# National Competition Policy

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## Third Tranche Assessment on Victoria's Implementation of the National Competition Policy

## Volume One: Main Report

March 2001

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# Summary of Contents

# Volume One: Main Report
# Table of Contents

# Abbreviations

| | |
|---|---|
| ABARE | Australian Bureau of Agricultural and Resource Economics |
| ABB | Australian Barley Board |
| ACCC | Australian Competition and Consumer Commission |
| AFISC | Australian Food Industry Science Centre |
| AIEF | Australian International Education Foundation |
| ANZECC | Australian and New Zealand Environment and Conservation Council |
| ARMCANZ | Agriculture and Resources Management Council of Australia and New Zealand |
| ARTC | Australian Rail Track Corporation |
| ATC | Australian Transport Council |
| BE | Bulk Entitlements |
| BSA | Building Services Agency |
| CCA | Conduct Code Agreement |
| CCT | Compulsory Competitive Tendering |
| CIE | Centre for International Economics |
| CMAs | Catchment Management Authorities |
| CN | Competitive Neutrality |
| CNCU | Competitive Neutrality Complaints Unit |
| COAG | Council of Australian Governments |
| CPA | Competition Principles Agreement |
| CRICOS | Commonwealth Register of Institutions and Courses for Overseas Students |
| CSOs | Community Service Obligations |
| DEET | Department of Education, Employment and Training |
| DHS | Department of Human Services |
| DNRE | Department of Natural Resources and Environment |
| DoI | Department of Infrastructure |
| DoJ | Department of Justice |
| DPC | Department of Premier and Cabinet |
| DSRD | Department of State and Regional Development |
| DTF | Department of Treasury and Finance |
| EMG | Energy Markets Group |
| EPA | Environment Protection Authority |
| ESC | Essential Services Commission |
| EWO | Energy and Water Ombudsman |
| FDR | Farm Dams Review |

| | |
|---|---|
| FRC | Full Retail Competition |
| GMPs | Groundwater Management Plans |
| GBEs | Government Business Enterprises |
| ISC | Index of Stream Condition |
| LPLC | Legal Practice Liability Committee |
| MCCA | Ministerial Council on Consumer Affairs |
| MDBC | Murray Darling Basin Commission |
| ML | Mega Litres |
| MPC | Melbourne Port Corporation |
| MRA | Mutual Recognition Agreement |
| MSATS | Market Settlement and Transfer System |
| MSAC | Melbourne Sports and Aquatic Centre |
| NCC | National Competition Council |
| NCP | National Competition Policy |
| NEC | National Electricity Code |
| NECA | National Electricity Code Administrator |
| NEM | National Electricity Market |
| NEMMCO | National Electricity Market Management Company |
| NMU | Non-Metropolitan Urban |
| NWQMS | National Water Quality Management Strategy |
| NVWE | Northern Victorian Water Exchange |
| ORG | Office of the Regulator-General |
| ORR | Office of Regulation Review |
| PBS | Pharmaceutical Benefits Scheme |
| PC | Productivity Commission |
| PTC | Public Transport Corporation |
| RMPs | Regional Management Plans |
| RRPs | River Restoration Plans |
| RWAs | Rural Water Authorities |
| SEPP | State Environment Protection Policy |
| SFMPs | Streamflow Management Plans |
| TERs | Tax Equivalent Regimes |
| TAC | Transport Accident Commission |
| TAFE | Technical and Further Education |
| TJ | Terajoule |
| TPA | Trade Practices Act 1974 (Commonwealth) |

| | |
|---|---|
| VCA | Victorian Channel Authority |
| VCGA | Victorian Casino and Gaming Authority |
| VCAT | Victorian Civil and Administrative Tribunal |
| VEETAC | Vocational Education, Employment and Training Committee |
| VENCorp | Victorian Energy Network Corporation |
| VET | Vocational Education and Training |
| Vic Track | Victorian Rail Track Corporation |
| VWIA | Victorian Water Industry Association |
| VWA | Victorian WorkCover Authority |
| WACC | Weighted Average Cost of Capital |
| WSAA | Water Services Association of Australia |
| WSC | Water Services Committees |

# 1. Executive Summary

This report outlines the progress made by Victoria in implementing its commitments under the National Competition Policy (NCP) and Related Reform Agreements (Agreements), signed by the Council of Australian Governments (COAG) in April 1995.

Over the past six years, Victoria has progressively implemented its commitments. Since coming to office, the Government has continued implementation, ensuring that prominence is given to the public interest provisions of the Agreements. To ensure the public interest test is rigorously applied, the Government has consulted the community on significant issues and established transparent review processes. The public interest test has been applied in a way that is sensitive to the interests of sections of the community who may be affected by change.

The principal purpose of this report is to facilitate assessment by the National Competition Council (NCC) of Victoria's implementation of the NCP. The report demonstrates that Victoria has fully complied with its commitments. As a consequence the NCC should be able to recommend payment of the full entitlement of the third tranche of competition payments from July 2001.

The report has been prepared to provide a discussion of key aspects of implementation necessary for the completion of the assessment. The report structure reflects the commitments contained in the Agreements and variations made to the Agreements by COAG on 3 November 2000. It has also been compiled with reference to the NCC's Framework for the Third Tranche Assessment, published on 5 February 2001.

The report addresses issues raised in the Framework and provides a comprehensive picture of Victoria's implementation. Volume one contains a detailed discussion of the key assessment issues. Volume two reports on some 130 legislation reviews and the application of competitive neutrality (CN) to over 100 public trading enterprises and business units.

Volume one contains a summary of progress; a discussion of the main principles of the NCP, including the legislation review program and CN; a discussion on infrastructure industry developments; and the application of the NCP to the agriculture, manufacturing and services sectors of the economy.

Volume one contains information on substantial progress in the infrastructure sector under the Related Reform Agreements. Continuing progress in the electricity and gas industries with a focus on the development of national markets, substantial progress in the proper pricing of scarce water resources and ongoing implementation of road transport in pursuit of national standards are described in the report. Chapters on rail and ports also demonstrate the application of the principles as outlined in the *Competition Principles Agreement* (CPA).

The report makes reference to reforms undertaken before the Government came to office, where such references are relevant to the third tranche assessment.

# Part A: Overview

## 2. Progress

- Victoria has made considerable progress in implementing National Competition Policy. The discussion throughout the report will demonstrate that Victoria's policy approaches across a wide range of Government activity are consistent with the requirements of National Competition Policy.

### 2.1 Recent and Prospective Developments

| | | |
|---|---|---|
| Dairy | July 2000 | Deregulation of dairy marketing |
| Electricity | December 2000 | Increased competition after vesting contracts expired |
| Barley | July 2001 | Deregulation of barley export marketing |
| Rail | July 2001 | Access regulation for intrastate freight |
| Gas | September 2001 | Full retail competition |

### 2.2 Progress on Commitments

#### *2.2.1 Infrastructure*

##### 2.2.1.1 Independent prices oversight and access regulation

Victoria has in place an independent economic regulator, the Office of the Regulator-General (ORG) that complies with the requirements of the CPA, including Clause 2(4).

The Government's proposal to establish the Essential Services Commission (ESC), the new economic regulatory body in Victoria, will subsume the ORG and provide continuing compliance with the CPA.

#### 2.2.1.2 Consumer interests and utilities

Legislation for the Water and Energy Industry Ombudsman was passed in late 2000. The legislation provides for the Ombudsman to be established in the first half of 2001. The Ombudsman will investigate and seek to resolve consumer complaints in the electricity, gas and water industries.

#### 2.2.1.3 Electricity - National Electricity Market

Victoria has met the objectives guiding the establishment of the National Electricity Market (NEM). Victoria has sought to develop a clearer set of institutional arrangements governing the policy direction and operation of the NEM, including clarification of the roles of regulators in a streamlined NEM structure.

Victoria has continued its review of legislative and regulatory barriers to free and fair trade in electricity.

#### 2.2.1.4 Electricity - Full Retail Competition

Victoria and New South Wales are leading the reform process to ensure retail contestability is introduced as soon as feasibly possible.

Load profiling is a cost-effective mechanism for measurement of market loads for smaller customers. However, there are some impediments which Victoria hopes to see removed to facilitate full retail competition (FRC) within the next two months.

Victoria supports the NCC's recognition that certain issues associated with implementing FRC are jurisdictional and that jurisdictions should decide how best to deal with them, e.g. settlement of the wholesale market.

The provisions of the *Electricity Industry Act 2000* are consistent with NCP principles. That is, they do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers.

Along with many other transitional derogations, Victoria's vesting contracts expired on 31 December 2000. Victoria still has some derogations from the National Electricity Code (NEC). Transitional derogations may be sought to implement retail contestability in a timely and effective manner.

#### 2.2.1.5 Gas-Retail Competition

Victoria is continuing a program for the introduction of contestability for gas customers. Subject to transitional arrangements necessary to support the orderly introduction of FRC for small customers, Victoria has otherwise implemented the 1997 Natural Gas Pipelines Access Agreement.

Consistent with the objectives of NCP, Victoria has continued its review of legislative and regulatory barriers to free and fair trade in gas. *The Gas Industry Act 1994* has been substantially amended to facilitate gas market developments.

#### 2.2.1.6 Water-Independent Price Regulation

The major development with respect to cost reform and pricing in Victoria has been the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*. This review has adopted a robust and transparent process for determining new prices to apply from 1 July 2001. The review will ensure that Victoria continues to meet the COAG pricing principles and paves the way for the introduction of an independent regulator.

In addition to the price review, Victoria has continued to implement full cost recovery for the rural water sector and has completed four case studies on identifying and measuring cross-subsidies.

The major development with respect to Victoria's institutional arrangements is the Government's proposal to establish the ESC. The ESC will have responsibilities for economic regulation of the water and other industries. The introduction of the ESC as the economic regulator of the water industry will be a major achievement and will ensure institutional separation with respect to pricing. ESC regulation of water businesses will take place following the price review and once transitional arrangements have been completed.

#### 2.2.1.7 Water-Allocation and Trading

The major developments with respect to water allocation and trading have been the completion of fifteen bulk entitlements, the Farm Dams Review (FDR) and the launch of a major river restoration initiative on the Snowy River.

Twenty Streamflow Management Plans (SFMPs) are in progress, three of which are community endorsed and two of which have been put into operation.

River Restoration Plans (RRPs) are being developed in three priority rivers and Victoria has continued to implement Groundwater Management Plans (GMPs).

In addition to these initiatives, Victoria has continued to facilitate trade through the Northern Victorian Water Exchange (NVWE) and work is ongoing with interstate trading partners to extend interstate water trading.

#### 2.2.1.8 Water-Environment and Water Quality

Key developments with respect to the environment and water quality in Victoria include the ongoing delivery of improved integrated resource management services by Catchment Management Authorities (CMAs), the ongoing implementation of 16 catchment-based nutrient management plans, the release of a draft State Environment Protection Policy (SEPP) - *The Waters of Western Port Bay and Catchments*, the initiation of a review of the SEPP - *Waters of Victoria*, and the benchmarking of the environmental conditions of Victoria's major rivers and tributaries.

Victoria has improved the regional management plan guidelines used by CMAs and the Port Phillip Catchment and Land Protection Board, and has initiated a review of the corporate governance arrangements for these bodies.

In addition to these initiatives, the Government's proposal to develop a new regulatory framework for drinking water quality is consistent with the National Water Quality Management Strategy (NWQMS) and will ensure greater confidence in the supply of good quality drinking water.

#### 2.2.1.9 Road Transport - National Standards

Victoria has substantially implemented all of the reforms scheduled by the Ministerial Council.

Victoria has been very successful in the implementation of reforms under the road transport reform agenda. Victoria has implemented all of the reforms in the first heavy vehicle reform package and, with the implementation of the chain of responsibility provisions, will have implemented all available reforms from the second heavy vehicle reform package.

Victoria will soon implement the chain of responsibility provisions that are an element of the combined bus and truck driving hours reforms. This has been addressed by the *Road Safety (Drivers) (Driving Hours) Regulations 2001* that were made on 30 January 2001 and came into force on 1 March 2001.

#### 2.2.1.10 Rail - Access Regulation

On 1 July 2001, the Freight Network, the strategically located Dynon and South Dynon Terminals and the Bayside Network will be declared for freight purposes. This means that the access regime will apply to all the intrastate tracks in Victoria used for the carriage of freight. With the implementation of the third party freight rail access regime for Victoria's intrastate network on 1 July 2001, Victoria's rail reform process will be complete.

## 2.3 General National Competition Policy Commitments

### *2.3.1 Competitive Neutrality*

Victoria has released a revised statement on CN that demonstrates the Government's commitment to a transparent and rigorous public interest test. The revised CN policy ensures that Victoria continues to meet the commitment to have a current policy on CN.

All significant Victorian government business enterprises (GBEs) are now subject to tax equivalents.

CN is promoted through presentations to regional hospitals, discussions with universities on the appropriate application of the policy and advice to government agencies on the application of CN policy to their business activities.

The Victorian Government Purchasing Board has incorporated CN into its best practice guidelines to ensure that tenders put forward by Victorian GBEs are appropriately priced.

### *2.3.2 Competitive neutrality complaint investigation*

Investigations of complaints against government owned businesses have commenced under the revised CN policy.

Victoria has continued to maintain an independent Competitive Neutrality Complaints Unit (CNCU).

Parties to complaints that predated the revised CN policy have been asked to assess their complaints against that policy and to advise the independent CNCU whether they wish to reinstate their complaints.

### *2.3.3 Legislation review*

Victoria has completed the majority of the reviews listed on the timetable published in 1996.

Victoria has applied standards requiring independence, rigour and transparency to the conduct of reviews.

The Government's approach to the public interest test has involved increased consultation over reform, increased transparency in decision making and a greater focus on the impact of proposals on rural and regional communities.

New legislative proposals continue to be assessed under the public interest test. The Government has established an integrated approach to this test.

## 2.4 Agriculture, Manufacturing and Services Sectors

### *2.4.1 Barley*

Barley export arrangements will be deregulated from July 2001. Deregulation follows significant consultation and careful consideration of the interests of the industry and community.

### *2.4.2 Dairy*

Victoria deregulated dairy marketing in July 2000 following a ballot of dairy farmers that showed high levels of support for deregulation.

Deregulation was accompanied by an adjustment package funded by a milk levy and administered by the Commonwealth.

Victoria provided direct assistance through stamp duty exemptions for the adjustment package, assistance with electricity connection and transport facilitation.

### 2.4.3 Forestry - Establishment of Forestry Victoria

The NCP review of the *Forests Act 1958* recommended that an assessment of the effects of separating the commercial and regulatory/policy functions of forest management be undertaken.

Forestry Victoria was established in August 2000 as a departmental business unit with a clear commercial focus and separate and transparent financial and reporting arrangements.

A Timber Pricing Review is to be completed in October 2001. The terms of reference for this review specify that the review should address the conclusions and recommendations of the NCP review of the *Forests Act 1958*.

### 2.4.4 Mining

The two key pieces of legislation in the Victorian mining sector are the *Mineral Resources Development Act 1990* and the *Extractive Industries Development Act 1995*. The *Mineral Resources Development Act 1990* has been reviewed and the review's recommendations responded to by Government and the legislative reforms have been implemented. The current review of the *Extractive Industries Development Act 1995* will be completed in 2001.

### 2.4.5 Taxi services

The review of legislation relating to taxi-cabs and other small passenger vehicles commenced in June 1999 under the previous Government.

The present Government publicly released an initial review report in October 2000, and has completed its final report.

### 2.4.6 Health professions

Victoria has made considerable progress in conducting reviews of health practitioner legislation, in responding to the reviews and implementing necessary reforms. Of the eight core Acts listed for review, all reviews have been completed, including legislative amendments.

Significant reforms include removal of ownership restrictions and replacement of bans on advertising with advertising regulations focused on consumer protection. Restrictions on practice are confined to specific procedures that involve a significant risk to the public.

Victoria has introduced new registration requirements for practitioners of traditional Chinese medicine in line with a public interest case for minimising the risks to the public of misuse of substances. The legislation complies with the public interest test.

### 2.4.7 Legal services

The NCC has raised a number of issues in relation to legal services that are addressed in detail in this report.

Legal services are regulated in Victoria by legislation including the *Legal Practice Act 1996*. The Act was assessed against the public interest test by the previous Government and considered in the second tranche assessment.

Two further reviews of legal profession regulation commenced in mid 2000, a specific review of multi-disciplinary practices and a general review of legal profession regulation. Although these reviews are not required under the NCP, they will consider issues that may influence the level of competition in legal services.

Further consideration of legal profession indemnity insurance has taken place with a draft response to the Legal Practice Board Report being released for comment in late 2000. The Government is considering the results of consultations and will finalise its response shortly.

### 2.4.8 Other professional and occupational licensing

Victoria has implemented recommendations from the Vocational Education, Employment and Training Committee (VEETAC) national working party regarding deregulation of some partially registered occupations. Where recommendations had not been fully addressed the relevant legislation was included in the NCP legislation review timetable in 1996.

### 2.4.9 Fair trading and consumer legislation

Victoria has met its commitments in relation to fair trading. In 1983, Victoria agreed to nationally uniform consumer protection legislation to promote efficiency and reduce compliance costs. The consumer protection provisions of Part V of the *Trade Practices Act 1974* (Commonwealth) (TPA) were chosen.

The *Fair Trading Act 1985,* which mirrors Part V of the TPA, was not included in the legislation review timetable that was assessed in the first tranche assessment.

The *Fair Trading Act 1999* has since repealed the *Fair Trading Act 1985*. The *Fair Trading Act 1999* was assessed against the NCP guiding legislative principles at the time it was introduced.

### 2.4.10 Finance, insurance and superannuation services

Consistent with the agreement reached at the time of the second tranche assessment, reviews of workers' compensation arrangements and transport accident compensation arrangements were commissioned in September 2000.

The Victorian WorkCover Authority (VWA) administers the WorkCover scheme, while the Transport Accident Commission (TAC) administers the transport accident compensation scheme. These schemes achieve some key welfare objectives through characteristics such as the no fault cover and on-going payments to seriously injured persons. These characteristics produce a "long-tail" scheme that is significantly different from those offered in other jurisdictions where private insurers provide products which are more commercially attractive.

The Government accepted recommendations to retain the single manager for each scheme, to establish independent price reviews of premia set for the schemes and other measures to enhance competition and efficiency.

### *2.4.11 Retail*

Victoria extended its trading hours in 1996 and accordingly in its second tranche assessment, the NCC concluded that Victoria had fully met its NCP obligations. Significant reforms were also made to liquor licensing.

Victoria has undertaken a further review of the eight per cent cap on packaged liquor licensing consistent with the agreement reached at the time of the second tranche assessment. Following the review and extensive consultations with the industry, the Victorian Government announced a phase-out of the eight per cent cap from the end of 2003. An earlier date of commencement is possible with industry consultation.

The Victorian Government's decision to remove the eight per cent limit from the end of 2003 will enable Victoria to meet its NCP commitments.

### *2.4.12 Gambling*

The Victorian Government has made considerable progress in reforming gambling legislation and regulations to ensure that they are consistent with the public interest.

The Government has introduced reforms, especially of public lotteries legislation, which allows for competition following the expiry of the current monopoly arrangements in 2004.

Harm minimisation has also featured prominently in the Government's gambling strategy. These reforms have been based on research, the national initiatives agreed to by COAG at its meeting of 3 November 2001 and extensive consultation with community, industry and other stakeholders.

# 3. Background

- Victoria is committed to implementing the terms of the National Competition Policy Agreements.
- Victoria has implemented the National Competition Policy using transparent processes, engaging in consultation and applying a rigorous public interest test that is sensitive to the impacts of reform on specific sectors of the community. In this regard the Government supports the response by the Council of Australian Governments to the review of the National Competition Policy.

## 3.1 Competition and Policies to Improve Productivity and Build National Markets

The TPA came into effect in 1974 and replaced earlier weaker laws. For the first time Australia had comprehensive laws to regulate both anti-competitive practices, such as price fixing agreements that were common place at the time, and to provide comprehensive consumer protection. Transitional authorisations granted by the then Trade Practices Commission facilitated the transition from price fixing arrangements and other practices that had become illegal under the new rules for market conduct.

The greater focus on competitiveness stimulated debate over the main costs faced by Australian business. Utilities and infrastructure were identified as key sectors of the economy that impacted on the costs of all businesses and the wider community. The impact on competitiveness was particularly acute in commodity sectors where businesses were often price takers on global markets but, increasingly, domestic manufacturing began to focus on utility costs as their pricing power declined. Reforms were designed to increase the efficiency of utilities to enhance the export competitiveness of Australian industry in general.

Monopolies had been favoured because they offered economies of scale or declining unit costs. The lower unit costs could be passed onto business and consumers. However, in practice there was often a lack of transparency in actual costs, investment decisions and responsiveness to business and consumers. Prices could easily be increased to fund new investment without risking a loss of customers. Higher utility prices flowed through to other industries, reducing their competitiveness, and as a consequence investment and employment in those industries.

Pricing often included significant cross subsidies in favour of certain consumers and rural and regional areas that reflected government policy objectives. However, the real cost of delivering these cross subsidies was often not clear and independent scrutiny was often lacking.

The move away from utility monopolies commenced with reform to the telecommunications sector in the late 1980s and early 1990s. The same issues were to be addressed in subsequent reforms in the broader utility sector. Although moves to divest utilities in Australia and the United Kingdom caught public attention, the significant change for the respective economies was the establishment of competitive markets for telecommunications, electricity, gas and other sectors.

## 3.2 Mutual Recognition and Trans Tasman Mutual Recognition Agreement - National Markets

A further trend was the reduction of barriers to trade between States and Territories. The Mutual Recognition Agreement (MRA) of 1992 committed States and Territories to enact legislation that would allow professionals that were registered in one jurisdiction to obtain registration in another without the need to prove qualifications. Thus professionals registered under State and Territory Statutes could now more easily practice outside their own State. It also allowed goods (with some exceptions) that could be legally sold in one jurisdiction to also be sold in another.

Following the Trans Tasman Mutual Recognition Agreement 1996, the principle of mutual recognition was extended to New Zealand through *the Trans-Tasman Mutual Recognition (Victoria) Act 1998.*

## 3.3 The Hilmer Inquiry and the Development of National Competition Policy

### *3.3.1 The Hilmer Inquiry*

NCP has its origins in the report by the Independent Committee of Inquiry that was appointed in 1992 by the then Prime Minister, the Hon Paul Keating. The report was presented to the COAG in 1993. The Chair of the Committee was Professor Hilmer, and the report is commonly known as the Hilmer report.

The Hilmer report inquired into:

- whether the scope of the TPA should be expanded to deal with anti-competitive conduct outside the scope of the Act;
- alternative means of addressing market behaviour and structure outside the scope of the Act; and
- other matters directly related to competition policy.

The report addressed the efficacy of regulation of the private sector.

The report argued that:

> *Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole. [p. 1]*

The report, however, noted that there are some markets in which unrestrained competition might not be in the public interest:

> *Competition policy is not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These*

*accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds. [p. xvi]*

In essence, the report argued that competitive markets are efficient at facilitating economic goals. Competitive markets allocate the economy's productive resources to the activities most desired by consumers, produce goods and services at least cost, and are responsive to changes in technology and the demands of consumers. Provided the operation of markets does not compromise related policy objectives, competitive markets offer a preferable mechanism to administrative direction.

### *3.3.2 The National Competition Policy*

NCP is given effect through three inter-governmental agreements signed by COAG in 1995. These are:

- the *Conduct Code* that commits governments to apply uniform competition laws;
- the CPA that establishes consistent guidelines for the pro-competitive reform of GBEs and government regulations; and
- the *Agreement to Implement NCP and Related Reforms* (Implementation Agreement) that specifies a timetable for reform and makes provision for additional general-purpose payments to the States and Territories.

The aim of the NCP is to increase the efficiency of the economy and, by doing so, increase economic growth, employment and living standards.

The Productivity Commission (PC) estimates that reform under NCP will increase national output by 2.5 per cent above what would be expected without the reforms.

NCP comprises six major elements:

- extended application of Part IV of the TPA to all business activities;
- implementation of a review of legislation that restricts competition;
- development of a CN policy and principles;
- application of principles for structural reform of public monopolies;
- establishment of a cooperative framework for access to essential facilities; and
- application of principles for prices oversight of GBEs.

NCP does not override other policy objectives. NCP encompasses a public interest test, used to determine where greater competition is appropriate. It includes a list of policy considerations that should be taken into account, including occupational health and safety, social equity, and rural and regional development. The NCP is explicitly neutral on public or private ownership.

The public interest test gives jurisdictions discretion over where to make reforms. It is central to legislation review (review of anti-competitive legislation) and CN policy.

The public interest test allows governments to establish where greater competition will benefit the community. It involves balancing a number of policy objectives against the effects of competition. They include social equity, environmental policy and efficient allocation of resources. Consultation is essential to effectively balance the full range of policy objectives.

A component of the public interest test is the "onus of proof" that is applied when reviewing legislation that restricts competition. Where a review cannot demonstrate a public interest in a restriction on competition, the restriction should be reformed or removed.

The underlying reasoning for the onus of proof is that there are costs and risks associated with government regulation of markets, and that markets generally achieve better outcomes. In limited instances markets will not work and government regulation is necessary. The TPA is based on this premise. It prohibits anti-competitive practices except where a public interest case can be made.

This current formulation of the public interest test best reflects the underlying rationale of NCP, that is, competitive markets can provide a means of enhancing economic welfare through increases in productivity, which support higher growth and employment. It does not preclude legitimate intervention in markets by governments.

In some instances, competitive markets are either inappropriate or not possible to establish. While core areas of social and environmental policy may use competitive markets to enhance efficiency of support services, the creation of property rights and the consequential commoditisation that support markets should only be applied where they do not compromise core rights.

The NCP Agreements envisaged that the entire reform program would be completed for this third assessment of progress. Since then, some elements of the reform program have been amended to extend reform timetables beyond 2001 - notably in relation to the water, electricity and gas sectors and the legislation review program.

### *3.3.3 Competition payments*

The NCP Agreements provide for a series of payments to the State and Territory Governments from the Commonwealth. In order to share the returns generated from reform across the community, the Commonwealth makes NCP payments to each State and Territory. Over the five years from 2001-02, an estimated total of $3.8 billion in NCP payments is potentially available. The prerequisite for receipt of full NCP payments by the States and Territories is satisfactory progress against the agreed reform agenda.

The Federal Treasurer allocates NCP payments on the basis of the NCC's assessments of progress with implementation. States and Territories submit reports to the NCC, which then makes recommendations to the Federal Treasurer. This report will be the basis upon which Victoria's eligibility for third tranche payments will be determined, as it will inform the Treasurer's decision on payments from 2001-02.

The NCC may recommend that the Treasurer reduce the NCP payments otherwise available to a State and Territory where that State or Territory has not pursued the reform program in the public interest. A failure to implement the program as agreed is likely to lead to a decline in economic activity and, consequently, a reduction in the overall financial dividend from reform. Under the terms of the NCP Agreements,

jurisdictions that do not implement the program as agreed may receive a reduction in their reform dividend.

In making a recommendation that a reduction or suspension be applied to a particular State or Territory when assessing the nature and level of the reduction or suspension, the NCC must take into account:

- the extent of overall commitment to the implementation of NCP by the relevant jurisdiction;
- the effect of one jurisdiction's reform efforts on other jurisdictions; and
- the impact of failure to undertake a particular reform.

The NCC recommends reductions in NCP payments only as a last resort, that is, where no satisfactory path to dealing with implementation questions can be agreed. The NCC's preference is to use the assessments to encourage governments to address competition concerns as comprehensively as possible, rather than to seek penalties for non-compliance.

The *NCP – Third Tranche Assessment Framework* (released 5 February 2001), which sets out the Council's intended approach to the assessment, and also signals issues for resolution, is aimed at ensuring that governments have the fullest possible opportunity to address their third tranche NCP responsibilities.

Payment under the third tranche will commence in 2001-02 and be made each year thereafter on the basis of each State's or Territory's progress on the implementation of the policy. Victoria is currently receiving the second tranche of competition payments worth approximately $115 million per annum. In July 2001 the third tranche of competition payments will commence at the rate of $177 million per annum. The competition payments through to 2005-06 are worth just under $1 billion to Victoria.

This third assessment by the NCC will build on the work of the first and second tranche assessments, undertaken in June 1997 and June 1999 respectively. The third tranche assessment is scheduled for completion before July 2001.

## 3.4 Reviews of National Competition Policy

When agreeing to introduce NCP in 1995, jurisdictions also agreed to a review in 2000 of the terms and operation of the NCP inter-governmental agreements and the need for, and operation, of the NCC.

The review was conducted as scheduled by an inter-governmental working group of officials.

The review of the Agreements was informed by the lessons learned and experience gained from implementing NCP for five years. The review was also able to draw directly on the 1999 report of the PC on the *Impact of Competition Policy Reforms on Rural and Regional Australia* and the report of the Commonwealth Senate Select Committee on the socio-economic consequences of NCP entitled *Riding the Waves of Change*.

The PC and the Senate Select Committee reports both involved significant public and stakeholder consultation. Both received submissions from "country" and "urban" Australia.

The key conclusion of the Senate Committee was that the community as a whole is demanding greater government attention to the application of the policy and its impact on the social fabric of communities.

In summary, the PC's key finding was that regional Australia was affected by a range of influences, both adverse and beneficial, of which NCP is only one, and that many of these influences (such as changing terms of trade and international tastes) are beyond the control of governments. It concluded that NCP would benefit the nation in the long term.

Both review processes identified key issues, including:

- a lack of understanding within the community generally about NCP;
- an inconsistency in the application and interpretation of the public interest test, with a perception that economic interests displace less tangible social and environmental interests; and
- a variation in the incidence of benefits and costs between country and metropolitan regions.

## 3.5 Response to the Reviews of National Competition Policy

At its 3 November 2000 meeting, COAG affirmed the importance of NCP and agreed to several measures to fine-tune implementation arrangements for NCP. The COAG working group of officials endorsed the substance of the NCP reform commitments, but recommended changes to clarify and "fine-tune" how NCP is implemented. The recommended changes reflect the key findings of the reports of the PC and the Senate Select Committee.

Together with minor changes to the assessment procedure for States and Territories and an adjustment to the legislation review timetable, the key "fine tuning" of the NCP process agreed to by COAG related to the application of the public interest test. COAG indicated that governments should document the public interest reasons supporting a decision or assessment and make them available to the public and other interested parties. COAG also stressed in its response to the review that governments should give explicit consideration to identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change, as part of the overall assessment.

Further, COAG agreed to undertake an enhanced role in guiding the NCC in its role of explaining and promoting NCP policy to the community.

This emphasis is consistent with the approach already adopted in Victoria with respect to NCP implementation. In particular, the Victorian Government's approach to NCP is based on the primacy of the public interest in decision-making with respect to the legislation review program and the application of CN policy, both of which are discussed in more detail later in this report.

# Part B:
# Report on the Elements of the Policy

## 4. Legislation Review and Regulation Review

- Victoria has completed the majority of the legislation reviews listed on the timetable published in 1996.
- Victoria has applied standards requiring independence and transparency to legislation reviews.
- The Government's approach to the public interest test has involved increased consultation, increased transparency in decision-making, and a greater focus on the effects of proposals on rural and regional communities.
- New legislative proposals that contain restrictions on competition continue to be assessed under the public interest test.
- Victoria facilitates compliance with the Council of Australian Governments *Principles and Guidelines for National Standard Setting and Regulatory Action* through participation in national forums.

### 4.1 Compliance with Legislation Review Commitments

Victoria has met its commitments to undertake legislation reviews in accordance with NCP requirements. Since 1996 over 100 reviews have been undertaken.

The Government's approach to legislation review under NCP is characterised by a commitment to:

- implementing NCP in the public interest;
- independent and transparent review processes; and
- a real commitment to consultation, both during the review process and in considering an appropriate response to the review's recommendations.

The Government is committed to ensuring that NCP is balanced with the Victorian Government's key public policy objectives of responsible financial management, growing the whole State, delivering improved services and restoring democracy. This last objective is demonstrated through the Victorian Government's genuine consultative processes. Consultation takes place during reviews and while the Government is developing a response. For instance, a plebiscite of dairy farmers was conducted to assist the Victorian Government formulate its response to dairy deregulation.

It is the practice of the Government to release to the public review reports and findings to enable the Government to have the benefit of stakeholder views when considering the most appropriate response to a review's recommendations.

## 4.2 Compliance with the Conduct Code Obligations

The Conduct Code Agreement (CCA), as one of the three Agreements on NCP, concerns the extension of Part VI of the Commonwealth's TPA to the jurisdiction of the States. Part IV of the TPA contains the competition provisions of the Act that relate primarily to market conduct such as misuse of market power, price fixing and other forms of anticompetitive conduct.

Victoria enacted legislation to extend Part IV of the TPA in 1996 in the form of the *Competition Policy Reform (Victoria) Act 1996*, hence fulfilling the main commitment under the Agreement. As a transitional measure, the legislation provides that businesses can be excepted from Part IV of the TPA by a State making a statutory exception. This provision was particularly relevant to government owned businesses because many had not previously been subject to the TPA. Exceptions are subject to review by the Commonwealth Government supported by advice from the NCC. The Commonwealth retains the power to overturn exceptions made by States where it does not consider the exception serves the public interest. States therefore apply public interest criteria when considering the desirability of an exception.

An alternative to an exception is an authorisation by the Australian Competition and Consumer Commission (ACCC). Applications for authorisations are made by the businesses engaged or potentially engaged in conduct that would be in breach of Part IV of the TPA. An authorisation can be granted where the ACCC is satisfied that the authorisation would provide a net benefit. Authorisations are normally granted for five years and can be renewed. The merit of an authorisation is that it can be more specific and offers greater flexibility.

Under Clause 2(1) of the CCA:

> *Where legislation, or a provision in legislation, is enacted or made in reliance upon Section 51 of the Competition Laws, the Party responsible for the legislation will send written notice of the legislation to the Commission within 30 days of the legislation being enacted or made.*

Under Clause 2(3) of the CCA:

> *Each party will, within three years of the date on which the Competition Policy Reform Act 1995 receives the Royal Assent, send written notice to the Commission of legislation for which that Party is responsible, which:*
>
> *(a) existed at the date of commencement of this Agreement;*

(b) *was enacted or made in reliance upon Section 51 of the TPA (as in force at the date* of commencement of this Agreement); and

(c) *will continue to except conduct pursuant to Section 51 of the TPA after three years from the date on which the Competition Policy Reform Act 1995 receives the Royal Assent.*

The second tranche assessment report provided details of the statutory exceptions that existed at the time. All of these statutory exceptions have expired.

## 4.3 Assessing Compliance with the National Standards Setting Obligation

### *4.3.1 The role of Ministerial Councils and standard setting bodies in establishing consistent national regulation*

Ministerial Councils are established by the COAG for the purpose of co-ordination between jurisdictions on matters of national significance. While governed by terms of reference approved by COAG, Ministerial Councils have significant discretion to examine and make decisions on a range of matters. In addition to Ministerial Councils, national standard-setting bodies such as the Australian Building Code Board develop national standards in a range of areas.

Ministerial Councils also address the constitutional limitation on the Commonwealth that can impede the effectiveness of Commonwealth regulation. The Commonwealth Constitution contains a number of heads of power on which the Parliament can rely when making new laws. Powers to regulate corporations and interstate trade and commerce are commonly relied on to regulate businesses. However, unincorporated businesses such as partnerships fall outside these powers unless they are engaged in interstate trade and commerce.

National schemes may involve referral of powers to the Commonwealth, mirror legislation between States and the Commonwealth and template legislation. For example, the TPA, which is based on the Corporations Head of Power, only achieved application to sole traders and partnerships (a common form of business among the professions) with the enactment of the Conduct Code by State Parliaments as part of the NCP Agreements.

Significantly, this form of the legislation can diminish the capacity of States to act unilaterally. For example, the *Wheat Marketing Act 1989* largely refers regulatory powers to the Commonwealth, which in turn has assigned these to the AWB Ltd, the now privatised Australian Wheat Board.

### *4.3.2 Guidelines and Principles for Regulatory Action*

Ministerial Councils often develop regulatory proposals that, because of their broad representation, can result in nationally consistent regulatory arrangements that minimise barriers to interstate trade. Regulatory proposals developed by Ministerial Councils can also impose significant costs on businesses and restrict competition within markets. Further, for Ministerial Councils to be effective, Ministers need to be

able to give commitments to implement legislation developed by the Council in their jurisdiction.

