Regulation and Regional Victoria: Challenges and Opportunities

A draft report for further consultation and input
January 2005
Opportunity for further comment

You are invited to examine this discussion draft report and provide comment on it within the Commission’s public inquiry process. The Commission will be accepting submissions commenting on this report and be undertaking further consultation before delivering a final report to the Government.

Submissions may be sent by mail, fax, audio cassette or email.

By mail: Regional Inquiry Victorian Competition and Efficiency Commission GPO Box 4379 MELBOURNE VICTORIA 3001 AUSTRALIA

By facsimile: (03) 9651 2163
By email: contact@vcec.vic.gov.au

The Commission should receive all submissions by 4 March 2005.
A review of regulatory barriers to Victoria’s regional economic development is timely in doing business in regional Victoria.

1. Identify the key regulatory barriers, including Victorian laws and regulations that significantly constrain Victoria’s regional economic development and employment.

As part of the inquiry, the Commission should:

1. Identify the key regulatory barriers, including Victorian laws and regulations that significantly constrain Victoria’s regional economic development and employment.
2. Report on ways to improve the design of Victorian laws and regulations to ensure the more efficient and effective means of achieving greater economic development, while protecting other community and environmental objectives.
3. Identify the main implementation issues associated with improving the designs of Victoria’s laws and regulations.
4. Identify opportunities for simplifying advisory mechanisms and the administration of regulation in regional Victoria.

The Commission should take into account any substantive studies or inquiries undertaken elsewhere, including relevant developments in the Commonwealth and States, and best practices from OECD countries that may help it provide advice on this Reference.

Process

In undertaking the inquiry, the Commission is to hold public hearings, consult with key interest groups and affected parties, and produce a draft report outlining recommendations for consultative purposes, with a final report to be handed to the Government in the first half of 2005.

The Commission should also draw on the knowledge and expertise of the relevant departments and agencies, and seek suitable secondees to assist its work.

John Brumby MP
Treasurer
1 July 2004
Preface

The draft report of the Inquiry into Regulatory Barriers to Regional Economic Development being undertaken by the Victorian Competition and Efficiency Commission (the Commission) is its first major public document. The release gives interested participants the opportunity to comment on the Commission’s analysis of regulatory barriers and draft recommendations, prior to the presentation of the final report to government by the end of June 2005.

In preparing this draft report, the Commission has sought to consult widely with a range of people interested in regulatory matters and their relationship to regional economic development. The Commission would like to acknowledge the contribution made by those who participated in public hearings in regional centres and roundtable discussions, as well as those who provided written submissions. The Commission has also benefited from the input provided by Victorian Government departments and agencies in understanding various regulatory arrangements and in providing comments on views put to them.

Once interested parties have had the opportunity to review the draft report, there will be a further round of meetings before the report is produced and presented to the Victorian Government. The Treasurer is required to release publicly the final report within six months of receiving it. The government should release publicly a response within six months of receiving the final report.

The Commission has faced the challenge of ensuring there is a common database covering regulators, and the regulatory framework that applies in areas of particular relevance to regional economic development. A survey of Victorian regulators of business is, therefore, being released along with the draft report. An electronic copy is available on the Commission’s website: www.vcec.vic.gov.au.

This draft report is necessarily wide-ranging. It addresses some generic regulatory issues for regional Victoria and some industry-specific ones, and makes draft recommendations on both, as well as other possible steps that would address more systemic issues in Victoria’s regulatory system.

In the next few months, the Commission will be undertaking a consultative process to ensure that the data presented is factually accurate and current. More particularly, this process will give the Commission the opportunity to seek additional information from participants in the inquiry, to enable us to investigate rigorously the advantages and disadvantages of our draft recommendations or any other significant issues that should be handled in this review.

The Commission urges you to provide feedback on this draft report.
The Commissioners have declared to the government all personal interests that could have a bearing on current and future work. Moreover, while the Commissioners confirm their belief that they have no personal conflicts of interest in regard to this inquiry, the Chairman wishes to disclose that he has shares in some resources companies, including Iluka Resources, which has interests in Victoria.
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<td>AQIS</td>
<td>Australian Quarantine and Inspection Service</td>
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<td>BIA</td>
<td>Business impact assessment</td>
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<td>DFSV</td>
<td>Dairy Food Safety Victoria</td>
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<td>DSE</td>
<td>Department of Sustainability and Environment</td>
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<td>DPI</td>
<td>Department of Primary Industries</td>
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<td>EES</td>
<td>Environment effects statement</td>
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<td>EIA</td>
<td>Environmental impact assessment</td>
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<td>EPA Victoria</td>
<td>Environment Protection Authority of Victoria</td>
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<td>ESC</td>
<td>Essential Services Commission</td>
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<td>FIRS</td>
<td>Federal Interstate Registration Scheme</td>
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<td>FMS</td>
<td>Fisheries Management Services</td>
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<td>FRDC</td>
<td>Fisheries Research and Development Corporation</td>
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<td>FSANZ</td>
<td>Food Standards Australia New Zealand</td>
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<td>GAIN</td>
<td>Gippsland Aquaculture Industry Network</td>
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<td>MRD Act</td>
<td>Mineral Resources Development Act 1990</td>
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<td>MOU</td>
<td>Memorandum of understanding</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>PIA</td>
<td>Policy impact assessment</td>
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<td>RIS</td>
<td>Regulatory impact statement</td>
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<td>SEPP</td>
<td>State environment protection policy</td>
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<td>VCAT Act</td>
<td>Victorian Civil and Administrative Tribunal Act 1998</td>
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<tr>
<td>VECCI</td>
<td>Victorian Employers’ Chamber of Commerce and Industry</td>
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<td>VicFin</td>
<td>Victorian Food Safety Information Network</td>
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<td>VPP</td>
<td>Victoria planning provisions</td>
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<td>WMP</td>
<td>Waste management policy</td>
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Key messages

- Regulation is a significant issue for economic development in regional Victoria. A number of its key industries are subject to wide-ranging regulation, while needing to be globally competitive; there is a higher proportion of small businesses than in metropolitan areas (especially when farmers are considered); and the distance from metropolitan Melbourne makes consultation and dissemination of information relating to regulation more challenging.

- A number of the significant regulatory issues for regional Victoria involve trade-offs between economic, social and environmental objectives. This requires clarity around policy intent, transparency around regulatory impacts based on wide-ranging consultation, implementation of best practice regulatory principles, and ensuring the capacity to administer regulation matches the policy intent.

- Components of Victoria’s regulatory environment compare well by Australian standards. Nevertheless, improving this environment, particularly the way that regulatory intent is implemented, could make a substantial contribution to the economy of regional Victoria.

- Businesses in regional Victoria face a major challenge in navigating the complex and evolving regulatory framework. The 69 regulators of business administer about 26000 pages of legislation and regulation.

- The Commission has identified specific improvements to regulations affecting land-use planning, native vegetation, other environmental areas, food safety, and various industries.

- In addition, a number of system-wide reforms would improve regulatory processes in developing and administering regulation, enhancing coordination across government agencies, tightening the linkage between policy intent and regulation, facilitating consultation on new or modified regulation, and taking into account the impact of the cumulative effects of regulation.

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Overview

Why this inquiry is necessary

More than a quarter of Victorians live outside Melbourne in regional areas. An integral part of the state economy, regional Victoria is the source of 28 per cent of the state’s jobs, some of its most important industries, seven of its top 10 international exports, and the majority of Victoria’s electricity supply.

While regional Victoria has shared in Australia’s long economic expansion, it has been responding to many pressures. Its industries are exposed to domestic and international competition. Some, such as property and business services, retail trade, and health and community services, have grown strongly. The utilities, government administration and mining sectors, on the other hand, have shed jobs. Some regions have lost young people to the cities, while others have been boosted by an influx of people seeking a ‘sea change’. These differential impacts highlight that regional Victoria is not one but many economies.

Against this background, the Victorian Government asked the Victorian Competition and Efficiency Commission to assess regulatory barriers to regional economic development. In doing so, the government recognised that the burden of regulation compliance may be more costly and challenging in regional Victoria than it is in the metropolitan area. The Commission is thus undertaking a ‘comprehensive review of regulatory barriers to regional economic development’ and identifying the key regulatory barriers that significantly constrain Victoria’s development and employment. It is required to report on ways to improve the design of laws and regulations, and the implementation issues involved in doing so, and to identify opportunities for simplifying advisory mechanisms and the administration of regulation in regional Victoria.

In approaching this task, the Commission has not reviewed government policy, which is not its role. Rather, it has sought to review and analyse the regulatory framework giving effect to policy that applies in regional Victoria, and to identify amendments to this framework that might better facilitate the achievement of the government’s policy objectives.

The ultimate objective of any government is to improve the community’s welfare, a multidimensional objective with economic, environmental and social components. One way in which regulation can contribute to economic development is by providing a framework that helps the government to achieve balance between competing objectives, in situations where market transactions do not adequately perform this role. The Commission has attempted to assess whether the regulatory framework provides an appropriate context for achieving a well-informed and balanced outcome.

Regulation and regional economic development

Regulation involves the imposition of rules, supported by government authority, that are intended to influence behaviour. Economic development in regional Victoria is shaped by underlying economic forces such as advances in technology, changing consumer tastes, developments in international markets, and the availability of labour, capital, land and raw material inputs. These forces operate, however, within an institutional framework that can be conducive to or hold back development. Regulation—and its role in achieving net community benefit by securing balance between developmental and other objectives—is part of that framework.
Regulation and regional Victoria: challenges and opportunities

Evidence of business growth and adaptation in regional Victoria shows that enthusiasm and enterprise are in abundance. Globalisation has brought the regions even closer to the forces of competition, putting a premium on capacity to adapt. In some respects, the regions may be more sensitive to these factors because their opportunities for change are more limited and discontinuous.

Regulation is typically perceived as a supplement to market forces. Where there is rivalry between existing firms and the threat of entry from new ones, the normal operation of markets provides a powerful stimulus for firms to seek out new opportunities to provide products and services that are more valued by consumers, at the lowest possible prices.

Under some circumstances, markets will fail to deliver desired outcomes for the community. Market transactions may result in distributional outcomes that are at odds with community expectations. Sometimes, the costs and benefits of activities are not borne by the agents involved, or some market participants are less well informed than others. In such situations, regulation may have a role to play in improving community wellbeing.

For this role to be effective, however, regulation must be well directed and cognisant of the features of the economy of regional Victoria, such as:

- its diverse and changing employment and industry structure
- its export orientation and consequent exposure to international economic pressures
- the importance of small businesses
- its specific demographic features, such as a population that is generally older than that in Melbourne
- the diversity of the social and economic environments, ranging from small hamlets to major cities, from loose to tight labour markets, and from younger to older populations.

Victorian regulators of business administer around 26,000 pages of state government legislation and regulation. Few important business decisions can be made without regard to regulatory arrangements. Regulation can thus facilitate development if it is implemented consistently with best practice principles, but add to the cost of doing business and sap initiative and flexibility if it is not. In this inquiry, the Commission has assessed the regulatory framework by comparing it against principles of best practice regulation.

Principles of best practice regulation

Drawing on the work of various authorities, the Commission considers that the following principles should guide the development and enforcement of regulations and of the broader regulatory framework:

- Regulatory effort should be the minimum necessary, consistent with the scale of the problem.
- Regulations should be understandable and introduced only after proper consultation.
- Regulations should not be unduly prescriptive.
- Regulations should be consistent with other laws and regulations, across industries and across businesses.
- Regulations should be enforceable.
- Regulators should be accountable.

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- Regulations should be enforceable.
- Regulators should be accountable.
Aspects of the regulatory framework in Victoria

Victoria has implemented processes consistent with good regulatory practice. Before any substantive new subordinate legislation (Regulations) are introduced or sunsetting Regulations are re-introduced, the proponents are required to demonstrate that they have considered all relevant costs and benefits likely to arise as a result of the regulations. The onus is on advocates of regulation to show that their proposal is the best way for the government to address a clearly identified problem.

This process is formalised through: the requirement to produce a regulatory impact statement (RIS) for Regulations introduced under subordinate legislation; a business impact assessment (BIA) for primary legislation that has significant impacts on business and/or competition; and a policy impact assessment under the Environment Protection Act 1970. The Commission has a role in the RIS and BIA process, because it is required to assess the quality of RISs and to ensure the need for, and anticipated effects of, the Regulations have been examined rigorously and articulated clearly and transparently. The Commission independently assesses the adequacy of RISs before they are released for consultation and of BIAs before Cabinet considers the associated legislation.

Regulations, once implemented, are administered and enforced by Victoria’s 69 regulators of business. Until now, there has been no single information source about Victoria’s regulators. As part of its inquiry, the Commission surveyed those Victorian Government regulators whose activities affect Victorian businesses, other private entities (such as private schools or hospitals) and occupations. In addition, Victoria’s 79 local councils play an integral role in administering and enforcing state regulation covering areas such as planning, native vegetation, food safety and public health. Water authorities and catchment management authorities also perform some regulatory functions, but have not been surveyed at this stage.

The State Government business regulators are defined in 11 categories, broadly classified by area of regulation (table 1).

The Commission’s survey found that:

- regulators administer 170 Acts, which have been amended approximately 3400 times since they were enacted and consist of 19 600 pages
- regulators administer 176 Regulations, which have been amended 342 times and consist of more than 6400 pages
- 44 of the 69 regulators indicated that they make special arrangements for stakeholders in regional areas, and 31 have offices or staff located outside Melbourne
- less than half of the regulators publish materials in languages other than English (27 of 60 responses) or offer translation services (23 of 57).

The Commission also identified 80 advisory bodies that provide independent advice to Ministers, regulators and departments, either about regulations or how they should be implemented.
Table 1: Victoria’s regulators of business

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<td>Dairy Food Safety Victoria, Food Safety Unit, PrimeSafe</td>
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<td>Health</td>
<td>Chinese Medicine Registration Board of Victoria, Chiropractors Registration Board of Victoria, Dental Practice Board of Victoria, Drugs Policy and Services Branch, Environmental Health Unit, Health Services Commissioner, Infectious Diseases, Epidemiology and Surveillance, Intimacy Treatment Authority, Medical Practitioners Board of Victoria, Medical Radiation Technologists Registration Board, Nurses Board of Victoria, Optometrists Registration Board of Victoria, Osteopaths Registration Board of Victoria, Pharmacy Board of Victoria, Physiotherapists Registration Board of Victoria, Podiatrists Registration Board of Victoria, Private Hospital Unit, Psychologists Registration Board of Victoria, Tobacco Policy</td>
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<tr>
<td>Animal Welfare</td>
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</tr>
<tr>
<td>Construction</td>
<td>Architects Registration Board of Victoria, Building Commission, Plumbing Industry Commission, Surveyors Board of Victoria</td>
</tr>
<tr>
<td>Other</td>
<td>Children’s Services, Co-Operative Housing Societies, Legal Practice Board, Licensing Services Branch (Victoria Police), Office of the Legal Ombudsman, Small Business Commissioner, State Revenue Office, Supported Residential Services</td>
</tr>
<tr>
<td>Transport</td>
<td>VicRoads, Victorian Taxi and Tow Truck Directorate</td>
</tr>
<tr>
<td>General</td>
<td>Business Licensing Authority, Consumer Affairs Victoria, Equal Opportunity Commission, Essential Services Commission, Industrial Relations Victoria</td>
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</tbody>
</table>

Source: VCEC (2005)

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Table 1: Victoria’s regulators of business

<table>
<thead>
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<th>Category</th>
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<tr>
<td>Food Safety</td>
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<td>Health</td>
<td>Chinese Medicine Registration Board of Victoria, Chiropractors Registration Board of Victoria, Dental Practice Board of Victoria, Drugs Policy and Services Branch, Environmental Health Unit, Health Services Commissioner, Infectious Diseases, Epidemiology and Surveillance, Intimacy Treatment Authority, Medical Practitioners Board of Victoria, Medical Radiation Technologists Registration Board, Nurses Board of Victoria, Optometrists Registration Board of Victoria, Osteopaths Registration Board of Victoria, Pharmacy Board of Victoria, Physiotherapists Registration Board of Victoria, Podiatrists Registration Board of Victoria, Private Hospital Unit, Psychologists Registration Board of Victoria, Tobacco Policy</td>
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Source: VCEC (2005)
Net community benefit

Balancing a range of competing interests is an issue with which many regulators must contend.

In November 2001, the government released Growing Victoria Together, a key policy document that presents the government’s vision for the future:

Growing Victoria Together balances economic, social and environmental goals and actions. It is clear that we need a broader measure of progress and common prosperity than economic growth alone. That is the heart of our balanced approach – a way of thinking, a way of working and a way of governing which starts by valuing equally our economic, social and environmental goals. (Government of Victoria 2001a, p. 3)

In practice, most government departments and regulators have a specialised focus on one type of objective: economic, social or environmental. Consequently, a failure to achieve the intended balance between these objectives can occur if decision-making processes are not fully transparent and well coordinated. Balancing these objectives is at the heart of most areas of regulation covered in this report. Evidence presented to the Commission suggests that the regulatory system in regional Victoria sometimes falls short of best practice and may not guarantee that the balance between conflicting objectives is always consistent with government policy intentions and achieves its intended outcomes.

The meaning of the net community benefit objective may be clarified by identifying the characteristics of net community benefit in legislation or guidelines. Where one value can be achieved only at the expense of another, however, decision makers need to judge the weights to be given to individual components that make up net community benefit. While the balance between competing interests is a political choice, it is important that the choice is appropriately informed.

Such judgments are unlikely to be well informed unless preceded by consultation with those likely to be affected by the proposed regulation, within an analytical framework that permits a transparent airing of its costs and benefits. Consultation and analysis involve costs, however, not the least of which may be those associated with potentially wealth creating activities being delayed if the consultation process becomes unduly drawn out. A decision has to be made, therefore, about how much analysis, consultation and monitoring is appropriate.

Outcomes should be monitored and evaluated once regulation has been introduced, to test whether the intervention is having its intended effects, whether all of the costs of regulation were identified before its introduction and whether changes in circumstances have affected the type of regulation needed. Industry concern about the unintended impacts of regulation is a recurring theme in this inquiry. Good monitoring and evaluation mechanisms would progressively identify and resolve these issues.

Areas of regulation considered in this report

The terms of reference require the Commission to identify the key regulatory barriers that constrain Victoria’s regional economic development and employment. The Commission used the following criteria to select particular areas of state regulation to examine in greater detail:

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Regulation and regional Victoria: challenges and opportunities

- issues that were raised by participants in the inquiry
- areas of state regulation important to industries that are particularly significant in regional Victoria
- industry-specific regulation applying to industries that are located predominantly in regional Victoria
- areas that have not recently been subjected to a policy decision or an independent and substantive review.

Based on these criteria, the Commission has focused on regulations relating to land-use planning, the environment, native vegetation and food safety. It has also reviewed aspects of industry-specific regulation relating to the mining, forestry, aquaculture and broiler chicken industries. These eight areas are only a small proportion of the regulations affecting businesses in regional Victoria, but each is complex and wide ranging. The Commission has thus had to be selective in the aspects of these regulations that it has examined.

The analysis of these eight areas has also revealed options for systemic improvements to the regulatory framework. These systemic improvements would help to reduce problems in other state regulation that have not been analysed in detail in this inquiry, but that have relevance for regional businesses.

**Land-use planning**

The regulation of planning and building control had its origins in the context of securing and reconciling property rights and ensuring public health and safety. While these issues are still relevant today, the scope of planning has expanded to address the management of all land use and development in urban and regional areas. Under these circumstances, the challenge for the planning framework is to be flexible enough to accommodate regional diversity and changing community needs and attitudes, while providing consistency and flexibility in regulatory approach. In regional Victoria, a particular challenge is how to cope with increasing tensions between agricultural and urban land uses, and with the enormous environmental diversity across the state.

The implementation and practice of planning differ between regional and metropolitan Victoria, including the much larger size of non-urban zones and the different mix of economic activity. A greater proportion of small-scale matters are subject to permit approval in regional Victoria, and councils in regional Victoria are generally not as well resourced as their city counterparts.

Inquiry participants generally acknowledged that the current planning system and processes are a considerable improvement on the recent past. They also suggested, however, that significant shortcomings in the planning system and its implementation are impeding development in regional Victoria. One shortcoming raised was the absence of a periodic review of Victoria’s strategic planning policy framework. Good practice would suggest this framework should be subjected to review every five years.

Many of the other shortcomings noted by inquiry participants are being targeted by current reform initiatives. In particular, the implementation of the Better Decisions Faster program offers the prospect of substantial and broad ranging improvements. There seems to be no publicly specified measure of change, however, against which the success of this reform program might be measured. To enable the program’s success to be evaluated, the Department of Sustainability and Environment, in consultation with councils or the Municipal Association of Victoria, should:

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A recurring theme in submissions and hearings was that the implementation of state and local planning policy and regulations is impaired because councils have insufficient resources, instruction or training. This can be a particular problem when councils have to deal with large complex developments or significant amendments to planning schemes. While much is already being done to assist councils, additional attention is warranted. To address this concern, the Department of Sustainability and Environment should assess the likely resource costs to councils of new planning strategies or amendments, and should provide greater certainty about the conditions under which it might assist councils to ensure effective implementation.

Native vegetation regulation

It is clear from the interest in the regulation of native vegetation that this is a major issue in regional Victoria. A number of inquiry participants considered that these regulations and their implementation are having a major adverse impact on development.

Controls on clearing native vegetation are given effect through the planning system rather than through a specific Act of Parliament or subordinate legislation. The Victorian Planning Provisions requires landholders to obtain a permit to ‘remove, destroy or lop native vegetation’ except in defined circumstances. The State Government sets the objective for native vegetation management in Victoria, which is to achieve ‘a reversal, across the entire landscape, of the long-term decline in the extent and quality of native vegetation, leading to a net gain’. Councils are the responsible authority for most permits so that implementation depends, to a large extent, on councils’ capacity to implement the policy.

The controls have systemic features that are contributing to uncertainty for investment and thereby, impeding regional economic development. Because the controls are given effect through the planning system, they are not required to undergo the same sort of review process required for other types of regulation affecting business. The exemptions to the requirement to obtain a permit set out in the planning provisions are also open to very different interpretations. The implementation of the controls does not appear to have considered the institutional capability and budget of local government. Finally, underpinning the framework is a duty of care on landholders that appears to be based on changing community expectations.

While a number of actions to address these concerns have recently been implemented or are proposed (such as trials of market-based mechanisms, a proposed permit tracking system and draft operational guidelines for use by councils and others), they seem unlikely to eliminate them. There is also a lack of information about the effectiveness of different policies for achieving a net gain in native vegetation. Improving this information base should be a priority.

Given the apparent shortcomings, there could be a large pay-off for the community if it were possible to develop a less prescriptive approach that provides more certainty for landholders and better aligns their incentives with those of government agencies, while reducing the administrative load on councils. Land management plans (being introduced in New South Wales) could provide some of these benefits, although a number of issues would need to be settled before this approach could be implemented in Victoria. Catchment management authorities could perhaps administer these plans, but governance and funding arrangements would need to be clarified. The extent of landholders’ responsibilities to retain native vegetation would need to be clarified. The extent of landholders’ responsibilities to retain native vegetation...
would also need to be settled, given that they, the regional community or even the broader community may benefit from the past decline in native vegetation being redressed.

Environmental regulation

Regulation of industrial and individual activity to achieve environmental objectives affects most industries in regional Victoria. A consistent theme raised by inquiry participants is the general complexity of the environmental regulatory framework and the consequent challenges of meeting regulatory requirements. A number of inquiry participants raised concerns about the lack of transparency of specific environmental regulations, and about the challenges for small regional businesses to participate in consultation processes.

Before environmental regulations are introduced, they undergo a policy impact assessment (PIA). This process is broadly well designed; in particular, it provides considerable opportunity for community participation, both when a regulation is initially proposed and if it is altered in response to the initial round of consultation. A major shortcoming, however, is that the process does not provide for any independent assessment of the PIA against best practice principles for regulation. Independent assessment would increase consistency in impact assessments, improve transparency and increase confidence in the assessment process.

The planning approvals process deals with most activities impacting on the environment. Each year, however, five to ten major projects in regional Victoria are proposed that must go through a more extensive assessment process, in which the project proponent prepares an environment effects statement (EES). The government initiated a review of the EES process in 2000 but has not yet released its response to the 2000 review report. Release of both the report and the government’s response would reduce uncertainty about the regulatory environment.

The government’s response to the review of the EES process should particularly address the need for a staged process that is related to the complexity of projects and the nature of environmental risks. It should also address the need for:

- clear criteria for determining the applicable level of assessment
- processes for developing and reporting compliance with assessment timelines
- processes for streamlining and coordinating input into assessment processes by government agencies.

Food safety regulation

Regulation of food safety affects the important food producing industries in regional Victoria, as well as the hospitality and tourism sector, in addition to the health of all Victorians. All three levels of government share responsibility for this regulation. Local governments, operating within a national framework of food standards, regulate most retail businesses, and two state regulators (Dairy Food Safe Victoria and PrimeSafe) regulate the dairy, meat and seafood industries.

Food safety regulation has evolved from a prescriptive approach to one based on prevention. It focuses increasingly on outcomes, has incentives to improve the performance of industry participants, and attempts to relate the severity of regulation to the risks involved. Nevertheless, there are considerable challenges. Some inquiry participants argued that councils apply regulations inconsistently. The Victorian Auditor-General found in 2002 that only a few councils were fulfilling all of their legislative responsibilities, and that roles and responsibilities are not clearly defined. There is particular concern within the seafood industry...
that new regulations will impose significant costs on the industry, given the level of auditing and licence fees and the consequential impacts on the ways in which they conduct their business.

Food regulation has been a responsibility of local government for a long time, but the task has become more complicated and resource intensive. A memorandum of understanding outlining the roles of the different agencies involved in food safety regulation has been prepared and should be published. Further improvements in regulatory outcomes, however, would be achieved by more transparent reporting by local government of their performance against their obligations.

At the moment, little information is available about either the extent to which councils meet their obligations or the costs and outcomes of regulation. Improved reporting would help to reassure the public about the quality of their food; identify where resource constraints exist; clarify differences in priorities across councils and, by so doing, suggest possible benefits from refocusing spending; and provide a mechanism for tracking whether performance is improving over time. The Victorian Government may need to fund councils to help them provide the relevant information.

The Commission looked at the following ways in which the cost of regulation might be reduced: rationalising audit requirements across PrimeSafe, the Australian Quarantine and Inspection Service and the private sector (PrimeSafe is already working towards this); requiring that licence fees set by PrimeSafe and Dairy Food Safety Victoria are give effect by regulation and potentially subject to a RIS; and developing guidelines for councils to use when setting fees.

**Industry-specific regulation**

**Mining**

The mining sector can have large social and environmental impacts, which regulation can help to address. If this is done in a heavy-handed way, however, it may affect development that contributes significantly to the state’s economic performance. The regulatory framework should allow transparent evaluation of economic, social and environmental impacts in a timely and predictable manner. On the information available, the Commission considers that the processes for granting exploration and mining licences and assessing whether work can commence in licence areas do not always pass this test, and that some aspects of regulatory processes could be improved by:

- simplifying or streamlining approval processes
- improving coordination
- imposing time limits on decision making
- improving reporting.

One way to simplify approval processes is to widen the definition of ‘low impact’ exploration, which can be undertaken without an approved work plan. The different ways of doing this warrant examination.

A large number of referrals are required before decisions are made to grant work approvals, and they need to be coordinated through a process that ensures they are considered in a predictable and timely way. Implementing Ministerial delegations for the granting of exploration and mining activities on Crown land would help. In addition, the Department of Sustainability and Environment and the Department of Primary Industries—the two main agencies that new regulations will impose significant costs on the industry, given the level of auditing and licence fees and the consequential impacts on the ways in which they conduct their business.

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involved—should negotiate and publish a memorandum of understanding to facilitate streamlined and consistent decisions on exploration licence applications, building on the one that they have already negotiated for mining licence applications. Both memoranda of understanding should be reviewed after five years.

Under the Mineral Resources Development Act 1990, current time limits on decisions do not seem to prevent some delays. It is appropriate to maintain flexibility by continuing to permit the Minister to extend time limits, but the reasons for any extension of time should be published and a new time limit should be defined. Further, more detailed public reporting of the time taken for various stages of the approval process would encourage compliance with deadlines, highlight ways to improve the process and guide the allocation of agency resources among various parts of the process.

While the Commission considers that the time limits imposed on government decision making should be made more explicit and binding, it is not convinced that the Act’s time limits on miners and explorers improve the efficiency of mineral development. It would welcome comments on the advantages and disadvantages of these time limits.

Forestry

The industry consists of two distinct sectors: the logging of native forests and plantation timber. About two thirds of Victoria’s timber production is from plantations and one third is from native forests. In 2002, the government announced a new policy for regulating the native forests sector, based on the objective of balancing economic, social and environmental objectives.

Participants in the forestry industry consider that the regulatory framework within which they operate is too complicated. They also have concerns about native vegetation, planning and environmental regulation. The main drivers of activity in the native forests sector are access to, and pricing of, logs. In Victoria, both of these issues have been determined, or are being considered, as policy issues by government and are beyond the scope of this inquiry. It is also difficult for the Commission to comment on other aspects of regulation, which have only recently been implemented.

In the plantation sector, there is potential for investment to be affected by regulation of closely related sectors, such as agriculture and the harvesting of timber from native forests. Plantations and native forests will, to some extent, compete in the market for timber and timber products, while plantations compete with agriculture for access to land.

If the regulatory environment favours or inhibits either agriculture or harvesting from native forests relative to plantations, an inefficient split of production between the sectors would result.

Given that the key regulations affecting plantation forests are planning and controls on the removal of native vegetation, the Commission has focused on these issues (chapters 5 and 6). In light of its draft recommendations in these areas, the Commission intends to consult with stakeholders between the draft and final report to determine whether other regulatory issues affect the industry’s ability to contribute to regional economic development.

Aquaculture

Aquaculture is a small industry in Victoria, but one with growth potential. It is subject to a complex array of regulatory requirements and processes. Producers have to be licensed, and fewer licences are on issue now than five years ago. A major review of regulation, undertaken in 1998, recommended ways in which the regulatory environment could be improved and made more accessible to industry participants. Progress has been made, but Fisheries Victoria...
should document publicly the progress in implementing the review’s recommendations and publish a timetable for implementing the outstanding recommendations.

**Broiler chickens**

Annual sales of the chicken meat industry in Victoria are about $245 million. Rising environmental standards are making it harder for the industry to expand and take advantage of economies of scale in some parts of Victoria. Environmental standards appear more stringent in Victoria than in other states, and some in the industry are concerned that this difference may drive activity either interstate or to more remote parts of Victoria. The environmental requirements are set out in a code, which was agreed after a consultative process in 2002 and is to be reviewed in 2006. This review should be conducted in a transparent manner and should focus on the effect of significant developments since the code’s inception.

**Options for systemic reform**

Targeted recommendations aimed at improving individual regulations or areas of regulation may not be a complete solution to the regulatory problems facing regional Victoria. In addition to suggesting ways to improve regulations in particular areas, therefore, the Commission has considered systemic reforms, which it considers will yield two benefits:

1. helping to ensure continuing good regulation
2. addressing systematically the problems that span regulations and industries.

The Commission’s analysis of specific areas of regulation has identified some common themes:

- In several areas of regulation, there is a risk that some decision-making processes will not find the government’s intended balance between its economic, social and environmental objectives. Despite overarching government frameworks that set objectives such as sustainable development and net community benefit, the outcomes of regulation sometimes fall short of the intent of these frameworks.
- In a number of areas, there is a disconnection somewhere along the chain from converting policy objectives into regulation and implementing that regulation. This is particularly evident when local government is implementing regulation on behalf of the State Government. Examples occur in food safety and native vegetation regulation.
- Deficiencies in consultation are causing concerns about the effectiveness and fairness of some regulations.
- Regulation does not always accommodate the capacity of regions to implement and enforce it.
- There is scope to improve coordination among different government agencies involved in the regulatory process, so businesses do not waste time and resources trying to reconcile different and potentially conflicting messages from a range of regulators. The mining approvals process is an example.
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- Generally, enforceable regulations can have unintended consequences for small, emerging or niche sectors.
There is a tension between prescriptive and outcome focused regulation. Regulation that does not balance certainty and flexibility, that is too open ended or too prescriptive, can affect investment. This uncertainty or inflexibility will have the greatest effect in industries with long-term investment horizons, such as mining and forestry.

The cumulative impacts of regulation can be a problem for Victorian businesses. Any new regulations will add to the existing 26 000 pages of legislation and regulation. Combined, these recurrent problems can affect regional economic development by increasing cost and risk.

First, the processes for analysing the regional costs and benefits of new, amended or sunsetting regulation and primary legislation before its introduction (that is, BIAs and RISs) could be improved. Review of a number of recent RISs suggests there is scope to improve the analysis of new regulations, particularly by:

- identifying whether there are groups, including groups in regional Victoria, for whom the costs and benefits of regulation are likely to differ from the most common outcomes
- encouraging consistency between Victorian regulation and regulation in other states, where possible, by comparing approaches in other states with the proposed approach
- lengthening the time allowed for community feedback on RISs.

Second, many types of regulation are not captured by any formal review process. While there are costs in exposing these regulations to formal review, not doing so could mean that such regulations become increasingly common. The government has supported the Minister for Local Government considering whether local laws should be exposed to more scrutiny, which could help to address concerns about inconsistencies in regulation across local government areas.

Third, an important duty of regulators is to inform those whom they are regulating about their obligations. This may be particularly challenging where small businesses and people from different cultural or language backgrounds are involved. One option would be to include a more detailed implementation strategy (including information provision) in new proposals for regulations.

Fourth, equally important for regulators is to be able to tap the knowledge of industry, experts external to government, and those whom the regulation is designed to protect. Robust mechanisms are thus needed for obtaining timely feedback from a range of interest groups. Consultation can be particularly challenging in regional areas, given the characteristics of regional businesses and the distances involved. Reliance on peak bodies can reduce the costs of consultation, but may leave some firms and individuals unrepresented. Poor consultation, however, increases the risk that regulation has unintended side-effects and that its design and implementation does not account for the challenges facing regional businesses, particularly in smaller, niche or emerging sectors. This issue should be a focus of the Victorian regulators forum, which provides an opportunity for regulators to discuss ways to improve the efficiency and effectiveness of regulators.
Fifth, when they work effectively, advisory bodies can provide important input that improves the quality of new regulation and its administration and enforcement. It is important, however, to have processes of regular review that ensure the existing processes are still necessary and identify any scope for improvements.

Sixth, even with good processes for designing regulation, it is difficult to predict its impacts and be confident that the impacts will not generate unintended outcomes. For this reason, it is good practice for new regulatory proposals to be accompanied by proposals about how the regulations will be evaluated. Currently, reporting on proposed evaluation is not a formal part of either the RIS or BIA processes.

Seventh, there needs to be a framework for cost recovery that results in fees and charges that are both efficient and equitable. Such a framework should provide clear guidance on how to: set charges based on the minimum level of regulation necessary to achieve the government’s policy objectives, delivered at the lowest possible cost; split costs between industry and taxpayers; and avoid implementing charges that inhibit other government policy objectives. The Department of Treasury and Finance should be responsible for developing more extensive cost-recovery guidelines for Victorian regulators.

Finally, when responsibility for administering or enforcing regulation is devolved to local government, there are often problems with delays and inconsistencies in regulation. These problems appear to result from inadequate skills and resources available at the local level, and from a lack of accountability mechanisms to detect and correct problems. The State Government should consider these issues when it decides to allocate responsibility to local government for administering or enforcing new or amended regulation. It should discuss with local government how the regulation will be funded, what training or other assistance will be provided and how ongoing performance will be monitored.

Conclusion

Regulation is one of a number of forces that shape the development of regional Victoria. Improving the regulatory environment could make a substantial contribution to the state’s economy. This report—which considers many areas of regulation but covers only a small proportion of the total—reveals numerous opportunities for improvements in both specific areas of regulation and aspects of the regulatory system as a whole.

The Commission proposes 37 draft recommendations, which it considers would improve regulation in regional Victoria. The impacts of these recommendations on employment and investment, and on the costs of doing business, are difficult to quantify. Investment decisions are usually influenced by a range of factors, and it is normally not possible to isolate the impact of a particular regulation. The Commission expects, however, that its proposals would encourage economic development by reducing business costs, providing a more predictable regulatory environment, improving the implementation of regulation and enhancing pressures for continual improvement.

While there would be costs associated with implementing its recommendations, the Commission considers that these costs would be small. Almost all of the recommendations are intended to move regulatory processes towards best practice. The departments and agencies that design and implement regulation would bear most of the costs of most of the recommendations, and they are particularly well placed to control the size of these costs.

The Commission welcomes comments on its analysis of the situation and on its draft recommendations. It will consider inquiry participants’ comments before finalising its analysis and submitting its final report to the Treasurer, due before the end of June 2005.
Recommendations

(The recommendations are listed in the order that they appear in the report)

Planning

5.1 That the Victorian State Planning Policy Framework be subjected to review every five years.

5.2 That the Department of Sustainability and Environment—in conjunction with local councils or the Municipal Association of Victoria—develop a set of target performance indicators that they would expect the Better Decisions Faster reforms to deliver.

5.3 That the Department of Sustainability and Environment review the experience of councils in regional Victoria against such performance indicators in the near future (within three years), and report on the extent to which the reforms have delivered against expectations.

5.4 That, in view of recommendations 5.2 and 5.3, the Department of Sustainability and Environment assess what minimum additional data it might need to support a robust monitoring and assessment of the success of the Better Decisions Faster reforms, and work to incorporate that data in a statewide activity reporting framework, with the aim of having the data available to inform the review of performance.

5.5 That the Department of Sustainability and Environment assess the likely added resource costs to councils of new planning strategies or amendments developed at the State Government level, with a view to identifying where the local councils do not have the capacity to effectively implement those changes.

5.6 That the Department of Sustainability and Environment develop criteria to provide greater certainty about the conditions under which the department would assist local councils to facilitate larger and complex regional projects, or major local planning amendments.

Native vegetation

6.1 That the Victorian Government initiate the planned review of the native vegetation management framework to provide a basis for assessing any future changes to native vegetation policy.

6.2 That the Victorian Government consider measures to stimulate the development of appropriate land management plans as an alternative to the current requirement that landholders lodge a permit application each time they wish to clear native vegetation.

6.3 That the Victorian Government more clearly define landholder responsibilities to retain native vegetation against the benefits to landholders and the broader community. This definition should form the basis for determining the appropriate allocation of the costs of achieving net gain.

Environmental regulation

7.1 That the policy impact assessment (PIA) process be modified to require EPA Victoria or the Minister for the Environment to seek an independent review of draft PIAs.

7.2 EPA Victoria should seek to finalise draft or interim environmental guidelines as quickly as possible. Finalisation of the existing draft or interim guidelines, including those relating to noise in regional areas, should be a priority.
7.3 That the Victorian Government release as soon as possible the report of the review of the Environment Effects Act 1978 and its proposed response.

7.4 That the Victorian Government’s response to the review of the Environment Effects Act 1978 should address the need for (1) a staged EES process that is related to the complexity of projects and the nature of the environmental risks, (2) clear criteria for determining the applicable level of assessment, (3) early identification of assessment timelines and reporting of compliance against these, and (4) streamlined and coordinated input into assessment processes by government agencies.

Food safety

8.1 That the memorandum of understanding outlining the roles of each party involved in food safety regulation be published.

8.2 That Councils should report periodically their performance against their obligations under the Food Act. The results should be made available publicly. The form of this reporting would require development of a set of key performance indicators by the Food Safety Unit and local government, represented if appropriate by the Municipal Association of Victoria. The Department of Human Services should consider whether it should fund any additional costs incurred by councils to provide performance information.

8.3 That PrimeSafe recognise that the Australian Quarantine and Inspection Service audits can be deemed to comply with its own requirements, unless the integrity of the food safety regulatory system would be compromised.

8.4 That PrimeSafe publish a timetable for achieving its objective of promoting mutual recognition of audit systems, to reduce the cost imposed on a business that supplies multiple customers. The Commission encourages Dairy Food Safety Victoria to pursue similar initiatives.

8.5 That PrimeSafe release discussion papers in relation to decisions about the minimum frequency and scope of audits for the seafood industry, and consult widely with the industry.

8.6 That fees for licences administered by PrimeSafe and Dairy Food Safety Victoria be prescribed by Regulations (under the Subordinate Legislation Act 1994) to be statutory rules and consequently potentially subject to regulatory impact statements.

8.7 That the Food Safety Unit of the Department of Human Services, in conjunction with the Municipal Association of Victoria, work with councils to develop guidelines for setting registration fees. These guidelines and the fees charged should be reported publicly.

Mining

9.1 That the Department of Sustainability and Environment and the Department of Primary Industries negotiate a memorandum of understanding to facilitate streamlined and consistent decisions on applications for exploration licences.

9.2 That the Department of Primary Industries review both the existing memorandum of understanding (which covers mining and extractive industry work approvals) and the proposed memorandum (which would cover exploration) five years from the date of their commencement.

9.3 That the Minister responsible for the Mineral Resources Development Act 1990 be required to publish reasons for granting extensions of time for any stage in the approval processes for exploration and mining licences and work approvals.
9.4 That the Department of Primary Industries review its existing performance indicators on the time taken to grant exploration and mining licences and work approvals, with the aim of reporting the total amount of time between the submission of applications and the decisions made on those applications, as well as the time taken by individual agencies for specific stages of the approval processes.

9.5 That the Department of Primary Industries review s.45 of the Mineral Resources Development Act 1990 to provide for a reasonable balancing of the respective interests of licence holders, and existing and future owners and occupiers of adjacent land, and the holders of other interests now protected by s.45.

Aquaculture

9.6 That Fisheries Victoria document publicly the recommendations of the Review of Regulatory Arrangements in the Victorian Aquaculture Industry that it has implemented. It should publish an intended timetable for the complete implementation of those recommendations not yet fully implemented.

Broiler chickens

9.7 That an extensive review of the Victorian Code for Broiler Farms be conducted by 2006, five years after the implementation of the code. This review should be conducted through a transparent and consultative process similar to that preceding the introduction of the code, and should focus on the effects of significant developments occurring since the inception of the code.

Systemic reforms

11.1 That the Victorian Government endorse, consistent with current guidelines for developing regulatory impact statements, agencies preparing regulatory impact statements or business impact assessments identifying whether there are groups, including regional groups, for whom the costs and benefits of regulation are likely to differ from the most common outcomes. The Commission would look for this analysis in its assessment of the adequacy of regulatory impact statements and business impact assessments.

11.2 That, where possible, 60 days should be allowed for public consultation on regulatory impact statements covering significant or complex issues. Each regulatory proposal going to the Scrutiny of Acts and Regulations Committee should document the time allowed for the consultation period and explain why that period was adequate. In its annual report on regulation, the committee could report on the time periods allowed for consultation.

11.3 That the Victorian Government endorse that agencies advocating regulation that is not consistent with that of other jurisdictions analyse, where appropriate and relevant, the costs and benefits of a consistent approach as one of the alternatives included in their regulatory impact statements or business impact assessments. The Commission would take this analysis into account in its assessment of the adequacy of regulatory impact statements and business impact assessments.

11.4 That Ministers encourage the regulators for whom they are responsible to participate actively in the state forum of regulators. The forum should include on its agenda an exchange of information on regional issues, including consultation mechanisms.
12.1 That the new Victorian guidance for developing regulatory impact statements and business impact assessments, and any new cost-recovery guidelines make it clearer that agencies must demonstrate that an appropriate cost base underpins their cost-recovery arrangements.

12.2 That the Department of Treasury and Finance be responsible for developing more extensive Victorian cost-recovery guidelines that better impart how to ensure charges are set according to an efficient cost base, the principles for splitting costs between industry and taxpayers, and how to design robust cost-recovery arrangements that do not generate unintended incentives. These guidelines should be developed using a consultative process and publicly released.

12.3 That the Victorian Government, where it requires local government to administer or enforce new or reviewed State regulation, first discuss with local government how the regulation will be funded, what training or assistance will be provided, and how ongoing performance will be monitored, all of which should be public. The performance of local government against the agreed monitoring regime should also be made public.

12.4 That Victorian Government departments and regulators include in their 2004-05 annual reports information on each advisory body that they support. This information should include:

- how each body’s activity contributes to improved policy outcomes
- details of membership of the body, including any changes that took place during the year
- the total remuneration, if any, of the chair and members
- indicative estimates of the costs of administrative support of the body
- date of formation, and when any reviews of the body’s roles occurred
- a point of contact in the sponsor department or regulator, from whom further information can be obtained.

12.5 That the Victorian Government develop criteria and associated guidance material (along the lines of the UK Cabinet Office publications) for establishing any new advisory body, and the process of reviewing an existing body.

12.6 That the terms of reference of all major policy reviews include an examination of the efficiency and effectiveness of relevant government advisory mechanisms, and have regard to the criteria and associated guidance material outlined in recommendation 12.5.
Requests for information

(These requests appear in the order that they occur in the report.)

Planning
1. Given the importance of reporting for judging the performance of the planning system and for the timely identification of where change might be warranted, the Commission invites inquiry participants’ comments on the scope of the activity reporting initiatives. In particular, the Commission is interested in views on whether the activity reporting initiatives of Better Decisions Faster are sufficiently comprehensive, whether the timetable for implementation is appropriate, and what added costs might be associated with these initiatives.

Food safety
2. The Commission invites comments on whether the potential benefits from further integration of food regulators are sufficiently large for it to recommend in its final report that there be a review (involving public consultation) of this issue.

Mining
3. The Commission seeks comments on whether the definition of low impact exploration should be reviewed to focus more on the impact of exploration rather than the exploration process.
4. The Commission invites comments on the advantages and disadvantages of Mineral Resource Development Act requirements that work commence within specified times after exploration and mining licences are issued.

Forestry
5. The Commission invites further views on the nature and impact of regulations affecting the development of the plantation forestry industry.

Aquaculture
6. The Commission invites comments on alternative ways for determining access to foreshore areas, and their advantages and disadvantages.

Systemic reforms
7. The Commission is interested in views on whether new or amended regulations that have a material impact on regional Victoria should be accompanied by an implementation strategy that includes providing information to regional businesses early in the process.
8. The Commission is interested on views on which regulators (if any) should be required to provide more information in languages other than English or translation services for people from non-English speaking backgrounds, taking into account the costs and benefits of doing so.
9. The Commission is interested in views about whether the RIS and BIA processes should explicitly require the specification of evaluation and data collection strategies.
Part A
1 Introduction

On 20 April 2004, the Victorian Government released Victoria: Leading the Way, an economic statement that contained initiatives to strengthen Victoria’s performance in exports, investment and business growth. Among these initiatives was the proposal to establish the Victorian Competition and Efficiency Commission (the Commission), as the state’s foremost advisory body on business regulation reform and opportunities for improving Victoria’s competitive position.

The Commission performs three related functions:

1. It reviews regulatory impact statements and assessments of the economic impact of significant new legislation.
2. It undertakes inquiries into matters referred to it by the government.
3. It improves the awareness of, and compliance with, competitive neutrality.

Through its regulatory review role, the Commission aims to improve the regulatory framework in Victoria by ensuring regulations are implemented only where they improve overall community welfare. As part of this function, it is required to assess the quality of the regulatory impact statements that support regulations introduced under subordinate legislation. Such regulation includes substantive new regulation and ‘sun-setting’ regulation that is being re-introduced. The Commission’s assessment—to ensure the need for such regulation and that its likely effects have been examined rigorously and articulated clearly and transparently—is required before the regulatory impact statement (RIS) is released for public consultation.

The government has also recently required that primary legislation that has a significant impact on business and/or competition must be subject to a business impact assessment before it can be introduced. This assessment is a similar process to that required of regulatory impact statements. The Commission’s review function thus also includes the responsibility for assessing the adequacy of business impact assessments before Cabinet considers them.

As part of its inquiry function, the Commission is required to conduct public inquiries into matters referred to it by the government and to report publicly on the result of those inquiries. Given the nature of the Commission, these inquiries will primarily focus on regulations that may be having an adverse effect on the state’s economy and the community more generally. The Commission’s reports will typically identify the nature of any perceived deficiencies in Victoria’s regulatory framework and recommend to the government how best to address those deficiencies.

The review and inquiry roles of the Commission are related and complementary. Robust and effective scrutiny of the analysis underpinning new regulations is designed to ensure, over time, Victoria benefits from a continually improving regulatory framework.

Finally, the Commission is responsible for overseeing that the government’s Competitive Neutrality Policy is applied to all significant business activities undertaken by government agencies and local governments. The aim of competitive neutrality is to remove resource allocation distortions by ensuring government businesses do not enjoy any net competitive advantage simply as a result of their public sector ownership. Competitive neutrality will be applied, however, only where it is in the public interest.

In carrying out its functions, the Commission is to expose, rather than judge any trade-offs between competing economic, social and environmental objectives to be made through a regulatory process. (Such policy judgements are properly a role for the elected...
This inquiry provides an opportunity to identify ways in which regulation can facilitate the government’s objective of achieving economic development in regional Victoria, consistent with the community’s overall interests.

The following are among the resulting benefits:

- Businesses and the community will be able to assess the reasons behind regulations (including the alternatives considered) and to be satisfied that a thorough consultative process has been followed before regulations are introduced. Where improved transparency and evaluation reveal problems with the implementation of regulations, these problems are more likely to be addressed.
- Better policy and regulatory choices will arise from a clearer articulation of any trade-offs between competing objectives and from a consideration of any feasible alternatives.
- The processes by which policy decisions are given effect will improve, particularly in regulation. In turn, they will enable improved economic, social and environmental outcomes.

1.1 Background to the inquiry

When it established the Commission, the government gave it the terms of reference for its first inquiry: an inquiry into the regulatory impediments to regional economic development. The Commission has been directed to:

- identify the key regulatory barriers, including Victorian laws and regulations that significantly constrain Victoria’s regional economic development and employment
- report on ways to improve the design of Victorian laws and regulations to ensure that more efficient and effective means of achieving greater economic development are adopted, while protecting other community and environmental objectives
- identify the main implementation issues with improving the designs of Victoria’s laws and regulations
- identify opportunities for simplifying advisory mechanisms and the administration of regulation in regional Victoria.

