National Competition Policy

Report for the 2005 Assessment on Victoria's Implementation of National Competition Policy

May 2005

Victoria
The Place To Be

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Overview and major achievements

The 2005 report to the National Competition Council (NCC) details Victoria's ongoing achievements in National Competition Policy (NCP) reform. The report shows that Victoria continues to make significant progress and has met all the requirements for the 2005 assessment. Major achievements include:

- Significant progress on areas of legislation review and reform (see Sections 4 and 5): 2004 saw the completion of legislative amendments in four priority legislation areas; pharmacies, legal professions, travel agents and gaming. Review activity in agricultural and veterinary chemicals and trade measurement continued in 2004 and relevant legislative amendments are expected in 2005-06. Victoria expects to complete all non-priority legislation review and reform activity in 2005-06.

- Important contribution to national reform program in the energy markets (see Sections 1 and 2): Victoria has continued to take a lead role in the national reform program for electricity and gas.

- VCEC established (see Section 3): The Victorian Competition and Efficiency Commission (VCEC) incorporates and expands on the roles of the Office of Regulatory Reform and Victoria's Competitive Neutrality Unit. The VCEC will play an important role in ensuring that the NCP competition test is undertaken in respect of all primary legislative proposals and relevant regulations.

As a result of these and other gains detailed in this report, the NCC should have confidence in recommending the full disbursement of Victoria's payments for 2005-06.

This report describes Victoria's progress on all outstanding NCP matters, as outlined by the NCC in its 2005 NCP assessment framework.

1. Electricity

Assessment issues

- Victoria has continued to take a lead role in the national reform program for energy markets.
- The Australian Energy Market Commission and Australian Energy Regulator were established in 2004.
- Victoria struck landmark pricing agreements for small consumers with energy retailers in December 2003.
- Retail price regulation is continuing.

National Electricity Market reform

Victoria has continued to take a lead role in the national reform program for energy markets. It supports national energy reforms that will provide a more competitive and stable national energy market, increasing the level of investment certainty.

The Australian Energy Market Commission (AEMC) and Australian Energy Regulator (AER) will be the new national energy institutions, providing streamlined and more efficient rule-making and regulation for the National Electricity Market (NEM) and the national gas access regime. The AEMC and the AER were established under legislation in 2004, and will assume their new functions in electricity and gas progressively during 2005.

The national market reforms also include improvements to the framework for transmission in the NEM. The improvements include new national planning arrangements for transmission and a more economic and incentive based regulatory test for investment in transmission. The new arrangements will ensure investment in transmission links between the states is more economically based, allowing investors to strike the right balance between generation and transmission investment.

Victoria is seeking to remove unnecessary state-specific regulations. The Victorian cross ownership laws are a good example of this. Victoria's cross ownership laws place quantitative limits on cross ownership between generation and networks and were intended originally to protect the competitive market structure in the electricity and gas sectors.

Recent mergers between power generators and retailers have demonstrated that vertical integration between generators and retailers in the electricity market can reduce the cost of risk management for companies and consumers without reducing the level of competition between generators and between retailers.

Victoria is reviewing the rationale for its cross ownership laws and examining options for the most effective way to regulate merger activity in the national energy market. An Issues Paper on Victoria's cross ownership laws was released in December 2004. Submissions to the Issues Paper closed on 28 February. The Government expects to make a decision on the future of the cross ownership laws in 2005.

Retail market competition

Victoria has the most competitive energy retail market in Australia. Since full retail competition was introduced, around 530,000 or 22% of electricity users and around 330,000 or 20% of gas users have changed to an alternative retailer. The Government promotes effective retail competition, recognising that effective competition delivers the greatest benefits to users in both price and service standards.

Victoria's goal is to have energy prices set by the market rather than regulation. However, it also recognises that effective competition does not occur overnight, and that as a consequence small users must have protection during the transition to fully effective competition. To this end, in December 2003 Victoria struck landmark pricing agreements for small consumers with the privately owned energy retailers that will deliver low energy prices to Victorians through to the end of 2007. The pricing agreement represents a real decrease in electricity prices over the four year period, and limits increases to gas prices to around CPI from 2005 onwards.

The Essential Services Commission carried out its second investigation into the effectiveness of retail competition and a review of the consumer safety net arrangements during 2004. The review determined that retail competition is becoming increasingly effective in providing benefits for consumers. However, there is a continuing need to maintain safety net arrangements for residential and small business consumers. Accordingly, through legislation passed in Spring 2004, these arrangements were extended to 31 December 2007. It is anticipated that price regulation will continue at least until full retail competition is fully effective.

The Government has introduced several new consumer protection measures, including: a prohibition on late payment fees; a penalty payment of $250 per day by retailers to consumers where supply disconnection has occurred contrary to the provisions of the Energy Retail Code; reserve powers to regulate early exit fees and pre-payment meters; and an obligation on retailers to publish details of their retail market offers.

To further address the issue of supply disconnection, where consumers are genuinely unable to afford their energy bills, Victoria has established a Committee of Inquiry into Financial Hardship of Energy Consumers. This will inform Government on measures to mitigate against supply disconnection, and to better coordinate community and supplier resources to assist affected consumers. The Committee will provide a final report later in 2005.