COAG issued Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils Bodies in 1995 and made revisions in 1997.

### *4.3.3 Role of the Commonwealth Office of Regulation Review*

The Commonwealth Office of Regulation Review (ORR) has a key role in advising Ministerial Councils and other National Standards Setting Bodies on the quality of regulatory impact assessments prepared under the Principles and Guidelines. The ORR has particular expertise in the area that can be of benefit, particularly early in the development of new regulatory proposals.

Accordingly, the Principles and Guidelines require notice that includes a requirement to notify the ORR when a decision is taken to develop a regulatory proposal. The ORR can then liaise with officials supporting a Ministerial Council and provide formal advice to the Ministerial Council on the draft regulatory impact assessment. However the Guidelines do not require the Ministerial Council to comply with the advice from the ORR. Adverse advice may be an indication that the regulatory impact assessment may not be adequate to meet State and Territory requirements.

### *4.3.4 Council of Australian Government Committee for Regulatory Reform*

The COAG Committee for Regulatory Reform has a brief to advise COAG Senior Officials on matters relating to regulatory reform, NCP Legislation Review, Mutual Recognition and other matters referred to it by COAG Senior Officials.

The Committee provides specific advice on matters such as the Principles and Guidelines and receives reports from the ORR on compliance with the Principles and Guidelines.

### *4.3.5 National Regulatory Initiatives in Food Safety*

Victoria participates in Ministerial Councils across a range of portfolio interests. Recent initiatives that involve regulation have progressed in areas such as the environment and food safety.

A recent development was the agreement between the Commonwealth and the States and Territories to implement a co-operative national system of food regulation. The following objectives are set out in the COAG Agreement:

(a) providing safe food controls for the purpose of protecting public health and safety;

(b) reducing the regulatory burden on the food sector;

(c) facilitating the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards;

(d) providing cost effective compliance and enforcement arrangements for industry, government and consumers;

(e) providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures;

(f) recognising that responsibility for food safety encompasses all levels of government and a variety of portfolios; and

(g) supporting the joint Australia and New Zealand efforts to harmonise food standards.

The model food Acts and the associated food standards are intended to implement the reforms, subject to regulatory impact assessments and the NCP public interest test.

# 5. Competitive Neutrality

- Following a review, the Treasurer launched a revised *Competitive Neutrality Policy Victoria 2000* on 23 October 2000.
- The new Victorian Policy has an increased emphasis on public interest.
- Competitive Neutrality has applied to all significant public sector business activities since 1996.
- The Competitive Neutrality Policy applies to local government and will assist local government in developing Best Value service standards for their significant business activities.

## 5.1 Introduction

As outlined in the CPA, clause 3(4), Victoria has the following commitment to implement CN with respect to significant Public Trading and Financial Enterprises:

> *To the extent that the benefits to be realised from implementation outweigh the costs, for significant GBEs which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:*
>
> *(a) the Parties, will, where appropriate, adopt a corporatisation model for these GBEs; and*
>
> *(b) the Parties will impose on the Government business enterprise;*
>
> *i. full Commonwealth, State and Territory taxes or tax equivalent systems;*
>
> *ii. debt guarantee fees directed towards offsetting the competitive advantages provided by Government guarantees; and*
>
> *iii. those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.*

As outlined in the CPA, clause 3(5), Victoria has the following commitment to implement CN with respect to other significant business activities:

> *To the extent that the benefits to be realised from implementation outweigh the costs, where an agency undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:*

*(5)(a) ensure the prices charged for goods and services will take account, where appropriate, of:*

- *full Commonwealth, State and Territory taxes or tax equivalent systems;*
- *debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and*
- *those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors*.

*(5)(b) reflect full cost attribution for these activities.*

CN policy has applied to all significant public sector business activities since 1996. Many of the commercial GBEs have been corporatised or commercialised and others have been sold. All significant GBEs are subject to income tax equivalents and the Goods and Services Tax (Refer Volume Two: Part F). The introduction and implementation of CN has seen a levelling of the playing field between government organisations and private businesses. As well, CN has been promoted through presentations to regional hospitals, discussions with tertiary education institutions, and advice to government agencies on the application of CN policy to their business activities.

The Victorian Government Purchasing Board has incorporated CN into its best practice guidelines to ensure that tenders put forward by Victorian government businesses are appropriately priced. Partnerships Victoria also includes CN adjustments in its public sector comparator model. The result of these reforms are to ensure that the most efficient business (be it government or private) provides the service or good.

The Government launched Victoria's new approach to CN on 23 October 2000. All government departments and local governments have been provided with copies of the new *Competitive Neutrality Policy: Victoria 2000* and guidelines for its implementation.

## 5.2 Competitive Neutrality Policy: Victoria 2000

The new Victorian CN policy has an increased emphasis on public interest. It requires that all public sector business activities be assessed to determine their significance in the market. Business significance does not relate to size or expenditure relativities, but rather to impact in the market. For businesses considered to be significant, if the benefits of introducing a CN measure exceed the costs and the measure does not jeopardise other public policy objectives, then CN measures should be in place.

The new policy emphasises that if there is a potential conflict between policy objectives, then a public interest test process should be undertaken, involving public consultation, to consider the options (costed alternatives) to best meet all policies. Ultimately this may involve full or partial implementation of a CN measure, identification of subsidies or justified non-introduction of the CN measure. However, the onus is on public sector agencies to apply CN policy and to adequately document their compliance including any decision not to implement a CN measure for any reason. This process should also result in a clarification of "community service obligations" (CSOs) or public good expenditures/subsidies associated with business activities. The policy requires that these CSOs be transparently accounted for and justified by the public sector agency.

As this policy has only been in place since October 2000, it is difficult to report on any significant impact of the shift in emphasis. Considerable effort is being devoted to refreshing public sector knowledge of CN through mail-outs, website information, seminars and small group discussions.

A number of Departments including the Departments of Education, Employment and Training (DEET); Human Services (DHS) and Infrastructure (DoI) (local government division) are developing guidance information for portfolio agencies and using newsletters to alert agencies to their obligations under the new CN policy. Box 5.1 describes the procedure adopted by the Department of Natural Resources and Environment (DNRE).

**Box 5.1: Case Study: Implementing the new CN policy**

Following the introduction of the CN policy in 1997, the DNRE undertook an audit of all its portfolio agencies. This work comprised an assessment of the agencies that were undertaking potentially competitive business activities and their impact on the relevant markets. DNRE also evaluated the activities to which CN might apply. Internal guidelines on CN were prepared, and made available to business units. In addition, the agencies were also advised of the applicable Government pricing models. DNRE's business units undertook steps to assess the pricing practices of their business activities and made the necessary adjustments to comply with CN policy.

With the introduction of the revised CN policy in October 2000, DNRE advised all of its portfolio business units and statutory agencies of the changes and that the revised policy information is readily available from the Government's website. In addition, NRE advised its portfolio business units and statutory agencies of the:

- continued need to apply CN policy where benefits exceed costs;
- requirement to document the public interest test where there is a potential conflict between policy objectives, and the requirement to consult widely on all costed alternative policy options in this instance; and
- onus on agencies to adequately document compliance with CN Policy, including decisions not to implement such policy measures.

## 5.3 Local Government and Best Value Victoria

### *5.3.1 Best Value Principles*

The release of the new CN policy will also be promoted in the context of Best Value implementation for local government. A revised policy statement, in compliance with CPA, clause 7(2) is being developed to reflect the Best Value framework within which local governments will now operate. In December 1999, the *Local Government Act 1989* was amended to repeal compulsory competitive tendering provisions and incorporate Best Value principles.

Compulsory Competitive Tendering (CCT) required councils to expose services to competition to improve cost efficiency and accountability. By the time it had been in operation for four years, councils had publicly tendered 50 per cent or more of their expenditure to meet the Act's requirements. However, there was increasing

community concern that CCT was too inflexible and that councils had too little discretion to moderate its application in local circumstances. Adverse impacts were perceived most strongly in rural areas.

The Best Value Principles apply to all council services allowing councils to determine quality and cost standards in consultation with their communities. Best Value Victoria will provide a framework for councils to develop and deliver improvements to services, ensuring that they are relevant and responsive to community needs.

Best Value Victoria is based on six principles:

- quality and cost standards for all services;
- responsiveness to community needs;
- accessibility and appropriately targeted services;
- continuous improvement;
- regular community consultation; and
- frequent reporting to the community.

The CN process will be a valuable tool for local government in developing Best Value service standards for services provided by significant businesses. Local government may also elect to apply CN measures (especially full cost reflective pricing) to other services where it enhances comparative assessment for Best Value review and consultation purposes.

### *5.3.2 Local Government Competition Principles Agreements*

The former State Government decided late in 1998 that, in recognition of Victorian local government's efforts in implementing competition policy and as an incentive for future compliance, the Government would share the competition payments it received from the Commonwealth. Box 5.2 describes the extent of efforts by one local council to implement competition policy.

The decision to share competition payments with local government was documented in CPAs between the State and each council in early 1999. The local government pool is nine per cent of what the State actually receives from the Commonwealth in any year. Competition payments are made only to NCP compliant councils, and a non-compliant council forfeits its share of the pool to the State.

These agreements have been rendered obsolete with the repeal of CCT legislation, the introduction of Best Value Principles and the revision of Victorian CN policy. The revised clause 2 policy statement on NCP and local government will confirm the basis for local government NCP compliance and provide the basis for future payments.

Anti-competitive provisions of the TPA apply to Victorian local governments, which all maintain trade practice compliance programs.

Local governments' NCP compliance is assessed from their annual NCP statements, certified in each case by the council's Chief Executive Officer, and prepared in accordance with guidelines updated by DoI each year.

For 1998–99 the four elements for councils' NCP compliance were those identified in *NCP and Local Government — A Statement of Victorian Government Policy* (June 1996). Those elements were Competition Code, TPA, CCT, CN, and local laws. For 1999–2000 reporting, the three elements of local government NCP compliance were Competition Code, TPA, CN and Local Laws. Council's NCP statements for 1999-2000 are currently being assessed by the DoI.

The first part of a local government NCP payment is a lump sum related to the tranche year for compliance. First tranche payments for 1997–98 and 1998–99 had a $50,000 base. Payments for second tranche years (1999–2000 and 2000–2001) have a $100,000 base; third tranche payments will have a $150,000 base. The second part of a payment is a council's per capita share of the balance of the local government pool.

**Box 5.2: Case Study — Managing NCP (Source: City of Greater Geelong)**

The City of Greater Geelong, in applying the principles of NCP, has reviewed its overall business structure to ensure that it can operate in a competitive environment, separating the regulatory functions from the commercial activities of council.

The following is a list of some services where CN measures have been applied:

- Centre Based – Long Day Child Care;
- Fleet and Administration;
- Infrastructure, Maintenance, and Construction;
- Planning and Building Services; and
- Art, Culture and Recreation Services.

The process adopted in applying CN involved assessing the full scope of each service provided either to the community for internal purposes. CN measures (full cost-reflective pricing in particular) were applied to all of the tendered activities involved in a service (e.g. Staff tenders for contracts for programs and projects forming part of a service) as well as to activities that were not tendered but were Council owned and operated as significant businesses (e.g. major facilities, plant and equipment supporting programs and projects).

### *5.3.3 Legislation Review (Local Laws)*

In conducting NCP reviews of existing local law, councils were assisted by guidelines issued by the DoI in May 1998. DoI subsequently advised councils that, where they had not been able to complete amendments to, or repeal of, restrictive local laws in accordance with review recommendations and *Local Government Act 1989* processes, they had until January 2000 to do so. Departmental monitoring indicates that the councils concerned completed the necessary actions by January 2000.

In relation to the making of new local laws, the *Local Government Act 1989* was amended in 1998 (Schedule 8(2)(j)) to require that a local law does not restrict competition unless it complies with a "competition test". As a result, the "competition test" is incorporated into the legislative process for the making of all new local laws.

### 5.3.4 Local government compliance 1998–99

In making recommendations to the Minister on councils' NCP compliance, the DoI's Local Government Division is assisted by an advisory panel that comprises representatives from the Department of Treasury and Finance (DTF) and Municipal Association of Victoria.

The panel assesses councils' NCP statements individually, and may seek clarification from any council whose statement is not sufficiently self-explanatory, before settling upon recommendations on eligibility for payments.

The panel proposed, and the Minister agreed, that if a council failed to comply with one of the identified NCP elements, it should lose 25 per cent of its entitlement, not 100 per cent. In fact, all councils were assessed as compliant with the four elements of NCP for 1998–99 and the part-compliance guideline was not invoked. That is, they had:

- trade practices awareness programs in place and no proven complaints;
- competitively tendered 50 per cent or more of their expenditure (or, in the case of two councils, a satisfactory explanation as to their failure to achieve the 50 per cent target);
- applied CN principles to significant council tenders, contracts won by council with external parties and (untendered) significant business activities; and
- completed reviews of their local laws to identify any restrictions on competition and applied the "competition test" to determine whether the restrictions were justified.

A total of $4,825,354 was distributed to councils for 1998–99. Payments ranged from $86,989 (Greater Geelong City Council, population 186,307) to $50,676 (Borough of Queenscliffe, population 3,406).

### 5.3.5 Transition to Competitive Neutrality in Best Value Context

Best Value principles were introduced in December 1999 and local government's application of CN policy will be carried out in a Best Value operating environment from 2000–2001 onwards. Councils continued to apply CN in accordance with *NCP and Local Government — A Statement of Victorian Government Policy* (June 1996) excluding CCT obligation until the end of December 2000. This allowed councils a two month transition period in which to become familiar with and apply the revised CN policy. The gains under CN policy are sometimes achieved progressively over time, Box 5.3 demonstrates this progress in one local council.

Further guidance on the transition to *CN Policy Victoria 2000* in a Best Value context will be provided to councils with the release of the revised clause 2 policy statement on NCP and local government in the first half of 2001.

**Box 5.3: Case Study: CN Evolution (Source: Casey City Council)**

The City of Casey's core business is to provide quality services to its community. It has not pursued policies to actively seek to increase its market share. During the amalgamation process, Casey ceased its in-house delivery of all building surveying inspection services and the design component of Council's engineering services. This transfer of service delivery to private industry has been successful in reducing Council costs. Private enterprises are efficient service providers of these services.

In the 1999-2000 year, Casey had six business activities which it considered significant. These are Endeavour Hills Leisure Centre, Berwick Leisure Centre, Doveton Outdoor Pool, Cranbourne Indoor Heated Pool, A joint Child Care Facility (see case study in Chapter 24) and Myuna Community Farm.

A brief summary of the four leisure centres is:

- Endeavour Hills Centre — An indoor multi-purpose recreational centre with 280,000 customers per year, two basketball courts, gym, childcare facility;
- Berwick Centre — An indoor/outdoor multi-purpose centre with 158,000 customers per year, four multi-purpose rooms, single court basketball court and operates monthly outdoor market;
- Doveton Pool — 45,000 customers per year with three pools and a water slide; and
- Cranbourne Pool — 187,000 customers per year, two indoor pools, external pool, spa and sauna.

The four leisure centres were grouped into one parcel and the management and operation of these centres put to public tender in 1996. The YMCA was successful over the Council's in-house team and the contract commenced on 1 November 1997, expiry date is 30 December 2001. Casey has applied CN where possible while considering the contract that is in place. Full cost reflective pricing calculations are made each year to clearly show the level of subsidy. An analysis of all other leisure centres within the catchment of the market has been made. This information assists Casey in prioritising resources. Casey has achieved a balance of good utilisation of its centres without undercutting or deterring competitors.

In 1999, the YMCA were given approval to open a gymnasium at the Endeavour Hills Leisure Centre. Full cost reflective pricing principles were applied to the proposal. Approval was given subject to the gymnasium providing commercial profit. This profit is now reducing the level of subsidy to the rest of the centre. A Best Value/CN compliance process has now commenced to ensure the best future direction for these centres can be put in place as the existing contract expires in December this year.

The other significant business is the Myuna Community Farm. This is a ten hectare community farm, which targets school children for education purposes and family groups for picnics and parties. The council is committed to social and educational objectives in maintaining this facility. Last year 55,051 people visited the site. A competitor analysis has been carried out. Competitors are limited with the closest being 38 kilometres away. A full cost reflective pricing calculation is undertaken each year to determine the full subsidy by Council for purposes of transparency and accountability. However, fees are set to maintain accessibility for the target groups of young children (pre- and primary school aged) and families.

## 5.4 Competitive Neutrality Complaints

Prior to October 1999 the Victorian Competitive Neutrality Complaints Unit (CNCU), completed the following investigations under the previous government:

1. *Building Services Agency (BSA) (DoI)* (Complaint received 12/1/99 and finding report dated 22/3/99)

The complainant alleged that the BSA did not apply full CN costing to the provision of disabled housing for DHS. The fixed price given to DHS was below the amount required for competitive tendering and below the total project cost. It was found that the BSA had not complied with the previous Government's CN policy because it had:

- not explicitly estimated the competitive advantages arising from its government ownership and taken these into account when determining the price of its services;
- claimed competitive disadvantages which were not substantiated in a manner consistent with the Victorian Government's CN policy; and
- not set a gross profit margin which was sufficient to fully cover all of its costs after taking into account its competitive advantages and disadvantages arising from government ownership.

Response: The BSA was sold in 1999.

2. *Swan Hill Secondary College (DEET)* (Complaint received 1/4/99 and finding report dated 24/9/99)

The complainant alleged that Swan Hill Secondary College had not applied CN in relation to the pricing of access for the general public to indoor pool and gym facilities. As a result, it had been able to offer memberships to school students, local residents and sporting groups at a reduced rate; and offer free use to various sporting groups.

The CNCU concluded that the Swan Hill Secondary College had breached the Victorian Government's CN policy. This conclusion was based on the evidence that the College provided a commercial activity but did not:

- apply CN pricing principles when setting the price of access to its fitness facilities; or
- substantiate its reasons for not applying the CN policy.

Response: DEET undertook to issue further guidance to schools and TAFEs. This information is being prepared now in the light of the new CN policy. The college has amended its access policy.

3. *VETASSESS (Office of Training and Further Education (OTFE))* (Complaint received 7/7/99 and finding report dated 1/10/99)

The complainant alleged that VETASSESS received subsidies from OTFE and its other joint venture partners and was not required to have the same certifications as other training providers. They suggested a conflict of interest for OTFE as industry regulator and joint venture partner of a training company. VETASSESS advertised its affiliation with OTFE and this (allegedly) was represented as an endorsement of VETASSESS by OTFE.

The CNCU concluded that VETASSESS did not enjoy financial or regulatory advantages associated with its government ownership. VETASSESS accounted for advantages of government ownership and therefore its activities were consistent with the Victorian Government's CN policy.

The CNCU also concluded that OTFE was not a competitor in the market for assessment services. The role played by OTFE was confined to that of industry regulator. Finally, the national regulatory arrangements in place to govern the actions of Industry Training Boards competing in the market for assessment services appeared consistent with CN policy.

4. *Melbourne Sports and Aquatic Centre (MSAC) (Department of State Development)* (Complaint received 22/7/99 and finding report dated 15/10/99)

The complainant alleged that the MSAC did not apply full CN costing to the provision of fitness programs and recreational facilities.

The CNCU found that MSAC failed to comply with CN policy because it had:

- not fully and transparently documented the CN cost adjustments in regard to the gymnasium and aerobics activities;
- provided insufficient evidence to support the argument that only the gymnasium and aerobics facilities were subject to CN policy; and
- not transparently applied CN pricing to the gymnasium, aerobics and other ancillary commercial activities. This was despite being previously advised in 1997 by CNCU and the Department of Premier and Cabinet to be transparent in costing and pricing these activities.

Response: The MSAC subsequently provided information satisfying the CNCU of its compliance with the CN policy.

### *5.4.1 Temporary Suspension of Complaint Investigations*

The newly elected government commenced a review of the Victorian CN policy shortly after taking office in late September 1999 and all complaint investigations were suspended. In February 2000 the NCC agreed to the temporary suspension of investigations by the Victorian CNCU, pending release of a new CN policy.

At the start of October 1999, the CNCU had on hand 8 complaints; by October 2000 when the new CN policy was released there were 18 complaints that had been suspended (summarised in table 5.1). In addition, a number of complaints (mentioned above) required follow-up to confirm compliance post reporting. (See footnotes to table for an explanation of the multi-faceted nature of some complaints.)

**Table 5.1: Summary of CN complaints**

| Area of Government | Nature of business | No. of Complaints |
|---|---|---|
| **Pre October 1999** | | |
| Local Government | Gym and fitness programs | 2* |
| Local Government | Child care services | 4** |
| Local Government | Waste collection | 1 |
| Department of Human Services — Public hospitals | Hospital laundry services | 1 |
| **October 1999 to end October 2000** | | |
| Local Government | Gym and fitness programs | 4* |
| Local Government | Child care services | 1# |
| Department of Education, Employment and Training | Training services | 2 |
| Department of Human Services — cemetery trusts | Cemetery memorials | 1 |
| Department of Justice (DoJ) — Country Fire Authority | Fire extinguisher servicing | 1 |
| Department of Natural Resources and Environment | Native forest hardwood timber | 1 |

*Notes:* ** one of these complaints related to two facilities of the one council.*

*** one complaint related to three councils and is included as three.*

*# multiple complainants against various centres run by one council also included in pre October 99.*

### *5.4.2 Recommencement of CN complaint investigations*

Following the launch of the new CN policy, the CNCU wrote to all complainants and subjects of complaints transmitting the new CN policy (and guide). The letters asked the parties to consult and endeavour to work out their complaints in the context of the public sector agency's implementation of the new policy. If the matter was not resolved, the complainant was asked to complete a proforma to formally reinstate the complaint.

This process was adopted as the complaints on hand had been made in the context of the old CN policy, which no longer applied, and further, during the period of suspension the issues may have been resolved between agencies. A starting point for Victorian complaint investigations is to strongly encourage parties to attempt to resolve the issues directly before undertaking an investigation. This approach to complaints on hand also allowed a short implementation phase to allow compliance under the new policy.

As at 31 December 2000, three complaints were on hand, two of which had been reinstated since the release of the new CN policy and one new complaint.

**Box 5.4: Case Study — Consultative Complaint Resolution**

One complaint suspended in the review process related to the industrial training courses (e.g. Dangerous Goods Handling) offered by Active Consulting, which is linked to the Sunraysia Institute of Technical and Further Education (TAFE). These courses were offered in competition with privately run courses including those offered by Aust-Link Pty Ltd (the complainant). Aust-Link is a registered training organisation.

As a result of consultation, the complaint has been resolved without the need for investigation. The parties have agreed to an approach which is transparent and allows both organisations to contribute cooperatively for the long term benefit of a productive training system.

To progress complaint investigations in relation to the potential build-up in a timely way, the CNCU is engaging the services of consultants to undertake the preliminary assessment of complaints.

# 6. Public Monopolies

- The Essential Services Commission is being established to enhance prices oversight of public monopolies and access regulation.
- Victoria has complied with Clause 4 of the Competition Principles Agreement in relation to structural reforms in rail, ports and grain handling.
- Access regulation is to be extended to Victorian rail tracks from 1 July 2001.

## 6.1 Overview of Structural Reform

Clause 4 of the Competition Principles Agreement (CPA) provides for structural review of public monopolies prior to introducing competition. It provides a framework for addressing the potential inefficiency of monopoly producers.

### *6.1.1 Overview of reform process and links to review requirements in Clause four of Competition Principles Agreement*

Monopolies, both public and private, are in a position to set their prices and output to what the market will sustain. The consequence of overcharging, particularly in an infrastructure sector, is a loss of economic welfare due to suppressed demand and higher costs for downstream industries with the consequence of higher prices and further loss of economic welfare. These losses will be measurable in lower living standards for the community, lower levels of employment and economic growth.

### *6.1.2 Contestable markets*

Private monopolies are also subject to the TPA, with Section 46 relating to misuse of market power and other provisions of Part IV designed to limit the scope for monopolists to use their market power to damage potential competitors. However, public monopolies do not face this discipline as they may be excepted from Part IV of the TPA or where they are a legislated monopoly Part IV of the TPA may not be effective.

### *6.1.3 Introducing competition*

Where a government makes a decision to introduce competition, Clause 4 provides a framework for ensuring that aspects of the public monopoly are not perpetuated because their relationship to government provides commercial advantages.

Clause 4 becomes relevant where a decision is taken to introduce competition as part of a government policy commitment or through a NCP legislation review that recommends removal of legislative barriers to market entry.

Once the decision to introduce competition has been made, a structural review under Clause 4 would be required before the full reform could be implemented.

The structural review includes:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements;
- the merits of separating potentially competitive elements into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing CN;
- the merits of any CSOs provided by the public monopoly, and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

Competition can be introduced without change of ownership. CN would need to be applied where a publicly owned business would be in competition with private businesses.

The main issue addressed by the review is structural separation of commercial and regulatory functions. Regulatory functions would normally be assigned to an independent regulator, leaving the commercial business to be subject to the same regulation as its competitors. This outcome is also consistent with the application of CN.

### *6.1.4 Prices oversight of public monopolies*

Public monopolies may be subject to the Clause 2 prices oversight provisions of the CPA that provides for independent price regulation by State jurisdictions. Independent price regulation, however, faces some significant difficulties because of the lack of transparency in the monopolist's actual costs and external indicators that the monopolist's costs are the minimum cost of an efficient producer.

Victoria's independent prices regulator, the Regulator-General, to be succeeded by the ESC, addresses this issue by requiring regulated monopolies to release cost information. In addition the monopolist's costs can be benchmarked against similar businesses elsewhere. Effective competition can however circumvent the need for elaborate cost estimation processes. The declared industries for prices oversight are listed in 6.3.

### 6.1.5 Access regulation

Where monopolies are located in strategic parts of the economy, such as electricity distribution networks and gas distribution networks, a lack of access to their facilities can reduce competition in downstream markets. Accordingly, in addition to prices oversight, these industries are subject to regulation that requires facility owners to sell access to third parties at a regulated price. The declared industries for access regulation are listed in 6.3.

The most recent decision on access regulation was made by the Victorian Government on 1 February 2001 when it announced its intention to declare Victorian rail tracks for access regulation by the Regulator-General from 1 July 2001. The declaration will facilitate competition in above-track services, notably intrastate rail freight that currently includes timber freight.

The Commonwealth Treasurer, on the advice of the NCC, has recognised the Victorian access regime for commercial shipping channels as being effective under Part IIIA of the TPA.

### 6.1.6 Related Reform Agreements

In the case of electricity, gas, water and road transport, the sector-specific reform agreements provide for outcomes such as free and fair trade. Many of the key issues were subject to review before signing the agreements. Hence further review would not be necessary and would be undertaken where the agreements specified the need for further review.

### 6.1.7 Other structural reforms

In the absence of sector-specific reform agreements for rail transport, ports and grain handling, Clause 4 has become relevant as a consequence of decisions by the former government to implement reform.

## 6.2 Institutional Arrangements

The Government is establishing the ESC, a new economic regulatory body in Victoria which will subsume many of the functions, objectives and powers of the ORG. The guiding principles for establishing the ESC call for the new regulator to be independent from Government and embrace an approach to regulation that is "light-handed" and promotes certainty, stability and transparency. As a consequence, certain changes to the ORG's functions, objectives, obligations, corporate governance arrangements and accountability mechanisms are being considered. The characteristics, form and date of formal establishment of the ESC will be announced during 2001.

The Government is committed to an open, consultative process in the development of the ESC and is continuing to undertake extensive public consultation on the proposals. Public consultation for the ESC proposal between July and September 2000 — which included the release in July 2000 of a Consultation Paper — sought views on the role, functions and powers of the ESC. Further targeted consultation occurred in December 2000 and January 2001. The role and jurisdiction of the proposed ESC builds on broad support among key customer, industry and government stakeholder groups for the approach outlined in the Consultation Paper.

It is also proposed that the jurisdiction of the ESC be extended to include water and sewage services across the State. Extension of independent economic regulation of the monopoly water businesses would fulfil the Government's election commitment with regard to fair water pricing and would also ensure that the Government meets the requirements for water reform under NCP.

The development of a new independent regulatory framework for the water industry is a significant undertaking. It is proposed to establish a high level interdepartmental steering group chaired by the Department of Natural Resources and Environment to oversee a work program to enable the ESC to commence this role at a future date. The ESC would however continue the role currently undertaken by the ORG in the industry, including oversight of licence obligations and customer contracts of the three Melbourne metropolitan retail businesses.

Consultation is also continuing on developing improved customer advocacy arrangements for implementation simultaneously with the establishment of the ESC.

## 6.3 Declared Industries

Regulated industries for prices oversight and access are:

- the electricity industry (from 3 October 1994 — distribution, retailing and until end 2000 — transmission) — the *Electricity Industry Act 2000*;
- the gas industry (from 11 December 1997 — distribution and retailing) — the *Gas Industry Act 1994*;
- the water industry managed by the three Melbourne metropolitan licensees and the Melbourne Water Corporation (from 1 January 1995) — *the Water Industry Act 1994*;
- the grain export shipping industry of (from 1 July 1995) — the *Grain Handling and Storage Act 1995*;
- the port industry in the ports of Melbourne, Geelong, Portland and Hastings (from 1 January 1996) — the *Port Services Act 1995*; and
- the rail (including trams) industry as from 29 April 1999 — access only — *Rail Corporations Act 1996*.

On 1 February 2001 the Victorian Government announced its intention to declare a Victorian rail tracks access regulation by the Regulator-General from 1 July 2001 under the *Rail Corporations Act 1996*.

## 6.4 Compliance

### *6.4.1 Compliance with Clause four Competition Principles Agreement for structural reforms in core infrastructure industries of Rail*

The V/Line Freight Corporation business was sold to Freight Australia together with a 15 year lease of Victoria's non-electrified intrastate (largely broad gauge) rail network on the understanding that a third party access regime would be implemented. This

transaction increased private participation in rail transport through transferring responsibility for track infrastructure to the private sector. Further details including third party access to the infrastructure are described in part 11.

### *6.4.2 Compliance with Clause four Competition Principles Agreement for structural reforms in core infrastructure industries of Ports*

After the structural separation of the ports and channels in 1995 both the Melbourne Port Corporation (MPC) and the Victorian Channel Authority (VCA) became subject to the economic regulation of the ORG until 30 June 2000, thus complying with Clause 4 CPA.

Subsequently, public owned ports at Geelong, Portland and Hastings were transferred to the private sector, while the Port of Melbourne remained in public ownership. Privatisation of the ports of Geelong and Portland, and the assignment of the management of the port of Hastings to the Toll Group's Geelong Port Pty Ltd, put these three private ports at the risk of market domination from the much larger (public) Port of Melbourne.

After a public inquiry in 1999, the ORG extended and strengthened its economic regulation of MPC and VCA until 30 June 2005, to protect the smaller regional ports from misuse of market power by public monopolies in compliance with Clause 4.

The elements of the review resulted in structural separation of the Port of Melbourne and Port Phillip Bay channel assets into the MPC and VCA. The MPC is a statutory corporation with a commercial charter and is subject to the normal corporate planning and financial requirements of public trading enterprises. The VCA is independent of the operators of the ports of Melbourne and Geelong.

The Port of Melbourne was integrated into the broader regulatory framework with regulatory functions either transferred or jurisdiction over the Port of Melbourne granted to bodies such as the Environmental Protection Authority, Marine Board (safety), and Local Government (local roads).

Though specific community service obligations were not identified, the Minister has power to direct the MPC and VCA. This power has been used where visiting warships have sought access to the Port of Melbourne but for security reasons have not been in a position to provide arrival times well in advance.

The ORG recently outlined the regulatory framework that will apply to the Victorian ports industry for the five year period ending 30 June 2005. The framework differs for MPC, VCA and regional ports (ports of Geelong, Hastings and Portland) in terms of how prices will be determined over the regulatory period from 1 July 2000 through 30 June 2005.

The ORG has decided to continue to regulate the MPC and VCA on a similar basis to the arrangements in place during the previous regulatory period. The setting of real price reductions (that is nominal prices increases have to be below the consumer price index by a specified factor) has been applied to MPC and VCA to ensure regulatory consistency with other regulated industries in Victoria, most notably electricity and gas.

The regulatory framework for the regional ports of Geelong, Portland and Hastings differs from the Port of Melbourne, in that the former are subject to "light-handed" regulation. The ORG has approved Reference Tariffs put forward by the regional port operators. Prices charged by regional port operators in the financial year ending 30 June 2001 must not exceed approved reference tariffs specified in the respective determinations. In the four following financial years, prices must not increase in real terms. A proposed increase in reference tariffs beyond indexation, will need to be vetted and approved by the ORG.

The revised price control for the MPC requires it to deliver average real price reductions of 5.2 per cent for both contract and non-contract prescribed services over the five year period ending 30 June 2005.

The price cap to be applied to the VCA requires the price of prescribed services to fall by a real 2.1 per cent over the period 2000–01 to 2004–05.

### *6.4.3 Compliance with Clause four of Competition Principles Agreement for structural reforms in other public monopolies*

In 1995 the grain handling facilities previously owned by the State of Victoria through the Grain Elevators Board were sold to the private sector (Vicgrain). In 2000 Vicgrain became part of GrainCorp Limited.

The ORG initially regulated pricing of services of, and access to, the grain export facilities at the ports of Geelong and Portland until at least 30 June 2000.

Early in 2000, the ORG conducted a Public Inquiry into whether it should extend economic regulation until 30 June 2003, and the form of that regulation. In June 2000 the ORG decided to continue economic regulation until 30 June 2003, and to require GrainCorp to comply with some Pricing Principles, including the need for greater transparency.

# Part C: Infrastructure

## 7. Electricity

- Victoria has met the objectives guiding the establishment of the National Electricity Market. A set of institutional arrangements governing the policy direction and operation of the market, including clarification of the roles of regulators in a streamlined National Electricity Market structure is being developed.
- Victoria has continued its review of legislative and regulatory barriers to free and fair trade in electricity and is a leader in ensuring that retail contestability is introduced as soon as feasibly possible.
- The provisions of the *Electricity Industry Act 2000* are consistent with National Competition Policy principles. They do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers.

The NCC identified the following key areas in order to review Victoria's performance in electricity reform:

- experience to date, for evidence that customers opened up to competition have been able to change supplier and have realised benefits;
- a timetable which sets out the project plan for full retail competition (FRC), with major milestones;
- evidence that the approach taken within the jurisdiction to implementing FRC is based on a comparison of costs and benefits and leaves room for innovation; and
- evidence that barriers to entry have been minimised through national consistency.

### 7.1 Overview of Progress

Victoria has met the structural reform objectives guiding the establishment of the National Electricity Market (NEM).

Victoria supports the need to develop more contemporary principles to guide the future development of the NEM. Through the Energy Markets Group (EMG), Victoria has sought to develop a clearer set of institutional arrangements governing the policy direction and operation of the NEM, including clarification of the roles of regulators in a streamlined NEM structure.

Victoria has continued its review of legislative and regulatory barriers to free and fair trade in electricity.

The provisions of the *Electricity Industry Act 2000* are consistent with NCP principles. That is, they do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers.

Victoria is continuing the program for the introduction of contestability for electricity consumers. Victoria and New South Wales are leading the reform process to ensure retail contestability is introduced as soon as feasibly possible.

Load profiling is a cost-effective mechanism for measurement of market loads for smaller customers. However, there are several potential impediments. Victoria hopes to see removal of these potential impediments to FRC within the next two months.

Victoria supports the NCC's recognition that certain issues associated with implementing FRC are jurisdictional, and that jurisdictions should decide how best to deal with them, e.g. settlement of the wholesale market.

Along with many other transitional derogations, Victoria's vesting contracts expired on 31 December 2000. Victoria still has some derogations from the National Electricity Code (NEC). Transitional derogations may be sought to implement retail contestability in a timely and effective manner. In general, transitional derogations would only be used as a last resort, where other mechanisms to deliver effective full retail competition have failed.

Table 7.1 demonstrates Victoria's progress against these performance measures. The following sections discuss in more detail the progress and outcomes of jurisdictional legislative reviews and reforms.

### *7.1.1 Implementation of National Electricity Market arrangements*

Victoria has met the structural reform objectives guiding the establishment of the NEM. The NCC has noted that a broad examination of the roles and responsibilities in the areas of NEM operations and development, NEC change and regulation is needed. In this regard, Victoria supports the need to develop more contemporary principles to guide the future development of the NEM. Through the EMG, Victoria has sought to develop a clearer set of institutional arrangements governing the policy direction and operation of the NEM, including clarification of the roles of regulators in a streamlined NEM structure.