In the preamble to the terms of reference, the government expressed its concern that some regulations, that apply to businesses across the state, may impose significantly higher costs on businesses located in regional areas. It noted:

The burden of business regulation compliance may be more challenging and costly in rural and regional Victoria than it is in major cities. This can occur for a range of reasons. In some cases regional businesses are required to comply with regulations that are not relevant to city based businesses, [or] with multiple regulatory regimes, particularly in border regions, or where there is overlap with national regulation and/or its administration.

Various participants in the inquiry echoed these concerns, considering that the burden of regulation imposed on regional businesses and communities has been increasing and adversely affecting productivity and growth (box 1.1).

This inquiry provides an opportunity to identify ways in which regulation can facilitate the government’s objective of achieving economic development in regional Victoria, consistent with the community’s overall interests.
1.2 The Commission’s approach

The Commission is conducting the inquiry in an open and transparent manner, in accordance with the requirements of the terms of reference and with the Order establishing the Commission (box 1.2).

Box 1.2: The Commission’s operating guidelines

In undertaking the inquiry, the Commission has had due regard for the terms of reference and the operating principles enshrined in the Order establishing the Commission. Its key operating guidelines are:

• the provision of analysis and advice that is independent and rigorous
• an overarching concern for the wellbeing of the community as a whole, rather than the interests of particular industries or groups.

The Commission must also operate in a framework consistent with the Victorian Government’s social, economic and environmental policies and priorities.

The key requirements of the inquiry’s terms of reference are:

• to hold public hearings
• to consult with key interest groups and affected parties
• to produce a draft report for consultative purposes
• to submit a final report to Government in the first half of 2005.

The Order establishing the Commission also requires that the Treasurer should publicly release the final report of the inquiry within six months of receiving it, and that the government should publicly release a response to the final report within six months of the Treasurer receiving it, regardless of the date of release of the final report.

Source: Government of Victoria (2004b)

Shortly after it received the terms of reference, the Commission advertised the inquiry in Victorian newspapers. To assist in setting the direction for the inquiry, it held a regional roundtable with invited participants in Ballarat on 17 July 2004. The proceedings of the roundtable were recorded and made available on the Commission’s website.
The Commission subsequently published an inquiry issues paper on 16 August 2004 (VCEC 2004), to provide participants with background information on the inquiry, to describe the Commission’s processes, and to help guide participants in framing submissions. The issues paper invited participants to make submissions, of which the Commission received more than 50 before the release of this draft report. A significant number of individuals and businesses provided input via industry associations. The Victorian Farmers Federation submission, for example, drew on input from over 100 members. Similarly, the submission from the Victorian Employers Chamber of Commerce and Industry (VECCI) was based on input from 54 regional businesses.

In September, the Commission held public hearings in Ballarat, Bendigo, Colac, Geelong, Mildura, Traralgon, Warrnambool and Wodonga. Hearings were widely advertised in the regional media, and the Commission’s Chairman was interviewed on a number of regional radio stations. The hearings attracted around 50 participants, representing a diverse range of industries and interests. Throughout October and November, the Commission also held targeted meetings with industry and government representatives. To enable a full response to concerns raised by inquiry participants, the Commission forwarded a list of questions to some government departments. The responses received were treated as public evidence and used to formulate the views set out in this report. Appendix A contains full details about participation in the inquiry.

The Commission’s approach to this inquiry is consistent with that adopted when reviewing other agencies’ regulatory proposals. The benefits of any change advocated by the Commission must ultimately be greater than the costs. The Commission’s analysis suggests the costs of most of its recommendations are comparatively small administrative costs that government agencies would bear in implementing regulatory frameworks. The Commission expects that its proposals would encourage economic development by reducing business costs, providing a more predictable regulatory environment, improving the implementation of regulation and enhancing pressures for continual improvement.

In releasing this draft report, the Commission is seeking feedback on its assessments of the likely costs and benefits. This information will guide the Commission in preparing its final recommendations. A round of further consultation is anticipated before the Commission is required to present its final report to the Treasurer, by the end of June 2005. The Treasurer is then required to release publicly the final report within six months of receiving it. The government should release publicly a response within six months of receiving the final report.

1.3 Report structure

To identify regulations that are significantly constraining regional economic development, the next three chapters in part A of the report outline:

- the role of regulation in achieving a ‘net community benefit’
- principles of best practice regulation that would facilitate the achievement of desirable outcomes from regulation
- characteristics of Victoria’s regulatory framework
- the drivers of economic development in regional Victoria and the role of regulation
- the areas of regulation on which the Commission has focused in this report.

The discussion in part A provides a backdrop to the part B analysis of specific areas of regulation: land-use planning (chapter 5), native vegetation (chapter 6), environmental regulation (chapter 7), food safety regulation (chapter 8) and industry-specific regulation.
issues in relation to the mining, forestry, aquaculture and broiler chicken industries (chapter 9).

An assessment of regulation across a wide range of areas, as the terms of reference require, has highlighted generic issues with the regulatory framework. Part C proposes changes to the processes for developing, implementing and enforcing regulation in Victoria, to ensure the problems identified in part B do not re-occur.

The Commission invites comments on these recommendations, which it considers would help to ensure regulations do not unnecessarily impede economic development and employment in regional Victoria.
2 The challenge of regulation

The inquiry terms of reference require the Victorian Competition and Efficiency Commission to:

Report on ways to improve the design of Victorian laws and regulations to ensure the most efficient and effective means of achieving greater economic development, while protecting other community and environmental objectives.

This chapter provides some building blocks that underpin the analysis of this issue later in this report:

- It defines regulation.
- It discusses the purpose of regulation.
- It outlines the characteristics of a good regulatory framework, which will facilitate the achievement of this purpose.
- It describes the regulatory environment in Victoria.

Against this background, the next two chapters describe the role that regulation performs in economic development, and identify the regulations that part B addresses in detail.

2.1 Defining regulation

The Organisation for Economic Cooperation and Development (OECD) defines regulation as ‘the instruments by which governments place requirements on enterprises, citizens and government itself, including laws, orders and other rules issued by all levels of government and by bodies to which governments have delegated regulatory powers’ (OECD 1997, p. 6). That is, regulation involves the imposition of some rules, supported by government authority, that are intended to influence behaviour.

Regulation can involve many different types of instrument, with varying degrees of government direction. These might range, for example, from the legislated prohibition of an activity to government imprimatur (without legislative backing) for a voluntary industry code of practice.

In this report, the Commission considers regulation delivered through the rules set in primary legislation (an Act of Parliament), regulations, mandatory codes of practice, ministerial directions or binding guidelines that could affect economic development in regional Victoria. It also considers cost-recovery mechanisms designed to cover the costs of government agencies implementing that regulation.

2.2 The purpose of regulation

The ultimate policy objective of any government is to improve the community’s welfare. The Victorian Government has expressed its vision for the community’s welfare in its Growing Victoria Together statement (Government of Victoria 2001a). That statement also expressed the underlying policies considered necessary to achieve that vision—policies that include an ongoing reliance on regulation where appropriate.

While governments normally rely on market forces to allocate resources efficiently and to deliver community welfare-enhancing outcomes, market forces are not always effective.

The Victorian Government has expressed its vision for the community’s welfare in its Growing Victoria Together statement (Government of Victoria 2001a). That statement also expressed the underlying policies considered necessary to achieve that vision—policies that include an ongoing reliance on regulation where appropriate.

While governments normally rely on market forces to allocate resources efficiently and to deliver community welfare-enhancing outcomes, market forces are not always effective.
This is particularly so where such market operations result in equity (that is, distributional) outcomes that are at odds with the outcomes that the community seeks. Markets may also fail to deliver suitable outcomes where, for example, there is an information asymmetry or the agents involved do not fully bear the costs and benefits of activities.

In cases where markets do not work in delivering efficient outcomes, or they work but do not deliver socially acceptable outcomes, government intervention may be warranted, if it can lead to net benefits. Such intervention may deliver a more efficient outcome (with higher community welfare as a result) or income distribution that is more consistent with community values. Regulation is one means of intervineing, and it may be more or less ‘market friendly’.

Intervention via regulation, however, often involves governments making a trade-off between efficiency and equity, and requires a balancing of competing community interests. It can be a complex task to evaluate these trade-offs. Interventions can have both direct and indirect effects, when an individual’s or firm’s responses to an intervention affects others. These responses may be transitional or long lasting, and the associated distributional changes can be transitory or permanent. Often, isolating cause and effect is difficult because many factors (in addition to an intervention) influence market behaviour. There might also be differing degrees of community concern about distributional impacts, depending on whether the impacts focus on particular groups or are spread more widely (PC 2001, chapter 3).

Resolving the tension between economic development and the environment may also require trade-offs. If there were complete markets for all goods and services, including environmental services, then competitive market transactions would lead to the provision of the level of environmental services that reflects the value that the community places on the environment. Those who place a high value on the preservation of native vegetation, for example, could subsidise those who protect native vegetation, effectively buying instruments that deliver ‘native vegetation services’. Markets for such services are frequently incomplete, however, as described in part B of this report. Governments that intervene, using ‘command and control’ mechanisms such as prohibitions or controls on particular activities, or market instruments such as taxes, subsidies and tradeable permits. These different types of instrument can have different costs. Moreover, in the ways in which government intervenes can have substantial implications for the distribution of wealth and income, which can lead to considerable tension, as observed in debates over land-use planning and native vegetation (chapters 5 and 6).

Public health and safety provide another example of a situation where government involvement may be warranted. Firms may have an inadequate incentive to invest in providing food safety if consumers are poorly informed about the safety of the food they buy and if it is difficult to trace the source of food poisoning. Given that market transactions do not automatically make these costs and benefits explicit or provide an appropriate balance between them, the government may intervene via regulation.

It is not uncommon for Acts establishing regulations to have an objective such as ‘net community benefit’. This objective recognises that there may be trade-offs between economic efficiency and equity, for example, or between a higher level of environmental amenity and economic development. Legislation or guidelines sometimes clarify the meaning of the net community benefit objective by identifying the characteristics of such a benefit. Decision makers, however, still need to judge the weights to be given to individual components that make up the net community benefit, if one value can be achieved only at the expense of another. While the balance between competing interests is a political choice, it is important that the choice is appropriately informed.

Such judgements are unlikely to be well informed unless preceded by consultation with those likely to be affected by the proposed regulation, within an analytical framework that permits a transparent airing of the costs and benefits of that regulation. Once an
intervention has been made, outcomes should be monitored to test whether the intervention is having its intended effects. Consultation and analysis involve costs, however, including the costs of delays to potentially wealth creating activities if the consultation process is unduly drawn out. They can also become a focus for lobbying activity. A decision has to be made, therefore, about how much analysis, consultation and monitoring is appropriate. The Productivity Commission noted:

[The extent of analysis needs to reflect the likely costs of making a policy change—that is, it needs to be pragmatically based and focused initially on a consideration of the reform proposal and its likely consequences, the characteristics of those likely to be affected, and the general state of the economy and local labour markets. (PC 2001, p. xv)]

Designing a regulatory framework that enables these competing interests to be balanced and also encourages productivity improvements is not a simple task. This task is central, however, to areas of regulation covered in this inquiry, such as those relating to native vegetation, the environment more broadly and land-use planning. As the Chairman of the House of Representatives Standing Committee on Financial Institutions and Public Administration noted:

Society deals better with change when it: understands the rationale behind the decision making; can see a rigorous framework on which those decisions are based; is confident that those affected have been consulted; and believes that all consequences have been considered.

(Hawker Committee 1997, p. vi, cited in PC 2001, p. 7)

2.3 Best practice regulation

The intent of decision makers is more likely to be achieved in a manner that ensures benefits are maximised and costs are minimised if a regulatory framework is designed using best practice principles that encourage:

- the development of appropriately designed regulations
- effective administration and enforcement of these regulations
- processes that encourage continual improvement of the regulations and their administration.

The benefits of applying such principles include that:

- they provide a regulatory process that reveals the trade-offs between competing objectives by making transparent the costs and benefits of alternative choices. Decisions can thus be based on an awareness of the trade-offs.
- they prevent regulation from having unintended consequences for the economy, society and the environment. Regulation constrains corporate and individual behaviour that normally adds value by lowering costs, expanding service availability and finding new ways in which to meet consumers' needs. If regulation is poorly designed, it can unduly affect relative costs, distort competition, unnecessarily impede entrepreneurial activities and undermine the achievement of social and economic objectives.

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(Hawker Committee 1997, p. vi, cited in PC 2001, p. 7)
Recognising the risks and costs potentially associated with regulation, governments have paid particular attention to the development of best practice principles of regulatory design, to ensure regulation delivers the greatest net benefit to the community.

**Best practice principles**

Best practice principles to guide the development and enforcement of regulations, and of the underlying institutional framework, are summarised in box 2.1. Explained in appendix B, these have been drawn from the work of various authorities.

The principles in box 2.1 inform the discussion of specific regulations in later chapters. Some useful context is provided first, however, by the following description of some features of Victoria’s regulatory framework.

**Box 2.1: What is best practice regulation?**

1. Regulations should be understandable and introduced only after proper consultation:
   - Regulations should be developed through consultation that tests specific proposals, including the estimates of costs and benefits, and identifies the potential for unintended consequences.
   - Regulations should be easy to understand and readily available.
   - Timely advice should be available on general issues of interpretation and compliance.

2. Regulatory effort should be the minimum necessary given the scale of the problem:
   - Objectives should be tightly defined, and there should be clear evidence of a problem not able to be addressed by other means.
   - The regulation should be targeted at the specific problem to achieve the objectives.
   - Overall benefits to the community should clearly justify costs.
   - Regulation should be the best feasible alternative.
   - Benefits and costs relevant to key subgroups, such as small business, should be considered.
   - Regulation should not restrict competition, unless this clearly generates the highest net benefit of all the options.

3. Regulations should not be unduly prescriptive:
   - Regulations should usually be performance and outcome focused.
   - They should not be overly prescriptive about how outcomes are to be achieved.
   - They should be flexible enough to accommodate changes over time and different circumstances.

(continued next page)
2.4 The regulatory framework in Victoria

According to a recent study of 145 countries (World Bank 2004), Australia has a very positive business environment in terms of the ease and consistency with which businesses can be started, properties registered and contracts enforced. There is also evidence that Victoria’s performance in regulation reform compares well with that of other states. The National Competition Council concluded that Victoria’s performance in legislation review was ‘well above average’ compared with other jurisdictions and that Victoria has substantially completed the total [National Competition Policy] reform agenda and its overall progress has been impressive (NCC 2003a, pp: xxxi–xxxii).

Box 2.1: What is best practice regulation? (continued)

4. Regulations and their administration should be consistent with other regulations:
   • Overlap and duplication with other state or Commonwealth Government regulation should be avoided.
   • Any differences from the regulation and administration of other industries, or from that applied by other Australian governments to the industry being regulated, should be transparent, and the costs and benefits of these differences should be carefully considered. Consistency need not require uniformity.

5. Regulations should be enforceable:
   • Regulations should provide the minimum incentives necessary for reasonable compliance.
   • They should be fairly and consistently enforced.
   • They should be developed to achieve a reasonable level of voluntary compliance and community support.
   • They should be able to be effectively monitored and policed.

6. There should be processes for the continual improvement of regulation:
   • All regulatory instruments (such as legislation, mandatory guidelines and codes of practice) that impose a significant burden on the community should be reviewed every 10 years. These reviews should be subject to external scrutiny.
   • Regulators should clearly explain their decisions, publicly where possible.
   • There should be an appeal process for individual decisions that have substantive effects on individuals and firms.
   • There should be mechanisms for evaluating the operation of regulations, to assess how well the regulations are achieving their intended outcomes.

7. Regulators should be accountable
   • There should be clear criteria for assessing each regulator’s performance and public reporting of information, to allow the Parliament, those regulated and the wider community to make that assessment.


2.4 The regulatory framework in Victoria

According to a recent study of 145 countries (World Bank 2004), Australia has a very positive business environment in terms of the ease and consistency with which businesses can be started, properties registered and contracts enforced. There is also evidence that Victoria’s performance in regulation reform compares well with that of other states. The National Competition Council concluded that Victoria’s performance in legislation review was ‘well above average’ compared with other jurisdictions and that Victoria has substantially completed the total [National Competition Policy] reform agenda and its overall progress has been impressive (NCC 2003a, pp: xxxi–xxxii).
Regulation and regional Victoria: challenges and opportunities

Nevertheless, a common theme of industry surveys in recent years has been dissatisfaction with aspects of Commonwealth and state government regulatory policy (Hindle and Rushworth 2004; sub. 52). Specifically, some parts of industry perceive that the compliance burden is growing rapidly, despite government policies to reduce red tape. Based on a recent national survey of 257 manufacturing companies, the Australian Industry Group (2004a) estimated the following:

- Manufacturers were spending over $680 million per year on staff costs to manage compliance with taxes, environmental management and other regulations.
- The compliance burden on regional companies was almost 15 per cent higher than that on metropolitan companies, with federal and state taxes and environmental management being the main causes ($675 per employee per year for regional companies, compared with $590 for businesses located in the major cities).
- While the absolute time spent administering compliance increased with firm size, time spent per employee on compliance was higher in small companies (4.85 hours per month in companies employing between one and 25 employees; compared with 2.65 hours for medium sized firms and 0.78 hours for large firms).

Another general concern is that the increasing complexity of the regulatory framework makes it difficult for businesses, especially small businesses and start-up companies, to be confident that they have adequately complied with the rules (Hindle and Rushworth 2004, p. 15). Chapter 3 discusses the large number of requirements, especially those that apply when starting a business, and appendix C provides some examples. This trend towards increased complexity is apparent throughout most developed countries, including Australia, and is certainly not limited to Victoria. As explained below, the business impact assessments now required for primary legislation in Victoria will have specific regard for the impacts on small business.

The remainder of this section describes the 'how and who' of regulation in Victoria. It begins by describing how policy is developed and the process for developing, administering and enforcing regulations. It then explains who is responsible for administering and enforcing regulation, drawing on a survey undertaken by the Commission for this inquiry.

Regulatory policy development in Victoria

Policy development is the initial stage in the regulatory process. It involves:

- identifying the size and scope of the problem
- considering alternative approaches, both regulatory and non-regulatory, to redress that problem
- analysing the costs and benefits of those alternative approaches and determining whether government involvement is warranted and, if so, which alternative would generate the best results
- finalising the policies, laws, regulations, codes of practice, and/or other documents necessary to implement the preferred approach.

Policy development involves departments developing advice to government, the government reaching a decision based on that advice, and then the government enacting the legal and administrative tools necessary to implement that decision. A good policy development process is usually underpinned by guidance on overarching principles and identifying appropriate regulation in line with those principles. The Victorian Government's guidelines are outlined in the following sections, along with aspects of the state's policy
development processes. In Victoria, a range of government organisations (described below) provide advice to government.

The objectives of government policy, policy options presented to the government, and government decisions regarding those options are not within the mandate of the Commission. Some processes involved in developing policy (for example, the use of regulatory impact statements and public consultation) and giving effect to those policy objectives (including how they are implemented), however, are matters for the Commission.

Box 2.2: Guidelines for developing regulation

Subordinate Legislation Act 1994 Guidelines — This publication is a comprehensive guide to assist ministers, departments and agencies to comply with their obligations under the Subordinate Legislation Act 1994. The guidelines are mandatory and cover issues such as the development of, assessment of, and consultation on, new subordinate legislation (Regulations).

Principles of Good Regulation — This acts as a general manual for regulation in Victoria. It outlines the conditions under which government regulation is appropriate, and lists several principles of good regulation design (which broadly mirror those endorsed by the Commission in section 2.3).

Regulatory Alternatives — The purpose of these guidelines is to raise awareness of alternatives to traditional ‘command and control’ regulation, such as voluntary codes of conduct, information disclosure requirements and public education programs. This publication outlines the factors to consider in determining the most appropriate policy response to a given problem.

Setting Fees and Charges Imposed by Departments and Budget Sector Agencies — The Victorian Department of Treasury and Finance has summarised the requirements to be followed when setting fees and charges. In addition to summarising the legislative requirements set out in the Subordinate Legislation Act, this document offers guidance on the application of competitive neutrality requirements and also reflects government policy guidance on costing.

Regulatory Impact Statement Handbook — All regulations that result in an appreciable burden (including those that amend or replace existing regulations) are subject to public scrutiny through the regulatory impact statement (RIS) process. This process provides a formal mechanism for considering all of the costs and benefits of a regulatory proposal and assessing it relative to other feasible alternatives, including non-regulatory alternatives. The handbook describes the way in which these documents should be prepared and the issues that they should cover.

Guidelines for the Application of the Competition Test to New Legislative Proposals — All governments in Australia have agreed that markets should be subjected to competitive pressures where there are no overriding reasons for not doing so. Victorian laws and regulations must not restrict competition unless (1) the benefits of the restriction to the community as a whole outweigh the costs, and (2) the objectives of the legislation can be achieved only by restricting competition. This publication sets out the procedures to be followed, and factors to be considered, when agencies assess the overall costs and benefits of regulation that reduces competition.

Statutory Rules: Guidance Notes — This material provides assistance in drafting regulations in formal, legal language appropriate for Parliament.

Policy guidelines

The Victorian Government recognises the importance of ensuring the processes followed in the development and implementation of regulation are consistent across all of government. To this end, various guidance publications have been produced to assist departments and regulatory agencies to achieve the government’s objective of ensuring regulations do not impose unnecessary costs or impede the opportunities for the development of business (ORR 1996a, p. 2). These guidelines also inform businesses and the wider community about the processes followed, and the factors considered, in the development of new regulations. The main guidelines are listed in box 2.2.1.

The list shows that there are guidelines covering each stage of the regulation development process, from correctly identifying the problem to be addressed to formally writing the regulations.

The Victorian Government has instituted three processes to present evidence that the benefits to society of proposed regulations exceed the costs: regulatory impact statements, policy impact assessments and business impact statements.

Regulatory impact statements

The Subordinate Legislation Act requires statutory rules (predominantly regulations made under primary legislation) that are likely to impose an appreciable economic or social burden on a sector of the public to be subject to the RIS process.

A RIS is required to:

- define the nature and extent of the problem being addressed by the regulation
- state the objectives of the regulation and how it will operate
- identify whom it will affect (and the likely impact on them) and the regulation’s enforcement regime.

The RIS should then:

- identify and analyse the costs and benefits of the proposed regulation, including the economic, social and environmental impacts and the likely administration and compliance costs
- identify and assess the costs and benefits of any other practicable means of achieving the same regulatory objectives
- contain sufficient information to allow a decision on whether the proposed regulatory measure is justified.

Consultation is an integral part of the RIS process. It provides information relevant to assessing costs and benefits, and may identify alternative methods of achieving the stated objective. The Subordinate Legislation Act requires consultation in the initial stages of the RIS process with persons and bodies potentially affected by the proposed regulation, and the RIS must document the consultation undertaken.

1 A new Victorian Guide to Regulation is being prepared and is expected to be available early in 2005.

2 Statutory rules are defined in s.3 of the Subordinate Legislation Act.

Regulatory impact statements

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The policy impact assessment process is discussed in chapter 7.

Policy impact assessments

State environment protection policies, which have a similar status to subordinate legislation, are also subject to a formal assessment, through a policy impact assessment. These assessments follow a similar process to that required for a RIS, except that:

- the minimum period allowed for consultation is longer (60 days)
- the policies must be reviewed within 10 years, but do not automatically sunset\(^3\)
- there is no requirement for independent assessment of the adequacy of the policy impact assessment as a basis for consultation.

The policy impact assessment process is discussed in chapter 7.

Business impact assessments

The Victorian Government also requires a business impact assessment (BIA) to be undertaken where proposed primary legislation would have potentially significant effects for business and/or competition. The analysis required is similar to that for a RIS but must include a specific assessment of the impact of the legislation on small business. Where a BIA is required, the Commission will independently assess its adequacy before Cabinet consideration. A BIA does not require a mandatory consultation period or that a draft copy of the legislation be made available to the Commission for its assessment.

Informal processes

While the government’s policy development guidelines could be applied to the development of all types of regulation, there are no formal processes for reviewing the costs and benefits of regulation that falls outside the scope of RISs, policy impact assessments and BIAs, such as for some substantive fees, local laws, guidelines, codes of conduct and ministerial directions (SARC 2002, p. 19). The development of these types of regulation is subject to informal processes. The assessment process, level of analysis and level of consultation are at the discretion of the organisation responsible for developing the regulation.

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\(^3\) Sun-setting provisions ensure regulations automatically lapse after a fixed period unless something happens to keep them in place.
Administration and enforcement of regulation in Victoria

The administration of regulation is the process of interpreting and applying the legislative rules. If the regulator makes binding decisions, the process may also involve an appeals stage. The significance of the administration varies across regulations. Some regulations have extensive administration, with detailed inspection and approval processes. Others, such as basic registration, have minimal administration requirements. For regulation that establishes requirements, the regulatory authority’s main focus is on promoting compliance.

Promoting compliance with regulation usually involves a combination of monitoring and enforcement activities. (It can also involve providing advice to regulated businesses.) Monitoring is a formal process of measuring and reporting compliance with regulatory requirements. It adds to transparency and encourages implementation, but it does not compel businesses to implement the regulation. It can, however, provide information that will assist in enforcement.

Enforcement is the final stage of the regulatory process. It involves: identifying a breach in the regulation; collecting evidence; reviewing that evidence and considering counter arguments; determining the consequences of a breach; and ensuring those consequences occur.

The administration of regulation primarily involves the regulating agencies, which may contract out some of their tasks. Private building inspectors are one example of a private business or individual being authorised to make regulatory decisions. Regulators are also involved extensively in the enforcement of regulation, often through monitoring or prosecuting breaches of the regulation. Determining whether a breach has occurred and the consequences of a breach, and then ensuring those consequences occur, is a more judicial process. It can involve tribunals or boards, and courts of law in some cases.

The principal mechanism for the review of decisions by responsible authorities under Victorian legislation is the Victorian Civil and Administrative Tribunal, which was established under the Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act). The VCAT Act provides that the tribunal may review a decision of an authority in cases where particular legislation authorises such review (s.48(a)) and may substitute its own decision or give directions. The tribunal is authorised by more than one hundred Victorian Acts to review decisions of authorities; persons seeking review under different Victorian legislation thus do not face a range of different tribunals. In exceptional cases, such as under the Food Act 1984, decisions by an authority may be reviewed in the magistrates court. Compared with the courts, the tribunal has the advantages of relative informality and speed in dealing with cases brought to it. Ordinarily, each party bears their own costs. In addition, the tribunal seeks consistency by giving reasons for its decisions and by accounting for earlier relevant decisions (although it is not bound by them).

Persons aggrieved by a decision of an authority may also have standing to apply to a superior court for judicial review of the legality of the authority’s exercise of power. Judicial review has the disadvantages of the costs and delays inherent in the court system, and it is confined to reviewing questions of law. Judicial review is unlike appeals to the tribunal, in that it does not extend to a review of the merits of administrative action.

The Commission is not aware of any formal processes that assist in developing best practice in the administration and enforcement of regulation. Regulators meet to discuss common issues, but the extent to which this forum (in its infancy) will be used to improve the efficiency and consistency of regulation administration is not clear.

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Business regulators in Victoria

For this inquiry, the Commission has defined a business regulator as:

A state government entity (either independent or within a department) that derives from primary or subordinate legislation one or more of the following powers in relation to businesses and occupations: inspection; referral; advice to a third party; licensing; accreditation; or enforcement. (Based on Better Regulation Task Force, 2003)

Government departments fulfil a wide variety of roles, ranging from policy advice to service delivery. Some departments have units or divisions within their structure that act as business regulators—for example, the Food Safety Unit within the Department of Human Services and the Chemical Standards Branch of the Department of Primary Industries. Separate to government departments, a wide range of organisations conduct their day-to-day operations at arms length from executive government. Included in this group are business regulators, such as the Essential Services Commission, and occupations licensing boards, such as the Architects Registration Board and the Dental Practice Board.

Who are Victoria’s business regulators?

The Commission has sought to compile a comprehensive list of Victorian regulators, which it intends to serve as a public directory of all government regulatory agencies affecting business, providing an important information source about the regulatory framework in Victoria. Using its definition of a business regulator, the Commission initially identified 69 state-based government regulators whose activities affect Victorian businesses, other private sector entities (such as private schools and hospitals) and occupations. It identified these regulators by scanning legislation reviews and annual reports of government departments, and consulting with government and with agencies.

The survey report focused on Victorian Government regulators of business activity. A number of organisations performing regulatory functions relevant to Victoria were not covered:

- courts and tribunals
- local councils
- Commonwealth regulators
- interstate regulators
- third party auditors
- regulators with little or no direct relevance to businesses (such as the Victorian Electoral Commission)
- private authorities with delegated regulatory powers.

For a more extensive discussion of the method used, see The Victorian Regulatory System report (VCEC 2005).

The recent white paper Securing Our Water Future Together (DSE 2004a) sets out the regulatory framework governing water resources. It affirms that regulation is separate from operations and service delivery (p. 142). Water authorities, whose primary role is

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operational and service oriented, currently perform some regulatory functions, such as granting bore construction licences. Catchment management authorities, which are responsible for ensuring the sustainable use and management of land and water resources at the catchment level, also employ some regulatory instruments (such as authorising permits) to achieve this goal. Water authorities and catchment management authorities are not included in the survey results, but are intended to be covered by a future version of the report. Significant aspects of water regulation, however, are covered in the report. The Essential Services Commission regulates price and service quality aspects of the water industry, and EPA Victoria sets and regulates environmental standards and performance. The Environmental Health area of the Department of Human Services is responsible for regulating drinking water quality.

The survey results have been released as The Victorian Regulatory System (VCEC 2005), and the scope of regulators covered is outlined in table 2.1.

The quantitative aspects of the survey should be treated with caution. As with any new exercise of this kind, certain questions may have been interpreted differently, and the requested information is not available in the desired form for a significant number of entries. Improving the usefulness of the operational information for the next version of this survey report is a key challenge. Notwithstanding this issue, the qualitative parts of the survey reveal significant differences across regulators in terms of structure and governance arrangements, and in operational matters such as the level and type of service provided on-line, to community members from non-English speaking backgrounds, and to Victorians living in regional areas of the state. These differences are discussed below.

**Legislative framework**

There is a wide range of governance arrangements across different regulators. Some regulators, such as the Essential Services Commission, have been established through legislation and operate at arms length from the government as statutory authorities. Others—for example, the Bureau of Animal Welfare—operate as branches of state government departments. The survey (as at 1 November 2004) revealed the following:

- Of the 69 Victorian Government entities regulating business activity, 20 were located within government departments and 49 were statutory authorities operating at arms length from the government.
- Victorian business regulators administered a combined total of 170 Acts, which totalled over 19,600 pages. These Acts had been amended approximately 3400 times.
- These Acts are commonly given specific force through subordinate legislation—the most common form being regulation.
- Victorian regulators of business activity administered 176 sets of Regulations, which totalled over 6400 pages. These Regulations had been amended 342 times.

Similar to Regulations are state environment protection policies and waste management policies, which are the responsibility of EPA Victoria. These are made under the provisions of the Environment Protection Act 1970 and provide more detailed requirements and guidance for applying the Act in Victoria (EPA 2004a and 2004b). Currently nine state environment protection policies, five industrial waste management policies, and two waste management policies operate in Victoria.

Codes of practice can also be used to regulate behaviour (table 2.2). These can either be backed by legislation—as in the case of the 25 codes that operate under the authority of part II of the Prevention of Cruelty to Animals Act 1986—or operate on a voluntary basis—for example, numerous codes relating to VicRoads operations (such as access operational and service oriented, currently perform some regulatory functions, such as granting bore construction licences. Catchment management authorities, which are responsible for ensuring the sustainable use and management of land and water resources at the catchment level, also employ some regulatory instruments (such as authorising permits) to achieve this goal. Water authorities and catchment management authorities are not included in the survey results, but are intended to be covered by a future version of the report. Significant aspects of water regulation, however, are covered in the report. The Essential Services Commission regulates price and service quality aspects of the water industry, and EPA Victoria sets and regulates environmental standards and performance. The Environmental Health area of the Department of Human Services is responsible for regulating drinking water quality.

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**Table 2.1: Victorian Government regulators of business**

<table>
<thead>
<tr>
<th>Safety</th>
<th>Gambling</th>
<th>Environment</th>
<th>Animal Welfare</th>
<th>Construction</th>
<th>Other</th>
<th>Transport</th>
<th>General</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Chemical Standards Branch</td>
<td>• Bookmakers and Bookmakers’ Clerks Registration Committee</td>
<td>• Crown Land Management</td>
<td>• Animal Health Operations</td>
<td>• Architects Registration Board of Victoria</td>
<td>• Children’s Services</td>
<td>• VicRoads</td>
<td>• Business Licensing Authority</td>
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<tr>
<td>• Country Fire Authority</td>
<td>• Greyhound Racing Victoria</td>
<td>• EPA Victoria</td>
<td>• Bureau of Animal Welfare</td>
<td>• Building Commission</td>
<td>• Co-Operative Housing Societies</td>
<td>• Victorian Taxi and Tow Truck Directorate</td>
<td>• Consumer Affairs Victoria</td>
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<tr>
<td>• Marine Safety Victoria</td>
<td>• Harness Racing Victoria</td>
<td>• Fisheries Victoria</td>
<td>• Veterinary Practitioners Registration Board of Victoria</td>
<td>• Plumbing Industry Commission</td>
<td>• Legal Practice Board</td>
<td>• VicRoads</td>
<td>• Equal Opportunity Commission</td>
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<td>• Metropolitan Fire and Emergency Services Board</td>
<td>• Racing Appeals Tribunal</td>
<td>• Land Stewardship and Biodiversity Division</td>
<td>• Animal Welfare</td>
<td>• Surveyors Board of Victoria</td>
<td>• Licensing Services Branch (Victoria Police)</td>
<td>• Victorian Taxi and Tow Truck Directorate</td>
<td>• Essential Services Commission</td>
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<td>• Minerals and Petroleum Regulation Branch</td>
<td>• Victorian Commission for Gambling Regulation</td>
<td>• Parks Victoria</td>
<td>• Other</td>
<td>• Surveyors Board of Victoria</td>
<td>• Office of the Legal Ombudsman</td>
<td>• Supported Residential Services</td>
<td>• Industrial Relations Victoria</td>
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<td>• Office of Gas Safety</td>
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<td>• Plant Standards Branch</td>
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<td>• Small Business Commissioner</td>
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<td>• Office of the Chief Electrical Inspector</td>
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<td>• Sustainable Energy Authority</td>
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<td>• Professional Boxing and Combat Sports Board</td>
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<td>• Supported Residential Services</td>
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**Source:** VCEC (2005)
In addition to formal codes of practice, regulators frequently publish guidance materials to assist with compliance and to set out best practice principles for the industry. The Guidelines for Good Pharmaceutical Practice 2004, available from the Pharmacy Board of Victoria, are an example. Responses to the Commission’s survey of regulators indicated 59 regulators provide guidance publications.

Victoria’s regulators have a wide range of objectives. Some, such as the Office of Gas Safety and the Office of the Chief Electrical Inspector, aim to ensure public safety through the regulation of inherently dangerous activities or professions. Others aim to protect the public from a range of adverse outcomes such as food contamination (Dairy Food Safety, PrimeSafe, the Food Safety Unit), and unfair or unsafe work practices (Equal Opportunity Commission, Victorian WorkCover Authority).

A significant number of authorities regulate entry to a trade or profession. These are mostly in health professions, such as the Nurses Board of Victoria and the Pharmacy Board, but also cover professions such as architecture, legal services and teaching.

### Operational information

Part of the survey related to the operations of regulators. It covered matters such as enforcement activities, expenditure distribution and licence revenue for the three years to 2002-03. It also included questions relating to the on-line provision of information, the services available for those from a non-English speaking background, and the number and nature of the advisory bodies linked to each regulator. The survey also examined the nature of each regulator’s interaction with regional Victoria.

#### On-line public access to information

On-line access to licensing and registration information can make it significantly easier for businesses and professionals to obtain required information. This access can be particularly important in more remote areas, although on-line provision of information should be seen as a complement to, not a substitute for, readily accessible information via more traditional methods (Weedon and Maddern 2004). The majority of regulators provide information on-line for regulated firms, while significantly fewer reported providing information on-line for complainants (table 2.3).

### Table 2.3: Regulators providing on-line information (number)

<table>
<thead>
<tr>
<th>Information provided</th>
<th>Yes</th>
<th>No</th>
<th>Not supplied</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing and/or registration information</td>
<td>57</td>
<td>4</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Information on lodging complaints about regulated firms/professionals</td>
<td>38</td>
<td>27</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: VCEC (2005)
This report does not include information on the extent to which transactions (such as the payment of licence fees or the changing of contact details) can be conducted on-line, although reviews of regulator websites suggest the scope for on-line transactions is very limited at the moment. This issue is likely to be canvassed in future editions of this report.

Regional engagement

There is substantial variation in the level of service and support made available to those consumers and businesses located in regional Victoria. Some authorities focus on industries that are almost exclusively regionally based. As a result, regulators such as the Animal Health Operations branch of the Department of Primary Industries and Parks Victoria have a high level of engagement with regional Victoria. Some other regulators make a concerted effort to ensure the whole of the state is engaged (table 2.5). The Victorian Institute of Teaching had a regional support program of 150 events across 30 locations in 2004.

Table 2.4: Regulators with operations in regional areas (number)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Not supplied</th>
<th>Not available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulators making special arrangements for stakeholders in regional areas</td>
<td>44</td>
<td>20</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Regulators having offices/staff located in regional areas</td>
<td>31</td>
<td>33</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Regulators conducting education or professional development seminars and activities in regional areas</td>
<td>48</td>
<td>16</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: VCEC (2005)

Table 2.5: Regulators reporting higher levels of engagement with regional Victoria

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Land Stewardship and Biodiversity Division</td>
<td>Marine Safety Victoria</td>
<td>Office of the Chief Electrical Inspector</td>
<td>Parks Victoria</td>
<td>Plant Standards Branch</td>
<td>Plumbing Industry Commission</td>
<td>State Revenue Office</td>
<td>Supported Residential Services</td>
<td>Sustainable Energy Authority Victoria</td>
<td>Tobacco Policy</td>
<td>VicRoads</td>
<td>Victorian WorkCover Authority</td>
<td></td>
</tr>
</tbody>
</table>

Source: VCEC (2005)

5 Some regulators, such as VicRoads, offer on-line payment facilities.
Multi-lingual services

Victoria’s multicultural tradition is reflected in the fact that one Victorian in five speaks a language other than English at home (DIMIA and VOMA 2003, p. 37). These citizens may face additional compliance challenges arising from poor English language skills. In large centres, such problems are often mitigated to an extent by the presence of a concentrated ethnic community. These challenges may be more acute in regional areas, however, which are more detached from such support networks. The provision of written material in languages other than English and the availability of translation services can significantly reduce the burden of regulatory compliance on recent migrants, with resultant economic benefits. This is particularly the case in regional areas.

The survey asked three questions designed to gauge the level of service provision for those stakeholders from a non-English speaking background (table 2.6).

Table 2.6: Regulators providing services for stakeholders from a non-English speaking background (number)

<table>
<thead>
<tr>
<th>Regulators providing services</th>
<th>Yes</th>
<th>No</th>
<th>Not supplied</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulators publishing materials for regulated firms or professionals/occupations in languages other than English</td>
<td>19</td>
<td>40</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Regulators publishing any materials for consumers in languages other than English</td>
<td>22</td>
<td>37</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Regulators offering translation services for people contacting the regulator by phone or in person</td>
<td>23</td>
<td>34</td>
<td>11</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: VCEC (2009)

The responses to these questions varied substantially. While fewer than half of those responding to the question indicated that they made special arrangements for stakeholders from a non-English speaking background, some particularly positive examples were cited. Industrial Relations Victoria produces information relating to the clothing outwork industry in 11 languages other than English, and on the Child Employment Act 2003 in 7 other languages.

A number of regulators provide either written material in foreign languages or translation services to stakeholders, but only a minority reported providing both of these services (table 2.7).

Table 2.7: Regulators providing translation services and written material in languages other than English to regulated firms or customers

<table>
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<tr>
<th>Bureau of Animal Welfare</th>
<th>Industrial Relations Victoria</th>
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<tr>
<td>Business Licensing Authority</td>
<td>Marine Safety Victoria</td>
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<td>Chemical Standards Branch</td>
<td>Metropolitan Fire and Emergency Services Board</td>
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<td>EPA Victoria</td>
<td>Office of Gas Safety</td>
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<td>Equal Opportunity Commission</td>
<td>Parks Victoria</td>
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<td>VicRoads</td>
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<td>Food Safety Unit</td>
<td>Victorian WorkCover Authority</td>
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<tr>
<td>Health Services Commissioner</td>
<td></td>
</tr>
</tbody>
</table>

Source: VCEC (2005)
2.5 Advisory bodies

The terms of reference call for the Commission to ‘identify opportunities for simplifying advisory mechanisms’. The definition of advisory mechanisms could be very broad, and many different types of mechanism are discussed throughout this report. Where relevant, the Commission has made recommendations on how advisory mechanisms could work better.

The development of new regulation and its administration and enforcement (or a significant amendment to existing regulation) benefits from engagement with the community and experts in relevant fields. This issue is discussed in detail in chapter 11, which recognises the many different mechanisms for information exchange. Government agencies can use both informal and formal mechanisms to obtain views, advice and feedback from stakeholders. Informal mechanisms include feedback to inspectors from businesses subject to inspection, or a business or industry association’s lodgement of concern with a government agency. More formal processes cover ad hoc mechanisms (such as complaints-handling processes and consultation on specific reports, policy proposals or regulatory changes) and ongoing mechanisms (such as panels or advisory groups).

To help inform understanding of the current framework through which advice to regulators is provided, the Commission has sought to identify the number and scope of permanent and external advisory bodies that are associated with the state’s regulators of business. In this context, the Commission considers a regulatory advisory body as:

- [a] Victorian body providing independent and/or expert advice to Ministers, regulators or departments to inform regulatory decision making and function as standing consultative mechanisms.\(^6\)

Additionally, regulatory advisory bodies:

- do not have formal decision-making powers\(^7\)
- are set up by legislation or at the initiative of a Minister or government agency
- are independent from executive government, with a defined membership based on specific skills or ability to represent specific interests
- are established for an extended period or on an ongoing basis (rather than for the term of a particular project).

In response to the Commission’s survey, 47 regulators provided information about a total of 80 permanent advisory bodies (VCEC 2005). Box 2.3 contains some examples.

---

\(^6\) Since the Commission starting collating information of regulatory advisory bodies in August 2004, the government has introduced the proposed Public Administration Bill. This Bill defines an ‘advisory entity’ as those public entities: not having any functions to exercise other than the provision of advice or a report to any person or body, having a written terms of reference; reporting to a Minister or government; and having been declared under the Public Administration Act 2004. The Commission’s definition is very similar but excludes those bodies that have a life less than 12 months, and includes all entities rather than only those ‘declared’ under the proposed Act.

\(^7\) The distinction between advisory and decision-making bodies can be blurred when, for example, the decision maker endorses most recommendations of an advisory body regarding particular approvals.

---
Box 2.3: Examples of advisory bodies

Marine Safety Victoria has established four industry advisory groups to help provide efficient and effective dialogue between the regulator and the key stakeholder groups: the Recreational Boating Advisory Group, the Small Commercial Vessel Advisory Group, the Fishing Industry Safety Advisory Group and the Marine Industry Advisory Group. Each of the four groups focuses on a specific aspect of Marine Safety Victoria’s operations.

Several advisory bodies serve to operate as broad based forums for stakeholders to present their views on a range of transport matters. Examples that fall under the umbrella of VicRoads include the Victorian Road-Based Public Transport Advisory Council, the Victorian Bicycle Advisory Council, the Victorian Motorcycle Advisory Council and the Victorian Road Freight Advisory Council.

Source: VCEC (2005)

Box 2.4: Gippsland Lakes

The region around the Gippsland Lakes offers an illustrative example of how complex the regulatory system can become. Prospective businesses must deal with a multitude of decision-making and advisory bodies and obtain a range of permits, giving many of these agencies the ability to delay and, in some cases, effectively veto any new proposal. Preliminary analysis by the Commission has identified at least 32 regulatory and advisory bodies. The range of decision-making and advisory bodies also has the potential to limit easy access to timely and relevant information by members of the community.

State Government departments such as the Department of Primary Industries, the Department of Sustainability and Environment, the Department of Infrastructure, and the Department of Innovation, Industry and Regional Development play the lead role in coordinating and implementing government programs and services.

In addition, there are statutory authorities (operating outside the departmental structure) that have responsibility for a particular area relating to the Gippsland Lakes. The Gippsland Ports Authority is charged with managing the Port of Gippsland. Marine Safety Victoria has overall responsibility for ensuring water safety and, as such, plays an important role in the Gippsland area. Parks Victoria manages Victoria’s marine national parks. EPA Victoria has the lead role in ensuring compliance with environmental standards and policies.

Australia’s three-tiered system of government means the local governments in the area—the South Gippsland Shire Council, the East Gippsland Shire Council, the Wellington Shire Council, and the Baw Baw Shire Council—also have decision-making functions with regard to aspects of the lakes’ management. The location of any proposed development determines which council is responsible for the required planning permit. Commonwealth authorities, such as the Department of Environment and Heritage, may also become involved in certain instances.

The Commission is interested in receiving further comments on the issue of regulatory overlap and duplication, with a view to including specific examples in its final report.

(continued next page)
In Victoria, water and catchment management authorities conduct the operational management of water resources. In the Gippsland region, there is Gippsland Water, East Gippsland Water, the Southern Rural Water Authority, the West Gippsland Catchment Management Authority and the East Gippsland Catchment Management Authority.

There is also a range of advisory bodies relevant to the Gippsland Lakes. Many of these, such as the Gippsland Lakes and Catchment Taskforce, act as forums through which the multitude of decision-making bodies can interact and attempt to agree on a mutually consistent approach to strategic decisions. Other advisory bodies include the Gippsland Lakes and Coast Regional Coastal Board, the Sustainable Gippsland Advisory Committee, the Victorian Coastal Council, the Victorian Environmental Assessment Council, the Gippsland Integrated Natural Resources Forum and the Gippsland Area Consultative Committee. The Victorian Catchment Management Council is the State Government’s peak advisory body on catchment management.

Some of the authorities noted here have formal advisory mechanisms of their own. The East Gippsland Catchment Management Authority, for example, has four advisory groups (one for each geographic area): the Far East Catchment advisory group, the Mitchell Catchment advisory group, the Snowy Catchment advisory group, and the Tambo and Nicholson Catchment advisory group.

3 Regulation and regional economic development

This chapter discusses the ways in which regulation can influence economic development. To a large extent, forces beyond the control of government will shape economic development in regional Victoria. Regulation and other government interventions can nevertheless have a considerable impact, both positive and negative, particularly given characteristics of regional Victoria’s economy (such as its diversity) and the important role of small business.

3.1 The relationship between regulation and other drivers of economic growth

Determinants of growth

About 28 per cent of Victorians live and work in regional Victoria, which is defined as all of the state outside of metropolitan Melbourne. Most regional Victorians have shared in Australia’s long economic expansion; average incomes have risen and unemployment has fallen over the past 10 years. That said, there is considerable disparity across regions. Some industries, however, have grown strongly and others have declined, with the impact felt differentially across the state.

Figure 3.1 shows that agriculture, manufacturing, retail trade, construction and health and community services are particularly important employers in regional Victoria. Employment, however, is only one indicator of an industry’s significance—for example, the mining sector’s small employment understates its overall economic contribution. The Minerals Council of Australia points out that the mineral industry contributed about 7 per cent of the value added in non-metropolitan Victoria in 2002-03, producing more than 65 million tonnes of coal and 3500 kilograms of gold in that year, and that the industry’s employees are in ‘highly skilled, well paid jobs’ (sub. 17, pp. 11 and 17).

Source: ACIL Tasman (2004)

Figure 3.1: Employment shares, by industry, 2001
To understand how regulation affects economic development in regional Victoria, it is necessary to consider the broad forces shaping the performance of those industries most important in regional Victoria (identified in figure 3.1), and how regulation interacts with these forces. The rate at which an economy grows depends on growth in its inputs and the productivity with which those inputs are used. Moreover, most economists agree on the prerequisites for economic growth: a stable macroeconomic environment (particularly low inflation and steady economic growth) and a legal framework that provides secure property rights (and enforceable contracts). In addition to these fundamentals, however, what specific factors determine the growth performance of regional Victoria? And what is the role of regulation in this economic growth?

The Victorian Competition and Efficiency Commission is not aware of studies that have quantified the relative importance of factors that determine the growth performance of regional Victoria, including the impact of regulations. Such quantification would be difficult in view of data limitations, the wide differences across regions, and the intangible nature of some of the important influences on economic performance. Nevertheless, it is useful to describe the factors likely to influence regional growth, so as to place the role of regulation in context and to consider the mechanisms through which regulation affects regional development.

Growth in regional Victoria will be shaped by growth ‘drivers’ operating on both the supply and demand sides of the market in which the region is engaged. It is impossible to say how these forces will play out in the future, but two predictions can be made with confidence:

1. Regional Victoria, like metropolitan Melbourne, will continue to be exposed to considerable change.
2. The growth prospects for most industries in regional Victoria will depend on how the region is placed relative to its competitors overseas, in other states and in Melbourne.

These are perhaps the most important characteristics of the environment that should inform the development and enforcement of regulation in regional Victoria.

Supply-side influences on regional growth

The availability of an appropriately skilled labour force is a prerequisite for a growing economy. Business groups have identified the matching of skill needs to availability as a growing problem across Australia (AIG 2004b). The lifestyle advantages of regional Victoria will attract people to live and work in many parts of the state, although it can be difficult to attract skilled workers to areas that are perceived as being too remote or that lack urban or social infrastructure. Conversely, some areas have a surplus of skilled workers resulting from structural declines in some industries. Gippsland timber and electricity workers are examples of such a surplus (DOI 2002a, p. 29).