In July 2004, Victoria also announced that new interval meter technology would be made available to allow consumers to save money on their electricity bills and help protect the environment. Victoria's consumption of power during peak times has increased dramatically and the interval meter technology will allow better management of those peaks and potentially delay the need for new power stations. The rollout of new and replacement meters is expected to begin in 2006. The introduction of interval meters will facilitate the further introduction of cost reflective tariffs which, in turn, will enable consumers to better understand and manage their energy consumption.

2. Gas

Information request

- The Council requested the following information:
- Progress in reforming submerged lands legislation.
- Progress in review of the *Pipelines Act 1967*.
- Progress in implementing the national gas quality standard.

Submerged lands legislation

Under the Offshore Constitutional Settlement between the Commonwealth and the States, it has been agreed that the States will implement any legislative reforms initiated by the Commonwealth that relate to offshore petroleum facilities.

The Commonwealth *Petroleum (Submerged Lands) Act 1967* will be replaced by a new *Offshore Petroleum Act*. The Commonwealth has not yet introduced this new Act but this is expected to occur in 2005. The new Act will incorporate all amendments to the *Petroleum (Submerged Lands) Act 1967* made by the Commonwealth in 2002 relating to NCP.

Once the *Offshore Petroleum Act* is passed, it is proposed that Victoria will follow by enacting a new Offshore Petroleum Act and repealing the *Petroleum (Submerged Lands) Act 1982* in 2006 and thereby incorporate the NCP amendments.

Pipelines Act 1967

Victoria reported to the NCC in 2004 that a complete review of the *Pipelines Act 1967* was in progress and draft legislation would be developed to incorporate recommendations from this review and the 1997 NCP review. The review is now complete and the drafting of a new *Pipelines Act* is currently underway to address the recommendations of the NCP review. It is expected that the Bill will be introduced and passed by December 2005.

Gas quality standards

During 2004 Victoria updated its regulations in consultation with industry to make them fully consistent with and reference the national gas standard. Victoria is currently finalising a working draft of the regulations and preparing the associated Regulatory Impact Statement. It is anticipated that the amendments will be implemented in the second half of 2005.

3. Competitive Neutrality

Information request

The Council requested the following information:

- Any changes to the coverage of competitive neutrality principles or complaints handling processes.
- Any changes to the process arising from the transfer of responsibility for competitive neutrality education and complaints handling to the VCEC.

Victorian Competition and Efficiency Commission

The Victorian Competition and Efficiency Commission (VCEC) was established on 1 July 2004 under the *State Owned Enterprises (State body – Victorian Competition and Efficiency Commission) Order 2004*. The VCEC incorporates and expands on the functions of the Office of Regulatory Reform and Victoria's Competitive Neutrality Unit. The VCEC has three core functions:

- Advising on the adequacy of regulatory impact statements and business impact assessments of significant new legislation;
- Undertaking inquiries referred to it by the Treasurer; and
- Operating Victoria's Competitive Neutrality Unit (CNU).

Accordingly, Victoria's CNU has been subsumed into the VCEC which is now responsible for providing competitive neutrality advice and dealing with competitive neutrality complaints consistent with the Victorian Government's CN Policy. Information concerning competitive neutrality can now be found on the VCEC web site www.vcec.vic.gov.au.

The transfer of responsibility from the CNU to VCEC has not resulted in changes in the way that complaints are handled. The emphasis on education has continued, with a particular focus on Local Government, to ensure the correct application of CN Policy by significant government owned business operations.

Local government compliance

The Local Government Division of the Department for Victorian Communities, assisted by an advisory panel of representatives from the VCEC, the Department of Premier and Cabinet and the Municipal Association of Victoria, has made recommendations on Councils' NCP compliance. The panel assessed Councils' Local Government Improvement Incentive Program (incorporating CN) statements individually, and sought clarification from any Council whose statement was not sufficiently self-explanatory or complete, before settling upon recommendations to enable Local Government to receive payments equal to 9 per cent of the State's total NCP payments.

Seventy-seven Victorian Councils were found to be fully compliant with CN Policy and eligible for competition policy payments in December 2004. Two Councils' payments were made provisional subject to one undertaking a review and the other addressing issues of partial compliance with CN. Five Councils were identified as needing to meet with VCEC representatives to discuss several points to help clarify aspects of their application of CN Policy.

In its 2004 Annual Report on NCP, Victoria reported that nine Councils were identified as needing further CN compliance training. Training has since been undertaken.

Competitive Neutrality complaints

The number of queries and complaints received by the CNU/VCEC from private business operations fell dramatically in 2004. The VCEC received only one complaint between 1 July and 31 December 2004. The decline in private business complaints (and queries) continues a trend over the last two years. In Victoria, a high proportion of CN complaint investigations has involved Local Government. The decline suggests that Councils have attained a high level of understanding of, and willingness to apply, the CN Policy.

Complaints received since December 2003 and completed prior to December 2004

City of Greater Geelong – Geelong Livestock Exchange

This complaint was registered on 13 July 2004 and finalised on 24 December 2004.

This complaint related to a proposal being considered by the City of Greater Geelong (the Council) to allocate significant funds to upgrade the Geelong Livestock Exchange. The complainant alleged that such an investment would not be economically viable, and consequently there had been a departure from the application of the Government's CN Policy.