**Table 7.1: Victoria's Progress**

| Key Areas Identified by the NCC | Victoria's Progress |
|---|---|
| Experience to date, for evidence that customers in tranches opened up to competition have been able to change supplier and have realised benefits | During 2000, more than 50 per cent of contestable electricity customers transferred retailers in Victoria based on competitive packages of service and price. Despite recent price rises, average Victorian wholesale electricity prices are 16 per cent lower than the average price since market launch. |
| A timetable which sets out the project plan for FRC, with major milestones | In January 2001, choice of retailer was introduced to electricity customers consuming between 40 and 160 MWh/yr. It is planned that smaller customers, those using less than 40MWh/yr, will be able to choose their retailer from January 2002. |
| Evidence that the approach taken within the jurisdiction to implementing FRC is based on a comparison of costs and benefits and leaves room for innovation | Victoria's approach to implementing FRC through net system load profiling is based on independent analysis of the relatively low cost of profiling, which supports innovation and allows customers to readily switch retailers. Profiling will not create a barrier to the efficient entry of full interval metering for smaller customers in the medium to longer term. The Victorian regulatory framework allows for the Regulator-General to approve a phased roll-out of interval metering targeted to the most economic customers. This can be used to produce net benefits and manage the logistics of a metering roll-out. |
| Evidence that barriers to entry have been minimised through national consistency | Victoria and other NEM jurisdictions have entered into arrangements with NEMMCO for it to procure national systems for customer transfer and settlement processes to be used under FRC and thereby ensure national consistency. In addition, Victoria and New South Wales have conducted joint consultation on proposed Metrology Procedures to ensure that barriers to entry are minimised through a high degree of consistency in arrangements between jurisdictions. |

### *7.1.2 Review of electricity related legislation to ensure consistency with National Competition Policy objectives*

Victoria has continued its review of legislative and regulatory barriers to free and fair trade in electricity. Since the CPA, the *Electricity Industry Act 1993* was substantially amended to facilitate electricity market reform. Those amendments were consistent with NCP. The *Electricity Industry Act 1993* has now been replaced by the *Electricity Industry Act 2000*, which substantially re-enacted various provisions of the 1993 Act relevant to the regulation of the electricity industry. The *Electricity Industry (Residual Provisions) Act 1993* now contains remaining provisions from the former 1993 Act that are relevant for historical purposes, including privatisation provisions.

The provisions of the *Electricity Industry Act 2000* are consistent with NCP principles. That is, they do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers. Key provisions of the 2000 Act include:

- provisions to facilitate further steps in the transition to full retail competition in the Victorian electricity market, including provisions to support the use of cost-effective mechanisms for measurement of market loads for smaller customers;
- a safety net for domestic and small business customers to ensure that no customer is disadvantaged during the staged introduction of full retail competition. Customers are protected during this transition period, as local retailers have been required to publish their price and service offers to all domestic and small business customers, to take effect from 1 January 2001. This published information is subject to oversight by Government and the ORG. The safety net provisions are transitional provisions and will be subject to review before their scheduled expiry on 31 December 2003. The safety net provisions will ensure that consumer interests are protected while competition is becoming effective;
- a requirement for retailers to enter into community service agreements;
- a licensing regime administered by the independent economic regulator, the ORG;
- cross-ownership restrictions covering participants in the Victorian electricity industry; and
- provisions relating to the management of electricity supply emergencies.

### *7.1.3 Participation in the National Electricity Market review of National Electricity Code provisions*

Victoria supports further review of the NEM. However, it is also important to recognise that NEM jurisdictions are ultimately responsible for the National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO) and that the policy framework for further development of the NEM also lies with those jurisdictions.

Victoria notes the NCC's comments on the Inter-Regional Planning Committee and supports a review of the institutional arrangements concerning interconnects. A Ministerial Taskforce, established to examine security of supply issues in Victoria, reported that the arrangements for interconnects are less than optimal. As a result Victoria has put in place arrangements to identify possible short-term solutions pending a longer-term response in the market. These arrangements include establishing a project to encourage demand side participation within the market and to identify the barriers to further demand side activity. In addition, Victorian Energy Network Corporation (VENCorp) has been asked to analyse the costs and benefits of augmenting the interconnection to Snowy and New South Wales by increments up to 1000MW and make this information publicly available.

### 7.1.4 Removal of impediments to competition in the National Electricity Market

Victoria is continuing the program for the introduction of contestability for electricity consumers.

Customers who use more than 160 MWh/yr can already choose their electricity retailer. The most recent independent survey of Victorian industrial and commercial businesses reported that these customers achieved an average reduction in electricity costs of 23 per cent over the period 1994 to 1998.[1] In addition, over the same period around one third of the firms surveyed stated that they had changed retailers. Despite recent rises, prices are still well below pre-competition days and contestable customers continue to change retailers based on competitive packages of service and price. A report by NECA shows that the average wholesale electricity price in Victoria was 16 per cent lower than the average price at market start.[2] During 2000, more than 50 per cent of contestable electricity customers transferred retailers in Victoria.[3]

In January 2001, choice of retailer was introduced to electricity customers consuming between 40 and 160 MWh/yr. It is planned that smaller customers, those using less than 40MWh/yr, will be able to choose their retailer from January 2002. Two key milestones for the roll-out of electricity FRC are:

- completion of the metrology procedure consultation and review process by July 2001; and
- completion of the national transfer and wholesale settlement system, associated business systems and the market participant interfaces by December 2001.

Victoria and New South Wales are leading the reform process to ensure retail contestability is introduced as soon as feasibly possible.

### 7.1.5 Impediments to the use of load profiling for wholesale market settlement

Victoria's approach to implementing FRC through net system load profiling is based on independent analysis of the relatively low cost of profiling, which supports innovation and allows customers to readily switch retailers. Profiling will not create a barrier to the efficient entry of full interval metering for smaller customers in the medium to longer term. The Victorian regulatory framework allows for the Regulator-General to approve a phased roll-out of interval metering targeted to the most economic customers. This can be used to produce net benefits and manage the logistics of a metering roll-out.

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*[1] Australian Chamber of Manufactures, Outcomes of the Contestable Electricity Market of New South Wales and Victoria, June 1998.*

*[2] Source: NECA, Quarterly Report October to December 2000 (www.neca.com.au). NECA's data excludes the effects of industrial action in the Latrobe Valley on 2 November 2000, which if included would skew the outcome.*

*[3] Source: NEMMCO, Retail Transfer Statistical Data, (. It is noted, however, that this total includes changes in configurations, introduction of new connection points, and the re-opening and closing of connection points – all of which are registered as transfers. Disaggregated data is not available at this time due to NEMMCO data confidentiality issues.*

Implementation of load profiling will require:

- resolution of any intellectual property licensing issues; and
- authorisation of changes to the NEC – which is currently being progressed by the ACCC.

Victoria hopes to see removal of these potential impediments to FRC within the next two months.

### *7.1.6 Finalisation and approval of metrology procedures*

Under the NEC, a metrology procedure allocates roles, responsibilities and procedures for the collection and processing of electricity consumption data for purposes of wholesale market settlement. It is expected that draft Victorian metrology procedures was released for consultation in February 2001. Following consultation, the metrology procedures will be published on the NEMMCO website for three months prior to implementation in the middle of 2001.

### *7.1.7 Establishment of a low-cost and effective customer transfer system*

NEMMCO recently entered a contract to procure a comprehensive Market Settlement and Transfer System (MSATS). The MSATS should start market trials in mid-2001, to be ready for implementation by January 2002. Victoria is participating in, and assisting, this process.

Victoria supports the NCC's recognition that certain issues associated with implementing FRC are jurisdictional, and that jurisdictions should decide how best to deal with them, e.g. settlement of the wholesale market.

### *7.1.8 Removal of transitional arrangements*

Along with many other transitional derogations, Victoria's vesting contracts expired on 31 December 2000. Victoria still has some derogations from the NEC. Transitional derogations may be sought to implement retail contestability in a timely and effective manner. In general, transitional derogations would only be used as a last resort, where other mechanisms to deliver effective full competition have failed. For example, transitional derogations may be required in the areas of metering and settlement of the wholesale market. As wholesale market settlement is based on a differencing regime, it is necessary to regulate, at a wholesale level, the metering of all customers that have transferred to a retailer other than their local retailer (second tier customers). The current regulatory framework provided by the Code, which has applied to transfers by large customers, allows the flexibility for either the retailer or the distributor (as default provider) to provide metering and data services for such customers. However, this flexibility would create significant complexities in the mass market in terms of establishing systems and processes to enable the transfer of small customers. Accordingly, derogations may be sought to enable a simplified regime to apply in respect of the mass market for a transitional period to facilitate the orderly introduction of FRC.

# 8. Gas

- Victoria is continuing a program for the introduction of contestability for gas customers. Subject to transitional arrangements necessary to support the orderly introduction of full retail competition for small customers, Victoria has otherwise implemented the 1997 Natural Gas Pipelines Access Agreement.

- Consistent with the objectives of National Competition Policy, Victoria has continued its review of legislative and regulatory barriers to free and fair trade in gas. *The Gas Industry Act 1994* has been substantially amended to facilitate gas market developments.

The NCC has indicated that continued effective observance of reforms in gas will form the criteria for the third tranche assessment. The NCC identifies no specific issues for Victoria, although it is noted that the certification of the State-based access regime remains with the Commonwealth Minister for a decision.

This chapter will focus on an assessment of progress and outcomes of jurisdictional legislative reviews and reforms, including:

- the effective implementation of the 1997 Natural Gas Pipelines Access Agreement;

- retail contestability; and

- further review of legislative and regulatory barriers to the free and fair trade in gas in Victoria.

## 8.1 Summary of Progress

Victoria is continuing the program for the introduction of contestability for gas consumers, facilitated through an industry-based Gas Contestability Steering Committee.

Victoria expects to remove any transitional regulatory arrangements to establish a competitive natural gas market for gas customer, consuming more than 5 terajoules (TJ) per annum, from 1 September 2001.

There may be a further transitional period to allow for the development of systems and processes necessary to support the orderly introduction of gas FRC for some 1.4 million domestic and small business customers. These customers were scheduled to become contestable on 1 September 2001. However, a preliminary timeline developed by industry suggests that FRC would be achievable in the first half of 2002. There are many factors that will influence the ultimate timing for implementation of gas FRC, including the development of systems and processes necessary to manage customer transfers and metering data. Victoria is working closely with key stakeholders to ensure that gas FRC is introduced as soon as feasibly possible, and in a manner where the interests of consumers are protected and there is sufficient incentive for the provision of sustainable infrastructure.

Consistent with the objectives of NCP, Victoria has continued its review of legislative and regulatory barriers to the free and fair trade in gas. The *Gas Industry Act 1994* has been substantially amended to facilitate gas market reform.

These amendments are consistent with NCP principles and are essentially similar to those provided in the electricity context. The provisions will be reviewed prior to their scheduled expiry on 31 August 2004. Further substantive amendments to the *Gas Industry Act 1994* are scheduled for 2001. These amendments will further facilitate the orderly introduction of FRC in the Victorian gas market. In so far as possible, amendments to the *Gas Industry Act 1994* are based on equivalent amendments to the electricity legislation, so as not to set up regulatory barriers to convergence.

Table 8.1 summarises Victoria's progress in these areas. The following sections discuss in more detail the progress and outcomes of jurisdictional legislative reviews and reforms.

**Table 8.1: Victoria's Progress**

| Key Areas | Victoria's Progress |
|---|---|
| The effective implementation of the 1997 Natural Gas Pipelines Access Agreement | The 1997 National Gas Pipelines Access Agreement requires each jurisdiction to:<br>• give legal effect to a uniform Gas Pipelines Access Law to implement the National Third Party Access code for Natural Gas Pipeline Systems;<br>• submit its access regime embodied in its Access Legislation to the NCC for certification as an effective access regime under Part 111A of the TPA; and<br>• comply with the transitional arrangements for phasing in of access for customer classes.<br>Victoria has complied with these requirements as follows:<br>• the *Gas Pipelines Access (Victoria) Act 1998* applies the Gas Pipelines Access Law comprising the National Code and the legal framework for its operation;<br>• an application was lodged with the NCC on 30July 1999 to certify the effectiveness of the Victorian Gas Access Regime under Part 111A of the TPA; and<br>• transitional regulatory arrangements to establish a competitive natural gas market for gas customers consuming more than 5TJ per annum are expected to be removed with effect from 1 September 2001. There may be a further transitional period to allow for the development of systems and processes necessary to support the orderly introduction of FRC for smaller customers. |

| Key Areas | Victoria's Progress |
|---|---|
| Retail contestability | The first three stages of contestability have been completed with over 700 of Victoria's largest gas customers able to choose their retailer. Industry has developed a preliminary timeline, which suggests that FRC would be achievable in the first half of 2002. There are many factors that will influence the ultimate timing for implementation of gas FRC, including the development of systems and processes necessary to manage customer transfers and metering data. Victoria is working closely with key stakeholders to ensure that gas FRC is introduced as soon as feasibly possible, and in a manner where the interests of consumers are protected and there is sufficient incentive for the provision of sustainable infrastructure. |
| Further review of legislative and regulatory barriers to the free and fair trade in gas in Victoria | The *Gas Industry Act 1994* has been substantially amended to facilitate gas market reform. |

### *8.1.1 Effective implementation of the 1997 Natural Gas Pipelines Access Agreement*

A central feature is an obligation to implement a national regime for third party access to the services of natural gas transmission and distribution pipelines, including satisfactory progress in phasing out transitional arrangements and meeting the timetable for the introduction of competition (including retail competition).

In 1998, Victoria passed legislation to apply the Gas Pipelines Access Law and the National Third Party Access Code for Natural Gas Pipeline Systems. Victoria is currently awaiting certification of the access regime. Otherwise Victoria has met its obligations under the 1997 Gas Agreement.

### *8.1.2 Retail contestability*

Victoria is continuing the program for the introduction of FRC for gas consumers, facilitated through an industry based Gas Contestability Steering Committee. A key objective of the Committee, is where possible and appropriate, to deliver processes that harmonise with existing and evolving processes in gas and electricity markets in Australia.

The *Gas Industry Act 1994* legislates for the staged introduction of retail contestability in the Victorian gas industry through four separate stages. The first three stages of contestability have been completed with over 700 of Victoria's largest gas customers, consuming above 10 TJ per annum, able to choose their retailer. Already, around 10 per cent of these customers have changed retailers based on competitive packages of service and price.

Plans for approximately 600 customers consuming between 5 to 10 TJ per annum to become contestable as part of the third stage of contestability (i.e. 1 September 2000) were deferred. Victoria took this decision due to concerns that datalogging would not be a cost-effective method of measuring consumption for customers using less than 10 TJ per annum. These concerns have been alleviated by revised (lower) estimates of datalogging costs, in conjunction with the proposed establishment of a customer safety net (see below). Accordingly, it is anticipated that the customers in the 5 to 10 TJ per annum segment will become contestable from 1 September 2001.

The final stage of contestability, which involves some 1.4 million domestic and small business customers, was scheduled to occur on 1 September 2001. However, industry has developed a preliminary timeline, which suggests that FRC would be achievable in the first half of 2002. Similar to electricity, there are many factors which will influence the ultimate timing for the roll-out of gas FRC, including:

- the removal of potential impediments to the use of load profiling for wholesale market settlement;
- the establishment of the regulatory regime to support FRC; and
- the establishment of low cost and effective customer systems and processes necessary to manage customer transfers and metering data.

Consultation papers have been developed on the issues of profiling and trading arrangements. Victoria has received responses on the proposals contained in those papers and expects to finalise its position in regard to those matters in March 2001.

Victoria is working closely with key stakeholders to ensure that gas FRC is introduced as soon as feasibly possible, and in a manner where the interests of consumers are protected and there is sufficient incentive for the provision of sustainable infrastructure.

### *8.1.3 Further review of legislative and regulatory barriers to the free and fair trade in gas in Victoria*

Historical legislative and regulatory barriers to free trade in gas were removed as part of the settlement in November 1996 of the dispute between the Commonwealth Government, the Victorian Government and the Bass Strait producers (Esso and BHP) regarding the liability for the incidence of Petroleum Resource Rent Tax on Bass Strait gas production. The settlement removed the State's exclusive contractual franchise and allowed other gas suppliers to enter the market on a competitive basis. The Victorian Government also initiated a sale of release gas in March 1999 to further competition in the retail and wholesale market.

In addition, the market arrangements established in Victoria, including the Market and System Operations Rules enacted under the *Gas Industry Act 1994*, facilitate trade in gas and provides for its more efficient use. VENCorp is currently undertaking a review of the current market arrangements, progressing to recommendations to the VENCorp Board by the end of 2001.

Consistent with the objectives of NCP, Victoria has continued its review of legislative and regulatory barriers to the free and fair trade in gas. As noted above, the *Gas Industry Act 1994* has been substantially amended to facilitate gas market reform, and provides for:

- a licensing regime administered by the independent economic regulator, the ORG;
- market and system operation rules for the Victorian gas market;
- cross-ownership restrictions to prevent the re-aggregation of the Victorian gas industry; and
- prohibitions on significant producers (the Bass Strait producers) engaging in anti-competitive conduct.

The 2000 FRC amendments to the *Gas Industry Act 1994* will facilitate the transition to full retail competition in gas, and provide for:

- a safety net for domestic and small business customers, including an interim reserve price regulation power. The safety net provisions are transitional provisions and will be subject to review before 31 August 2004, their scheduled expiry. The safety net provisions will ensure that consumer interests are protected while competition is becoming effective; and
- a requirement for retailers to enter into community service agreements.

These amendments are consistent with NCP principles and are essentially similar to those provided in the electricity context. The provisions will be reviewed prior to their scheduled expiry on 31 August 2004. Further substantive amendments to the *Gas Industry Act 1994* are scheduled for 2001. These amendments will further facilitate the orderly introduction of FRC in the Victorian gas market. In so far as possible, amendments to the *Gas Industry Act 1994* are based on equivalent amendments to the electricity legislation, so as not to set up regulatory barriers to convergence.

# 9. Water

- The 2001 Price Review of Water, Drainage and Sewerage Services in Victoria has adopted a robust and transparent process for determining new water prices to apply from 1 July 2001, and will determine prices for services from that date forward. The review will ensure that Victoria continues to meet the Council of Australian Governments pricing principles and paves the way for the introduction of an independent regulator.
- The Government's proposed Essential Services Commission will have responsibilities for economic regulation of the water industry. The introduction of the Essential Services Commission as the economic regulator of the water industry will be a major achievement that will ensure institutional separation with respect to water pricing.
- In terms of water allocation and trading, 15 Bulk Entitlements, the Farm Dams Review and the launch of a major river restoration initiative on the Snowy River have been implemented.
- Victoria has continued to facilitate trade through the Northern Victorian Water Exchange and work is ongoing with its interstate trading partners to extend interstate water trading project.

## 9.1 Summary of Progress

The major development with respect to cost reform and pricing in Victoria has been the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*. This review has adopted a robust and transparent process for determining new prices to apply from 1 July 2001, and will determine the new prices for these services from that date forward. The review will ensure that Victoria continues to meet the COAG pricing principles and paves the way for the introduction of an independent regulator. In addition to the price review, Victoria has continued to implement full cost recovery for the rural water sector and has completed four case studies on identifying and measuring cross-subsidies in the Non-Metropolitan Urban (NMU) sector.

The major development with respect to Victoria's institutional arrangements is the Government's proposal to establish an ESC to ensure high quality, equitable and reliable supplies of services such as electricity, gas and water. Under this proposal, the ESC will have responsibilities for economic regulation of the water industry once the pricing review and transitional arrangements are completed. Implementation of the proposal will require an overhaul of the current legislative and regulatory framework and the development of a Statewide framework for the water industry. The introduction of the ESC as the economic regulator of the water industry will be a major reform achievement which will ensure institutional separation with respect to pricing. The overhaul of the regulatory framework will also clarify the roles and accountabilities of Government, water authorities and other regulators to further minimise the potential for conflicts of interests. Once established, the ESC will protect the short and long term interests of consumers by ensuring water businesses charge prices which enable them to operate and invest efficiently, but do not enable them to earn monopoly profits or provide sub-standard services.

The major developments with respect to allocation and trading have been the completion of 15 Bulk Entitlements (BE), the *FDR* and the launch of a major river restoration initiative on the Snowy River. Twenty SFMPs are in progress, three of which are community endorsed and two of which have been put into operation. RRPs are being developed in three priority rivers and Victoria has continued to implement GMPs. In addition to these initiatives, Victoria has continued to facilitate trade through the NVWE and work is ongoing with its interstate trading partners to extend the Murray Darling Basin Commission's (MDBC) interstate water trading project.

Key developments with respect to the environment and water quality in Victoria include the ongoing delivery of improved integrated resource management services by CMAs, the ongoing implementation of 16 catchment-based nutrient management plans, the release of a draft SEPP - *The Waters of Western Port Bay and Catchments*, the initiation of a review of the SEPP - *Waters of Victoria*, and the benchmarking of the environmental conditions of Victoria's major rivers and tributaries. Victoria has also improved the Regional Management Plan Guidelines used by CMA and the Port Phillip Catchment and Land Protection Board, and has initiated a review of the corporate governance arrangements for these bodies. In addition to these initiatives, the Government's proposal to develop a new regulatory framework for drinking water quality is consistent with NWQMS and will ensure greater confidence in the supply of good quality drinking water.

Table 9.1 summarises the key developments.

**Table 9.1: Summary of Progress**

| Type of Reform | Victorian Progress |
|---|---|
| **1. Cost Reform and Pricing** | |
| Full cost pricing | • Implementing full cost recovery principles since early 1990s;<br>• October 1997 Price Reforms completed move off rates based charging and ensured implementation of full cost recovery;<br>• 2001 Price Review will ensure ongoing compliance with full cost recovery;<br>• Ongoing implementation of full cost recovery by the Rural Water Authorities (RWAs); and<br>• Proposed introduction of Tax Equivalent Regimes (TERs) for NMUs and RWAs. |
| Two part tariff/Volumetric charges | • Two part tariffs, including a volumetric component, have been implemented throughout Victoria. |
| Cross-subsidies removed | • Abolition of rates based charging has removed distortionary cross-subsidies; and<br>• three case studies in NMU sector were undertaken to ensure there were no remaining cross-subsidies. |
| CSOs defined | • CSOs limited to the provision of concessions to pensioners, rebates for certain not-for-profit organisations and the rates and charges relief grant scheme; and<br>• all CSOs funded in a transparent way. |

| Type of Reform | Victorian Progress |
|---|---|
| Metro positive rate of return | • Each authority recovers operating expenses, including tax (where applicable), capital expenditure to meet service obligations, interest payments and dividends. This ensures positive rates of return are achieved. |
| Economically and environment ally sustainable | • *Water Act 1989* ensures any new investment must prove its ecological sustainability before a new BE or necessary amendments to the existing BE will be approved; and<br>• All new investments above $5 million assessed in accordance with the *Investment Evaluation Policy and Guidelines (1996).* |
| Irrigation management devolved | • Establishment of Water Services Committees (WSC) by RWAs to ensure local input into irrigation management. |
| **2. Institutional Reform** | |
| Separate roles – Metros/NMUs/Rurals | • Proposed establishment of the ESC as the independent economic regulator of the water industry;<br>• Development of water service agreements which clearly specify obligations on NMUs and RWAs;<br>• WSC for the RWAs and rural pricing;<br>• Proposed new drinking water quality regulatory framework;<br>• Review of regulatory arrangements for septic tank systems; and<br>• Establishment of Energy and Water Ombudsman (EWO). |
| Commercial focus – metros | • Water businesses have skills-based boards, pay dividends and tax equivalents, compete by comparison and have commercial charters. |
| Performance monitoring | • Continue to participate in a number of National and State performance monitoring and benchmarking programs, including Water Services Association of Australia (WSAA), Victorian Water Industry Association (VWIA), Agriculture and Resources Management Council of Australia and New Zealand (ARMCANZ) etc. |
| **3. Allocations and Trading** | |
| System of water entitlements | • *Water Act 1989* provides water allocation framework;<br>• Bulk Entitlements conversion program reached stage where 76 per cent of diversion sites across the State have been negotiated and agreed with stakeholders; and<br>• Ongoing implementation of GMPs. |
| Allocations for environment | • Allocation to environment in two phases – (1) through BE conversion process and SFMP on unregulated rivers; and (2) identified stressed basins addressed through SFMPs and RRPs; and<br>• 20 SFMPs in progress, 3 community endorsed and 2 in operation, RRPs commenced for 3 priority rivers.<br>• In addition, *FDR*, development of Statewide methodology for determining environmental flow requirements, development of River Health Strategy, and the Snowy River Restoration Initiative (Victorian, New South Wales and Commonwealth committed $375 million over 10 years). |
| Trading in water entitlements | • Permanent transfers up to 20,000ML and temporary transfers up to 250,000ML;<br>• Establishment of NVWE and project to explore the expansion of the Exchange;<br>• Ongoing work with interstate trading partners; and<br>• Development of a trading handbook. |
| **4. Environment and Water Quality** | |
| Integrated resource management | • Integrated resource management provided by CMAs; and<br>• Improved regional management plan guidelines and CMA review of governance arrangements. |
| NWQMS progress | • CMAs play major role in implementing NWQMS; |

| Type of Reform | Victorian Progress |
|---|---|
| | • Ongoing implementation of 16 Nutrient Management Plans;<br>• Preparation, release and reviews of State Environment Protection Policies which incorporate NWQMS; and<br>• Proposed new regulatory framework for drinking water quality using *Australian Drinking Water Guidelines 1996*. |
| **5. Public Education and Consultation** | |
| Public Consultation | • Extensive consultation on all reform initiatives including BE program, FDR, 2001 Price Review, drinking water regulation;<br>• Community participation in development of BEs, SFMPs and RRPs etc; and<br>• Industry workshop on best practice in customer consultation. |
| Public Education | • Developing a Statewide Water Conservation Initiative;<br>• Clarifying roles and responsibilities of Government, water authorities and regulators; and Continuing to deliver a variety of public education programs such as National Water Week, Waterwatch etc. |

## 9.2 Cost Reform and Pricing

The major development with respect to cost reform and pricing in Victoria has been the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*. This review has adopted a robust and transparent process for determining new prices to apply from 1 July 2001. The review will ensure that Victoria continues to meet the COAG pricing principles and paves the way for the introduction of an independent regulator. In addition to the price review, Victoria has continued to implement full cost recovery for the rural water sector and has completed three case studies on identifying and measuring cross-subsidies in the NMU sector.

### *9.2.1 Progress on Cost Reform and Pricing*

With respect to cost reform and pricing, the NCC noted the following issues for consideration in Victoria's third tranche assessment:

- implementation of full cost recovery for NMUs and metropolitan businesses focussing on independent asset valuation, and instituting TERs for NMUs;
- cross-subsidies for NMUs; and
- a review of rural water charges and costs to ensure they comply with the principle of full cost recovery with subsidies made transparent.

Victoria has been addressing these issues through the following reform initiatives:

- the 2001 Price Review of Water, Drainage and Sewerage Services in Victoria;
- a further review of the impacts of introducing a TER for NMUs and RWAs, and a subsequent proposal to introduce a State based TER in July 2001 prior to the introduction of the National TER in July 2002;
- completing three case studies on identifying and measuring cross-subsidies in the NMU sector;
- ongoing implementation of full cost recovery for the rural sector; and
- the proposed introduction of the ESC as the economic regulator of the water industry.

In May 2000 the Minister for Environment and Conservation initiated the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*. This review has adopted a robust and transparent process for determining new prices to apply from 1 July 2001, and will determine three-year price paths for metropolitan and NMU services from that date forward. While the review has considered and sought comment on the best way forward for setting prices in the rural sector, it will not set new prices for rural services as rural prices have recently been adjusted, negotiated and agreed to by WSC.[4]

The 2001 Price Review has adopted a similar process to that used by economic regulators, such as the ORG and the Independent Pricing and Regulatory Tribunal of New South Wales, to carry out price determinations. The process is consistent with COAG pricing principles and has involved:

- releasing an issues paper;
- undertaking extensive stakeholder consultation on the issues paper;
- reviewing stakeholder submissions on the issues paper;
- adopting the 'building block' approach for determining prices;
- calling for submissions from water businesses on activity costs and appropriate price paths/revenue levels; and
- preparing recommendations to Government on three-year price paths to apply from 1 July 2001.[5]

Where responsibility for pricing has been transferred to an independent regulator in the past (electricity, gas, ports and transport), the Government has set the pricing policy framework and an initial medium term price path for the new regulator to manage. Therefore, the 2001 Price Review paves the way for the introduction of an independent regulator and the outputs from the review will feed into the work program, discussed below, for establishing the ESC as the economic regulator of the water industry. While further work will be done on developing a pricing policy framework, the three-year price paths determined in the 2001 Price Review will most likely be transferred to the ESC to manage.

With respect to the introduction of a TER for NMUs, Victoria proposes to introduce a State based TER for NMUs and RWAs in July 2001 prior to the introduction of the National TER in July 2002. The Treasurer gave his approval-in-principle to the proposal following a further review in May 2000 of the impacts of applying a State based TER to NMUs and RWAs. This review took into account the impacts of the TER on revised asset values consistent with a draft Practice Statement on "Assets Valuation and Financial Reporting" for the Victorian water industry and considered the operating principles of the National TER.

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*[4] In the rural sector, RWAs have established Water Services Committees to ensure that the trade-offs between customer service levels and price are established and agreed to by customers.*

*[5] For more detail on the process see "2001 Price Review of Water Drainage and Sewerage Services in Victoria, Issues Paper, September 2000".*

The removal of rates-based charging and the introduction of two part tariffs have removed distortionary cross-subsidies throughout Victoria. Under the new tariff structures, all customers pay a volumetric price which is set having regard to long run marginal cost and there is much less variation between average prices paid by different customers. It is unlikely that any customers are paying less than the incremental costs or greater than the stand alone costs of supply, particularly in the metropolitan sector, where the NCC was satisfied that the October 1997 Price Reforms substantially removed cross-subsidies.[6]

To confirm there were no remaining cross-subsidies in the NMU sector, Victoria commissioned consultants, Marsden Jacob Associates, to develop a methodology for identifying and measuring cross-subsidies and to apply it to three representative authorities. The methodology developed by Marsden Jacob Associates is consistent with the NCC's assessment framework, which looks at cross-subsidies outside of the Baumol band. The three case studies found that while there was some price discrimination between customer groups or systems at each authority, there were no remaining cross-subsidies. The three authorities in the case studies were Western Water, Gippsland Water and Grampians Water. These authorities provide a good cross-section of the NMU sector because each authority has specific characteristics attributable to differences in bulk water supplies, pricing structures, customer groups and financial positions. As these authorities provide a good cross-section of the NMU sectors, and the case studies have not identified any remaining cross-subsidies, it is unlikely that there are any significant distortionary cross-subsidies remaining in the NMU sector.

Victoria has continued to implement full cost recovery for the rural sector. At this stage, only nine (of the 34) districts in Goulburn Murray do not currently recover full business costs. While a clear indication of the financial results for the year 2000-01 and the proposed prices for the 2001-02 irrigation season will not be available until May 2000, Goulburn-Murray Water has indicated that the remaining districts will recover full business costs by the end of 2000-01. Victoria will provide the NCC with detailed analysis on the actual results for 2000-01 and any proposed price changes as soon as this information is available.

One of Victoria's major reform initiatives, which will ultimately address the majority of the issues identified for consideration by the NCC, is the Government's proposal to establish an ESC to ensure high quality, equitable and reliable supplies of services such as electricity, gas and water. Under the Government's proposal, the ESC will have responsibilities for economic regulation of the water industry. Once established, the ESC will be responsible for ensuring Victoria continues to comply with the COAG pricing principles. The detailed program for establishing the ESC as economic regulator of the water industry is considered in Appendix B at the end of Volume 1.

The specific elements of the COAG cost reform and pricing commitments are now considered.

[6] *Second Tranche Assessment Report, Volume Two: Water Reform, 30 June 1999, p.383.*

### 9.2.2 Full Cost Recovery

*Drawing on the advice of the Expert Group and complying with the ARMCANZ full cost recovery guidelines, jurisdictions are to implement full cost recovery[7].*

In the second tranche report, Victoria provided detailed information and figures to prove that Victoria's metropolitan and NMU authorities comply with the cost recovery guidelines. This information estimated the lower (incremental cost) and upper (stand alone cost) bounds and successfully demonstrated that revenue levels for Victoria's metropolitan businesses and NMUs lie within these bounds. As Victoria's urban water prices have been frozen since the second tranche and are currently being considered in the *2001 Price Review of Water, Drainage and Sewerage Services in Victoria*, it is not appropriate to provide updated information on cost recovery levels until the new prices have been set. Therefore, this section concentrates on the methodology being used in the 2001 Price Review while detailed information on cost recovery levels and new prices will be provided to the NCC when the review is completed in June 2001.

As mentioned above, the 2001 Price Review has adopted the 'building block' approach for determining prices. This approach involves specifying the requirements/obligations for each business, identifying the costs (both capital expenditure and operating costs) necessary to meet those obligations, defining appropriate rates of return on capital, and then determining a set of tariffs that will recover both the costs and the return on capital.

The 'building block' approach ensures that the lower bound of business viability is determined for each water business. The final revenues are then governed by the defined rate of return on capital. To ensure Victoria's defined rates of return do not push revenue levels above the upper bound, independent consultants were engaged to estimate the current Weighted Average Cost of Capital (WACC) for each water business. These WACC estimates will be used to ensure revenues do not exceed the upper bound.

This methodology is consistent with COAG full cost recovery principles and is similar to the approach used by other economic regulators in Australia. While the new prices will not be available until June 2001, Victoria is confident that they will meet the full cost recovery requirements.

### 9.2.3 Consumption Based Pricing

*Jurisdictions must implement consumption based pricing. Two-part tariffs were to be put in place by 1998 where cost effective. Metropolitan bulk water and wastewater suppliers should charge on a volumetric basis.*

Victoria's metropolitan, NMU and RWAs have all implemented consumption based pricing. Two-part tariffs, including a volumetric component, have been implemented throughout Victoria. In relation to wholesale prices, the three metropolitan retail companies have paid bulk water and sewerage charges to Melbourne Water since

[7] *Summary of COAG Strategic Framework requirements as per the NCC Second Tranche Assessment Framework. Italicised text in the beginning of all sections will refer to this reference.*

1995. For both services, these are presented as two-part tariffs, with a fixed component and a volumetric component.

### *9.2.4 Removal of Cross-Subsidies*

> *Jurisdictions are to remove cross-subsidies, with any remaining cross subsidies made transparent (published).*

Victoria removed its distortionary cross-subsidies when it removed water and sewerage rates based on property valuations. In the metropolitan sector, volumetric charges are set on the basis of long run marginal costs, which ensures no one customer or location pays less than the incremental cost of supply for services received. With the abolition of rates, there is much less variation between the average prices paid by different customers which ensures it is unlikely that any customers are paying above the stand alone costs of supply.

As mentioned above, three case studies have been undertaken to identify whether there are any remaining cross-subsidies in the NMU sector. While these studies identified some price discrimination, they did not identify any major distortionary cross-subsidies. Victoria is confident that authorities in the case studies provide a good cross-section of the NMU sector, and it is unlikely that there are any significant distortionary cross-subsidies remaining in the NMU sector.

In the rural sector, cross-subsidies have been removed because each service has progressively moved to full cost recovery and the process by which prices are negotiated and agreed to by WSC limits the potential for cross-subsidies to exist. WSC are fully aware of the operational, maintenance, administrative and renewal costs recovered in their prices and would not agree to higher prices that generated cross-subsidies for other customers.

Once established as the economic regulator of the water industry, the ESC is likely to have some responsibilities in relation to Victoria's ongoing compliance with the COAG cross-subsidy requirements.

### *9.2.5 Community Service Obligations*

> *Where service deliverers are required to provide water services to classes of customers at less than full cost, this must be fully disclosed and, ideally, be paid to the service deliverer as a CSOs.*

CSOs in Victoria's water industry are limited to the provision of concessions to pensioners, rebates for certain not-for-profit organisations, and the rates and charges relief grant scheme. These CSOs are available for urban water and wastewater services. The Government funds all of these CSOs in a transparent way.