The labour force skills in demand in regional Victoria have changed in the past and are likely to change in the future. Between 1991 and 2001, there were significant changes in employment patterns in both Melbourne and regional Victoria, with particularly strong growth in health and community services, and property and business services, and declining employment in the utilities sector and government administration and defence (figure 3.2). Although the trends appear similar between Melbourne and regional Victoria, shifts in employment patterns have been much more complicated at the statistical division level across the state (ACIL Tasman 2004).

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Demographic changes are expected to pose challenges for regional Victoria, including challenges in relation to labour supply:

Many rural areas and small towns have a very high percentage of their population that are aged, driven by emigration of young people and the ‘ageing in place’ of older age groups. Much of regional Victoria is faced with declining fertility rates, out-migration of young adults, including younger women of child-bearing age, and lower numbers of people moving to regional Victoria from Melbourne. These factors imply that ageing will affect regional Victoria before Melbourne and, in some parts of regional Victoria, the effects of a rapidly ageing population are already being felt. (Government of Victoria 2004c, pp. 10–11)

In relation to the labour market impacts of such demographic changes, the Victorian Government postulated that ‘the predominant labour market effects will be on the supply side, with critical skills shortages occurring across a range of industries’ (Government of Victoria 2004c, p. 49). The government suggested that the operation of the labour market will ultimately solve this problem, although it noted that this market may not be sophisticated enough to achieve this outcome in regional areas. It also suggested that there is a role for state regulation to encourage labour force participation, by facilitating greater labour market flexibility (Government of Victoria 2004c, p. 48).

The Productivity Commission similarly noted the importance of flexibility in labour markets: ‘continued reforms to labour markets will make it easier for rural and regional Australia to respond to economic shocks by changing work practices, thereby improving productivity and lowering costs’ (PC 1999, p. 75). While the operation of labour markets will have an important impact on the growth potential of regional Victoria, this issue is not discussed in this report, given that the Victorian Government referred most of its industrial relations powers to the Commonwealth Government in 1996.

The impending skill shortages envisaged by the Victorian Government raise issues in relation to education and training. One of these issues is the appropriate location of training facilities. There may be some cost advantages from centralising education facilities, perhaps in Melbourne. On the other hand, local suppliers of training services may be more flexible and responsive to economic shocks by changing work practices, thereby improving productivity and lowering costs.
attuned to the training needs in their particular areas. Additionally, people who are trained in a region rather than Melbourne will more likely be attracted to a job in that area.

A second important supply-side influence on economic performance, given the role of primary industries in regional Victoria, is ready access to resources. The Minerals Council of Australia contended:

Although not as richly endowed in mineral resources as other states, Victoria has sufficient mineral resources to allow a substantial expansion in the contribution that the minerals industry makes to the state’s GSP. MCA has identified a number of prospective mining projects—for example, in gold, brown coal, mineral sands and coal seam methane production alone—that have the potential to more than double the real value of Victoria’s current level of mineral production, provided the public policy environment is conducive to mining development. Most importantly, all of these developments would be located in regional Victoria. (sub. 17, p. 3)

All industries require access to land in varying degrees. Many expanding agricultural industries depend on irrigation and have gained from the development of property rights frameworks for water. The Institute of Public Affairs pointed out that ‘rural Victoria has prospered over recent times as a result of irrigated agriculture founded on well understood property rights to water’ (sub. 41, p. 4).

It is acknowledged within government that the users of natural resources, whether in mining, agriculture, forestry, fishing or tourism, need to be mindful of environmental consequences. Environmental pressures affect many aspects of economic development. As societies become wealthier, they typically expect that industries will have smaller impacts on the environment. Some industries, such as tourism, are growing because more people want to experience Victoria’s natural environment. The population movement towards coastal areas is driven by similar desires, but brings its own pressures on the environments of these areas.

In addition, the expansion of the residential population into some areas may create environmental barriers to the expansion of traditional industries. There can also be complex tensions between different environmental objectives; for example, the promotion of wind farms to reduce greenhouse gas emissions raises concerns about the impacts on landscapes.

A third important supply-side consideration is access to capital. The Commission is not, however, aware of any capital market impediments to the supply of capital to regional Victoria.

A further supply-side influence on regional growth is the availability and cost of infrastructure. Consider, for example, transport infrastructure, which influences development in many complex ways. Areas such as water, gas, electricity and telecommunications are similarly important.

An efficient transport supply chain helps regional Victoria’s export industries to remain competitive, both domestically and internationally. Improved transport arrangements have also tended to encourage the concentration of economic activity in large centres, where employers can take advantage of larger pools of labour and proximity to suppliers and customers. Consumers can also travel further for their personal needs. These trends have placed smaller towns under pressure, although working in the other direction has been the ‘seachange’ phenomenon, as people have taken advantage of reduced travel times to move away from Melbourne. These factors lead to a complex pattern of population movements (box 3.1).
Finally, but perhaps most important, technological developments—and the speed with which regional Victoria takes advantage of these developments—will have a substantial impact on productivity growth. Many factors influence the rate at which such developments spread through industries, with the extent of competition and openness to international trade being particularly important. These effects can be pervasive:

The increased mechanisation of farming has reduced labour requirements in regional industries but, through improvements in productivity, has been fundamental to industry survival and growth. Improved telecommunications and internet access may make a regional location more attractive for business, but may also mean regional clients are easier to service from a capital city. Better cars and roads have reduced the isolation of some smaller towns, but also made it easier for country people to travel to distant regional centres for work, shopping and leisure activities. (Banks 2000, p. 4)

Competitive pressures are particularly important drivers of innovation and technological development. The extent to which the regulatory environment promotes, rather than impedes, innovation can thus have an important impact on productivity growth.

Demand-side influences on growth

The pattern of economic development—which industries expand and where this happens—is heavily influenced by changes in the community’s preferences for different goods and services. As incomes increase, it is commonly observed that a declining proportion of incomes is spent on necessities such as food and utility services, and an increasing proportion is spent on health services, tourism and other leisure industries. The strong growth of the tourism industry is an example of an industry that benefits from rising incomes in Australia and overseas, particularly Asia. As of 2002-03, tourism accounted for

Box 3.1: Population movements in regional areas

'Contrary to the common perception, the population drift to Australia’s capital cities—evident since the beginning of the century—actually ceased in the early 1970s. While larger towns have since experienced the fastest population growth, small towns appear to be holding their own in relative terms. Almost half of Australia’s small towns had population growth of more than 10 per cent in the decade preceding the 1996 Census.

That said, the picture at the regional level is quite diverse. In the case of Victoria, regions losing population have included Western district service centres for agriculture (for example, Charlton and Ararat) and brown coal regions such as Moe—Yallourn. In contrast, areas along the Murray (for example, Rutherglen and Mildura) and at Lakes Entrance are growing mainly due to viticulture, tourism and retirement.

The Victorian experience mirrors two major demographic trends that are evident across regional Australia. One is ‘coastal drift’. Small towns located along coastal Australia are growing fast because of people’s lifestyle choices and the services employment that this generates. The flipside of that growth is relative (if not absolute) decline in many, but not all, smaller inland towns.

In addition, there has been a drift in population from some of those small towns to the larger inland regional centres: attracting them the rather ugly label of ‘spoon cities’. This phenomenon is particularly evident in the wheat–sheep zones of New South Wales, Western Australia and Victoria. Albury—Wodonga is a well-known example of a ‘spoon city’. A smaller scale example is Horsham. Its population has grown steadily since the mid-1980s, whereas six of the seven surrounding municipalities—towns such as Dimboola, Nhill and Warracknabeal—have lost population.

Source: Banks (2000, p. 3)
Regulation and regional Victoria: challenges and opportunities

around 5 per cent ($10 billion) of Victoria’s gross state product (GSP) and contributed an estimated $3.5 billion to regional Victoria’s economy (Tourism Victoria 2004a). In 2003-04, domestic tourists spent over 37 million visitor nights in regional Victoria (Tourism Victoria 2004b).

The region’s prosperity will also be affected by demand for agricultural and mineral products. The demand for some of these products will be influenced by developments in world markets, given that six of Victoria’s top 10 exports are raw or processed agricultural or mineral products from regional Victoria (table 3.1).

Table 3.1: Top 10 exports from Victoria, by value, 2003-04

<table>
<thead>
<tr>
<th>Export commodity</th>
<th>Value (A$ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger motor vehicles</td>
<td>1 467</td>
</tr>
<tr>
<td>Aluminium</td>
<td>1 081</td>
</tr>
<tr>
<td>Milk and cream</td>
<td>1 060</td>
</tr>
<tr>
<td>Wool</td>
<td>970</td>
</tr>
<tr>
<td>Cheese and curd</td>
<td>567</td>
</tr>
<tr>
<td>Meat (excl. bovine)</td>
<td>539</td>
</tr>
<tr>
<td>Bovine meat</td>
<td>534</td>
</tr>
<tr>
<td>Refined petroleum</td>
<td>521</td>
</tr>
<tr>
<td>Medicaments (incl. veterinary)</td>
<td>489</td>
</tr>
<tr>
<td>Motor vehicle parts</td>
<td>488</td>
</tr>
</tbody>
</table>


While commodity prices fluctuate significantly, the long-term historical trend since the middle of the twentieth century has been for a decline in the price of primary industry commodities relative to manufactured goods and services. As illustrated in figure 3.3, while the overall terms of trade for Australia were relatively constant for the past 40 years, the terms of trade for farmers (calculated as the ratio of an index of prices received by farmers to an index of prices paid by farmers) declined significantly from the level in the 1960s, although they stabilised in recent years (ABARE 2003a, pp. 10 and 17).

Figure 3.3: Terms of trade in Australia

Source: ABARE (2003a)
To some extent these price trends reflect technological change, which has reduced costs and increased supply. This creates pressures for farmers to continue improving their productivity (for example, through larger scale operations) to remain internationally competitive and profitable. The Australian dairy industry, in which Victoria plays a substantial role, provides a good example. Between 1992-93 and 2002-03, the terms of trade facing the industry deteriorated significantly. Input prices rose by more than 2.4 per cent per year, while output prices increased by 0.2 per cent per year over the same period (ABARE 2004, p. 2). As a result, smaller and less efficient farmers were forced to leave the industry, with the remaining farms having larger scale and more intensive operations. Since 1991-92, there has been a 36 per cent increase in the average size of Australia’s dairy farms, a 45 per cent increase in the number of cows milked per farm, and a 23 per cent rise in the milk yield per cow. These increases in efficiency have resulted in a 78 per cent increase in milk production per farm since 1991-92 (ABARE 2004, p. 2).

Similar pressures for productivity improvements have been felt in the mining sector. The Minerals Council of Australia noted:

> Although less involved in mineral exports than elsewhere in Australia, the minerals industry in Victoria is, nevertheless, subject to the same global market forces—most notably the long-term decline in the international commodity prices and the relentless pursuit of productivity to maintain international competitiveness in the face of that trend. Indeed, even where Victoria does not compete internationally for its capital, technology and expertise, it still has to compete for these resources with the other Australian states and territories. As many of the competing jurisdictions are more richly endowed with mineral resources, Victoria has to be that much more competitive in other aspects of competitiveness to be successful. (sub. 17, p. 3)

### How regulation affects development

As indicated, regional Victoria has been experiencing substantial economic change, largely driven by factors beyond the control of government. In what ways does regulation influence the economic development of regional Victoria? This is a complex issue. Box 3.2 summarises some of the ways in which State Government regulations influence business decisions. The Commission has also prepared case studies (appendix C) of the regulations with which people have to comply when setting up a new business in various industries.

Many of these regulations interact with the growth drivers outlined in the previous section—for example, regulations that affect access to resources or that influence labour markets, transport or the diffusion of new technologies. By doing so, regulations can affect the relative attractiveness of activities and locations within regional Victoria, and between regional Victoria, Melbourne and other states, and so can influence the rate and composition of economic development in many ways.

The costs that regulation can impose on regional (and metropolitan) businesses include compliance costs, delays, uncertainty and inflexibility. Some of these costs can increase more than proportionately to the level of regulation—for example, incremental reductions in emissions levels may cause proportionately greater increases in compliance costs.

The costs of complying with regulation can affect the investment climate. While investment is influenced by a host of factors, such as prices, input costs and the general economic environment, poor regulation can raise business risk and therefore discourage investment, particularly in areas of new regulation. Some concern and doubt about the costs of any new regulation is inevitable, but poor processes for developing and administering regulation would exacerbate these problems.

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Regulation and regional Victoria: challenges and opportunities

**Box 3.2: Regulations and business decisions**

Regulations on entry to a market
The pressure that potential entrants to a market bring to bear on incumbent firms is an important spur to improved performance, yet regulations (for example, in relation to occupational licensing) restrict or increase the cost of entry into industries such as construction. While such regulations are intended to benefit consumers by setting entry standards, there is a need for balance. Consumers can be disadvantaged in the longer term if the hurdle to new entrants is set too high, excessively constraining competition and resulting in unnecessarily higher prices.

Restrictions on the conditions of exit from a market
Site rehabilitation requirements are an example of an intervention that adds to the cost of leaving a market. This raises questions relating to the level of remediation that should be required and who should bear the cost. If site rehabilitation requirements are too low, environmental degradation may occur. If they are too high, existing uses may continue for longer than they otherwise would and development may be discouraged. In the long term, restrictions on exit from an industry will discourage new firms from entering the industry.

Regulation on where a business may locate
Land planning regulations influence where a business may locate. Land-use zoning can have a major impact on the efficiency with which land is used. Balance needs to be achieved here as well, between the need for certainty and the need to be responsive to changing circumstances. An appropriate balance must also be struck to achieve sufficient consistency across the state, while allowing regions the flexibility to follow different approaches to reflect differences in community preferences and economic circumstances.

Land-use zoning allocates land for residential, commercial, or industrial purposes. A number of inquiry submissions indicated that tensions can arise (particularly at the interface between zones) between these competing uses of the land. The way in which these tensions are resolved has significant implications for the pattern of development in regional Victoria.

Regulations on how land may be used
Many regulations affect how land may be used. Examples relating to agricultural land include requirements not to clear native vegetation, requirements to undertake pest and weed control, and requirements to limit odour and noise.

Regulations relating to the built environment
There are many regulations on the types of building that can be constructed, how and where they should be constructed, and their use.

Regulations affecting access to resources
Access to mineral resources, land and water is typically subject to regulation.

Environmental regulations
Many of the traditional and emerging industries in regional Victoria are intensive users of environmental resources. As growth continues, there will be more examples of developments in sensitive areas and close to communities. As community expectations for a healthy environment increase, and as new industries expand that also depend on environmental resources (such as tourism), the role of environmental regulation is becoming ever more important. The community expects the environment to be maintained at the same time as material living standards increase, and this requires that appropriate environmental standards are maintained at minimum cost.

(continued next page)
Regulation and regional economic development

Box 3.2: Regulations and business decisions (continued)

Regulations affecting relations between a business and its employees

Many of the regulations in this category relate to the industrial relations framework, administered by the Commonwealth Government. At the state level, occupational health and safety legislation imposes many obligations on employers and employees, aimed at ensuring a safe working environment. Other aspects of the employer-employee relationship that are regulated include superannuation, and training and qualification requirements.

Regulations about a firm’s relationship with its customers

The regulations described so far have been about firms’ use of various inputs. Firms’ relations with their customers are also regulated—for example, consumer protection regulation covering the information that must be provided to customers, the conditions on which goods are sold, the quality of goods and services, to whom they can be sold and at what price, who can sell them and where they can sell them.

An important area of consumer protection regulation relates to food safety. The consequences of poor food handling can be serious, and consumers cannot necessarily assess the risks at the time of purchase. Regulation of the way in which food is handled is warranted, therefore, to prevent adverse events from happening. Such regulation will have both benefits and costs, and impacts on regional economic growth.

In other cases, investment would be affected if businesses expect regulations to become more onerous over time. Businesses, particularly those making long-term investments, will make business decisions based on the expected level of future regulation (not the current level). If they over-estimate the level of future regulation, there will be under-investment. The impact of such decisions may be subject to a ‘multiplier’ effect, in that a firm that decides not to invest will consequently purchase fewer inputs from other suppliers, who purchase less from other suppliers, and so on. Such effects could be particularly noticeable in small regional communities. Regulatory processes that reveal the government’s long-term regulatory objectives will reduce this problem.

Regulation and community support for development

While a bad regulatory environment can impede economic activity, an effective regulatory framework can enhance the community’s support for economic development. The community expects, for example, that the environment will not be polluted, that natural resources will be used in a sustainable way, that the food eaten will not make people ill and that people can work in safety. There are well-known arguments, however, that unfettered market transactions in such areas may not lead to the outcomes that the community desires. As discussed in chapter 2, an important role of regulation is to provide a framework to balance competing interests and resource uses, and to do so in a way that maximises the overall benefit for the community.

It is sometimes suggested that regulation should be used as an instrument of industry policy, and should be perceived as an alternative or complement to government assistance programs to shape industry development. According to this view, more stringent environmental regulations, for example, could be used to encourage the development of industries providing environmental services. This use of regulation can easily become selective government assistance and is subject to similar criticisms made about such assistance (see IC 1996).

Nevertheless, an effective regulatory environment will facilitate economic development. It will not prevent the decline of poorly run businesses or of good businesses in declining markets, but it can facilitate development by providing a framework for resolving tensions between the community’s potentially conflicting aspirations (for example, aspirations for

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Nevertheless, an effective regulatory environment will facilitate economic development. It will not prevent the decline of poorly run businesses or of good businesses in declining markets, but it can facilitate development by providing a framework for resolving tensions between the community’s potentially conflicting aspirations (for example, aspirations for
higher material living standards and an improved natural environment). By doing so, it can build community support for economic development.

To the extent that there is scope to improve regulation and the way in which regulations are enforced, identifying and acting on areas in which regulation falls short of the best practice principles outlined in chapter 2 can have substantial potential economic benefits. Application of these principles will ensure a thorough and transparent examination of the costs and benefits of regulatory interventions before they are introduced, accounting for the features of the economic and industry environment in which the interventions are to be applied.

**Regulation and specific characteristics of regional Victoria**

In addition to being mindful of these best practice principles, those designing and enforcing regulation are less likely to create impediments to growth in regional Victoria if they are mindful of some of a region’s specific features—for example:

- Substantial differences exist across regions.
- A higher proportion of employees in regional Victoria than in the Melbourne metropolitan area are employed in small businesses.

There are substantial differences across regions

To assist in placing regulation in regional Victoria in context, the Commission asked economic consultants ACIL Tasman to prepare an overview of the ‘state of play’ in regional Victoria. The study was to highlight the important trends, opportunities and challenges facing regional Victoria specifically, as well as the state as a whole. The full report is available at www.vcec.vic.gov.au. It provides information on 10 statistical divisions, as identified by the Australian Bureau of Statistics (figure 3.4).
The data in the report confirm that regional Victoria is an amalgamation of diverse communities and local economies with sharply distinguishing characteristics—for example:

- The economic size of the regions (as measured by their labour force) differs significantly. Barwon and Goulburn, the largest two regions, are between three and four times bigger than Wimmera, the smallest region.
- Population growth varies widely across the state. Between 1991 and 2001, the population in Goulburn and Loddon in the centre of the state, near the route connecting Melbourne with Sydney, grew by about 8 per cent, while the Western District and the Wimmera in the more remote west of the state experienced declines of almost 1 per cent and 5 per cent respectively. As well as these changes, many coastal towns have been growing rapidly, driven partly by those seeking lifestyle changes, while some small inland towns are declining.
- Labour force trends have generally been similar to trends in population growth. The labour force has declined in East Gippsland, Western District and Wimmera, but grown strongly in Loddon, Barwon and Goulburn.
- Unemployment rates have declined across the state. However, some regions (for example, Ovens–Murray and Goulburn, with an unemployment rate of 3.8 per cent and 4.5 per cent respectively) appear to have much tighter labour markets than others (such as Central Highlands, Gippsland and East Gippsland, all of which have unemployment rates above 6.5 per cent).
- Industry structure differs considerably across regions—for example, the proportion of the labour force employed in agriculture, forestry and fishing ranges from 4.2 per cent in Barwon to 23.1 per cent in the Wimmera.
- The ways in which industry structure is changing also differ across regions. Between 1991 and 2001, the number of people employed in the mining sector fell by 67 per cent in East Gippsland but rose by 116 per cent in the Mallee, while employment in cultural and regional services grew by 68 per cent in East Gippsland but by only 21 per cent in the Mallee.
- There are significant differences across regions in education levels.
- People in regional Victoria live in quite different environments, ranging from farms, to small hamlets through to large cities. Some of these are growing rapidly, while others are losing population.

This diversity of demographic and economic conditions across regional Victoria suggests regulations might have differential impacts across regions.

More people in regional Victoria are employed in small businesses

The data presented by ACIL Tasman indicate that small businesses employ a larger proportion of the labour force in regional and rural areas than in metropolitan Melbourne (figure 3.5). Over 47 per cent of employees in metropolitan Melbourne work in businesses with more than 50 staff, significantly above the proportion in regional Victoria (35 per cent).

1 The data exclude agricultural businesses, but include businesses coded as services to agriculture, hunting and trapping, forestry and logging, and commercial fishing.
There are substantial variations across regional Victoria. Major regional cities such as Geelong, Ballarat, and Bendigo have a business size breakdown broadly similar to that of Melbourne, while smaller towns tend to be dominated by small businesses. Employees in the statistical divisions of Wimmera (72.5 per cent), Ovens–Murray (60.8 per cent) and East Gippsland (74.7 per cent) predominantly work in smaller businesses (less than 50 employees), compared with the state average of only 55.1 per cent.

Firm size may affect the relationship between regulation and economic development in a number of ways:

- Small firms may find regulation more burdensome than do large firms, given that there are some fixed costs in learning about, and complying with, regulations.
- The owners of most small firms aspire to expand their businesses into larger firms. Regulation can impede development if the costs of regulation increase with firm size—for example, through a licence fee structure based on turnover, or if regulatory audit frequency or stringency was to increase with firm size.
4 Scoping regulatory barriers to regional development

4.1 Introduction

The discussion in chapter 3 identified how regulation might influence economic development in regional Victoria, but did not identify the key regulatory barriers that significantly constrain Victoria’s regional economic development, as directed in the inquiry terms of reference. The Commission applied four criteria to determine the areas of Victorian Government regulation that it should assess in part B as being potential key barriers to regional development:

1. issues raised by participants in the inquiry
2. regulations that apply across Victoria but are particularly significant for activities that are important drivers of growth in regional Victoria
3. industry-specific regulations applying to industries that are located predominantly in regional Victoria
4. whether an area of Victorian Government regulation has been subject to a recent policy decision or an independent and substantive review.

Some inquiry participants raised issues about the quality of some infrastructure and other services. The Commission’s view is that these issues, while important, are essentially about the level of funding of these services and thus are outside the inquiry’s terms of reference.

In section 4.2, these four criteria are used to identify the areas of regulation that are addressed in detail in part B. In sections 4.3 and 4.4, other regulatory issues raised by inquiry participants are outlined.

4.2 Criteria for selecting key regulatory barriers

Issues raised by inquiry participants

Reflecting the broad scope of the terms of reference, inquiry participants raised many areas of regulation that they consider are holding back regional economic development. These regulations can be grouped into two broad categories: (1) those applying to a variety of businesses (such as food safety regulation, planning laws, occupational health and safety, and environment); and (2) those affecting specific industries (such as aquaculture, mining, broiler chickens, and forestry) or specific inputs to production (such as labour, road and rail transport, water, and electricity) (box 4.1).

The Commission has sought to consider most of the issues, but some were policy issues, and it was neither efficient nor practicable to examine all regulatory issues in detail. It thus applied the remaining three criteria to identify areas of regulation that should be addressed in detail.
Box 4.1: Issues raised by inquiry participants

Inquiry participants identified the following generally applicable areas of regulation that they consider are significantly constraining regional economic development:

- food safety regulation
- planning laws
- native vegetation
- environmental regulation
- occupational health and safety (including WorkCover)
- industrial relations (the move to federal awards)
- fire services levy
- regulatory barriers to attracting migrants to regional areas.

In addition, participants identified areas of regulation that they consider are affecting specific industries or inputs to production, including:

- access to natural resources (particularly minerals)
- transport (road and rail)
- aquaculture
- forestry (private and public)
- civil construction
- labour laws (such as industrial relations and child employment)
- electricity prices and access to networks for co-generators
- a moratorium on further trials of genetically modified crops
- firearms.

Regulations that apply generally across Victoria but are particularly significant for industries that are important drivers of growth in regional Victoria

The Commission decided to concentrate on regulatory issues relating to land-use planning, native vegetation, the environment and food safety (chapters 5, 6, 7 and 8 respectively). As well as being raised by inquiry participants, regulations in these areas are particularly important across industries such as agriculture, mining, tourism and food processing, all of which will have a major impact on development in regional Victoria:

- Planning regulation is a significant issue for regional Victoria, given the increasing competition among residential, commercial and agricultural uses for good quality land. If regional Victoria is to take advantage of growth opportunities, then planning regulations need to facilitate the timely application of land to its most highly valued uses. The tensions surrounding land use and planning were reflected in a number of submissions identifying the impacts of planning regulation on regional economic development.
- Environmental regulation is frequently interwoven with land-use regulation and, like it, affects activity in significant industries in regional Victoria.
• Given that most of Victoria’s native vegetation is located in regional Victoria, and the potential for tensions to emerge between economic development and environmental objectives, it is not surprising that a number of submissions raised issues about the impact of native vegetation regulations on regional economic development.

• Food safety regulation has obvious significance not only for Victoria’s meat, dairy and food processing industries, but also for other growing industries such as tourism.

Industry-specific regulations applying to industries that are located predominantly in regional Victoria

The Commission received a number of submissions in relation to the forestry, mining, aquaculture and broiler chicken industries, each of which has its own industry-specific regulatory regime. Given the current or potential significance of these industries to regional Victoria, aspects of these regulatory regimes are assessed in chapter 9.

Whether an area has been subject to a recent policy decision or an independent and substantive review

Other significant regulatory issues raised by participants have been reviewed recently, or a policy decision has been made, and reform implementation is progressing. The Commission considers that it is not appropriate to make recommendations about these issues in this report. It has, however, notified the relevant authorities about most issues raised by inquiry participants in these areas. These issues (and, in some cases, the authorities’ responses) are summarised in section 4.3.

Other regulatory issues

The regulations addressed in part B potentially affect a large number of businesses in industries that are located predominantly in regional Victoria. One consequence of focusing on these areas is that it has not been possible to address some other regulatory issues in the same detail, even though they are not being reviewed elsewhere. These areas of regulation are discussed briefly in section 4.4.

4.3 Areas of regulation subject to current or recent review

Inquiry participants raised issues in relation to several areas of regulation that either have been subject to recent review or are being reviewed.

Electricity

Concerns were raised about voltage fluctuations, the cost of electricity being higher in parts of regional Victoria than in Melbourne, and the costs associated with the roll-out of electricity interval meters for regional consumers.

The Essential Services Commission (ESC) is considering these issues in the 2006–10 price review, which will lead to a final determination in August 2005. It is not appropriate, therefore, for the Commission to examine these issues in this inquiry, although it did seek the ESC’s views on them.

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Cost of electricity

Mr John Hayden, Chief Executive Officer of AKD Softwoods in Colac, suggested:

Our network charges, that is the cost of distribution of the power here makes up about 50 per cent of the cost of our electricity. Once again this is higher than the equivalent use in the metropolitan area, and these network charges are not contestable. (Colac transcript, pp. 17–18)

Similarly, Mr David Peart, Executive Officer of the Geelong Manufacturing Council, commented:

Geelong pays higher rates for electricity and other services than Melbourne counterparts in many cases. In fact Geelong under current analysis, pays the highest rates in Victoria for electricity. (Geelong transcript, p. 36)

The ESC advised the Commission that customers with the same or materially similar load and connection characteristics pay the same distribution tariff, which implies some uniformity in prices across rural and urban areas within each distribution network area. Transmission charges paid by distributors vary at each transmission connection point, however, and electricity retailers pay for distribution and transmission charges. As a result, electricity prices are often higher in rural and regional areas because of the higher costs inherent in providing network and energy services.

The ESC noted that the regulatory regime includes two measures that reduce the differential between rural and urban prices. These are a valuation adjustment to the assets of the distribution businesses, and an equalisation adjustment applied to transmission charges.

Quality of supply

According to Dr Greg Walsh:

The quality of power delivered to dairy processing plants in this and other regions is a persistent problem. Here I am talking about voltage variation, not outages. Variations in voltage, which can have their origin in natural events such as storms or in failing infrastructure, impact on sophisticated dairy equipment such as milk powder driers, causing them to malfunction. This results in downtime, lost sales opportunities and waste. (sub. 15, p. 2)

Similarly, Mr Edwin Van Gool, representing Uncle Tobys (Wahgunyah), suggested that voltage fluctuation problems occur up to a dozen times per year, with an estimated cost of about $200 000 per year (Wodonga transcript, p. 37).

The Commission asked the ESC for data comparing the quality and reliability of supply between metropolitan Melbourne and different regional areas, including the number and types of complaint by commercial customers. The ESC advised that it collects information about the performance of all five distributors against the quality and reliability targets that were established in the 2001–05 price review (ESC 2004, p. 2). The number of customer complaints made to the Energy and Water Ombudsman Victoria and the relevant reports (for calendar years 2001, 2002, and 2003) are available from the ESC.

The ESC also advised that the Electricity Distribution Code imposes obligations on distributors to maintain voltage quality within prescribed standards. Electricity consumers raised voltage quality during the 2001–05 price review. The then Office of the Regulator-General thus assessed whether the voltage quality standards in the Electricity Distribution

Cost of electricity

Mr John Hayden, Chief Executive Officer of AKD Softwoods in Colac, suggested:

Our network charges, that is the cost of distribution of the power here makes up about 50 per cent of the cost of our electricity. Once again this is higher than the equivalent use in the metropolitan area, and these network charges are not contestable. (Colac transcript, pp. 17–18)

Similarly, Mr David Peart, Executive Officer of the Geelong Manufacturing Council, commented:

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Code were appropriate for the 2001–05 period. Information at that time did not reveal any systematic issues or changes in the number of complaints about voltage variation, and indicated that the distributors were responding adequately to complaints.

The Office of the Regulator-General recognised that limited voltage data were available because little monitoring was undertaken. The 2001–05 Price Determination thus required the Victorian distributors to install monitoring equipment at each zone substation and at the far end of one distribution feeder supplied from each zone substation. Data from the distributors was to become available at the end of 2004.

The ESC expected that improved monitoring and reporting of voltage quality will enable the distributors to deliver supply quality in accordance with the Electricity Distribution Code.

**Metering**

The Victorian Farmers Federation has some concerns about the cost of electricity interval meters:

In July 2004, the Victorian Government announced the rollout of electricity interval meters for Victorian consumers. The intention of introducing these interval meters is to provide electricity consumers with information about their consumption habits. However, the economic cost posed by the installation of these meters will place a heavy burden on rural electricity users. (sub. 39, p. 17)

It pointed out that most of its members do not have access to natural gas and thus rely on electricity for water heating, and that these customers will be the first to have interval heaters installed.

The Commission asked the ESC about:

- the extent of consultation undertaken in regional areas on mandating interval smart meter technology
- specific issues raised during the consultations.

The ESC advised that it recently decided to mandate interval meters (to be phased in from 2006) for all Victorian electricity customers, after concluding that these meters would yield net benefits for customers and that regulatory intervention is warranted to ensure these benefits are captured (ESC 2004, p. 4).

According to the ESC, stakeholders did not raise any region-specific issues during consultations. While recognising that reticulated gas is available to some regional customers, the ESC concluded that interval meters would assist these customers in accessing the benefits of the competitive market (particularly lower prices for off-peak electricity).

**Water**

The Victorian Government has undertaken a substantial review of water policy issues and has released a discussion paper, followed by a policy paper (DSE 2003a, 2004a).

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Inquiry participants did not question the government’s overall approach to water reform, but did raise some specific matters. The Government has allocated $400 to cover the costs to farmers of installing meters on existing water bores, pumps and other diversions from the state’s water system that are currently un-metered. The Victorian Farmers Federation suggested that $400 is insufficient and that the cost to farmers, including the cost of hiring an approved meter reader, is approximately $2000 per meter (sub. 39, p. 34). It suggested:

Producers be given the choice to opt out of water meter installation in favour of a deeming approach. (sub. 39, p.34)

The Gippsland Aquaculture Industry Network complained:

It galls yabby and fish growers in the region that their use of the water, that is a non-consumptive use, gets taxed whilst stock dams, which are highly consumptive commercial use, are free of the impost expected of the aquaculture industry. (sub. 29, p. 10)

The Victorian Farmers Federation cited an example where a groundwater applicant, fulfilling its obligations in accordance with s.40 of the Water Act 1989, incurred significant out-of-pocket expenses in addition to normal application and licence fees:

There is a need to ensure that a rural water authority does not misuse its power under section 40 of the Water Act 1989 to require individuals to go to considerable expense to support a licence application, particularly when the proposed site for the groundwater bore is outside of the established groundwater supply protection area. (sub. 39, p. 33)

It complained about an instance in which it considered inadequate notification was given of water restrictions affecting flower producers (sub. 39, p. 34).

The Commission has informed the Department of Sustainability and Environment about such issues raised by inquiry participants.

Rail

Some regions are heavy users of rail freight services. Significant quantities of rail freight originate in the Goulburn, Gippsland and Mallee regions, and Barwon is an important destination for rail freight (ABS 2002, tables 6 and 8). Other regions also consider rail to be important to their economic development. The Sunraysia Mallee Economic Development Board, for example, uses the fact that ‘Mildura is a major freight gate for Freight Victoria and is linked by rail to the Ports of Melbourne, Geelong and Portland’ to promote its region (SMEDB 2004).

The inquiry submissions and hearings involved little discussion of issues relating to rail. However, one inquiry participant, Mr Ken Wakefield, of Wakefield Transport, argued in relation to rail access:

… a regulator needs to be put in place with really strong powers to ensure that these continuing audits go on to make sure that there is a structural separation between above-rail and below-rail assets. (Mildura transcript, p. 42)

Rail access regulation has been in place in Victoria since 1 July 2001. This regulation is designed to facilitate competition among train operators by regulating the process and framework within which they can negotiate the terms and conditions for using natural monopoly rail infrastructure. Under the regime, access seekers negotiate with the leaseholder of the infrastructure. If those negotiations fail, the ESC can make a binding determination on the terms and conditions of access. Orders-in-Council can bind the ESC in its determination of disputes. There are currently Orders specifying the infrastructure

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subject to the regime and the pricing principles to be applied within the regime (Government of Victoria 2001b).

A paper on Options for Reform of the Victorian Rail Access Regime (DOI 2004) was released for public consultation in July. The Victorian Government is considering options that would:

- extend the coverage of the regime
- provide more up-front guidance on the terms and conditions of access
- change the pricing methodology
- include rules for accounting separation and financial and operational reporting
- place greater constraints on the use of information and price discrimination by the vertically integrated access provider
- make the arbitration process more timely
- increase the powers of enforcement.

Given this review, the Commission does not intend to make any recommendations about rail access regulation.

**Fire services levy**

Several inquiry participants considered that the current arrangements for collecting the fire services levy impede the development of regional businesses and communities. In particular, they highlighted the difference in the size of the levy between comparable businesses in the metropolitan area and regional Victoria. The Department of Treasury and Finance reviewed alternative funding arrangements, including a property charge based system, in 2003. The Victorian Government subsequently decided to retain the levy. The funding arrangements seem to contain some anomalies, however, from the perspective of regional economic development.

**Occupational health and safety**

Regulation surrounding occupational health and safety affects a large number of regional businesses and communities, and was mentioned frequently in submissions. Such regulation has recently been reviewed at both the state (the Maxwell review) and national levels (by the Productivity Commission). The Victorian Government responded to the Maxwell review by introducing the Occupational Health and Safety Act 2004.

This area of regulation, and particularly the Victorian legislation, has been subject to thorough and public review processes. The government has provided its response to these reviews, and the Commission considers it is more appropriate to focus its analysis in other areas than to duplicate this work. Nevertheless, the reviews did not examine the individual Regulations in detail, and the Commission has received a number of related submissions, particularly regarding the Occupational Health and Safety (Prevention of Falls) Regulations 2003. The issues associated with these Regulations are discussed later in this chapter. Under the Occupational Health and Safety Act 2004, some Regulations made under the old Act sunset two years after the new Act comes into operation on 1 July 2005, unless revoked earlier. If new Regulations are introduced at that time, they are likely to trigger the need for a regulatory impact statement to be prepared and thus for the Commission to assess that statement.

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4.4 Other areas of regulation not covered in part B

Inquiry participants raised issues in relation to some other areas of regulation. While these issues did not strictly meet the criteria outlined in section 4.2, the Commission has addressed them (although in less detail than the issues covered in part B).

Road transport

Inquiry participants raised concerns about regulation of road transport:

- Inconsistent regulation between Victoria and neighbouring jurisdictions.
- The impact on farmers of road use regulations.

Mr Ken Wakefield, of Wakefield Transport, pointed out:

... cross-border issues are really restrictive to our regional area, being that we are in—what I call it, a tri-state hinterland, where we’re the capital of it, and you go across the river and Mr Scully’s [the NSW Transport Minister] not allowing us extra mass, where everywhere else in Australia you can have mass accreditation and be allowed to run at 68 tonne with a B-double, but as soon as you cross that water, well, you’re back to 62.5. Running from here to Brisbane or any place that includes New South Wales, it’s very restrictive. (Mildura transcript, p. 36)

Mr Wakefield also discussed inconsistencies in matters such as vehicle dimensions (particularly height) and indivisible loads. He noted that the absence of stamp duty on vehicles registered under the Federal Interstate Registration Scheme (FIRS) was an incentive for him not to register his trucks in Victoria.

The Victorian Farmers Federation raised issues relating to road use regulations (sub. 39, pp. 29–30). The Commission asked VicRoads about these issues. VicRoads’ full response is available on the Commission’s website (VicRoads 2004). Part of this response is reproduced below.

Weight, height and length limits on regional roads

The Victorian Farmers Federation suggested that low weight, height and length limits on regional roads can make it effectively illegal to transport produce or to move machinery from one farm to another (sub. 39, p. 29). In response, VicRoads noted:

Exemptions from general mass and dimension limits are provided to allow agricultural vehicles, machinery and combinations, which frequently do not comply with normal regulatory limits, to move on roads, particularly from one farm to another. The Road Safety (Vehicles) Regulations 1999 make specific provision for agricultural vehicles, and combinations, and exemptions are provided under a Notice in the Victoria Government Gazette, which are described in the attached information bulletin, Operating Conditions for Oversize Agricultural Vehicles and Combinations—June 2000.

Agricultural vehicles and combinations that are covered by the Notice do not require specific permits from VicRoads. However, where these vehicles exceed the mass and dimension limits specified in either the regulations or the Notices, operators may apply to VicRoads for permits to travel. Permits are required in these cases because it is...
considered that the granting of the necessary regulatory exemption(s) requires individual consideration of the road safety and/or road infrastructure risks.

In considering permit applications, VicRoads staff balance the risks of providing an exemption against efficiency considerations. The nature of agricultural operations and the areas in which agricultural vehicles travel are factors taken into account by VicRoads staff in assessing permit applications. Permits may be issued to cover a vehicle for a period of up to 12 months, or at the other extreme be limited to a single trip. This decision is based upon the assessment of the risk of the movement and the need for the movement of the vehicle to be managed. (VicRoads 2004, p. 2)

Curtain containment

The Victorian Farmers Federation pointed out that a large proportion of horticultural users use side curtains as containment during transport and that VicRoads now considers curtain containment to be insufficient and requires bins to be strapped down (sub. 39, p. 30). In response, VicRoads noted:


The performance standards in the load restraint guide allow curtains to be used for load restraint if certified by the manufacturer. (VicRoads 2004, p. 3)

Vehicle overloading

 Produce that is loaded in the field does not have access to suitable weighing facilities, and the Victorian Farmers Federation suggested that vehicle overloading regulations should include flexibility for transport from the field to the nearest practical weighbridge (sub. 39, p. 30). In response, VicRoads noted:

The regulations relating to mass limits do not provide any allowance for vehicles exceeding mass limits, other than the normal enforcement tolerances, prior to accessing the nearest public weighbridge. Livestock transport vehicles are able to participate in the Victorian Livestock Loading Scheme, which is a volume loading scheme that manages mass by limiting the number of beasts able to be transported. This scheme effectively allows some variation in mass due to the variation in the weight of individual beasts being transported.

The Victorian Farmers Federation (VFF) has proposed the implementation of a Victorian Grain Harvest Management Scheme based on a scheme that is operating in Queensland. VicRoads is working with the VFF and other stakeholders in an effort to develop a scheme that recognises the difficulty of loading grain in the paddock, but does not create a de facto increase in mass limits. (VicRoads 2004, p. 3)

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Inconsistent regulation between Victoria and other states

In response to the Commission’s question about measures that VicRoads has taken to address mass limit differences between Victoria and other jurisdictions, VicRoads noted:

The National Transport Commission (NTC), and its predecessor the National Road Transport Commission, were formed with a mandate to develop nationally consistent laws for road transport. The Commission has been successful in a number of areas and continues to develop model legislation. National model legislation is considered by Transport Ministers, and if approved is implemented in the states and territories.

Victoria generally leads in the implementation of approved national road transport reforms and has been ahead of other jurisdictions in this regard for a number of years.

In 1999 Victoria implemented higher mass limits, which was an approved reform developed by the then National Road Transport Commission. Victoria has approved almost the entire arterial road network for use by vehicles operating at higher mass limits. However, New South Wales has not approved routes other than the Newell Highway, which is frustrating to some operators.

There are other areas of difference in regulation, and some of these are being addressed in the current NTC work program. VicRoads continues to actively participate in the work of the Commission, with a view to improve consistency in regulation where inconsistency affects transport operations. (VicRoads 2004, p. 4–5)

Civil contractors

The Civil Contractors Federation, which represents some 2000 members nationally, submitted that it wished to pursue 23 matters where formal or informal regulatory processes imposed by government agencies, councils and water boards were having an impact on its members and/or consumers. The association suggested that a comprehensive review of tendering and contract management boards involving these three groups would ‘remedy many of the informal regulatory issues that are adversely impacting upon civil contractors, regional economic development and the consumer’ (sub. 22, p. 8). It also pointed out:

The experiences of the Federation and its members over recent time have highlighted the impact that inadequate engagement with the relevant stakeholders can have in regard to the implementation of regulatory controls, both formal and informal. (sub. 22, p. 9)

The federation has raised some important issues, including matters relating to tendering processes. A comprehensive review of these issues is beyond the scope of this inquiry, but the association’s important point about the role of consultation in developing regulation is discussed in chapter 11.

Training to comply with regulation

Inquiry participants suggested that the costs of training staff to comply with regulations can be higher in regional Victoria, owing to the absence of local training capability. When a new liquor licence is issued to a person who has not previously held a liquor licence, for example, the owner/manager must undertake an initial one-day training/information course.

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Mr Peter De Koeyer, Deputy Director of Wodonga TAFE, pointed out that only one TAFE
institute in Melbourne has been accredited to deliver this training (Wodonga transcript, pp. 16–17).

The Chief Executive Officer of AKD Softwood noted that maintenance fitters needed to attend night classes in Geelong to obtain an S Class electrical licence, and that assessors must be brought from either Geelong or Warrnambool to assess forklift drivers, log grab and crane operators. AKD Softwood estimated that this accreditation and training costs thousands of dollars per year (Colac transcript, p. 20).

The training needs associated with regulations are likely to differ on a case-by-case basis. The Commission’s survey of regulators did not address this issue directly, but did find that 48 of 69 regulators conduct education or professional development seminars in regional areas.

**Barriers to attracting migrants to regional Victoria**

Recognising their contribution to the economy and to society, the Victorian Government has encouraged net overseas migration to Victoria, which increased during 2003 from approximately 26 000 to 36 000, representing a 38 per cent increase in the number of new migrants to Australia settling in Victoria (Office of the Premier 2004). Migrants can play a particularly important role in the relatively thin labour markets in some regional areas, yet the number of new migrants choosing to settle in regional locations still forms only a small proportion of Victoria’s (and Australia’s) overall migrant intake.

Mr Paul O’Brien, Director of Resident Services at the Warrnambool City Council, outlined to the Commission an ongoing pilot project, which has facilitated the settlement of 80 Sudanese migrants into the region over the past 12 months:

... it has been an economic generator as a project. The basis behind the project is for population sustainability and there are a range of skill shortages that we have identified in Warrnambool and we’re working very hard to fill those employment skill shortages. So, that’s the objectives of the project. What we have encountered along the way is whole lot of regulation that stops us from being as successful as we possibly would like. (Warrnambool transcript, pp. 45–46)

Mr O’Brien and his colleague, Ms Waters, pointed out that migrants may have difficulties securing recognition of their overseas qualifications and may need to undertake lengthy additional training, possibly in Melbourne.

Inquiry participants also suggested that migrants settling in regional Victoria may have more difficulty complying with regulations than they would face in Melbourne, where migrants are more likely to have ready access to face-to-face services and possibly interpreters. The Commission’s survey of regulators suggests that regulators are making some attempts to cope with this issue, with the majority of the respondents indicating that they make special arrangements for stakeholders in regional areas. Less than 50 per cent of the regulators surveyed, however, indicated that they publish material in languages other than English or offer translation services.

**Occupational regulations relating to working at heights**

Regulations were put in place in October 2003, imposing duties (commencing 31 March 2004) on employers in relation to tasks performed at a height of more than 2 metres. The Regulations are intended to reduce the risk of fatalities and injuries across a broad range of industries, including construction, transport and storage, recreation services, agriculture, and wholesale and retail trade.

The Victorian WorkCover Authority, the proponent of the Regulations, issued a consultation paper in April 2000 (VWA 2000). It then received 27 submissions from
external stakeholders in response to the issues paper, and released a paper summarising these submissions and its response in October 2000. It made various adjustments to its proposal, which was then circulated for public comment in a regulatory impact statement (RIS) in June 2002 (WorkSafe 2002, p. 56).

The RIS noted 24 fatalities from either a fall from height or a fall into a depth between 1993-94 and 1996-97. The proposed Regulations imposed duties on employers, including:

- assessing the risk of a fall associated with a task
- ensuring the risk of a fall is reduced as far as practicable
- providing information, instruction and training
- meeting additional requirements relating to the use of ladders.

Consultants employed by the Victorian Workcover Authority consulted with employers to elicit information about the compliance costs of the Regulations. Ten workshops were held with employers from a range of industries and trades, and 47 employers provided survey responses (although a breakdown by industry was not provided). There was not a workshop specifically for agriculture, although a representative from the Victorian Farmers Federation attended a workshop and distributed copies of a Victorian Workcover Authority survey to its members.

The information gained from these consultations was used to inform a cost–benefit analysis. The analysis contained in this RIS compares favourably with that in others that the Commission has reviewed for this inquiry and in its first six months of reviewing new RISs. The analysis could have been enhanced, however, by:

- more comprehensive and representative information on compliance costs. The compliance cost estimates were based on a sample of 47 firms, which represented employers likely to be attentive to the management of work at height risk (WorkSafe 2002, p. 60). It is difficult to obtain objective cost estimates from stakeholders, but such a small sample is unlikely to be representative of the impact of such wide reaching regulation, particularly for those sectors that will find compliance most difficult, because the costs will differ significantly across industries and locations. (It may be much more costly for firms outside major centres to rent ‘cherry pickers’ and other specialist equipment, for example).
- more analysis of the likely compliance rates and the consequences of different rates. The RIS assumed full compliance and that this would translate into a 50 per cent reduction in falls. A lower level of compliance would seem more plausible, and this would generate fewer benefits, particularly if those least inclined to comply are engaged in the most risky practices.\(^1\)

While the RIS had some shortcomings, it did demonstrate the value of this consultative tool. Submissions noted a conflict between the draft Regulations and the electrical safety provisions in the Electrical Safety Act 1998 and the changes in the final Regulations sought to address this issue. A significant number of submissions to the Victorian Workcover

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1 The Regulatory Impact Statement Handbook notes the importance of a realistic assessment of what is likely to be achieved, and the impact of this assumption on costs and benefits (ORR 1996b, p. 22). The Victorian Workcover Authority (pers. comm., 23 December 2004) argued that the approach of assuming 100 per cent compliance was consistent with the advice of the Office of Regulation Review in the early 1990s where there was a concern about avoiding understating possible compliance costs.
Author raised concerns about the prescriptive nature of the requirements for using ladders, and the Victorian Workcover Authority noted that technical experts were able to demonstrate that it would be difficult or impossible to comply with these provisions in many circumstances. As a result, substantive changes were made towards a more performance-based approach to ladder use, before the Regulations were introduced in 2003.

Good practice is to release Regulations and associated guidance material (consistent with the Regulations) before the new Regulations are enforced, so firms have sufficient time to develop and implement compliance strategies before enforcement commences. The appropriate delay will depend on the nature of the compliance task (for example, the level of training, new procedures and alterations to equipment). The link between compliance and the provision of good information was noted in the 2004 review of the Occupational Health and Safety Act 1985 (Maxwell 2004, p. 274). Good information about the requirements of the Act (and by extension, the Regulations) and how to comply with them was described as a ‘central and fundamental’ function of the Victorian Workcover Authority. While changes in the Regulations followed the RIS process, however, three issues appear to have emerged during implementation.

The first issue is the extent of the guidance materials. The RIS identified the agricultural sector as a major area of falls risk (accounting for about 17 per cent of works exposed to a falls risk, with orchardists being the most risk exposed of the farm population). The RIS noted that the Victorian Workcover Authority was intending to prepare an implementation strategy to assist this sector in achieving compliance with the then proposed Regulations (WorkSafe 2002, p. 54). However, while there are 13 separate guidance notes on the Victorian Workcover Authority’s website, some of which cover particular tasks or sub-sectors, guidance specifically for orchardists is still being drafted in consultation with the Victorian Farmers Federation and the Australian Workers Union.