Subsequent inquiries determined that the Council had not yet made a decision to commit funds to an upgrade, and to date had only made investments to address critical Occupational Health and Safety and Environmental Management issues. The VCEC formed the view that while the Council is considering options, which include committing significant investment funds to upgrade the Saleyards, it has not yet made a binding

decision to invest, and therefore the Council could not be in breach of the Government's CN Policy. The Council and the complainant were advised and consequently the complaint was closed with no further action required at this time.

However, the Council was also advised that any significant investment would need to be planned on the basis of full cost recovery pricing and a reasonably based expectation of commercial viability. Alternatively, the Council would need to undertake a robust public interest test to determine that the activity warranted a subsidy.

Investigations in progress at December 2003 and completed prior to December 2004

Victorian Arts Centre Trust – theatre venue hire and commercial investment

This complaint was registered on 24 August 2003 and finalised in February 2004.

This is the second complaint concerning the Victorian Arts Centre Trust (VACT) investigated by the CNU. A brief summary of the first investigation, finalised in December 2003, was provided in Victoria's 2004 Annual Report on NCP.

The second complaint related to the pricing of Victorian Arts Centre theatre venues and facilities for hire by commercial producers, and the role of the VACT as an investor in commercial productions. The CNU concluded that the VACT was not in breach of CN Policy as the Centre's commercial theatre venue hire activity was not a significant business activity and therefore, the VACT is not required to apply full cost-reflective pricing. The CNU's investigation also concluded that the commercial investment and production activities of the VACT were not classed as a "business". However, the CNU recommended that the VACT disclose in its Annual Report all commercial productions in which it has invested at each of the Arts Centre theatres.

4. Priority legislation review and reform

Assessment issues

- In 2004 Victoria made significant progress towards completion of review and reform activity in all of the priority legislation areas.
- Pot limits for rock lobster boats play an important role in preventing fishery depletion and harm to protected species by internalising the externality cost of excessive pot numbers and soak times.

Agriculture and Veterinary Chemicals (Victoria) Act 1994

During 2004 the Australian Pesticides & Veterinary Medicines Authority (APVMA), a Commonwealth statutory authority, completed further consultations with stakeholders and revised a draft Cost Recovery Impact Statement (CRIS).

The *Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005* (Cwth) was enacted in March 2005. The Act amends, among others, the *Agricultural and Veterinary Chemicals Code Act 1994* and the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* to implement the new cost recovery arrangements for the APVMA as outlined in the CRIS. In order to implement the new cost recovery arrangements, it will be necessary for the Commonwealth to introduce new regulations to specify the new levy rates for the tiered levy, new application and modular fees and assessment periods and other changes.

It will also be necessary to amend the regulations under these Acts, namely the *Agricultural and Veterinary Chemicals Code Regulations 1995* and the *Agricultural and Veterinary Chemical Products (Collection of Levy) Regulations 1995*, to give effect to all the measures contained in the CRIS. A minor amendment is also required to the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*.

The new cost recovery arrangements are planned to be in place before 30 June 2005. This timing allows the APVMA time to introduce the necessary administrative changes ahead of the start of the financial year, and provides registrants with sufficient notice of the changes in fees and levies.

Victoria meets its NCP obligations through automatic adoption of the reformed legislation through the *Agricultural and Veterinary Chemicals (Victoria) Act 1994*. No further changes to Victorian legislation are needed.

Fisheries Act 1995

Information request

The Council requested the following information:

- regarding octopus predation, why not allow industry participants to discover the optimum trade-off between a lower total allowable catch (TAC) and lower fishing costs?
- regarding harm to protected species, how does limiting pot numbers per boat impact on protected species?
- regarding competition for high catch ground, what is the experience from situations elsewhere, such as the individual transferable quota (ITQ) rock lobster fishery of New Zealand, as to how important this problem is and what if any measures have been tried to address it?
- what progress has been made in removing quota holding and transfer restrictions in the abalone industry?

Victoria has previously reported to the NCC that restrictions on the number of pots allowed per rock lobster licence are in place to address ecological sustainability issues, not only in the rock lobster fishery but also with regard to protected species such as whales. Without pot limits an individual rock lobster fisher seeking to achieve their total allowable catch at minimum cost would be likely to choose to deploy more pots for a longer soak time. This would have two important impacts:

- higher predation, leading to long term depletion of stock numbers; and
- greater risk of harm to protected species.

Both of these effects create significant externalities – the costs go way beyond those borne by individual fishers.

In the absence of pot limits, fishers would have an incentive to set a large number of pots to exploit good fishing grounds and prevent others from doing so, causing further risk of depletion.

Predation

As noted by the Council, the setting of a total allowable catch for rock lobsters internalises the externality cost of stock losses due to predation within the industry. However, it does not internalise the cost to individual fishers.

On the other hand, individual pot limits mean that each fisher deploys fewer pots for a shorter soak time, thereby internalising the cost of predation to individual fishers in the industry, protecting stocks for the future.

Protected species

Another impact of more pots and longer soak times in the absence of pot limits is an increase in the exposure of protected marine mammals to entanglement. Marine mammal populations are recovering from historically low levels and such populations, particularly of

Southern Right whales, are unable to sustain an increase in natural mortality. Fishing induced mortality has a significant impact on whale population structure and function.