The Government has recently provided a subsidy totalling $26.5 million to a number of NMU authorities to reduce and cap customer capital contributions for new sewerage schemes throughout regional and rural Victoria. This funding was provided to fund schemes which improve public health, the environment and the economy in regional Victoria. The funding arrangements for new schemes are governed by explicit Departmental guidelines which require the support of the Environment Protection Authority (EPA) and local government for new schemes to proceed. The Government contributions are disclosed in NMU annual reports.

The Government will review its CSO policy before transferring responsibility for pricing to the ESC.

### *9.2.6 Rates of Return*

> *Publicly owned supply organisations should aim to earn a real rate of return on the written down replacement cost of assets for urban water and wastewater.*

As noted in the second tranche report, Victoria's metropolitan and NMU authorities earn positive rates of return. Each authority covers operating expenditures, including tax (where applicable), the capital expenditure required to meet service obligations, interest payments and dividends. While the specific rates of return will not be available until the completion of the 2001 Price Review (see above), Victoria is confident that positive rates of return will continue to be achieved.

### *9.2.7 Rural and Irrigation Services*

#### 9.2.7.1 Full Cost Recovery

> *Where charges do not currently cover the costs of supplying water to users, jurisdictions are to progressively review charges and costs so that no later than 2001 they comply with the principle of full cost recovery with any subsidies made transparent.*

Victoria has continued to implement full cost recovery in the rural sector. The majority of rural water services recover operational, maintenance and administrative costs, finance charges and a renewals annuity. Where externalities are directly attributable to water users and RWAs have incurred costs to carry out remedial works to address these externalities, these costs are also fully recovered from rural water customers.[8] As noted above, Victoria proposes to introduce a State-based TER for RWAs in July 2001.

At this stage, only nine (of the 34) districts in Goulburn Murray, which represent less than 10 per cent of Goulburn-Murray Water's total rural water services, do not currently recover full business costs. Goulburn-Murray Water has indicated that these remaining services will recover full business costs by the end of 2000-01.

Victoria's RWAs use normalised revenues based on ten-year rolling averages of sales to ensure financial self-sufficiency. While there will always be minor fluctuations between under recovery and over recovery from year to year due to unforeseen and seasonal variations in expenditures and/or revenues, this approach ensures full cost recovery over time. Keeping this in mind, Appendix A at the end of Volume 1 provides an indication of the 2000-01 forecast levels of cost recovery for rural services provided by Victoria's five RWAs. These figures should only be used as a rough

[8] For example, the operating expenditure component of rural water prices includes a charge for the operation of salinity mitigation schemes in northern Victoria.

indication of cost recovery because they merely show cost recovery levels at a point in time and do not account for the ten year rolling average of sales. For example, water sales on the Goulburn System has not been available due to the drought and this has dramatically reduced Goulburn-Murray Water's revenues over the past three years. The information in Appendix E at the end of Volume 1 has been taken from the authorities' 2000-01 Corporate Plans. Victoria will provide the NCC with updated information, and any proposed price changes when this information is made available in May/June 2001.

While the proposed role for the ESC in the rural water sector is yet to be determined, the ESC is likely to have some responsibilities in relation to the ongoing implementation of full cost recovery principles in the rural sector.

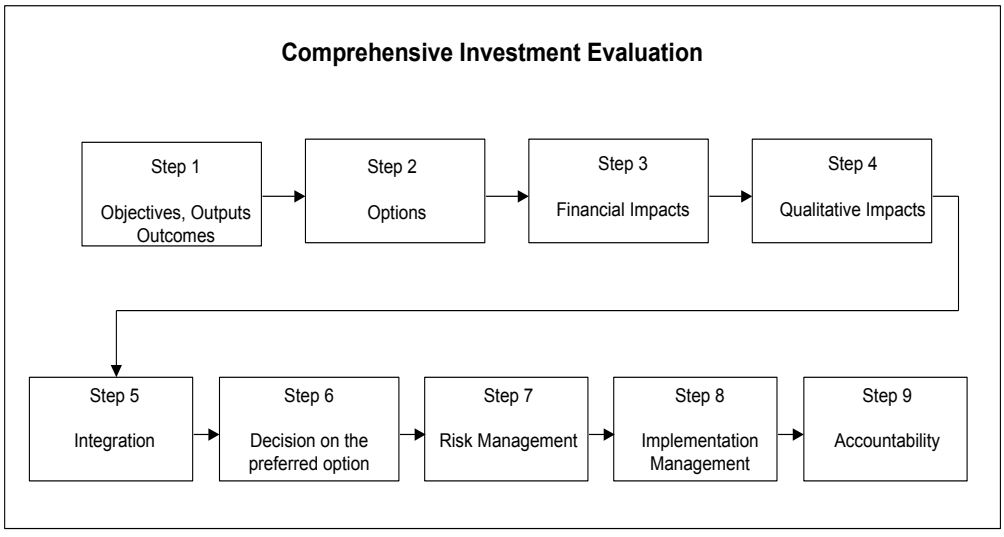
### 9.2.7.2 Economic Viability and Ecological Sustainability

> *Jurisdictions are to conduct robust independent appraisal processes to determine economic viability and ecological sustainability prior to investment in new rural schemes, existing schemes and dam construction. Jurisdictions are to assess the impact on the environment of river systems before harvesting water.*

As noted in the second tranche report, any work on new or existing schemes must meet the legislative requirements of the *Water Act 1989*. The Act requires ecological sustainability to be assessed before any revisions can be made to a bulk entitlement order. Since bulk entitlement orders are affected by changes to rural schemes and dam construction, any new investment must prove its ecological sustainability before a new bulk entitlement or the necessary amendments to the existing bulk entitlement will be approved.

As noted above, Victoria's RWAs are well placed to meet the COAG full cost recovery requirements. Victoria's ongoing compliance with the full cost recovery principles will ensure that, as a minimum, any revenue raised from new schemes will be set above the economically viable lower bound.

**Figure 9.1: Comprehensive Investment Evaluation**



The *Investment Evaluation Policy and Guidelines (1996)* and *Partnerships Victoria (2000),* issued by the DTF, addresses the economic viability of all new investments. Under the *Investment Evaluation Policy and Guidelines (1996),* water authorities must perform a comprehensive investment evaluation for all capital projects that are equal to greater than $5 million. Figure 9.1 illustrates the nine steps in the evaluation process set out in the guidelines. Once completed, authorities must submit their evaluations to the DNRE for the Minister for Environment and Conservation's approval. When reviewing authorities' investment evaluations, the Minister ensures the environmental and social implications of the proposed investment have been thoroughly considered. The Minister also seeks the Treasurer's approval to ensure economic evaluations have been adequately performed and all commercial matters have been addressed. These arrangements ensure all new investments are economically viable and ecologically sustainable. Partnerships Victoria is the Victorian Government's policy for integrating private sector investment into public infrastructure. This policy also ensures new investments are economically viable.

As well as meeting the legislative requirements of the *Water Act 1989* and undertaking investment evaluations, extensive pre-feasibility studies, assessing economic viability and ecological sustainability, are undertaken prior to any investment in major rural schemes or dam construction.[9] These studies involve extensive consultation with stakeholders and are made available to the public.

In addition to these processes, any major development in Victoria that impacts upon the environment is subject to the *Environment Protection and Biodiversity Conservation Act 1999* any developments that may have implications of national environmental significance are also subject to assessment. The Government has recently initiated a review of environment assessment procedures, primarily focussing on the *Environment Effects Act 1978*, with the stated aim of reviewing existing procedures for the environmental assessment of projects, developing improved procedures, and evaluating the need, scope and form of environmental assessment for strategic projects. This review will further strengthen Victoria's commitment to ecologically sustainable development.

#### 9.2.7.3 Devolution of Irrigation Management

> *Jurisdictions are to devolve operational responsibility for the management of irrigation areas to local bodies subject to appropriate regulatory frameworks.*

As noted in the second tranche report, all of Victoria's RWAs have WSCs in place. By setting up WSCs, RWAs ensure they receive local input into the management of irrigation areas. The committees play an important role in negotiating and agreeing to price and service level trade-offs and provide a vital communication link between authorities and their customers. Victoria's RWAs have continued to improve customer consultation through their WSCs and these committees ensure local customers are intimately involved in the operational responsibility of irrigation areas. While the proposed role for the ESC in the rural water sector is yet to be determined, WSCs will

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[9] *For example, the "Deakin Irrigation Development Pre-Feasibility Study" and "Deakin Irrigation Project Feasibility Study".*

most likely continue to play a significant role in terms of negotiating trade-offs between price and service levels.

## 9.3 Institutional Reform

The major development with respect to Victoria's institutional arrangements is the Government's proposal to establish an ESC to ensure high quality, equitable and reliable supplies of services such as electricity, gas and water.[10] Under this proposal, the ESC will have responsibilities for economic regulation of the water industry. Implementation of the proposal will require an overhaul of the current legislative and regulatory framework and the development of a Statewide framework for the water industry. The introduction of the ESC as the economic regulator of the water industry will be a major reform achievement which will ensure institutional separation with respect to pricing. The overhaul of the regulatory framework will also clarify the roles and accountabilities of Government, water authorities and other regulators to further minimise the potential for conflicts of interests. Once established, the ESC will protect the short and long term interests of consumers by ensuring water businesses charge prices which enable them to operate and invest efficiently, but do not enable them to earn monopoly profits or provide sub-standard services. In addition to the proposed introduction of the ESC, Victoria has been working on a number of projects to improve the institutional arrangements for Victoria's water industry.

### *9.3.1 Progress on Institutional Reform*

With respect to institutional reform, the NCC has noted the following issues for consideration in the third tranche assessment:

- the various roles of the Treasurer in the metropolitan sector as opposed to independent price regulation;
- the various roles of the Minister for Agriculture and Resources in the non-metropolitan sector;
- conflicting roles for NMUs between service provision and the other functions of standard setting and partial regulation; and
- the conflict between service provision and regulation with respect to NMU wastewater reticulation.

Victoria has been addressing these issues through the following reform initiatives:

- transferring responsibility for recommending prices in the metropolitan sector from DTF to DNRE;
- developing water services agreements which clearly specify the obligations on NMU and RWAs;
- developing a new regulatory framework for drinking water quality in Victoria;
- undertaking a review of the current regulatory arrangements for septic tank systems;

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*[10] For more detail see "Essential Services Commission, Improving Utility Services for all Victorians, Consultation Paper", July 2000.*

- developing improved Departmental guidelines for assessing the need for compulsory installation of small town sewerage schemes;
- the NCP Review of Victoria's Water Legislation;
- establishing the EWO to handle customer complaints in the water industry; and
- the proposed introduction of the ESC as economic regulator of the water industry.

When the Bracks Labor Government came to power in November 1999, responsibility for recommending prices in the metropolitan sector was transferred from the DTF to the DNRE. Given that the Treasurer has remained a shareholder of the metropolitan retail businesses and is the key shareholder for Melbourne Water, the transfer of responsibilities with respect to price recommendations has reduced the potential for conflicts of interest. There have been some other minor changes to Ministerial responsibilities and a summary of the current institutional arrangements for the water industry is provided in Appendix B at the end of Volume 1. As was the case for the second tranche assessment, these arrangements continue to minimise the potential for conflicts of interest.

The lack of a coherent regulatory and enforcement framework for drinking water quality in Victoria has prompted the Government to develop proposals for a new regulatory framework for drinking water quality. The implementation of a new drinking water quality framework that will facilitate consistent practices in the provision of drinking water, will provide greater clarity in the obligations placed on all stakeholders (Government, water businesses, regulator and consumers). Implementation of the proposal will address the issue of institutional separation – at present both the Minister for Health and the Minister for Environment and Conservation have various policy and regulatory roles with respect to drinking water quality.

The new regulatory framework will clarify these roles and establish a drinking water quality regulator to minimise the potential for conflicts of interest. It is proposed that the new drinking water regulatory framework will be in place by 1 January 2002.[11]

The EPA has undertaken a review of the current regulatory arrangements for the management of septic tank systems. As part of its examination of regulatory roles and responsibilities, the review considered the issue of water businesses having the power to require properties to connect to sewers and concluded that these powers were inappropriate. On the basis that health and environmental issues provide the grounds for compelling connection to reticulated sewerage, the review has recommended that health and environmental regulators be responsible for deciding whether a scheme to which people would be required to connect should go ahead. The review also recommended that individual householders should have the opportunity to be exempted from the requirement to connect where they can establish that wastewater can be managed on-site on a sustainable basis. The Government is currently considering the review's recommendations which, taken as a whole, will substantially change the way in which septic tanks are managed. The Government is also keen to ensure that any changes in relation to the management of septic tanks takes place with full regard to the broader picture of roles and responsibilities in wastewater management.

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*[11] For more detail see "A New Regulatory Framework for Drinking Water Quality in Victoria, Consultation Paper", August 2000.*

In the meantime, as part of the Government's package of initiatives relating to the sewering of small towns in regional Victoria, authorities can only proceed with compulsory schemes approved by the Minister for Environment and Conservation. Guidelines have been developed which require authorities to follow a number of steps before seeking the Minister's approval to proceed with the scheme. These steps include extensive consultation with the community and a requirement that compulsory schemes should only proceed where other options have been considered and the EPA and/or the local council agrees that alternative arrangements cannot be made to meet health and environmental needs. These arrangements also limit the potential for a service provider to compel a community to use a service without justifying the need to provide the service on health and environmental grounds. These arrangements are formalised in the NMUs' water services agreements, which have been recently developed to set out each authority's specific service obligations.

The NCP Review of Victoria's Water Legislation is also reviewing the powers held by water authorities. This review will assess whether any of these powers restrict competition and will consider whether the retention of any restrictions is justified. The independent consultants undertaking the review will make recommendations with respect to these restrictions and the Government is required to respond to these recommendations.[12] The issue of the legislative powers of NMUs with respect to regulating wastewater reticulation will be thoroughly considered as part of this review. The recommendations of the EPA's review of septic tanks have been made available to the consultants.

Victoria is currently establishing an EWO who will have responsibility for handling customer complaints, and make rulings relating to compensation in the electricity, gas and water industries. The EWO will be an industry based scheme underpinned by legislation and will ensure improved, independent complaints handling arrangements are put in place for the water industry.

The Government's commitment to establishing the ESC as the economic regulator of the water industry will ensure Victoria meets the COAG institutional reform requirements. As well as introducing an independent economic regulator for Victoria's water industry, the overhaul of the water regulatory framework required to establish the ESC will clarify the roles and accountabilities of Government, water authorities and other regulators to further minimise the potential for conflicts of interests. All of the reform initiatives discussed above will feed into the development of a new water regulatory framework to ensure the most appropriate institutional arrangements are put in place.

The work program for establishing the ESC as the economic regulator of the water industry is outlined in Appendix C at the end of Volume 1.

The specific elements of the COAG institutional reform commitments are now considered.

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[12] *The NCP Review of Victoria's Water Legislation is due to be completed by May 2001.*

### 9.3.2 Institutional Role Separation

*As far as possible the roles of water resource management, standard setting and regulatory enforcement and service provision should be separated institutionally by 1998.*

The reform initiatives discussed above highlight Victoria's achievements with respect to institutional role separation.

With respect to the institutional arrangements for the rural sector, the WSC continue to provide a substantial degree of separation through such features as consultation, joint decision-making and transparency. These committees monitor and agree to the service delivery aspects of the rural water sector, and help RWAs achieve the Government's triple bottom line objectives. While these arrangements provide adequate separation, they will be reviewed and improved upon as part of the work program to develop a new regulatory framework for establishing the ESC as the economic regulator of the water industry.

### 9.3.3 Commercial Focus for Metropolitan Service Providers

*Metropolitan service providers must have a commercial focus, whether achieved by contracting out, corporatisation etc, to maximise efficiency of service delivery.*

Victoria's metropolitan service providers are State-owned Corporations Law companies. They have skills-based boards, pay dividends and tax equivalents, compete by comparison with each other over customer service and performance standards, and are required by their legislation to operate their businesses "as efficiently as possible consistent with prudent commercial practice". In the second tranche assessment, the NCC was satisfied that Victoria's metropolitan water providers have a commercial focus to maximise efficient service delivery. Victoria's report on the legislative review and CN has been provided separately in Victoria's report on NCP obligations.

### 9.3.4 Performance Monitoring and Best Practice

*ARMCANZ is to develop further comparisons of interagency performance with service providers seeking best practice.*

Victoria continues to participate in a number of national and State performance monitoring and benchmarking programs, including those carried out by the WSAA, the High Level Steering Group on Water, the VWIA, and the Australian NMU Working Group (through ARMCANZ). The work program for establishing the ESC as economic regulator will clarify the obligations of water businesses. The specification of clear obligations will ensure performance monitoring and benchmarking of the Victorian water industry continues to improve and the reform commitment continues to be met.

## 9.4 Allocation and Trading

The major developments with respect to allocation and trading have been the completion of 15 bulk entitlements, the FDR and the launch of a major river restoration initiative on the Snowy River. Twenty SFMPs are in progress, three of which are community endorsed and two of which have been put into operation. RRPs

are being developed in three priority rivers and Victoria has continued to implement GMPs. In addition to these initiatives, Victoria has continued to facilitate trade through the NVWE and work is ongoing with its interstate trading partners to extend the MDBC's interstate water trading project.

### *9.4.1 Progress on Allocation and Trading*

With respect to allocation and trading, the NCC has noted the following issues for consideration in Victoria's third tranche assessment:

- substantial progress in implementing the agreed and endorsed second tranche assessment implementation program;
- development of trading rules with a view to addressing weaknesses and the further development of interstate trade; and
- implementation of processes to provide water to the environment and evidence that provisions for the environment are being made and are adequately resourced.

Victoria has been addressing these issues through the following reform initiatives:

- ongoing implementation of the bulk entitlement conversion program;
- ongoing implementation of SFMPs and the development of a standard procedure for undertaking SFMPs;
- ongoing implementation of RRPs and GMPs;
- developing a Statewide methodology for determining environmental flow requirements;
- the FDR;
- developing the Victorian River Health Strategy;
- the Snowy River restoration initiative;
- the Melbourne Water Resources Strategy and the Western Water, Barwon Water, and Central Highlands Water Resources Review;
- ongoing facilitation of water trading through the NVWE, including development of a project aimed at expanding the Exchange;
- ongoing work with its interstate trading partners to facilitate the extension of the MDBC's interstate water trading project; and
- providing important input into the High Level Steering Group on Water's Priority Projects on Water for the Environment, Water Trading, and Improved Groundwater Management.

#### 9.4.1.1 Bulk Entitlements

Under the legislative framework of the *Water Act 1989*, Victoria's BE program directly deals with the allocation of water to authorities and the environment and provides a comprehensive framework for the trading of surface water entitlements. This program has reached the stage where flow-sharing arrangements at approximately 76 per cent of the diversion sites across the State have been negotiated and agreed with stakeholders.

While 15 BE have been granted and a further five finalised since the second tranche assessment, progress on the major systems still to be converted has been slower

than expected. This is due to a number of factors including a review of the approach to the conversion of the Melbourne system and the need to reach stakeholder consensus on conversion of the Barwon, Ovens and Broken River systems. Both the review of the approach to the Melbourne system conversion and the extended stakeholder consultation have been vital to ensure the entitlements are environmentally sustainable and in line with community needs. The conversion process for these major systems is now well advanced and is expected to be completed by the end of 2001.

#### 9.4.1.2 Water for the Environment

Victoria is committed to providing water for the environment and has a number of formal processes in place and major reform initiatives underway to ensure fulfilment of this commitment. The formal processes and major reform initiatives, such as the Snowy River Restoration Initiative and the FDR, are now considered.

As noted in the second tranche report, water allocations for the environment are being addressed in two phases. The first is through the process of conversion to bulk entitlements where there is the opportunity for environmental managers to negotiate improved environmental flows or secure bulk entitlements for the environment. In this phase, provisions for environmental water will also be made in SFMPs for unregulated rivers. In the second phase, stressed basins will be identified and addressed through the implementation of SFMPs and RRPs.

Provision of water for the environment through the BS program continues to be successful because the negotiation between stakeholders, undertaken as part of the BE conversion process, ensures that environmental managers, irrigators, water authorities and other groups have been consulted and accept the outcomes before the entitlement is finalised. There is recognition by the irrigators of their dependence on healthy rivers to sustain their business and therefore, of the need to provide water for the environment. So far, improved environmental flow regimes have been negotiated in 82 per cent of BE Conversions. For example, negotiations on the Thomson/Macalister water sharing arrangements concluded during 2000, increased the passing flow for the Thomson River below Cowwarr Weir from 25ML/day to 125ML/day as part of Southern Rural Water's proposed BE. In addition, the proposed BEs for the Thomson-Macalister system incorporated formal mechanisms for review as further relevant information is collected. The capacity to review BEs when necessary is provided for under the *Water Act 1989* and in a number of cases, where this is appropriate, environmental flow review processes have been included in BEs.

#### 9.4.1.3 Streamflow Management Plans

On unregulated rivers, not covered under the bulk entitlement program, the management of diversions is being undertaken through the development and implementation of SFMPs. SFMPs establish environmental objectives, immediate and, where necessary, long term environmental flow provisions, mechanisms to achieve long term environmental flows provisions, rostering rules, trading rules, and rules covering the granting of any new licences.

Twenty SFMPs are in progress, three of which are community endorsed and two of which have been put into operation. An additional six will be endorsed by the community by mid-2001. Progress in the development of SFMPs has been slower than expected. This is primarily due to the negotiation of consensus outcomes being more difficult than anticipated. However, this is not surprising given that the initial SFMPs, rated as high priority, contain many stream reaches which are over-allocated

and where the provision of acceptable environmental flows can impact significantly on security of supply of existing licences. Victoria has developed a standard procedure for undertaking SFMPs to improve the rate of progress. This procedure will provide clear guidelines to assist Consultative Committees in more efficient delivery of SFMPs. A key element of the procedure is the approach to dealing with transition from existing diversion practices to future practices which accommodate environmental flow requirements.

#### 9.4.1.4 River Restoration Plans

RRPs are being developed for priority flow-stressed rivers where the environmental provisions made through the BE process are considered to be insufficient to meet environment objectives. While there have been some minor changes, (see Appendix D at the end of Volume 1), to the scheduling for the agreed rivers and several new inclusions to the list of priority rivers, Victoria is, in general, on target to meet the RRP work plan as outlined in the second tranche implementation program.

RRPs are being developed in three priority rivers – the Thomson, Avoca and Glenelg Rivers. Environmental flow assessment has been completed in the Thomson–Macalister system and plan development has been commenced. Environmental flow requirements are being assessed for the Glenelg and Avoca Rivers as the first step to the development of RRPs. In addition, preliminary work has commenced on the Wimmera River.

#### 9.4.1.5 Groundwater Management Plans

Victoria has continued to implement GMPs. To date, 15 Groundwater Supply Protection Areas have been established and GMPs for these areas are currently being developed and implemented. Two GMPs have been completed, seven plans have been released for public comment and approval of the plans is expected within the next few months, the remaining six will be completed within two years.

Over the next three years an additional 20 Groundwater Supply Protection areas will be established and the development of management plans for these areas will commence.

Progress against the agreed second tranche implementation program for BE, SMFPs, RRPs and GMPs is set out in Appendix D at the end of Volume 1.

#### 9.4.1.6 Other Major Reform Initiatives

Whilst the major mechanisms for providing water for the environment and dealing with stressed rivers are the BE, SFMP and RRP processes, three statewide initiatives are currently underway which will provide clear policy direction, consistent approaches and ensure better protection of environmental water provisions. These include the FDR, the Victorian River Health Strategy and the development of a Statewide methodology for determining environmental flow requirements.

Under the Victorian *Water Act 1989*, there is currently no mechanism for control over irrigation dams that are constructed off waterways. These dams can impact on downstream users, and on the environment. In April 2000, the Victorian Government instituted a review on the management of farm dams. Key issues covered by this review include:

- the need to ensure that all commercial dams including catchment dams are considered in water allocation processes;
- the need for a two-step process in the management of unregulated streams incorporating;
  - Sustainable Diversion Limits (SDLs) to be established across the state which will provide rules for granting any new diversions and/or for trading; and
  - where the current level of diversions are close to the SDLs or in priority areas, SFMPs to be developed; and
- the need for formal recognition of the SFMP process in legislation.[13]

The draft recommendations of the FDR are now out for comment with final recommendations to Government due by April 2001. The current draft recommendations protect environmental flow provisions from erosion due to incremental development within the catchment, establish better rules for the granting of any new licences, and incorporate environmental flow considerations in the development of trading rules for unregulated streams.

A Victorian River Health Strategy is currently being developed. This will establish clear directions for the management of rivers and streams into the future. It will articulate State policy on environmental flows and other waterway health-related issues, and will integrate these issues within the broader picture of waterway health. A draft Strategy is due for release mid-2001.

The current Statewide environmental flow determination method is being reviewed with a view to formally assess and where possible improve on the current approach. The current method has been applied by a variety of consultants in ten different SFMPs. In all cases the local SFMP project groups, which have both environmental and water user representatives, have accepted the environmental flow determination outcomes for their systems. However, with this experience and with recent further development of environmental flow methodologies both within Australia and internationally, it was considered timely to review the current approach to ensure that it is based on the best scientific information available and fully meets the needs of the decision-making process. This review is now underway and a refined agreed Statewide approach is expected by August 2001. This will ensure that the bulk of the SFMP program (yet to be undertaken) will incorporate environmental flow studies that represent the 'best scientific information available'.

Restoration of the Snowy River is a major commitment of the Bracks Labor Government and reflects Victoria's commitment to ensuring sufficient water is provided for the environment. Victoria, New South Wales and the Commonwealth have recently committed $375 million over ten years to restore the Snowy River and to provide additional environmental flows to the Murray. Considerable work has been undertaken to develop detailed plans for this world-scale initiative. The future work program will involve realisation of water saving from the Murray, Goulburn and Murrumbidgee systems and trialing of innovative river restoration techniques. Victoria has initiated a trial to determine the feasibility of proceeding with a $25 million river rehabilitation plan for the Snowy River. This trial is being overseen by a community reference panel and a scientific working group.

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*[13] For more detail see "Sustainable Water Resources Management and Farm Dams, Discussion Paper, April 2000" and the "Farm Dams (Irrigation) Review Committee, Draft Report, December 2000".*

In addition to these reform initiatives, Victoria is developing the Melbourne Water Resources Strategy and undertaking the Western Water, Barwon Water, and Central Highlands Water Resources Review. The Melbourne Water Resources Strategy will establish a long term framework for managing Melbourne's water resources in a way that is cost effective, environmentally sustainable and in line with community needs. The Western Water, Barwon Water, and Central Highlands Water Resources Review is examining options for connecting the Melbourne Water, Western Water, Barwon Water, and Central Highlands water supply systems.

#### 9.4.1.7 Water Trading

Water trading in Victoria has continued to play an ever-increasing role in agricultural production. Over the three years from 1997-98 to 1999-2000 many irrigators only coped with the low allocations of water by turning to the water market. This has prompted record levels of water trading with permanent transfers up to 20,000ML and temporary transfers of up to 250,000ML. The NVWE continues to play an important role in facilitating water trading - 49,033ML of temporary trades were made on the Exchange in 1999-2000. A co-operative project with four RWAs has been developed, with the aim of exploring the expansion of the Exchange both geographically, to include all of Victoria and interstate, and in terms of kinds of trade, to include permanent transfers and leasing.

This project is also looking to set consistent, high standards for recording and auditing trade – while relevant authorities have already instituted improved procedures which guard against fraud. The accounting of flow and financial adjustments has been upgraded and will be further developed in this process.

A trading handbook is being produced, which will set out all the rules and their rationale, and be the basis for further refinements. This handbook will cover the current strong constraints on trading "sales" water which are in place as part of the Cap, and the limits to trade on unregulated tributaries including the slanting of entitlements to winter rather than summer.

As noted above, a likely result of the FDR will be improved controls over irrigation dams that are constructed off waterways. These controls will enable previously unlicensed dam owners to enter the market and should result in increased trade.

Victoria continues to work with its interstate trading partners to facilitate the extension of the MDBC's interstate water trading project. While the MDBC's pilot project has resulted in interstate trade of 9,000ML up to mid-2000, there are a number of issues that need to be worked through before this project can be extended. These issues include the development of appropriate exchange rates to account for differences in security of supply, trade restrictions imposed by various interstate irrigation schemes, and accountability for salinity impacts of trade in South Australia. Victoria will continue to work with its interstate trading partners, through relevant working groups, to ensure these issues are resolved.

Victoria has continued to participate and provide important input into the High Level Steering Group on Water's Priority Projects on Water for the Environment, Water Trading, and Improved Groundwater Management.

The specific elements of the COAG allocation and trading commitments are now considered.

### 9.4.2 Comprehensive System of Water Entitlements

> *There must be comprehensive systems of water entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality.*

The second tranche report provided a detailed description of Victoria's legislative framework which enables water entitlements to be clearly defined and provides the statutory basis for environmental allocations. This framework under the *Water Act 1989,* and the reform initiatives discussed above, demonstrates that Victoria has a comprehensive system of water entitlements in place.

### 9.4.3 Water Trading

> *Arrangements for trading in water entitlements must be in place by 1998. Water should be used to maximise its contribution to national income and welfare.*

Where cross-border trade is possible, trading arrangements must be consistent between jurisdictions and facilitate trade. Where trading across State borders could occur, relevant jurisdictions must jointly review pricing and asset valuation policies to determine whether there is any substantial distortion to interstate trade.

As noted in the second tranche report, the Victorian *Water Act 1989* enables both temporary and permanent transfers of water entitlements. The second tranche report and the reform initiatives discussed above highlight Victoria's achievements with respect to water trading.

### 9.4.4 Water for the Environment

> *Jurisdictions must develop allocations for the environment in determining allocations of water and should have regard to the relevant work of ARMCANZ and Australian and New Zealand Environment and Conservation Council (ANZECC).*

Best available scientific information should be used and regard had to the inter-temporal and inter-spatial water needs of river systems and groundwater systems. Where river systems are overallocated or deemed stressed, there must be substantial progress by 1998 towards the development of arrangements to provide a better balance in usage and allocations for the environment.

Jurisdictions are to consider environmental contingency allocations, with a review of allocations five years after they have been initially determined.

The progress on allocating water for the environment through BE, SFMPs, RRPs, and other major reform initiatives, discussed above and in Appendix D at the end of Volume 1, highlights Victoria's achievements with respect to allocating water for the environment.

### 9.4.5 Groundwater

*Section 1.1, Clause 4(a) of the COAG water resource framework has been interpreted as requiring a working "comprehensive system" of establishing water allocations to be in place which recognises both consumption and environmental needs. This system is to be applicable to both surface and ground water. However, applications to individual water sources will be determined on a priority needs basis.*

In relation to groundwater pricing, private withdrawals of groundwater are not subject to the pricing clauses of the 1994 Framework Agreement.

As noted in the second tranche report, a rigorous statutory licensing process monitors Victoria's groundwater allocation system. These groundwater licenses are linked to community driven GMPs, which are being implemented on a priority needs basis. Progress on implementation of GMPs is discussed above and in Appendix D at the end of Volume 1.

In relation to the framework's pricing requirements, Victoria's non-private withdrawals are carried out by a few NMUs and most of the rural authorities. There are no large cooperatives that act as wholesalers in Victoria and when selling groundwater to their customers, Victoria's water authorities ensure the full cost recovery pricing requirements are met. Victoria's full cost recovery achievements are discussed in Section 9.2, which establishes that NMUs continue to meet the requirements and the rural authorities are well placed to meet the requirements by 2001.

As noted in the second tranche report, charges continue to be recovered from licensed groundwater users. The charge comprises a service fee and a volumetric component.

### 9.4.6 Victoria's Implementation Program

*Section 1.2. For the second tranche, jurisdictions should submit individual implementation programs, outlining a priority list of river systems and groundwater resources, including all river systems which have been over-allocated or deemed to be stressed, and detailed implementation actions and dates for allocations and trading to the NCC for agreement.*

Progress on Victoria's Implementation Program, detailing the current status of the priority work programs for BE conversions, SFMPs, River Restoration and Groundwater Management is provided in Appendix D at the end of Volume 1.

## 9.5 Environment and Water Quality

Key developments with respect to the environment and water quality in Victoria include the ongoing delivery of improved integrated resource management services by CMAs, the ongoing implementation of 16 catchment-based nutrient management plans, the release of a draft SEPP- *The Waters of Western Port Bay and Catchments*, the initiation of a review of the SEPP - *Waters of Victoria*, and the benchmarking of the environmental conditions of Victoria's major rivers and tributaries. Victoria has also improved the Regional Management Plan Guidelines used by CMA and the Port Phillip Catchment and Land Protection Board, and has initiated a review of the corporate governance arrangements for these bodies. In addition to these initiatives, the Government's proposal to develop a new regulatory framework for drinking water

quality is consistent with the NWQMS and will ensure greater confidence in the supply of good quality drinking water.

### *9.5.1 Progress on Environment and Water Quality*

With respect to the environment and water quality, the NCC has noted continued compliance with the NWQMS as an issue for consideration in Victoria's third tranche assessment.

Victoria has been addressing this issue and the other COAG environment and water quality requirements through the following reform initiatives:

- releasing a draft SEPP - The Waters of Western Port Bay and Catchments;
- initiating a review of the SEPP - Waters of Victoria;
- ongoing development and implementation of 16 catchment-based nutrient management plans;
- the ongoing delivery of integrated resource management services by Victoria's CMAs and the Port Phillip Catchment and Land Protection Board;
- developing improved Regional Management Plan Guidelines for these bodies;
- initiating a review of the corporate governance arrangements for these bodies;
- benchmarking the environmental conditions of Victoria's major rivers and tributaries; and
- developing a new regulatory framework for drinking water quality in Victoria.

As noted in the second tranche report, the strategic directions of the NWQMS are implemented through the catchment management arrangements in the development of Regional Catchment Strategies, their component water quality or nutrient management plans and in the regional schedules of SEPPs. All of these regional processes for setting water quality objectives use *ANZECC Australian Water Quality Guidelines for Fresh and Marine Waters* as the minimum standards to be adopted and in many cases, set regional water quality objectives that are more stringent than those recommended. Victoria's progress in these areas includes significant implementation of nutrient management plans, the release of a draft SEPP - *The Waters of Western Port Bay and Catchments*, and the current review of the SEPP - *Waters of Victoria*.

Victoria's CMAs are responsible for coordinating integrated catchment management services throughout Victoria and play a major role in implementing the NWQMS. As noted in the second tranche report, they are responsible for strategic planning of land and water resources management in their region and the provision of integrated waterway and floodplain management. In addition, they provide advice to Government on priorities for action and investment.

Given the importance of CMAs to both integrated resource management and implementation of the NWQMS, Victoria is committed to improving the planning and administrative arrangements by which CMAs operate. Two examples of this commitment are the development of improved Regional Management Plan Guidelines and the initiation of a review of corporate governance arrangements.

The purpose of the Regional Management Plans (RMPs) is to plan and integrate Government investment in catchment management, in support of longer-term Regional Catchment Strategies at the regional level. The Government provides CMAs

and Port Phillip Catchment and Land Protection Board with Regional Management Plan Guidelines to assist with the preparation of their RMPs and supporting documentation. These guidelines have recently been revised to improve consultation arrangements, align outputs with key projects and budget structures, clarify roles and responsibilities, and seek further improvements through project evaluation.

The proposed review of governance arrangements will define and promote good governance by clarifying and improving existing frameworks, relationships, standards, as well as supporting and communication processes.

In addition to these initiatives, the DNRE in conjunction with the CMAs, Melbourne Water and the Port Phillip Catchment and Land Protection Board have recently benchmarked the environmental condition of Victoria's major rivers and tributaries. Nine hundred and fifty river reaches were assessed across Victoria, particularly looking at their hydrology, water quality, riparian and channel condition and instream biota. This is the first time that such a consistent and comprehensive study of environmental condition of rivers has been carried out anywhere in Australia. Information from the benchmarking exercise has been included on the State Internet data warehouse which ensures its availability to all members of the community. The Index of Stream Condition (ISC) was developed to assist in assessing river condition and will be used by CMAs together with their regional communities to set management objectives, determine management priorities and measure the effectiveness of long term programs for rivers in their catchment.[14]

Victoria is also developing a new regulatory framework for drinking water quality. This framework, discussed in Section 2.1 above, will be consistent with the NWQMS and will adopt new drinking water quality standards and risk management requirements. The risk management requirements support integrated activity amongst the stakeholders with the potential to impact on the quality of water from the catchment to the tap. The process for making regulations will ensure standards are set in a transparent manner, with community benefits and costs of particular standards clearly defined. The intention is to develop standards based on the *Australian Drinking Water Guidelines 1996*.