Second, the guidance materials developed after the RIS may sometimes suggest approaches that impose significantly higher compliance costs than envisaged or anticipated in the RIS. The Better Regulation Task Force in the United Kingdom examined the issue of guidance and noted the importance of ‘those who draft guidance [taking] into account the projected costs and benefits of the original regulatory proposal to make sure that the guidance does not stray beyond the original intention’ (Better Regulation Task Force 2004, p. 23). The guidance note on Fall Prevention: Windmills or Frost Prevention (VWA undated) notes that the most effective option for reducing the risk of falls is to replace most windmills with solar, diesel or electrically powered ground based pumps or Towers. The Victorian Workcover Authority advised:

While the foundation for the advice contained in the current [Windmills] Guidance Note may be sound, we are concerned that the way it is presented may tend to over-emphasise a solution that may not be practicable in the short-term for many farms in Victoria. Accordingly WorkSafe [VWA’s OH&S arm] has taken the view that the appropriate course of action is to withdraw the guidance note until we have had a further opportunity to consider the presentation of this information.
(pers. comm., 22 December 2004)

A third concern is the timely release of guidance materials, ensuring sufficient time for firms to develop and implement compliance strategies. The RIS proposed that the Regulations commence operation six months after they were made. The Victorian Employers Chamber of Commerce and Industry (VECCI) submission on the RIS argued that there should be a 12-month delay, while the Victorian Farmers Federation stressed that the Victorian Workcover Authority ‘must appropriately communicate with employers within this small period. The Victorian Workcover Authority advised:

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necessary to allow the development of communication materials and information campaigns early enough for affected firms to develop compliance measures. The Victorian Workcover Authority responded that the proposed six-month delay was sufficient. The Victorian Farmers Federation and VECCI’s concerns seem to have been borne out, however, because some key guidance notes were not released until after the commencement of the Regulation on 31 March 2004, with Fall Prevention Advice and Compliance with OHS Regulations 2003 in the Agricultural Sector (VWA 2004) dated as being released on 5 August 2004.

Mr Jim McKay, Chief Executive Officer of the West Wimmera Shire Council, recognised that the Regulation is aimed at eliminating deaths and injuries, but commented:

... it is only after the legislation has been enacted that the full implications are now being appreciated.

Every farming operation is impacted in some way. Refuelling overhead fuel tanks, accessing paddock grain bins, constructing haystacks and servicing of large agricultural equipment and machinery.

The provisions are considered excessive and there is a need for reconsideration of their application in some circumstances. (sub. 8, p. 3)

The Victorian Farmers Federation suggested that additional expenditures to comply with the legislation mean ‘a number of farm businesses are rethinking their long term viability’ (sub. 39, p. 27). It also noted that ‘falls from heights restrictions will see the end of farm windmills and grain silos’ (sub. 39, p. 4).

The Chair of the Citrus Industry Board, Mr Mansell, suggested that the Regulation was introduced without input from the industry and that ‘there was no consideration given as to how our industry was going to deal with that’ (Mildura transcript, p. 53). He said that he had heard that ‘some growers put a yellow step on their ladder at two metres and ... don’t pick anything above that’ (Mildura transcript, p. 54).

It appears that there was extensive consultation (based on the assessment of options using cost–benefit analysis) before these Regulations were introduced. This case illustrates, however, that even a thorough consultation process cannot prevent unanticipated impacts of regulation after it is introduced, to ensure that it yields the anticipated benefits and to identify any unintended impacts. This issue is addressed more broadly in chapter 10.

The Prevention of Falls Regulations affect virtually every sector and have a particularly high impact on some regional industries. Moreover, there seems to be sufficient evidence of unanticipated consequences having occurred during the implementation phase. Consequently, while the Commission is wary of proposing excessive additional layers of review and the associated costs, in this case a higher level of analysis of the costs and benefits of this regulation and its administration is warranted.

There would appear to be a case for reviewing the existing and any new Victorian Workcover Authority guidance material on compliance with the Occupational Health and Safety (Prevention of Falls) Regulations 2003 in the agricultural sector. Such review would ensure the costs of the proposed compliance approach do not outweigh the benefits, and

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2 A number of other participants argued that the regulation should come into operation without delay because discussions had already been occurring for several years, although the nature of the regulation had evolved over that period.

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consider alternatives that may generate greater net benefits. This review should be publicly released.

Input to the inquiry on this issue has been from the agricultural sector. The Commission is interested in any other region-based industries that consider the guidance material proposes compliance methods for which the costs outweigh the benefits.

Under the Occupational Health and Safety Act 2004, some Regulations made under the old Act, including the Occupational Health and Safety (Prevention of Falls) Regulations 2003, sunset two years after the new Act comes into operation on 1 July 2005, unless the Regulations are earlier revoked. This provides an opportunity for the Victorian Workcover Authority to collect information on the effectiveness of the prevention of falls Regulations and the costs they impose, before reassessing their continuation when they sunset.

**Child employment**

Two submissions raised concerns about the Child Employment Act 2003, which was introduced recently, following a review coordinated by Industrial Relations Victoria:

1. The West Wimmera Shire Council expressed concerns about the child employment laws discouraging children from working on relatives’ farms (sub. 8, p. 6).
2. The Victorian Farmers Federation claimed that the new child employment regulations will stifle the traditional farming way of life and that ‘cutting out practical methods of teaching young people what is right and what is not, will not help’ to improve farm safety (sub. 39, p. 26; Geelong transcript, pp. 79–80).

Under the Act, children must be employed only to undertake ‘light work’, including farm related chores. The minimum age of employment permitted by the Act is generally 13 years, but there is no minimum age for a child employed in a family business (by his or her parents). The Act also requires children not to be employed during school hours on a school day unless the school grants an exemption, and the maximum number of hours that a child can work are set (IRV 2004). Between 1800 and 2000 permits are sought annually, and about 87 per cent of permits granted under the old Act were for non-farming activities (IRV 2001, p. 4).

The changes in the new Act are not significant and, in some respects, are less onerous than the Act replaced (Community Services Act 1970). Children employed by their parents in a family business no longer require a permit, for example. One of the primary changes, however, was an increase in the maximum penalties for breaches, from $100 or one month’s imprisonment to up to $10,000.

The Victorian Farmers Federation suggested that the new exemption from the Act for children employed in a family business should be widened to include the extended family—for example, nieces, nephews and grandchildren. The Commission supports review of this extension to the existing provisions, where parents grant permission.
5 Planning regulation

5.1 Introduction

Victoria's planning regulations give expression to the Victorian Government's policy regarding how land should be used and developed. They affect the location, form and intensity of economic activity. In doing so, they exert a major influence on economic development. Accordingly, Victoria's planning regulations (and the manner in which they are implemented) have the potential to facilitate or impede regional economic development.

In assessing the impact of planning regulation on regional economic development, this chapter examines:

- the objectives, structure and composition of the planning framework in Victoria, and the main stakeholders in the development of that framework
- the characteristics that distinguish planning in regional Victoria and its impact on regional economic development
- the problems experienced with the planning system, areas of current reform, and scope for improvement.

5.2 Objectives of planning

The objectives of planning in Victoria are set out in s.4 of the Planning and Environment Act 1987. They may be summarised as seeking to ensure the fair, orderly, sustainable and economic use and development of land, having regard to environmental, social, heritage and community interests. Through the use of planning schemes, government must balance, integrate and reconcile competing and differing considerations, having regard to the interests of property owners, net community benefit and sustainable development.

The Act also provides objectives for Victoria's planning framework. These objectives focus on establishing sound strategic planning and coordination; the facilitation of development; a system of planning schemes based on municipalities; a single authority for issuing permits; clear procedures; accessible processes; public participation; and scope for enforcement and compensation, where circumstances require. The planning system does not address regional economic development as an objective or manage it separately. Rather, the objectives for planning and the planning framework are conceived and implemented under a statewide approach, although implementation occurs principally at the municipal level.

The regulation of planning and building has its origins in securing and reconciling property rights, and ensuring public health and safety. While health and safety objectives are still central to such regulation, the scope of planning has expanded to address the

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1 While society normally relies on market forces to determine how the community's resources are best used, in some cases the market will not deliver social, economic or environmental outcomes consistent with the community's interests. This may occur, for example, where significant costs or benefits accrue to parties other than those involved in market transactions, or where information asymmetry exists between market players—that is where conditions of 'market failure' are present. In such cases, government intervention, via regulation for example, may be warranted to ensure the best interest of the community is protected.
management of all land use and development in urban and regional areas, as governments address broader goals of improving amenity and wellbeing in the community. There is thus considerable scope for conflict in how land is used, with differences evident between private and community expectations. The planning system seeks to provide a consistent, transparent and accountable process to resolve these competing interests.

Achieving all these objectives involves a difficult balance. The planning framework needs to be flexible enough to accommodate regional diversity and changing community needs and attitudes, but also needs to provide a high degree of certainty and consistency in its strategic underpinnings and regulatory approach.

5.3 Structure of Victoria’s planning framework

Legislation

In Victoria, planning for land use and development is controlled through the Planning and Environment Act and its associated Regulations—the Planning and Environment Regulations 1998 and the Planning and Environment (Fees) Regulations 2000. Because planning addresses a substantial range of social, economic and environmental issues, it also often requires concurrent consideration of associated state legislation. This legislation may include:

- the Coastal Management Act 1995
- the Heritage Act 1995
- the Catchment and Land Protection Act 1994
- the Flora and Fauna Guarantee Act 1988
- the Subdivision Act 1988

Planning schemes

The Planning and Environment Act establishes planning schemes as a core tool in the planning framework for governing the use, development and subdivision of land in each municipality in Victoria. (An overview of this framework is shown in figure 5.1). In 1996, the Victoria Planning Provisions (VPPs) were introduced to provide a standard framework for all of Victoria’s planning schemes. Planning schemes are intended to be strategic, policy-driven documents and, accordingly, commence with statements of state and local planning policies. To ensure a consistent approach to policy implementation across the state, the VPPs also provide standard zones, overlays and planning provisions addressing particular forms of land use and development. The residential planning controls, known as ResCode, are one example.

Using the VPP template, local councils construct a planning scheme for a municipality by inserting their municipal strategic statement—which sets the strategic vision for the municipality—and local policies—which serve to detail and assist decision making for users of planning schemes. Councils may select zones and overlays from the VPPs that are relevant to the characteristics of the municipality, and may add local schedules to reflect strategically justified local requirements.

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The Act requires councils to review their municipal strategic statement every three years, and ‘review regularly’ their planning scheme. The Planning and Environment (General Amendment) Act 2004 assented to on 16 November 2004, includes a requirement for planning authorities to review and improve their planning schemes every three years.

The creation and amendment of planning schemes can be undertaken only in accordance with the planning scheme amendment process detailed in the 2004 Act (see below). The same process applies to amendments to the VPPs. Ordinarily, this process requires the public exhibition of amendments and the testing of the merits of the amendment, whereby an independent panel appointed by the Minister for Planning receives and hears submissions. Section 20(4) of the Act, however, provides for the Minister to exempt himself or herself from public notice of an amendment if it is considered not warranted or not in the interests of Victoria. Amendments to the VPPs and state policy are usually introduced into the planning scheme via this provision. A targeted consultation process usually precedes any amendment.

The planning scheme identifies where a planning permit is required to change the use of land or undertake development.

Each local council—there are 48 in regional Victoria—has its own planning scheme that includes the state planning policy framework and the local planning policy framework (including a municipal strategic statement). The number of local planning policies in each planning scheme varies markedly—for example, the South Gippsland Shire Council has six local planning policies and the Greater Geelong City Council has 46. In total, there are over 700 local planning policies in regional Victoria.

The number, diversity and complexity of planning policies at the local level are a function of multiple considerations. These considerations may include the urban or rural issues facing...
the municipality, the land conditions and capabilities, the potential impact of particular uses and development, and the willingness and ability of the municipality to fund strategic research and planning policy development. The clarity of policy and the certainty of outcome thus vary from municipality to municipality. The process of policy development is evolutionary and cumulative, and varies in its robustness depending on whether the policy is rigorously tested during its formation. Consequently, there is a need to regularly review and refine policy.

Amendments

Planning schemes may be amended, and land may be rezoned, with the approval of the Minister for Planning. Only the Minister can amend the VPPs; councils can process amendments to the local section of planning schemes, but the final approval remains with the Minister.

Figure 5.2: Planning scheme amendment process

Source: DOI (2002b, chapter 2, p. 4)
Amendments to the VPPs are associated with the standard state provisions of the scheme (such as state policy, zones or overlays) or significant changes in the strategic policy approach to land use and development in the state. They must be consistent with the objectives of planning in Victoria and the state planning policy framework.

Minister’s Direction no. 11 aims to ensure a comprehensive strategic evaluation of a planning scheme amendment and its outcomes. The Strategic Assessment Guidelines practice note outlines the key strategic considerations that planning authorities must evaluate to comply with the requirements of Minister’s Direction no. 11.

The Planning and Environment Act specifies a public process for amending planning schemes, including review by an independent panel appointed by the Minister. The panel is to review submissions made on an amendment and make a recommendation to the planning authority (the council). This recommendation is one of the matters that the Minister considers when the amendment is forwarded to him or her for approval. The process for a planning scheme amendment is outlined in figure 5.2.

Permits

A variety of land uses, developments and subdivisions may be permitted within the framework of zones and overlays. The Act establishes a permit process (box 5.1) that provides for the consistent consideration of applications. In exercising discretion, the responsible authority is required to have regard to the state and local planning policy frameworks, including the municipal strategic statement. Statutory timelines are detailed for the consideration of permits.

**Box 5.1: The council planning permit process**

- **Step 1**: Before the application is made
  - Pre-lodgement certification by the council may be available.
  - Applicant should talk to council planner and neighbours, and seek professional advice.
- **Step 2**: Preparation and submission of application
- **Step 3**: Council check of the application
  - Council may seek more information from applicant.
  - Council must send application to a referral authority if specified in the planning scheme.
- **Step 4**: Advertisement of application if required
  - Advertisement must be run for a minimum of 14 days.
  - People affected by the proposed development may object.
- **Step 5**: Council assessment of the application
  - Council considers any objections and any referral authorities’ comments.
  - Council assesses planning scheme provisions and may negotiate with the applicant.
- **Step 6**: Council decision on the application (a permit, a notice of decision to issue a permit, or a refusal)
  - Applicant applies to the tribunal if permit is refused or if they object to permit conditions.
  - Objector can seek a tribunal review of a decision.

Source: DOI (2001)
Permit applicants and objectors against the decision of the responsible authority (or against its failure to make a decision within the statutory time frame) have various rights of appeal to the Victorian Civil and Administrative Tribunal, for a review of decisions made on applications.

Main stakeholders
The main stakeholders in Victoria’s planning system are:

- the Minister for Planning
- the Department of Sustainability and Environment
- local councils
- the Victorian Civil and Administrative Tribunal
- independent panels appointed by the Minister
- advisory committees
- referral authorities
- local communities
- proponents of land use change.

A brief outline of the role of each of these stakeholders is set out below.

The **Minister for Planning** has overall responsibility for the state’s planning legislation and framework. The Minister has wide-ranging powers that include the ability to grant exemptions from complying with legislation, set Ministerial Directions, approve planning scheme amendments and intervene to expedite the process.

The **Department of Sustainability and Environment** is primarily responsible for the framework and practice of planning in Victoria, reporting to the Minister for Planning and overseeing the strategic and statutory operation of the system by local councils. It has one metropolitan and four regional offices. The regional offices are responsible for delivering departmental services in an accessible manner for regional Victoria. They are not responsible for the preparation of regional plans. The department prepares the standard provisions for planning schemes, for statewide application. It reviews planning scheme amendments adopted by councils before recommending ministerial approval.

**Local councils** are the bodies primarily responsible for the preparation and administration of planning schemes. As the planning authority, they research and draft local planning policy—including the municipal strategic statement—and usually initiate the amendment of the planning scheme. They oversee the operation of the permit process, make decisions on permit applications and enforce the planning scheme and permits.

**The Victorian Civil and Administrative Tribunal**, through the Victorian Civil and Administrative Tribunal Act 1998, reviews a range of disputes relating to planning scheme administration and planning permit decisions.

**Independent panels**, appointed by the Minister for Planning, review submissions made on planning scheme amendments and make recommendations to councils. Through their work, panels influence the drafting of policy and strategic land-use decisions, but their deliberations are confined to recommendations rather than decisions on the merits of proposed amendments.

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Advisory committees may be established on an ad hoc basis under the provisions of s.151 of the Planning and Environment Act to advise the Minister on any matters referred to them by the Minister.

Referral authorities are involved in both planning scheme amendment and permit application processes. They are bodies, agencies or groups that are specified in the Planning and Environment Act or planning scheme whose interest may be affected by the scheme’s amendment or by the granting of a permit that authorises land use or development. EPA Victoria, VicRoads and catchment management authorities are examples of referral authorities. In the case of referrals required under a planning scheme, the responsible authority must refuse a permit if the referral authority objects to the permit being granted. Any review of that decision or the weighing of that objection with other relevant consideration is limited to an application for review by the Victorian Civil and Administrative Tribunal.

The Victorian community can engage in both the planning scheme amendment and the planning permit process, with the ability to object or make submissions, and to seek review by an independent panel or the Victorian Civil and Administrative Tribunal (depending on whether the matter is associated with an amendment or permit application). Victoria is at the forefront of third party rights in the planning process in Australia.

Lastly, proponents of land use change and development may apply for a planning permit or request a planning scheme amendment. While the permit process includes appeal rights, there is no similar avenue for review if a planning authority refuses to exhibit a planning scheme amendment. In the case of such a refusal, that is the end of the matter unless the Minister can be persuaded to take on the role of the planning authority for the purposes of testing the proposed amendment.

Evolution of Victoria’s planning system

The current planning framework, with its focus on strategic planning and policy, net community benefit and sustainable development, has its origins in the Planning and Environment Act. That Act has been amended on a number of subsequent occasions, and the planning system is the subject of regular review and ongoing reform.

The work of the Perrott Committee in 1993—which constituted a comprehensive review of both statutory and strategic planning in Victoria—led to a new planning framework (DPD 1993). Among its principal findings were:

- a lack of vision for land-use planning in Victoria
- fragmented local government, which was not conducive to proper planning or achieving economies of scale
- ineffective organisation for planning, including an over-emphasis on local aspects of planning and development at a cost to the wider community.

The Perrott Committee’s recommendations addressed the strategic framework for planning, reform of the planning system (including the format of planning schemes, integrated development approvals, building control legislation, and review of the planning appeals system) and the organisation for planning. Reforms introduced in response (which took almost five years for all municipalities to implement) led to a consistent structure and framework of planning schemes throughout Victoria.
In December 1999, the Auditor-General Victoria published a report following its review of land use and development, giving particular attention to the planning system (AGV 1999). It proposed over 60 suggestions to improve the planning system, addressing topics that included:

- the role of the department in statewide activities
- council management of land use and development
- resource management within councils
- performance monitoring within councils.

In 2001, the Victorian Government commissioned Deacons and Tasman Economics to undertake a National Competition Policy review of Victoria’s Planning and Environment Act and associated subordinate instruments (Deacons and Tasman Economics 2001). That review made 14 recommendations aimed at improving the effectiveness and efficiency of the Act. The government’s response to that review was released in October 2004 (DSE 2004b). Many of the recommendations, and the proposed government response, coincided with reforms arising from the government’s Better Decisions Faster initiative, which was launched in 2003 (see below).

In 2002, the Minister for Planning established a reference group on decision-making processes. This group, also known as the Whitney Committee, examined three aspects of the planning system:

1. using and interpreting local policy
2. introducing amended plans
3. enforcing the planning scheme.

It concluded that the VPP based system of planning control is worthy of support but not without weaknesses. The group recommended refinements and improvements that address the identified weaknesses. Its work and recommendations have been an input into the Better Decisions Faster initiative detailed below (Whitney Committee 2002a,b,c).

In August 2003, the government released a discussion paper on opportunities to improve the planning system in Victoria—Better Decisions Faster (DSE 2003b). It advanced 31 options to improve the planning permit process, enforcement, the planning scheme amendment process and agreements. Following the discussion paper, a directions paper was released in April 2004, outlining a program to implement 30 of the 31 proposed initiatives (DSE 2004c). Topics covered included:

- encouraging pre-lodgement certification
- imposing time limits on further information
- rejecting inadequate applications immediately
- introducing a new short permit process
- introducing self-assessment opportunities
- introducing permit activity reporting for all councils.

The Department of Sustainability and Environment has advised the Commission that a number of the reforms arising from Better Decisions Faster have already been implemented, and that legislation to give effect to many others is before Parliament (DSE 2004d, pp. 13–14). The government anticipates that the reforms will result in approximately $50 million in savings to the development industry in Victoria.
A concurrent reform of the Victorian Civil and Administrative Tribunal was undertaken during 2003 and 2004. This reform process, code-named ‘Operation Jaguar’, sought to improve the timeliness of planning decisions before the tribunal.

Further, with particular reference to regional Victoria, the rural zone provisions in all planning schemes were comprehensively reviewed between 2001 and 2004. Arising from the review, a suite of four new zones with clearer purposes and tighter controls has been advanced. The zones seek to properly recognise the importance of the agricultural industry and provide greater protection of productive agricultural land. Councils will determine how and when to apply the new zones in their area.

In addition to these Victoria-specific reviews and reforms, a national review of development approvals systems is underway, with the potential to introduce changes to Victoria’s planning system. The review objective—under the aegis of the Development Assessment Forum—is to facilitate national reform and harmonisation of Australia’s development assessment systems. The forum recently commissioned a draft Practice Model for Development Assessment, which is being tested with stakeholders. The Better Decisions Faster reforms were designed to align with this national approach to development assessment (DSE 2004c, p. 2).

5.4 Planning and regional development

Victoria’s planning framework has regard to regional economic development primarily through provisions relating to particular industry activities that are essentially confined to regional Victoria. Examples include provisions relating to intensive animal industries, forestry and timber production, mineral resources and extractive industries, tourism and apiculture.

The planning framework also has regard to regional economic development in that it provides for local councils to select zones and overlays from the VPPs that are relevant to the characteristics of the municipality, and to add local schedules that reflect strategically justified local requirements. In this regard, local councils can exercise a degree of control over regional economic development in their jurisdiction. Such control is constrained, however, to the extent that any amendments must be demonstrably consistent with the statewide objectives of planning and the planning policy framework.

Region focused planning is confined to catchment authorities (whose responsibility is confined to water and drainage), the Upper Valley and Dandenong Ranges, coastal areas, alpine areas, and metropolitan Melbourne. The purpose of these economic development plans, however, is not primarily directed at facilitating economic development; rather, economic development is considered as part of a broader policy approach that embraces economic, social and environmental objectives.

2 The Development Assessment Forum was created to identify leading edge approaches to development assessment in Australia. The forum’s membership includes the three spheres of government (federal, state/territory and local), the development industry and related professional associations. For more information, see www.daf.gov.au.

3 This regional strategy plan is specifically referenced in part 3A of the Act, and the region is addressed as a discrete area at clause 53 of the VPPs. This set of circumstances arises from the repeal of the Upper Yarra Valley and Dandenong Ranges Authority Act 1976 in 1994.
The Great Ocean Road Regional Strategy, a recent initiative of the State Government, provides for a review of planning schemes, which will occur in the near future. An important objective of this discrete region based plan is to facilitate sustainable economic development in the geographic area surrounding the Great Ocean Road (DSE 2004e, pp. 4–7).4

5.5 Differences between regional and metropolitan areas

Despite a consistent structure of planning schemes and the overarching planning framework established by the Planning and Environment Act, the implementation and practice of planning differ between regional and metropolitan Victoria. The distinguishing regional differences may be summarised as:

- the much larger extent of non-urban areas and the application of non-urban zones, overlays and provisions particular to these areas
- boundaries to planning scheme overlays (addressing special land use and environmental conditions) beyond the minimum actually justified, resulting in a greater number of applications for planning permits that add no or minimal value through the planning permit process5
- a greater proportion of small-scale and relatively straightforward matters being subject to permit approval
- regional councils (particularly rural councils) generally not being well resourced, and being more likely to have lesser skilled and/or experienced planning staff
- a different decision-making culture, accounting for different matters when considering applications. The smaller, closer communities of regional Victoria place greater weight on personal and community circumstances than large metropolitan areas might do.

Land-use issues faced by regional Victoria differ from those of metropolitan Melbourne (with more land used for agriculture, forestry, mining, for example) and several inquiry participants considered that planning regulations thus assume greater significance in regional areas:

...there has to be a realisation that the way you look at planning in regional Victoria, particularly the further you get away from Melbourne, is probably different, and that planning has a great opportunity to be a facilitator of growth in a centre such as this rather than a negative part of it. (Mr. B. Howard, Warrnambool transcript, p. 42)4

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4 The Great Ocean Road Region Strategy is built around four key directions: (1) protect the landscape and care for the environment; (2) manage the growth of towns; (3) improve the management of access and transport; and (4) encourage sustainable tourism and resource use (DSE 2004e).

5 An example might be where a council considers that the potential for erosion in land abutting a watercourse warrants a specific planning overlay such as an erosion management overlay. If the council lacks the resources to properly research and specifically define the affected areas, it might ‘play safe’ by applying the overlay well beyond the area required to be controlled by a permit process. Permit applications would then be needed for activity outside the area actually affected, adding costs for applicants and council, but having no commensurate benefit.
5.6 What are the challenges?

Many of the inquiry participants who commented on planning regulations acknowledged that the current planning system and processes are a significant improvement on the recent past—the outcome of reviews such as those by the Perrott Committee and the Auditor-General, and their associated reforms (DPD 1993, AGV 1999). A clear message from participants, however, was that significant shortcomings remain, impeding the development of regional businesses. The main concerns (some of which are interrelated) may be summarised as:

- imprecise and poorly understood policy
- inconsistent policies and decision making
- excessive or inefficient processes
- inadequate integration of multiple approval processes and different authorities
- excessive regulation
- poorly conceived applications
- insufficient resources at local council level to adequately implement state and council planning policies, with practitioners operating in a stressed environment. 6

These concerns—which are not unique to regional areas because they relate to planning regulation across Victoria—echo issues identified in earlier reviews of Victoria’s planning system. Inquiry participants’ concerns also tended to relate more to the implementation and application of elements of planning regulation, and were less about shortcomings of the planning framework more generally. Finally, it must be recognised that initiatives flowing from the Better Decisions Faster process (which either have yet to be implemented or have been implemented but not had time to have any significant effect) could address some of these concerns.

Precision and understanding of policy

Despite almost a decade of strategic policy-driven planning schemes, the role and use of planning schemes are still not widely understood, or consistently or effectively applied by all parties to the planning process. The problem is compounded where strategy and policy (at state and local government levels) are too imprecise to provide meaningful guidance or consistent interpretation.

The Whitney Committee, too, raised this concern in its findings, while upholding the essential merit of the VPP framework (Whitney Committee 2002a). It concluded:

... the Victoria Planning Provisions (VPP) based system of planning control is one worthy of support. It is a system that transparently sets down the State and local objectives as a basis for reaching sound planning outcomes. (p. 1)

The current balance in the system has gone too far in favour of flexibility and performance based controls to the detriment of certainty and this should be reviewed.

6 The view that the planning system operates in an environment of extreme strain and stress is widely held. The Planning Institute of Australia recently held a workshop on this topic as part of Planning Week 2004.
The difference in construction of the general and specific provisions of the strategic planning policy framework (SPPF) creates the potential for tension with specific local policies and differences of interpretation.

Some MSSs [municipal strategic statements] and local policies lack clarity. (pp. 3–6)

In discussions with the department, the Commission was advised that the state planning policy framework has been reviewed in the context of particular planning issues and thus has been subject to amendments. The Commission does not view this as a substitute for a regular, holistic review to ensure the framework remains relevant.

The absence of a specified review period heightens the risk for users of the planning system that the Victorian policy framework is not fully relevant or sufficiently precise to be of value in their decision making. This risk is particularly relevant in an environment where municipalities are required to update their strategies every three years. Accordingly, the Commission considers that a review period should be specified (every five years).

A further issue raised by the Planning Institute of Australia relates to the clarity of State Government policy:

It has been stated in some quarters that the SPPF serves little purpose because it has very generalised statements that provide little direction and that the objectives it pursues are often seemingly in conflict with other objectives. It is precisely this problem that... is adding to the uncertainty. (PIA 2004a)
The resolution of this issue involves a difficult balance of enhancing certainty of outcome while maintaining the flexibility to consider and balance relevant considerations across the state. Nonetheless, inquiry participants highlighted the need for more definitive statements of policy that unambiguously articulate expected outcomes. The City of Greater Bendigo noted:

> The State Government could lessen the uncertainty surrounding the current planning schemes through the development of specific policies and guidelines. Whilst ‘performance based’ planning is generally supported by this municipality, there is a need for greater certainty—both for the developer and for the community. (sub. 23, p. 2)

As with other matters drawn to the Commission’s attention, this is not a new issue or one that has been ignored. The Department of Sustainability and Environment has recognised the need to assist in this area and helped develop and make available documents such as Using Victoria’s Planning Assessment System, Strategic Assessment Guidelines and Planning Victoria: A Councillor’s Guide (the latter in conjunction with the Municipal Association of Victoria).

The issue was also addressed by the Better Decisions Faster review and a National Competition Policy review of the Act. The latter review included recommendations to:

- Develop NCP [National Competition Policy] guidelines and workshops to assist planning and responsible authorities to implement planning policy which is consistent with NCP; and
- Improve consistency of planning decisions concerning planning scheme amendments and permit applications. (DSE 2004b, p. 4)

The Victorian Government announced its support for those recommendations and endorsed the development of such guidelines by the end of 2004. At the same time, it supported the development of new processes to improve by 2004-05 the consistency of planning decisions under Better Decisions Faster (DSE 2004b, p. 4).

Table 5.1 outlines relevant reforms arising from the Better Decisions Faster review that should assist in this area, and the status of their implementation.

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Inquiry participants also questioned the standing and weight that responsible authorities give the Victorian Civil and Administrative Tribunal give to draft policy and draft guidelines in their consideration of applications. Discussions with representatives of the mining industry, in particular, drew the Commission’s attention to the uncertainty, delay and cost associated with the use of draft policies and guidelines in the approvals process.

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7 These department guidelines for local government translate state policies/strategies into local government plans.
International Power Hazelwood, for example, noted that the relevance of draft policies and guidelines is often an issue in planning and approvals processes. In most cases, the proponent of a development is asked to either comment on or assess the implications for the project of draft policies and guidelines. Despite draft policies and guidelines having no relevance in the approvals process—because they are not finalised and endorsed—most proponents consider their implications on the basis of goodwill and the desire to act responsibly. Proponents who agree to work within the intended framework of draft policies and guidelines are thus often exposed to continually changing levels of assessment and conditions of approval (pers. comm., 26 November 2004).

In addition, the use of draft policies and guidelines can lead to confusion when contradictory provisions remain in planning schemes or guidelines. This confusion is compounded when review bodies such as independent panels and the Victorian Civil and Administrative Tribunal give little weight to those draft documents unless they have been through a public process and are close to being formally incorporated into the planning scheme.8

Considerable cost and delay are commonly associated with gaining approval to incorporate new strategies, policies and guidelines in planning schemes. These constraints may influence councils to rely on draft documents but, as noted above, this can result in substantial costs for applicants.

The Commission considers that responsible authorities and the Victorian Civil and Administrative Tribunal need clear guidelines on how to use draft documents in their consideration of planning applications. Such guidelines should make clear the weight that review bodies will accord to draft documents. The Commission’s view echoes that of the Whitney Committee, which found that full statutory recognition should be given only to policies that are contained in the planning scheme or are in the formal process of being included, and which recommended establishing a clear hierarchy of documents to be considered in decision making (Whitney 2002a, p. 18).

**Consistency of policies and decision making**

Inquiry participants drew attention to inconsistencies between state and local government policies, and between decisions made by different councils on essentially similar planning matters, claiming that these inconsistencies impede economic development in regional Victoria. They made a similar claim about situations where the outcome of planning regulations appears at odds with the intent of those regulations, and where there is no apparent trigger for a timely reconsideration of them.

The effect of perceived inconsistency in policy and decision making may be measured in delays and higher costs to applicants, lower or forgone economic activity, an added council workload that can compound existing staff and resource problems, and minimal value adding for either the individual or the community. At the Commission’s Colac hearings, Mr. J. Hayden gave an example of the scope for inconsistency between state and local planning policy, which introduced uncertainty to any decision to invest. He noted:

> In response to the Federal Government 20x20 Vision for Plantation Expansion, the State Government ruled that plantation development exceeding 40 hectares was as-of-right, provided that it occurred in a rural zoning, however local government councils can impose planning guidelines.

8 See, for example, the case of Skye Environmental Services Pty Ltd v Frankston City Council (2004) VCAT 682. The case can be downloaded from www.austlii.edu.au/cgi-bin/disp.pl?au/cases/vic/VCAT/2004/682.html.

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overlays which might require planning permits. These overlays could be based on environment, fire management, landscape, erosion or restriction on harvesting. This can create uncertainty for potential plantation expansion. (Colac transcript, p. 16)

Gippsland Private Forestry raised the same theme:

The Planning and Environment Act 1987 through the VPPs are intended to provide greater uniformity in land-use planning across the state. The application of the VPPs has not delivered complete uniformity across Victoria and has not delivered a level playing field with respect to land use. This is due to inconsistent application across about 78 LGAs [local government areas] and lack of centralised referrals:

- LGAs vary in their consideration of issues of state importance identified under the state planning policy framework (SPPF) when making planning and land use decisions.
- LGAs vary in their consideration of the local long-term directions for land use and development when setting the zones and overlays under the local planning policy framework.
- Zones and the maximum area for which plantation development is an as-of-right land use in the Rural Zone area not uniformly applied by each LGA. The maximum area is currently 40 ha in some and unlimited in other LGAs.
- Overlays are not uniformly applied. Each LGA uses those overlays it deems to be relevant. Overlays tend not to overtly discriminate between land uses but their application can constrain private forestry activities sometimes inadvertently.
- Particular provisions which apply to specific uses and developments vary and may be inconsistent with the code.
- LGAs vary in the priority given to private forestry under their municipal strategic statements... (sub. 11, pp. 10–11)

Such uncertainty increases the element of risk in any venture and would necessitate a higher hurdle rate of return for any investment to proceed. The effect of added uncertainty could thus be expected to reduce investment (and regional development). It should be acknowledged, however, that local variations (even though they may generate uncertainties) have a legitimate role. They reflect the particular planning requirements of individual municipalities and the balance of community interest within those jurisdictions.

At the heart of this issue, therefore, is whether local councils, in deciding to impose local policy overlays, have (1) appropriate processes to involve affected parties in that decision and (2) access to the planning skills required to make the best decisions for their community. The first matter—appropriate processes—is a case-by-case question of fact. The second—access to resources—is a more generic issue relating to the level of funding for local government.

Inconsistency partly reflects the complexity of relevant matters to be taken into account. It can also be partly attributed to the fact that planning decisions reflect personal judgements, and that the weight given to competing considerations is uniquely influenced by the decision makers’ context and background. Additionally, inconsistency might arise where council planning staff do not understand the relevant planning policy. To some extent, this problem might more accurately be viewed as a reflection of regional councils’ access to adequately trained or experienced staff (an issue dealt with below). Some inquiry participants claimed, however, that this inconsistency is sometimes the result of decision makers applying criteria not specifically identified in the planning scheme.

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Inconsistency was recognised as an important issue in the recent Better Decisions Faster review. To address this issue, the review instituted reforms that:

- have been implemented (for example, the use of guideline judgements that provide principles for decision making on a particular matter), or
- are being implemented (for example, model officer reports that set out standard reports for different types of application, clearly setting out the policy context and decision-making criteria), or
- required legislative backing, and the recent Planning and Environment (General Amendment) Act gives effect to these (for example, reforms to strengthen local policy outcomes).

The Commission expects these reforms to improve the consistency of decision making across councils. Table 5.2 contains a summary of relevant reforms and the status of their implementation.

### Table 5.2: Status of recent reform implementation

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Source: DSE (2004d, p. 13)

Moreover, other past and present initiatives are aimed at addressing this concern. These include efforts to provide councils with the tools to apply planning regulations (for example, the Manual for the Victorian Planning Provisions), and to improve the skills of council planning staff in regional Victoria (see below).

Councillors generally are conscious of the need for greater consistency in their planning policies and decisions, and are acting to address this issue. The Commission is aware that councils are involved in forums through which greater consistency in the planning policies and decisions might emerge. These forums include ad hoc forums run by councils (in conjunction with the Municipal Association of Victoria) on planning issues, and forums run by the Planning Institute of Australia. In addition, groups of regional councils meet to discuss planning issues of common interest (frequently with the involvement of the Department of Sustainability and Environment), with a view to being more uniform in their approach to particular planning issues.

Particularly significant for regional development is the apparent inconsistency in planning that relates to broiler farms (box 5.2).
Box 5.2: Regulation under the Victorian Code for Broiler Farms

In 2001, the Victorian Code for Broiler Farms was incorporated into the VPPs and all planning schemes in Victoria under the Planning and Environment Act. The purpose of the regulatory regime established under the code was to ‘provide a framework for the economically and environmentally sustainable development and operation of the broiler farming industry in Victoria, recognising the needs of the industry and the community’ (Government of Victoria 2001c, p. 1).

The Victorian Farmers Federation provided information to suggest, however, that the regulations have had an impact entirely inconsistent with this purpose. It considered that the code has had the effect of almost entirely preventing industry development—either through the construction of new farms or the expansion of existing ones—and necessary restructuring. As a result, the broiler industry in Victoria operates under a severe comparative disadvantage relative to the industry in other states. This situation, the Victorian Farmers Federation concluded, warrants the content of the code being revisited (this issue is discussed further in chapter 9).

Source: sub. 39, pp. 21–24

Implicit in this example is a more general concern about whether the planning system embodies sufficient ‘feedback loops’ to identify, in a timely manner, where industry-specific regulation might need to be revisited and to trigger remedial action where appropriate. In its discussions with the department, however, the Commission was advised that systemic arrangements are in place to review the operation of such industry codes. The department advised that the Victorian Code for Broiler Farms was developed and introduced with the support of a Broiler Code Committee of industry, government and consumer representatives. That committee is also responsible for monitoring the operation of the code and advising the Minister on the operation of the code and the need for change. Moreover, an independent review of the code (which was funded by the department) supported the deliberations of that committee.

Further, although the code is apparently constraining the development of broiler farms in some regions, it is not necessarily an impediment to regional economic development. The certainty provided by the planning requirements set out in the code provides added confidence for the development of local planning strategies that embrace broiler farms. As an example of this, the department has been working with the Strathbogie Council to develop a local planning strategy (incorporating the Victorian Code for Broiler Farms and other intensive animal husbandry codes) that is supportive of intensive animal husbandry in that municipality. As a result of these efforts, the council has proposed to amend its planning scheme to introduce a new zone to support intensive animal husbandry (including broiler farms). That amendment is expected to come into effect early in 2005.

Number and efficiency of processes

The planning legislation details essential statutory steps required in processing either a planning scheme amendment or planning permit application. Inquiry participants were critical of many councils unnecessarily adapting or extending the process, particularly in the initiation of further information requests; the timing, extent and sequencing of referrals and public notification; the delegation and programming of decision making; and the extent and nature of public consultation. In these circumstances, decision making is often avoided and/or deferred, with the result that applicants can face a significantly higher burden in lost time and added expense. Mr. W. Vine, a member of the Bendigo Wine Growers Association, stated:

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it takes a long time to get a planning permit. In fact, it can slow them down to the point where some of them just lose interest and decide either to cut corners or not to proceed. (Bendigo transcript, pp. 41–4)

Similar comments were received in other public hearings of the Commission. At Mildura, Mr. Carazza observed:

It's the delays and the delays and decision making that really creates a problem. When you're talking about an investment that you've got millions of dollars invested and the delays are there, it becomes a very costly exercise, so either you've got to abandon the system or just pursue it but in a lot of pain. (Mildura transcript, pp. 33–4)

Mr. Carazza argued that planning decisions in regional Victoria appear to take twice as long as they should, and that there is a need to make things happen quicker (Mildura transcript, p. 34).

At the other extreme, a 'one model fits all' approach is often taken, regardless of the size and complexity of the proposal being considered. The same process may apply for the removal of a tree as for a multi-million dollar development. Where this occurs, the risk is high that excessive costs or a poor quality decision will result.

The West Wimmera Shire Council was critical of past policy development that attempted to apply a single model across the State. With particular reference to rural zones (that is, the subdivision of small lots to allow intensive farming and rural based land uses), it noted:

The initial 'Rural Zones' provisions were inadequate in that they were restrictive and in attempting to solve problems in rural fringe areas merely applied a one size fits all solution, which had no practical application in rural Victoria. After much public outcry they were redrafted and have been improved however there are still numerous rural related uses that were permit required uses and are now prohibited use. (sub. 8, p. 3)

In the inquiry submissions and hearings, a general complaint about planning regulation was that the time taken to resolve the process is excessive. The Act and its associated Regulations provide statutory timelines for processing and decision making for permit applications, but there are no comprehensive published statistics to judge how well the 'permit system' performs, or how individual councils fare in relation to these limits and in administering the system more generally.

Some measure of this performance may be inferred from the prevalence of appeals regarding the failure of the responsible authority to make a decision in the prescribed time. Such appeals have recently increased, accounting for 15 per cent of 3271 appeals in 2002-03 and 17 per cent of 3702 appeals in 2003-04. These numbers suggest delays are a considerable and increasing concern.

Delays have also been a concern with regard to the operation of the Victorian Civil and Administrative Tribunal. The tribunal’s Planning and Environment List received 3702 applications in 2003-04. This was the greatest number of applications ever received by the division, up 13 per cent from the number in the preceding year. In 2002-03, 3271 cases were received and 3448 were finalised, with 1520 cases pending. Over the preceding three years, the number of new cases varied between approximately 3000 and 3350. During the period 2001–2003, the percentage of cases resolved within 20 weeks decreased from 52 per cent to 41 per cent, and the percentage of applications resolved within 28 weeks decreased from 77 per cent to 72 per cent.

The Victorian Government has recognised that the resolution of cases in the Victorian Civil and Administrative Tribunal system is lengthy, and this issue was the subject of reforms...
during 2004 (‘Operation Jaguar’). Those reforms led to a marked improvement in performance, with the median time to resolve matters reducing from 22 weeks to 18 weeks. These improvements were achieved principally through reform to the system, rather than through the application of significant additional resources (Morris 2003, p. 5).

In contrast to the prescribed timelines for processing and decision making for permit applications, the Commission understands that there is no equivalent specified timeframe for planning scheme amendments. An amendment essentially lapses two years after the original notice is given, unless specified procedural events have occurred or the Minister has extended the timeframe for the amendment.

The Commission recognises that planning scheme amendments generally embody a significant change to the principles governing planning or the use and development potential of an area. Accordingly, any decision on those amendments warrants a full consideration of their implications, and such consideration takes time. Nevertheless, while the differing complexity of various amendments makes it difficult to prescribe a timeframe, this difficulty alone is not a compelling reason to have no set timeframes. It is not clear to the Commission whether the lack of a specified timeframe for the progress of planning scheme amendments is problematic for regional Victoria, or how materially this issue may affect regional development.

Some inquiry participants considered that more should be done to provide for councils to learn ‘best practice’ lessons from their peers. In this way, effective policies could be introduced at less cost to councils. Mr. B. Howard, a planning consultant, considered that there was no institutionalised process that would identify best practice examples for local policies and make them available to other regional councils (Warrnambool transcript, p. 41). He suggested the Department of Sustainability and Environment could usefully provide this role. Processes and outcomes would subsequently improve, saving regional councils a lot of work and, at the same time, assisting in the timely implementation of appropriate planning policies. The same view was put to the Commission in the Ballarat hearing, where Mr. M. Kauffman, a planning consultant, suggested that poor performing councils could learn from better performers (Ballarat transcript, p. 55).

The development of a comprehensive and accessible database on planning outcomes might highlight where best practice policies exist among regional councils. Additionally, the Department of Sustainability and Environment (in collaboration with the Municipal Association of Victoria) already distributes some guidance material that aims to provide such support. The planning practice notes9 issued by the department, for example, provide guidance on the most appropriate way to use and implement the VPPs. While inquiry participants highlighted the problem of excessive or inefficient planning processes, there was limited comment on the considerable number of reforms underway to address this issue and on the likely effect of these reforms. Table 5.3 contains a summary of relevant reforms arising from the Better Decisions Faster initiative, and the status of their implementation.

9 The planning practice note series provides practical advice to users about specific aspects of the Victorian planning system. The VPP practice notes provide advice about using the VPPs and new format planning schemes. The general practice notes provide advice about other planning related issues. The department also produces advisory notes that provide information about specific matters such as new initiatives.
Concern about inadequate planning integration was raised in the context of different land-use practices and approval processes, including farming, mining, energy generation, forestry, and native vegetation removal. The state planning policy framework (SPPF) requires planning and responsible authorities to have regard to, and integrate, a broad range of issues in making decisions consistent with the objectives of planning in Victoria, net community benefit and sustainable development. These authorities must give regard to allied legislation, guidelines and associated approvals processes managed by other bodies and authorities.

Inquiry participants noted that these parallel processes are often overly complex, lack clarity and consistency, and often focus on a single issue to the exclusion of balance and integration with other considerations within the planning framework.

### Integration of approvals processes and different authorities

Concern about inadequate planning integration was raised in the context of different land-use practices and approval processes, including farming, mining, energy generation, forestry, and native vegetation removal. The state planning policy framework (SPPF) requires planning and responsible authorities to have regard to, and integrate, a broad range of issues in making decisions consistent with the objectives of planning in Victoria, net community benefit and sustainable development. These authorities must give regard to allied legislation, guidelines and associated approvals processes managed by other bodies and authorities.

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**Table 5.3: Status of recent reform implementation**

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<tr>
<th>Reforms from Better Decisions Faster</th>
<th>Stage of implementation</th>
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<tbody>
<tr>
<td>Require regular process auditing</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Make notice requirements more precise</td>
<td>To begin in 2005</td>
</tr>
<tr>
<td>Refine referral requirements</td>
<td>Current project. Stage 1: December 2004; stage 2: April 2005</td>
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<tr>
<td>Introduce a new short permit process</td>
<td>To begin in 2005</td>
</tr>
<tr>
<td>Introduce model officer reports</td>
<td>Current project, to be introduced in December 2004</td>
</tr>
<tr>
<td>Make minor changes to plans during assessment easier</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Clarify minor changes to plans after a permit has been issued</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Require Ministerial approval to prepare an amendment</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Allow approval by councils of some amendments</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Make administrative procedures for amendments more efficient</td>
<td>To begin in 2005</td>
</tr>
</tbody>
</table>

Source: DSE (2004d, pp. 13-14)

The Commission considers that this suite of reforms, if adopted and implemented in the immediate future, will do much to address inquiry participants’ concerns about excessive and inefficient planning processes. It recognises, however, that a positive outcome of these reforms should not be accepted as inevitable. The progress of such reforms should be monitored against predetermined benchmarks to assess whether the reforms are delivering against expectations and, if not, whether additional reforms might be warranted. (Further discussion on this matter, along with recommendations to facilitate such comparisons, is included later in this chapter).

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Inquiry participants noted that these parallel processes are often overly complex, lack clarity and consistency, and often focus on a single issue to the exclusion of balance and integration with other considerations within the planning framework.
International Power Hazelwood identified this problem in its submission, as did the Minerals Council of Australia. The former drew attention to its experience with the planning and environmental approvals processes:

There is however no person within government who can assist the proponent by facilitating the timely resolution of issues and often conflicting advice within government agencies. In other words, the significant investment in the EES (environmental effects statement) process, a government representative whose role is to facilitate government decision making with respect to the approvals process would be a significant improvement on the current situation. (sub. 48, p. 3)

The Minerals Council of Australia commented on its participation in possible reforms to integrate environmental approvals processes, but noted that inefficiencies and uncertainties in the old processes continue:

Over recent years a practice has evolved where the different departments and agencies of government make separate and sometimes conflicting submissions to the independent panel reviewing the EES of a proponent … [and these] un-coordinated practices lead to extremely confusing and difficult situations for the independent panel to resolve. They also place the proponent in the impossible position of needing to find solutions to satisfy every corner of government. Delays are inevitable and are costly to both industry and government, and ultimately the community forgoes part or all of the economic benefits of the prospective investment. The result is that Victoria is seen by investors as an extremely difficult state to deal with and sends a message that is completely at odds with the encouragement to investment promoted by all Ministers. (sub. 17, p. 32)

To avoid unnecessary ‘doubling up’ in the approvals process, the approvals process of all authorities need to be coordinated. In the examples above, the outcomes of apparent inadequate integration are substantial delays and cost, and shortcomings in the weighing of all relevant interests of the net community benefit and sustainable development.

The existing system has avenues to facilitate coordination, and some problems drawn to the Commission’s attention might have arisen because inquiry participants were not fully aware of these avenues. A primary source of assistance, for example, is the department’s regional offices, where local officers may provide a coordinating role. The department has also established an independent Development Facilitation Unit (with two staff), which coordinates and resolves issues relating to the approval of major developments. For mining projects in particular, the Department of Primary Industry has a branch whose role includes facilitating mining project approvals—a role that encompasses coordinating the roles of various agencies involved in the development approvals process. For projects with potentially significant environmental effects, the environment effects statement process operates to enable approval processes to run in parallel, rather than sequentially.

The Better Decisions Faster review acknowledged unnecessary costs and delays arising from referrals to different authorities within the planning approval process as a significant problem, albeit for the whole state, not just for regional Victoria. Figure 5.3 outlines referral requirements and procedures. That review recommended that referral requirements be refined to address this issue.

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10 The Business Development and Technology Branch of the Minerals and Petroleum Division. Part of its role is to facilitate development of Victoria’s minerals.
Implementation of this reform is being undertaken in two stages: the first stage in December 2004 and the second scheduled for April 2005 (DSE 2004d, p. 13). Refining the referral requirements will include:

- A clearer distinction between section 55 referrals under the Act (with associated rights to veto an application) and other processes of seeking comments or notification;
• Elimination of unnecessary referrals and encouragement of written standard agreements between councils and referral authorities. (Many councils do not have the arrangement that allows exemption from referral if a permit application satisfies conditions agreed in writing between the referral authority and the responsible authority); and
• Requiring thresholds to be specified below which referral is not required. (DSE 2003b, p. 20).