Interactions with protected species in the rock lobster fishery, in the form of entanglements with pot lines, occur predictably, but infrequently. There is no incentive for an individual fisher to take into account the impact of their individual actions on entanglements. Thus the pot limits internalise this externality cost as well.

Competition for high catch ground

The Victorian rock lobster fishery management regime bears strong similarities to all other temperate rock lobster fishery management regimes in Australia, all of which have pot limits as a critical component. All of these regimes are highly regarded and have obtained export accreditation. A critical issue in obtaining export accreditation is passing the Australian Government's fisheries audit test, as required under the *Environment Protection and Biodiversity Conservation Act 1999*, by demonstrating that the regime is "demonstrably ecologically sustainable".

Quota management was introduced relatively recently, in 2001, to the Victorian Rock Lobster fishery. During stakeholder consultations, ecological concerns relating to entanglement and predation were raised. As a result, input limits on the fishery, in the form of pot limits, were retained as a cautious approach to regulatory change. Fisheries Victoria was also able to rely on the experience of the two other jurisdictions in Australia where harvesting of this species occurs (viz South Australia and Tasmania). In both jurisdictions, a quota management system is in place, in concert with input controls in the form of pot limits.

The New Zealand rock lobster fishery, like that in Victoria, is a quota-managed fishery. Unlike Victoria, however, the New Zealand fishery does not restrict the number of pots a fisher may use. Under the New Zealand model, commercial fishers, recreational fishers and Maori fishers compete for access to the best grounds in rock lobster fisheries. New Zealand manages these impacts through adjustments to the total allowable commercial catch, affecting the commercial sector only.

Fisheries Victoria is pursuing with New Zealand information regarding the application of their Quota Management System to their Rock Lobster fishery. A request for details on the management of the New Zealand Rock Lobster fishery has been made, including a request for information on the dynamics of stock concentrations, fisher behaviour on high catch grounds, and on the environmental and economic performance of its fishery. Should this inquiry show that the environmental issues faced in the New Zealand rock lobster fishery are sufficiently similar to those faced by the Victorian rock lobster fishery, Fisheries Victoria will draw on the New Zealand management regime, amongst other things, to consult with the Victorian industry on removal of pot limits.

Abalone

An Exposure Draft of the *Fisheries (Abalone) Bill*, a bill to amend the *Fisheries Act 1995*, was released for comment in February 2005. The Bill provides for the necessary changes to allow the separation of quota holding from an access licence. It also provides measures to remove transfer restrictions in the fishery. The Bill is expected to go before the Autumn 2005 sitting of Parliament.

Drugs, Poisons and Controlled Substances Act 1981

The *Drugs, Poisons and Controlled Substances Act 1981* was amended in November 2004. Amendments addressed all the relevant recommendations from the National Competition Review of National Drugs, Poisons and Controlled Substances Legislation (the Galbally Review) that Victoria did not already comply with and that could be done without national cooperation and/or prior action by the Commonwealth. Specifically, the Act was amended to automatically adopt the Standard for the Uniform Scheduling of Drugs and Poisons schedules by reference, repeal the requirement for manufacturers and wholesalers to obtain licences to handle Schedule 5 and 6 poisons, and allow the Code of Good Wholesaling Practice to be adopted when it is finalised.

Responses to the remaining Galbally Review recommendations are being developed through Victoria's involvement with the National Co-ordinating Committee on Therapeutic Goods (NCCTG). The NCCTG has developed a work plan to ensure the implementation of the recommendations.

In 2004 the NCCTG endorsed the Price Information Code of Practice (Recommendation 11d). It will be formally adopted within the trans-Tasman legislation when completed.

In 2005 the NCCTG will continue its work on the Code for the Supply of Starter Packs (Recommendation 12) in conjunction with Medicines Australia and on updating the Code of Good Wholesaling Practice for Therapeutic Goods (Recommendation 18). In addition, the NCCTG is identifying minor amendments to the draft criteria that will allow recognition of labelling exemptions granted by other jurisdictions (Recommendation 20).

It is expected that further reforms to be implemented in Victoria will become clear once the legislation for the Trans-Tasman Therapeutic Products Agency is finalised.

Pharmacists Act 1974

The *Pharmacy Practice Act 2004* received royal assent on 16 November 2004.

The Act is consistent with reforms recommended by the National Review of Pharmacy Legislation in February 2000 in all but six areas:

1. Restrict entry of new friendly societies to the Victorian pharmacy market – Recommendation 5(a)(2);

2. Retain controls restricting the practice of pharmacy to registered pharmacists – Recommendation 16(b);

3. Lift restrictions on the number of pharmacies that may be owned by permitted ownership entities – Recommendation 4(a);

4. Allow ownership of pharmacies by prescribed relatives of pharmacists – Recommendation 3(b);

5. Remove requirements for registration of pharmacy premises – Recommendation 7(a); and

6. Remove provisions preventing consideration for third parties based on a pharmacy's turnover or profit – Recommendation 6(c)(3).

Regarding entry by friendly societies, Victoria adopted the less restrictive position of the 2002 COAG Senior Officials Working Group, which was that entry by existing friendly societies should not be restricted. Victoria's approach is also less restrictive than the recommendations of the national review in relation to controls over the practice of pharmacy. Victoria believes that there are already sufficient controls over the practice of pharmacy exercised outside pharmacy legislation.