The specific elements of the COAG environment and water quality commitments are now considered.

### *9.5.2 Integrated Resource Management*

*Jurisdictions must have in place integrated resource management practices, including:*

- *demonstrated administrative arrangements and decision making processes to ensure an integrated approach to natural resource management and integrated catchment management;*
- *an integrated catchment management approach to water resource management including consultation with local government and the wider community in individual catchments; and*

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*[14] For more detail see "www.vicwaterdata.net".*

- *consideration of landcare practices to protect rivers with high environmental values.*

A summary of the roles and responsibilities with respect to integrated catchment management in Victoria is set out in Attachment F at the end of Volume 1. This summary, the second tranche report and the reform initiatives discussed above highlight Victoria's achievements with respect to integrated resource management.

### *9.5.3 National Water Quality Management Strategy*

> *Support ANZECC and ARMCANZ in developing the NWQMS, through the adoption of market-based and regulatory measures, water quality monitoring, catchment management policies, town wastewater and sewerage disposal and community consultation and awareness.*

The reform initiatives discussed above highlight Victoria's achievements with respect to the implementation of the NWQMS.

In relation to progress on catchment-based nutrient management plans, there are currently 16 plans in various stages of development or implementation in Victoria. Two of these, the Corangamite Regional Nutrient Management Plan and Ovens Basin Water Quality Strategy, are both final and have been endorsed by the State Government. A further two, the draft Upper North East Water Quality Strategy and Werribee River Catchment Nutrient Management Plan, have been submitted to government for endorsement.

The following draft plans have all been released for some time and are currently being finalised for submission for government endorsement:

- Goulburn Broken Catchment Water Quality Strategy;
- Campaspe Water Quality Strategy;
- Loddon Catchment Water Quality Strategy; and
- Central Gippsland Water Quality Management Strategy.

The draft Glenelg-Hopkins Nutrient Management Plan has recently been released for public comment. This plan revises and combines the previously released draft Glenelg Nutrient Management Plan, the draft Hopkins Catchment Water Quality Management Plan and also includes the Portland Coast Basin.

The release of a further five plans as drafts for public comment are anticipated during 2001-02.

In addition, a draft SEPP for *The Waters of Western Port Bay and Catchments* has been developed which sets water quality targets for the Bay and its waterway inputs. The draft was released for comment in June 2000 and is currently being revised. It is expected to be recommended to Government in April 2001.

A key initiative currently being undertaken by the EPA is the review of the SEPP - *Waters of Victoria*. This review will establish a statutory framework with revised goals and approaches reflecting the changes in our knowledge and management approaches to protect, improve and ultimately sustain the environmental qualities of Victoria's streams, lakes, estuaries, and marine environments and the uses of these environments, which the community values.

As noted in the second tranche report, the NWQMS technical guidelines for specific activities and industries which are regarded as non-point source activities, are adopted in the implementation of these action plans and SEPP schedules. Work programs are developed which utilise the information available in these documents.

The technical guidelines for specific industries which are managed as point source discharges are used in the development of environmental performance benchmarks for use in the development of licence conditions.

## 9.6 Public Consultation and Education

The Victorian Government is strongly committed to community consultation and engagement and there have been significant consultative programs and communication strategies accompanying all of its major reform initiatives. In particular, there has been extensive consultation with stakeholders and the community as part of the review of farm dams, the 2001 Price Review and proposals for new drinking water quality regulatory arrangements. Extensive public consultation continues to be a feature of the development and implementation of BE, SFMPs and RRPs and other natural resource management programs. Informed public debate is critical for working through all these issues and gaining acceptance of a way forward. In addition, Victoria's water businesses continue to improve customer consultation and have relied on widespread community education to assist with demand management during Victoria's longest drought.

Greater awareness of water related issues is also being promoted through various programs and in particular the Statewide Water Conservation Initiative. This initiative aims to develop awareness and promote the efficient and sustainable use of Victoria's water resources over the short and long term. Together with other related reforms, it will also clarify water businesses' obligations with respect to the ongoing provision of public education to minimise the potential for conflicts of interest.

### *9.6.1 Progress on Public Consultation and Education*

> *Jurisdictions must have consulted on the significant COAG reforms (especially water pricing and cost recovery for urban and rural services, water allocations and trade in water entitlements).*
>
> *Education programs related to the benefits of reform and to promotion of general awareness of water issues should be developed.*

With respect to public consultation and education, the NCC noted the potential conflict where the service provider is also responsible for public education as an issue for consideration in Victoria's third tranche assessment.

#### 9.6.1.1 Public Consultation on Reforms

Victoria has addressed its commitments to public consultation in this area through:

- the extensive consultative programs it has put in place in relation to major reform issues such as the review of farm dams, proposals for establishing the ESC as an economic regulator and proposals for new drinking water regulatory arrangements;
- the consultative program accompanying the 2001 Price Review of water, drainage and sewerage services;

- community and stakeholder participation in the development of bulk entitlements etc; and
- facilitating best practice in customer consultation through an industry workshop.

The review of farm dams has involved extensive community consultation. The Farm Dams (Irrigation) Review Committee held a number of hearings across the State and the CMAs coordinated 42 meetings to discuss the issues involved. As noted in Section 3.1, a Discussion Paper was released for comment and 356 submissions were received. A Draft Report has subsequently been released seeking further comment from stakeholders and the community.

The review of regulatory arrangements for drinking water quality has also involved extensive community consultation. In August of last year the Minister for Environment and Conservation launched a proposals paper (*A New Regulatory Framework for Drinking Water Quality in Victoria, Consultation Paper, 2000).* To further stimulate public debate and understanding of the issues, eight workshops were held across the State with some 200 individuals attending. Some 44 written submissions were received. A further round of consultation with the industry is planned once a preferred policy position is finalised.

The 2001 Price Review involved extensive consultation to ensure all relevant issues were identified and exposed to public scrutiny. This consultation process involved the release of an Issues Paper and twenty consultation sessions. Some 46 written submissions were received in response to the issues paper and consultation sessions.

In summary, the following issues and consultation papers were released last year:

- Farm Dams (Irrigation) Review Committee, Draft Report, December 2000;
- 2001 Price Review of Water Drainage and Sewerage Services in Victoria, Issues Paper, September 2000;
- A New Regulatory Framework for Drinking Water Quality in Victoria, Consultation Paper, August 2000;
- ESC, Improving Utility Services for all Victorians, Consultation Paper, July 2000;
- NCP Review of Water Legislation, Issues Paper, June 2000; and
- Sustainable Water Resources Management and Farm Dams, Discussion Paper, April 2000.

Extensive stakeholder consultation and community participation is required to ensure the successful development and implementation of bulk water entitlements, RRPs, SFMPs, nutrient management plans and other integrated natural resource management programs. Victoria is committed to ongoing consultation on these initiatives to improve public awareness and to ensure the full benefits of the reforms are understood and achieved to facilitate stakeholder input into the programs.

Another Government initiative with respect to customer consultation was an industry Community Engagement Workshop held by the DNRE September 2000. The theme of the workshop was “Engaging Customers and the Community – Achieving Water Industry Leadership in Consultation”. As a result of the workshop, the industry is currently developing a code of best practice for customer consultation, which will also including performance measures, targets and outcomes.

#### 9.6.1.2 Public Education

Victoria has met its commitments to public education and put in place measures for addressing the potential conflict between service providers being responsible for ongoing public consultation on water conservation through:

- developing a Statewide Water Conservation Initiative;
- clarifying the roles and responsibilities of Government, water authorities and regulators; and
- continuing to deliver a variety of public education programs.

As noted by NCC, there is a potential conflict between service providers determining the level of ongoing public education on water conservation when it has a financial interest in increased water consumption. Victoria has addressed this by measures designed to give water businesses a clear understanding of Government's expectations in this area. Wherever possible, Government policies are translated into explicit obligations and targets for the businesses while then public education campaigns on water conservation in their communities.

On 16 October 2000 during National Water Week, the Minister for Environment and Conservation announced a Statewide Water Conservation Initiative. The main features of the initiative are:

- a Statewide education campaign to raise general community awareness of the need for water conservation through an extensive media campaign; and
- active management and goal setting through:
  - establishing clear goals and targets for water conservation over both the short and long term;
  - identifying clear roles and responsibilities of the various players in the water industry; and
  - identifying appropriate incentives for sustainable water resource management.

In partnership with Government, the metropolitan and NMU water businesses have launched a Statewide water conservation education and awareness campaign which includes a series of television advertisements, the provision of education materials to customers and schools, and other forms of advertisements such as newspapers, billboards, brochures and press statements.

There has also been significant progress on providing greater clarity on the obligations of water businesses. The VWIA has formed an industry working group to assist with active management and goal setting, and NMU and RWAs will be required to develop water conservation strategies, including goals and targets, as part of their water service agreements. The metropolitan retail operating licences already require the metropolitan retail businesses to have plans in place and work is underway to include specific water conservation targets in these plans.

The Statewide Water Conservation Initiative will ensure the Minister for Environment and Conservation and the DNRE play a greater role in coordinating water conservation and public education in Victoria. The features of the initiative also minimise the potential for conflicts of interest by placing clearer obligations on water businesses with respect to the provision of public education.

The outputs of the Statewide Water Conservation Initiative will feed into Victoria's institutional reform initiatives. In particular, the roles and responsibilities identified in the Statewide Water Conservation Initiative will be further considered in institutional reform initiatives such as water service agreements and the development of a new water regulatory framework to accommodate the introduction of the ESC.

Improved understanding of water conservation and broader resource issues also continues to be addressed through a variety of public education programs, discussed in the second tranche report, such as National Water Week, the Waterwise Program and Waterwatch. After two years Waterwatch has more than 11,000 participants working through 575 groups. These groups are regularly monitoring more than 2,000 sites for water quality and in some areas, river environmental condition.

The reform initiatives discussed above demonstrate that Victoria continues to meet the COAG requirements with respect to public consultation and education.

# 10. Road Transport

- Victoria has substantially implemented road transport reforms. All of the reforms in the first heavy vehicle reform package have been implemented and, with the implementation of the chain of responsibility provisions, Victoria will have implemented all available reforms from the second heavy vehicle reform package.
- Victoria has yet to implement the chain of responsibility provisions that are an element of the Combined Bus and Truck Driving Hours reform. This has been addressed by the Road Safety (Drivers) (Driving Hours) Regulations that were made on 30 January 2001 and will come into force on 1 March 2001.

## 10.1 Overview of Progress

The 1995 Agreement to implement the NCP and related reforms included road reform for all three tranches of the assessment process. For the first two tranches, the Agreement states that NCP payments will, among other things, be dependent upon the 'effective observance of road transport reforms'. The third tranche requires jurisdictions to have fully implemented and continue to fully observe, all COAG agreements with respect to road transport.

Victoria has been very successful in the implementation of reforms under the road transport reform agenda. Victoria has implemented all of the reforms in the first heavy vehicle reform package and, with the implementation of the chain of responsibility provisions, will have implemented all available reforms from the second heavy vehicle reform package.

## 10.2 Implementation of Road Transport Reform

Road transport reforms predate NCP, having originated with the Heavy Vehicle Agreement of 1991 and the Light Vehicles Agreement of 1992.

The Australian Transport Council (ATC) has developed a list of agreed road transport reforms to be used in the assessment of the third tranche of competition payments. ATC considered six reforms assessable under the third tranche:

- Combined Vehicle Standards;
- Australian Road Rules;
- Combined Truck and Bus Driving Hours;
- Consistent On-Road Enforcement for Roadworthiness;
- the Second Heavy Vehicle Charges Determination; and
- Ultra-low Floor Bus Axle Mass Increase.

Victoria supports the list of six reforms in the assessment framework. At the ATC meeting on 17 November 2000 the framework was agreed to by ATC for submission to the NCC through COAG.

Victoria has substantially implemented all of the reforms listed in the assessment framework (refer to Table 10.1 for a summary of Victoria's progress in six reform areas). However, Victoria has yet to implement the chain of responsibility provisions that are an element of the Combined Bus and Truck Driving Hours reform. This has been addressed by the *Road Safety (Drivers) (Driving Hours) Regulations 2000* that were made on 30 January 2001 and came into force on 1 March 2001.

Victoria has been very successful in the implementation of reforms under the road transport reform agenda. Victoria has implemented all of the reforms in the first heavy vehicle reform package and, with the implementation of the chain of responsibility provisions, will have implemented all available reforms from the second heavy vehicle reform package.

**Table 10.1: Victoria's Progress on the Six Reforms**

| Six Reforms Assessable under the Third Tranche | Victoria's Progress |
|---|---|
| Combined Vehicle Standards | Victoria consolidated the combined vehicle standards provisions on 15 May 1999 into the *Road Safety (Vehicles) Regulations 1999*. These regulations remain the primary legislation on vehicle matters. |
| Australian Road Rules | In Victoria, the *Road Safety (Road Rules) Regulations 1999* came into force on 1 December 1999. The road rules were published as *Road Rules – Victoria* in the Victorian Government Gazette and are incorporated by reference into the *Road Safety (Road Rules) Regulations 1999*. *Road Rules – Victoria* are substantially the Australian Road Rules agreed to by all States.<br>The only rule yet to be implemented relates to vehicles crossing continuous single lines. The introduction of this rule has been deferred for seven years until the line marking changes are made. |
| Combined Truck and Bus Driving Hours | All key elements of the combined bus and truck driving hours reform, other than the chain of responsibility provisions, have been implemented in Victoria. These include:<br>● nationally consistent hours for driving, work and rest, and a driver log book were implemented under Victorian regulations on 1 September 1998;<br>● the introduction of the national Transitional Fatigue Management Scheme in Victoria in January 1999;<br>● provision for two-up driving; and<br>● record keeping by employers.<br>The chain of responsibility provisions are included in the *Victorian Road Safety (Driver) (Driving Hours) Regulations 2001* that were made on 30 January 2001 and came into force on 1 March 2001. |
| Consistent On-Road Enforcement for Roadworthiness | The national Administrative Guideline for Assessment of Defective Vehicles has been adopted by Victoria and incorporated into heavy vehicle inspection procedures.<br>Business rules and administrative procedures used by VicRoads and Victoria Police have been amended to provide for mutual recognition of defect notices and their clearance in other States and Territories. |
| Second Heavy Vehicle Charges Determination | The charges were automatically adopted in Victoria through template legislation, when they were introduced into law in the host jurisdiction, the ACT, on 1 July 2000. |
| Ultra-low Floor Bus Axle Mass Increase | The new mass limits for low floor buses were implemented through a notice in the Victoria Government Gazette on 23 May 2000. |

# 11. Rail

- On 1 July 2001, the Freight Network, the strategically located Dynon and South Dynon Terminals and the Bayside Network will be declared for freight purposes. This means that the access regime will apply to all the intrastate tracks in Victoria used for the carriage of freight.
- With the implementation of the third party freight rail access regime for Victoria's intrastate network on 1 July 2001, Victoria's rail reform process will be complete.

## 11.1 Overview of Progress

As part of the second tranche assessment, the NCC reported that the Victorian Government had conducted a review to consider its reform options prior to privatising the intrastate rail freight network.

In this assessment, the NCC concluded that Victoria would meet its Clause 4 obligations given the plan to introduce an appropriate access regime. In the third tranche, the NCC will assess whether Victoria has met its NCP obligations, through the introduction of an access regime over intrastate rail freight services.

The Minister for Transport has announced that he will declare the freight network together with the strategically located Dynon and South Dynon Terminals and the Bayside Network for freight purposes from 1 July 2001. This means that the access regime will apply to all the intrastate tracks in Victoria used for the carriage of freight. With the implementation of the third party freight rail access regime for Victoria's intrastate network, on 1 July 2001, Victoria's rail reform process will be complete.

The following sections examine:

- the structural reform of the Victorian Rail Industry;
- the access regime;
- the certification of the access regime; and
- CSOs.

## 11.2 Structural Reform of the Victorian Rail Industry

Victoria's rail reform process will be complete on 1 July 2001 with the implementation of the third party freight rail access regime for Victoria's intrastate network.

### *11.2.1 Country Passenger Rail Services*

The previous Government awarded seven-year contracts for the operation of two of the State's country passenger services, namely the Warrnambool and Cobram services. These contracts expire on 30 June 2001. The Government is currently re-tendering both services under contracts aligned with the expiry date for the V/Line Passenger franchise on 28 August 2009.

### *11.2.2 Train and Tram Services*

The Government has adopted a two-stage approach to structural reform of its remaining public sector train, tram and rail freight businesses.

On 1 July 1997 the Victorian Rail Track Corporation (VicTrack) and V/Line Freight Corporation were established under the *Rail Corporations Act 1996*, and on 1 July 1998 five separate Corporations were created to provide metropolitan train and tram services and country rail passenger services:

- Bayside Trains;
- Hillside Trains;
- Swanston Trams;
- Yarra Trams; and
- V/Line Passenger.

In accord with the CPA, the Victorian Government conducted reviews of the structural reform options for the freight and passenger businesses.

After a decision was taken to lease the interstate (standard gauge) track to the newly formed Australian Rail Track Corporation (ARTC), it was considered that freight competition on the remaining predominantly broad gauge track was likely to be a limited driver of efficiencies. It was concluded that the gains in terms of competition from a vertically separated track and freight transport business would be outweighed by the opportunities for technical efficiencies which an integrated structure would provide. The V/Line Freight Corporation business was sold to Freight Australia together with a 15 year renewable lease of Victoria's non-electrified intrastate rail network on the understanding that a third party access regime would be implemented.

A review of metropolitan rail passenger operations found that on-track competition was likely to be only a limited driver of efficiency, due to the loss-making nature of the services and the fact that the train network was crowded at peak times, thereby limiting the service opportunities available to new entrants. The benefits of competition were thought to be best achieved through competition *for* the market rather than *in* the market. The metropolitan passenger rail businesses (both train and tram) were established on a vertically integrated basis in order to maximise operational efficiencies and minimise the contractual complexity of the industry. The metropolitan train operations, Bayside and Hillside (now Connex) were franchised for 15 years, while the tram operations, Yarra and Swanston, were franchised for 12 years. These franchises commenced on 29 August 1999.

The Public Transport Corporation (PTC) remains as a statutory corporation with a limited life to manage residual non-operational functions.

The Office of the Director of Public Transport has been established within DoI to manage all contractual arrangements with private sector transport services providers.

## 11.3 The Access Regime

In order to address certain conflicts of interest for infrastructure lessees in providing access to third parties, the Victorian Government introduced Part 2A of the *Rail Corporations Act 1996.* Part 2A provides a regime whereby rail operators, other than the relevant lessees, may obtain access to certain leased rail infrastructure which has been "declared" by the Governor-in-Council on the recommendation of the Minister for Transport.

The Minister for Transport may make a recommendation that rail infrastructure be declared only if he or she is satisfied that doing so is necessary to promote competition or to increase efficiency or the level of service to the public.

The Minister has announced that he will declare the Freight Network, together with the strategically located Dynon and South Dynon Terminals, and the Bayside Network for freight purposes from 1 July 2001. This means that the access regime will apply to the intrastate track in Victoria used for the carriage of freight. With the implementation of the third party freight rail access regime for Victoria's intrastate network, Victoria's rail reform process will be complete.

The proposed regime will be substantial as indicated in the discussion paper *Proposals for Implementation of the Victorian Rail Access Regime*, released by the DoI in April 2000, although the wording of the proposed Declarations and Pricing Orders has not yet been finalised.

An access regime for passenger services is not being introduced.

## 11.4 Certification

It is not proposed to seek "certification" of the access regime as "effective" for the purposes of Part IIIA of the TPA. However, the proposed access regime has been designed in order to satisfy the requirements of Section 6(4) of the CPA for an "effective" State access regime.

The regime is a negotiate-arbitrate regime under which, if the parties cannot agree on the terms of access, either party may seek a determination from the ORG. A determination may deal with any matter relating to access.

The legislation requires the ORG to take into account parts of the CPA and any Orders made under Part 2A of the *Rail Corporations Act 1996*. The Discussion paper released in April 2000 included draft pricing orders, setting out rules for determining disputes about price, for each of the freight networks, the Bayside Network and the Dynon Intermodal terminals. These orders are yet to be finalised.

The orders will provide a degree of certainty to access seekers and providers about the likely outcome if a disputed matter is referred to the ORG for determination and so provide a framework within which commercial arrangements can be made.

The parties are not bound by the rules in the pricing orders and are free to agree on any terms they wish. However, the ORG will apply the relevant pricing order in determining any access dispute about price which is referred to it.

The ORG has powers to require access providers to supply approved information to access seekers to facilitate negotiation of access. Access providers must maintain separate financial information for the declared infrastructure. In the event of a dispute, the ORG has wide powers to seek information in order to make a determination.

There are also appeal provisions relating to ORG determinations and appeal procedures to handle the disclosure of confidential information.

## 11.5 Interstate Track

In order to facilitate the development of a 'one stop shop' for access to the national track, in 1998 Victoria entered into a Heads of Agreement with the Commonwealth owned ARTC. Victoria agreed to lease the State's interstate standard gauge track (the Melbourne-Wodonga and Melbourne-Wolseley standard gauge lines) to the ARTC for five years from 1 July 1998. In late 1998 the ARTC sought a 15-year lease of the interstate rail infrastructure. Negotiations concluded with the signing on 20 October 2000 of a 15-year lease, backdated to 1 July 1999. This longer lease term was designed to facilitate investment by ARTC in the track.

Under the terms of its lease, ARTC was required to submit an undertaking in regard to access to the ACCC. A draft undertaking has been submitted and Victoria does not propose to declare the interstate track under Part 2A of the *Rail Corporations Act 1996.*

## 11.6 Community Service Obligations

When in the public sector, V/Line Freight provided a light general freight service which extended to remote areas and some free services to charitable organisations. This part of the business was uneconomic and resulted in losses over a number of years. However, it was considered to have a significant CSO element, and prior to the sale of V/Line Freight in 1999 a service agreement was put in place under which V/Line Freight was paid an average of $5.6 million for three years from 1 July 1997. The business was sold with the requirement that the service agreement be honoured.

Independent consultants, Booz Allen and Hamilton reviewed this service agreement in 2000 and a revised service agreement is being negotiated.

# 12. Other Transport

- The *Marine Act 1988* was reviewed in 1998 and the recommendations of the review accepted by the Government. As part of the implementation of the recommendations, structural changes will be enacted in 2001 and occupational licensing standards have been amended in accordance with National Competition Policy principles to ensure only those requirements necessary for meeting the objectives of the Act are retained.
- The section of the *Transport Act 1983* dealing with passenger ferry provisions, which was identified for review, was repealed in 1999.

The Victorian Government identified the following legislation for review:

- Marine Act 1988; and
- passenger ferry provision of the Transport Act 1983.

In relation to the *Marine Act 1998*, Victoria completed a review aimed at clarifying the responsibilities of harbour masters. The review recommended:

- retaining licensing of ship ports;
- consideration of legislation aimed at increasing the competition for ship pilotage services;
- establishing performance based standards for ship crewing; and
- no change to the provisions for recreational vessels.

The section of the *Transport Act 1983* dealing with passenger ferries was repealed in 1999.

The NCC had requested that Victoria provide a progress report on the review of the *Marine Act 1998*, providing information on the review and any reforms that have been completed, and the timetable for implementing any outstanding reforms. These matters are summarised below.

## 12.1 Legislation Review of the *Marine Act 1988*

The *Marine Act 1988* was reviewed in 1998 and the Review Committee's recommendations, which were all accepted by the Government, were intended to ensure that the Act meets its objectives with respect to safety and pollution reduction as effectively and efficiently as possible.

For example, structural changes, which effectively clarify responsibility for the safe management of local ports for local authorities, will be enacted in 2001. Furthermore, occupational licensing standards have been reviewed for compliance with competition policy and amended to ensure that only those requirements necessary for meeting the objectives of the Act are retained.

The monopoly agreement for the pilotage service has been allowed to sunset. However, legislative measures have been taken to ensure that safety is not compromised as a result.

Importantly, for safety reasons, the registration system for vessels has been retained by the Government, consistent with the review's findings.

# Part D: Agriculture, Resources, Manufacturing and Services

## 13. Agriculture and Related Activities

- Barley export arrangements will be deregulated from July 2001. Deregulation follows significant consultation and careful consideration of the interests of the industry and community.
- Victoria deregulated dairy marketing in July 2000. Deregulation was accompanied by an adjustment package funded by a milk levy and administered by the Commonwealth. Victoria provided direct assistance through stamp duty exemptions for the adjustment package, assistance with electricity connection and transport facilitation.
- The National Competition Policy review of the *Forests Act 1958* recommended that an assessment of the effects of separating the commercial and regulatory/policy functions of forest management should be undertaken. Forestry Victoria was established in August 2000 as a departmental business unit with a clear commercial focus and separate and transparent financial and reporting arrangements.

Australian agriculture has traditionally been characterised by a regulatory environment which restricts price and supply of products, marketing and purchasing arrangements to varying degrees. These restrictions can inhibit efficiencies in production processes, restrict product and market development and impose costs on consumers and other users of produce.

### 13.1 Coarse Grains

Domestic market reform in Victoria for feed and malting barley commenced in mid-1999, and the Australian Barley Board (ABB) was transferred to grower ownership of the Corporations Law companies, ABB Grain Ltd and ABB Grain Export Ltd. Victoria passed legislation to effect a sunsetting of ABB Grain Export Ltd's export monopoly over barley on 30 June 2001. Following a period of extensive public consultation, the Victorian Government announced in December 2000 that it will allow the export monopoly arrangements to sunset as scheduled.

The Victorian Government could find no convincing evidence that the private monopoly arrangement enjoyed by ABB Grain Export Ltd produced a net community benefit. It found there were significant benefits to the community from full deregulation of the industry in terms of grower choice, investment, innovation and marketing.

The Government's decision focused on providing choice to growers, so that they can take advantage of changes to the domestic and export markets. As a result, Victorian barley growers will be able to shop for the best deal when they sell barley grain harvested after 30 June 2001. They will no longer be required to sell their export grain to ABB Grain Export Ltd. Grain traders will be able to compete for Victorian growers' business. However, growers will still have the option of trading grain through ABB Grain Export Ltd.

The Government carefully considered the advantages and disadvantages of single desk marketing for export barley. In particular, the Government considered the extent to which there is a premium available for Victorian barley. In this context, it is noteworthy that the Victorian export market is different from other States, with malt barley, as opposed to feed barley, being the dominant grade of export barley. Compared to other States, a relatively small percentage of Victoria's feed barley is currently directed to the premium Japanese market.

Any benefits to growers from the private monopoly, enjoyed by ABB Grain Export Ltd in terms of price premiums, are enjoyed by producers of feed barley. Furthermore, the majority of Victorian barley for export is malt barley, for which there is no evidence of an export price premium. As there is no compelling reason for restricting barley export to a private monopoly, growers should be allowed operational control of their businesses.

## 13.2 Dairy

On 1 July 2000, the Australian dairy industry was deregulated. Victoria's legislation giving effect to deregulation was introduced and passed in the Autumn Parliamentary sittings of 2000.

Prior to deregulation, an extensive poll of Victorian dairy farmers informed the Government's decision. The poll showed high levels of support for deregulation.

Deregulation, which saw the removal of State Government controls over the farm gate supply and pricing of milk, has introduced contestable trading for market milk in Australia. The effect of this change has been varied throughout the key dairy producing States. The Australian Bureau of Agricultural and Resource Economics (ABARE) recently reported that in Victoria, the average farm gate price for milk is expected to fall slightly (by 3.5 per cent) in 2000–01. This relatively small decrease in price reflects a lower price for market milk, the loss of the Commonwealth Government's domestic market support scheme on manufacturing milk and higher world prices for manufactured milk.

This expected fall in the price received for market milk may not necessarily translate to a fall in farm income. ABARE concludes that in Victoria, higher milk production in 2000–01 will more than offset the impact of slightly lower prices following deregulation, leading to a one per cent increase in farm cash income. In addition, dairy farmers will receive payments from the Commonwealth Government's administered industry adjustment scheme.

Victoria has provided transitional assistance through a stamp duty exemption on the adjustment package, assistance with electricity supply connections and road transport measures. The transitional assistance recognises the short-term adjustment costs faced by the industry. The Government also provided the assets of the Victorian Dairy Industry Authority, $64.1 million, to the Geoffrey Gardiner Dairy

Foundation, to support the long-term future of the Victorian industry and its communities.

The creation of a single, national milk market is also expected to facilitate consolidation of manufacturing plants across Australia. For example, there are significant links in terms of shareholding and proposed alliances developing with New Zealand entities.

There is strong evidence to indicate that consumers are benefiting from deregulation in the form of retail price of fresh milk. Surveys undertaken by the ACCC suggest that the Victorian retail price of milk to the consumer has fallen by as much as 4.7 per cent.

Dairy deregulation has, therefore, resulted in benefits to Victoria for both producers and consumers and could be expected to facilitate further structural efficiencies in the processing sector as well as production improvements.

## 13.3 Poultry Meat

Victoria has completed its review of the *Broiler Chicken Industry Act 1978* and is currently developing its response to the review's recommendations. The independent review found that the legislated price determining arrangements imposed a net cost on the community as a whole.

The review also found that when broiler chicken growers negotiate with each other and submit a joint position to the Victorian Broiler Chicken Industry Negotiating Committee in the course of its price determinations, they are likely to be in breach of the competition provisions of the TPA.

The Government notes the review's findings and is considering the most appropriate means of ensuring that Victoria's chicken growers continue to be able to negotiate collectively in a manner that does not expose industry participants to a risk of breaching the TPA while fulfilling it's commitments under NCP. The Victorian Government has encouraged the application for the ACCC Authorisation, as recommended by the review of the Act, facilitating discussions between industry groups in an attempt to seek industry consensus on an Authorisation, and has ensured that all Victorian broiler chicken growers are aware of the application for Authorisation and the reasons for it.

## 13.4 Agricultural and Veterinary Chemicals

The review of Australia's agricultural and veterinary (AgVet) chemicals legislation adopted a nationally co-ordinated review process. Victoria played a key role in facilitating, co-ordinating and responding to the national review. Governments have responded to the report and are examining implementation options.

The Standing Committee on Agriculture and Resource Management/Agriculture and Resource Management Council of Australia and New Zealand Signatories Working Group developed an intergovernmental response to the review's recommendations which was supported by the COAG Committee for Regulation Reform. An interjurisdictional Low Regulatory Activity Task Force has been established by the Standing Committee on Agriculture and Resource Management to examine how best to regulate low risk chemicals.

The recommendation that the AgVet Code be amended to remove the present requirement for licensing of agricultural chemical manufacturers until the case for such an extension is made is not supported by the Victorian Government at present. The provision should be retained in its exempted state until the Commonwealth completes a review of the need for the provision. Any activation would be conditional on satisfaction of requirements of a thorough Regulatory Impact Assessment.

The implementation of recommendations for the retention of the veterinary surgeon exemption in the AgVet code will follow a report to the Standing Committee on Agriculture and Resource Management/Agriculture and Resource Management Council of Australia and New Zealand Signatories Working Group.

## 13.5 Food Regulation

Victoria's *Meat Industry Act 1993* seeks to ensure the protection of public health by imposing appropriate standards on the handling of meat at all stages of the process from slaughter up to the point of sale for human consumption. The Act also covers pet food processing facilities and retail outlets. The *Meat Industry Act 1993* was reviewed in 2000 with the review finding that the legislation achieved its objectives in a manner that resulted in a net benefit to the community, particularly in relation to food safety.

The review also provided six recommendations on amendments to the Act to allow greater accountability of the decisions of the Authority established under the Act, and to clarify the power of the Minister in directing the Authority. It is anticipated that the Government will have responded to the review in time to undertake any legislative amendments in 2001.

It is also proposed that Victoria's *Food Act 1984* be amended to provide for the adoption of the new National Food Safety Standards of the Food Standards Code and to incorporate changes required as a result of COAG's decision on 3 November 2000 to adopt the National Model Food Bill. This is anticipated to be completed in 2001.

## 13.6 Forestry

A review of the *Forests Act 1958* was completed in April 1998. This review covered the Act, certain regulations made under the Act and the *Code of Forest Practices for Timber Production*. While the Act, regulations and Code are major components of the framework of legislation relevant to State forests and the timber industry, there is a broader legislative context. Other Acts and regulations impinge on State forest products and related markets. The Act is administered within a broader context of Victorian Government policies on industry development, resource management and environment protection.

A revised response is currently being developed to reflect the Government's policy directions. Some of the recommendations have been acted on, with the establishment of Forestry Victoria in August 2000 as a departmental business unit with a clear commercial focus, and separate and transparent financial and reporting arrangements. A Timber Pricing Review, to be completed in October 2001, will address the conclusions and recommendations of the review report of the *Forests Act 1958*.

## 13.7 Fisheries

The management of Victorian fisheries is conducted through the *Fisheries Act 1995*, *Fisheries Regulations 1998*, various Orders in Council, Fisheries Notices, Ministerial Guidelines and management plans. Supporting regulations specify management controls such as closed seasons, minimum sizes and gear restrictions. Aquaculture is also regulated under this legislative framework, as is recreational fishing, through, for example, mechanisms such as bag limits, minimum sizes and gear restrictions.

The regulatory regime applying to the Victorian fishing industry is complex, with fisheries managers having a "tool box" of management tools. The review found a number of restrictions in the Act which fall into the categories of resource definition, access controls, input controls, output controls and security of access rights. Restrictions were also identified for specific fisheries including the abalone, rock lobster, scallop, ocean finfish, bay and inlet, inland freshwater and recreational fisheries.

The review found that these restrictions could reduce the efficiency of the industry but that generally the Victorian fishing industry is relatively efficient.

The Government has now responded to the review's recommendations. The Government supports the key findings of the review relating to the high value rock lobster and abalone fisheries. The Government considers that moving from a system of input controls (pots) to output controls (quota) is the best way forward for the rock lobster industry. With respect to abalone fishing, restrictions on how quota units are able to be traded will be abolished, freeing up trade and making quotas more readily available to those who can utilise it more efficiently.

# 14. Mining and Resources

- The *Mineral Resources Development Act 1990* has been reviewed according to NCP principles and the Government has responded to the review's recommendations.
- The review of the *Extractive Industries Development Act 1995* will be completed in 2001.
- Victoria has participated in the national review of the *Petroleum (Submerged Lands) Act 1982*. The review has reported, and a national response is being developed.
- Victoria has also completed review and reform to the *Petroleum Act 1958*, with the outcome reported in the second tranche assessment.

## 14.1 Overview of Progress

The two key pieces of legislation in the Victorian mining sector are the *Mineral Resources Development Act 1990* and the *Extractive Industries Development Act 1995*. The *Mineral Resources Development Act 1990* has been reviewed and the review's recommendations responded to by Government. The *Extractive Industries Development Act 1995* is currently under review to be completed in 2001.

## 14.2 Mining Licences

The *Mineral Resources Development Act 1990* vests ownership of minerals in the Crown. This allows the State to establish a uniform system for access to land for mineral search and development, management of the environmental consequences of these operations and compensation to owners and occupiers of land on which mining industry activities are conducted. The major restrictions on competition identified by the review relate to exclusive rights to explore and mine, the granting of licences and permits to facilitate exploration of minerals and the establishment and continuation of mining operations.

The review concluded that the majority of restrictions on competition contained in the legislation were necessary to achieve the objectives of the legislation and are justified in the public interest. The Government has accepted most recommendations of the review which have been implemented by amendments to the Act in Spring 2000 or will be implemented through amendments to policy and procedures which support the administration of the Act. The amendments to policy and procedures will include the development of Ministerial Guidelines for the application of fit and proper person provisions.

## 14.3 Petroleum

A national review of the *Petroleum (Submerged Lands) Act 1982* operating in Australia has been conducted. The report of this review was considered on 25 August 2000 by a Ministerial Council comprising relevant State and Territory Ministers. The Ministerial Council concluded that the mirror Commonwealth, State and Northern Territory legislation that governs exploration and development of the nation's offshore petroleum resources is essentially pro-competitive. Where there are restrictions on competition these are necessary to protect the interests of the community as a whole, and the benefits of the restrictions outweigh the costs. It is anticipated that the review report will be released early in 2001.

# 15. Taxi Services

- The review of legislation relating to taxi-cabs and other small passenger vehicles commenced in June 1999 under the previous Government. The present Government publicly released an initial review report in October 2000, and has completed its final report.