Regarding this reform, the department noted:

Under this initiative, referral authorities would only be involved in the planning permit process where their interests may be affected or where they can add value to the decision making process. The workload of both councils and referral authorities will be greatly reduced by the identification of unnecessary referrals and formulation of standard conditions where appropriate. (DSE 2004b, p. 4)

While the Commission would expect this initiative to reduce delays and the workload of councils, evidence of this outcome is not yet available. Current initiatives to collect data on the performance of councils could provide an insight into the success of this reform.

A particular concern with referrals is the degree of power wielded by referral authorities in the process for planning scheme amendments and permit applications. Where referrals are required under the provisions of a planning scheme, the responsible authority must refuse a permit if the referral authority objects to the granting of that permit (s. 61(2) of the Planning and Environment Act).

The potential power this accords to referral authorities makes it particularly important that they are fully integrated into the planning process and receive all the necessary information to make a well-informed decision.11 The lack of data on the frequency of referrals by responsible authorities, and on the degree to which this power has been exercised, has meant the Commission cannot form a view on the impact on regional development from this characteristic of planning regulation. It is possible to note, nonetheless, that the reforms to refine referral requirements can be expected to reduce the incidence of referrals and to reduce potential costs arising from any inappropriate use of the veto power.

Extent of regulation

Inquiry participants’ concerns about excessive regulation embraced a number of elements:

• the requirement for permit applications arising from the blanket, excessive or imprecise application of controls in circumstances that do not warrant additional regulation
• the requirement for permits for select rural or primary industry practices where there is no similar regulation of other activities that have virtually the same impact
• the requirement for a permit where a series of guidelines would suffice
• use of the planning permit process to regulate the minilae of farming practice.

11 The key objective of the referrals process is to provide authorities whose interest may be affected by the granting of a permit with the opportunity to ensure a permit is not granted that will adversely affect that authority’s responsibilities or assets.
The effect of perceived excessive regulation is measured in delays and higher costs to applicants, added council workload that can compound existing staff and resource problems, and minimal added value for either the individual or the community. The City of Greater Bendigo drew attention to such excessive regulation when it noted that the Greater Bendigo Planning Scheme has over 85 triggers for planning approval. These triggers deal with matters of varying complexity, and many require considerable interpretation. The council noted:

Combined with the current lack of qualified planning staff (particularly in rural areas) and the ever-increasing requirements for planning approval, the timeframes for obtaining approval have skyrocketed. The cost of such increased timeframes can be critical to the success of a development venture. (sub. 23, p. 2)

Other local councils expressed the view that the growth in regulations is placing an excessive burden on the local industries, particularly farm enterprises. The West Wimmera Shire Council noted:

Farmers are finding it increasingly difficult to keep abreast and comply with all of the requirements of increasing government regulations. Many impinge on farm operations. Regulations now limit or control by permit activities that were undertaken freely not so long ago. (sub. 6, p. 2)

The Macedon Ranges Shire Council drew attention to the importance of avoiding excessive regulation for its shire:

Of the approximately 1800 enterprises in our region, 95 per cent are micro-employers. This reliance on small business means that any ‘regulatory’ change translates into a severe resource impost, as there is no specialist staff to handle changes. (sub. 10, p. 2)

The Victorian Farmers Federation exemplified industry participants’ views on this matter when it noted:

Producers are concerned by the increase in information required in order to obtain planning permits and building permits from council for the construction or demolition of sheds, extensions and in some cases dwellings on rural land. The requirement for additional engineering drawings, inspections and maps can impose a significant additional cost to farmers seeking to expand or develop the farm business. This is in addition to the fees payable with permit applications. As more activities on private land require permits, the greater the cost to the individual or business from fees. The level of intervention is often extreme for the potential impact of the activity on the site. (sub. 39, p. 14)

While the majority of these [planning] regulations were introduced with the best of intentions, the sheer volume of regulation constitutes an operational nightmare for producers seeking to run a profitable and sustainable farm business. Planning regulations are limiting the ability of the Victorian agricultural community to reach its full economic potential. (sub. 39, p. 17)

A quantification of these costs is not possible. The frequency of complaints about excessive regulation, however, and observations of the volume and nature of permit approvals processed by councils suggest that these costs are material.
Initiatives to address such concerns have been either put in place or foreshadowed as a result of the Better Decisions Faster review. Table 5.4 contains a summary of relevant reforms and the status of their implementation.

Table 5.4: Status of recent reform implementation

<table>
<thead>
<tr>
<th>Reforms from Better Decisions Faster</th>
<th>Stage of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase deemed-to-comply provisions and the use of practice notes</td>
<td>To begin in 2005</td>
</tr>
<tr>
<td>Introduce additional self-assessment opportunities</td>
<td>To begin in 2005</td>
</tr>
<tr>
<td>Strengthen local policy outcomes</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
</tbody>
</table>

Source: DSE (2004d, p. 13)

The Commission considers that the reforms listed in table 5.4 will help alleviate inquiry participants’ concerns about excessive regulation (and, in doing so, facilitate economic development in regional Victoria). Assessing the success of these reforms, however, will require some objective measurement of their impact against expected outcomes. The Better Decisions Faster reforms for activity reporting and data collection should provide useful information in this respect. (Further discussion on this matter, along with recommendations to facilitate such measurement and comparisons, is included at the end of the following section).

Poorly conceived applications

The performance and efficiency of the regulatory environment are the responsibility of both the regulators and applicants seeking approval. Where applicants provide poorly documented proposals, a considerable amount of time and cost is spent rectifying this shortcoming before a properly informed decision can be made. This situation adds to the workload of councils and absorbs their scarce resources.

Reforms suggested by the Perrott Committee, which led to the introduction of a consistent structure and framework for planning schemes throughout Victoria, have helped to address this problem. Additionally, the Department of Sustainability and Environment has made available on the Internet all planning schemes. Combined, these changes provide the community with tools that should facilitate significantly greater access to planning information, and an improved understanding and use of planning tools.

The problem of inadequate applications adding to the cost and workload of councils was also identified in submissions to the Better Decisions Faster review. That review stimulated the development of a pre-lodgement certification process, which has been successfully trialled in a Melbourne metropolitan council area. The success of that trial attracted recent budget support (under the government’s Victoria: Leading the Way economic statement) to extend the reform across all of Victoria (DSE 2004b, pp. 3–4).

Provided that the pre-lodgement initiative is effectively implemented, the Commission would expect that extending it across all of Victoria would address some of the problems in this area. Other reforms foreshadowed under the Better Decisions Faster initiatives (such as the immediate rejection of inadequate applications, and the development of a new comprehensive application form) might relieve some of the workload of council planning officers. Table 5.5 contains a summary of recent reforms expected to address concerns in this area, and the status of their implementation.
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<table>
<thead>
<tr>
<th>Reforms from Better Decisions Faster</th>
<th>Stage of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop a new, comprehensive application form</td>
<td>Current project, to be introduced December 2004</td>
</tr>
<tr>
<td>Reject inadequate applications immediately</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Encourage pre-lodgement certification</td>
<td>Current project (ongoing)</td>
</tr>
<tr>
<td>Set time frames for further information</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Strengthen local policy outcomes</td>
<td>In Planning and Environment (General Amendment) Act</td>
</tr>
<tr>
<td>Make minor changes to plans during assessment easier</td>
<td>In Planning and Environment (General Amendment) Act</td>
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</table>

While these reforms are expected to improve the quality of applications and reduce the time and costs involved in assessing them, it is nonetheless important to monitor their results. Monitoring is vital to identify results are meeting expectations and whether additional measures are warranted. The data collection initiatives arising from the Better Decisions Faster reforms should be valuable in providing data on which to judge success.

The Commission found the lack of any readily available and comprehensive measurement of service delivery to be a major impediment to assessing the performance of the planning system and of regional councils’ implementation of that system. An ideal outcome would be a comprehensive electronic database on the amendment and approvals processes—a database that collects monthly data at the municipal level, as well as from Panels Victoria and the Victorian Civil and Administrative Tribunal, and records the value of works and type of proposals in the system, as well as the timelines to deliver on key milestones. Such a system would allow analysis of relative performance and identify where further reforms might be needed.

Others, too, have noted the value of adequate measurement. A study for the Development Assessment Forum concluded:

Comparative performance measurement and benchmarking, with its potential to bring greater levels of accountability and ideas for better ways, can provide one of the most effective drivers for improvement in areas of governance where the forces of competition are difficult to apply. (Walsh and UTS 2002, p. I)

Similarly, the Planning Institute of Australia noted:

Without having regular data, managers and participants in the planning system are ‘running blind’. For too long, recommendations have been made to improve the planning system with only an incomplete picture of the VPS [Victorian Planning System]. Lifting the use of planning and subdivision registers to the standard of building registers and building statistics and adding to this data from councils and Victorian Civil and Administrative Tribunal appeals and determinations, inspections, enforcement and penalties—is the single most important action needed to upgrade the performance of the planning system … No managers can run a system without basic statistics on operational and outcome performance. (PIA Victorian Division 2004, p. 3)
The Commission acknowledges that councils are already obligated under the Planning and Environment Act to collect relevant information—for example, information about planning permit applications must be kept by every responsible authority in accordance with the Act and must be publicly available. The availability of that information (for example, in electronic form) is limited, however, and there is no comprehensive statewide summary or consolidation.

The Department of Sustainability and Environment advised the Commission that it is fully aware of this shortcoming, and that action is in train to address the matter:

- No regular reporting of planning permit activity across Victoria exists at present. However, it is estimated that there were 58 000 planning permits in Victoria for the year 2003-04. Regular reporting is a key initiative of Better Decisions Faster. Stage 1 of the project will produce a report for each council and a state aggregate for the financial year 2003-04 by the beginning of 2005. Full implementation of permit activity reporting across the state is planned for completion in 2007...
- Permit activity reporting is a key initiative included in Better Decisions Faster. Funded for the next three years. An initial report will be prepared for the financial year 2002-03 to be released at the end of the year.
- The project will be developing an ongoing program of permit monitoring over the subsequent two years. It will provide the state and local government with permit data that will enable useful benchmarking to support continued improvement of the planning system. (DSE 2004d, p. 3)

The National Competition Policy review of the Planning and Environment Act also identified this deficiency, and recommended that a database be developed and maintained to provide information about the amendment and permit processes. The government’s response (released in October 2004) has been to:

- support continuation of the Amendment Tracking System;
- provide $1.95 million to fund the development and implementation of a permit activity reporting system over a three year period; and
- provide funding to develop and implement the SPEAR system for the electronic lodgement of planning applications. (DSE 2004b, p. 3)

The Commission endorses these reforms, because they will make a valuable first step to monitoring the performance of the planning system and identifying if and where further change might be needed.

Given the importance of reporting for judging the performance of the planning system and for the timely identification of where change might be warranted, the Commission invites inquiry participants’ comments on the scope of the activity reporting initiatives. In particular, the Commission is interested in views on whether the activity reporting initiatives of Better Decisions Faster are sufficiently comprehensive, whether the timetable for implementation is appropriate, and what added costs might be associated with these initiatives.

While a better database is a necessary step in monitoring the performance of the planning system, this alone is not sufficient. Such monitoring should be directed to measuring performance against expected outcomes. There appears to be no publicly specified measure of change, however, against which the success of these reforms might be measured (an issue for many of the other Better Decisions Faster reforms). To assist in this regard, the Commission suggests that the department—in conjunction with local councils and the Municipal Association of Victoria, for example—develop a set of target performance indicators that they would expect the reforms to deliver. The performance...
measurement principles produced by the Development Assessment Forum could be a useful starting point in this regard (Walsh and UTS 2002).

Additionally, the Commission suggests that the department conduct a review of the experience of regional councils against such performance indicators in the near future (say in three years). That time would need to be mindful of the availability of data, given the rolling introduction of the data collection reforms.

Draft recommendation 5.2
That the Department of Sustainability and Environment— in conjunction with local councils or the Municipal Association of Victoria— develop a set of target performance indicators that they would expect the Better Decisions Faster reforms to deliver.

Draft recommendation 5.3
That the Department of Sustainability and Environment review the experience of councils in regional Victoria against such performance indicators in the near future (within three years), and report on the extent to which the reforms have delivered against expectations.

Draft recommendation 5.4
That, in view of recommendations 5.2 and 5.3, the Department of Sustainability and Environment assess what minimum additional data it might need to support a robust monitoring and assessment of the success of the Better Decisions Faster reforms, and work to incorporate that data in a statewide activity reporting framework, with the aim of having the data available to inform the review of performance.

Resources at local council level

A recurring theme in submissions and hearings was that the implementation of state and local planning policy and regulations is significantly impaired as a result of councils not having sufficient resources, instructions or training. A number of factors have contributed to this issue, including the following:

- Planning schemes have become complex since the introduction of the VPPs, with an increasing diversity of matters to be taken into account in assessment of sustainability and net community benefit.
- The rigours of justifying and assessing the merits of proposals have become more demanding.
- The scale of community participation has grown considerably over the past decade, and the expectations of participants are increasingly challenging.
- Victoria has been through a building and development boom that has been reflected in increases in planning applications.

The Municipal Association of Victoria specifically alluded to this issue when it noted that the effective implementation of the new rural zones would require substantial analysis on local impacts by councils. While acknowledging that the Minister for Planning has provided funding to assist councils, the Municipal Association of Victoria noted that additional funding is necessary if councils are to undertake the increased work involved and properly implement the new zones (MAV 2004a, p. 2).

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The resourcing problem is compounded where government is unclear or has internal differences of opinion on how a policy should be implemented. Mr. Pearce, from the Mildura Rural City Council, provided an example of this problem:

… the customer sees council as being the planning authority, which it is, but then [they] also come to council to look for the implications … of Government legislation as it applies to planning. Whether that be the impact of land capability studies required by the EPA for septic tanks, whether that be native vegetation issues in relation to land clearing for development … so [councils] really are the first point of contact in relation to those specific agencies, and rather than try and make it inconvenient for the people, we interpret the legislation as best we can …. (Mildura transcript, p. 6)

While all of these matters have placed a greater load on the system across the whole of Victoria, the problem of insufficient resources was held to be particularly significant in regional Victoria, with planning officers in particular finding they are labouring under greater workloads and increased stress. The City of Greater Bendigo noted that:

… the new VPP planning schemes do not deliver consistency or streamlined approvals, as they are difficult to interpret and impose greater requirements for planning approvals. … The duplication of approval requirements and the complexity of the Victorian Planning Provisions place an undue strain on local government resources and on the community in general. (sub. 23, p. 2)

The Warrnambool City Council also noted that the specialist skills required were often not available in the region, and the council faced added costs where it had to send staff to metropolitan areas for the requisite training (sub. 18, p. 2). Similarly, Mildura Rural City Council stated:

The flow on of state legislation to local government is of growing concern. It is often the requirement of local government to implement or regulate state government legislation without any financial or resource allocation to enable them to do so. (sub. 21, p. 1)

Anecdotal evidence suggests increasing numbers of people are leaving the industry, and staff turnover and salary demands are escalating. Regional Victoria is particularly affected, with an exodus of some staff from the regions to metropolitan centres in search of more interesting work and better wages. Regional councils have experienced considerable difficulty recruiting suitably qualified and experienced staff; in some cases, the only options are to take on relatively recent graduates and overseas applicants, both of whom are ‘learning on the job’.

This anecdotal view of the regional labour market for planning staff is supported by recent evidence from a national inquiry into planning education and employment.12 The inquiry found:

- There is a 16 per cent vacancy rate in planning positions, with local government facing the biggest challenge with recruiting and retaining planners;

12 The first National Inquiry into Planning Education and Employment in Australia responded to serious concerns about the shortage of planners, their workplace environments and their professional training. Undertaken over 12 months by the Planning Institute of Australia, the inquiry was funded by all state and territory planning departments.
Rural and regional areas suffer from a long term shortage of planners;
Post-graduate training of planners has become increasingly important due to the ever-changing nature of the job, but getting time away from the office to attend training can be difficult and, for rural and regional planners, difficult to access;
The cost of attending planning courses in metropolitan areas (typically Melbourne in the case of Victoria) mitigates against regional council planning staff attending such courses; and
The prospects of attracting people back to rural areas after they have completed planning courses in the larger cities are slim. (PIA 2004b, pp. i–ii)

This problem of a lack of sufficiently skilled planning staff in regional Victoria reflects a much broader problem afflicting parts of regional Australia. It is also one that has been evident for some time, as the population (and the workforce) concentrate more in coastal areas and the larger, regional ‘sponge’ cities. On this matter, the Productivity Commission noted in its report on the impact of National Competition Policy on rural and regional Australia:

It is clear that ‘coastal drift’ has been a significant demographic phenomenon in country Australia over recent years. Indeed, this trend has been evident for many decades ... A large proportion of the fastest-growing large country municipalities and smaller towns are located along the coast. Those experiencing falling population are predominantly in the interior or have economies dominated by a declining industry. While there are many inland towns and cities whose population is increasing, population growth in most small inland towns is below the national average. (PC 1999, pp. 25–6)

To the extent that inadequate resources at regional council level are the result of an inadequate skill set among planning staff of regional councils, there are initiatives in place to address this problem.

These initiatives include professional development programs—such as the PLANet professional development program that covers an extensive program of training for people working within planning—and a framework being developed by the Municipal Association of Victoria and universities. As the Victorian Government has previously noted regarding efforts to address this problem:

Particular emphasis has been placed on the recognised shortage of people and skills in the planning system, with a specifically-tailored professional development program operating successfully now for the past three years. In conjunction with the Municipal Association of Victoria and the universities, an education roundtable is currently developing a framework for enhancing the education, professional development and operational environment for local government planners. (Government of Victoria 2003a, p. 24)

The national inquiry noted above made recommendations to address the general shortage of planners that have particular relevance for rural and regional Victoria (box 5.3).
Box 5.3: National inquiry recommendations of particular relevance for regional Victoria

- University planning schools, with the assistance of key planning agencies, should address the supply issue through means such as scholarships for rural/remote students or work placements to rural/regional areas.
- More accessible, ongoing professional training is needed, such as courses on-line.
- State and local government should develop a strategy to share planning resources and develop a regional approach to supply a pool of planners.
- The Planning Institute of Australia message board forum should be enhanced to allow planners to share information and seek technical advice, particularly planners in rural and remote areas.

Source: PIA Victoria Division (2004, pp. 73–4)

Many of the recommendations made in that report are already being pursued in Victoria. The Department of Sustainability and Environment, for example, provides direct financial assistance (via scholarships) to students to undertake the graduate diploma of rural and regional planning at LaTrobe University, Bendigo. The department’s submission noted that this assistance was fundamental to the course proceeding (DSE 2004d, pp. 2–3). Other examples of the department having already undertaken the sort of reform recommended in the Planning Institute of Australia report are the provision of a telephone help line for planning queries and a counselling service for planning staff.

Moreover, the Better Decisions Faster reforms that aim to ease some of the planning regulation workload facing councils (tables 5.4 and 5.5) could be expected to reduce pressure on councils’ limited resources. In addition, the reform to require councils to include the resource implications of amendments (already introduced) could also be expected to reduce the likelihood of an excessive burden being placed on councils.

Despite these initiatives, the Commission considers that the challenges faced by regional councils in attracting and retaining suitably qualified staff are likely to remain a concern. It recognises, however, that the shortage of planners partly reflects a much larger problem affecting the population and workforce of regional areas more generally, and is also a function of the funding available to local government. Both of these issues are beyond the scope of this inquiry.

The problem of skill shortages among regional council planning agencies is particularly problematic where large complex developments or significant amendments to planning schemes are involved. In such circumstances, regional councils are unlikely to have the necessary staff resources and skills. An example was the introduction of the Great Ocean Road Strategy into the VPPs and local planning schemes. The department recognised the difficulty that this created for the five local councils affected, and funded a specialist planning consultant to help them integrate the strategy into their local planning schemes.

In discussions with the Commission, the department also drew attention to the potential for its regional managers to attract additional resources for the planning task of councils for significant planning projects. It noted that councils could sometimes access central agency funds for particular projects.

While the department provides advice and guidance to regional councils in such circumstances, the impression gained by the Commission during the inquiry was that this ad hoc provision might not be always adequate. The Commission thus suggests that the department be required to assess the likely added resource costs to councils of new planning strategies or amendments. The department should also develop criteria to provide greater certainty of its involvement and commitment of resources to assist councils where
warranted to ensure effective implementation. Such criteria to trigger the department’s involvement could be developed in conjunction with, for example, regional councils or the Municipal Association of Victoria. They might include the absolute value of the development or its proportion of the total development value normally considered by that council. Criteria might also include the number of expected staff hours required for the council to assess a major proposal, or the proportionate increase that this number would represent over a ‘normal’ workload.

The added certainty of access to department assistance would be particularly important where the processes for planning and environmental effects coincide.

Draft recommendation 5.5
That the Department of Sustainability and Environment assess the likely added resource costs to councils of new planning strategies or amendments developed at the State Government level, with a view to identifying where the local councils do not have the capacity to effectively implement those changes.

Draft recommendation 5.6
That the Department of Sustainability and Environment develop criteria to provide greater certainty about the conditions under which the department would assist local councils to facilitate larger and complex regional projects, or major local planning amendments.
6 Native vegetation regulation

6.1 Introduction

Victoria has an extensive and complex array of regulations designed to encourage the sustainable use of the state’s resources such as the air, land, water, native flora and fauna, and minerals. The regulatory framework encompasses a wide variety of Acts, regulations and policies. These are administered by government agencies such as the Department of Sustainability and Environment (DSE), the Department of Primary Industries, EPA Victoria, catchment management authorities, water authorities and municipal councils. How these regulations are developed and administered can have a significant effect on industries that have been important sources of growth for regional income and employment—industries such as food processing, mining, agriculture, property development and tourism.

While there is an ongoing debate about the precise meaning of sustainable development, the most widely used definition is based on the 1987 Brundtland report, which defined it as ‘seeking to meet the needs of the present generation without compromising the ability of future generations to meet their own needs’ (AGV 2004, p. 5). This definition is echoed in the Victorian Government’s main goal for sustainable development, which is ‘to promote a better quality of life for current and future generations, by ensuring our economy, our society and our environment develop in a balanced way’ (Government of Victoria 2001a, p. 18).

Submissions from participants in the agricultural, mining and private forestry sectors—which are important sources of income and employment in regional Victoria—considered that Victoria’s native vegetation retention planning controls on private land are not achieving a well-informed balance between the economic, environmental and social effects of clearing activities. According to some inquiry participants, the controls are imposing unnecessary costs on landholders, contributing to uncertainty for investment and, therefore, unreasonably impeding regional economic development.

This chapter examines inquiry participants’ concerns about the native vegetation planning controls and their relationship with regional economic development. At first glance, it seems unlikely that native vegetation regulation could be having a significant impact on regional economic development. Victoria is the most highly cleared state in Australia and, on most recent figures, 2500 permits for clearing native vegetation have been considered by DSE in the past four years (plus an unknown number considered by local councils). A number of inquiry participants considered, however, that Victoria’s controls over native vegetation clearing are imposing significant costs on landholders and adding to uncertainty for investment.

In examining these concerns, the Victorian Competition and Efficiency Commission has taken as a given that the Government’s over-arching policy objective is to promote sustainable development by increasing the quantity and quality of native vegetation in Victoria. The focus here, therefore, is on assessing whether the regulatory framework for giving effect to this broad policy objective is likely to be impeding regional economic development and, if so, whether there are better ways of achieving the government’s objective. The Commission has also taken into account the Productivity Commission’s (2004a) report on native vegetation regulations in Australia.

The next chapter examines the regulatory processes in two other areas—the assessment of the environment effects of major projects and environmental policies developed by EPA Victoria.
6.2 Native vegetation controls

The native vegetation planning controls (hereafter, the native vegetation controls) have several key features that are relevant to the Commission’s examination of inquiry participants’ concerns:

- Controls on native vegetation clearing on private land were first introduced in Victoria in 1989 as a critical response to concerns about vegetation clearance, which at that time was resulting in an estimated annual net loss of around 10 700 hectares of native vegetation. The most recent estimate is that the annual amount of clearing has fallen to around 2500 hectares (DSE 2004d, p. 7).

- Native vegetation clearing controls are given effect through the planning system rather than through a specific Act of Parliament or subordinate legislation. Section 52.17 of the Victorian Planning Provisions requires landholders to obtain a permit to ‘remove, destroy or lop native vegetation’ except in defined circumstances. Exemptions to the requirement to obtain a permit are intended to ensure certain types of business activity continue without the need to obtain a permit (see below).

- In addition to s. 52.17 of the Victorian Planning Provisions, local councils can use overlay provisions to override some exemptions. Most clearing applications considered by local councils are triggered by overlays (MAV 2004a, p. 13).

- The controls were first introduced without any consultation, possibly to avoid panic clearing. The policy environment in which they operate has since changed substantially, however. In 1997, Victoria’s Biodiversity Strategy laid out the objective of achieving ‘a reversal in the long term decline in the extent and quality of native vegetation, leading to a net gain—with the first target being no net loss by the year 2001’ (Government of Victoria 2003b, p. 8). Subsequently, the government released the native vegetation management framework (DNRE 2002a), which laid out the current objective of achieving a net gain in the extent and quality of native vegetation (see below). The Commission was advised that the release of the framework occurred following extensive consultation (DSE 2004d, p. 7).

- Despite these changes, there has not been a comprehensive and public review of the controls—although the government has flagged a review of the implementation of the framework.

- There is no requirement that major changes to the native vegetation controls undergo a formal public process of testing costs and benefits, and reviewing alternatives, unlike other areas of environmental regulation such as state environment protection policies (chapter 7).

- Responsibility for implementing the controls rests with councils and DSE rather than with a specific regulator. Under the controls, councils are the responsible authority for all permit applications (except for the Alpine Resorts Planning Scheme, for which DSE is the responsible authority). Implementation, thus, depends on the capacity of councils to implement the policy (see below). For clearing involving certain types of application (for example, clearing of more than 10 hectares and clearing on a roadside) councils must refer applications to DSE for advice, which is binding. DSE has received around 2500 native vegetation referrals from councils over the past four years (not all of which were mandatory), and objected to a permit being granted in only 5 per cent of cases (DSE 2004d, p. 8).

1 Native vegetation is defined as plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses.
In addition to the native vegetation controls, significant effort has been put into developing and implementing alternative mechanisms for achieving the government's net gain objective for native vegetation management (see below).

Objectives and purpose of native vegetation regulation

As noted, Victoria's native vegetation controls are given effect through planning provisions. These specify that a responsible authority (such as a council or DSE), in deciding on an application to lop, remove or destroy native vegetation (hereafter referred to as clearing), must consider the goal of net gain expressed in Victoria's native vegetation management framework. Specifically, the framework notes:

Our primary goal for native vegetation management in Victoria is to achieve 'a reversal, across the entire landscape, of the long-term decline in the extent and quality of native vegetation, leading to a net gain'. (DNRE 2002a, p. 14)

Underpinning this objective is a concern that past clearance of native vegetation has reached a level that is threatening biodiversity (the range of plant and animal life), and the productive capacity of Victoria's land. The framework notes that Victoria now has the most highly cleared landscape in Australia, with 66 per cent of native vegetation in the state having been cleared (although the level of clearing varies dramatically across the state). Most of this clearing has occurred on private land, with the result that 92 per cent of the native vegetation on Victoria's private land has been cleared. The concern is that this level of clearing has resulted in problems that include salinity, soil structure decline, reduced water quality and quantity, increased rates of severe flooding and declining biodiversity (DNRE 2002a, p. 7). As a result, a net gain in the extent and quality of native vegetation is needed to help address these problems and make Victoria's land more sustainable (DSE 2004d, p. 6).

Two observations underpin the problem that the net gain objective is intended to address. First, native vegetation provides benefits to landholders (for example, through addressing soil structure decline) and the broader community (for example, through addressing biodiversity decline). These benefits are often referred to as environmental (or ecosystem) services. Second, the level of environmental services provided by native vegetation in the state has fallen below the level that is economically, environmentally and socially desirable as a result of past clearing. This suggests that increasing the provision of environmental services by native vegetation could raise the wellbeing of both landholders and the broader community.

Efforts to increase the environmental services provided by native vegetation must have regard to the costs of providing these services. These costs include the value of lost production opportunities, the costs of looking after or improving the native vegetation, and any administration and compliance costs. The challenge for government is to design policies for increasing the provision of environmental services from native vegetation that minimise the costs to the community as a whole.

A number of factors are relevant to the development of such policies:

- Landholders are increasingly recognising the immediate and long-term productivity and amenity benefits of native vegetation retention, as evidenced by the large numbers participating in Landcare and other community based land conservation activities.²

² In 2001, there were 1360 Landcare or Landcare-like groups in Victoria, and Landcare group members managed over 50 per cent of agricultural land (DSE 2004d, p. 7).

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Some of the services provided by native vegetation benefit the broader community. This suggests government has a role in developing policies to increase the provision of environmental services from native vegetation above the level that landholders would be willing to supply.

Some landholders may not be fully aware of the potential effects of clearing on land productivity and biodiversity. Alternatively, some marginal landholders may discount longer term benefits, particularly during periods of business stress caused by drought or unfavourable market conditions. This suggests a role for government in providing information and advice to landholders.

A challenge facing governments in their efforts to increase the provision of environmental services through native vegetation is that landholders often have better information about the quantity and quality of native vegetation on specific parcels of land, and about the costs of protecting that vegetation. Also, the quantity and quality of native vegetation will vary from region to region, as will the resulting landholder, local and community-wide benefits of native vegetation retention.

Difficulties in assessing the benefits to society of retaining native vegetation reinforce the need for transparent funding and cost-sharing arrangements. This will enable the community to make informed choices about the trade-offs between ensuring more environmental services from native vegetation and achieving other important social, economic and environmental goals.

In principle, a wide range of instruments could be used to increase the provision of environmental services of native vegetation. These range from the use of regulation through to non-regulatory methods such as financial incentives. The approach in Victoria involves a combination of controls and incentives (see below).

Key features of the native vegetation management framework

Taking the objective of a net gain in native vegetation as a given, the key challenges from a policy perspective are (1) to identify a desired level of net gain in native vegetation, (2) specify how the desired target is to be achieved, and (3) to determine how the resulting costs will be shared. The framework seeks to provide guidance on these key challenges.

Determining the desired level of net gain

The framework does not specify a level of native vegetation cover that is considered to be sustainable, or a time period for reaching such a target. The intention is to release a number of regional native vegetation management plans to guide implementation in catchment areas. According to the framework, these plans will outline regional priorities and targets, and provide regional guidelines for authorities in determining permit applications. At the time the framework was released, the regional plans had been drafted and circulated for public comment. According to DSE, the Victorian Government is currently considering the plans. The priorities and targets from the draft regional plans have been incorporated into endorsed regional catchment strategies, which have been through further public consultation; nine of the 10 have been published (DSE, pers. comm., 23 December 2004).1

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3 The Mallee Regional Catchment Strategy (MCMA 2004, p. 56), which covers a relatively heavily cleared region of Victoria, aims to achieve a target level of 30 per cent native vegetation cover across each bioregion, with a 20 per cent improvement across all conservation significance levels. This suggests government has a role in developing policies to increase the provision of environmental services from native vegetation above the level that landholders would be willing to supply.

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To establish a credible target for the quantity and quality of native vegetation, good information is needed on the current state of that vegetation. The framework sets out a measurable unit of the on-site quality and quantity of native vegetation—the habitat hectare. Creating a measurable unit has a number of benefits. It allows progress towards the primary goal of net gain to be measured, more consistency in its application and greater flexibility by identifying higher and lower significance vegetation. It is also a prerequisite for developing effective market mechanisms (see below).

DSE is seeking to address major gaps in knowledge about the location and quality of native vegetation in Victoria. The latest published estimate of the rate of net clearing on private land in Victoria is 2500 hectares per year, which is based on a study released in 2000, covering the period 1990–1995 (DNRE 2002a, p. 33). DSE considered that Victoria is still experiencing a net loss of native vegetation extent of around 2500 hectares per year, and an ongoing decline in the quality of existing native vegetation on private land; the net extent figure reflects permanent clearing for urban development, agriculture and infrastructure, and accounts for revegetation (within the level of accuracy of the techniques used) (DSE, pers. comm., 23 December 2004).

The framework sets out initiatives designed to improve the measurement, collection and reporting of information relating to the net gain objective. DSE advised the Commission that a number of information collection projects have been completed or are well underway, including:

- statewide mapping of the extent and type of native vegetation (which has been completed and is publicly available)
- investigation of appropriate remote sensing techniques to regularly monitor statewide vegetation extent (underway)
- modelling of the quality of native vegetation (completed for northern Victoria and currently being expanded to cover the remainder of the state)

**Mix of policy tools and mechanisms**

While choosing a level of desired net gain is one challenge, another key challenge is deciding on how to bring about a net gain. The framework recognises that the regulatory approach (the native vegetation controls) ‘generally focuses on what is not allowed and does little to encourage or inform better conservation and management of native vegetation’ (DNRE 2002a, p. 36). It suggests, therefore, that the focus needs to be on encouraging landholder efforts, with support from targeted incentives, information provision, and education and training (see below). The framework discusses programs aimed at encouraging landholder efforts, but provides little information on the different programs’ cost-effectiveness or relative priority.

(CCMA 2003, p. 103) is to maintain the extent of all native vegetation types to at least 2002 levels, reflecting the less extensive clearing that has occurred in that region.
Regulatory measures
The native vegetation controls are the primary regulatory measure for achieving the net gain objective. The framework provides guidance on how net gain should be applied in assessing an application to clear native vegetation on private land. This guidance takes the form of a three-step approach:

1. Avoid adverse impacts, particularly those from vegetation clearance.
2. Minimise impacts (if they cannot be avoided) by appropriately considering them in planning processes and expert input to project design or management.
3. Identify appropriate offset options.

Where native vegetation clearance and its impacts cannot be avoided, the framework states that an appropriate offset is to be provided. Offsets are determined by councils or DSE (for referred applications), and generally operate as follows (Government of Victoria 2003b, p. 22):

- The authority determines the conservation significance (habitat hectare) of the native vegetation that the landholder wishes to clear.
- The authority requires the landholder to organise and fund an offset of a required amount to compensate for the loss.
- Offsets may be in the form of revegetation (on- or off-site) or improvements in the quality of some existing remnant vegetation.

Where clearing is permitted, any native vegetation offsets must be protected (for example, through registered conditions on the property title), with the level of protection depending on the significance of the vegetation. There may also be a requirement to manage protected vegetation in accordance with an agreed plan for a specific period. Under the framework, a landholder can receive approval to clear an offset at a later date, as long as a like-for-like alternative is similarly offset.

An advantage of offsets is that they provide some flexibility to a landholder, by creating an avenue through the permit process for allowing the clearing of native vegetation. The framework provides ways of achieving greater flexibility for landholders, by using offsets from third-party agreements (DNRE 2002a, p. 38). Offsets can be provided on sites remote from the clearing site (within the same bioregion, which is a large area of the state) and may be on public land (where the offsets must improve the quality of degraded areas through replanting). DSE is currently developing an offset credit trading scheme to ensure appropriate standards are observed and to give landholders simpler, more efficient (cheaper) access to credits. Future incentive schemes may improve the flow of potential credits where they are needed.

To provide greater clarity, certainty and consistency in implementing net gain through the planning controls, DSE has prepared draft operational guidelines for applying net gain. The intention to develop the guidelines was announced when the framework was released, and they are nearing finalisation (DSE 2004d, p. 8).

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4 A number of other Victorian Acts, such as the Flora and Fauna Guarantee Act 1988, and the Catchment and Land Protection Act 1994, also provide some protection to native vegetation. The Flora and Fauna Guarantee Act provides for the identification and protection of threatened species and threatened communities of flora. The Catchment and Land Protection Act protects native vegetation by setting requirements to prevent land and water degradation and the spread of weeds as part of catchment management strategies.
Non-regulatory measures

As noted, the framework states that the focus of efforts to achieve a net gain needs to be on encouraging landholder efforts through targeted incentives, information provision, and education and training. DSE cited a number of non-regulatory programs that are funded by the state and federal governments and that it considers are helping achieve a net gain in the quantity and quality of native vegetation in Victoria (DSE 2004d, pp. 6–7; DSE 2004f). These programs include:

- the National Action Plan for Salinity and Water Quality, which provides for combined federal and state funding of $304 million over the period 2001–2008 (an average of $43 million per year)
- federal and state contributions to Landcare of around $6 million per year
- additional funds under specific programs related to native vegetation (such as BushTender).

The BushTender program, which is being trialled, has stimulated a high degree of interest because it could be a cost-effective method of encouraging landholders to preserve and manage native vegetation:

- The North East and North Central Trial began in 2001-02 and has allocated around $400 000 to 73 landholders (97 successful bids) covering nearly 3200 hectares of significant native vegetation, with the funding secured under three-year management agreements (DSE 2004f). After the first year, over 90 per cent of participating landholders successfully fulfilled their management commitments, and received approval to invoice for the second payment due to them under the agreement.
- A second trial in Gippsland broadened the agreement periods offered to three or six years, with a further option of 10-year protection or permanent protection covenants following the management agreement period. Of the successful bids, all but one opted for at least a six-year management agreement period, and almost half committed to further protection. In total $800 000 was allocated, with successful bids covering 1684 hectares of vegetation, of which approximately half was high or very high conservation significance.

Two additional programs that are attractive to landholders with an interest in conservation are Land for Wildlife (where landholders can enter voluntary non-binding agreements to manage biodiversity on their land) and The Trust for Nature (which uses voluntary, but legally binding agreements on land use, registered on the property title). The latter also operates a revolving fund whereby land is purchased and then resold under a covenant. Further, some local councils offer rate rebates for native vegetation on private property. A feature of all of these programs is that they may involve considerable levels of cost sharing by private landholders.

Cost-sharing arrangements

The selection of mechanisms to achieve the net gain objective needs to consider who should pay the costs of increasing the quantity and quality of native vegetation.

The framework (DNRE 2002a, p. 13) says that a ‘beneficiaries pays’ approach is appropriate for identifying who should pay, and it outlines several principles for defining the responsibilities of landholders and guiding government investment decisions:

- Land managers have a responsibility to retain native vegetation.
- Public resources are to be directed to increasing the extent or quality of native vegetation.

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- The North East and North Central Trial began in 2001-02 and has allocated around $400 000 to 73 landholders (97 successful bids) covering nearly 3200 hectares of significant native vegetation, with the funding secured under three-year management agreements (DSE 2004f). After the first year, over 90 per cent of participating landholders successfully fulfilled their management commitments, and received approval to invoice for the second payment due to them under the agreement.
- A second trial in Gippsland broadened the agreement periods offered to three or six years, with a further option of 10-year protection or permanent protection covenants following the management agreement period. Of the successful bids, all but one opted for at least a six-year management agreement period, and almost half committed to further protection. In total $800 000 was allocated, with successful bids covering 1684 hectares of vegetation, of which approximately half was high or very high conservation significance.

Two additional programs that are attractive to landholders with an interest in conservation are Land for Wildlife (where landholders can enter voluntary non-binding agreements to manage biodiversity on their land) and The Trust for Nature (which uses voluntary, but legally binding agreements on land use, registered on the property title). The latter also operates a revolving fund whereby land is purchased and then resold under a covenant. Further, some local councils offer rate rebates for native vegetation on private property. A feature of all of these programs is that they may involve considerable levels of cost sharing by private landholders.

Cost-sharing arrangements

The selection of mechanisms to achieve the net gain objective needs to consider who should pay the costs of increasing the quantity and quality of native vegetation.

The framework (DNRE 2002a, p. 13) says that a ‘beneficiaries pays’ approach is appropriate for identifying who should pay, and it outlines several principles for defining the responsibilities of landholders and guiding government investment decisions:

- Land managers have a responsibility to retain native vegetation.
- Public resources are to be directed to increasing the extent or quality of native vegetation.
• Public resources are to be used to facilitate voluntary actions by landholders and for shared investment in enhancing vegetation of conservation significance.

While these principles are open to interpretation, they appear to require landholders to be responsible for providing much of the environmental services provided by remaining native vegetation on their properties. Government investment, therefore, will be directed towards increasing the quantity of environmental services provided by native vegetation.

The framework provides no specific information on the current level of cost sharing or the desired level. DSE noted, however, that landholders are making a significant contribution to managing the impacts of native vegetation clearing. It estimated that landholder financial contributions under the Salinity Management Program were around four times those of the federal and state governments (or around $1.4 billion) over the period 1990–2001 (DSE 2004f, p. 6). Significant but unquantified landholder contributions have also been made through Landcare and Landcare-like groups in Victoria.

6.3 Challenges
Regarding the native vegetation controls and their implementation, inquiry participants raised concerns about:

• the balancing of economic, environmental and social considerations
• the sharing of the costs of achieving native vegetation objectives
• whether the controls meet the net gain objective
• inconsistent application, excessive compliance costs and the loss of economic development opportunities.

Balancing economic, environmental and social considerations
Most areas of regulation involve a weighing up of competing economic, environmental and social considerations. As noted in chapter 2, these weighting processes can have a significant influence on regional economic development.

Inquiry participants raised concerns about the processes for developing and implementing the native vegetation controls. These concerns related to a perceived failure to adopt a balanced approach to assessing applications to clear native vegetation. The Victorian Farmers Federation considered:

The key problem with the assessment process for native vegetation applications is that there is no requirement to undertake a ‘triple-bottom-line’ assessment of the application as opposed to the vegetation removal or even a wider assessment of environmental costs and benefits. Applications are purely assessed according to loss of trees and their conservation status. Therefore, a development which may propose a valuable water saving option for a farm, a valuable economic development for the region, and can provide significant offsets as compensation, may still be refused because the native vegetation to be removed is assessed as significant. (sub. 39, p. 8)

Concerns were also raised about the balancing of the environmental benefits with economic and social benefits, when requiring local councils and VicRoads to provide offsets for clearing native vegetation on roadsides (see below). The Productivity Commission (2004a, p. 367) noted that although Victoria’s controls are implemented through the planning system, which requires a balanced consideration of various goals, decisions on permits for native vegetation clearance are based on environmental factors alone.
Table 6.1: Summary of offset objectives for large old trees (by level of conservation significance)

<table>
<thead>
<tr>
<th>Vicinity</th>
<th>Timing</th>
<th>Conservation significance</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Very high</td>
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<tr>
<td>For each medium old tree removed as part of permitted clearing:</td>
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</tr>
<tr>
<td>Two other medium old trees to be protected</td>
<td>Five new trees to be recruited</td>
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<tr>
<td>10 new trees to be protected</td>
<td>five new trees to be recruited</td>
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</tr>
<tr>
<td>For parcels of land greater than 4 hectares with less than eight scattered old trees per hectare, or for parcels of land less than 4 hectares with any number of scattered old trees per hectare:</td>
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<tr>
<td>Two other medium old trees to be protected</td>
<td>one other medium old tree to be protected</td>
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<tr>
<td>10 new trees to be protected</td>
<td>five new trees to be recruited</td>
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<tr>
<td>Eight other medium old trees to be protected</td>
<td>four other medium old trees to be protected</td>
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<tr>
<td>20 new trees to be protected</td>
<td>ten new trees to be recruited</td>
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</tbody>
</table>

Source: DNRE (2002a, p. 55)

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<td>Five new trees to be recruited</td>
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<tr>
<td>40 new trees to be protected</td>
<td>Ten new trees to be recruited</td>
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</tbody>
</table>

Source: DNRE (2002a, p. 55)
The framework approach to calculating offsets illustrates how economic and social considerations play little direct role in determining the level and type of offset required. Table 6.1 shows the offsets that are required if a landholder receives a permit to remove some large old trees. The framework says that it is important to retain large old trees to prevent the loss of habitat for native wildlife. It stipulates, therefore, that protection of some existing trees is required as an offset in parcels of land that are greater than 4 hectares and that have eight or more large old trees per hectare. For land parcels of more than 4 hectares but with fewer than eight large old trees per hectare, however, planting of new trees is sufficient.

The size of the required offset also depends on the conservation significance of large old trees (table 6.1). The framework provides no guidance on how these complex offset requirements were calculated, and does not indicate the development of requirements accounted for economic and social factors. There is also no indication that economic and environmental factors, such as the introduction of more efficient irrigation systems, play a role in determining offset requirements. The factors determining the level of offset are (1) conservation significance and (2) the physical characteristics of the parcel of land on which the old trees are located.

In response, some inquiry participants argued that the approach embodied in the native vegetation controls (including the framework) does seek to achieve a balanced approach. It was noted, for example, that some clearing of high conservation value native vegetation has been permitted for some projects deemed to be of high economic and social value, subject to negotiated offsets.

To better understand how economic development issues are considered in applying the native vegetation framework, the Commission asked Bendigo Mining Limited to provide a perspective (box 6.1). The Commission also provided DSE with the opportunity to comment on the claims made. The department’s views are reflected where appropriate in this chapter. The Commission was interested in this example in the context of understanding how the process can be improved, rather than for judging the merits of the issues being considered.

**Box 6.1: Impact of native vegetation controls on Bendigo Mining**

Bendigo Mining Limited (BML) operates the New Bendigo Gold project, which at full-scale is expected to yield 570 000 ounces of gold annually, directly employ in excess of 550 people and contribute over $200 million annually to the Bendigo economy (FitzGerald 2004). To help bring the mine to full production, BML sought to establish a new mine site at Carshallon. The site is located on Crown land covered in box iron bark forest that provides habitat for several species of flora and fauna, including a threatened species of parrot. The BML proposal required clearing 40 hectares of native vegetation.

The planning provisions state that a permit to lop, clear or destroy native vegetation is not required for activities involved in mineral exploration or mining, as per an approved work authority under mining legislation. To prepare for the environmental assessment process, BML sought advice from DSE on whether the native vegetation management framework would apply. The department advised that the framework would apply and provided advice on how offsets would be measured. BML said that it committed to achieve a net gain outcome on this basis, even though it understood the framework did not apply to mining. The company hoped this commitment would provide confidence to stakeholders of the project.

BML said that it provided the panel conducting the environmental effects assessment with a legal opinion that the framework did not apply to the proposed development, but noted that it was still prepared to demonstrate its commitment to a net gain outcome by proposing a series of offsets. According to BML, it committed to achieve a net gain outcome on this basis, even though it understood the framework did not apply to mining. The Planning Minister supported this recommendation and added that the offsets should be to the satisfaction of the department and the Environment Minister.
Inquiry participants’ concerns about the degree of balancing of economic, environmental and social values may also stem from the way the controls have been applied, rather than from the overall design of the framework. In discussions, some inquiry participants considered that the officers responsible for assessing permit applications often focus on ensuring no tree is cut down, rather than on achieving a more balanced outcome.

In the Commission’s view, much of the concern about the lack of balancing of economic, environmental and social factors stems from the way the native vegetation controls were designed and how they have evolved. As noted, the controls were introduced in 1989, initially without any consultation, and there has since been no systematic and public review of costs and benefits of the controls or alternatives. The lack of any systems for monitoring

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**Box 6.1: Impact of native vegetation controls on Bendigo Mining (continued)**

According to BML, DSE sought a meeting with BML and explained that the framework and draft operational guidelines would apply to the project. BML stated that the draft operational guidelines had only within that month been sent to the Minerals Industry peak body for review in less than a week.

BML considered that the government acted inappropriately by seeking to regulate based on the framework and draft operational guidelines, and that this led to a major risk for the project. At the panel hearing, the company set out a proposal to deliver a net gain comprising: the protection of a known high quality swift parrot habitat; $1.2 million for rehabilitation of Crown land; $0.6 million for heritage conservation; $0.5 million for tourism offsets; and funding for additional annual operating costs and site rehabilitation costs. This proposal was formulated through a community consultation process that BML conducted during the planning approval process.

BML stated that if the draft operational guidelines were followed it would be required to find and purchase around 400 hectares of box iron bark forest of equal environmental value to that proposed for clearing. Although BML successfully identified and purchased 90 hectares of land, it was unable to identify the remaining requirement in a search process that has taken over 18 months to date. BML stated that even if it could identify 400 hectares of suitable land, it would cost in excess of $1 million to purchase, based on current land prices.

DSE disagreed with BML’s view and indicated a preliminary estimate that the 90 hectares of land purchased by BML would be adequate for Stage 1 East Carshalton. It added that offsets could be achieved through land management at a considerably reduced cost (pers. comm., 23 December 2004).

BML stated that stakeholder and community consultations revealed a preference for new trees to be planted (preferably close to Bendigo). It considered, therefore, that the approach advocated under the framework does not meet the community’s and the company’s views on the type of offset necessary to achieve a net gain.

BML added that the requirements imposed on it at the panel hearing are likely to become a condition of the mine expansion. It is concerned that a precedent may be set in applying the framework to mining and exploration. It is also concerned about the use of draft operational guidelines to determine offsets, particularly in light of what it perceived as limited consultation with the industry. It considered that these issues have added to industry uncertainty and placed a project with economic and social benefits at risk.

DSE stated that the framework is clear—that is, the framework applies to mining and exploration, and makes specific provision for temporary loss of native vegetation (and subsequent rehabilitation of the site) to cater for these operations (pers. comm., 23 December 2004).

Sources: Discussions with Bendigo Mining Limited (November 2004) and DSE (December 2004).

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In the Commission’s view, much of the concern about the lack of balancing of economic, environmental and social factors stems from the way the native vegetation controls were designed and how they have evolved. As noted, the controls were introduced in 1989, initially without any consultation, and there has since been no systematic and public review of costs and benefits of the controls or alternatives. The lack of any systems for monitoring
and assessing implementation in a transparent way also means that there is no way of assessing whether balanced decisions are being made.

Recently implemented or proposed changes are designed to address concerns about the way in which the controls are being implemented. These include the development of a system to track permits, operational guidelines for applying net gain via the controls, and the employment of native vegetation officers to assist councils in implementing the controls. The government has also stated that ‘the achievements of the net gain approach will be formally reviewed four years after implementation of the approach commences. The review will assess how effective the net gain implementation has been in reducing land clearance and in achieving commensurate gains’ (DNRE 2002a, p. 26).