A more restrictive approach than that recommended by the national review was adopted with regard to ownership limits, but Victoria's approach meets its obligations under NCP as determined by the Prime Minister in his statement dated 1 June 2004.

On the remaining four recommendations above, Victoria has also taken a more restrictive approach than that recommended by the national review.

The model of 'prescribed relatives' operates only in South Australia and the Government believes there are no obvious competition benefits from allowing the prescribed relatives of a registered pharmacist to hold a proprietary interest in a pharmacy in Victoria. Victoria understands that this recommendation was made primarily to enable the South Australian model to continue and it was not intended to be adopted by other States. Victoria also understands that there was limited support for this recommendation from COAG Senior Officials.

The national review recommendation in relation to pharmacy premises has four provisos. Victoria considers that the second proviso, that the responsibilities of pharmacy proprietors and managers and of registered pharmacists under State drugs and poisons legislation are not compromised, is best met by a continued role for the Pharmacy Board in active inspection and approval of premises. The Government believes that to protect the public, it is essential that the premises from which drugs and poisons are compounded and/or dispensed are of sufficient standard. If such a function were to be removed from the Pharmacy Board, it would need to be carried out by the Department of Human Services. The Government prefers that the Pharmacy Board carry out this function so that dispensing of both scheduled and unscheduled medicine is addressed and because it does not require State funding.

Finally, Section 22(3) of the *Pharmacists Act 1974*, which is retained in the new legislation, makes void any clause in a bill of sale, mortgage, lease or other commercial agreement that gives to any person other than the person carrying on the practice the right to receive any consideration that varies according to the profit or takings of the practice. The Government believes that this provision is essential to support pharmacists to resist commercial pressures that may compromise their professional decision-making. It prevents the unnecessary dispensing and use of medicine, the cost of which would be carried by the Pharmaceutical Benefits Scheme and also by the State through the hospital system in treatment of patients admitted for medication misadventure.

Legal Practice Act 1996

Information request

The Council requested the following information:

- Progress on the interjurisdictional process with respect to professional indemnity insurance.
- Progress with the review of conveyancing restrictions and any subsequent reforms.

The *Legal Profession Act 2004*, which repeals the *Legal Practice Act 1996* and introduces reforms to improve the regulation of the legal profession, received Royal Assent on 14 December 2004. It is anticipated that it will come into operation in mid-2005.

The Act establishes new bodies that will be responsible for regulating the profession and implements national model provisions intended to provide consistency in regulatory standards and procedures across jurisdictions in order to facilitate national practice.

The national model provisions incorporated into the Act were developed through the Standing Committee of Attorneys-General. As a result, several regulatory functions, including admission of legal practitioners, trust money and trust accounts, costs disclosure and review and fidelity cover, will become uniform across jurisdictions.

Professional indemnity insurance

Ministers and the legal profession have not yet reached agreement on a national approach to professional indemnity insurance. Development will continue on a scheme relating to professional indemnity insurance that will facilitate interstate practice. In the interim, there will be jurisdictional variation relating to insurance requirements.

The *Legal Profession Act 2004* does not substantially alter the current arrangements in relation to professional indemnity insurance for Victorian legal practitioners who are not barristers.

In relation to Victorian barristers, the Act provides that a barrister may choose to apply for insurance with the Legal Practitioners' Liability Committee (LPLC). The LPLC may choose to refuse or provide the insurance. However, the Act also provides that the insurance for a barrister must be with the LPLC if the Victorian Bar Council resolves on or before 28 February 2005 that barristers are required to insure with the Committee. The Victorian Bar Council resolved on 16 December 2004 that Victorian barristers are required to insure with the LPLC.

The Act also extends the provisions in relation to professional indemnity insurance to cover the new business structures allowed for under the national model provisions, namely multi-disciplinary partnerships and incorporated legal practices.

Conveyancing

Conveyancers are currently regulated by the *Legal Practice Act 1996* (*LPA 1996*), however this regulation is minimal. The *LPA 1996* defines a conveyancer as a person, other than a legal practitioner, who carries on a business in the course of which conveyancing work is carried out. Conveyancing work is not legal work and a person must not engage in legal practice unless the person is a legal practitioner. The *LPA 1996* places limits on who can

carry on business or work as a conveyancer. Conveyancers are also required to disclose certain information to prospective clients. Other than this, there is no licensing regime and no requirement for conveyancers to hold professional indemnity insurance (other than as members of their professional associations).

The recent review of the regulation of the Victorian legal profession under the *LPA 1996* did not deal with the regulation of conveyancers. However, this issue did arise during the course of the review and was the subject of discussion in the National Competition Review of the *Legal Practitioners Bill* (renamed *Legal Profession Bill*) undertaken by PricewaterhouseCoopers (PWC) in May 2004. PWC identified that only allowing non-lawyer conveyancers to perform aspects of a conveyance that is not "legal work" is a restriction on competition. However, PWC noted that the regulation of conveyancing would involve a number of complex inter-related matters and that a full assessment of the benefits and costs of reserving legal work associated with conveyancing services to legal practitioners would require a comprehensive review of the regulation of conveyancing services, including legal work associated with conveyancing transactions. PWC recommended that the current regulatory approach be retained until a new regulatory scheme for conveyancers, if any, was developed.