## 15.1 Overview of Progress

Taxis are regulated by the Victorian Taxi Directorate under the *Transport Act 1983*. The total number of taxi-cabs in Victoria is limited by a requirement for a licence to be issued under the *Transport Act 1983*. The average market value of a Metropolitan taxi licence is $253,000.

The NCP reviews of legislation relating to taxi-cabs and other small passenger vehicles were commenced in June 1999, prior to the election of the current Victorian Government. Consultants who carried out the review on behalf of the Government concluded that there were significant restrictions on competition in the taxi-cab sector relating to entry, price and quality. In particular, the taxi-cab licensing system constituted a barrier to entry, resulting in significant economic rents accruing to licence holders, and a deadweight economic loss of around $72 million per annum to the Victorian economy.

The review also noted that the current arrangements have led to consumer costs in the form of high fares, restricted consumer choice, and reduced availability of taxi-cabs (particularly in peak periods).

The Consultant's report canvasses several options for reform of the taxi-cab sector, including complete open entry to the taxi-cab sector, deregulation of fares (in the long run) and maintenance of existing quality regulations on vehicles and drivers. Open entry can be achieved by introducing an "as of right" licensing scheme. This would necessitate compensation of some $860 million to be paid to existing licence holders to be recouped by Government over 16 years by the imposition of increased licence fees.

The previous Victorian Government had not finalised its response to the report. The current Government made the Consultant's report publicly available to enable it to have the benefit of the views of stakeholders and the public in developing its final report.

# 16. Health

- Victoria has made considerable progress in conducting reviews of health practitioner legislation, in responding to reviews, and implementing necessary reforms.
- Of the eight core Acts listed for review, all reviews have been completed, including legislative amendments.
- Significant reforms include removal of ownership restrictions and replacement of bans on advertising with advertising regulation focused on consumer protection.

## 16.1 Overview of Progress

Regulation over the health professions has been modernised and streamlined with either the removal of restrictions on competition or reform that results in more focused restrictions that address specific risks.

Regulation of private hospitals under the *Health Services Act 1988* has been reviewed with reforms including the removal of the licensing restriction on the number of private hospital beds.

Victoria has introduced new registration requirements for practitioners of traditional Chinese medicine in line with a public interest case for minimising the risks to the public of misuse of substances.

### *16.1.1 Health profession registration*

The Victorian Legislation Review Timetable (1996) lists eight core health profession Acts for review. As noted above, these reviews and any consequential reforms have been completed. Table 16.1 contains a summary of review and reform implementation.

Registration has been retained in all cases to support a restriction on the use of professional title and in some cases restrictions on practice. Where professional title is restricted, only registered professionals can use a professional title such as “chiropractor” when dealing with consumers and others. However, others may perform procedures in the same area of practice. For instance, therapeutic massage could be construed as the type of manipulation normally performed by a chiropractor, while the title chiropractor certifies that the practitioner has specialist expertise.

In some instances high risk procedures may be restricted to registered practitioners. Filling teeth is one such example. Restrictions on practice can be applied where the procedure can be clearly defined in legislation and there is an identifiable risk. In such instances other health professional Acts need to include exemptions for the procedure where the other practitioners may also perform the same procedure.

**Table 16.1: Summary of Legislation Review Progress**

| Legislation | Review progress | Implementation |
|---|---|---|
| *Medical Practice Act 1984* | Review completed in 2000 | *Health Practitioner Acts (Amendment) Act 2000* passed |
| *Nurses Act 1993* | Review completed in 2000 | Amending legislation passed in late November 2000 |
| *Psychologists Act 1978* | Review completed in 1998 | Replacement legislation, the *Psychologists Registration Act 2000* enacted |
| *Dental Technicians Act 1972, Dentists Act 1972* | Review completed in July 1998 | Legislation replaced with the *Dental Practice Act 1999* |
| *Physiotherapists Act 1978* | Review completed in 1997 | Legislation replaced with the *Physiotherapists Registration Act 1998* |
| *Chiropodists Act 1968* | Review completed in 1997 | Legislation replaced with the *Podiatrists Registration Act 1997* |
| *Chiropractors and Osteopaths Act 1978* | Review completed in 1996 | Legislation replaced with the *Chiropractors Registration Act 1996* |
| *Optometrists Registration Act 1958* | Review completed and new legislation assessed under public interest test | *New Optometrists Registration Act 1996* enacted |

Restrictions on practice are often contained in other legislation that references registered health practitioners. Drugs, poisons and controlled substances legislation is a case in point. The framework for this legislation can more efficiently address control of drugs than individual health practitioner Acts.

### *16.1.2 Registration and reservation of title*

Reviews found that restrictions on the use of professional titles served to inform consumers on the competency of practitioners. Additional information was necessary due to the complex nature of health services and the difficulties faced by consumers in evaluating the quality of service on offer.

In this respect, the case for registration is based on rectifying market failure in the form of information asymmetries and high information cost in evaluating the competency of practitioners.

In addition, externalities may arise from malpractice where a resulting condition places an ongoing burden on the health care system.

Registration of Chinese medicine practitioners was also put in place in recognition that some substances regularly prescribed and prepared by these practitioners contained potentially dangerous substances. This new legislation was assessed against the public interest test.

Of note is the link between registration and taxation. While this matter is not within the scope of the legislation review, the new tax system requires health practitioners to be registered in order to provide their services GST-free.

### 16.1.3 Registration and reservation of practice

Reviews found that generalised restrictions on practice, where written into individual health practitioner Acts, were not in the public interest. Generalised restrictions such as a restriction on performing "dentistry", while covering some high risk procedures, may also cover low risk procedures such as advice on oral hygiene. Within a practice, such restrictions can cause inflexibility and leave para-professionals uncertain as to their potential liability.

In some instances such as dentistry, reviews found a case for specific restrictions on practice in the relevant health practitioner Act.

Registration of para-professionals may be necessary where there are restrictions on professional practice. Registration in this case may increase flexibility by allowing an exemption to be granted to para-professionals.

Outside the scope of health practitioner legislation reviews are institutional arrangements, such as recognition of practitioners by hospitals and health insurers, which play a significant role in limiting the range of professionals performing procedures.

Professional colleges play a significant role in certifying professionals with specialist skills that are not the subject of the core registration regime.

### 16.1.4 Ownership and advertising

The most significant reform to health practitioner legislation is the removal of ownership restrictions that previously restricted ownership to registered professionals. In conjunction with reforms to replace highly restrictive controls on advertising with more focused consumer protection advertising regulation, barriers to market entry were reduced while ensuring that regulation focused on ensuring public health and safety.

Table 16.2 shows ownership restrictions and advertising restrictions have been removed, with new provisions relating to matters such as misleading and deceptive conduct included in revised advertising regulation. A consistent approach to advertising regulation meant amending Acts, such as the *Optometrists Registration Act 1996*, to bring the Acts into line with current policy. In these instances, the revised provisions were assessed against the public interest test using new information on the impact of advertising practices under conditions of increased competition.

### 16.1.5 Disciplinary procedures

All health practitioner registration boards have the power to discipline health practitioners over breaches of their registration conditions. The procedures applied by these boards have been the subject of review through the legislation reviews. These procedures have been progressively updated to ensure procedural fairness.

### 16.1.6 Business licensing

As a general principle, premises are required to meet hygiene and safety standards.

A summary of regulation of health practitioners is provided in Table 16.2.

**Table 16.2: Regulation of Health Businesses**

| | Reservation of title and qualification requirements | Reservation of practice | Ownership, advertising, and conduct of business | Discipline processes | Business licensing |
|---|---|---|---|---|---|
| Chiropractors | YES | NO | NO | YES | NO |
| Osteopaths | YES | NO | NO | YES | NO |
| Medical Practice | YES | NO | NO | YES | YES |
| Nurses | YES | NO | NO | YES | NO |
| Dentists, Dental Technicians | YES | YES (limited) | NO | YES | YES |
| Optometrists | YES | YES (limited) | NO | YES | NO |
| Physiotherapists | YES | NO | NO | YES | NO |
| Chiropodists | YES | NO | NO | YES | NO |
| Psychologists | YES | NO | NO | YES | NO |

### 16.1.7 Professional liability insurance

A requirement for professional indemnity insurance has been introduced for a number of professions, including nurses, medical practitioners and psychologists. A requirement for professional indemnity insurance was also considered by the Victorian Law Reform Committee. The restriction on competition was assessed against the public interest test.

### 16.1.8 Prescribing rights

In the Spring 2000 Parliamentary sittings, new legislation was passed for nurses including the introduction of limited prescribing rights for a class of nurses. Such an arrangement reduces the earlier restrictions on practice in relation to medical practitioners, as imposed through the drugs poisons and controlled substances legislation.

Under reforms made in 1996, prescribing rights for glasses and for pharmaceuticals restricted by schedule to optometrists and ophthalmologists were extended to orthoptists on referral from a registered ophthalmologist or optometrist. Orthoptists generally work in a hospital context with optometrists. While ophthalmologists and optometrists were previously authorised to prescribe glasses because of the opportunity it offered to screen for eye disease, the review concluded that orthoptists have sufficient technical skills to prescribe glasses.

However, the review concluded that an opthalmologist or optometrist should still screen for eye diseases, hence the requirement for a referral. Though there has been uncertainty regarding the necessary form of a referral, there is sufficient evidence that the provision is achieving the intended result. The Act is due to be reviewed before 2006.

### *16.1.9 National Competition Policy review of pharmacy regulation*

Pharmacy is regulated through State legislation, however, the operation of the Pharmaceutical Benefits Scheme (PBS) makes a national approach necessary. Victoria agreed to participate in the national review of pharmacy regulation that reported in 2000.

Concurrently, the Commonwealth undertook a review of the Community Pharmacy Agreement and finalised with a new Agreement in June 2000. The national review of pharmacy regulation made a number of findings in relation to the Community Pharmacy Agreement highlighting the interaction between State regulation and the Commonwealth Agreement.

COAG agreed to develop a response to the national review. A proposed response is being developed.

### *16.1.10 Drugs, poisons and controlled substances*

Victoria is participating in the national review of drugs, poisons and controlled substances legislation. This review is examining, amongst other things, the scheduling of drugs, and advertising restrictions with respect to scheduled drugs and therapeutic goods. The review is yet to report.

### *16.1.11 Hospital and other service providers*

The report of the review of the *Health Services Act 1988* in May 2000 was followed by the Government's response in June 2000. The Government accepted the review's key recommendation to remove the bed cap and replace the current guidelines with a new guide for assessing applications for registration of both private hospital and day procedure developments under the Act.

The new guide took effect on 22 July 2000. It introduced new criteria for determining adequacy of services (new service standards) and removed the requirement to source beds from the existing pool. There are no plans to reintroduce a bed cap and this would be extremely difficult in practice.

The review of the *Pathology Services Accreditation Act 1984* is underway. The Act licenses pathology services and includes restrictions on ownership. The review was delayed by the need to reconstitute the review panel. It is due to report by mid-2001.

### 16.1.12 Public health

The reviews under the public health section of the framework are either complete or nearing completion. A review of the *Cemeteries Act 1958* has been completed. A response is pending.

A review of the *Health Act 1958* has reported and the Government is considering its response. Though the Act covers a range of matters, the core competition issues are limited to issues such as occupations with potential public health risk such as pest controllers.

### 16.1.13 Specific issues raised in the NCC Assessment Framework

The framework makes a reference to Victoria regarding prescribing rights for orthoptists that has been discussed in detail above.

The framework identifies three key areas that have a potentially significant impact on competition including:

- reserved areas of practice for various health professions;
- restrictions on business conduct, such as ownership and advertising controls for practitioners and licensing of businesses; and
- prescriptive rather than outcome focused regulation.

There are issues raised in relation to other jurisdictions with respect to partially registered professions (speech pathologists, occupational therapists and radiographers).

However, there are no specific issues raised in relation to Victoria. The general requirement has been addressed in this report:

> *Progress in each of the above areas will be important for the third tranche assessment. Consistent with the CPA, the Council will look for jurisdictions to provide convincing evidence that, where legislation restricts competition after 30 June 2002, the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation cannot be achieved without restricting competition. Restrictions on competition in new legislation also need to meet these tests.*
>
> *In assessing compliance in the identified priority areas, the Council will look for governments' public interest reasoning to offer rigorous justification for policy decisions to introduce or retain restrictions on competition.*

Consistent with the framework, the tables contain summary reports on all legislation reviews where there have been developments since the second tranche assessment.

# 17. Legal Services

- Legal services are regulated in Victoria by legislation including the *Legal Practice Act 1996*. The Act was assessed against the public interest test by the previous Government and considered in the National Competition Council second tranche assessment.
- Further consideration of legal profession indemnity insurance has taken place with release in 2000 of a draft response to the Legal Practice Board Report for comment. The Government is considering its response.

## 17.1 Overview of Progress

Legal services are regulated in Victoria by the *Legal Practice Act 1996*. The Act followed a review of legal practitioner regulation that commenced before NCP. The Act was assessed against the public interest test by the previous government and was considered in the second tranche assessment.

Two further reviews of legal profession regulation commenced in mid-2000. Although these reviews are not required under NCP, they will consider issues that may influence the level of competition in legal services.

The first review was to examine the concept of multi-disciplinary practices. Similar reviews were commissioned in other States. However, the Commonwealth joined the debate raising the need to factor the Commonwealth into the process of State reviews.

The second review is a general review of legal profession regulation following the 1996 review under the previous government.

Further consideration of legal profession indemnity insurance has taken place with a draft response to the Legal Practice Board Report (June 1998). While the Government is considering its response, there was no support during the submission stage for removal of the monopoly.

## 17.2 Legal Profession Indemnity Insurance

The *Legal Practice Act 1996* provided for competition in legal profession indemnity insurance from 1999. The Act however provided for a further review before implementation. The review by the Legal Practice Board in June 1998 recommended that the monopoly continue. The Parliament then amended the *Legal Practice Act 1996* to remove the sunset provision.

In the context of the second tranche assessment, the previous government agreed to review the matter. As a consequence, in November 2000, the DoJ released the Legal Practice Board's 1998 review and a draft response. The draft response concluded that professional indemnity insurance is compulsory for Victorian solicitors for consumer protection reasons. The draft response noted that in moving to a competitive scheme there was a risk that solicitors could be denied insurance cover

and would have to cease practice, because the solicitor's risk may be difficult to assess and even though the solicitor's professional competence is not in doubt.

The draft response concluded that a reduction in the number of solicitors in Victoria due to inability to obtain insurance would not be in the public interest, as it would result in:

- an artificial contraction in the supply of legal services within the Victorian market, together with related market distortions;

- reduced access to legal services by the community (particularly affecting country Victoria and those who depend on the smaller sized legal practices to obtain affordable legal services); and

- reduced competition within the profession, leading to greater inefficiencies in the delivery of services and increases in the costs of legal services to the community.

The draft response concluded that a lack of insurance after ceasing practice (ie lack of "run-off" cover) also means that a client who makes a claim against a former solicitor will be uninsured. Therefore the public interest requires that any insurance scheme for Victorian solicitors must:

- deliver affordable insurance to all solicitors licensed to practise;

- ensure that the clients of solicitors and former solicitors, including solicitors who have ceased to practise due to disgrace, insolvency or death, are covered by comprehensive run-off insurance; and

- facilitate risk management to deal with the potential detriment to the community as a whole of deficient legal services.

The draft response found that the design options for the scheme were, therefore, considerably limited. Specifically, the current scheme provides affordable insurance to all solicitors who are otherwise entitled to practise law. Evidence suggests that a competitive market would not provide cover to all practitioners.

Further, provision of run-off insurance implies the need for a scheme that specifies minimum insurance coverage and has a secure funding base that is not subject to erosion. Minimum insurance coverage should include run-off coverage that would be unlikely to be universally provided under more competitive circumstances.

In this respect regulated run-off insurance would require minimum insurance coverage (particularly in relation to solicitors who practised in small or country firms and those who ceased to practise due to disgrace, insolvency or death) and an ability to levy members of the profession in the event of under-provision.

To achieve these objectives it is necessary to require all solicitors to obtain legal professional indemnity insurance through the Legal Practice Liability Committee (LPLC). However, the LPLC has the scope to and does reinsure through the competitive reinsurance market. In this respect, competitive processes therefore play a real role in determining the LPLC's underwriting cost.

The main benefits of the current arrangements lie in:

- provision through an independent statutory body (the LPLC) that is independent of legal profession associations and subject to reporting arrangements;
- preventing an inappropriate contraction in the competitive market for legal services in Victoria;
- the provision of proper compensation to all consumers suffering a detriment as a result of negligent or otherwise deficient legal services; and
- the reduction, due to systematic risk management, of the number and amount of losses suffered by consumers in Victoria as a result of such deficient services.

The draft response found a tendency for there to be higher operating costs and operational inefficiency in markets where there is a lack of competition. The evidence of the lower cost of administration and insurance coverage derived from the LPLC's mutual arrangement provides reassurance that any such tendency has been outweighed by the particular circumstances of the mutual fund's methods of operation. The benefits to the community of proper levels of compensation and reduced losses through systematic risk management are further strengthened by the lower cost of insurance provided by the current mutual arrangement. The benefits of cheaper premiums flow through to consumers of legal services through reductions in the costs of legal services in Victoria.

## 17.3 National Market

The legal profession has developed around State jurisdictions. Related infrastructure, such as legal profession indemnity insurance, also reflects this heritage. The MRA between States and Territories provided for greater integration of professional service markets in a way that facilitates a national market.

The greater mobility of the legal profession across State borders is evident in the prominence of national law firms. In conjunction with these developments, legal firms have demonstrated sensitivity to premiums by seeking to insure with lower cost insurers. A number of prominent New South Wales firms recently insured with the LPLC, on the basis of lower premiums in contrast to commercial insurance offered through the New South Wales Law Society.

Given the small premium pool of less than $10 million in Victoria, competition would seem more likely to emerge with a national market rather than within State markets. National law firms are likely to lead this process.

## 17.4 Specific Issues Raised in the NCC Assessment Framework

The NCC Framework highlights key issues in relation to legal profession regulation, regulation of entry to the profession, reservation of legal practice, and controls on the ownership and structure of legal practice ownership.

The NCC Framework further states that "monopoly provision of professional indemnity insurance include preventing the development of insurance products that better suit lawyers' individual needs and cross-subsidies between low-risk and high-risk solicitors. The question for governments is whether this practice provides a

net benefit to the community as a whole, rather than a particular benefit to high-risk solicitors or providers of insurance".

The issue of universal coverage of legal practitioners is addressed in the sections above.

The NCC Framework notes that Victoria has completed its review of legal profession legislation (along with New South Wales and Queensland). It states that governments will "need to demonstrate that any remaining restrictions on competition contained in legislation provide a net community benefit, and that restricting competition is the only way to achieve the objectives of the legislation".

The remaining restrictions on competition contained in the *Legal Practice Act 1996* were assessed and reported on in Victoria's *Report for the Second Tranche Assessment 1998*. NCP provides for a further review of remaining restrictions on competition before 2006. Proposed new or amended restrictions on competition that arise before the next review will be assessed against the public interest test.

# 18. Other Professional, Occupational and Business Licensing

- Victoria has implemented recommendations from the Vocational Education, Employment and Training Committee National Working Party, May 1993, in relation to deregulation of some partially registered occupations. Where recommendations had not been fully addressed the relevant legislation was included in the NCP legislation review timetable in 1996.

## 18.1 Overview of Progress

Under NCP, States and Territories are reviewing a range of professional and occupational licensing instruments. Under the mutual recognition arrangements, each jurisdiction recognises regulations made and administered in other jurisdictions.

The VEETAC Working Party on mutual recognition was established by Governments to examine occupations registered in some, but not all jurisdictions. The task of the Working Party was to determine if each occupation should be deregistered or fully registered in all jurisdictions. The VEETAC Working Party Report in May 1993 recommended the removal of partial registration requirements for a variety of occupations.

States and Territories have identified legislation for licensing or registration of occupations that restricts competition. The following section covers significant professional and occupational regulation and includes regulation of motor vehicle dealers, real estate agents, second-hand dealers and pawnbrokers, travel agents and private agents.

## 18.2 Motor Car Traders

In Victoria the *Motor Car Traders Act 1986* has been reviewed. Some subjective components of trader eligibility have been removed from the Act, and licensing and warranty requirements have been retained. The review was reported in the second tranche assessment.

## 18.3 Second-hand Dealers and Pawnbrokers

The *Second-Hand Dealers and Pawnbrokers Act 1989* has been reviewed and there has been a reduction in requirements for licensing, premises and obligations to retain certain goods. For the public benefit, registration has been retained as a deterrent to criminal activity. The review was reported in the second tranche report.

## 18.4 Finance Brokers

Following a review, the *Finance Brokers Act 1969* has been repealed and licensing discontinued. Documentation requirements and a prohibition on up-front fees have been inserted into the *Consumer Credit (Victoria) Act 1995* to combat dishonest operations whereby less sophisticated would-be borrowers are persuaded to make

payments for sham services or are manoeuvred into accepting loans on unsuitable terms. The review was reported in the second tranche report.

## 18.5 Auctioneers

The *Auction Sales Act 1958* requires auctioneers of goods (including livestock) to be licensed. The review of the Act recommended that licensing be discontinued but that a minimal registration system be introduced for livestock auctioneers, in the interests of livestock disease control. A proposed Government response rejecting the registration proposal as unnecessary has been circulated to stakeholders.

## 18.6 Estate Agents

The review of the *Estate Agents Act 1980* recommended that full licensing be retained for residential property sales, but experience and education requirements be made less restrictive. Further, the review found that a less restrictive form of licensing should apply to agents selling commercial property and business and managing property; and regulation to protect against defalcation should be retained.

The Government has released the report for consultation in formulating its response.

## 18.7 Travel Agents

In July 2000, the Ministerial Council on Consumer Affairs (MCCA) released the review report of travel agent regulation for further consultation. The report was released for comment and written submissions from stakeholders, including those in other jurisdictions. The Ministry of Fair Trading in Western Australia will coordinate responses from each jurisdiction.

A supplementary report will be prepared and forwarded to the MCCA. The MCCA will prepare a response to the review in consultation with COAG's Committee on Regulatory Reform.

## 18.8 Private Agents

A review of the *Private Agents Act 1966* was conducted in Victoria. A public discussion paper was released in July 2000. New legislation is currently being developed. A draft Bill will be released for public comment in mid 2001.

# 19. Fair Trading and Consumer Legislation

- Victoria has met its commitments in relation to fair trading.
- The *Fair Trading Act 1985,* that mirrors Part V of *the Trade Practices Act 1974 (Cwth)*, was not included in the legislation review timetable that was assessed in the first tranche assessment.
- The *Fair Trading Act 1999* has since repealed the *Fair Trading Act 1985*. The *Fair Trading Act 1999* was assessed against the National Competition Policy guiding legislative principle at the time it was introduced.

## 19.1 Overview of Progress

In 1983, Victoria agreed to nationally uniform consumer protection legislation between the Commonwealth and the States and Territories to promote efficiency and reduce compliance costs. The consumer protection provisions of Part V of the Commonwealth TPA, which contains general prohibitions against misleading or deceptive conduct in trade or commerce, and a list of prohibited practices was chosen.

Currently, several Acts administered by Consumer and Business Affairs Victoria contributes to the overall framework of 'ground rules' for the commercial provision of goods and services and avenues for resolving disputes and dealing with non-compliance.

## 19.2 Fair Trading Act

When the NCP legislative review schedule was compiled, Victoria did not include the *Fair Trading Act 1985*, because the provisions it contained in addition to those mirroring Part V of the TPA did not restrict competition.

The *Fair Trading Act 1999* has since repealed the *Fair Trading Act 1985*. The *Fair Trading Act 1999* was assessed against the NCP guiding legislative principle at the time it was introduced. The assessment found that only the requirements imposed on 'Off-Business-Premises Sales' in Part 4 entail some restriction on competition, specifically:

- the mandatory five day cooling off period for contact sales; and
- the requirement that any cooling off period offered for non-contact sales (sales which are made when the parties are not in each other's presence and when the purchaser has not attended the supplier's premises in relation to those sales) must be at least 5 business days.

The assessment found that these restrictions were justified because they were the least restrictive means available to achieve the over-riding benefit of countering:

- contact sales being secured by intimidation; and
- purchasers being misinformed regarding their rights to withdraw from purchases made off business premises, that is, not understanding when a cooling off period has to be 5 business days.

The provisions in Part 2 are based largely on the 'Unfair Practices' provisions in Part V, Division 1 of the TPA.

The provisions in Part 5 establishing rules for lay-by sales are based on those already operating successfully in New South Wales. There is no *obligation* on traders to offer lay-bys, and observing the rules will not restrict competition between those who do provide a lay-by facility.

Powers are created to use subordinate legislation to introduce mandatory codes of practice and information standards and to ban the supply of particular dangerous goods or services. Only the banning powers have been invoked, three times, because of significant health risks associated with: candles having a wick or wicks containing lead; flammable children's nightclothes; and toy guns with high velocity projectiles.

The *Fair Trading Act 1999* repealed the *Consumer Affairs Act 1972* but preserved certain potentially restrictive regulations, again for public health and safety reasons. These include:

- Standards imposed for the construction of toys for use by children under 3 years of age (aimed at ingestion hazards) and of cigarette lighters (childproofing); and
- Cautionary labelling requirements for airpots (temporary storage containers for cool or hot liquids) and for spirit stoves, to reduce injury risks from misuse.

## 19.3 Consumer Credit Code - Progress on National Review

State and Territory governments have jointly undertaken a national review of Consumer Credit Code legislation. A report has been finalised and accepted by the inter-jurisdictional Uniform Consumer Credit Code Management Committee, a steering committee for the review.

COAG's Committee on Regulatory Reform is currently being consulted on the adequacy of the report, before a response is developed by the MCCA.

## 19.4 Trade Measures - Progress on National Review

To facilitate interstate trade and reduce compliance costs, governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement. Jurisdictions have progressively enacted uniform legislation and have identified the national scheme as involving legislation which may impact on competition. Accordingly a national review of uniform trade measurement was conducted.

A report on the review of uniform trade measurement legislation has been finalised and recently distributed to the review committee members for approval. If approved, the report will be presented to the Standing Committee of Officials of Consumer Affairs and forwarded to the Committee on Regulatory Reform.

# 20. Finance, Insurance and Superannuation Services

- Reviews of workers' compensation arrangements and transport accident compensation arrangements were commissioned in September 2000. The Government released the reports and responses in February 2001. The reviews found that the WorkCover and transport accident compensation schemes have features of a welfare scheme that are uncommon in insurance products, including the competitive products offered in other States. These features entail a significant public interest.

- The Government has accepted recommendations to retain the single manager for each scheme and to establish independent price reviews of premiums set for the schemes and other measures to enhance competition and efficiency.

## 20.1 Overview of Workers' Compensation Reviews

The review of workers' compensation arrangements in 1998 recommended that the VWA cease to provide insurance and that all underwriting be provided by private insurers. The introduction of decentralised competitive premium setting was recommended by the review.

These recommendations were rejected by the former Victorian Government. In its second tranche assessment, the NCC questioned Victoria's progress in this area and proposed that jurisdictions consider a national review of workers' compensation by the Productivity Commission (PC). Victoria supported a national review, but the review did not proceed. Consequently, Victoria undertook a second review.

## 20.2 Workplace Accident Compensation Legislation

The new review of workers' compensation arrangements under the new Victorian Government was commenced in September 2000. This review covered the Victorian workplace accident compensation legislation and associated regulations as follows:

- the *Accident Compensation Act 1985*;
- the *Accident Compensation (WorkCover Insurance) Act 1993*; and
- the *Accident Compensation Regulations 1990*.

Together these form Victoria's workplace accident compensation scheme, administered by the VWA. The scheme has many features of an insurance product, and is often known in Victoria as WorkCover. However the scheme also has 'non-insurance' features, which are deemed to be in the public interest and display properties of a welfare scheme, and hence should not be viewed as a simple insurance product.

The review identified five key restrictions on competition arising from the legislation under review. A public interest test of each restriction on competition, including an assessment of one or more alternative approaches was conducted as part of the review. The alternatives examined included ways of introducing more competition, either by abolishing or modifying the existing restriction on competition.

The restrictions on competition, the review recommendations and the Government's Response are summarised in Table 20.1.

## 20.3 Overview of Compulsory Third Party Insurance Legislation

The compulsory third party insurance arrangements provided by the TAC were reviewed in 1997–98. The review found that there was a net benefit to motorists in holding compulsory insurance but there were significant costs associated with the statutory monopoly arrangements as it reduced incentives to innovate and reduce costs and prices.

The former Victorian Government announced in October 1998 that it would retain the monopoly. The NCC expressed concern at the Government's response to the review findings. Victoria supported a national review of third party insurance, but the review did not proceed. Consequently, Victoria undertook a second review.

Victoria's agreement to participate in the national review was considered by the NCC as meeting second tranche obligations.

## 20.4 Transport Accident Compensation Legislation

The new review of the Victorian transport accident compensation legislation was commenced in September 2000. This review covered the following Acts and associated regulations:

- the *Transport Accident Act 1986*;
- the *Transport Accident (Charges) Regulations 1986*;
- the *Transport Accident Regulations 1996*; and
- the *Transport Accident (Impairment) Regulations 1999*.

Together these form Victoria's transport accident compensation scheme. The scheme has some features of an insurance product, and is sometimes referred to by Victorian motorists as third party personal insurance or compulsory third party (CTP). However the scheme also has 'non-insurance' features, which are deemed to be in the public interest and display properties of a welfare scheme, and hence should not be viewed as a simple insurance product.

The review identified three key restrictions on competition arising from the legislation under review. A public interest test of each restriction on competition, including an assessment of one or more alternative approaches was also conducted. The alternatives examined included ways of introducing more competition, either by abolishing or modifying the existing restriction on competition. The final recommendation in each case is the one which provides the greatest potential public benefit.

The restrictions on competition, the review recommendations and the Government's Response are summarised in Table 20.2.

## 20.5 Public Interest Test

As a consequence of the legislated benefits in Victoria, and common law provisions, both the VWA and TAC schemes are not considered to be standard insurance products, with maximum defined benefits. The availability of no fault statutory benefits under the schemes makes it similar to a system of welfare benefits.

One of the main objectives of both schemes is to ensure that injured persons are properly compensated and that the burden of the cost of injury is met by the schemes and reflects the full cost of the injury.

The Victorian schemes offer benefits that are not available in other jurisdictions with private underwriters, and is therefore not directly comparable with such schemes. In particular, the Victorian schemes are designed to provide no fault benefits to injured persons, which in some cases generates a significantly longer tail.

Jurisdictions with competitive schemes tend to have dollar caps to limit the size of the tail and traditionally, private insurers have managed liabilities by commuting long-term benefits. Schemes that provide options to minimise long-term liabilities exert greater pressure on other sources of assistance (e.g. Social Security payments and health care benefits), as the benefit may be expended in a short period of time.

Evidence from other jurisdictions suggests that private insurers attempt to undercut competitors, discounting premiums in order to attract business. This fierce price competition usually continues until the point where collected premiums are insufficient to fund scheme liabilities and premiums are then sharply increased. The premium charged under competition tends to fluctuate rather than being smoothed over time, as is the case with a public underwriter.

The current reviews have been thorough in their cost-benefit assessment to retain the single management structure. Where the reviews support the retention of the restriction, the exercise highlighted certain costs which the Government intends to address, in order to improve the functioning of the schemes. Accordingly, the Government will review the functions performed by the VWA and TAC to identify if there is scope for greater contestability to be introduced.

Further, the Government supports the review recommendations for an independent review of VWA's and TAC's proposed premiums, including the consideration of risk reflective pricing, prior to making a premium order or seeking Ministerial approval. However, before implementation, an examination of options for an independent review of proposed premiums will be undertaken.

With respect to workers compensation, the Government will also consider broadening the scope for self-insurance arrangements, with a view to moving towards performance based premiums.

**Table 20.1: WorkCover Review Findings and Government Response**

| Restriction on Competition | Review Recommendation | Government Response |
|---|---|---|
| 1. A compulsion exists for employers to obtain WorkCover insurance in respect of their liability to pay compensation and common law damages to employees. | The charge should remain compulsory in the interests of achieving the social policy objectives of the Act. | Accepted |
| 2. The VWA is the single manager of workers' compensation insurance. | The single manager arrangement should be maintained at this time, as it provides the greatest net public benefit.<br>However, the Victorian Government may wish to consider the scope for improved market testing of some of the services provided. | Accepted |
| 3. Centralised premium setting (regulated price). | The premium setting responsibility should remain with the VWA.<br>However, an independent third party should review the premiums and associated rationale for setting the premiums. The independent review should be made public prior to the approval of the new premiums. This would provide greater transparency in the review setting process. | Accepted<br><br>Accept recommendation of a third party review of premium – however further work will be undertaken to determine how the mechanism will work in practice (e.g. the appropriate party, timing of independent advice). |
| 4. Approval of occupational rehabilitation service providers. | The ability to approve occupational rehabilitation service providers should be retained to ensure that service providers are suitably qualified to perform the tasks required of them. | Accepted |
| 5. Eligibility requirements for self-insurers. | Self-insurance requirements should be adjusted to increase flexibility and promote the expansion of self-insurance as it allows greater emphasis to be placed on innovative occupational heath and safety outcomes rather than the insurance product. | Accepted<br><br>The VWA will be asked to assess the prospect of increasing self-insurance type arrangements. |

**Table 20.2: TAC Review Findings and Government Response**

| Restriction on Competition | Review Recommendation | Government Response |
|---|---|---|
| 1. There is a compulsion for all registered vehicle owners in Victoria to pay a transport accident charge. | The charge should remain compulsory in the interests of achieving the social policy objectives of the Act. | Accepted |
| 2. TAC is the single manager of the transport accident compensation scheme in Victoria. This is, in effect, a legislated monopoly. | The single manager arrangement should be maintained for Compulsory Third Party personal insurance in Victoria at this time, as it provides the greatest net public benefit. However, the Victorian Government may wish to consider the scope for improved market testing of some of the services provided. | Accepted |
| 3. Centralised premium setting (regulated price). | The premium setting responsibility should remain with the TAC.<br>However, an independent third party review of the TAC's proposed premiums should occur prior to Ministerial approval. The review should be made public prior to the Minister's decision and it should examine and report on the premium methodology, and the cross subsidies that exist within the premium structure. This would provide greater transparency in the review setting process. | Accepted<br><br>Accept recommendation of a third party review of premium – however further work will be undertaken to determine how the mechanism will work in practice (e.g. the appropriate party, timing of independent advice). |

## 20.6 Choice in Public Sector Superannuation

Over the past few years the Government has progressively withdrawn from the direct provision of superannuation for public sector employees. All Victorian public sector employees who commenced employment after 1 January 1994 have become members of private sector superannuation funds regulated by the *Superannuation Industry (Supervision) Act 1993*.

Of necessity, the Government is still closely involved with the (now closed) State Superannuation Fund which has a large unfunded liability that directly impacts on the State's finances. The State Superannuation Fund is administered by the Government Superannuation Office (GSO), an independent trustee Board established on 1 July 1999. The legislation establishing the GSO requires that it conduct a contestability review of its administrative operations and activities by 30 June 2001.

Most departments and agencies now provide employees with at least some degree of choice regarding the fund into which employer contributions are paid. Several Departments offer an unlimited choice of funds. Further policy work on the issue of choice in superannuation in public sector employment has been frustrated by the delays in the passage of the Commonwealth's own choice of fund legislation.

# 21. Retail

- Victoria extended retail trading hours in 1996 and accordingly, in its second tranche assessment, the National Competition Council concluded that Victoria had fully met its National Competition Policy obligations.
- Victoria has undertaken a further review of the eight per cent cap on packaged liquor licences in response to the National Competition Policy's Second Tranche Assessment that Victoria had failed to adopt the National Competition Policy review recommendation to abolish the eight per cent cap.
- Following the review and extensive consultations with the industry, the Government announced a phase-out of the eight per cent cap from the end of 2003. An earlier phase out would be subject to agreement between the Government and industry.

## 21.1 Overview of Retail Trading Legislation

For a number of years, Governments around Australia have had laws restricting retail trading hours. Legislation controlling the trading hours was common place for a number of reasons, including the protection of small businesses, and to reduce the need for shop employees to work outside normal working hours.

Victoria demonstrated its commitment to reform by extending its shopping hours in 1996. Accordingly the NCC in its second tranche assessment concluded that Victoria had fully met its NCP obligations in relation to shop trading hours.