Sharing costs and benefits

There appears to be wide acceptance that landholders and the broader community should share the costs of native vegetation retention. Some inquiry participants argued, however, that the current controls mean landholders bear virtually all of the costs of retaining native vegetation on their properties. They considered that landholders with native vegetation are unfairly being asked to pay for biodiversity benefits that accrue to the community as a whole. For example, Gippsland Private Forestry stated:

The cost of native vegetation retention is currently not equitably shared by all who benefit. There is still a high degree of landowner resentment to the native vegetation regulations because they make native vegetation retention ‘costly’ rather than ‘valuable’. Equitable retention of existing native vegetation requires funds from broad based taxation to support initiatives to make native vegetation that is valued for public good reasons also valuable to the landowner on whose land it occurs. (sub. 11, pp. ix–x)

It also stated that:

The user pays principle is currently violated with non-landowners and particularly urban citizens freeloading on the backs of those rural private landowners who continue to incur the cost of native vegetation retention for the common good with no effective public support commensurate with the costs involved. (sub. 11, p. 19)

Concerns were also expressed about rural communities being required to bear much of the cost of offsets related to management of native vegetation on roadsides (see below).

Much of the debate about sharing of costs is couched in terms of the ‘duty of care’ expected of landholders because that duty defines the point at which private landholder investment in public good conservation ceases and public responsibility for investment begins (VCMC 2003, p. 13). Usually it is interpreted as the minimum standard expected by the community (The Wentworth Group 2003, p. 8). As noted, the standard expected of landholders, as laid out in the framework, is a responsibility to maintain native vegetation. This is different from the more general duty of care specified in the Catchment and Land Protection Act 1994.

The main problem with defining a duty of care based on changing community expectations is that it can lead to uncertainty for investment by landholders (The Wentworth Group 2003, p. 8). Uncertainty can be further undermined if there is no link between the standards connected to the community and the costs of retaining vegetation. If landholders bear the costs of meeting community expectations, there is more likely to be ongoing pressure from the community to achieve higher standards. This highlights the importance of putting in place cost-sharing arrangements that reflect the types of benefit that native vegetation provides (to landholders, regions/catchments and the entire community).
As noted, there is little detailed information on the costs of meeting the native vegetation controls, or on the overall balance between government and landholder funding. DSE indicated that landholder contributions under salinity management programs were around four times the public contributions, suggesting that landholders have a strong willingness to contribute to improved salinity outcomes. The Commission is unaware of any broader estimates of the level of cost sharing across native vegetation management policy. It is thus unable to make a finding on the appropriateness of existing levels of cost sharing.

**Meeting environmental objectives**

As discussed in chapter 2, well-designed regulation is effective in achieving the intended objectives at the least possible cost to the community. A number of inquiry participants argued that the native vegetation controls are unintentionally undermining the environmental objective of achieving a net gain in native vegetation. The argument is that preventing clearing by landholders or, as may be more common, requiring offsets (leading to a net gain) by those permitted to clear, effectively raises the expected cost of maintaining native vegetation, relative to the landholder benefits. Any uncertainty about the likelihood of more strict application of the controls (due to increasing community expectations), or of increases in offsets required, could be adding to the expected cost to landholders of retaining and maintaining native vegetation.

Several inquiry participants considered that the native vegetation controls might be causing unintended environmental consequences. Gippsland Private Forestry said that:

> There appears to be little 'reward' to native vegetation owners for good past or future management. In fact one can argue there is in fact the opposite. Degraded native vegetation is generally given wider management options than quality native vegetation. The scope to undermine the intent of policy aiming to achieve sustainable native vegetation communities in the future by inadvertent or deliberate negative management actions will not be lost on landowners who do not support adoption of regimes they regard as unfair or unreasonable. (sub. 11, p. 34)

The Productivity Commission also considered that native vegetation regulation might be having perverse environmental outcomes:

> In Victoria, variation in offset requirements according to the environmental quality of the native vegetation cleared creates poor incentives for landholders to maintain the environmental quality of the vegetation. If landholders believe they may wish to clear in future, there is an incentive for them not to manage or even actively to degrade the land to reduce the potential size of offsets. (PC 2004a, p. 112)

In response, DSE argued that any unintended environmental effects are likely to be small and that the controls need to be viewed, not in isolation, but as part of a broader mix of measures aimed at achieving a net gain in native vegetation:

> Net gain is more than simply regulation. It is relevant in the whole area of investment in improved native vegetation management. The net gain approach provides an inherent incentive for landholders to protect and improve existing vegetation in order to increase opportunities for government or other investment. There is little evidence to substantiate the claim that native vegetation regulations have had a detrimental impact on input to government environmental programs generally, although this may have occurred in some individual situations. (DSE 2004d, p. 8)

**Native vegetation regulation**

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The department considered that incentives to retain native vegetation goals are provided through other policy instruments, such as the National Action Plan for Salinity and Water Quality. The Commission notes, however, that one of the cost-sharing principles set out in the framework is that public resources are to be directed to increasing the extent or quality of native vegetation through appropriate management, rather than to retaining existing vegetation (DNRE 2002a, p. 32). It is difficult to see how these programs could be targeted in such a way that they provide an effective counterbalance to these perverse incentives. While incentive schemes such as BushTender have much potential for overcoming these perverse incentives, the scheme has been applied only on a small scale to date.

That said, the lack of public information makes it difficult to assess the precise extent to which landholders are engaging in activities that undermine the intent of the native vegetation controls. As noted, DSE considers that there is still an annual incremental net loss in the extent of native vegetation of around 2500 hectares.

**Other challenges**

Inconsistent application

Inconsistent application of regulation can affect regional economic development by imposing unnecessary costs on business and contributing to uncertainty about how regulation will be applied. As a result, it can deter business expansion and discourage or delay new investment.

Some inquiry participants considered that councils have applied the native vegetation regulations in an inconsistent manner. According to the Victorian Farmers Federation:

> ... different councils [have] different interpretations of the exemptions [to the requirement to obtain a native vegetation clearing permit], particularly on roadside or crown land boundaries. It can take an extremely long time to obtain approval from a council so that the producer is able to remove the necessary trees or even branches along a boundary fence line in order to put in a new fence. Some producers have been asked to move their boundary fences further inside their properties to avoid removing any trees. (sub. 39, p. 8)

Some inquiry participants considered that inconsistent approaches reflect differences in the capacity of local councils to assess permit applications. The Mildura City Council stated:

> The flow on of state legislation to local government is of growing concern. It is often the requirement of local government to implement or regulate State Government legislation without any financial or resource allocation to enable them to do so. The recently introduced native vegetation [framework] for which guidelines are currently being prepared is a case in point. The Department of Sustainability and Environment set the standard but the responsibility for enforcement is transferred to local government without any resources or financial assistance. This can be a costly exercise where court action is required. (sub. 21, p. 1)

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Gippsland Private Forestry considered that inconsistent approaches extended to a failure, in some cases, to enforce the controls:

It would be my observation that the scrutiny of, in terms of compliance of any permits, whether they're related to forestry or anything else, is piecemeal at best. (Traralgon transcript, p. 22)

The Municipal Association of Victoria recently released the results of a survey on the capacity of local government to manage the native vegetation framework. It found that most councils undertook limited or no monitoring of permit compliance and limited enforcement of permit breaches (MAV 2004a, p. 1). While all respondents to the survey said they were aware of illegal removal of native vegetation, only about half had taken enforcement action (MAV 2004a, pp. 25–6).

Even with additional DSE assistance and staff, the Mildura Council did not believe the situation would change:

DSE have put on a number of specific officers to assist … But that will still not overcome the enforcement issue and the transfer of that responsibility, those people will not be there to take enforcement action, so it's still being left with the councils to pick up the bill for enforcing or applying State Government legislation. (Mildura transcript, pp. 18–19).

The Commission notes that the draft operational guidelines for applying net gain are intended to provide greater clarity and more streamlined permit approval processes. Based on ‘desktop assessments’ from some municipalities, DSE expects that under the processes laid out in the operational guidelines, 60–80 per cent of applications to local government will be assessed via a ‘simple or streamlined pathway’ (DSE 2004d, p. 8).

Some inquiry participants stated, however, that the operational guidelines being developed, while intended to improve consistency and simplicity in administration, are too complex and would increase future compliance costs by increasing the need to seek specialist advice. The Municipal Association of Victoria commented:

Applications for native vegetation removal require complex, scientific analysis against the State Government’s net gain principles. It is considered that the complexity of the controls and the lack of resources [within councils] is impacting upon councils’ ability to apply the controls. While DSE is preparing [operational] guidelines to assist the assessment of such applications, the draft guidelines are so complex in themselves that the Municipal Association of Victoria has urged that further work be done on them before they are released. (MAV 2004a, p. 2)

Excessive administrative and compliance costs

Some inquiry participants considered that the loose wording of the controls also meant that permits were required for many routine native vegetation management practices, thereby imposing unnecessary costs. According to the Victorian Farmers Federation:

It is often costly and time consuming for an applicant to work their way through the planning application process for native vegetation. DSE and local councils can request an environmental assessment be undertaken as part of the application, which can be a significant cost to the applicant. Often, the scale of the proposed development does not warrant the level of assessment. The VFF is aware of cases where it has taken almost two years for a council to make a decision on an application. Only when a decision is made can an applicant appeal. This situation is unworkable and represents a significant obstacle to regional economic development. (sub. 39, p. 8)

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The Commission notes that the draft operational guidelines for applying net gain are intended to provide greater clarity and more streamlined permit approval processes. Based on ‘desktop assessments’ from some municipalities, DSE expects that under the processes laid out in the operational guidelines, 60–80 per cent of applications to local government will be assessed via a ‘simple or streamlined pathway’ (DSE 2004d, p. 8).

Some inquiry participants stated, however, that the operational guidelines being developed, while intended to improve consistency and simplicity in administration, are too complex and would increase future compliance costs by increasing the need to seek specialist advice. The Municipal Association of Victoria commented:

Applications for native vegetation removal require complex, scientific analysis against the State Government’s net gain principles. It is considered that the complexity of the controls and the lack of resources [within councils] is impacting upon councils’ ability to apply the controls. While DSE is preparing [operational] guidelines to assist the assessment of such applications, the draft guidelines are so complex in themselves that the Municipal Association of Victoria has urged that further work be done on them before they are released. (MAV 2004a, p. 2)

Excessive administrative and compliance costs

Some inquiry participants considered that the loose wording of the controls also meant that permits were required for many routine native vegetation management practices, thereby imposing unnecessary costs. According to the Victorian Farmers Federation:

It is often costly and time consuming for an applicant to work their way through the planning application process for native vegetation. DSE and local councils can request an environmental assessment be undertaken as part of the application, which can be a significant cost to the applicant. Often, the scale of the proposed development does not warrant the level of assessment. The VFF is aware of cases where it has taken almost two years for a council to make a decision on an application. Only when a decision is made can an applicant appeal. This situation is unworkable and represents a significant obstacle to regional economic development. (sub. 39, p. 8)
As for a number of areas of native vegetation management, there is little information on which to base a view on the costs of the controls to landholders and governments. Few inquiry participants provided quantitative information to the Commission on the costs. Some considered that the administrative and compliance costs tend to fall more heavily on small business and individuals, who tend to find regulation more intimidating and relatively more costly. The Institute of Public Affairs stated that the native vegetation controls:

... tend to be "one size fits all". This implies both a distinct inequity and a significant barrier to entry. Small operators find the regulation both more daunting and relatively more costly than large businesses. New entrants to businesses affected by the regulations, especially those with limited capital, find the cost of compliance a strong disincentive. (sub. 41, pp. 6–7)

A number of inquiry participants considered that the cost of meeting native vegetation controls is affecting the provision of road infrastructure. Currently, a permit is required for roadside clearing by councils and other public authorities such as VicRoads in undertaking road construction and maintenance (with applications considered by DSE), because roadsides are recognised as being a significant component of remnant native vegetation.

According to the Victorian Farmers Federation:

Native vegetation regulations are also beginning to have a negative impact on the provision of road infrastructure to rural communities. The requirement for the provision of "offsets" to compensate for native vegetation removal on road reserves is adding significant costs to road developments. Road reserves are likely to have good quality native vegetation and therefore, VicRoads and councils, when seeking to construct roads face significant "offset" costs. In some cases, agricultural land must be purchased for the road instead of utilising the road reserve and removing native vegetation. Where native vegetation is removed, additional land may need to be purchased for revegetation works as compensation. With these additional costs, road developments in rural areas will become increasingly unattractive for councils and VicRoads who are trying to maximise limited budgets. (sub. 39, p. 9)

This issue was also raised with the Productivity Commission during the inquiry into native vegetation and biodiversity regulation:

Where road maintenance or widening involves clearing of native vegetation, VicRoads or local authorities may be required to make offsets for any permitted vegetation clearance. This additional cost may lead to the project being delayed, altered or cancelled if the benefits no longer justify the costs. If the project goes ahead and the construction authority’s budget is fixed, other projects will be deferred. Alternatively, taxes or rates would need to be increased to make up the shortfall. (PC 2004a, p. 378)

There is little publicly available information on the aggregate cost of roadside offsets required under the native vegetation controls, or on the impact of this cost on road construction and maintenance in regional Victoria. The effects may be quite significant. One submission to the Productivity Commission’s inquiry (Weatherhead 2004, p. 1) claimed that the largest cost item in the road resealing budget for the Shire of Strathbogie was tree management (which also exceeded the cost of the bitumen used for road resurfacing).

The main concern regarding this issue appears to be the lack of an explicit process for assessing and comparing (a) the environmental benefits of applying the controls to roadside management with (b) the broader costs to the community of delays and additional costs in constructing or maintaining roads.

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The main concern regarding this issue appears to be the lack of an explicit process for assessing and comparing (a) the environmental benefits of applying the controls to roadside management with (b) the broader costs to the community of delays and additional costs in constructing or maintaining roads.
Are native vegetation controls impeding regional economic development?

A key purpose of this inquiry is to identify the key regulatory impediments to regional economic development. While a number of inquiry participants considered that the native vegetation controls are impeding regional growth, there is a distinct lack of information and research on which to form a firm view on this matter (box 6.2). Consequently, the impact of the native vegetation controls is a matter of judgement.

Box 6.2: Assessing the effect of the native vegetation controls on regional economic development

It is difficult to say how the controls have affected economic development opportunities. As noted, there is no public information on current rates of clearing, the total number of permits (granted or refused), the nature and amount of any offsets required, or how many landholders have been deterred from applying for permits. It is also difficult to ascertain direct costs, including the administrative and compliance costs to landholders and to governments.

One way the controls may affect future regional economic development is by preventing land clearing for agricultural production. This can occur because a clearing permit is refused or, where granted, requires land to be locked away as an offset to the permitted clearing.

As noted, DSE stated it received around 2500 native vegetation permit referrals from councils in the past four years. Of these, it objected to only 5 per cent and approved 65 per cent with conditions (DSE 2004f, p. 8). To estimate the potential amount of land affected by the controls, the Commission assumed that all of those applications refused or approved with conditions covered an average area of 10 hectares (the area for which referral to DSE is mandatory). Assuming that DSE required a one-for-one offset on average, the total offset requirement over the four-year period would have been 17,500 hectares (70 per cent of 25,000 hectares)—an average of around 4375 hectares per year.

The number of permits considered by councils is not known, so this estimate excludes any offsets required by councils.

In discussions, DSE considered that these estimates were well above the likely outcomes (pers. comm., 23 December 2004).

If the average offset requirement were one hectare for every two cleared, then the average amount protected by an offset would be less than 2200 hectares per year. Alternatively, if larger offsets were required, then assuming a one-for-three offset, for example, the amount protected increases to 6600 hectares per year for an application of 5 hectares or, for an average permit application of 10 hectares, to 13,125 hectares per year.

By way of comparison, the Victorian Farmers Federation cited figures from the 2001 Agricultural Census by the Australian Bureau of Statistics, indicating that Victorian private landholders, in the 12 months to June 2001:

- planted 5173 hectares for nature conservation
- planted 6526 hectares for land and water protection
- fenced an area of 11,391 hectares for the protection of remnant native vegetation
- fenced an area of 5173 hectares for land and water protection (VFF 2004)

Assuming the controls deterred no clearing and the above figures are correct, then the amount being locked away under the native vegetation controls is small relative to the voluntary and government-supported efforts of private landholders. It might also be compared to the estimated current rate of net clearing of 2500 hectares per year.

If the controls are not resulting in extremely large areas of private land being locked away, their contribution to a net gain in native vegetation—and, as such, their cost-effectiveness compared with alternative instruments, such as non-regulatory measures—becomes questionable.
Box 6.3: Productivity Commission review of the impacts of native vegetation and biodiversity regulations

In August 2004 the Federal Government released a report by the Productivity Commission on the impacts on landholders and the local communities of native vegetation regulations across Australia and on whether there were better ways of achieving desired environmental objectives (PC 2004a).

The Productivity Commission found that current native vegetation regulations lead to perverse environmental outcomes, do not meet the criteria for 'good regulation' and result in adverse impacts on some landholders. It proposed a three-part approach to improving Australia's existing arrangements that was intended to achieve better environmental outcomes, at less cost to the community overall and landholders:

1. Improve existing regulatory regimes
2. Promote private conservation by increasing potential returns from market and non-market mechanisms, by encouraging landholders to provide more environmental services
3. Clarify landholder and community responsibilities. In particular:
   - delineate and allocate private and public good environmental services so public good environmental services are purchased from landholders who (in aggregate) bear the costs of actions that directly contribute to sustainable resource use
   - devolve responsibility to regional communities.

Central to these recommendations were the assumptions that policies that do not engage landholders will fail and that policy choices would be improved by identifying the cost-benefit trade-offs in providing environmental services.
6.4 The Commission’s view

The Commission considers that the current native vegetation controls have systemic features that are impeding regional economic development by contributing to uncertainty for investment. Consequently, it has examined three possible ways of improving the current arrangements, which would assist in achieving the government’s net gain objective in a more cost-effective manner:

- improving the information base
- improving certainty
- cost sharing.

In examining possible improvements to the native vegetation controls, the Commission has drawn on the views of inquiry participants, reforms under consideration elsewhere, and the recommendations of the recent Productivity Commission Inquiry into Native Vegetation and Biodiversity Regulations (box 6.3).

Improving the information base

Limitations in publicly available information are an obstacle to assessments of the impact of the native vegetation controls on regional Victoria. There are information gaps for important issues—including the basic question of whether Victoria is in a net gain or net loss situation. There is also little information on the effectiveness of the current native vegetation controls in achieving the goal of net gain, relative to alternatives. Further, since the regional native vegetation management plans have not been finalised and made publicly available, the level of net gain required to achieve the government’s objectives for biodiversity and sustainable land use is not clearly understood.

A number of initiatives—such as the development of standard native vegetation accounting concepts (for example, habitat hectares), improved vegetation mapping and the development of the permit tracking system—are helping to improve the information base. These represent only a partial solution, however, because the controls do not encourage landholders to volunteer their knowledge about the location and quality of native vegetation on private property. Some inquiry participants argued that the controls even do the reverse.

The native vegetation controls have not been subject to a review since they were introduced. Arguably, if they had, much more information would be available for assessing progress in meeting the net gain objective and for examining the effectiveness of alternative instruments.

The Commission considers that a priority action for government is to improve the public information base on which the effectiveness of native vegetation controls and alternative policy instruments can be assessed.

As well as arguing that better information is needed, a number of inquiry participants argued that more resources should be put into non-regulatory mechanisms for supporting landholder efforts to protect and enhance native vegetation with a high conservation value. Gippsland Private Forestry suggested that the broader community should fund initiatives to make native vegetation that is valued for public good reasons also valuable to the landholder (sub. 11, pp. ix–x).

There are various ways of encouraging the retention of native vegetation on private land. These include education and training, grants and subsidies for protection measures, tax concessions and rebates (such as accelerated depreciation for Landcare works or tax concessions and rebates (such as accelerated depreciation for Landcare works or tax cost sharing).

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that provide payments for ecosystem services (such as BushTender) can better align landholder and community interests in achieving environmental objectives, and encourage landholders to volunteer information about the characteristics of native vegetation on their properties, and about the costs of looking after it. When combined with efforts to raise awareness of and knowledge about the benefits of native vegetation, non-regulatory measures are likely to outperform regulatory ones. The Glenelg Hopkins Catchment Management Authority noted:

Along with education and awareness, financial incentives remain the most powerful and direct means of encouraging more people to consider participating in nature conservation programs. (GHICMA 2000, p. 65)

While there is significant scope for greater use of non-regulatory mechanisms to manage native vegetation in Victoria, the Commission considers that an assessment of current approaches should occur before any moves are made to expand or introduce new non-regulatory mechanisms. There is insufficient information on which to judge the relative contribution and costs of existing non-regulatory measures. Accordingly, it remains unclear whether the current mix of mechanisms—regulatory and non-regulatory—is achieving a net gain in a cost-effective manner.

The government has previously flagged the need to review the effectiveness of native vegetation management in Victoria. The framework (DNRE 2002a, p. 26) states that the effectiveness of net gain implementation is to be reviewed four years after implementation commenced. Apart from assessing rates of clearing and the contribution of the framework to observed changes in this rate, the Commission understands that this review will also consider the costs and benefits of regulatory and non-regulatory mechanisms used to achieve net gain. This consideration would help to determine whether the current mix of mechanisms is effective, efficient and equitable.

Since the review could look at the implementation of policy as well as the broad framework, it would be desirable for it to be undertaken by an independent body or panel, and in a transparent manner. Ideally, it would occur after the implementation of the native vegetation permit tracking system, which is nearing completion (DSE 2004f, p. 9), so better information is available on the number of permits and the nature of the offsets that are being required.

**Draft recommendation 6.1**

That the Victorian Government initiate the planned review of the native vegetation management framework to provide a basis for assessing any future changes to native vegetation policy.

**Removing uncertainty**

Inquiry participants considered that immediate steps could be taken to improve the operation of the native vegetation controls. They expressed various views, however, regarding the scope for improving the existing controls. On this matter, the Productivity Commission stated:

... there appear opportunities for reductions in negative impacts on individual landholders for little or no direct reduction in environmental benefits if higher cost/low gain outcomes were treated more flexibly. The clearing of trees and lopping of branches to maintain

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Credits for qualifying expenditure, rebates on land tax and council rates, and payments for the services provided by native vegetation (ecosystem service payments).

The Commission can see many advantages in using non-regulatory alternatives. Schemes that provide payments for ecosystem services (such as BushTender) can better align landholder and community interests in achieving environmental objectives, and encourage landholders to volunteer information about the characteristics of native vegetation on their properties, and about the costs of looking after it. When combined with efforts to raise awareness of and knowledge about the benefits of native vegetation, non-regulatory measures are likely to outperform regulatory ones. The Glenelg Hopkins Catchment Management Authority noted:

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Since the review could look at the implementation of policy as well as the broad framework, it would be desirable for it to be undertaken by an independent body or panel, and in a transparent manner. Ideally, it would occur after the implementation of the native vegetation permit tracking system, which is nearing completion (DSE 2004f, p. 9), so better information is available on the number of permits and the nature of the offsets that are being required.
The risk, however, is that flexibility will be reduced through the controls becoming even more prescriptive. Also, any review is unlikely to significantly reduce the uncertainty around the exemptions because factors such as changes in technology or management practices, and landholder efforts to work around the controls, are likely to necessitate future revisions. The most recent amendment to the exemptions, for example, was required to clarify whether a permit is required for clearing related to the use of centre pivot irrigation systems.

The Commission considers that improving the wording of the controls would be a worthwhile step. In identifying possible improvements, however, it would also be worthwhile to examine whether there is scope to move towards flexible, yet more certain forms of regulation. One approach is to encourage landholders to develop land management plans that specify the outcomes desired for native vegetation on their land over an extended period, provide greater certainty around the impact of changes in government policies, and recognise that landholders have an incentive to maintain or enhance the quality of their assets.

Box 6.4: Property vegetation plans

The New South Wales Government recently proposed changes to the regulation of native vegetation clearing. These were developed through extensive consultation and review. The reforms arose from two reviews commissioned by the government. The first review, by the Wentworth Group of Concerned Scientists, proposed tighter controls on clearing, but recommended that the need for greater investment security for farmers be recognised through the development of property management plans, financial support to conserve and improve native vegetation, and the regionalising of administration and approval processes through catchment management authorities.

The government accepted the Wentworth model as the basis for changes to existing controls, and established a Reform Implementation Group to develop a legislative package of reforms and oversee their implementation. Parliament passed the resulting legislation in December 2003. The Native Vegetation Act 2003 (NSW) seeks to end broadscale clearing unless it can improve or maintain environmental outcomes. Most recently, the government released for public consultation a draft regulation and assessment method to allow commencement of the new legislation early in 2005.

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Box 6.4: Property vegetation plans (continued)

Under the New South Wales model, approval is required to clear remnant native vegetation. There are two options for obtaining approval, either through a development application or through a property vegetation plan. The local catchment management authority would assess both, using the assessment method set out in the regulation. The main difference between the two is that offsets can be secured in property vegetation plans, but not in development applications. The property vegetation plans are an agreement between the landholder and the local catchment management authority that sets out how a landholder will manage native vegetation on their property. Entering into a plan is not compulsory, but there is a strong incentive to do so because they allow a landholder to secure offsets to balance the negative impact of clearing to meet the ‘improve or maintain’ test, and they are also required when applying to catchment management authorities for natural resource incentive funding for native vegetation. The government has provided $436 million over four years to assist landholders in protecting and repairing landscapes, with at least $120 million of this amount earmarked for distribution through property vegetation plans on farms.

The following are key features of the property vegetation plans:

- Landholders can undertake some clearing activities without repeatedly applying for a permit.
- Legally binding and clearing provisions are valid for up to 15 years, staying with the property even if it is sold.
- The landholder can apply for a new plan at any time, but the plan can be terminated only by the Minister if breached.
- The plan is unaffected by changes in local or state planning rules, including the listing of new threatened species.

The New South Wales reforms are designed to achieve: greater flexibility for landholders (who can clear for routine agricultural management activities and clear unprotected regrowth without the need for approval); greater certainty (because clearing provisions within property vegetation plans can last for up to 15 years); localised decision making (with the landholder and local catchment management authority agreeing on the plan); and financial incentives (which are provided to help manage and improve native vegetation).

The system appears to have potential advantages and disadvantages. The set-up costs could be quite significant, and the government has provided $120 million over three years to fund native vegetation incentives through property vegetation plans. The plans have the potential, however, to provide much more certainty for landholders and lower compliance costs, given the flexibility for managing native vegetation within agreed parameters. Also, the linking of incentives to the management of native vegetation has the potential to encourage landholders to invest in additional native vegetation. The success of the New South Wales model will depend on the plans not being too prescriptive so new plans are not required every time the landholder wishes to adopt a minor change to their management practices. The offsets are intended to balance the impact of clearing proposals and, therefore, to make regrowth valuable. Also, farmers will be able to trade offsets.

Source: Discussions with the New South Wales Department of Infrastructure, Planning and Natural Resources (December 2004).

A potential model is provided by New South Wales, which recently announced changes to its controls to increase the focus on protecting highly valued remnant native vegetation and to remove the requirement to obtain a permit for clearing native vegetation of low conservation significance (box 6.4). The Victorian Farmers Federation has proposed a similar model, based around farm vegetation management plans (box 6.5).
Box 6.5: Farm vegetation management plans

The Victorian Farmers Federation (2004) recently put forward proposals to address perceived flaws in native vegetation policy. It proposed that the goal for native vegetation on private land should be to achieve the protection and enhancement of the extent and quality of native vegetation of high ecological significance. It argued that this goal should be pursued via programs that support farmers to value and protect native vegetation, and via regulatory controls that do not impede normal farming practices or sustainable development.

Specific actions recommended by the Victorian Farmers Federation include the following:

**Regulations**
- Conduct an independent review of the exemptions to ensure they allow normal farming practices to continue and landholders to adopt new technology.
- Broaden the permit assessment process to encompass economic and social costs and benefits of proposed developments.
- Assess the costs and benefits of regulation against alternatives, using publicly available regulatory impact statements.
- Support the use of farm vegetation management plans (see below).

**Financial assistance/cost sharing**
- Identify areas of high ecological significance and provide financial support to enable landholders to protect and enhance vegetation for biodiversity outcomes.
- Have government fund the cost of managing additional native vegetation beyond that required for production (until alternative ecosystem service payments are available).

**Non-regulatory approaches**
- Conduct landholder education programs on native vegetation management, to build capacity for effective voluntary action.
- Increase the use of ecosystem service payments through a suitable BushTender scheme.

**Farm vegetation management plans**

The Victorian Farmers Federation proposed that a framework for farm vegetation management plans be developed. The plans are intended to encourage landholders to manage native vegetation for land management and biodiversity outcomes, but in a way that gives them the flexibility to manage vegetation without requiring ongoing consent from a planning authority.

Under the proposed plans, landholders would still be required to provide offsets for any native vegetation removed, but a wider range of actions that contribute to environmental improvements would be counted as offsets against native vegetation removal. The community should pay for the protection and management of any native vegetation deemed to have a high level of conservation significance that cannot be removed in farm development, through either management payments or the purchase of that land from the landholder.

The plans would be prepared using technical assistance from catchment management authorities, and align development with environmental outcomes, at the farm and catchment level. The proposed plans would have a life of 10–15 years and could also be linked to environmental management systems (management tools for measuring and improving environmental performance, which underpin ‘clean and green’ marketing of produce).

The Victorian Farmers Federation considered that the success of the plans depends on whether:
- they are workable for farmers
- landholders understand the conservation value of their native vegetation
- agencies have the confidence that native vegetation will be managed as specified under the plan.

The proposed plans for Victoria could operate in much the same way as those proposed in New South Wales, with the main difference being that landholders rather than the government would drive further development of the plan concept.

Source: Discussions with the Victorian Farmers Federation (December 2004).
Under both proposals, land management plans would replace the need for case-by-case applications for permits to clear native vegetation. They would be voluntary agreements between a single landholder (or group of landholders) and a government authority (such as a catchment management authority) that would identify native vegetation present on a property, the land management and biodiversity values associated with it, and the management actions, if any, needed to preserve it. The landholder would be free to operate in accordance with the plan and without the need to obtain native vegetation clearing permits. The plans would have an extended life of 10–15 years, but could be varied at any time by the landholder. They would remain valid in the face of any changes in government policy (unless some form of compensation is paid).

Depending on how they are designed and implemented, the uptake of land management plans could offer a number of benefits:

- The plans could provide greater flexibility and certainty for landholders regarding their native vegetation management obligations. The farm based plans being implemented in New South Wales will have a life of up to 15 years, irrespective of changes to local or state planning rules, including new listings of threatened species. Landholders and the state and local governments will make savings from the reduced need to apply for and consider clearing permits. Landholders will also have a greater degree of certainty about any offsets required if they undertake clearing permitted under the plan.

- Encouraging landholders to volunteer information about the current quantity and quality of native vegetation on their properties. By requiring a whole-of-farm assessment, more information can be obtained on the location and conservation value of native vegetation.

- They could encourage an alignment (rather than conflict) between the interests of all landholders and the government and its agencies. Associated with this benefit is the scope for improving the integration of existing government programs for protecting and enhancing native vegetation.

- They could introduce flexibility by allowing landholders to choose whether to develop a land management plan or continue without one (but be required to obtain a permit to clear native vegetation). Alternatively, a group of adjacent landholders could jointly develop a land management plan to better coordinate the management of native vegetation corridors. The flexibility to change land use would remain.

- They could be accommodated within the current planning system at a low cost.

It would appear that land management plans could be accommodated within the existing regulatory framework. The native vegetation controls state that a permit may be granted to remove, destroy or lop native vegetation in accordance with a land management plan or a works program. The Commission understands, however, that there has been limited uptake of plans. Possible reasons for this slow uptake include high set-up costs relative to the perceived benefits, a lack of awareness of the option, a lack of encouragement by the authorities, or a lack of certainty.

Some incentives would likely be needed to encourage the uptake of land management plans by landholders with native vegetation. This incentive could come from tying eligibility for existing financial incentives (such as grants for fencing, tree planting or other management actions) to the development of a plan. Alternatively, it could come from adopting more flexible approaches to determining offsets where clearing occurs.

The approach proposed by the Victorian Farmers Federation is to protect high conservation value native vegetation with compensation paid to the landholder. In addition, the definition of offsets would be broadened beyond the protection or planting of native vegetation, to include a wide range of land management practices that contribute to enhancing the quality of native vegetation. Encouraging landholders to volunteer information about the current quantity and quality of native vegetation on their properties. By requiring a whole-of-farm assessment, more information can be obtained on the location and conservation value of native vegetation.

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They could introduce flexibility by allowing landholders to choose whether to develop a land management plan or continue without one (but be required to obtain a permit to clear native vegetation). Alternatively, a group of adjacent landholders could jointly develop a land management plan to better coordinate the management of native vegetation corridors. The flexibility to change land use would remain.

They could be accommodated within the current planning system at a low cost.

It would appear that land management plans could be accommodated within the existing regulatory framework. The native vegetation controls state that a permit may be granted to remove, destroy or lop native vegetation in accordance with a land management plan or a works program. The Commission understands, however, that there has been limited uptake of plans. Possible reasons for this slow uptake include high set-up costs relative to the perceived benefits, a lack of awareness of the option, a lack of encouragement by the authorities, or a lack of certainty.

Some incentives would likely be needed to encourage the uptake of land management plans by landholders with native vegetation. This incentive could come from tying eligibility for existing financial incentives (such as grants for fencing, tree planting or other management actions) to the development of a plan. Alternatively, it could come from adopting more flexible approaches to determining offsets where clearing occurs.

The approach proposed by the Victorian Farmers Federation is to protect high conservation value native vegetation with compensation paid to the landholder. In addition, the definition of offsets would be broadened beyond the protection or planting of native vegetation, to include a wide range of land management practices that contribute to enhancing the quality of native vegetation.
improved environmental outcomes (such as pest and weed control, and the installation of water-saving technology).

The benefits of moving to a system based on land management plans, as well as the rate of uptake, will clearly depend on how the plans are designed and administered. Key issues to be addressed include:

- determining who would negotiate a land management plan with the landholder. Options include councils, catchment management authorities and DSE. In allocating responsibility for negotiating plans, it will be important to consider the governance arrangements and capabilities of the negotiating body, and the general desirability of ensuring that outcomes reflect local conditions.
- determining who would pay for the costs of developing the plans (for example, preparing maps, conducting site inspections and undertaking any studies necessary to evaluate the status of existing native vegetation). Many landholders have a strong incentive to establish farm plans (business plans) anyway.
- identifying the timeframe that best provides certainty to landholders while meeting environmental objectives, and providing the corresponding assurance for landholders that plans will not be superseded by changes in the native vegetation controls.
- defining landholder responsibilities relating to land and biodiversity protection (see below).

The Commission notes broad support for land management plans from the Productivity Commission and groups representing landholders, such as the Victorian Farmers Federation. The Productivity Commission (2004a, pp. 345–6) considered that the New South Wales proposals appeared to address many of the issues raised by participants to its inquiry. More specifically, it perceived a number of advantages in adopting this approach, including an improved regional focus for native vegetation management, reduced complexity in regulatory processes, and greater flexibility to manage regrowth and to change land use.

On balance, the Commission considers that the introduction of land management plans could offer significant benefits to landholders in regional Victoria, given the opportunities that they present for increased flexibility and certainty. For the government, the concept of land management plans also offers potential benefits, including better alignment of landholder and government objectives, encouragement to landholders to volunteer information about native vegetation on private land, and the opportunity to take a more coordinated and integrated approach to implementing native vegetation policy at the level of individual landholdings.

**Draft recommendation 6.2**

That the Victorian Government consider measures to stimulate the development of appropriate land management plans as an alternative to the current requirement that landholders lodge a permit application each time they wish to clear native vegetation.

### Sharing costs

In principle, the key challenge for native vegetation policy is to identify and apply methods for increasing the provision of environmental services associated with native vegetation in a way that minimises the total costs (not just the cost to government or to a particular group in society). Under current arrangements in Victoria, landholders are responsible for providing much of the environmental services associated with retaining native vegetation on their properties, and much of the associated cost. Existing government assistance

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through non-regulatory programs tends to focus on increasing the quantity and quality of native vegetation. This approach reflects a view that governments should buy environmental services only above the level that is determined by the landholder’s duty of care.

As noted, defining landholders’ duty of care against changing community standards is contributing to uncertainty about future standards of responsibility. Where community standards are formed without an appreciation of the costs of meeting those standards, there is an increased likelihood that community demands will continue to rise unchecked. The Commission considers that a better approach is to consider cost sharing in terms of who benefits from the provision of environmental services associated with native vegetation.

Draft recommendation 6.3

That the Victorian Government more clearly define landholder responsibilities to retain native vegetation against the benefits to landholders and the broader community. This definition should form the basis for determining the appropriate allocation of the costs of achieving net gain.
7 Environmental regulation

7.1 Introduction

The processes for developing the native vegetation controls can be contrasted with those in two other key areas of environmental regulation of importance to regional Victoria: (1) the development of state environment protection policies and associated regulations addressing air, water, land and noise pollution, under the Environment Protection Act 1970 (Vic.), and (2) the assessment of the environmental effects of major projects, as set out under the Environment Protection Effects Act 1976 (Vic.). While policy in these two areas of environmental regulation involves the need to strike a well-informed balance between economic, environmental and social considerations, the processes underpinning them are more transparent than those for the native vegetation controls. That said, some inquiry participants considered that environmental protection policies and environment effects assessment processes are presenting challenges for businesses in regional Victoria.

This chapter thus examines the processes for developing and implementing environment protection policies and those guiding environmental assessments for major projects. The Victorian Competition and Efficiency Commission does not claim to have the technical expertise to assess the adequacy or otherwise of the standards embodied in these policies. It can, however, examine the processes for developing and implementing these policies, to determine whether they are sufficiently robust to ensure objectives are achieved in a way that is likely to minimise any adverse effects on regional economic development.

7.2 Environment protection policies

In Victoria, the impacts of businesses and communities on air, land and water quality are regulated under the Environment Protection Act. The Act, administered by EPA Victoria, was designed as ‘umbrella’ legislation covering air, water and land protection and the regulation of noise pollution in Victoria, to deal with the environment in a systematic way.

Objectives of environment protection regulation

The stated purpose of the Environment Protection Act is to ‘create a legislative framework for the protection of the environment in Victoria having regard to the principles of environment protection’ (s. 1A). The Act sets out 11 principles of environment protection, covering a variety of issues, one of which is the ‘integration of economic, social and environmental considerations’. In describing this principle, the Act states that ‘sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment’ (s. 1B).

The specific problem that the Act seeks to address is that the market does not adequately determine and allocate the costs of pollution and, as such, the markets for environmental services such as clean air, water and land are said to be ‘incomplete’. Without a mechanism to determine and allocate the costs of pollution, businesses will tend to emit too much pollution (from the point of view of society), creating a role for government to use non-market mechanisms such as regulation to better balance economic, social and environmental outcomes. Getting the balance right is a difficult task: if the environmental standards that businesses must meet are too strict, then socially desirable types of economic activity may be discouraged. Equally, if standards are too lax, then the balance will be inappropriately skewed towards economic development. How this balance is

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achieved in practice will be determined in part by the framework for developing environmental protection policies.

Key features of the regulatory framework

The Environment Protection Act charges EPA Victoria with the task of developing state environment protection policies (SEPPs) and waste management policies (WMPs) for Victoria:

- SEPPs establish the uses and values of the environment that the community wants to protect, define the environmental quality objectives and indicators, and describe the attainment and management programs that will ensure the necessary environmental quality is maintained (EPA 2004a).
- WMPs outline measures to improve the management of wastes. They may also allocate responsibility for industrial waste management operations and disposal, and establish the level of technology that should be applied to processes involving wastes (EPA 2004b).

SEPPs and WMPs are subordinate legislation under the Environment Protection Act and are enforced through a range of mechanisms such as licensing, work approvals, education and auditing (figure 7.1).

There are currently 13 SEPPs and seven WMPs in place, addressing aspects of air, water, land and noise pollution in Victoria. Except for the noise SEPPs, which set objectives for noise levels for industrial activities for only the metropolitan areas of Victoria, all other SEPPs and WMPs apply across Victoria.
The policy development process for SEPPs is outlined in figure 7.2.1. It may be summarised as comprising:

- the preparation of a draft policy and draft policy impact assessment (PIA)
- consultation with interested parties (including affected government departments and/or statutory authorities) before and after the preparation of the draft policy and policy impact assessment
- responding to public comments and finalising the policy in response to the comments received
- the development of a recommendation to Governor-in-Council
- tabling of the policy for Parliamentary consideration, which may lead to its being disallowed or amended
- review of the policy within 10 years of it coming into effect (or of its last review).

The preparation of the PIA is a key element of the policy development process. The PIA is intended to explain the provisions in the policy, their rationale, and an assessment of the potential key impacts of adopting the policy. The Environment Protection Act specifies that a PIA must:

- include a statement of the purposes of the policy
- identify alternative means of achieving the objectives, including not declaring or varying the policy
- assess the ‘possible financial, social and environmental impacts of each alternative in qualitative, and to the extent practicable, quantitative terms to ensure that the costs are not disproportionate to the benefits achieved’ (s. 18C(1)(c)).

Compared to some other regulatory processes, such as that applying to native vegetation, the policy development process for SEPPs has a number of strengths. It provides for quite extensive public input, for example, the draft (and final) SEPP and PIA are made publicly available, and the SEPP development process allows for at least three months of public comment on a draft SEPP and PIA, compared with a minimum of 28 days for regulatory impact statements (RISs). Similarly, the process provides for the draft SEPP and PIA to be finalised in response to public comment and for the provision of a written response to all submissions made—again, steps not required in a RIS process. As discussed below, the major challenges appear to relate to the independent scrutiny of the SEPP and the accompanying PIA.

While SEPPs and WMPs are the two key forms of statutory policy, the Environment Protection Act also gives EPA Victoria the power to incorporate a wide range of policy documents, including codes of practice and information bulletins (s. 72(2)). Incorporated documents have legal standing and carry the same weight as other elements of the SEPP or WMP. EPA Victoria decides whether to incorporate a document on a case-by-case basis, giving consideration to factors such as the required flexibility for future change and the likelihood that the document will be used for enforcement or prosecution actions. It develops incorporated documents through stakeholder consultation processes and makes draft and final documents widely available to stakeholders and the broader community (EPA, pers. comm. 18 November, 9 December 2004).

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1 WMPs are developed through a public process similar to that used for SEPPs (EPA 1996, p. 10).
How do environmental protection policies impact on regional Victoria?

The Commission received input on environmental protection policies from submissions, public hearings and discussions. The key issues highlighted were:

- the impact of environment protection policies on regional economic development
- the use of draft policy documents in decision making.

Impact of policies on regional economic development

A number of inquiry participants considered that standards set by EPA Victoria in a number of areas are excessive, given the standards set in other jurisdictions or what is considered reasonable for industry compliance. The Victorian Farmers Federation raised issues relating to odour standards, in relation to the separation and buffer distances specified in the Victorian Code for Broiler Farms (chapter 9) and the use of chicken manure as a part of accepted farming practice. The SEPP ‘Air Quality Management’ establishes the framework for managing emissions (including odorous pollutants) into the air environment, and

Source: EPA (1996)

Steps in italics are requirements of the Act
provides the basis for the separation and buffer distances specified in the Victorian Code for Broiler Farms.

Inquiry participants also raised concerns about the ‘practically’ of odour standards for farming industries’ operations within regional Victoria. In supporting its call for a review of the EPA Victoria odour standards, the Victorian Farmers Federation stated:

Chicken manure adds organic material to the soil and is an accepted part of farming practice. The spreading of this manure is an issue due to smell. Under EPA legislation, it is an offence to allow offensive odours off your property boundary. This is clearly not practical in a state where $7.6 billion worth of agricultural produce is exported each year. (sub. 39, p. 35)

Concerns were also raised about the appropriateness of noise standards. In relation to mining activity, Tarnagulla Resources stated:

The EPA, as a referral authority to the shire, set all the environmental controls (not the Department of Primary Industries). Noise levels were set so that no work could be carried out at night on surface. (sub. 20, p. 3)

In relation to the interim gunshot noise guidelines, Field and Game Australia Inc. stated:

There appears to be no uniformity between states, the minimum standards applied in Victoria are inconsistent with standards established in other states. (sub. 12, p. 2)

Inquiry participants also commented that restrictive emission standards established by EPA Victoria act as a barrier to development in regional Victoria. The SEPP ‘Waters of Victoria’ sets a statutory framework for protecting Victoria’s fresh and marine water environments, and provides the basis for the regulation of water quality.

Australian Lake Trout commented that EPA Victoria emission regulations prevent the expansion of industry in regional Victoria:

EPA regulation is the sole reason constraining our expansion... We are an important sunrise industry. However confidence in our industry is at rock bottom. We are not prepared to invest additional funds into our business unless EPA adopt a more enlightened and reasonable attitude towards our industry. (sub. 46, pp. 2–3)

Some inquiry participants also considered that the implementation of environmental protection policies is not appropriately targeted at the major sources of pollution, with adverse consequences for particular industry sectors. The Gippsland Aquaculture Industry Network submission, citing the example of a proposed black bream aquaculture business’s attempt to obtain planning approval, stated:

When asked why there was so much concern by the EPA over the level of discharges into the lakes system when there wouldn’t be a teaspoon of phosphate come out of the facility in a year when there were 700 tonnes a year flowing in from dairy farms and towns according to a study just completed by the CSIRO, the answer was, ‘Because we can, this is a point discharge issue.’ In other words, ‘we can’t do anything about the real problem so we will do something here where we are able, irrespective of the quantitative impact’. The project eventually failed for lack of a planning permit. (sub. 29, p. 5)
This issue was also raised in the report of the National Competition Policy review of the Environment Protection Act. The report noted concerns about EPA Victoria’s perceived inequitable treatment of point source and diffuse source pollution, and recommended:

- Pollution, whether from point or diffuse sources, should be regulated equitably. Furthermore, point source polluters, through existing fees and levies, should not be required to subsidise regulation and monitoring of diffuse source pollution. Possible fees or levies on diffuse source polluters should be considered, where practical. (The Allen Consulting Group 2000, p. 29)

### Use of draft documents

Several inquiry participants commented on EPA Victoria’s use of draft documents in its regulation of specific activities. They noted, for example, that while there is a SEPP outlining regulated noise limits for industrial activity in metropolitan Melbourne—SEPP N-1 ‘Control of Noise from Commerce, Industry and Trade’—equivalent noise limits for industrial activity in regional Victoria are still in draft form. The Minerals Council of Australia (Victorian Division) stated:

In 1989 the Environment Protection Authority (EPA) promulgated noise limit guidelines for industrial activities in rural Victoria known as Interim Guidelines for Control of Noise from Industry in Country Victoria N3/89.

In October 2000 the EPA issued a draft recommendation document which superseded the 1989 interim guidelines document. This later document is known as Noise from Industry in Regional Victoria. The October 2000 document remains under review.

Neither the 1989 EPA rural guidelines nor the EPA October 2000 revision recommendations are law, or a regulatory tool in their own right, nor do they constitute a SEPP. The criteria are therefore not mandatory and can only be given force through another document such as a legal notice, planning permit, approval licence, mining licence or planning scheme...

The [Minerals Council of Australia] conservatively estimates that the cost of implementation of the draft standard on Noise from Industry in Regional Victoria has added $1 million per annum to the cost of doing business in rural Victoria. (sub. 17, p. 36)

Inquiry participants commented that EPA Victoria is using the environment effects statement process (see below), in particular, to enforce draft standards that are considered to be more stringent than finalised, agreed standards. The Minerals Council of Australia (Victorian Division) stated that the environmental effects statement processes:

... suffer from the misuse by agencies of draft or unofficial policy and guidelines when setting limits on project proponents. There are particular problems in this regard with discharges to land, discharges to air and noise licences. (sub. 17, p. 51)

Similar concerns were raised in relation to standards for silica and other particulate matter (see BML case study, box 7.4).

Inquiry participants also observed more generally that the use of draft policies and guidelines represents a source of significant uncertainty for business, with the potential for frequent changes in the requirements and conditions they must meet (see the International Power Hazelwood case study, box 7.3).
The use of draft guidelines in decision making can pose advantages and disadvantages. Without agreed guidelines or policies, draft guidelines may be useful in signalling the likely requirements under future guidelines and may ease the transition to a new regulatory environment. On the other hand, because drafts have no official status in their own right, their use can create uncertainty for business. This is particularly the case if the proposed standards impose significant costs on industry, appropriate standards are disputed or the standards are subject to frequent change. The discretionary application of draft guidelines to individual decisions also has the potential to create inconsistent regulation across individual businesses or activities.

The Commission’s view

Environmental regulations affect all businesses across the state, and compliance with environmental regulation is identified as having significant costs for business (AIG 2004a). At the same time, the community is becoming increasingly aware of, and sensitive to, environmental issues. As a result, it is important that good regulatory processes underpin the achievement of environmental objectives. As noted, the Commission does not have the technical expertise to comment on the appropriateness or otherwise of the standards giving effect to environmental protection policies. It can, however, assess the processes that lead to the development and implementation of these policies, to determine whether they are likely to lead to a well-informed balance between economic, environmental and social considerations.

As discussed in chapter 2, policy development is the initial stage in the regulatory process. It involves defining the problem, examining different ways to redressing it, and forming an appropriate policy response. The objectives of regulation are more likely to be achieved in a way that ensures benefits are maximised and costs minimised if the regulatory framework encourages the development of appropriately designed regulations, effective administration and enforcement, and continuous improvement.

Assessment of the policy impact assessment process

The main strength of the process followed by EPA Victoria in developing environmental protection policies is that it provides extensive opportunities for engagement with the community and business. As noted, EPA Victoria is required to advertise its intention to make or review a SEPP or WMP, issue a discussion paper, draft policy and PIA, and respond to feedback from stakeholders. Some elements of this process provide a useful model for a transparent and rigorous impact assessment process.

Perhaps the major shortcoming of the process is that it does not provide for any independent assessment of the PIA against best practice principles for regulation. As noted in chapter 2, Subordinate Legislation Act 1994 (Vic.) requires that Regulations that are likely to impose an appreciable economic or social burden on a sector of the public be subject to the RIS process. The Act requires that all RISs be independently assessed to ensure their analysis of costs and benefits is appropriate for public consultation on the proposed Regulations.