In the absence of a review of the regulation of conveyancing services, the provisions of the *LPA 1996* that relate to conveyancing businesses were carried over in to the *Legal Profession Act 2004*.

On 10 November 2004, the Attorney General and the Minister for Consumer Affairs jointly announced the terms of reference for a review of the regulation of Victoria's conveyancing industry. Although the terms of reference referred to competition issues only in general terms, the tender documentation for the review:

- noted concerns previously raised by the National Competition Council in relation to the regulation of Victorian conveyancers;

- noted the recommendations of National Competition Policy Review that was undertaken in relation to provisions to be included in the *Legal Profession Act 2004*; and

- specified that the reviewer should apply National Competition Policy principles in considering limitations on the nature of work that conveyancers perform and referred to clause 5 of the Competition Principles Agreement.

The review will assess the efficiency and effectiveness of the current regulatory regime for conveyancers and consider options for reform of this regime. The review will also comment on the nature and extent of work that conveyancers can and/or should be able to perform in relation to land transactions.

As part of the review, comment will be sought from stakeholders on a discussion paper that was released in March 2005. The closing date for submissions is 5 May. It is likely that a final report will be presented to the Department of Justice by the end of June 2005.

Apart from the general commitment to review conveyancing services as a necessary corollary of the legal profession review, the review was given added urgency by the collapse of a Geelong conveyancing company in 2004 with client losses estimated at up to $9 million.

Travel Agents Act 1986

Victoria reported the recommendations of the NCP review of the *Travel Agents Act 1986* to the NCC in 2004. The current status of each recommendation is:

- Remove entry qualifications for travel agents – Victoria reported in 2004 that it did not support the removal of qualification requirements, but that specific requirements would be reviewed. New reduced qualification requirements were introduced by the *Travel Agents (Amendment) Regulations 2004* which took effect from 1 January 2005. Victoria presented its arguments in favour of retaining entry qualifications relating to fares and ticketing for overseas travel in its 2004 report.

- A competitive insurance system – Victoria reported in 2004 that it proposed to retain the mandatory compensation scheme but that a review would be undertaken with a view to establishing a risk-based premium structure. The Travel Compensation Fund (TCF) carried out this review in 2004. The review considered risk-based weighting of premiums but found that this would not be feasible, because historical claims data does not disclose any clear predictors of risk. Victoria presented its arguments in favour of retaining compulsory TCF membership in its 2004 report.

- Change the current licence exemption threshold – to implement this recommendation, a replacement Order in Council is being prepared.

- Extend the operation of the Act to the Crown – this was implemented in May 2004 by the *Estate Agents and Travel Agents (Amendment) Act 2004*.

Trade Measurement Act 1995; Trade Measurement (Administration) Act 1995

In May 2004 the Ministerial Council on Consumer Affairs approved the final public benefit test and recommendations. The review recommended a review of 'the definition of meat'. The Standing Committee of Officials on Consumer Affairs is undertaking this review and it is expected be completed in the first half of 2005.

Tattersall Consultation Act 1958; Public Lotteries Act 2000

The Government has conducted a review of the options for the post-2007 lottery industry arrangements and in March 2005 made a detailed announcement on the future licensing arrangements and the licensing process.

The Government has decided that the public lotteries licence or licences that will operate after 30 June 2007 will be awarded through a competitive process that will result in the Government granting either an exclusive lotteries licence or up to three non-exclusive licences. The licence or licences issued will be structured so as to provide flexibility for a national lottery market.

The licence awarding process will begin in May 2005, with licence agreement(s) expected to be finalised in early 2006.

5. Other legislation review and reform

Assessment issues

- Amendments to implement review recommendations for a number of other legislation areas were drafted or enacted in 2004.
- Outstanding matters are likely to be completed in 2005-06.

Consumer Credit (Victoria) Act 1995

The review of the Consumer Credit Code (which is a nationally uniform document passed by the Queensland Parliament and adopted in each of the States and Territories) has been completed. The Ministerial Council on Consumer Affairs endorsed the report in 2002. Queensland and New South Wales are drafting different provisions arising from the review. Pending resolution of some outstanding issues raised by the review, it is likely that the NCP recommendations will be completed in 2005.

Co-operatives Act 1996

The Act was introduced in 1996 and was reviewed against NCP principles at that time. It replaced the *Co-operation Act 1981* which had been scheduled for review.

Victoria reported to the NCC in 2003 that this review had been removed from the review schedule.

Crown Land (Reserves) Act 1978 and related Acts and Land Act 1958

The NCP review of the *Land Act 1958* and *Crown Land (Reserves) Act 1978* has been completed and is expected to be released along with a Victorian Government response by mid-2005.

After the NCP review, the Government undertook a further review of Crown land legislation in 2004 in order to update the Acts and remove a number of redundant and outdated provisions.

After completion of public consultation on the further review of the legislation, amendments are expected to be made to the legislation in 2005-06 and will include any changes required to implement NCP recommendations.

Legal Aid Act 1978 (as amended 1995)

There has been no further consideration of the NCP implications for the *Legal Aid Act 1978* since Victoria's 2004 Annual Report on NCP. In 2004 Victoria reported that it supported and had implemented all but three of the ten recommendations of the NCP review

undertaken by KPMG. Victoria provided a public benefit argument in support of its views on the three outstanding recommendations in its 2004 report.