## 21.2 Shop Trading Reform

In Victoria, previous restrictions on trading hours were intended to achieve a number of objectives, including minimisation of the risk of market dominance by larger retailers. Exemptions applied for a range of businesses and were generally based on size, location and products sold. Typical examples were small local shops selling newspapers, milk, bread, soft drinks and tobacco products.

The impact of such legislative restrictions in Victoria was clearly anti-competitive and adversely impacted on consumer convenience and choice. Shopping regulation was reviewed in Victoria in 1996 and hours were extended in the same year, as it was evident that restrictions did not provide a net public benefit. Trading hours and other shopping arrangements are now largely deregulated in Victoria.

In its Third Tranche Assessment Framework the NCC has indicated that for some jurisdictions shop trading hours will not be a matter for assessment in the third tranche, either because actions taken in the first and second tranches addressed NCP obligations or because current arrangements do not significantly restrict competition.

## 21.3 Liquor Licensing Reform

Victoria completed its review of liquor licensing in 1998 and implemented a series of pro-competitive reforms in 1998 and 1999. However, as part of the liquor licensing reform, the '8 per cent rule' was retained for holders of packaged liquor licences in Victoria. In its second tranche assessment, the NCC concluded that for Victoria to be considered as complying with its NCP obligations, it would need to remove the eight per cent limit from its licensing Act.

In March 2000, the Government commissioned a review to further examine the socio-economic consequences of the eight per cent rule and to develop a range of feasible reform options. The decision to undertake this further review was taken in response to the NCC's second tranche assessment that Victoria had failed to adopt the NCP review recommendation to abolish the eight per cent limit on packaged liquor licences.

### *21.3.1 The March 2000 review findings*

The March 2000 review found that the Victorian market for packaged liquor is intensely competitive and offers consumers a diverse range of shopping experiences. The review also found that, while the eight per cent rule offers some independent liquor retailers protection from the major supermarket chains, it is unlikely to be effective in promoting diversity in the medium to long term. For example, with a major chain easily able to transfer an existing licence to any of its unlicensed supermarkets, a small business could lose its protection at very short notice.

Small and large business interests within the liquor industry acknowledge that the eight per cent rule is not an effective way to promote the viability of small business in the long term and have expressed different views on alternative mechanisms that would ensure diversity in the market.

The March 2000 review proposed three possible reform options to be considered as part of the public consultation process:

- phase out the eight per cent limit linked with an industry adjustment program;
- abolish the eight per cent rule in metropolitan Melbourne but restrict the expansion of the major chains in rural areas; or
- limit the market share of a single major chain or limit the combined share of the major chains.

The Government publicly released the review report in September 2000.

In summary, the March 2000 review dealt with a range of complex matters that have an impact on, and is of interest to consumers, small liquor retailers, the major supermarket chains and alcohol harm minimisation groups.

### *21.3.2 The eight per cent cap and Government's commitments to reform*

In its Third Tranche assessment Framework, the NCC recognised Victoria's efforts in implementing some significant pro-competitive reforms, but noted that it had retained restrictions - the eight per cent cap - that did not satisfactorily meet the public interest test.

Following the March 2000 review and extensive consultations with the industry, the Government announced a phase-out of the eight per cent limit from the end of 2003. This decision has built in flexibility to enable the commencement of the phase-out to be earlier subject to industry agreement.

The eight per cent rule has been a feature of Victoria's liquor licensing framework for almost 20 years. Investment decisions by small businesses, particularly decisions on where to locate a liquor store, have been influenced by this provision. The review found that eight per cent rule is becoming ineffective in meeting its objectives and that its eventual removal would be in the public interest. It also highlighted the structural adjustment costs associated with the removal.

The Government's position represents a balanced approach that will lead to the phasing out of the eight per cent rule, while fostering a transitional environment that will enable small businesses to adapt to the reforms. By providing advance notice of the changes, small businesses will have the opportunity within a stable regulatory environment to properly re-assess their business strategies and consider re-positioning themselves.

During this period of adjustment, some small liquor retailers may wish to diversify the type of products or services offered at their stores. This may require a fit-out, recruitment and training of additional staff and re-negotiation of lease conditions. The transitional period will also enable the Government to work with the industry to develop long-term strategies that improve the capacity of small businesses to compete in the industry.

Further, it should be noted that even during this transitional period, the pool of packaged liquor licences is likely to continue to grow, which enables the major chains to obtain further licences.

The Government's decision to remove the eight per cent limit from the end of 2003 will enable Victoria to meet its NCP commitments with minimal disruption to the liquor industry. This decision is a fair and reasonable resolution of a complex policy issue and will ensure that the phase-out does not have unduly negative impacts on small or large businesses, and the community in general.

The decision also reflects the agreement between the Government and the liquor industry that the eight per cent limit is an ineffective mechanism to ensure diversity in the market. In addition, both the Government and industry recognise the need to find an alternative to the eight per cent limit and are currently investigating suitable models to implement the Government's commitment consistent with competition policy principles.

As part of its commitment to reform the eight per cent rule, the Government has already provided support to the Liquor Stores Association of Victoria, which represents independent liquor retailers, to conduct seminars throughout Victoria on how to reposition their businesses under the new liquor licensing arrangements.

# 22. Education Services

- In 1999–2000 the Department of Education, Employment and Training (DEET) satisfied its legislative review obligations with completion of the review process relating to the *Education Act 1958* and associated Ministerial Orders.
- The review process dealt with three items of legislation that had been identified as having the potential to restrict competition. These were:

  - registration of teachers in non-government schools;

  - registration of non-government schools; and

  - the setting of fees for overseas students.

## 22.1 The Government Policy Levers

Education is a major area of government expenditure and activity, at both national and state levels. The State Government plays a role in all four areas of education: preschools, primary and secondary schools, vocational education and training (VET) and universities. Victoria's public expenditure on education and training of approximately $5.3 billion in 1999–2000 represents 24 per cent of total government operating expenses. This expenditure is directed largely to primary and secondary education and VET.

The State Government also has a substantial role in regulating the industry. Typically the legislation can be categorised as:

- 'general education' Acts that relate to the provision of public and private schooling;
- Acts that establish a system of VET; and
- Acts that establish the universities of each jurisdiction.

For instance, under the *Education Act 1958* the State Government regulates the registration of private schools and the endorsement of schools as suitable for overseas students. The State Government regulates the registration of training providers and the accreditation of training courses through the *Vocational Education and Training Act 1990* and requires university courses to be accredited through the *Tertiary Education Act 1993*.

It is through the funding, provision and regulation that governments can significantly leverage the education and training system to economic and social goals.

## 22.2 Overview of Legislation Reviews in Education

The review of legislation involving the then Department of Education, which was conducted during 1997, and submitted a report covering tertiary education and training legislation. However, this report did not cover legislation for the schools sector, which included the *Education Act 1958*.

In 1999–2000 the DEET satisfied its legislative review obligations with completion of the review process relating to the *Education Act 1958* and associated Ministerial Orders.

The review process dealt with three items of legislation that had been identified as having the potential to restrict competition. These were:

- registration of teachers in non-government schools;
- registration of non-government schools; and
- the setting of fees for overseas students.

### *22.2.1 Registration of teachers in non-government schools*

With respect to the registration of teachers in non-government schools, the current position of the Government accords with the majority view of the Review Committee, namely that the existing system of teacher registration for teachers in non-government schools should be retained.

Three public benefits were identified with the retention of registration for teachers in non-government schools:

- all students will be taught by teachers with minimum academic standards;
- there is limited student exposure to teachers who have engaged in conduct unbecoming a teacher; and
- universities will be in a better position to offer courses for teacher training.

The Review Committee considered that, on the whole, the minimum qualifications required for registration correlate well with the community expectations of minimum teaching standards. It was submitted that the checking of qualifications is a specialised task, especially for interstate and overseas qualifications, which is of significance given that approximately 20 per cent of applications for registrations are from interstate or overseas.

In addition, it was considered that removal of the registration system for teachers in non-government schools would impact on interstate recognition of Victorian qualifications and on the recognition in Victoria of interstate qualifications.

For the reasons outlined above, it was held that the benefits of any restrictions resulting from teacher registration outweighed the costs and that no change should be recommended to the existing system.

This view was supported at the time of the review by the two key stakeholders nominated in the terms of reference — the Association of Independent Schools of Victoria and the Catholic Education Office.

### *22.2.2 Registration of non-government schools*

The Review Committee concluded that the benefits of a registration system for non-government schools outweighed the costs. However, the Committee had proposed a less restrictive alternative to the existing legislation whereby schools would have to satisfy three criteria relating to suitable curriculum, suitable teachers

(ie. with appropriate registration) and suitable premises — but that a fourth criterion concerning minimum numbers be removed.

The Government's current position with respect to the registration of non-government schools differs from the majority of the Review Committee in only that it supports the retention of the existing legislation, including the requirement that schools meet a specified minimum enrolment.

Retaining the fourth criteria ensures that a school can offer a sufficient range of subject options. As students have different abilities and it is essential that they be provided with at least a minimum amount of subject choice to enable them to achieve in the curriculum areas where their abilities lie.

This position was supported by the key stakeholders nominated in the terms of reference — the Association of Independent Schools of Victoria and the Catholic Education Office.

### *22.2.3 The setting of fees for overseas students*

Across all sectors of education, the overseas student program represents Victoria's largest service industry, contributing $1.3 billion to the State economy. The placement of overseas students in Government schools, which commenced in 1995 with just 58 students, is now in excess of 1,000 students. Victoria is the market leader in attracting overseas students.

The Review Committee considered a proposal for a differential fee structure for overseas students attending Government schools, which also includes the Distance Education Centre and English Language Centres. The proposed fee structure would involve the Minister setting a maximum fee that Government schools may charge, comprising a minimum fee that schools must charge, with the option of schools charging an additional 10 to 20 per cent. The additional amount was to reflect criteria the school may have chosen, including different curricula, reputation, or other matters the school may think would enable it to charge a higher fee in the market place.

A decision on this view by the Review Committee was held over pending consideration of further information sought from DEET with respect to advice that the present central marketing of the Government school system could not be retained under a differential fee structure.

The Government school system is marketed as a total system and the marketing strategy and management of the program emphasises the following aspects:

- students are recruited to the Government system, rather than to a particular school, which is a strong marketing aspect in attracting students;
- students can move between Government schools if necessary and frequently do so at no additional cost;
- supplementary services (e.g. English as a Second Language and Distance Education) can be provided without extra cost as required, with payments being made to the respective institutions on a proportional basis;
- schools must be approved to participate in the program and the quality of school programs be assured;
- on matters such as visas, the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and memberships of the Australian

International Education Foundation (AIEF) are administered for the system as a whole — DEET pays the fees for CRICOS and AIEF on behalf of all participating schools;

- economies are achieved in marketing through the development of materials about the system rather than about individual schools and through representation of the system at international education fairs, etc;
- Commonwealth accountability requirements are managed for the system as a whole; and
- the need to give preference to Victorian students means that the number of international students that can be accommodated at any one school is relatively small.

The Government decided to retain the existing system of setting a uniform fee for overseas students on the basis that the public benefits of the present system substantially outweigh any restrictions that might exist:

- fees for overseas students being set by the Minister, on behalf of Government schools, takes into account the overall costs of the school system and of relevant support services. Differential fees as considered by the Review Committee would need to be set by the Minister at the request of schools, which would imply Ministerial recognition of a difference in quality between school programs;
- strategies are being developed to increase the placement of overseas students in schools in rural centres and it would be clearly untenable if there were any suggestions that such schools did not compare favourably with metropolitan schools, which might be inferred from a differential fee structure; and
- it also needs to be noted that the processes involved in Government-to-Government negotiations and agreements are important elements in the international education marketing effort. It is likely, therefore, that the discontinuation of the current system-wide approach would have a negative impact on broader marketing strategies across all education sectors, including universities, TAFE institutes, Government and non-Government schools.

## 22.3 Further Education and Training Reform

When the Government came into power it had identified that it would examine as a priority:

- the quality and outcomes of post compulsory education and training in the State;
- the outcomes and effectiveness of the 'education and training system' for the community; and
- the performance of the public education system.

To this end the following reviews were established and completed:

- Review into Quality of the Apprenticeship and Traineeship System in Victoria, known as the Schofield Report.
- Ministerial Review of Post Compulsory Education and Training Pathways, known as the Kirby Report; and
- the Review of Public Education, the Next Generation.

# 23. Gaming

- The Victorian Government has made considerable progress in reforming gambling legislation and regulations to ensure they are consistent with the public interest.
- The Government has introduced reforms, especially of public lotteries legislation that allows scope for competition following the expiry of the current sole-licence arrangements in 2004.
- Harm minimisation has also featured prominently in the Government's gambling strategy. These reforms have been based on research, national initiatives agreed to by the Council of Australian Governments on 3 November 2000 and extensive consultation with community, industry and other stakeholders.

## 23.1 Overview of Progress

The Victorian Government has made considerable progress in reforming gambling legislation and regulations. In particular, it has implemented far-reaching reform, especially of public lotteries legislation and in the implementation of harm minimisation measures for problem gambling. The Government has also met many of its election commitments in gambling, and is now examining avenues for further reform.

The Government appreciates that gambling involves both economic and social benefits and costs. The Government understands that it operates in a complex policy environment. It has been clear, however, on its commitment to reduce the adverse effects of problem gambling while ensuring that those who enjoy gambling are able to do so safely. In trying to achieve these goals, the Government has held that success is dependent upon some key principles in gambling policy. These include:

- efficient regulation of the industry;
- adequate and appropriate probity; and
- better protection of consumer's rights, problem gamblers and the wider community.

In trying to achieve these goals, the Victorian Government has attempted to achieve the wider public interest. This has been achieved through:

- an examination of all economic and social costs;
- undertaking extensive consultation with industry, community groups and other stakeholders; and
- assessing existing rights.

In order to apply the public interest test, the Government has sought the expert opinions of various groups and individuals. For example, consultants have

undertaken independent reviews of legislation. The Centre for International Economics (CIE) was retained in 1996-97 to undertake a general study of the regulation of gambling markets, products and participants in Victoria.

While implementing its gambling policy agenda, the Government has ensured consistency with the NCP framework. That is, regulations and restrictions are implemented only where there is public interest. The Government has actively considered the competitive effect of all policy proposals and pro-competitive alternatives.

The public interest test used must take into account the specific circumstances of each jurisdiction and the effect on specific groups such as various cultural, local and regional communities. Regional considerations are particularly relevant in gambling because of the interaction between the socioeconomic characteristics of communities and gambling.

The Government has also introduced reforms to gambling regulation in order to ease the compliance and administrative burden in gaming. For example, citizens in regional Victoria can now more easily apply for work in gaming venues. This follows the Government's removal of a requirement that they travel to Melbourne to seek an employment licence. Fingerprinting can now be taken at the nearest rural division police headquarters rather than at the Victorian Casino and Gaming Authority (VCGA) offices in Melbourne. Further, reforms to the licensing regime mean that applicants no longer need a liquor licence for premises approval. Applicants now have to jump the highest hurdle first rather than last.

The Victorian Government sees gambling reform as a continuing process. It is in this context that the Premier recently announced that gaming machines must have clocks and there should be adequate light in venues. These initiatives will allow patrons to make themselves aware of the passage of time and have a point of reference with the external environment. The proposal is consistent with COAG strategy of 3 November 2000 and the Productivity Commission (PC).

Wherever possible the Government focuses on being part of national solutions. An example of this is in the provision of information to players of gaming machines, where Victoria is working with the Federal and other State and Territory Governments through the Ministerial Council on Gambling and similar forums.

The Government thus takes issue with the argument that gambling regulation must be assessed more broadly than under an NCP framework. If we are to define public interest correctly, as must be the case, then the NCP framework is sufficient.

The Government accepts that not all stakeholders or commentators will agree with all its policy initiatives. The Government will be monitoring its reforms and their impact while examining new avenues for action. It is for this reason that the Government established the Gaming Research Panel (GRP). The GRP will help identify research gaps, especially in areas that can assist in improving programs for existing problem gamblers and reducing the adverse social impacts of gaming.

Similarly, the Government has instituted other reforms that, together with the initiatives listed in this paper, will help achieve a balance in gambling. An example of this includes major reforms to the Community Support Fund. Under its revised charter, the fund will promote responsible gambling through provision of funds for research, community education, prevention and problem gambling services.

## 23.2 Statewide Cap

The Government has continued the practice of capping the number of gaming machines outside the casino (by Ministerial Direction). The cap was last reviewed in April 1997. In addition the Government has frozen in legislation the number of machines permitted in the casino.

The Government notes the view put forward by the PC in its recent report on gambling that quantity restrictions in general are blunt instruments. However, it also notes the PC's view that some caps may be more effective than others and that various situations exist, such as the combination of a machine number cap and a price cap, which could make a global cap more effective. This evidence would imply that global and other quantity restrictions have some effect. In addition it is noteworthy that the PC's observations concern the effectiveness of caps on minimising the harm caused by problem gambling. The Government has imposed caps to also address the adverse economic consequences arising from disproportionate levels of gambling expenditure in disadvantaged regions.

Undoubtedly, given the presence of other complex policy instruments, it is difficult to ascertain the effectiveness of a cap. The Government believes however that, at the current stage of growth in the gambling industry and under current policy settings, a set number of machines assists in tackling problem gambling by reducing accessibility. Importantly, the policy forms part of the Government's multi-faceted gambling policy agenda.

As a broad principle, the Government believes that the costs of a statewide cap on recreational gamblers must be assessed against potential positive benefits of restricting access to problem gamblers. Given the nature and magnitude of negative impacts of gambling, the public interest favours a continuing cap in the absence of alternative and proven strategies.

In particular, as the evidence is conflicting and not clear on this policy issue, it is preferable at this time to employ the precautionary principle and retain the cap on gaming machines.

## 23.3 Lotteries Legislation

The Victorian Government views the creation of a long-term sustainable national lotteries market as critical to ensure consumers are well served and have access to a high quality lottery product. It is for this reason that the Government introduced the *Public Lotteries Act 2000* following extensive consultation and an independent review. The Act will replace the *Tattersall Consultations Act 1958* and will complete reform in this area.

The new Act conforms to NCP principles, and allows the Government to issue a licence or number of licences. By removing the legislative monopoly and creating the possibility of multiple suppliers, Victorian consumers may have the opportunity to be served by one or more efficient and responsive providers.

As part of these reforms, the Government has decided to retain Tattersall's monopoly until it expires in June 2004. This is because any revocation or material change to the operating conditions of the licence before expiry would risk compensation payments that may negate any potential gains. The Government has not yet decided whether the licensing post 2004 will be for an exclusive licence or for multiple licences for different products.

The legislation entitles Tattersall's to a licence until 30 June 2007 subject to that provider meeting certain conditions. However, the legislation does not provide a guarantee of exclusivity. The Government may issue one licence, if it is convinced that is the best option, or additional lottery licences effective from 1 July 2004. The Government will inform itself of the best course of action by 1 July 2002.

The Victorian Government believes that the *Public Lotteries Act 2000* strikes an appropriate balance between the possibility of new entrants in the medium term and, most importantly, a new, competitive and sustainable national market in the long-term.

The Government notes especially that the June 2004 expiry of exclusivity is earlier than the other major States. The Victorian Government hopes that other Australian State and Territories, especially those that have retained exclusive licensing, also move to the national competitive lotteries market.

## 23.4 Enhancing Probity

The Victorian Government believes in strong probity of the gaming industry. The Government defines probity to include increased transparency and accountability of the industry to Parliament and the wider community. It is for this reason that the Government introduced the *Gambling Legislation (Miscellaneous Amendments) Act 2000.*

This legislation ensures mandatory provision of reasons for decisions, probity enhancing measures and the strengthening of enforcement provisions. In addition, the VCGA will be required to conduct open hearings and sessions, and the community now has access to information about applications and a range of other regulatory information. These reforms were part of the Government's comprehensive approach to increasing transparency in gaming that included the release of the Second Triennial Review of the Casino and the casino tender documents.

Importantly, the Government also established a more arm's length relationship between the gaming industry and Government by discontinuing the inappropriate government promotion of gaming. The Government amended the objects of the VCGA to remove the promotion of tourism, employment and economic development generally in the State. This will allow the VCGA to focus on its key objectives, which include administering more efficient and effective regulation and the fostering of responsible conduct of gambling activities.

## 23.5 Gaming Machine Legislation

Gaming machines play an important part in the Government's gambling policy agenda for various reasons including their popularity with consumers, their contribution to State revenue and the higher incidence of problem gamblers who play on machines compared to others forms of gambling.

As part of the Government's NCP commitments, an independent consultant completed the review of the *Gaming Machine Control Act 1991* and other relevant legislation in late 2000. The consultant was charged with considering the social costs and benefits of further liberalisation of the market in the context of better serving the public interest. In particular, the terms of reference included an examination of the impact on competition of:

- licensing two gaming operators. The review should recognise that the Government will continue to uphold all its contractual agreements;

- gaming machine ownership. This includes the 50:50 split of gaming machines between hotels and clubs;

- consideration of the concentration of gaming venue ownership and the emergence of 'quasi clubs';

- the allocation of at least 20 per cent of gaming machines outside the casino to non-metropolitan Victoria;

- the numbers of gaming machines per venue; and

- betting limits on gaming machines.

The review specified that the contractual agreements to 2012 between the Government and Tattersall's and Tabcorp would be honoured. This decision was informed by the same consideration as the decision to honour exclusive licence franchises for the casino and lotteries.

The NCP review has since been submitted to the Minister for Gaming for his consideration. The Government will announce its response to the review in due course.

## 23.6 Responsible Gambling Legislation

Through its *Gambling Legislation (Responsible Gambling) Act 2000* the Government introduced key reforms to help combat problem gambling. The legislation was the result of a comprehensive public consultation process where:

- over 200 submissions were received;

- more than 500 people attended a series of gaming forums held at 10 venues across the State;

- several hundred calls were made to the responsible gambling hotline; and

- just over 1000 people accessed the paper directly from the Internet.

Noteworthy also was the response from a wide variety of stakeholders including from the gambling industry and welfare groups. The diversity of opinions gave the Victorian Government a comprehensive overview of the issues behind the adverse effects of gambling and ways to promote responsible gambling. Importantly, the information received was invaluable in ascertaining the public interest.

The Act promotes responsible gambling by restricting competition through a freeze on gaming machine numbers, restrictions on 24 hour trading, regional caps on gaming machines and provision for advertising restrictions. These measures are consistent with the COAG strategy adopted on 3 November 2000. No alternative non-competitive restrictive means of meeting the objectives were identified. It is the Government's view that, on balance, the benefits of these restrictions to the Victorian community in addressing problem gambling outweigh the costs. An examination of individual reforms highlights the net public benefits from the legislation.

Firstly, the Act provides local councils with the opportunity to comment on the impact of applications to the VCGA for new gaming venues and for extra machines at existing venues. This will ensure that a wider range of opinions is sought and that, importantly, potential venue operators and the wider community consider the economic and social implications of additional gaming machines.

The introduction of regional caps on gaming machines was another critical initiative in the Government's fight against problem gambling and to protect vulnerable communities from the adverse economic consequences of oversupply of gaming machines. Regional caps will be put in place in areas where gaming machines are likely to cause harm. Importantly, implementation of the regional caps policy will treat all venue types equally, including the small club sector, while meeting the public's expectations of a cap on machines in vulnerable communities.

This policy was the result of the Government taking into account the economic and social costs and benefits after consulting with industry, the wider public and specific communities at risk. It should be noted that caps were the subject of an independent report that clearly demonstrated the importance of addressing gaming on a regional basis. The Victorian DTF undertook significant research on this issue.

The Government appreciates that, while there may be adverse side effects of the cap on venue operators and some recreational gamblers, it believes that its main effect of reducing accessibility in key regional areas will help stem problem gambling and that this benefit outweighs any cost. Again, the cap forms an important part of the Government's multi-faceted gambling strategy. As the NCC notes in its *NCP – Third Tranche Assessment Framework* paper, the overall impact of gaming machine caps will depend on other aspects of the policy environment.

The Government's responsible gambling legislation also provides for enhanced consumer protection in that players of gaming machines are to be given information relevant to gaming on gaming machines and for the regulation of advertising in relation to gambling in general. In addition to improving market information, and therefore market efficiency, the Government believes that better information will help players' understanding of games being played and, in the process, help tackle problem gambling. Following public consultation, draft advertising guidelines were considered by the Victorian ORR and a Regulatory Impact Statement was released for further consultation. Advertising guidelines were also among the harm minimisation measures that the PC supported in its gambling report.

The Government has also legislated to limit the operation of 24 hour gaming venues in Victoria. In rural areas, new 24 hour gaming venues are banned. In the metropolitan areas, no new 24 hour gaming venues are allowed without a demonstrated net economic and social benefit. In implementing this policy, the Government intended that 24 hour gaming should not be permitted outside of Metropolitan Melbourne and that there must be a break from gaming each day. The ban will help to ensure that individuals, in particular problem gamblers, do not spend excessively long times playing gaming machines and, consistent with their own and the wider public interest sentiment, take a break from gambling.

The ban on 24 hour gaming venues was not extended to the casino due to contractual arrangements. Furthermore, in the interests of a level playing field in the metropolitan Melbourne area, the ban was not extended to non-casino gaming venues. The Government is monitoring the effectiveness of this reform.

## 23.7 Gaming and Minors, Gaming Venue Design

The Government has recently acted in the public interest to improve safeguards for individuals, especially children.

The *Gaming No.2 (Community Benefit) Act 2000* bans machines that offer cash prizes or cash redeemable prizes in amusement, tourist or recreational centres. These machines are usually found in amusement centres where children attend. It is the Government's view that these machines may act to induce children to gamble. Furthermore, under the *Public Lotteries Act 2000*, minors will now not be able to purchase lottery tickets.

Ministerial Directions also ban electronic gaming machines in unrestricted areas where minors are allowed. This restriction will remove the undesirable situation of exposing children to a poker machine environment. In a similar vein, the Government legislated that patrons should not have to pass through the gaming room in order to access any other part of a venue.

The requirement that physical barriers be used to separate restricted gaming rooms from other parts of the venue will also assist in clearly distinguishing gaming areas from other parts of the venue.

Bingo games are often held by community organisations to raise revenue with a portion going to the organising venue. Through the *Gaming No.2 (Community Benefit) Act 2000*, the Government legislated to guarantee that a portion of bingo revenues go to charity and community groups. This proposal arose as a result of the gradual erosion of proceeds from games due to bingo venues being able to exercise their excessive market power over clubs and charities to siphon off game proceeds. To ensure greater competition and also to provide community groups with another avenue for revenue raising, the Act removes an impediment to community and charitable fundraising by allowing community and charitable bodies to use trade promotion lotteries as an adjunct to their charitable activities.

## 23.8 Planning

In an effort to lessen the impact of gambling on local communities and, in particular, small business, the *Planning and Environment Act 1987* was changed in order to give effect to three initiatives. These include:

- the requirement that a venue operator obtain a planning permit from the municipal council before establishing a venue which occupies more than 25 per cent of the floor area of the licensed premises where liquor is consumed;

- the banning of new gaming venues in specific shopping complexes across Victoria; and

- the banning of new gaming venues in many strip shopping centres (broadly defined as two or more adjoining buildings mainly used for shops located in business zones). In most districts the provision only applies to those centres which have been specified by the council in the scheme.

Complementary to these reforms are the Government's moves to place an increased emphasis on applying social and economic benefit tests in gambling, for example, in the placement of new gaming venues in municipal areas, especially those operating for 24 hours.

## 23.9 Interactive Gambling

In light of the worldwide growth in interactive gambling and the need to adequately protect consumers, the Victorian Government regulated interactive gambling in Victoria through the *Interactive Gaming (Player Protection) Act 1999*. The Act was passed by the previous Government in June 1999 and proclaimed by the current Government on 9 November 2000. The Act introduces various restrictions to ensure adequate protection for consumers of interactive gambling services. Players will be protected by measures that:

- ban the use of credit betting;
- restrict access to minors;
- involve strict player registration guidelines;
- have self-exclusion;
- detail operator licensing procedures;
- set betting limits; and
- ensure there is a minimum seven-day cooling-off period before increasing a bet limit.

The Commonwealth Government's *Interactive Gambling (Moratorium) Act 2000* came into effect on 22 December 2000. Broadly, the Act prohibits a person from providing an interactive gambling service unless the person was already providing the service before 19 May 2000.

The Victorian Government believes that the Commonwealth's proposal to ban Internet gaming is unworkable and fails to adequately protect consumers who wish to use these services. The Commonwealth legislation may also act to slow e-commerce transactions and the growth of the Internet across the board.

## 23.10 Review of Club Keno Legislation

The *Club Keno Act 1993* was reviewed and a report submitted to the Treasurer in September 1997. The current Government is considering its response.

## 23.11 Review of Racing and Betting Legislation

The Government has continued with the reform of racing and betting legislation. The former Government commissioned the independent consulting firm, CIE, to undertake this report during 1998. CIE consulted widely throughout the racing and gaming industry in the course of preparing the report and received over 30 written submissions.

The current Government released the CIE report in January 2000 and released its response to the report in August 2000.

The pieces of legislation reviewed by CIE were:

- *Racing Act 1958*;
- *Gaming and Betting Act 1994* as it relates to betting;
- *Lotteries Gaming and Betting Act 1966* – Part 3, Part 4 (except Division 7) and Part 5 (except Sections 69, 72 and 73); and
- *Casino Control Act 1991* – Part 5A and other provisions as they relate to the conduct of approved betting competitions.

The Government welcomed the report as a way of indicating the ways that the racing industry in Victoria may develop, expand and operate more effectively and efficiently. In broad terms, the Government response indicated that:

- it will remove any unnecessary competitive restrictions, except where there is an overriding community benefit;
- it supports in principle the opportunities that alternative codes and proprietary racing may provide and will not maintain legislative obstacles where there are viable alternatives proposed that would contribute to the racing industry; and
- implementation of some proposals is best advanced at a national level. Where appropriate, the Victorian Government will actively promote deregulation at an inter-jurisdictional level.

The Government has begun a process of reform following its review. The Government's response to CIE's recommendations and its actions are set out below.

### *23.11.1 Other codes of racing*

The Government supported CIE's recommendations that other codes:

- be given an opportunity to demonstrate to a Ministerial committee that they have sufficient integrity architecture to offer their sports as potential totalisator betting product; and
- be granted access to racing personnel (such as jockeys) and to established racecourses.

An independent panel comprising racing, corporate governance and business experts will now conduct the assessment process. Legislative restrictions on other codes accessing racing personnel are to be removed by the *Racing and Betting Acts (Amendment) Bill 2001*. Access to racecourse venues is not restricted by legislation.

### *23.11.2 Proprietary racing*

The Government supported the CIE recommendation that "until such a time as proprietary racing interests can provide detailed, costed recommendations for their independent regulation, it is recommended that the ban on proprietary racing remain". The Government issued a public invitation in April 2000 seeking expressions of

interest with only one substantive submission received from Teletrak Australia. The Government is currently engaging independent consultants to conduct an assessment of the company's proposal.

### *23.11.3 Additional sports betting licences*

The Government did not support the CIE recommendation that additional sports betting licences be made available. There is an overriding community benefit from continuing the current arrangements rather than legislating to enable a proliferation of sports betting licences.

### *23.11.4 Off-course sports bookmaking*

The Government did not support the CIE recommendation that sports bookmakers be allowed to utilise hotels and clubs as agencies or to field at sporting events. Recent legislation has allowed sports bookmakers to conduct 24 hour trading at approved racecourses. Further broadening the range of venues will not assist in preventing the proliferation of sports betting outlets. Attendant costs for adequate central monitoring and supervision were also a factor in the Government's decision.

### *23.11.5 Various bookmaking issues:*

#### 23.11.5.1 Minimum telephone bet limits

The Government supported CIE's recommendation that these limits be abolished. To minimise any adverse impact on the racing industry, and having regard to responsible wagering issues associated with off-course access to bookmakers, the Government proposed to commence a phased reduction of the limits commencing in July 2001.

#### 23.11.5.2 Dissemination of betting odds during race meetings

CIE recommended a removal of restrictions. The Minister has power to approve dissemination in any circumstances and has exercised this power in a number of specific cases. To date however, the bookmaking profession has not sought approval in respect to any general release of pre-race fluctuations. Dissemination of odds is a national issue and needs to be examined in this context.

#### 23.11.5.3 Interstate advertising restrictions

The Government supported in principle CIE's recommendation to remove interstate advertising restrictions, despite Victorian bookmakers being disadvantaged by allowing interstate operators to advertise in Victoria if reciprocal access is not available to Victorian operators. This highlights the case for a national approach to advertising/access issues. The Government is advancing national reform through the Australian Racing Ministers' Conference.

### 23.11.5.4 Incorporation and partnerships

The Government accepted CIE's recommendation regarding the support of incorporation and partnerships. The Government is prepared to remove legislative impediments to forming partnerships and incorporation of bookmakers, subject to appropriate mechanisms to exclude undesirable persons acting as directors or managers of those corporations. The bookmaking profession is being consulted on this issue.

### 23.11.5.5 24 hour Internet trading for race betting

The Government supported CIE's recommendation that bookmakers be allowed to operate on racing on a 24 hour basis using the Internet. The Government is willing to remove restrictions on 24 hour trading on race meetings for appropriately monitored telephone or Internet betting. A submission in relation to sports bookmaking is pending.

### 23.11.5.6 Tipping services

The Government supported CIE's recommendation to deregulate tipping and similar betting information services. These services will be subject to regulation by general consumer protection legislation. Deregulation will be effected by the passage of the *Racing and Betting Acts (Amendment) Bill 2001*.

# 24. Child Care

- Child care issues in Victoria are addressed through a balanced approach to the achievement of economic and social objectives in the public interest.
- Victoria has not listed its legislation for review as the *Children's Services Act 1996* was passed after the commencement of National Competition Policy.
- The continued application of Competitive Neutrality policy to child care requires councils to examine the full cost of services and related social policy objectives to ensure appropriate resource allocation decisions are made.

Child care in Victoria is an important social policy issue. In developing legislation and delivering services relating to child care, the public interest is a significant factor. However, notwithstanding the overriding importance of the public interest associated with child care, how these objectives are achieved and the economic consequences of service delivery and legislation, need to be considered under competition principles including CN.

## 24.1 Child Care in Victoria

The Victorian Government is committed to supporting families in caring for their children in their early years by ensuring that all children are given the opportunity to access high quality children's services. The provision of quality local services for young children and families is seen as being fundamental to the wellbeing of the community.

The DHS is responsible for licensing children's services in Victoria. As at 30 June 2000, there were approximately 2,850 licensed centre-based services providing almost 100,000 places for children aged 0–6 years. In addition, Victoria either funds directly or manages the distribution of Commonwealth and State Government funding to approximately 1,600 agencies providing children's services. There are approximately 2,100 service delivery locations across the State.

A range of providers is responsible for the delivery of these services including committees of management, local government, companies, tertiary education institutions, non-government schools, government schools and private individuals.

Victoria is committed to the development of flexible, integrated services, enabling families to access a range of services at the one location. For example, while the role of the preschool program has remained consistent for a number of years, there is now greater variety in how the program is delivered. Preschool can operate as a stand-alone service, or can be delivered as part of, or alongside, other forms of part day or long day care in State primary schools. An increasing number of long day care centres are offering a funded preschool service, with 463 long day care centres (approximately 26 per cent) receiving preschool funding in 2000. In addition, the majority of preschool providers offer other programs such as three-year-old groups, school age care and occasional care.

The Victorian Government is committed to ensuring access to preschool education for all eligible Victorian children. To this end the Victorian Government's Health Card Grant was more than doubled since the beginning of 2000. The Health Card Grant is provided to services for families on low incomes and is used to reduce fees for those families. This has resulted in the preschool participation rate increasing by 3.6 per cent between February 1999 and February 2000.

The proposed amendment to the current legislation to include Family Day Care and Outside School Hours Care will take full account of the NCP requirement to meet the public interest test and include a consultation phase. The Bill is expected to be tabled in the Spring 2001 sittings of Parliament.

## 24.2 Legislative Review

Victoria has not listed its legislation for review as the *Children's Services Act 1996* was passed after the commencement of NCP. The previous government approved the legislation as being competitively neutral and compliant with public interest test requirements. Therefore, it was unnecessary to review this Act.