While the process of independent assessment does not guarantee that the benefits to the community of proposed regulations will outweigh the costs, it does help to ensure the community and the government have adequate information from which to assess the likely effects.
In principle, EPA Victoria's PIA process may result in environmental protection policies that achieve the objectives of the Act in a way that minimises any adverse effects on regional economic development. In these circumstances, introducing a further step (an independent review of the PIA) would only cause a delay (albeit minor) and further costs in introducing new environmental protection policies. The question is whether the lack of independent scrutiny of these assessments decreases the likelihood of achieving a well-informed balance between economic, social and environmental considerations.

To examine this issue, the Commission sought to review the adequacy of the PIA process. Without any guidelines on the preparation of PIAs, the Commission reviewed recent PIAs for several SEPPs mentioned by inquiry participants. As noted, participants raised issues relating to air and water quality. EPA Victoria recently reviewed the SEPPs protecting the air and water environments, and the PIAs prepared as part of these reviews are summarised below (boxes 7.1 and 7.2).

The Commission reviewed the following two PIAs—Variations to State Environment Protection Policy 'Ambient Air Quality' and State Environment Protection Policy 'Waters of Victoria'—by applying the following criteria which it uses to assess the adequacy of RISs:

- a definition of the nature and extent of the problem
- a statement of the objectives of the proposed policy
- an explanation of the proposed policy, its likely impact, and the enforcement regime
- the identification and analysis of the costs and benefits of the proposed policy
- a discussion of practical alternatives to the proposed policy
- the identification and analysis of the costs and benefits of the practical options identified
- a comparison of the net benefits of the proposed policy with the alternatives.

The strengths of the PIA process, for example the extensive opportunities for public input, have been noted. Effective consultation is recognised as an important element of best practice in regulation, and the PIA process is an example of good practice against this criterion.

Box 7.1: Policy impact assessment of variations to the SEPP 'Ambient Air Quality' and SEPP 'Air Quality Management'

The air environment in Victoria is protected by two SEPPs. These were created in February 1999 as a result of the first SEPP for the air environment being divided into two policies: SEPP 'Ambient Air Quality' and SEPP 'Air Quality Management'. EPA Victoria subsequently reviewed both SEPPs. The accompanying PIA Variations to State Environment Protection Policy 'Ambient Air Quality' and State Environment Protection Policy 'Air Quality Management' was released in January 2002.

The PIA (p. iv) states that the objectives of the review are that the SEPP (AAG) and SEPP (ADG) reflect the latest developments in environmental management to ensure that the community's aspiration for the cleanest air possible, having regard to the State's social and economic development, is achieved.

The review resulted in the proposal of expanded policy requirements. The PIA justified the expanded policy requirements on the grounds of community expectations for clean air (not specifically addressed in the PIA) and greater availability of scientific information.

(continued next page)
Box 7.1: Policy impact assessment of variations to the SEPP ‘Ambient Air Quality’ and SEPP ‘Air Quality Management’ (continued)

The PIA includes some general discussion (via case studies) of how some elements of the policy will impact on certain industries. It also contains information on the aggregate fee increase that would likely result from the proposed policy changes.

The PIA discusses two alternatives to the proposed changes—namely to do nothing or to amend the SEPP to reflect the improved scientific information without changing the policy framework. It also includes a summary of the impacts of the proposed policy changes and justifies supporting the preferred option instead of the alternatives.

The PIA cites benefits from the proposal but does not quantify them. Similarly, it identifies some costs of the proposal, but the cost analysis is limited. The PIA also discusses the consultation process undertaken as part of the review.

Box 7.2: Policy impact assessment of the SEPP ‘Waters of Victoria’

The first SEPP ‘Waters of Victoria’ was made in 1988, with a focus on the key water pollution challenges of the 1980s, particularly point source discharges. Following the development of the 1988 SEPP, awareness and understanding of ecologically sustainable development improved, new bodies for coastal and catchment management were established and a greater focus on diffuse pollution sources emerged. The 1988 SEPP was revised to reflect these changes, and the accompanying PIA was released in June 2003.

The PIA highlights the problems that have arisen from the intensified use of water environments in Victoria. The problems relate to excess nutrients, suspended solids, salinity, reduced environmental flows and altered flow regimes, heavy metals and oils, aquatic pests, depleted oxygen levels and falling pH levels. The PIA discusses the severity of the relevant environmental risks and notes the adverse consequences for the many social and economic activities that depend on water.

In summary, the SEPP aims to ensure catchments, rivers and coasts are managed in an integrated manner so actions in the catchment do not have a detrimental impact on the quality of fresh and marine water environments. Specific objectives are also outlined in the policy background paper and each of the accompanying information bulletins.

The PIA explains the proposed changes to the policies contained in the SEPP and describes the groups to whom the SEPP applies. The impacts on groups and other effects are detailed in clause 13 (‘General responsibilities for implementing the Policy’). The PIA indicates that new monitoring frameworks are being developed. It also explains that there is no legal penalty for noncompliance with the SEPP, but that EPA Victoria can use the provisions of the Environment Protection Act where necessary to take appropriate enforcement action.

The PIA cites benefits from the proposal, but does not quantify them. It attributes the inability to identify all associated social and economic costs to the fact that the proposed SEPP is flexible and non-prescriptive.

The base case (whereby the 1988 SEPP is unchanged) is the only alternative listed, and some drawbacks of relying on the status quo are briefly discussed. The reason given for rejecting the status quo is that it represents an outdated policy process that does not focus on the most relevant concerns.

The PIA outlines the consultation approach undertaken to develop the SEPP and indicates that regional organisations such as coastal marine authorities and coastal boards have indicated their support for the approach of the SEPP to regional target setting for water environment quality (pp. 34, 43).

Box 7.2: Policy impact assessment of the SEPP ‘Waters of Victoria’ (continued)

The PIA includes some general discussion (via case studies) of how some elements of the policy will impact on certain industries. It also contains information on the aggregate fee increase that would likely result from the proposed policy changes.

The PIA discusses two alternatives to the proposed changes—namely to do nothing or to amend the SEPP to reflect the improved scientific information without changing the policy framework. It also includes a summary of the impacts of the proposed policy changes and justifies supporting the preferred option instead of the alternatives.

The PIA cites benefits from the proposal but does not quantify them. Similarly, it identifies some costs of the proposal, but the cost analysis is limited. The PIA also discusses the consultation process undertaken as part of the review.
The Commission’s review of two examples of PIA documents identified differences in the extent to which they addressed the above criteria, with some criteria more nearly met than others. The review process identified several gaps common to both PIAs:

- inadequate explanation of how the proposed enforcement regime would work and how it differed from the current approach
- inadequate cost–benefit analysis, particularly a lack of quantitative analysis of the costs and benefits of the proposal and in comparison to the status quo and any alternatives
- no comparison of the net benefits of the proposed policy with those of the alternatives.

An explanation of the enforcement regime is an important element of a proposal. The Commission considers a good assessment would outline both the existing and proposed enforcement regimes, and their major differences.

The Commission considers that identification and analysis of the costs and benefits of a proposal is a key feature of good regulatory practice, where this analysis is proportional to the level of risk that the proposal represents. Equally, the Environment Protection Act also requires the PIA to assess the net benefit of the proposed policy, at least qualitatively, and to the extent possible, quantitatively. The Commission considers a good cost–benefit analysis would:

- define the base case
- explain how the proposed policy would address the identified problems, and thereby demonstrate the benefits of the proposal
- identify all groups likely to be affected and identify and assess the impacts on these groups (including the direct and indirect costs of implementation, equity issues and intangible impacts)
- identify the costs and benefits from social, environmental and economic perspectives (including compliance, administrative and resource allocation costs)
- where relevant, include a sensitivity test for impacts subject to uncertainty
- ensure there is no ‘double counting’ in the cost–benefit analysis
- identify the net present value of the proposal.

These principles would apply equally to an assessment of the net benefit of alternatives.

The Commission notes that environmental outcomes are often uncertain and that this uncertainty poses challenges for assessing the costs and benefits of proposals. There are examples, however, of impact statements prepared for environmental regulatory proposals where cost–benefit analysis has been assessed as being adequate to inform consultation and decision making. The Commonwealth Office of Regulation Review website identifies the RISs for Minimum Energy Performance Standards for Electrical Appliances as being examples of the level of analysis appropriate in a COAG RIS at the consultation stage for significant proposals (ORR 2004). The Commission reviewed the Minimum Energy Performance Standards for Electrical Appliances (Air-conditioning and Heat Pumps) RIS and also found that the information provided was adequate to inform consultation and decision making.

The Commission notes that the extent to which costs and benefits can be accurately quantified will vary across proposals. Nonetheless it considers there is scope to improve the cost–benefit analysis provided in PIAs. Other impact assessments that have addressed environmental issues (such as the RIS for electrical appliances) may provide insights.
into techniques and approaches appropriate to the analysis of environmental costs and benefits.

In so far as the PIAs do not appear to meet some key criteria for best practice regulation, the Commission’s review of recent PIAs suggests there may be scope to improve the PIA process. As noted, the main gap in the process appears to be the lack of an independent review of PIAs.

Independent review of regulatory proposals is considered to be a key element of good practice. The Organisation for Economic Cooperation and Development (OECD) stated:

A central pillar of regulatory policy is the concept of an independent body assessing the substantive (i.e. rather than legal) quality of new regulation and working to ensure that Ministries comply with the quality principles embodied in the assessment criteria. (OECD 2002, p. 89)

Independent review of the PIA process would have the benefit of improving the transparency, consistency and quality of the analysis, which underpin its credibility and promote confidence in the quality of assessment and the broader process. In its 1995 recommendation on improving the quality of government regulation, the OECD stated:

A quality control process, such as through independent reviewers, is necessary to ensure that analysis is consistent and reliable. (OECD 1995, p. 17)

In the context of gate-keeping arrangements for legislative review, the Productivity Commission stated:

As the [National Competition Council] has highlighted, a key requirement for ensuring good policy making is effective independent scrutiny of, and public reporting on, the performance of departments and agencies in this area. In the [Productivity] Commission’s view, there should be independent bodies with responsibilities for gatekeeping in each jurisdiction. (PC 2004b, p. 233)

There may be a number of ways to realise the benefits of an independent review of the PIA process:

- Require the Minister for Environment to use existing powers under the Environment Protection Act (s. 18C(2)) to establish a panel to review the adequacy of a PIA.
- Require that SEPPs and WMPs be subject to a standard RIS-type process.
- Require EPA Victoria or the Minister for the Environment to seek an independent assessment of the PIA by an existing review body.

The first option, whereby the Minister appoints a review panel, is relatively simple to implement in that it likely can be done within the existing legislative framework. The extent to which the panel is independent will depend on the appointments made by the Minister. A drawback of this approach, however, is the creation of an additional body within the context of an already complex regulatory framework. This option would also not promote consistency in impact assessment processes across EPA Victoria (which prepares both PIAs and RISs) and the rest of government.

The second option—to make a regulation under the Subordinate Legislation Act to require SEPPs and WMPs to be subject to a standard RIS process—would have the advantage of introducing independent scrutiny of the proposal. One drawback is that this approach may lose some of the benefits of the current SEPP and WMP policy development process, such as the longer consultation periods. The Commission notes, however, that EPA Victoria advocates a similar approach for consultation on the RISs that it prepares. Chapter 11 also

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regulates longer consultation periods for RISs. Any extension of the consultation period would increase the attractiveness of this option and bring it closer to the third option.

The third option—a hybrid approach preserving the consultation benefits of the current PIA approach but also requiring EPA Victoria to seek an independent assessment of the PIA from an existing body—would also provide for independent scrutiny of the proposal, but without requiring the creation of a new body and, therefore, without increasing the complexity of the regulatory framework.

Given the period currently allowed for consultation on RISs, the Commission considers the third option to be the preferable means of introducing independent scrutiny of PIAs. This would preserve the positive features of the current PIA process as well as introducing the additional benefits of independent review. This option could be achieved simply through administrative means.

While providing a mechanism to achieve the benefits of independent review, the introduction of independent PIA assessment may also impose additional costs on the PIA process. The costs will arise in relation to the added time required to obtain an assessment of the PIA, along with any time and resources required to respond to suggested changes (including any additional consultation requirements). The scale of the costs will depend on the extent of change required: if limited changes are suggested, the additional costs will be small and unlikely to outweigh the benefits of greater consistency and confidence in the process. If the changes suggested are more significant, the costs will be higher, but the quality of the assessment (and possibly the SEPP or WMP too) will improve. The strong interests of business and the community in ensuring regulation is efficient and effective in achieving environmental objectives appear to support the introduction of independent PIA reviews.

Draft recommendation 7.1

That the policy impact assessment (PIA) process be modified to require EPA Victoria or the Minister for the Environment to seek an independent review of draft PIAs.

The Commission has been advised that EPA Victoria does not have any guidelines on the preparation of PIAs, although it does have guidelines on the preparation of RISs. The Environment Protection Act provides limited guidance on the content of a PIA, so there may be benefits in developing PIA guidelines to clarify the information required to enable a well-informed assessment of the net benefits of a proposed new or amended SEPP or WMP. If an independent review process were introduced, it would be desirable for the guidelines to reflect the assessment criteria applied by the independent reviewer.

Use of draft documents

As noted, inquiry participants expressed concerns about the use of the draft documents, particularly the interim noise requirements for industry in regional areas. The Commission notes that the EPA Victoria website notes that the interim guidelines are under review and states that a finalised version will be released ‘later in 2002’. The Commission considers that these circumstances create uncertainty for businesses, which are likely to be anticipating revised standards at any time but without guidance on when they may be forthcoming.

Draft recommendation 7.2

EPA Victoria should seek to finalise draft or interim environmental guidelines as quickly as possible. Finalisation of the existing draft or interim guidelines, including those relating to noise in regional areas, should be a priority.
7.3 Environment effects statements

The process for developing the native vegetation controls can be contrasted with the approach to developing environmental protection policies. Whereas the native vegetation controls are given effect through the planning system, and changes in them are not subject to standard regulation review processes, environmental protection policies are implemented through statutory instruments and thus are subject to consultative review processes. The environment effects assessment process represents another approach to environmental regulation. It seeks to ensure, where a proposal is considered to have significant potential environmental effects, that these effects are evaluated and reflected in approvals required under planning and other legislation.

The planning approvals process deals with the majority of activities impacting on the environment. Each year, however, five to ten proposed major projects in regional Victoria must go through a more extensive assessment process under the Environment Effects Act (DSE, pers. comm., 22 December 2004). The Minister for Planning has the capacity to direct that a proposed project undergo an environment effects assessment before planning and other necessary approvals are granted. Integral to this process is the preparation by the project proponent of an environment effects statement (EES). This statement and its consideration form an important avenue for ensuring a well-informed balancing of the economic, environmental and social effects of major projects.

Most of the proposals recently required to prepare an EES have been located in regional Victoria. They include coal mining in the Latrobe Valley, gold mining at Bendigo, mineral sands mining near Horsham, wind energy facilities, road projects, waste facilities, and residential and recreational developments (DSE 2004g). Regional communities and businesses have a vital interest in ensuring these environment effects assessment processes are efficient and effective.

Environment effects assessment process

The environment effects assessment process is laid out in the Environment Effects Act and supported by environmental impact assessment (EIA) guidelines (with specific guidelines for mining projects). The processes set out in the Act and the guidelines are not prescriptive and appear to provide considerable discretion as to the types of activity for which an EES may be required, as well as the matters to be considered during the assessment process.

Key features of the assessment process

The environment effects assessment process has several key features that are relevant to the issues raised by inquiry participants:

- The Act does not contain a statement of its objectives or purpose. These are laid out in the EIA guidelines, which are issued by the Minister for Planning under the Act. According to the EIA guidelines, the EES process aims to:
  - ensure decisions are taken following timely and sound environmental advice
  - encourage and provide opportunities for public participation in assessing environmental aspects of proposals before decisions are taken
  - ensure proponents of proposals take primary responsibility for protection of the environment relating to their proposals
  - facilitate environmentally sound proposals by minimising adverse impacts and maximising benefits to the environment
provide a basis for ongoing environmental management, including through the results of monitoring

— promote awareness and education in environmental values.

- The EES process could be applied to a wide range of activities, although evidence suggests it has been applied selectively by Victorian Governments. The Environment Assessment Review Issues and Options Technical Paper suggests a more rigorous review process is generally required only where a proposal raises environmental issues of state or regional significance and may have potential impacts that are not easily or adequately addressed by other approval processes (DOI 2002c, p. 1).

- The Act does not define either ‘environment’ or ‘significant effect’, although the EIA guidelines define the term ‘environment’ broadly, to include physical, biological, cultural, economic and social factors. The EIA guidelines also indicate that the Minister, in considering whether a proposal will require an EES, considers broad criteria developed by the Australian and New Zealand Environment and Conservation Council (ANZECC) in 1993.

- While the Act does not lay out criteria for determining when an EES is required, the EIA guidelines list activities that may be required to prepare an EES, including: public works, any decision by a person or body under Victorian Law, and any other planning works that the Minister for Planning may specify. There is no mention of factors such as the scale of the proposed project.

- The ‘standard’ EES process involves key steps, including: scoping of the EES, preparation of the EES by the proponent, public exhibition of the EES and calls for public submissions, a panel inquiry (including public hearings) and the development of the Minister’s assessment of the proposal. Following completion of the inquiry process, the Minister for Planning’s assessment of the environmental effects is forwarded to the decision making body (usually one or more Ministers, or State or local government agencies) to inform their decisions whether to approve the proposal.

- In a number of cases, the Victorian environment assessment process could operate in parallel with a similar Commonwealth process. Under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), the Commonwealth Government may require an environmental assessment of proposals that may have a significant impact on a matter of national significance (such as a nationally threatened species of flora or fauna). It may, instead, accredite state assessment processes and in limited circumstances, state approvals, avoiding the need for a parallel process. Accreditation may occur either on a case-by-case basis or via a bilateral agreement. The Commission understands that Victorian and Commonwealth governments have not yet entered into a bilateral agreement, so that Commonwealth accreditation of the Victorian EES process occurs only on a case-by-case basis.

- While the Environment Effects Act sets out the broad process involved, it does not specify any timelines for the completion of these steps. Instead, the EIA guidelines seek to provide indicative timeframes for some of the EES phases (table 7.1). These timelines do not appear to account for further information requests.

- Legally, the role of the EES process is to inform approvals processes required under other legislation covering areas such as planning, mining and environmental protection. In practice, however, the Minister’s assessment forms the basis for decision making under approval processes required by other legislation.

To summarise, the Environment Effects Act and the EIA guidelines broadly describe the EES process. While these combine to indicate the types of proposal likely to require an EES, the Minister appears to have significant discretion in determining when an EES will be required. Similarly, while the EIA guidelines indicate the timeframes for some parts of EES process, they do not address other parts, so the overall EES process is largely open ended.
Concerns about the clarity, certainty, timeliness and transparency of environment assessment processes led to the government initiating a review of the system in 2000.

**Figure 7.3: Environment effects assessment process in Victoria**

- Notification—at initiative of proponent, decision maker etc.
- Triggering of environment effects statement (EES)—at discretion of the Minister for Planning
- Scoping of EES—a general process under EIA guidelines
- EES—prepared by proponent
- Public submissions—received in response to exhibited EES
- Panel inquiry—public hearings, then a report to the Minister for Planning
- Assessment report—issued by the Minister for Planning after the panel inquiry

*Source: DSE (undated A)*

**Table 7.1: Indicative timeframes outlined in EIA guidelines**

<table>
<thead>
<tr>
<th>Phase / stage</th>
<th>Indicative timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision from the Minister for Planning on whether a proposal requires an EES</td>
<td>Usually provided within 28 days of receiving all relevant information</td>
</tr>
<tr>
<td>Public consultation on draft scope of the EES (outline of proposed contents of the EES)</td>
<td>Generally 28 days</td>
</tr>
<tr>
<td>Public exhibition of the EES</td>
<td>Usually two months (but may be altered by the Minister for Planning in certain circumstances)</td>
</tr>
<tr>
<td>Minister’s assessment of the environmental effects of the proposal</td>
<td>Three months after the close of the exhibition of the EES if a panel is not appointed; or one month after the presentation of the report of any inquiry (including a joint EES/planning scheme amendment inquiry) appointed by the Minister for Planning</td>
</tr>
</tbody>
</table>

*Source: DPD 1995*
Environment assessment review

In November 2000, the then Minister for Planning announced a review of Victoria's environment assessment procedures under the Environment Effects Act to help deliver better balanced environmental, social and economic outcomes, as well as more transparent and accountable processes. The aims of the review were to:

- review current procedures for environment assessment of proposals
- develop improved procedures
- evaluate the need for, and appropriate scope and form of, an environment assessment process for strategic proposals (including those for land use, development, resource management and the application of new technologies) that may have significant environmental impacts or implications (DOI 2002c, p. 3).

Overview of the environment assessment review process

Following announcement of the review, the former Minister for Planning appointed a stakeholder reference group (consisting of representatives of key non-government stakeholder organisations, government agencies and the community) to advise on issues and options for improving the environment assessment process. The Department of Infrastructure also conducted workshops between February and May 2001 with a range of stakeholders with experience of the EES process.

Reflecting the issues advanced in the stakeholder workshops, the government prepared an issues and options paper with advice from the stakeholder reference group. The paper consisted of a summary paper and a detailed technical paper (DOI 2002d and 2002c), and was released in 2002 to assist and encourage public input to the review. The Minister for Planning appointed an independent advisory committee (chaired by Richard Seddon) to consider the public submissions received on the issues and options paper. In December 2002, the Committee reported its findings to the Minister for Planning, with recommendations for reforming the environment assessment process in Victoria (DSE, undated B).

The advisory committee’s report and recommendations were not made public, and the government is yet to release its response. The Department of Sustainability and Environment (DSE) has advised the Commission that the government is finalising its reform package (pers. comm., 22 December 2004). As a result, the Commission is unable to consider either the advisory committee’s recommendations or the government’s response. It can, however, review and comment on the proposed reforms discussed in the environment assessment review’s issues and options paper.

Summary of issues considered and proposed reforms

While noting that stakeholders had made positive and supportive comments about the EES process, the government’s issues and options paper also recognised that the current EES process offers opportunities for improvement and reform. The paper (DOI 2002d, p. 9) stated that ‘environment assessment procedures in Victoria have not kept pace with best practice in project planning and environment management’ and noted, for example, that ‘the current process does not fully meet Victoria’s commitments under the 1992 Intergovernmental Agreement on the Environment (IGAE) to adopt certain minimum

2 At the time of the review, the Department of Infrastructure administered the EES process. Following a departmental restructure in December 2002, this responsibility was transferred to the newly established Department of Sustainability and Environment.

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standards for environment assessment, in the wider context of principles for environmental management and decision-making (DOI 2002d, p. 9).

The issues and options paper identified issues for consideration in the review, including:
the types of proposals requiring environment assessment; the transparency of decisions; the cost and timeliness of the EES process; the appropriate level of assessment; and the appropriate approach to assess the implications of a proposal for sustainability (addressing the potential social, health, cultural and economic impacts of the proposal).

The issues and options paper also proposed a reformed model of environmental assessment. At the heart of the proposal was the introduction of a suite of assessment processes to more closely match the level of assessment required with the level of environmental risk posed. Projects with potential impacts of local significance would require a relatively low level of assessment, while projects with more complex potential impacts of state significance would require a comprehensive assessment process (DOI 2002d, p. 26).

Relative to the current EES process, the reformed process proposed in the issues and options paper was also considered to offer opportunities for: quicker screening of proposals against clearer requirements; better focused studies requiring less time and fewer costs; a clearer framework for considering environmental, social and economic outcomes; and clearer accountability for implementation of the assessment (DOI 2002d, p. 27).

Challenges

Participants in this inquiry raised similar concerns about the way the environment assessment process has been implemented in Victoria. They considered that the current process is contributing to uncertainty for investors, unnecessary complexity that is imposing costs and delays, and the imposition on projects of strict conditions that are not justified given the environmental risks posed.

In assessing these concerns, a consideration for the Commission was that they were mostly from the mining sector, which has been represented in a number of recent EES processes. In addition to the Commission reviewing two mining sector submissions relating to these issues, the same concerns were raised in a roundtable meeting with representatives of the major Victorian miners. The view of the submissions and at the roundtable was that the EES process in Victoria is one of several areas of regulation contributing to the mining sector’s adverse perceptions of the regulatory environment in Victoria (chapter 9).

A number of inquiry participants commented that the EES process overall is complex, time consuming and costly. The Minerals Council of Australia (Victorian Division) stated:

There are numerous problems with the EES process. These include the cost of the study, the time taken for the study, the management of the public consultation process by the government rather than the proponent, and the uncertain outcome even when the planning panel recommendations are agreed to by the proponent. (sub. 17, p. 31)

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Consequently, the impact studies cost a disproportionate amount of money and the process takes an excessively long time to reach a conclusion in comparison with [the] economic importance of the project to the community. In some instances the cost of gaining approval can be 5 per cent of the cost of development and take longer than the time to complete the development. (sub. 17, pp. 32–3)

The issues and options paper prepared for the review of the environment assessment process made a similar observation:

The current EA [environment assessment] process does not provide a comprehensive, flexible and efficient system for delivering appropriate forms of assessment for all types of proposals. (DOI 2002d, p. 15)

A feature of many of the projects required to go through an EES process is that they require multiple approvals and input from a wide range of government regulators and agencies. A potential benefit of the EES process, therefore, is that it can inform multiple sequential processes that might otherwise run sequentially. Inquiry participants considered, however, that government input to EES processes is not well coordinated in many cases, which has led to conflicting advice, even from different areas within the same department.

International Power Hazelwood, which is going through an EES process in relation to a proposed expansion of its coal mining operations (see case study, box 7.3), stated:

The Intergovernmental Agreement on the Environment commits the signatory governments to best practice in the assessment and management of environmental impacts. ... Contrary to the intention of this commitment, IPRH and its consultants were, in most instances, left to identify, understand and interpret government policy and guidelines in assessing the potential environmental impacts of the West Field Project. There was uncertainty on the applicable policies and how they should be applied and this led to conflicting advice from within and across government agencies, additional work and potentially costly conditions of approval. (sub. 48, p. 2)

Similarly, the Minerals Council of Australia (Victorian Division) stated:

These uncoordinated practices led to extremely confusing and difficult situations for the independent panel to resolve. They also place the proponent in the impossible position of needing to find solutions to satisfy every corner of Government. Delays are inevitable and are costly to both industry and government, and ultimately the community foregoes part or all of the economic benefits of the prospective investment. The result is that Victoria is seen by investors as an extremely difficult State to deal with and sends a message that is completely at odds with the encouragement to invest promoted by all Ministers. (sub. 17, p. 32)

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Some inquiry participants also considered that the EES process has become more complex and costly as a result of the open-ended consultation and appeals processes that are a feature of the broader approvals processes that can create significant delays. International Power Hazelwood noted appeals by third parties had the potential to significantly delay and add considerable costs to a project (box 7.3). Similarly, the Minerals Council of Australia (Victorian Division) stated:

In other cases, organised, city-based activists who oppose development projects in regional Victoria, use a tactic of drip-feeding referrals to the Commonwealth seeking a ruling under the Commonwealth Environment Protection and Biodiversity Conservation Act. Each referral causes additional delays and cost to the proponent in the approval process.

More and more, proponents are finding that vexatious plaintiffs are using every avenue to exploit the legal process at the local, state and Commonwealth level to frustrate economic development in regional Victoria. (sub. 17, p. 22)

It is unfortunate that the inquiry did not receive any comprehensive submissions on the EES process outside the mining sector, making it difficult to form general conclusions about the extent, magnitude and consequences of the challenges identified by inquiry participants, although this was part of the aim of the environment assessment review. Nevertheless, for a general understanding of how the EES process may impact on regional economic development, the Commission sought input from two mining companies with recent experience with the EES process (boxes 7.3 and 7.4). The Commission also provided DSE with the opportunity to comment on the claims made by these companies. (The department's views are reflected where appropriate in the case studies.) The Commission was interested in understanding how this process might be improved, rather than judging the merits of the issues being considered.

Box 7.3: Case study—International Power Hazelwood (IPRH)

Hazelwood mine and power station were purchased from the State of Victoria in 1996 for $2.35 billion, with the expectation of a 40-year life based on coal reserves within the mining licence granted at the time of sale. IPRH supplies approximately 22 per cent of Victoria’s baseload electricity and approximately 5 per cent of the National Electricity Market. It employs 500 people directly and another 300 indirectly through contractors, and estimates that another 2000 jobs in the local community depend on the business (Traralgon transcript, p. 54).

The West Field Project involves an extension of the Hazelwood mine and requires relocation of the Morwell River (currently contained within a 4-kilometre long, 3-metre diameter concrete pipe), two creeks, the Strzelecki Highway and several local roads. Investment in the West Field Project is valued at $380 million, with $70 million to be spent on environmental works relating to shifting the river and upgrading it to a riverine system. The West Field Project comprises several phases. IPRH commenced project-planning works in August 1999, and phase 1 works commenced in 2000. It stated that the timing of the West Field Project is critical to the ongoing operations of the Hazelwood power station, with current coal resources predicted to be exhausted by 2009.

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IPRH stated that the project requires planning permits under the Planning and Environment Act; a planning scheme amendment; an EPA Victoria works approval; a licence to construct stream diversion works; a mining licence; and a work plan and work authority. There was a need to also negotiate agreements with VicRoads, landowners and services owners.

Some inquiry participants also considered that the EES process has become more complex and costly as a result of the open-ended consultation and appeals processes that are a feature of the broader approvals processes that can create significant delays. International Power Hazelwood noted appeals by third parties had the potential to significantly delay and add considerable costs to a project (box 7.3). Similarly, the Minerals Council of Australia (Victorian Division) stated:

In other cases, organised, city-based activists who oppose development projects in regional Victoria, use a tactic of drip-feeding referrals to the Commonwealth seeking a ruling under the Commonwealth Environment Protection and Biodiversity Conservation Act. Each referral causes additional delays and cost to the proponent in the approval process.

More and more, proponents are finding that vexatious plaintiffs are using every avenue to exploit the legal process at the local, state and Commonwealth level to frustrate economic development in regional Victoria. (sub. 17, p. 22)

It is unfortunate that the inquiry did not receive any comprehensive submissions on the EES process outside the mining sector, making it difficult to form general conclusions about the extent, magnitude and consequences of the challenges identified by inquiry participants, although this was part of the aim of the environment assessment review. Nevertheless, for a general understanding of how the EES process may impact on regional economic development, the Commission sought input from two mining companies with recent experience with the EES process (boxes 7.3 and 7.4). The Commission also provided DSE with the opportunity to comment on the claims made by these companies. (The department's views are reflected where appropriate in the case studies.) The Commission was interested in understanding how this process might be improved, rather than judging the merits of the issues being considered.

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Box 7.3: Case study—International Power Hazelwood (IPRH) (continued)

The Victorian Government determined that ‘in light of potentially significant environmental impacts of the proposal’, phase 2 of the West Field project required an EES. The West Field Project (phase 2) has also been deemed a ‘controlled action’ under the Commonwealth Environment Protection and Biodiversity Conservation Act for potential impacts on the threatened Strzelecki Gum. The Commonwealth Government has accredited the Victorian EES to assess the relevant environmental impacts under the federal Act.

IPRH originally sought an EES to simplify the otherwise interrelated and multiple individual approvals processes. The intention was that the EES, and the Minister’s assessment, would expedite the approvals required for the West Field Project to proceed.4

IPRH stated:

Preparation of the EES and the conduct of the associated stakeholder consultation has identified a number of issues that present potential barriers to investment in regional Victoria and IPRH’s capacity to develop the West Field of the Hazelwood Mine. (sub. 42, p. 1)

IPRH’s experiences with the EES process are discussed below.

The EES process to date

IPRH wrote to the Minister for Planning in December 2002 requesting advice on the need for an EES. DSE advised that a formal request for advice under s. 8 of the Environment Effects Act needs to come from a decision maker under Victorian law, and liaised with the Department of Primary Industries to progress the request. A formal request from the Minister for Energy Industries and Resources was received by the Minister for Planning in March 2003 (DSE, pers. comm., 22 December 2004).

On 4 April 2003, the Minister for Planning determined that the West Field Project (phase 2) required an EES. The Commonwealth Government accredited the EES process on 28 July 2003 and DSE finalised the assessment guidelines in August 2003. IPRH finalised the EES in early May 2004 and the department placed it on exhibition from 10 May to 18 June 2004. The Minister for Planning appointed a panel inquiry jointly under provisions of the Environment Effects Act and the Planning and Environment Act. The panel inquiry hearings commenced on 26 July 2004 and were adjourned in mid-August 2004 pending a decision on a third party application to the Victorian Civil and Administrative Tribunal in relation to procedures under the Planning and Environment Act. As a consequence of the tribunal decision (on the scope of assessment required for a planning scheme amendment), further hearings are to be held in January 2005 before the panel finalises its report for the Minister for Planning in March 2005.

Resource implications of the EES process for IPRH

IPRH estimated that the EES process has consumed the equivalent of three person years since 2003, and that a further 20 person years were engaged in project planning and EES preparation between 1999 and 2003 (IPRH, pers. comm., 26 November 2004). In financial terms, IPRH estimated that the EES process has cost the business approximately $3.9 million to date, or approximately 1 per cent of the value investment in the West Field Project (pers. comm., 26 Nov 2004). The department noted that estimates of the costs of EES processes are problematic because costs for some activities (such as those relating to engineering design, environmental studies and legal costs) are inherent aspects of major project developments (DSE, pers. comm., 22 December 2004).

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### Box 7.3: Case study—International Power Hazelwood (IPRH) (continued)

#### Delays

IPRH expressed concerns with the open-ended nature of the EES process, particularly the potential for appeals by third parties to delay the process:

- Risks to the timely and efficient conduct of the EES process have increased with some opponents to projects seeking to influence approval through challenges to the administrative procedures i.e., advertisement of assessment guidelines, exhibition of EES report, appointment of panel, terms of reference of panel and jurisdiction of panel to hear certain matters. *(sub. 48, p. 3)*

Such appeals add considerable cost to the planning approvals phase of projects and increase the anxiety of investors. *(sub. 48, p. 3)*

IPRH also commented that:

- Substantial costs are associated with any court action and with limited grounds for the awarding of costs there is little disincentive to instigating such appeals. *(pers. comm., 26 November 2004)*

The IPRH submission provided the following two examples:

1. an application to the Victorian Civil and Administrative Tribunal seeking to broaden a Panel’s examination of a proposal beyond the panel’s terms of reference
2. multiple applications to the Commonwealth Department of the Environment and Heritage seeking a reconsideration of IPRH’s Environment Protection and Biodiversity Conservation Act referral on the grounds of significant new information of a highly speculative nature. *(sub. 48, p. 3)*

IPRH argued that a number of these appeals by third parties are aimed at delaying the project to such an extent that critical timelines cannot be met, thus influencing investment decisions *(sub. 48, p. 3).*

#### Government as a source of uncertainty

IPRH also considered that there had been instances where it received conflicting advice from within and across government agencies, which resulted in additional work and potentially costly conditions of approval, and contributed to the uncertainty for investment decisions.

IPRH gave an example relating to studies covering road works. According to IPRH, in 2000 (before the commencement of the EES), it commissioned a feasibility study of options for realigning the Strzelecki Highway. This study was conducted in consultation with the relevant road authorities—VicRoads and Latrobe City Council. A further study was commissioned in 2003 as part of the EES. This subsequent study confirmed the findings of the feasibility study.

IPRH stated that the technical reference group then requested a third study that included a more rigorous assessment based on a VicRoads algorithm. DSE argued that it had identified the need for a more rigorous and transparent investigation of options for the realignment of the Strzelecki Highway and adjoining roads *(pers. comm., 23 December 2004).* IPRH stated that the algorithm could be only partly applied because the project involved changes different from those for which the algorithm was usually applied. According to IPRH, the third study, which took two months to complete and cost around $40,000, confirmed the findings of the two previous studies *(pers. comm., 26 November 2004).*

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IPRH also noted that the lack of certainty about how the government will apply native vegetation policy has the potential to significantly increase the cost of the West Field Project. It stated:

The implementation of net gain which is a requirement of Victoria’s Native Vegetation Management—A Framework for Action has the potential to significantly increase project costs if the policy and associated guidelines are applied literally by the Department of Sustainability and Environment. (pers. comm., 26 November 2004)

IPRH estimated that the costs of a literal application of the native vegetation policy could impose an additional liability of $250 000 (pers. comm., 26 November 2004).

Bendigo Mining Limited (BML) has been subject to numerous approval, licensing and permitting processes. This case study focuses on BML’s experiences in relation to the most recent supplementary environment effects statement (SEES) process.

Over the past 10 years, BML has spent $105 million exploring the resource potential of the New Bendigo Gold Project. BML has determined that the New Bendigo Gold Project has an inferred resource of 11 million ounces of gold, and is in the process of moving the mine into production. At full production, the New Bendigo Gold Project is expected to be one of the largest gold mines in Australia and is expected to provide in excess of 550 direct jobs and contribute over $200 million per year to the Bendigo economy (FitzGerald 2004; BML, pers. comm., 6 December 2004).

The move to production involves expansion of BML’s Carshalton mine. The Minister for Planning determined in April 2003 that the proposed mine expansion would require preparation of a SEES. BML had prepared separate SEESs for approval of other phases of the project. The proposed mine expansion also required approval under the Commonwealth Environment Protection and Biodiversity Conservation Act. The Commonwealth Minister accredited the Victorian SEES process to assess the relevant impacts on threatened and migratory species listed under the federal Act and has since approved the expansion.

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Box 7.4: Case study—Bendigo Mining Limited (BML) (continued)

The SEES process to date
BML approached DSE for advice on the need for further environment assessment in mid-2002. In September 2002, BML was advised that the office of the Minister for Energy and Resources would write to the Minister for Planning seeking formal advice on the need for an EES. According to BML, this letter was not sent until March 2003. The Minister for Planning determined that a SEES would be required in April 2003.

The Minister directed that a technical reference group (TRG) be set up, consisting of representatives of government agencies with environmental assets potentially affected by the proposal. According to BML, the technical reference group consisted of 32 representatives from 10 different agencies (such as EPA Victoria, six areas of DSE, the Department of Primary Industries, the Department of Human Services, Aboriginal Affairs Victoria and the City of Greater Bendigo). DSE believed there were fewer individuals and agencies represented. It also stated that it had only two representatives, but that BML also held discussions with staff representing specific policy areas, including salinity, ground and surface water, vegetation and Crown land management (pers. comm., 22 December 2004).

The SEES was placed on exhibition from late March to late April 2004, and a panel hearing was held in June 2004. The panel forwarded its report to the Minister for Planning in August 2004, and the Minister’s Assessment was provided in October 2004. The Commonwealth Minister approved the expansion in December 2004.

Resource implications for BML
BML estimated that the SEES process has cost $1.23 million to date. This includes expenditure on specialist impact assessments and peer reviews, SEES document development, consultation with government and the community, administration and the panel hearings. This estimate does not include salary costs, house and land purchases, net gain offsets and other compensatory actions, bonds or operating costs for the expansion activities.

BML estimated that compliance with the SEES and other approval processes has involved the equivalent of at least eight person years since December 2002 and approximately $1 million in salary expenses (pers. comm., 6 December 2004).

DSE noted that such estimates are problematic because they could include costs for activities that are inherent aspects of major project developments (pers. comm., 22 December 2004).

Delays
BML indicated that government departments have caused delays to the SEES process, despite BML’s efforts to agree on timeframes with key players at the outset. It stated that had it not been advised against writing to the Minister for Planning directly, it could have commenced the SEES six months earlier. DSE pointed out that s. 8 of the Environment Effects Act requires a decision maker (not a project proponent) to seek the advice of the Minister for Planning (pers. comm., 22 December 2004).

BML also indicated that the SEES timeframes were further extended by delays in obtaining feedback on key steps of the process and by contradictory advice that resulted in additional work and consequent delays. BML estimated that the schedule for approval agreed with the Minister for Energy and Resources in 2002 has consequently been delayed by a total of eight months (pers. comm., 6 and 20 December 2004).

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Box 7.4: Case study—Bendigo Mining Limited (BML) (continued)

Conflicting and/or inconsistent advice

BML considered that the provision of conflicting and/or inconsistent government advice was a source of uncertainty throughout the SEES process, and concurred with the following statements made in the Minerals Council of Australia (Victoria Division) submission:

Over recent years a practice has evolved where the different departments and agencies of government make separate and sometimes conflicting submissions to the independent panel reviewing the EES of a proponent.

For example, at the Bendigo Mining supplementary EES panel hearings in May 2004 [the Department of Primary Industries] presented a submission that was consistent with government policy on [ecologically sustainable development] and the previously agreed options of the government’s technical review group (TRG) established for the EES. DSE land managers, however, presented an alternative submission which included a completely new option for the project on the basis of biodiversity values and not the [ecologically sustainable development] principles. This was in spite of the involvement of the agency concerned being part of the TRG set up to guide the EES process. (sub. 17, p. 32)

BML considered that the DSE submission did not adequately consider the social and economic aspects of the proposal, and that this failure to adopt an ecologically sustainable development approach resulted in an unnecessary extension in the panel hearing, additional work and a stricter than necessary outcome for BML (pers. comm., 6 December 2004).

DSE stated that it has particular legislation and policy for which it is responsible, and its role is to advise the panel accordingly. It said that the function of the panel is to consider all relevant legislation and policies (pers. comm., 22 December 2004).

BML also considered that the SEES process was used to implement new environmental standards that are not consistent with government policy, have not been developed through the required consultation process and have no justified scientific derivation—for example:

During the SEES process, EPA attempted to obtain agreement from Bendigo Mining on standards that did not exist for crystalline silica and PM 2.5 dust fractions. This approach was outside the discussions occurring with the PEM working group and was at odds with the direction agreed with that group. (pers. comm., 6 December 2004)

BML consider that in light of such an approach by EPA Victoria:

...the panel outcome was more stringent than necessary, which will result in the cost of operating, in particular in relation to air monitoring, increasing from $18,500 to $450,000 per annum. (pers. comm., 6 December 2004)

BML also noted other instances of EPA Victoria providing conflicting advice and stated that the ‘dissent and changing goal posts” caused by EPA led to a very expensive impact assessment process for BML (pers. comm., 6 December 2004).

On the issue of draft policies, DSE observed that draft policy in some cases has some status and may best indicate the relevant matters that decision-making bodies will consider, and that such policy should, therefore, provide relevant context for EES studies (pers. comm., 22 December 2004).

Sources: Discussions with Bendigo Mining Limited (November 2004) and DSE (December 2004).
**The Commission’s view**

The Commission observes that many of the issues raised by inquiry participants—namely, the complexity, cost and timeliness of the EES process; the appropriate level of environment assessment; and the achievement of a well-informed balance of the environmental, economic and social dimensions of a proposal—were also identified as key issues in the environment assessment review (DOI 2002d, p. 9). Accordingly, the government’s response to the review could address these issues to some extent.

As a result, the Commission considers the delay in the government response to the 2002 review of environment assessment processes is creating uncertainty about the future regulatory environment facing proponents of major projects. The delay is also hindering the realisation of any benefits that may flow from process improvements. The Commission thus considers the Victorian Government should give a high priority to issuing a response to the environment assessment review.

**Draft recommendation 7.3**

That the Victorian Government release as soon as possible the report of the review of the Environment Effects Act 1978 and its proposed response.

The Commission notes that the environment assessment review appeared to provide for adequate consultation up until the preparation of the advisory committee’s report and recommendations to government. Neither the report nor the government’s proposed response have been released for consultation, however. The Commission considers that best practice would involve a timely release of the final report and the proposed response for consultation. Given the delays incurred, however, inquiry participants expressed a preference for a prompt response to the review.

The Commission notes that the government may respond to environment assessment review recommendations by proposing legislative change, introducing guidelines or using some combination of the two. Given the economic significance of proposals required to prepare an EES, any proposed legislative amendments would likely require the preparation of a business impact assessment and, therefore, would be subject to independent review. Preparation of a business impact assessment may also provide for a period of public consultation on the proposals. Changes introduced through the issue of new or revised guidelines would not necessarily be subject to either independent review or public consultation.

**Possible features of a revised EES process**

The Commission supports in-principle the suggestion considered in the environment assessment review that the ‘proportionality’ of the EES process could be improved. The evidence presented to the Commission and the case studies highlight the significant costs to project proponents of engaging in the EES process. While these costs appear to depend on a number of factors (including the complexity and perceived environmental risk of the project and the level of community concern), they do not appear to be directly proportionate to the scale of the project. Reports of the costs to companies of the EES process range from 1 per cent to 5 per cent of the total project expenditure.\(^5\) To the extent that these costs do not bring a proportionate increase in project benefits, they may reduce the profitability of a project and, therefore, could deter some worthwhile socially beneficial projects.

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\(^5\) Company estimates of the costs of undertaking an EES process are problematic because it is difficult to separate those costs directly attributable to EES processes from those that would be incurred anyway as part of business planning and community consultation processes.

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\(^5\) Company estimates of the costs of undertaking an EES process are problematic because it is difficult to separate those costs directly attributable to EES processes from those that would be incurred anyway as part of business planning and community consultation processes.
projects. This link to economic development reinforces the need to ensure the level of environmental assessment required appropriately reflects the level of environmental risk posed.

The alternative approach identified in the issues and options paper released as part of the environment assessment review is to require different forms or levels of environmental assessment, based on the nature of the potential impacts. The summary paper stated:

Projects with different levels of environmental risk or significance could be required to undergo different forms or levels of assessment:

- Projects with minor potential effects could continue to be dealt with under [current] approval procedures.
- Projects with limited but significant effects could require a limited form of environment assessment focused on the potential for reducing particular on-site and off-site effects to acceptable levels. Procedures under other Acts (for example, the Planning and Environment Act and the Environment Protection Act) might suffice for some of these proposals.
- Projects with extensive and significant effects could require a rigorous and comprehensive environment assessment that considers all significant impacts and the alternatives for reducing them, as well as the consistency of the proposal with current policy approaches and sustainability criteria. (DOI 2002d, p. 15)

While the Commission believes that a more flexible approach has merit, it would need to be carefully designed and accompanied by clear implementation guidelines to avoid increasing uncertainty for proponents. The introduction of additional assessment processes could simply result in an increase in the number of projects required to undergo some form of assessment, without a compensating increase in the economic, environmental and social benefits. This possible outcome reinforces the need for a more flexible system to be supported by clear criteria for determining the applicable level of assessment, and by a statement from the government about its expectations regarding the number and types of project likely to require some form of assessment (perhaps based on a review of previous cases).

Another feature of best practice regulation is that regulations, and thereby the requirements they impose, should be easily understood. The EES process is complex, placing considerable requirements on proponents. The Environment Effects Act does not provide proponents with any direct guidance on these requirements. While the current EIA guidelines provide some broad guidance, uncertainty remains around when an EES is required. Again, clear guidelines would assist in providing proponents with greater certainty in this area.

Best practice regulation is also characterised by the provision of timely advice on general issues of interpretation and compliance. As with all regulation, proponents should be provided with timely advice of the government decisions required throughout the EES process. As outlined, the current EIA guidelines provide indicative timelines for the various decisions, but it is difficult to monitor adherence to these.

An EES status report is available that seeks to provide some limited information, but it is not sufficient to assess adherence to the indicative timeframes set out in the EIA guidelines. The report would need to include, for example, information on the date at which all relevant information was provided to inform the decision on the need for an EES, to determine the proportion of proposals receiving advice within the suggested 28 day timeframe. According to the latest available status report, only three of the 25 proposals...
listed were advised within 28 days on the need for an EES. There is no information from which to assess why the timelines were not met (such as the need to require the proponent to provide additional information). The Commission considers that improved reporting of the administration of the Environment Effects Act (and any revised Act) is essential and should be expanded to report the total time involved in the various steps (including the delays associated with requests for further information), as well as the time taken by agencies to complete specific steps.

The Commission notes that the benefits of improved reporting may be somewhat limited by only indicative timeframes being specified. While inquiry participants did not comment on the indicative nature of the timeframes directly, many commented on the impacts of delays on the EES process more generally. The Commission recognises that the proposals required to prepare an EES are considered to have significant potential environmental effects and that any decision in relation to these proposals should adequately consider potential impacts. Further, the Commission also recognises that the time required to conduct an adequate assessment of the environmental effects of a proposal is likely to differ according to the complexity of the proposal and the level of environmental risk that it poses. In addition, the Commission also recognises that proponents share responsibility for the timely conduct of the EES process.

Nonetheless, the Commission considers that greater certainty around timeframes would assist decision making by proponents and monitoring of the administration of, and compliance with, the Act. Greater clarity could be achieved while still retaining some flexibility to account for individual circumstances. One approach would be to specify timeframes but permit the Minister to alter these on the condition that the reasons for doing so are provided to the proponent. Alternatively, a range of timeframes could be specified according to the complexity of the proposal. The issues and options paper reflected such an approach in its proposal to vary the suggested timeframes for specific steps according to the level of risk and thus the environmental assessment required (DOI 2002d, p. 26). In either case, legislative amendment should be considered to give the timeframes sufficient force.

As noted, there is some uncertainty about EES process costs and requirements given the potential for Commonwealth and Victorian processes to run in parallel. This situation could be addressed by the Victorian Government seeking to enter into a bilateral agreement with the Commonwealth Government on the basis of any new EES process introduced in response to the review of the Act.

Some inquiry participants considered that input to EES processes by government agencies should be better coordinated in order to reduce costs to project proponents from the need to resolve the different views that can arise across the various agencies (and even within particular agencies). The case studies conducted by the Commission illustrate the potential for differing views on the requirements of the assessment process, the likely impacts of projects and the means of addressing them.