The three recommendations not supported relate to the separation of Victoria Legal Aid's (VLA) policy and administrative functions and the rights of private practitioners to compete with VLA's in-house team.

KPMG argued that having a single agency undertaking the roles of both policy and administration is a potential restriction on competition and suggested that an independent advisory board should provide policy advice to the Attorney-General.

KPMG also argued that the provisions of the Act which give VLA the ability to allocate work to itself and the guidelines for the allocation of work between VLA and private practitioners, where they specify matters which can be or are exclusively referred to VLA's in-house practice (e.g. indictable crime matters), restrict competition in the market for legal services in Victoria. On this basis, KPMG recommended that section 8 of the Act be amended and section 28 of the Act be repealed.

In 2004 VLA decided to change the way it allocated indictable crime matters. Previously, there was a presumption in favour of allocating indictable crime matters to in-house practitioners. Now, a specialist indictable crime panel has been established made up of a combination of VLA officers and private firms and individuals. All members of the panel will be eligible to conduct legally aided Magistrates' Court committals and County and Supreme Court trials. This change in approach will mean that the private practitioners on the specialist panel will be allocated some of the cases that previously would have been retained in-house.

Murray Valley Citrus Marketing Act 1989

Victoria reported to the NCC in 2003 that a poll of citrus producers in the Murray Valley region of NSW and Victoria would be held to decide reconstitution of the Murray Valley Citrus Board. Victoria also reported that the *Murray Valley Citrus Marketing Act 1989* would be repealed.

The poll of producers was held, and the producers agreed to reconstitute the Board under the provisions of the *Agricultural Industry Development Act 1990* of Victoria.

The *Murray Valley Citrus Marketing Act 1989* was repealed on 1 July 2004 by section 20 of the *Agricultural Industry Development (Further Amendment) Act 2002*.

National Parks Act 1975

Several of the recommendations in the NCP review report on the *National Parks Act 1975* and aspects of the *Water Industry Act 1994* were addressed in amendments to the *National Parks Act 1975* in Spring 2004 through the *National Parks (Additions and Other Amendments) Act 2004*. The amendments addressed recommendations to simplify consent terms and to specify the membership of advisory bodies in terms of skills and experience. The NCP review report and the Government response are expected to be released by mid-2005.

Therapeutic Goods (Victoria) Act 1994

Victoria reported to the NCC in 2004 that an in-house NCP review of the *Therapeutic Goods (Victoria) Act 1994* had been completed. Due to the relationship between the Act and Victorian drugs and poisons legislation, implementation of recommendations from the NCP review was delayed until finalisation of the NCP review of State and Territory drugs

and poisons legislation. This occurred during 2004 and accordingly in November 2004, the *Therapeutic Goods Act (Victoria) 1994* was amended to repeal licences for wholesalers of therapeutic goods and to allow the Minister to approve codes of practice for wholesalers. Implementation of some reforms depends upon legislative action being taken by the Commonwealth, including legislative amendments arising from the establishment of the Trans-Tasman Therapeutic Goods Agency.

Trustee Companies Act 1984

The *Trustee Companies Act 1984* is being replaced by nationally uniform legislation developed by the Standing Committee of Attorneys-General. The legislation has been the subject of a competition assessment and is awaiting adoption by the States and Territories pending the resolution of outstanding minor matters.

6. New legislation and gatekeeping

Information request

The Council requested the following information:

- The scope of legislation containing non-trivial restrictions on competition that is subject to a formal regulatory impact assessment.
- Guidelines for conducting regulation impact analysis and the extent to which the guidelines must be followed by government bodies that review or make regulations.
- The extent to which impact assessment guidelines embody the CPA guiding principle.
- Details of the Gatekeeper role.

Regulatory impact assessments

In Victoria, a formal assessment to determine whether the CPA clause 5(1) guiding principle has been satisfied (often referred to as the 'NCP competition test') must be undertaken for:

- all primary legislative proposals (including new and amended legislation); and
- subordinate legislation (often referred to as "regulations") for which a Regulatory Impact Statement (RIS) is required.

For primary legislative proposals that potentially have significant effects for business and/competition, the NCP competition test must be incorporated within the Business Impact Assessments (BIAs), which must now be undertaken under Victoria's improved arrangements for the assessment and scrutiny of primary legislative proposals with significant effects for business and/or competition (see Box 1 below for further details).

For primary legislative proposals that are not considered to have potential significant effects for business and/or competition – and are therefore exempt from the BIA process – the NCP competition test assessment must still be undertaken, and continue to be presented in the main body of the relevant Cabinet submission.

For subordinate legislation, the *Subordinate Legislation Act 1994* requires the preparation of a Regulatory Impact Statement (RIS) for new or amended regulatory proposals. However, a number of exemptions and exceptions to the RIS process exist, most notably for proposals that:

- will not impose an appreciable economic or social burden on any sector of the public;
- are required under a national uniform legislation scheme, where an appropriate assessment of costs and benefits has been undertaken under that scheme; and
- are of a fundamentally declaratory or machinery nature.