The *Children's Services Act 1996* replaced Part XI of the *Health Services Act 1988* and modified the licensing scheme for children's services in Victoria. One of the major changes involved a change from the registration of premises under the *Health Act 1958* to the licensing of proprietors under the *Children's Services Act 1996*.

Those children's services that are funded or owned by local government are subject to the same legislative requirements and fees as privately funded centres.

The Children's Services Regulations underwent an exhaustive regulatory impact process prior to their commencement. This process involved comprehensive consultation with the sector and endorsement by the ORR.

Any future legislation will of course be subject to the public interest test under NCP.

## 24.3 Competitive Neutrality and Child Care

CN applies to all significant public business activities in Victoria including child care services. However, under the new CN policy, any government business — including child care centres owned and operated by local government — can justify not implementing CN measures, if it is shown that implementation of CN measures to the business in question, is "not in the public interest".

Child care is something of a special case in the application of CN which, in accordance with the CPA, is to be applied across all significant publicly owned businesses. The Victorian Government recognises that child care is generally provided by local councils in response to specific community needs and public policy objectives. However, it is not always the case that the full cost of the provision of child care is transparent and therefore recognised by councils or their constituents. Consequently, the continued application of CN policy to child care requires councils to examine the full cost of services and related policy objectives to ensure appropriate resource allocation decisions are made. The case study in Box 24.1 describes the outcome of one such review process.

A key feature of the new CN policy is the public interest test which allows government businesses to balance CN objectives with other policy objectives, including Best Value and social policy objectives relating to the provision of child care, in an open

and transparent manner. Fundamentally, CN is about making appropriate resource allocation decisions and a starting point for this is understanding the full costs associated with running the business. This is amply demonstrated in the case study shown below, and is a requirement of both the Best Value and CN policies.

Publicly owned child care facilities frequently operate in competition with private sector child care providers. It is appropriate that in determining fees, the council considers the specific market or circumstances that the public policy objectives are addressing. This environment may change over time. Best Value principles will prompt the consideration of options in addressing these changed priorities.

**Box 24.1: Better resource allocation — Child care facilities (source: City of Casey)**

The City of Casey listed two child care facilities in its 1999–2000 CN Compliance Statement:

- a long day care centre; and
- an occasional day care centre for respite relief.

These are jointly located in the one site known as the Webb Street Centre. Until 1998, Council operated two other child care centres: Tarlina Child Care Centre in Endeavour Hills and Kalparrin Child Care Centre in Berwick. These centres were both long day care centres for 35 children. In 1998, they had 70–75 per cent utilisation and a day to day operation loss of $32,580 per year and $16,514 per year respectively. This loss did not include the full cost reflective pricing considerations of a return on capital for land and building, etc.

The operation of these centres was structurally reviewed and Council closed both in 1998. They were closed because of their low utilisation, financial loss and the fact that larger capacity, more efficient private child care centres were being built throughout the developing municipality. The community was not losing any services because of these closures.

Another structural review of the dual childcare facilities in Webb Street is being carried out at present. The centre is operating at a substantial loss because of its uneconomic small-child capacity. Council is soon to consider its options for these centres to minimise the level of subsidy. There are 49 private long day childcare centres in the municipality. However, occasional care for respite relief is not widely available within this market catchment and this situation is likely to remain.

The full subsidy is calculated each year using full cost reflective pricing principles. A competitor analysis has been carried out within the market catchment to ensure the operation minimises any deterrent to these other competitors.

No CN complaints have been made regarding Council's child care centre and the public interest has been met.

Under the Victorian Government's new CN policy, Government businesses can apply a public interest test if the activities of the business have broader social, environmental and public policy objectives which may be compromised by the implementation of a CN measure. Because of the inherent social policy issues involved, child care is an example of where a public interest test is likely to be required prior to the application of CN pricing.

In undertaking the public interest test, child care providers are required to explore a range of options, including CN pricing. The process involves clarifying the public policy objectives, scoping the market, consulting all relevant stakeholders (including

competitors), and identifying the costs and benefits of different approaches (including suggestions of stakeholders) to determine which option would most benefit the community.

Finally, the CN policy requires the process and any subsidy provided to be transparent and publicly documented.

The treatment of child care issues in Victoria involves a balanced approach to the achievement of economic and social objectives in the public interest.

# 25. Planning Construction and Development Services

- The review of the *Planning and Environment Act 1987* found that in the main Victoria's planning legislation achieved its objectives in an effective and efficient manner and that the restrictions identified were in the public interest.
- The review of the *Architects Act 1991* found that the community derived a net benefit from these restrictive provisions, primarily through consumer protection, and recommended their retention.
- The review of the *Surveyors Act 1978* identified that the entry barrier to the profession provided a net benefit to the community and recommended its retention, but recommended the removal of other restrictions.

## 25.1 Planning and Building Approvals

The Victorian review of the *Planning and Environment Act 1987* and its subordinate legislation was completed in early 2001. Planning Legislation may restrict competition both in the market for the use and development of Victorian land, and the markets for the provision of the range of goods and services which may be produced or provided using land. This encompasses most businesses.

The review found that in the main Victoria's planning legislation achieved its objectives in an effective and efficient manner and that the restrictions identified were in the public interest. The review made a series of recommendations aimed primarily at improving the manner in which the Act is administered to ensure that effectiveness and efficiency is improved and maintained. These recommendations are not just consistent with NCP principles and objectives, but also consistent with principles of good regulatory design.

The Government is yet to respond to the review's recommendations.

## 25.2 Architects

Victoria did not participate in the PC review, choosing instead to subject the *Architects Act 1991* and subordinate legislation made under that Act to independent NCP review in 1998–99. Victoria's building legislation was reviewed as part of the same exercise. This was, in part, to enable consideration of any opportunities to integrate Victoria's building and architectural legislation.

The key market restrictions identified in the Victorian review relate to constraints on the use of the title "architect" to registered architects, and controls on the ownership of organisations using the title "architect". The review found that the community derived a net benefit from these restrictive provisions, primarily through consumer protection, and recommended their retention.

The Victorian Government is consulting with the public and stakeholders in developing its response to the review of the *Architects Act 1991*. In its response, the Government will consider, among other issues, opportunities to increase regulatory consistency across the States and Territories. Victoria is participating in a States and Territories working group, chaired by New South Wales, that will recommend a response to the PC inquiry.

## 25.3 Surveyors

Victoria has a Torrens system of land title registration whereby the Government keeps a central register of land ownership rights, restrictions, valuations and improvements, and guarantees ownership according to this register. This system significantly lowers transaction costs and reduces uncertainties in the property market. Cadastral surveyors are an essential part of the Torrens system as they record the information that allows the land parcels and related interests to be identified and recorded with certainty.

In order to protect the integrity of the land registration system, the Government regulates entry to the market for cadastral surveying. That is, the Government considers that it is not sufficient (or efficient) to allow markets to determine what constitutes a good survey. One poor survey could impact on several title holders and the Government's ability to guarantee title, thus creating a negative externality. Therefore competition in the market for cadastral surveying services is restricted to licensed surveyors.

The Victorian Government has undertaken a review of the *Surveyors Act 1978*. The review identified that the entry barrier to the profession provided a net benefit to the community and recommended its retention, but recommended the removal of a number of restrictions. The Victorian Government has substantially accepted the recommendations of the review. Amending legislation is planned for the Autumn 2001 sittings of Parliament.

The Victorian Government's view is that the surveying profession should be encouraged to develop its own registration system within a framework set and monitored by Government to ensure the integrity of the land registration system.

# Appendix to Chapter 9: Water

# Appendix A

**Table A1: Full Cost Recovery in the Rural Sector**

| | First Mildura Irrigation Trust | Gippsland and Southern | Goulburn Murray | Sunraysia | Wimmera Mallee |
|---|---|---|---|---|---|
| **Revenue** | | | | | |
| Bulk, service and usage | 3 600 | 12 908 | 54 692 | 10 822 | 13 096 |
| Other | 220 | 999 | 22 710 | 1 831 | 2 062 |
| | **3 820** | **13 907** | **77 402** | **12 653** | **15 158** |
| **Expenses** | | | | | |
| Operations, maintenance and administration | 2 550 | 9 410 | 67 945 | 8 717 | 10 379 |
| Finance charges | 0 | 0 | 240 | 0 | 326 |
| Other | 480 | 0 | 2 524 | 262 | 943 |
| Renewals Annuity | 950 | 2 724 | 13 763 | 2 081 | 2 353 |
| | **3 980** | **12 134** | **84 472** | **11 060** | **14 001** |
| **Surplus** | **(160)*** | **1 713** | **(7 070)*** | **1 593** | **1 157** |

**2000-2001 Forecast**

Note – These figures should only be used as a rough indication of cost recovery because they merely show cost recovery levels at a point in time and do not account for the ten year rolling average of sales. Unexpected shocks to revenue (e.g. no sales water available on Goulburn System for the last 3 years) have lead to forecast under recovery for the two asterisked (*) authorities in 2000-01.

# Appendix B

## B.1 Current Institutional Arrangements

The current institutional arrangements for Victoria's water industry are complex - five separate arms of government have direct roles of one form or another. While these arrangements will be reviewed in conjunction with the proposal to establish the ESC, a brief summary of the current institutional arrangements is set out below. When considering Victoria's institutional arrangements, it is appropriate to consider the arrangements for the three main sectors – metropolitan, NMU and rural water sectors.

## B.2 Metropolitan Sector

### *B.2.1 Service Provision*

Service provision in the metropolitan is provided by four corporatised entities – three retail water businesses and Melbourne Water Corporation (Melbourne Water). The three metropolitan retail water businesses, Government-owned Corporations Law companies with operating licences under the *Water Industry Act 1994* provide residential, commercial and industrial customers within the Melbourne metropolitan area with water and wastewater services. Melbourne Water, a statutory authority that derives its corporate form from the *Melbourne Water Corporation Act 1992* and from being a reorganising body under the *State Owned Enterprises Act 1992*, supplies wholesale water and sewerage services principally to the metropolitan retail water businesses as well as main waterway and drainage services in the metropolitan area.

The Minister for Environment and Conservation is the relevant portfolio Minister for these four businesses and is the joint shareholder of Melbourne Water with the Treasurer. The Treasurer is the sole shareholder of the three retail businesses and has responsibilities in relation to the financial performance of the retail businesses.

### *B.2.2 Regulatory and Policy Roles*

The key regulatory and policy roles for the metropolitan sector are set out in the table below:

**Table B1: Regulatory and Policy Roles for the Metropolitan Sector**

| Function | Regularity Responsibilities | Policy and Standard Setting |
|---|---|---|
| Pricing | Governor-in-Council (on recommendation of the Minister for Environment and Conservation) | Minister for Environment and Conservation |
| Customer Service and Performance Standards | Regulator-General | Regulator-General (via customer contract), Governor-in-Council (on recommendation of the Minister for Environment and Conservation). |

| Function | Regularity Responsibilities | Policy and Standard Setting |
|---|---|---|
| Drinking Water Quality | Regulator-General, Minister for Health and Minister for Environment and Conservation | Minister for Environment and Conservation and Minister for Health |
| Environmental | EPA | Governor-in-Council (via SEPP on recommendation of the Minister for Environment and Conservation) |
| Resource Management | Minister for Environment and Conservation | Minister for Environment and Conservation |

# B.3 Non-Metropolitan Urban Sector

## *B.3.1 Service Provision*

Service provision in the NMU sector is provided by 15 NMUs, which are statutory authorities under the *Water Act 1989*. The NMUs are responsible for providing urban water and sewerage services in urban areas to residential, commercial and industrial customers outside the metropolitan area.

The Minister for Environment and Conservation is the relevant portfolio Minister and the sole shareholder of these authorities.

## *B.3.2 Regulatory and Policy Roles*

The key regulatory and policy roles and responsibilities for the NMU sector are set out in the table below:

**Table B2: Regulatory and Policy Roles for the Non-metropolitan Sector**

| Function | Regulatory Responsibilities | Policy and Standard Setting |
|---|---|---|
| Pricing | Minister for Environment and Conservation | Minister for Environment and Conservation |
| Customer Service and Performance Standards | Minister for Environment and Conservation | Minister for Environment and Conservation (via Water Services Agreements) |
| Drinking Water Quality | Minister for Health and Minister for Environment and Conservation | Minister for Environment and Conservation and Minister for Health |
| Environmental | EPA | Governor-in-Council (via SEPP on recommendation of the Minister for Environment and Conservation). |
| Resource Management | Minister for Environment and Conservation | Minister for Environment and Conservation. |

## B.4 Rural Water Sector

### *B.4.1 Service Provision*

Service provision in the rural water sector is provided by five RWAs, which are statutory authorities under the *Water Act 1989*. The RWAs supply rural water services for use in irrigated agriculture, drainage in rural areas, rural domestic and stock water supplies, groundwater supplies and bulk supplies to some NMUs.

The Minister for Environment and Conservation is the relevant portfolio Minister and sole shareholder for the RWAs.

### *B.4.2 Regulatory and Policy Roles*

The key regulatory and policy roles and responsibilities for the rural water sector are set out in the table below:

**Table B3: Regulatory and Policy Roles for the Rural Sector**

| Function | Regulatory Responsibilities | Policy Responsibilities |
|---|---|---|
| Pricing | Minister for Environment and Conservation (via WSCs) | Minister for Environment and Conservation |
| Customer Service and Performance Standards | Minister for Environment and Conservation | Minister for Environment and Conservation (via Water Services Agreements) |
| Water Quality | Minister for Health and Minister for Environment and Conservation | Minister for Environment and Conservation and Minister for Health |
| Environmental | EPA | Governor-in-Council (via SEPP on recommendation of the Minister for Environment and Conservation) |
| Resource Management | Minister for Environment and Conservation | Minister for Environment and Conservation |

## B.5 Summary

The current institutional arrangements involve a number of players with various roles and responsibilities in each sector of the water industry. While the current structure of the industry, Ministerial responsibilities and departmental arrangements reduce the potential for conflicts of interest, the proposed establishment of the ESC and the overhaul of the water regulatory framework will provide clearer roles and accountabilities for Government, regulators and water authorities. The introduction of the ESC will therefore provide greater institutional separation and will further minimise the potential for conflicts of interest.

# Appendix C

## C.1 Establishing the Essential Services Commission as the Economic Regulator of the Water Industry

A broad ranging work program is being developed to put the necessary legislative and regulatory framework in place to enable the ESC to assume responsibility for economic regulation of the water industry.

The outcomes of the work program for establishing the ESC as an effective economic regulator of the water industry will include:

- new state-wide legislation which establishes the role of the ESC for the water sector and puts in place regulatory arrangements which recognise the diversity of the sector and meet Government objectives for the sector;

- ESC obligations and transitional responsibilities established with respect to the three-year price paths set in the 2001 Price Review and the future application of the pricing policy framework; and

- explicit obligations for the businesses either set out in legislation, licences or other appropriate regulatory tools.

This will involve work in the following key areas.

### *C.1.1 Regulatory and Institutional Arrangements*

With respect to regulatory and institutional arrangements, the work program will involve:

- establishing clear roles and responsibilities for the ESC – The central task will be to map out the future role and responsibilities of the ESC in the water sector, having regard to the sector's diversity and unique characteristics.

- clarifying other roles and relationships – Current regulatory arrangements are deficient. To realise the benefits of independent regulation, the roles and responsibilities of Government, regulators and water authorities should be set out in a comprehensive, statewide regulatory framework.

- incorporating the Government's view on the role of competition – Restrictions on competition in water legislation are currently being reviewed as part of the State's NCP commitments. Decisions on the extent to which competition can be encouraged in the context of the Government's commitment to public ownership of water businesses must be incorporated in new regulatory arrangements.

### *C.1.2 Implementation of Price Paths and Pricing Policy Framework*

Where responsibility for pricing has been transferred to an independent regulator in the past (electricity, gas, ports and transport), the Government has set the pricing policy framework and an initial medium term price path for the new regulator to

manage. The work to develop this framework is underway and forms part of the 2001 Price Review, discussed in Section 1 above. Once the pricing policy framework is finalised, it will be necessary to establish the ESC's obligations and transitional responsibilities with respect to the three-year price paths and the future application of the pricing framework.

### *C.1.3 Specification of Water Businesses' Obligations*

Certainty as to the obligations upon water businesses is also critical for effective economic regulation. A deficiency of current regulatory arrangements, in particular outside metropolitan Melbourne, is the absence of any explicit regulatory tools for placing customer service obligations on water businesses or defining resource management obligations. Water businesses also lack an explicit charter with respect to the Government's triple bottom line objectives.

In the metropolitan retail sector, performance standards are set out in operating licences and customer service standards in customer contracts. In the absence of licences, water services agreements have been developed which spell out the Government's expectations of NMUs and RWAs.

Therefore, the overhaul of regulatory arrangements will involve developing explicit regulatory tools and establishing clear accountabilities to address these deficiencies.

### *C.1.4 New Legislation*

A substantial overhaul of regulatory arrangements is foreshadowed which will need to be underpinned by new legislation. This could be achieved by substantial amendment of the current Acts, but the preferred approach is to develop a new piece of legislation dealing with regulation of the water industry, to either form a new part of the *Water Act 1989* or replace the *Water Industry Act 1994*. Developing new industry legislation for the water businesses is a substantial task.

# Appendix D

## D.1 Progress on Agreed Second Tranche Implementation Program

### *D.1.1 Water Allocation and Trading Framework*

#### D.1.1.2 Bulk Entitlement Program

Comment on progress shown in *italics.*

**1999**

**Bulk Entitlements finalised and granted**

- all Murray Bulk Entitlements to Urban and RWAs - completed
- Campaspe System Bulk Entitlements - completed
- Maribyrnong - completed
- Central Highland major urbans – negotiations finalised

**Conversion process actively progressed**

- Thomson/Macalister Bulk Entitlements – negotiations finalised
- Melbourne – actively progressed
- Tarago System– actively progressed
- Barwon River– actively progressed
- Ovens River– actively progressed
- Broken River– actively progressed

**Management of Entitlements**

- new data base completed and populated - completed
- Basin accounts published (for completed systems) – accounts published for major completed systems
- progress documentation of model runs – data updated and documented, specification reports to be prepared.

## 2000

### Bulk Entitlements commenced and/or continuing

- Thomson/Macalister Bulk Entitlements– negotiations finalised
- Melbourne– awaiting review of approach to conversion – environmental assessment continuing
- Tarago System– awaiting review of approach to conversion – environmental assessment continuing
- Barwon River– actively progressed
- Ovens River– actively progressed
- Broken River– actively progressed

### Conversion process not yet commenced

- Loddon River – not commenced
- Birch Creek – not commenced
- Wimmera-Mallee D and S System – processed commenced late 2000
- Grampians urbans – processed commenced late 2000

### Management of Entitlements

- Basin accounts published (for completed systems) – accounts published for major completed systems
- resource management arrangements reviewed – reviews undertaken for resource manager appointments
- progress documentation of model runs– data updated and documented, specification reports to be prepared

## 2001

### Bulk Entitlements finalised and granted

- all remaining major systems – remaining major systems will commence at the completion of Ovens and Broken Systems – expected completion 2003
- progress documentation of model runs

## *D.1.2 Management of Unregulated Rivers*

### D.1.2.1 Streamflow Management Plans (SFMPs)

#### 1. Criteria for Setting Priorities for SFMPs

In the context of the work program for the development of SFMPs, the following criteria were used to set priorities:

- level of consumptive use (ie. ecological impact due to changed flow regimes);
- conservation value;
- demand for new licences;
- frequency of rosters/restrictions;
- history of management problems;
- recreational value; and
- community expectations of the need for a SFMP.

#### 2. Three Year Work Program

Progress against the agreed second tranche implementation program is set out in the Table D1 below. The current status of each SFMP is presented in terms of the key milestones:

- development of background report from collation of existing information on environmental values, hydrology and water use;
- commencement of environmental flow study;
- establishment of a steering committee from key water use, environmental and recreational stakeholders;
- development of hydrologic model;
- development of draft plan;
- release of draft plan for public comment; and
- submission of final plan to Government.

Delays experienced in the preparation of SFMPs are mainly due to:

- the environmental flow methodology requires a reasonable range of flows during survey periods. The 1998 to 2000 drought resulted in delays of more than a year in obtaining survey results. This survey methodology is currently being reviewed and a likely change is to reduce the dependence on needing to do surveys over a wide range of flow conditions; and
- many of these high priority SFMPs are over-allocated. This means that, to meet the minimum environmental flows, major reduction in licensed use will be required and the consequences in terms of farm viability are likely to be extreme. The usual approach for dealing with this is to negotiate an interim environmental flow with a timeframe for meeting the target minimum environmental flow. Difficulty arises if, to meet the target flow, there is need for major investment in water savings or reduction in water use.

**Table D1: Progress Against the Agreed Second Tranche Implementation Program**

| Second Tranche Estimated Timing | River | Current Status (Milestones Achieved) | Revised Timetable |
|---|---|---|---|
| **In preparation Completion date:** | | | **Completion Date** |
| Dec 1999 | Merri River (draft plan prepared | 1,2,3,4,5,6,7 | June 2001 |
| Dec 1999 | Gellibrand River (draft plan prepared) | 1,2,3,4,5,6,7, | June 2001 |
| Jun 2000 | Moorabool River | 1,2,3,4,5 (under developed) | June 2001 |
| Jun 2000 | Upper Maribymong River | 1,2,3,4,5 | June 2001 |
| Dec 1999 | Upper Latrobe River | 1,2,3,4,5,6,7 | Dec 1999 |
| Mar 2001 | Kiewa River | 1,2,3,4,5 | June 2001 |
| Mar 2001 | Hoddles Creek | 1,2,3,4,5,6 | June 2001 |
| **To commence in 1999:** | Avon/Valencia/ Freestone Creeks | 1,2,3,4,5 | June 2001 |
| | Barwon/Leigh Rivers | 1 (under development) | June 2002 |
| | Hopkins River | 1 | June 2002 |
| | Mitchell River | 1 | June 2002 |
| To Commence in 2000 | Morwell River | 1 | June 2002 |
| | Tara River | 1 | June 2002 |
| | Narracan Creek | | |
| | Snowy River | | |
| | Tambo River | | **To commence in 2001** |
| **To commence in 2001** | Bunyip/Tarago River | (Now under BE) 1,2,3 | **To commence in 2001** |
| | Moe River | | |
| | Albert River | | |
| | Dandenong Creek | | |
| | Fitzroy River | | |
| **To be commenced by 2001** | | | **Completed by** |
| | Owens River above Myrtleford | 1,2,3,4, | June 2002 |
| | Yea River | 1,2,3,4,5 | June 2001 |
| | King Parrot Creek | 1,2,3,4,5 | June 2001 |
| | Seven Creeks | 1,2 | June 2002 |
| | Delatite River | | June 2002 |
| | Nariel Creek | 1,2 | June 2001 |
| | Loddon above Cairn Curran | 1 | June 2002 |
| | Diamond Creek | 1,2,3,4 | Dec 2001 |
| | Plenty River | | |

| Second Tranche Estimated Timing | River | Current Status (Milestones Achieved) | Revised Timetable |
|---|---|---|---|
| **To be commenced by 2001** | Woori Yallock Creek<br><br>Badgers Creek<br>Watts River<br>Stringy Bark Creek<br>Wandon Yallock Creek<br>Little Yarra<br>Steels Creek<br>Merri Creek | | **To commence in 2002**<br>or later |

## *D.1.3 Management of Stressed Rivers*

### D.1.3.1 River Restoration Plans

RRPs are being developed for priority flow stressed rivers where the environmental provisions made through the Bulk Entitlement process are considered to be insufficient to meet environment objectives. RRPs build on the current environmental provisions. They set clear environmental objectives, set priorities for any additional water, identify mechanisms to provide additional water, identify complementary instream and riparian habitat works that will maximise environmental gains and establish agreed cost-sharing for implementation.

Key milestones in the RRP process include:

- collation of existing information on environmental values hydrology and water use;
- commencement of environmental flow study;
- establishment of steering committee from key water use, environmental and recreational stakeholders;
- development of draft plan;
- release of draft plan for public comment; and
- submission of final plan to Government.

### D.1.3.2 Progress Against Work Plan

Victoria is, in general, on target to meet the RRP work plan as outlined in the second tranche assessment report. However, there have been some minor changes to the scheduling for the agreed rivers and several new inclusions to the list of priority rivers. These are a result of three key factors:

- changes in the level of community interest in particular rivers due to severe drought in some regions of Victoria;
- an increased commitment by the new Victorian Government to comprehensive community consultation processes; and

- a strong commitment by the new Victorian Government to the rehabilitation of the Snowy River.

As mentioned in Section 3.1, the Victorian Government is currently formalising its approach to management of waterways through the development of the River Health Strategy. The method for assessing environmental flows is also being reviewed. The outcomes from these processes, when completed, will have further implications for the development of RRPs and the future work plan.

Table D2 demonstrates Victoria's progress in implementing RRPs against the agreed work plan. From this, it can be seen that progress for the Thomson, Broken, Glenelg and Lerderderg Rivers are on target. Preliminary work and determination of environmental flows has commenced for the Maribyrnong River and Badgers Creek earlier than expected. However, work on the Loddon and the Avoca is behind the forecast timelines.

Preliminary work has begun on the Avoca River. The original intention was to use the Avoca and the Thomson Rivers as case studies to inform the development of future RRPs. However, it was decided that additional work was required to assess the Victorian methodology for determining environmental flows. The Avoca River, along with the Glenelg and Wimmera Rivers are being used as case studies to assess the current methodology, and where necessary recommend improvements. The outcome will be an agreed best practice approach for determining environmental flows. Work on the Loddon will commence once the assessment of the methodology is complete.

In addition, work has begun on three rivers not included in the original work plan - the Snowy, Macalister and Wimmera Rivers.

The Macalister, while recognised as flow stressed, was not originally considered a priority. However, in consultation with the relevant CMA, it was agreed to combine the RRP processes for the Thomson and Macalister systems because of their close proximity, the similarity of issues, the common local communities and the fact that they both impact on Lake Wellington.

The Wimmera River has always been recognised as a stressed river but was not included in the original priority list because it was felt that the water savings generated for the environment from the Mallee Pipeline, would address some of the flow stresses in that system. However, now the Wimmera River has been included in the process as a result of community concern. Milestones one and two (i.e. the collation of background information and undertaking an environmental flow study) will be completed by August, as part of the assessment of the Statewide methodology. This will then feed into the Wimmera BE and SFMP, which will determine the best use of the environmental allocation generated from the Mallee pipeline. The Wimmera CMA will then integrate agreed environmental flow regimes with broader waterway restoration activities.

Restoration of the Snowy River is a major commitment of the Bracks Labor Government. Victoria, New South Wales and the Commonwealth have recently committed $375 million over ten years to restore the Snowy River and to provide additional environmental flows to the Murray. Considerable work has been undertaken to develop detailed plans for this world-scale initiative.

The future work program will involve realisation of water saving from the Murray, Goulburn and Murrumbidgee systems and trialing of innovative river restoration techniques. Victoria has initiated a trial to determine the feasibility of proceeding with

a $25 million river rehabilitation plan for the Snowy River. This trial is being overseen by a community reference panel and a scientific working group.

The original work plan will continue to be reviewed in the light of community concern and interest and Government priorities. In particular, the development of future RRPs will depend on the experience of the Thomson/Macalister River case study, the outcome of the assessment of the environmental flow methodology and the policy direction established by the government encapsulated in the River Health Strategy.

**Table D2: Progress Against the Work Plan Agreed to in the Second Tranche Report**

| River | June- Dec 1999 | | | | | | Dec – June 2000 | | | | | | June – Dec 2000 | | | | | | Dec – June 2001 | | | | | | June – Dec 2001 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Milestones | | | | | | Milestones | | | | | | Milestones | | | | | | Milestones | | | | | | Milestones | | | | | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 |
| Thomson R d/s Cowwarr Weir | ✓ | ✓ | | | | | | | ✓ | | | | | | | ✓ | | | | | | | | | | | | | | |
| Avoca R | ✓ | ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Loddon R | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Glenelg R | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | | | | | | | |
| Broken R | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | | | | | | | |
| Lerderderg R | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | | | | | | | |
| Badger Ck | | | | | | | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | |
| Maribynong R | | | | | | | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | |
| Macalister R* | ✓ | ✓ | | | | | | | ✓ | | | | | | | ✓ | | | | | | | | | | | | | | |
| Wimmera R* | | | | | | | | | | | | | | | | | | | ✓ | ✓ | | | | | | | | | | |
| Snowy R* | ✓ | ✓ | ✓ | ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | |

- Shaded areas indicate the agreed to timeframes for completing milestones.

✓ - indicates that the Milestone has been achieved or is expected to be achieved before June 2001.

* - Additional rivers not in original work plan.

## Milestones

- Collation of existing information on environmental values hydrology and water use.
- Commencement of environmental flow study.
- Establishment of steering committee from key water use, environmental and recreational stakeholderrs.
- Development of draft plan.
- Release of draft plan for public comment.
- Submission of final plan to Government.

## *D.1.4 Groundwater Management*

### D.1.4.1 Groundwater Management Plans

When allocations reach 70 per cent of Permissible Annual Volume PAV, a mechanism to establish a Groundwater Supply Protection Area (GSPA) is triggered and a Groundwater Management Plan developed. A consultative committee, comprising mainly farmers but representing all relevant interests, is responsible for developing the management plan. The management plan must address issues such as metering and monitoring, allocation arrangements including transferable water entitlements, and costs associated with implementing the plan.

### D.1.4.2 Progress to date

Progress against the agreed second tranche implementation program and revised targets and timetables is set out in Tables D3 and D4.

**Table D3: Declared Groundwater Supply Protection Areas**

| Groundwater Supply Protection Areas | Declared | Consultative Committee | Management Plan (Target) | Current Status | Revised Targets |
|---|---|---|---|---|---|
| **Completed** | | | | | |
| Kooweerup Dalmore | Long established | NA | In place | Completed | NA |
| Shepparton Irrigation Area | Sept 1985 | NA | In place | Completed | NA |
| **Underway** | | | | | |
| Denison | Nov1998 | Established | Dec 2001 | Initial Draft plan | July 2001 |
| Campaspe Deep Lead | Dec1998 | Established | Dec 2001 | Draft plan released for public comment | Dec 2001 |
| Katunga | Dec1998 | Established | Dec 2001 | Draft plan to be released for public comment by mid Feb | Dec 2001 |
| Spring Hill | Dec1998 | Established | Dec 2001 | Draft plan released for public comment | May 2001 |
| Murrayville | Dec 1998 | Established | Dec 2001 | Draft plan released for public comment | April 2001 |
| Neuarpur | Feb 1999 | Established | Dec 2001 | Draft plan submitted for approval | April 2001 |
| Yangery | Feb 1999 | Established | Dec 2001 | Draft plan released for public comment | April 2001 |
| Nullawarre | Feb 1999 | Established | Dec 2001 | Draft plan released for public comment | April 2001 |
| Sale | April 1999 | Established | Dec 2001 | Initial Draft plan | July 2001 |
| Wy Yung | May 1999 | Established | Dec 2001 | Draft plan released for public comment | April 2001 |
| Deutgam | Jan 2000 | To be established | Dec 2002 | Consultative Committee submitted for approval | Dec 2002 |
| Warrion | Aug 2000 | Established | Dec 2002 | Initial meetings held | Dec 2002 |
| Telopea Downs | Jan 2001 | To be established | Dec 2002 | Consultative Committee to be established by April 2001 | |

**Table D4: Three year program for new Groundwater Supply Protection Areas**

| Groundwater Management Areas | Current Status |
|---|---|
| Alexandra | New proposal |
| Apsley | New proposal |
| Barnawartha | New proposal |
| Bungaree | Application for GSPA submitted |
| Condah | New proposal |
| Ellesmere | New proposal |
| Gifford | New proposal |
| Kaniva | New proposal |
| Kinglake | New proposal |
| Lang Lang | Modelling under way |
| Mid Loddon | Data Collection phase |
| Mullindolingong | New proposal |
| Nagambie | Data Collection phase |
| Murmungee | Data Collection phase |
| Orbost | New proposal |
| Rosedale | New proposal |
| Seacombe | New proposal |
| Upper Loddon | Data Collection phase |
| Wa De Lock | New proposal |
| Wandin | New proposal |

# Appendix E

## E.1 Integrated Catchment Management in Victoria

### *E.1.1 Roles and Responsibilities*[15]

The Government considers that the management of Victoria's catchments is a statewide responsibility for the benefit of all Victorians. As such there are a number of regional service providers who contribute to the success of Victoria's integrated catchment management approach. A list of the major partners involved in the policy, purchase, coordination and delivery of services in catchment management, along with a summary of their major roles is set out below.

#### E.1.1.1 Catchment Management Authorities

CMAs are responsible for the development of integrated RMPs to guide future investment of Government funding in the catchment. CMA responsibilities include:

- acting as an interface between government and regional communities;
- developing ongoing review and oversight for the implementation of the RCS;
- developing action plans for specific issues (e.g. salinity);
- providing all waterway and floodplain related service delivery;
- negotiating and developing the annual RMPs to allocate resources for all catchment-related activities undertaken by a variety of service providers in the region;
- coordinating catchment-related activities, including Landcare, Natural Heritage Trust, the administration of grants and the operation of Implementation Committees; and
- providing financial reports to the Minister for Environment and Conservation in line with the Corporate Plan.

#### E.1.1.2 Implementation Committees

Implementation Committees are the conduits for local community input, and are responsible for the development of detailed work programs and the oversight of on-ground program delivery for specific sub-catchment issues.

Implementation Committees are the mechanism by which an CMAs can develop and undertake focussed work programs and establish a dialogue with the local community. The Implementation Committees have a major decision-making role in the Regional Management Planning process in setting priorities for work and the

[15] *Source: "Regional Management Plan Guidelines 2001-2002"*

specific activities to be undertaken in land and water management in their region.

Specifically they:

- provide advice to CMAs on resource management objectives, targets, activities, priorities and budgets;
- develop the schedules for the Regional Management Plan;
- plan, develop and implement detailed plans for specific issues or sub-catchments;
- provide oversight of on-ground work programs;
- act as a communication link with relevant community stakeholder groups; and
- monitor performance on activities related to their work plan and report to CMAs on the achievement of objectives and targets.

## E.2 Department of Natural Resources and Environment

### *E.2.1 Catchment and Water Division*

The Catchment and Water Division of the DNRE:

- advises Government about statewide natural resource management policies, programs and priorities;
- conducts consultations as appropriate with the CMAs and other service deliverers when developing statewide natural resource management policies and programs;
- purchases services from a range of service providers to implement agreed government policies, programs and priorities by:
  - developing programs with clear objectives, targets and outcomes to implement government policies;
  - purchasing/funding services for program delivery; and
  - developing guidelines and standards for program delivery, and monitoring/evaluating program delivery;
- represents Victoria's natural resource management interests with respect to Federal funding programs;
- contributes to research programs and technology transfer to service delivery groups; and
- acts as the agent of Government in the purchase of catchment management services from CMAs.

### *E.2.2 Catchment and Agriculture Services*

Catchment and Agriculture Services of the DNRE:

- work with CMAs to achieve catchment management objectives;
- provide professional extension, advisory and regulatory services in catchment management, agricultural industries and regional development;
- make a major contribution to the development of the RMPs (including the Implementation Committee schedules);
- support the further development of the RCS and develop implementation plans and associated work programs;
- provide information, advice, technology transfer, and community education for particular Catchment and Water (CAW) Key Projects;
- assess and monitor natural resource conditions, agricultural industries and rural communities;
- provide a statutory referral service to maintain and enhance ecological sustainable development;
- ensure quality assurance and regulatory compliance; and
- provide emergency response and assist in recovery from natural disasters.

### *E.2.3 Agriculture Victoria*

Agriculture Victoria is the Victorian government's research and development (R and D) infrastructure that provides research and development services to industry. It comprises 12 research institutes, with a geographical spread that reflects the diversity of Victoria's primary industries. Areas of research include meat safety, crop development and protection, post-harvest technology, animal health and production, genetics and molecular biology, soil and environmental chemistry, pasture productivity, pilot-scale food production and processing, dairy technology, crop productivity, integrated pest management, weed and animal pest control, microbiological analysis, groundwater processes and more.

## E.3 Other Regional Partners

Other regional players who contribute to the integrated catchment management approach in Victoria include organisations such as the Urban/RWAs, local government and landcare groups. These service providers may have a similar role to Catchment and Agricultural Services (CAS) with an emphasis on integrating objectives at a strategic level and on the development and implementation of approved action plans, such as nutrient and salinity management plans.