Box 1: Business Impact Assessments

In its April 2004 Economic Statement, *Victoria: Leading the Way*, the Government announced the introduction of Business Impact Assessments (BIAs) for the scrutiny of new or amended primary legislation that may have significant effects for business and competition. In determining the appropriateness of applying a BIA process, the responsible Minister will take into account whether a proposed legislative measure will have a significant effect on business and/or competition, taking into account factors such as whether the measure will:

- affect a significant number of businesses;
- have a concentrated effect on a particular group, region or industry;·
- have a significant impact on small business;
- have a large aggregate impact on the Victorian economy;
- create a disincentive to private investment;
- add significantly to business costs; and/or
- place Victorian businesses at a competitive disadvantage with interstate and overseas competitors.

The assessment methodology used when preparing a BIA is based on the well-established methodology for Regulatory Impact Statements that is used to scrutinise subordinate legislative proposals, although BIAs are to include a specific assessment of the impacts of the proposed legislation on small business.

- state the objectives of the proposed measure;
- describe and assess the nature and extent of the problem being addressed;
- describe the expected impact on affected groups (including small business);
- assess the costs and benefits of the proposal and other practical alternative means of achieving the objective; and
- explain why the other means are not appropriate.

In assessing the costs and benefits of the proposal, BIAs need to specifically incorporate the NCP competition test to demonstrate that the proposed legislation is consistent with the clause 5(1) guiding principle.

Guidelines

For subordinate legislation, section 26 of the *Subordinate Legislation Act 1994* requires that RISs are prepared in accordance with guidelines issued by the Department of Premier and Cabinet. These are often referred to as the 'Premier's Guidelines'. A revised set of Premier's Guidelines came into effect on 17 January 2005 to take into account changes as a result of the establishment of the VCEC, and to implement elements of the Government's response to the Scrutiny of Acts and Regulations Committee's 2002 inquiry into subordinate legislation.

The revised Premier's Guidelines are part of the new guidance material available to government departments, agencies and regulatory bodies for the purposes of developing and assessing government regulation. This guidance material has been updated in a single publication known as the Victorian Guide to Regulation ('the Guide') , which was released in February 2005 (and which can be downloaded from the VCEC website: www.vcec.vic.gov.au).

The Victorian Guide to Regulation is structured under three broad headings:

- policy context and development: this section describes the various forms of regulation and regulatory alternatives, and discusses the circumstances under which governments should consider intervening in the market;

- process issues: which examines the processes that are in place in Victoria to ensure the appropriate scrutiny of regulatory proposals, and discusses when a BIA or RIS should be prepared; and

- guidelines for the preparation of BIAs and RISs: a step-by-step guide to the information and issues that need to be addressed in BIA and RIS documents.

The Guide also subsumes the Guidelines for the Application of the Competition Test to New Legislative Proposals. The competition test, which embodies the CPA clause 5 guiding principle, is now described as part of the step-by-step guide to preparing a BIA or RIS contained in the Guide.

Gatekeeper role

The Premier's Guidelines require that Ministers seek an independent assessment of the adequacy of RISs (according to the criteria outlined in the Act and the Premier's Guidelines), and that these independent assessments are now to be undertaken by the VCEC. For primary legislation, the Order in Council establishing the VCEC requires that it also provide independent advice on the adequacy of BIAs.

The VCEC is supported by a secretariat provided by the Department of Treasury and Finance (DTF). A protocol is in place between the Secretary of DTF and the Chair of VCEC to ensure the independence of the secretariat's advice to the Commission.

The VCEC assesses each BIA and RIS, and only provides certificates of adequacy when the analysis is considered to be the required standard. For primary legislation, the VCEC

certificate of adequacy must be provided to Cabinet or the relevant Cabinet Committee that is considering the proposed legislation. In the case of subordinate legislation, the RIS must not be released for public comment until the responsible Minister has received independent advice from the VCEC regarding the adequacy of the RIS.

The VCEC is required to report annually to the Treasurer on the nature and extent of compliance with published policies currently applying to government bodies in relation to RISs and BIAs. This report is to be released publicly.

As well as reviewing BIAs and RISs, another important function of the VCEC is to provide ongoing advice to government departments, agencies and regulatory bodies in the preparation of high quality BIAs and RISs. The VCEC provides training and assists in the identification of sources of relevant information. The Victorian Guide to Regulation encourages parties to consult with the VCEC during the early stages of the BIA or RIS processes.

In addition to the VCEC's role in the independent assessment of RISs, a further layer of scrutiny exists after regulations have been introduced.

After regulations are made, the Scrutiny of Acts and Regulations Committee (SARC) – which is an all-party parliamentary committee – must be supplied with copies of the RIS, the regulations, all public comments received during the consultation period, and the relevant department/agency's response to the main issues raised in the public comments. The SARC will review the regulations in accordance with the criteria relating to the adequacy of the statutory head of power authorising the regulations; the consistency of the regulations with principles of justice and fairness; and conformity with the processes for regulation-making specified in the *Subordinate Legislation Act 1994*.

The Act provides that, upon an assessment that any of the criteria have not been met, the SARC may make any recommendations to Parliament that it considers appropriate. The recommendations could include the disallowance of the regulation, wholly or in part, or the suspension of the regulation. In practice, however, the SARC has indicated that, where it considers that a statutory rule can be rectified by amendment, the Committee will bring the issues to the attention of the relevant Minister in the first instance for possible amendment.