In response to the issue of conflicting government advice, the Minerals Council of Australia (Victorian Division) suggested improvements to the EES process:

[The Minerals Council of Australia] considers that it would be preferable to ensure full involvement of all the interested agencies at the EES scoping stage to make sure that the proponent is made aware of all the issues and thresholds that must be addressed in the study. Once the study is presented for public comment, the

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government agencies should then prepare a ‘whole of government’ view for the panel. Any conflicts, differences or concerns should be resolved within government during the preparation of that ‘whole of government’ position. (sub. 17, p. 32)

In principle, a number of models could be used to address concerns about multiple agencies and the potential for conflicting advice. The Minerals Council of Australia (Victorian Division) provided one such model but raised issues about who should be responsible for coordinating agency input. It suggested that the Department of Primary Industries could perform such a role. The environment assessment review’s issues and options paper did not explicitly address the issue of multiple agencies involved in the process. The options for reform it proposed, however, involved the Minister or agency responsible for environment assessment taking a lead role in most steps of the environment assessment process. The Commission recognises merit in having a lead agency, but others have statutory responsibilities that they need to perform.

An alternative option to encourage coordination is for the relevant agencies to negotiate a memorandum of understanding to facilitate the provision of consistent and coordinated government input to the EES process. (A similar recommendation is made in relation to streamlining the mining applications process in chapter 9.)

The available options and their benefits and costs will depend on the shape of any new environment assessment processes arising from the government’s consideration of the environment assessment review. As such, it is not appropriate for the Commission to propose the best means of improving the coordination of government input to the process, other than to note that the government, in developing its response to the environment assessment review, needs to consider options to address the coordination issue.

Draft recommendation 7.4
That the Victorian Government’s response to the review of the Environment Effects Act 1978 should address the need for (1) a staged EES process that is related to the complexity of projects and the nature of the environmental risks, (2) clear criteria for determining the applicable level of assessment, (3) early identification of assessment timelines and reporting of compliance against these, and (4) streamlined and coordinated input into assessment processes by government agencies.

7.4 Conclusion

The regulatory framework in Victoria for managing the environmental impact of businesses and communities is extensive and complex. Based on the premise that deficiencies in regulatory processes can hinder regional economic development, this chapter and the previous one attempted to examine the likely impact of environmental regulations on regional economic development by assessing the regulatory processes underpinning three key areas of regulation.

Three different approaches to achieving sustainable economic development have been examined, in the areas of native vegetation regulation, environment effects statements and environment protection policies. Inquiry participants raised concerns about each of these areas. Many of these concerns centre around whether the implementation of the regulations is striking an appropriate balance between environmental, economic and social considerations. Each of the three areas of regulation has deficiencies in the way that it attempts to strike an appropriate balance. The Commission has thus suggested measures to improve these processes.

In principle, a number of models could be used to address concerns about multiple agencies and the potential for conflicting advice. The Minerals Council of Australia (Victorian Division) provided one such model but raised issues about who should be responsible for coordinating agency input. It suggested that the Department of Primary Industries could perform such a role. The environment assessment review’s issues and options paper did not explicitly address the issue of multiple agencies involved in the process. The options for reform it proposed, however, involved the Minister or agency responsible for environment assessment taking a lead role in most steps of the environment assessment process. The Commission recognises merit in having a lead agency, but others have statutory responsibilities that they need to perform.

An alternative option to encourage coordination is for the relevant agencies to negotiate a memorandum of understanding to facilitate the provision of consistent and coordinated government input to the EES process. (A similar recommendation is made in relation to streamlining the mining applications process in chapter 9.)

The available options and their benefits and costs will depend on the shape of any new environment assessment processes arising from the government’s consideration of the environment assessment review. As such, it is not appropriate for the Commission to propose the best means of improving the coordination of government input to the process, other than to note that the government, in developing its response to the environment assessment review, needs to consider options to address the coordination issue.

Draft recommendation 7.4
That the Victorian Government’s response to the review of the Environment Effects Act 1978 should address the need for (1) a staged EES process that is related to the complexity of projects and the nature of the environmental risks, (2) clear criteria for determining the applicable level of assessment, (3) early identification of assessment timelines and reporting of compliance against these, and (4) streamlined and coordinated input into assessment processes by government agencies.

7.4 Conclusion

The regulatory framework in Victoria for managing the environmental impact of businesses and communities is extensive and complex. Based on the premise that deficiencies in regulatory processes can hinder regional economic development, this chapter and the previous one attempted to examine the likely impact of environmental regulations on regional economic development by assessing the regulatory processes underpinning three key areas of regulation.

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In undertaking this review process, the Commission has had to navigate the complexity of each area of regulation. Given that these areas represent only three areas of environmental regulation, regional businesses and interstate or overseas investors seeking to understand the regulatory framework in Victoria must face a significant task.

A further challenge associated with the task of examining inquiry participants’ concerns is the lack of a coordinated framework within which environmental issues are addressed. This has made it more difficult to perceive how the pieces of environmental regulation fit together, and to identify the government’s over-arching policy objectives and priorities.

Similar issues have arisen in a number of Australian jurisdictions and other countries (such as South Australia, Tasmania and New Zealand). The response to this challenge in some other locations has been to introduce a coordinated regulatory framework for managing natural resources. In some instances, this has resulted in a significant simplification of the previous regulatory framework. The introduction of the Resource Management Act 1991 in New Zealand, for example, involved repealing 59 statutes (Kerr, Claridge and Milicich 1998, appendix 1). In Australia, such an approach has also provided a vehicle for the integrated implementation of Commonwealth–State funded natural resource management programs (the Natural Heritage Trust, the National Action Plan for Salinity and Water Quality and the National Landcare Program).

The development of an integrated natural resource management framework could offer some benefits, such as greater clarity, certainty and consistency in the management of natural resources. The need for careful design, however, is demonstrated by the New Zealand experience. A recent review of the New Zealand Resource Management Act raised concerns regarding the lack of formal national guidance to assist local implementation of the Resource Management Act. It also raised concerns regarding uncertainty and inefficiency in decision making that leads to increased costs and delays for applicants in some cases. In response to the review, legislative amendments have been proposed. These seek to improve the quality of decisions and processes without compromising good environmental outcomes or effective public participation (Office of the Associate Minister for the Environment (NZ), pp. 2, 4).

While the Commission has decided against making a recommendation on this matter, it considers that there may be some merit in examining whether the development of an integrated natural resource management framework could streamline and simplify regulation and, as importantly, ensure natural resource management frameworks embody best practice principles of regulation.
8 Food safety regulation

8.1 Introduction

The food industry covers a substantial number of activities in a long supply chain, from primary production through to food retailing and restaurants. Other functions involved between ‘paddock and plate’ include processing, transporting and trading food. The food and agricultural sector contributed 11 per cent of Victoria’s gross state product and $8.2 billion in exports in 2002 (Kefford 2003). The food manufacturing and food retailing sectors account for around 3.6 per cent and 5.7 per cent respectively of employment in regional Victoria (ACIL Tasman 2004).

Dairy, meat, horticulture, cereal based foods and wine are the main food manufacturing industries in Victoria. Of these, the dairy industry is the largest, with 28 per cent of Victoria’s food industry turnover and more than 40 per cent of its processed food exports (DIIRD 2004). Wine and gourmet food production have a growing role in tourism in regional Victoria. According to the Victorian Government:

Food production and processing has become the cornerstone of regional development in Victoria. (Brumby 2004)

Public confidence in the quality of the industry’s products cannot be taken for granted. Australia has avoided the outbreaks of bovine spongiform encephalopathy (BSE) or mad cow disease, which have had such a devastating impact on the market for beef in other countries. The South Australian Garibaldi mettwurst incident in 1995, the New South Wales hepatitis A outbreak associated with oysters in 1997, and salmonella infected pork rolls from a Victorian bakery demonstrate, however, that Australia has not been free of significant events.

Such events can have serious health repercussions and damage consumer confidence, with impacts beyond the food business identified as the source of the problem. After the Garibaldi incident, mettwurst sales fell by 40 per cent in Australia and 400–500 small goods producers went out of business (FSANZ 1999). Similarly, the oyster incident in New South Wales affected seafood sales across Australia (FSANZ 1999). In addition, there can be adverse flow-on effects on whole industry sectors and Victoria’s international reputation as a supplier of safe food.

The Victorian Competition and Efficiency Commission has chosen to examine food safety regulation for the following reasons:

- The regulation has an impact on a wide range of agricultural, manufacturing and service industries that are prominent in the regional Victorian economy.
- Inquiry participants from a wide range of industries, including seafood and aquaculture production, mobile food businesses and restaurants, suggested that food safety regulation impedes their development.
- A recent Auditor-General Victoria review of aspects of food safety regulation found significant problems with regulation in Victoria (AGV 2002).
- Regulation of food safety has undergone substantial change in recent years.

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- A recent Auditor-General Victoria review of aspects of food safety regulation found significant problems with regulation in Victoria (AGV 2002).
- Regulation of food safety has undergone substantial change in recent years.
8.2 Objective of food safety regulation

The Victorian food safety regulatory framework is established under the Food Act 1984 and its associated Acts, including the Meat Industry Act 1993, the Dairy Industry Act 2000 and the Seafood Safety Act 2003. Under s.4A of the Food Act, food is broadly defined as:

(1)(a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared)

(1)(b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a)

(1)(e) … any substance or thing declared to be a food under a declaration in force under section 3B of the Australia New Zealand Food Authority Act 1991 of the Commonwealth

(4) … to avoid doubt, ‘food’ may include live animals and plants.

Governments use regulation to encourage industry participants to deliver a level of food safety that is acceptable to the community. An objective of the Food Act, therefore, is to ‘ensure that food for sale is both safe and suitable for human consumption’. There is a general incentive for businesses to maintain food safety, but socially acceptable standards will not necessarily be met voluntarily by all businesses at all times, given potential areas of market failure:

- The sale of contaminated food could impose costs on those affected by food-borne illnesses. There can be asymmetric information, because some consumers may have difficulty assessing food quality and tracking a food problem to its source. As a result, some food producers may have inadequate incentives to maintain quality.
- Public confidence in the quality of food production is a public good, in the sense that it is not possible to exclude any industry participants from sharing in the benefits arising from public confidence in the industry. Poor performance by any one firm can diminish public confidence in the industry as a whole. For this reason, a poor performer will not bear the full cost of its actions. These external or spillover costs suggest a case for some collective action to encourage more investment in food safety than would otherwise occur.

Notwithstanding these sources of potential market failure, the objective should be to implement the best of the alternatives that are available to protect public health and safety, recognising that food safety regulation can impose significant compliance and other costs on businesses and on the broader community.

8.3 Regulatory framework

Three levels of government are involved in food safety regulation (figure 8.1).

National regulators and advisory bodies

While the Commission is not reporting on the Commonwealth Government’s involvement in regulation, its role is presented here to assist in understanding how the regulatory framework operates as a whole, and to identify any areas of overlap between the levels of government.

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Figure 8.1: Food safety regulatory framework

Australian New Zealand Food Regulation Ministerial Council

Sets policy
Food Standards Australia New Zealand (FSANZ)

Advice
Subcommittees

Minister for Health

Food Standards
Australia New Zealand (FSANZ)

Minister for Agriculture

Food Safety Unit
in Department of Human Services

Secretariat

Support

Technical advice

Food Safety Council

National standard setting

Ministerial Council

Minister for Agriculture

Food Safety Council

Secretariat

Support

Strategic advice

PrimeSafe

Dairy Food Safety Victoria

Counsels

Register, inspect, enforce

Statewide strategy, guidance, advice

Food businesses, including retail outlets, supermarkets, restaurants, school canteens, childcare facilities, hospitals, market stalls

Meat: abattoirs, processing (including pet food), transport vehicles, butcher shops, deli. Seafood: production/harvest, wholesale, processing, boat, transport, retail (uncooked seafood)

Dairy: farmer, carrier, manufacturer, distributor, milk broker

Optional for class 2 food businesses

Third party auditing

AGIS accreditation for exporters

Third party auditing

Optional for class 2 food businesses

AGIS accreditation for exporters

Food Standards Australia New Zealand (FSANZ), a bi-national statutory authority, develops uniform food standards, which the Australia New Zealand Food Regulation Ministerial Council approves. The Ministerial Council decides on policy guidelines, which FSANZ must have regard to when setting food standards. There are four Victorian representatives on the council: the Minister for Health, the Minister for Primary Industries, the Minister for State and Regional Development and the Minister for Information and Communication Technology (DOHA 2004). FSANZ receives advice from a range of advisory bodies, including the Technical Advisory Group, the Development and Implementation Subcommittee and the Food Regulation Standing Committee. A joint arrangement between Australia and New Zealand has been in place since 1996 to help remove regulatory barriers to trade in food.

Food standards provide legally enforceable guidelines relating to the composition, production, handling and labelling of food. It is an offence to supply food that does not comply with the relevant standards. Collectively, the standards are known as the Food Standards Code. The standards are uniform across Australia and are implemented by legislation through each state and territory. In Victoria, standards are adopted through the Food Act.

The Australian Quarantine and Inspection Service (AQIS) is responsible under the Export Control Act 1982 (Cwlth)—and its associated Regulations and Orders—for certifying specific commodities (including meat, dairy products, fish and eggs) for export from Australia. National standards (set by FSANZ) and international standards (set by Codex Alimentarius, an international standard setting body) apply to goods regulated under the Export Control Act. AQIS is also responsible for monitoring imported foods under the Imported Food Control Act 1992 (Cwlth). Imported foods too are required to meet Australian national standards.

Key Victorian regulators and advisory bodies

The Victorian food safety framework has two streams of food safety regulators (figure 8.1). Regulation of primary production, manufacture and transport of meat, seafood and dairy food is the responsibility of the Minister for Agriculture, through the Department of Primary Industries and two regulators—PrimeSafe and Dairy Food Safety Victoria (DFSV). The other stream applies to food businesses, most of which are regulated by the Food Safety Unit of the Department of Human Services under the Minister for Health; local government administrators and enforces the regulations.

Department of Primary Industries

This department regulates the use of chemicals on food and livestock, and the control of animal disease. It also provides advice about agricultural practices that affect the safety of food.

1 Any agency or member of the public can apply to change the food standards. The decision-making framework for developing or changing a food standard is based on the legislative requirements under the FSANZ Act and on international risk analysis practices. FSANZ must also account for submissions received from the public and for the requirements of government policies and international treaties. The process involves two rounds of public consultation and the requirement to undertake a regulatory impact assessment, to ensure the new standards do not impose excessive requirements on business. Amendments to food standards are then reported to the Ministerial Council for approval (FSANZ 2004).

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PrimeSafe
PrimeSafe regulates meat, poultry, pet food and seafood, from primary production through the supply chain to retail sales. It was established in July 2003 under the Seafood Safety Act, which expanded the role of the Victorian Meat Authority to include seafood safety. Previously, retail and seafood processing businesses were regulated for food safety by local councils under the Food Act. Section 8.5 examines regulation of the seafood industry in more detail.

All meat and seafood businesses are required to be licensed and to have a food safety management program (table 8.1).

Dairy Food Safety Victoria
The DFSV was established under the Dairy Act, replacing the Victorian Dairy Industry Authority. Under the Dairy Act, all dairy farmers, manufacturers and carriers are required to be licensed and to operate under a code of practice. Through an arrangement with AQIS, DFSV officers conduct audits on behalf of AQIS to ensure audits are not duplicated for exporting businesses.

Food Safety Unit of the Department of Human Services
The Food Safety Unit coordinates and manages the statewide strategy for ensuring the provision of a safe food supply in Victoria by those food businesses that are not regulated by DFSV and PrimeSafe. The unit is involved in food recalls, investigates food-borne illnesses and provides education on food safety issues (DHS 2004a). It is involved in developing regulation, policies and strategies for food safety through its participation in various subcommittees of FSANZ.

The unit provides secretariat services to the Food Safety Council, which comprises industry representatives who advise the Minister for Health on a range of food safety issues, including the implementation of regulations, standards proposed by FSANZ, and the operation of the Food Act. The council also provides technical advice to the Food Safety Unit.

Local government
Enforcement of the Food Act is the responsibility of local government. All food businesses are required to be registered with councils and to have a food safety program. In June 2001, 37,350 food businesses were registered with councils in Victoria (AGV 2002, p. 33).

Under the Food Act, councils are responsible for:

- inspecting food premises before registering, renewing or transferring the registration
- obtaining food samples for analysis and investigating noncompliance with food standards
- monitoring commercial food preparation, hygiene and safety standards, and taking preventative and remedial action in the event of noncompliance with the legislation

1 Under s.4B of the Food Act, a food business is defined as ‘a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves the handling of food for sale; or the sale of food, regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only’.

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• investigating reported noncompliance detected by Department of Human Services approved third party auditors and ensuring businesses are audited with the set audit frequency (AGV 2002, p. 31).

Environmental Health Officers in councils undertake most of these functions.

The approach to regulation summarised

Table 8.1 summarises the approaches of the various regulators. The food businesses have responsibility for food safety. They are required to be registered and to have food safety plans, which are (or will be) required to be audited, usually by a third party auditor. (The exceptions are those class 2 food businesses that choose to use a standard food safety plan.) Regulators check whether the measures implemented by the businesses to maintain food safety are adequate, and enforce compliance with food legislation (through inspections). A similar approach to licensing, auditing and the requirement for food safety plans is applied to businesses in the meat, dairy and seafood industries.

Table 8.1: Food safety requirements for Victorian businesses

<table>
<thead>
<tr>
<th>Business</th>
<th>Licence or registration</th>
<th>Food safety plan</th>
<th>Third party audit</th>
<th>Additional requirements&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Food business</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– class 1&lt;sup&gt;b&lt;/sup&gt;</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>Annual inspection by local council Must have a food safety supervisor</td>
</tr>
<tr>
<td><strong>Food business</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– class 2&lt;sup&gt;c&lt;/sup&gt;</td>
<td>✓</td>
<td>✓d</td>
<td>e</td>
<td>Annual inspection by local council Must have a food safety supervisor</td>
</tr>
<tr>
<td><strong>Butcher shops</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>abattoirs, meat processors and transporters</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>Compliance with meat standards</td>
</tr>
<tr>
<td><strong>Wildcatch and aquaculture</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Compliances with national standard for seafood when approved by FSANZ</td>
</tr>
<tr>
<td><strong>Seafood processing (inc. retail and wholesale)</strong></td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>Compliances with Dairy Code of Practice</td>
</tr>
<tr>
<td><strong>Dairy business</strong></td>
<td>✓</td>
<td></td>
<td></td>
<td>Compliance with Diary Code of Practice</td>
</tr>
</tbody>
</table>

<sup>a</sup> All businesses must comply with the national Food Standards Code.  
<sup>b</sup> Class 1 food businesses serving food that is high risk and consumed by vulnerable people (elderly, young children, patients).  
<sup>c</sup> All food businesses other than class 1.  
<sup>d</sup> Can choose to use a standard template developed by the Food Safety Unit or develop their own food safety program.  
<sup>e</sup> Audits are not required if the business uses a standard template developed by the Food Safety Unit. A compliance check by councils is conducted instead.  
<sup>f</sup> Audits are not required until after 1 January 2005.  
<sup>g</sup> Audits are not required until after 1 January 2005.  
<sup>h</sup> Third party audits are required only for dairy farms. Through an arrangement with AQIS, DFSV officers conduct audits for other dairy businesses on behalf of AQIS to ensure that audits are not duplicated for exporting businesses.

Sources: DFSV (2004b); DHS (2004); PrimeSafe (pers. comm., 26 November 2004).
The Office of Regulation Review has outlined the advantages and disadvantages of using licensing as the basis of regulation. Licensing involves administration and compliance costs, and can become a barrier to entry if licensing requirements are enforced more stringently for new entrants. The advantages of licensing include the following:

- It gives enforcement agencies knowledge about the ownership and location of food businesses.
- It helps to ensure food businesses have appropriate premises and processes, which can reduce fix-up costs later.
- It increases businesses’ awareness of food safety issues.
- Licence renewals provide a bargaining tool for encouraging compliance with food laws.

Licences raise revenue for enforcement agencies. (ORR 1995, p. 40)

8.4 What works well?

Food safety regulation in Australia and Victoria has undergone significant change in recent years (box 8.1), evolving from a prescriptive approach towards one based on prevention, using scientific analysis to target and manage identified risks in the food chain. Over recent years, complementary initiatives such as business and consumer education have also become important components of Victoria’s food regulatory system.

Important aspects of the regulatory framework appear consistent with the best practice principles described in chapter 2:

- The Code of Practice for Dairy Food Safety is outcome focused, describing desired outcomes without prescribing the process or the way that the outcome must be achieved. An example of a desired outcome is: ‘Pests must be controlled to prevent contamination of product, manufacturing and storage areas’ (DFSV 2002, p. 22).
- The auditing regime for the dairy and meat industry is performance based: poor performers are audited more frequently, and consequently bear more costs. Dairy businesses are assigned ratings ranging from A (required to have three audits a year) to D (audited every fortnight). Businesses that comply with the audit requirements are rewarded with lower audit costs, which provides a considerable incentive for good performance.
- Food businesses are categorised by their activities, the type of food they serve and whether they provide food to ‘vulnerable’ sections of the community such as the elderly, patients and young children. Less ‘risky’ businesses are given the option to develop a food safety program using a template if they do not wish to develop their own program. This approach appears consistent with the best practice principle of ensuring regulatory effort is related to the scale of the problem.
- The Auditor-General’s report Management of Food Safety in Victoria found that the process for developing and managing the food safety program templates, overseen by the Food Safety Unit, is ‘streamlined, well organised and responsive to the various industry groups’ (AGV 2002, p. 79). Templates are produced in a number of different languages, and supplementary templates are also available to cater for businesses serving traditional foods such as kebabs, sushi and roast duck.

Licences raise revenue for enforcement agencies. (ORR 1995, p. 40)
Box 8.1 Recent changes to Commonwealth and Victorian Food Safety Regulation

**Commonwealth**

1998: The Blair review found a lack of uniform legislation, a lack of coordination among government agencies, an inefficient food standards setting process, insufficient small business consultation in government decision making, and inadequate access to information concerning food regulation. The review recommended:

- an integrated and coordinated food regulatory system
- improved compliance and enforcement arrangements
- nationally uniform food laws
- streamlined food standards-setting procedures
- clearer objectives for the Australia New Zealand Food Authority Act
- a review of cost-effective alternatives for setting objectives.

2000: The Model Food Act was established to provide for nationally consistent legislation, consistent with the recommendation of the Blair review.

2002: The National Competition Policy review of the Food Standards Code recommended an alternative code, based on minimum effective regulation and generic standards.

2002: The new Food Standards Code was introduced.

2002: FSANZ extended food standard-setting process to primary sector (dairy, seafood, poultry and meat).

**Victoria**

1997: The Food Act was amended to require registered food businesses to prepare and lodge a food safety program, audited periodically by third party auditors.

2000: The National Competition Policy review of the Dairy Industry Act 1992 led to the deregulation of the Victorian dairy industry, the termination of the Victorian Dairy industry Authority, the repeal of the Dairy Industry Act, and the introduction of DFSV.

2001: The National Competition Policy review of the Meat Industry Act led to the amendment of the Act to increase the transparency and accountability of the Victorian Meat Authority, remove restrictions on competition and provide for additional rights to appeal to the Victorian Civil and Administrative Tribunal.

2001: The Food Act was amended to:

- allow food businesses to develop their own food safety program or to use a template developed by the Department of Human Services
- remove the obligation of local governments to determine the adequacy of food safety programs (now undertaken by third party auditors)
- reflect the Model Food Act.

2003: The Seafood Safety Act was passed, leading to the regulation of the seafood industry for food safety purposes.

There are many good features of food safety regulation in Victoria, and the Auditor-General commented:

> Victoria has been at the forefront of public health and regulation in Australia and internationally in ensuring food consumed or produced for consumption is safe. (AGV 2002, p. 20)

Nevertheless, the number of submissions that raised food safety regulation as an issue, along with the Commission’s analysis, suggests that there may remain scope for improvement.

### 8.5 What are the challenges?

The Commission has identified four key issues relating to food safety regulation, which may be impeding the economic development of regional Victoria:

1. Differences across councils in the ways that they enforce the Food Act are at odds with the best practice principle that regulations should be consistent across industries and across businesses.
2. The processes for developing and implementing seafood safety regulation fell short of a best practice approach to consultation.
3. There is scope to deliver regulatory services at lower cost.
4. The processes for setting licence fees will suitably constrain fee increases.

One inquiry participant voiced concern over FSANZ food standards, referring to the ban on domestic production and import of raw milk cheese (sub. 49). These standards are set nationally, however, and are outside the scope of this inquiry.

#### Council enforcement of food safety regulation

**Councils’ role**

Given that the rationale for food safety regulation is to give food safety greater attention, regulation may increase business costs. The implementation challenge is to achieve the desired public health outcomes at minimum cost.

The role of councils in administering food regulation was outlined in section 8.3. Delegating the administration and enforcement of food safety regulation to local councils, which are much closer to the regulated businesses, has potential efficiency advantages:

> Conceptually, a key principle for efficient multi-tiered regulatory systems is that of aligning responsibilities with accountabilities, such that responsibility for enforcing a particular law is matched as closely as possible to the jurisdiction which will be most affected by the enforcement or non-enforcement of the law. (ORR 1995, p. 10)

Local environmental health officers are likely to be better placed than officials from the state or Commonwealth governments to enforce food safety regulation, because they are located closer to the businesses in the region. The large number of different councils enforcing the same regulations, however, can lead to differences across jurisdictions in the ways that they interpret and enforce regulations.
Concerns about inconsistencies across councils

Some inquiry participants suggested that differences across councils can add unnecessarily to costs. According to Restaurant and Catering Victoria:

Operators speak frequently about the inconsistency between councils and individual environmental health officers in regard to requirements and their interpretation. They also speak about the lack of resources that councils have to adequately ensure compliance is occurring. This situation is often compounded in regional areas. The increased costs associated with registering a food handling business, the obsession with the paperwork generated and the inconsistency of interpretation … are major concerns. (sub. 37, pp. 3–4)

Mr Richard Hiscock, a mobile food vendor, argued that there are inconsistencies in councils' treatment of mobile food vendors (box 8.2):

Of the 79 councils in Victoria, nearly all have changed or modified the Food Act to best suit their needs, so there are now up to 79 variations of the Food Act, which has become even more confusing to the events industry. (sub. 53, p. 3)

Box 8.2: Case study—mobile food vendors

Mobile food vendors operate their business from market stalls or vans (such as hot dog, coffee and donut vans) and move from event to event (such as fêtes, markets etc.). An estimated 20,000 part-time and full-time businesses and charities are considered to be mobile food vendors. They are required to comply with the same regulations that apply to restaurants and cafés operating on fixed premises.

Mr Hiscock believes that there are inconsistencies in the way that local councils interpret the Food Act. Some councils require mobile food vendors to have a ‘temporary food permit’ to operate at each event, even though they are already registered with one council; other councils do not require this type of permit. Further, some councils require businesses to submit a food safety program for each event at which they operate. Multiple registration and the production of a food safety program for each event can be costly and time consuming, taking approximately two to three hours to prepare for each event, and some vendors are involved in up to 100 events per year.

Source: sub. 53

The Food Safety Unit of the Department of Human Services has provided the Commission with a list of concerns about inconsistencies across councils. In addition to multiple registrations for temporary premises (as raised by Mr Hiscock), issues reported by the Food Safety Unit include:

- variation in registration fees across councils
- inconsistent advice from local government officers as to what food businesses need to do to comply with the requirements of the Food Act and Food Safety Standards (DHS, pers. comm., 5 November 2004).

The Food Safety Unit has informed the Commission that the Minister for Health has recently endorsed a Department of Human Services/Municipal Association of Victoria working group to investigate options that will improve the administration of the Food Act. The investigation will be undertaken in consultation with relevant stakeholders, including business associations (DHS, pers. comm., 5 November 2004). The review is expected to be completed by mid-2005.
The Auditor-General in 2002 found that there were differences across councils in the extent to which they meet their obligations under the Food Act:

The audit identified that only a few councils were fulfilling all of their legislative responsibilities. For the majority, there was poor compliance with key elements of the framework, including incomplete annual inspections of all registered food businesses, noncompliant businesses not being followed up in all cases and the quantum of food sampling undertaken being below the minimum legislative requirement. (AGV 2002, p 4)

The Auditor-General also reported that:

- the level of outstanding annual inspections for individual councils at July 2002 ranged from 90 per cent to 1.5 per cent (expressed as a percentage of registered businesses) (AGV 2002, p 6)
- only 34 per cent of councils complied with legislative sampling obligations (AGV 2002, p 7)
- only 39 per cent of councils had a formal program directed at the education of businesses in their municipality, and about half did not perceive a need to identify businesses with special needs for targeting awareness and education programs (AGV 2002, p. 9).

The Food Act provides for consistency by specifying the requirements of councils, and the Food Safety Unit has prepared a guide, Administering the Food Act – A Guide for Local Government 2002 (DHS 2002), to assist councils to understand their legislative requirements. Yet, there are still different interpretations of requirements under the Food Act.

Is uniformity desirable?

The lack of uniformity between how councils interpret a food business’ obligations can create costs if it:

- leads to poorer health outcomes in areas where enforcement is less robust
- distorts competition by encouraging resource movements to areas where compliance costs are lower
- adds to compliance costs, as businesses that operate in more than one jurisdiction devote resources to understanding and complying with regulatory regimes that are not identical
- means the consequences of food quality problems extend beyond one local government area. In such a situation, a local government may choose not to bear the costs of administering its regulations, because it expects the consequences to occur in a different local government area.

That said, the absence of uniformity may not indicate poor practice—for example:

- Councils have to assign priority to their food safety and other obligations, and may reach different views on the relative importance of these obligations.
- Councils can use different tools to encourage compliance with food laws. Some may focus on inspections, supported by penalties for noncompliance. Others may devote more resources to education, to encourage good performance. That is, councils could be striving for equivalent outcomes, but choose different instruments to achieve these outcomes.

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If all of the costs associated with poor quality food were localised within particular local government areas, councils (which, in this case, would to a greater extent bear both the costs and the benefits of their decisions) might reach different conclusions about the optimal expenditure on enforcing food safety regulation.

Encouraging greater consistency

A uniform approach to all aspects of regulation is unlikely to be achieved when delivered by 79 councils. There may even be some arguments in favour of some diversity in approach. Nevertheless, some features of the regulatory framework seem to be working against consistency:

- There is no agency that oversees councils' food safety responsibilities.
- Councils do not have to report on their performance in upholding their food safety responsibilities.
- Councils appear to differ in their resources available for food safety regulation.

Central oversight

The Auditor-General found that the Food Act clearly stipulates the councils' role in the management of food safety but does not address who is responsible for overseeing the councils' performance (AGV 2002, p. 75). The Food Safety Unit has developed a strategic plan for its operation and to clarify the roles, responsibilities, key strategies and relationships of each party involved in food safety. This document is intended to be publicly available on the unit's website. Further, a memorandum of understanding was recently agreed between the Department of Human Services, the Australian Institute of Environmental Health (an industry association representing the professional interests of environmental health officers), the Municipal Association of Victoria (an industry association representing all local councils in Victoria), PrimeSafe and the DFSV. This memorandum should clarify the roles of each regulator and, in particular, the relationship between councils, PrimeSafe and the DFSV.

The Commission understands, however, that this is not yet a public document. It considers that the document should be made publicly available so all those with an interest (including consumers and regulated businesses) are aware of the accountabilities of the agencies involved in food safety regulation.

Despite a strategic plan being developed and the signing of the memorandum of understanding, there is still no agency that oversees councils’ food safety obligations; the Food Act has not been amended to address this issue. Regular public reporting by councils of their performance against their obligations is one mechanism that could help to improve performance.

Public reporting

Since 1994, councils have not provided the Department of Human Services with reports about their food safety responsibilities:

We were advised by the Food Safety Unit that the Health Act 1958 provides for local government to report on public health issues to the department. However, comprehensive local government reporting to
The Auditor-General concluded that neither the Food Safety Unit nor councils were adequately informing the public of their performance against their obligations, and that the situation is compounded by the lack of clarity as to which entity has overall responsibility for monitoring councils' achievements under the Food Act (AGV 2002, p. 107). The report also noted that the Food Safety Unit considers that it does not have the legislative power to monitor councils' performance, and recommended that 'this legislative ambiguity should be addressed' (AGV 2002, p. 75).

The Food Safety Unit has informed the Commission that an informal reporting arrangement is available through a central database known as VicFin (Victorian Food Safety Information Network). The database is accessible only by councils and the unit and includes information on food business registrations, compliance activities, inspections, third-party audits and prosecutions. It also allows access to relevant documents and provides a form of information exchange through forums. Around 75 per cent of councils are using the database (DHS, pers. comm., 5 November 2004), but some technical issues need to be resolved—for example, some councils would have to incur costs to make their databases compatible with VicFin. Reporting is not compulsory, and the Food Safety Unit has informed the Commission that there are no plans to make it so (DHS, pers. comm., 5 November 2004).

There are more extensive public reporting arrangements in other countries. In Canada, the City of Toronto provides inspection results of food businesses to the public through a website. Business owners also have a legislative responsibility to post the results of the inspection at the main entrance of their establishment (City of Toronto 2004). The New York City Department of Health and Mental Hygiene provides a similar on-line service, listing details of businesses' food safety violations (DHMH 2004). This type of approach could have benefits, such as encouraging businesses to comply with their food safety obligations, as well as ensuring the responsible authorities meet their legislative responsibilities in relation to inspections and the follow-up of noncompliance. The costs and benefits of such an approach would have to be carefully examined, however, before they are considered in Victoria.

Nevertheless, the Commission's view is that improved reporting arrangements could yield significant benefits. They would, for example, help to:

- reassure the public about the quality of the food being eaten
- identify where resource constraints exist
- clarify differences in priorities across councils. Combining these data with data on spending, and making comparisons across councils, may suggest possible benefits from re-focusing spending
- suggest ways to re-order priorities to improve performance
- provide a mechanism for tracking whether performance is improving over time.

One way to improve reporting would be to require councils to report periodically to the Department of Human Services against indicators, and for these reports to be published. If data and indicators should be outcome related—for example, the number of cases of food poisoning reported within a jurisdiction. These could be supplemented by activity indicators, such as the number of inspections undertaken or the proportion of cases of food safety regulation
The Best Value framework was introduced in 2000 for councils, replacing compulsory competitive tendering. The framework is established under the Local Government Act and is based on six principles that councils must observe for their provision of services to the community. One of the principles includes the requirement to develop quality and cost standards. Councils have been required to review all their services against the six principles over a five-year period and to report publicly on the progress of this annually (DOI 2000). The Department for Victorian Communities has informed the Commission that it is reviewing the reporting requirements for Best Value from 2006 (DVC, pers. comm., 1 December 2004). More information will be released in the Best Value Commission’s annual report in early 2005.

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A more constructive approach would be for the Food Safety Unit to increase the resources that it is already devoting to working with councils, to encourage councils to provide additional information for the VicFin database. The aim would be to use the data to produce a public report, demonstrating performance against key performance indicators that would be developed in consultation with local government. For this approach to be effective, councils would need to understand that providing the relevant information is in their interests. Councils might be more willing to provide information if, for example:

- they were involved in developing the form in which the information is provided
- the Victorian Government helped to fund additional costs incurred by councils to provide the information
- examples of good practices were identified for others to consider
- the report was used to identify any issues that affect a number of councils, and to provide a basis for forums to discuss these issues and ways to improve performance.

The Food Safety Unit might focus initially on those councils for whom food safety is a particularly high priority, perhaps because tourism is particularly important to them. Once a number of councils participate in a report that is public and perceived to have value, councils that are initially less interested in participating may find it worthwhile to become involved.

Councils may already be reporting some information about their food safety obligations under the Best Value framework. The Best Value program, however, is not prescriptive and allows councils the flexibility to develop their own performance indicators, so these may not be directly comparable across councils. In some cases, food safety may be reported as part of health services or regulatory services, depending on how a council has categorised its indicators. It may be difficult, therefore, to distinguish the delivery of food safety from other services. Nevertheless, the Department of Human Services could consider the Best Value framework as a means of implementing food safety performance indicators for councils.

There may also be scope for developing a centralised database of registered businesses that would have other uses. Mr Hiscock considered that such a database could address the problem of different councils requiring multiple food permits:

This information would be put onto a database and accessed by all health officers in the state, with a written report on that business. Before a food vendor attends an event, he notifies that council by email, fax, or letter of his registration number, the health officer can provide the information involved.

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Resource constraints

The issue of resource constraints is not new for councils. Indeed, the planning system, also administered by local councils, faces resourcing issues (chapter 5). Environmental health for council preparation by councils is responsible for a wide range of public health duties in addition to their food safety role, including the administration of tobacco regulations, pest control, waste management, approval of septic tanks, and the investigation of infectious diseases.

The Auditor-General found that councils consider that environmental health officers have the knowledge to perform their role effectively, but that the resources available to fund them are inadequate (AGV 2002, p. 64). The lack of resources highlights that food safety enforcement strategies need to be efficient. The Auditor-General recommended that:

Councils establish a formal framework to assist in determining their resource requirements, including consideration of optimum caseloads for environmental health officers and the time necessary to adequately undertake their food safety obligations. (AGV 2002, p. 68)

Councils can fund additional environmental health officers by increasing registration fees, because they have the power to do so under the Local Government Act 1989. Alternatively, councils can increase their general rates, although they may be reluctant to do so to improve their performance in relation to an activity that is required by a higher level of government, particularly in those areas of regional Victoria in which population (and the rate base) is shrinking. Councils in such areas may be particularly concerned that increasing licence fees and rates would make it more difficult to attract and retain population.

Resource constraints are inevitable, and the Commission agrees with the Office of Regulation Review that ‘in practice, if it is not possible to calculate the optimum level of resources for food law enforcement at the aggregate level’ (ORR 1995, p. 18). Given that resources will inevitably remain constrained, however, it is important for councils to understand where these resources are yielding the highest returns. Performance reporting, as recommended above, would provide useful information to guide resource allocation. Moreover, the increased consumer awareness of regulatory performance may engender greater confidence in, and feedback on, regulatory processes.

Food safety regulation

then access his information on the database and decide whether he needs to be checked out or not (suggest a minimum number of times a vendor is checked per year or within a particular time frame). If the vendor has had some bad reports, then that can also be actioned. Or the inspector at his or her own discretion, check anyone at random.

The FSP [food safety plan] would be done once a year and lodged in the database, updated if there are any changes. (sub. 53, p. 4)

The development of VicFin is an important initiative, although not all councils are submitting information to it, so it is not yet meeting its potential as an effective communication and management tool.

Draft recommendation 8.2

That Councils should report periodically their performance against their obligations under the Food Act. The results should be made available publicly. The form of this reporting would require development of a set of key performance indicators by the Food Safety Unit and local government, represented if appropriate by the Municipal Association of Victoria. The Department of Human Services should consider whether it should fund any additional costs incurred by councils to provide performance information.

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Processes for developing and implementing regulation for the seafood industry

The Commission has received 11 submissions relating to the recent decision that PrimeSafe should regulate the seafood industry under the Seafood Safety Act. Inquiry participants suggested that the regulations are not meeting the objectives of protecting public health and safety in the most efficient manner, and are imposing excessive costs on industry. This section discusses the processes that led to the regulation of the seafood industry in Victoria, and the lessons that can be learnt about bringing about change in an emerging industry.

The commercial fishing sector employs 1500 people, and a further 4500 people work in processing, transporting, wholesaling and retailing seafood (SIV 2004). Victorian seafood exports are valued at approximately $140 million (added value), the main export produce being rock lobster and abalone (Seafood Safety Management Working Group 2002, p. 18). A large proportion of the seafood industry’s activities occur in regional Victoria.

In 2003, regulation of the industry was brought under the Seafood Safety Act and enforced by PrimeSafe. Previously, retail and seafood processing businesses were regulated for food safety under the Food Act, with enforcement by local councils. The wildcatch and aquaculture sectors were not regulated for food safety purposes.

The Department of Primary Industries (pers. comm., 3 November 2004) has informed the Commission that the rationale for introducing ‘whole chain’ regulation of the seafood industry is to:

- move away from the former reactive approach to regulation to one based on encouraging businesses to prevent food safety incidents
- manage food safety risks in a systematic way. Fisheries Victoria issues licences to harvest seafood and undertake aquaculture, but does not manage food safety. This could expose the government, industry and consumers to risks, as occurred in the New South Wales Wallis Lakes hepatitis A outbreak. The incident left the New South Wales Government and the oyster industry jointly liable, with costs in excess of $17 million (Seafood Safety Management Working Group 2002, p. 8).
- encourage the development of the industry and maintain market access by delivering a safe and higher quality product.

Consultation about whether to regulate the seafood industry under the Seafood Safety Act involved discussions with seafood and aquaculture industry associations. Subsequently, a Seafood Safety Management Working Group (with representation from seafood businesses and industry associations) was established to consider implementation issues.

Notwithstanding this process, some inquiry participants suggested that there was insufficient consultation, both before the legislation was introduced and for its implementation (box 8.3).

Inquiry participants also suggested that specific regulations were not addressed in the consultation process (box 8.4) and exceed what is needed to improve food safety. They are concerned that compliance costs—including licence and auditing fees, and time required to meet the requirements of food safety management plans—will be significant. These costs are compounded by the increase in fisheries levies, as they move towards full cost recovery (chapter 9).
Inquiry participants suggested that there was inadequate consultation and guidance when seafood safety regulations were developed and implemented. According to Mr David Wilkes of Seafood Training Victoria:

At no time did PrimeSafe consult with Industry, AQIS or the Victorian peak body with regard to implementing the Act. At no time did PrimeSafe consult with any body or organization with regard to the setting of licence fees; they imposed those, often to sectors who had yet to come under the Act in July 2004. PrimeSafe have NEVER given guidelines to any Industry sector so that the sectors could work toward the implementation of Food Safety Plans as required by PrimeSafe under the Act. (sub. 1, p. 3)

Mr David Lucas, from the Victorian Rock Lobster Association, observed:

Really probably the failures that I've outlined in regulation what it's leading to is industry not having a sense of ownership of regulations that it probably should have because—what generally causes it is because they weren't involved in the formulation of the regulations in the first place. (Geelong transcript, pp. 63–4)

Inquiry participants perceived seafood products sold live (such as yabbies and rock lobsters) and fish to be low risk foods. According to Mr Wayne Robinson of the Victorian Freshwater Crayfish Growers Association:

This legislation has been passed with little consultation with (actual) Industry and little, if any, regard for the food safety risk of that species (in a live state) as required under Food Standards Australia New Zealand (FSANZ) and the Global Food Safety Initiative ... (sub. 33, p. 2)

Mr Lucas stated:

The guiding principle behind FSANZ is that it's to impose food safety standards that are based on risk, and the intent is that the cost will result in—if the costs are associated with the risk, you end up with the lowest achievable regulatory cost, which enables industry to have confidence to facilitate innovation and growth ... What you've ended up with is a schedule of fees that are totally inconsistent with the intent of FSANZ ... (Geelong transcript, pp. 56–8)

Mr Bob McDonald, from the Southern Shark Gillnet Fishermans Association, noted:

The legislation, as imposed through PrimeSafe, targets and levies the catching (and aquaculture) sectors, the smallest of the fish retailing and marketing in Victoria with the least demonstrable issues with public health. (sub. 28, p. 2)

The Commission has insufficient information and expertise to form a view about specific features of the regulations, such as whether certain products or processes impose greater public health risks than others. The concerns raised by inquiry participants, however, may suggest some failings in the consultation process. While this consultation is largely completed, analysis may reveal useful lessons for future consultation processes.
Was the process of developing the regulations accessible to all interested parties?

Extensive consultation is particularly important for regulations being introduced into a previously unregulated area such as the seafood industry. There are costs involved in consultation, however, and it may not be possible to consult with every business when there is a large number. It may be more efficient, therefore, to consult with peak industry associations to ensure a cross-section of viewpoints is heard.

The initial decision to regulate the industry was based on the Department of Primary Industries’ discussions with Seafood Industry Victoria, the Victorian Aquaculture Council and Seafood Services Victoria, through a series of meetings. These discussions were limited to industry representatives. The initial discussions indicated support for ‘through chain’ regulation of the seafood industry, and also canvassed options as to which authority would be best placed to enforce the regulation. It was considered that expanding the functions of the Victorian Meat Authority (now known as PrimeSafe) would be the best option because it was not feasible for local councils to manage food safety regulation on boats, and it was not cost-effective to establish a new statutory body to oversee the enforcement.

Following these discussions, the Minister for Resources and the Minister for Agriculture convened a Seafood Safety Management Working Group to ‘recommend implementation arrangements for food safety management for the seafood industry in Victoria’ within ‘the context of government’s food safety policy decision to expand the responsibilities of the VMA to include seafood’ (Seafood Safety Management Working Group 2002, p. 15). The working group was composed of nine representatives from the seafood industry, businesses in different parts in the industry and from the two peak bodies, Seafood Industry Victoria and the Victorian Aquaculture Council. The remaining five representatives were from government departments/agencies. The working group relied on both peak bodies to represent, and distribute information to, their members.

Some sectors of the industry consider that they were neither consulted adequately nor fully represented by their peak bodies (box 8.5). This suggests that consultation with peak representative bodies may need to be supplemented, particularly when there are small or emerging segments of industries that are not well represented by the existing associations. Further, the incentive of industry associations to represent the interests of the full range of firms in the industry may be affected by their dependence on government for some of their funding through fisheries levies. The Commission notes that Fisheries Victoria is reviewing the needs and expectations of industry and government regarding the role of the Victorian Aquaculture Council, including the level of funding. The review is expected to be completed in early 2005.

The Department of Primary Industries recognised that some sectors of the industry were not well represented, so wrote to all businesses licensed under Fisheries Victoria, informing them that the government was reviewing arrangements for seafood safety management (through the working group) and inviting their participation in the development of the scheme (DPI, pers. comm., 23 November 2004). This happened towards the end of the review process, however.

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1 Seafood Industry Victoria and the Victorian Aquaculture Council are peak bodies, appointed by the Minister for Agriculture in accordance with s.85 of the Fisheries Act 1995 to provide independent advice. Both bodies represent groups of smaller associations. The former had 26 industry association members in 2003, and the latter had eight.
There appears to be some confusion in the seafood industry about its regulatory obligations. PrimeSafe informed the Commission that regulation of the wild catch and harvesting sector is to be phased in, with businesses being licensed from 1 July 2004 (and paying a licence fee) and audits not being required until after 1 July 2005 (pers. comm., 10 November 2004). This would allow a transition time for businesses and for PrimeSafe to work with businesses to develop food safety programs and the number of audits required. Further, the Department of Primary Industries informed the Commission that the Seafood Safety Act had to be enacted first, to provide PrimeSafe with the authority to make decisions about the scheme’s implementation. These decisions covered issues such as the establishment of licence fees, inspections to determine which businesses needed to be licensed for food safety, and the development of audit regimes. The working group was limited in making recommendations on these matters except in a generic sense, because final decisions are the responsibility of the PrimeSafe board (DPI, pers. comm., 10 December 2004).

Did consultation permit thorough consideration of the costs and benefits of regulating the seafood industry?

Chapter 2 suggested that the process of policy development is more likely to lead to desired outcomes if it begins with a clear understanding of the nature and extent of the problem that needs to be addressed and the objective that needs to be pursued, and if the advantages and disadvantages of different options for achieving this objective are explored and, as far as possible, quantified. An advantage of pursuing this process is that it provides a framework that enables targeted and transparent consultation.

The Working Group’s 2002 review, Food Safety System for the Victorian Seafood Industry, did not define the nature and extent of the problem, or quantify the costs or benefits of imposing licences and food safety programs on the seafood industry, or the expected cost to the industry of complying with the new regulations. It acknowledged that ‘some licence holders [in the wildcatch sector] that are landing very small quantities of catch may not continue when required to be licensed and have food safety programs in place’ and ‘it will … be a major change for most [boat] operators to operate under a food safety program’ (Seafood Safety Management Working Group 2002, pp. 18–19).
In addition, the report of the 2002 review did not indicate that alternatives to regulation were explored. The Victorian yabby industry, for example, has a code of practice, which was developed by the Freshwater Crayfish Growers Association of Victoria and the Victorian Aquaculture Council developed to establish best practice standards, encourage self-regulation, provide operational and educational guidance, and provide clear direction for complying with food safety legislation requirements (DNRE 2000, p.11).

The working group had limited scope to look at alternatives to regulation, because the decisions that the industry should be regulated by the Victorian Meat Authority using a licensing and audit approach were made before the working group was set up. Other important decisions, such as that the industry would self-fund regulation, had also been made before this process. These prior decisions were:

… based on initial discussions with representatives from industry and relevant government departments as the most cost-effective approach that would also provide through chain management and the ability to meet the special needs of the industry. (Seafood Safety Management Working Group 2002, p. 6)

When the Seafood Safety Act was implemented, the Victorian Government had not decided that legislation that has an appreciable impact on competition or business would be subject to a business impact assessment (BIA), as described in chapter 2. While the BIA process is not necessarily public, the requirement to undertake a BIA provides comfort that the costs and benefits of new proposals (particularly the impacts on small business) have been considered and that alternative ways to achieve the desired objective have been explored. The introduction of the Seafood Safety Act illustrates the benefits that the BIA process should generate.

PrimeSafe determines seafood licence fees under s.12 of the Seafood Safety Act, rather than under the Regulations. This bypasses the need to prepare a regulatory impact statement (RIS), so reduces the scope for effective consultation about fees. This issue is discussed below.

The cost of regulation

The Commission has identified four areas where the cost-effectiveness of food safety regulation could potentially be improved:

1. reducing the number of food safety regulators
2. reducing overlap with AQIS requirements
3. reducing overlap between regulatory and private sector quality assurance requirements
4. increasing the transparency of decisions in relation to minimum audit frequencies.

Reducing the number of food safety regulators

As illustrated in figure 8.1, food safety regulation in Victoria is undertaken by the Food Safety Unit of the Department of Human Services, 79 councils, the DFSV and PrimeSafe. The question is whether an alternative structure would permit delivery of an equivalent level of regulatory services at lower cost.
There are different structural arrangements in other states:

- Queensland Health administers the Food Act 1981 (Qld) and related legislation in conjunction with local government, which is responsible for enforcement in the manufacturing, food service and retail sectors (Queensland Health 2004). A separate agency, SafeFood Production QLD, is responsible for food safety in the primary producing sectors (including dairy, meat, egg and seafood) and reports to the Minister for Primary Industries and Rural Communities (SafeFood Queensland 2004).

- In South Australia, the Department of Health administers the Food Act 2001 (SA) in conjunction with local government, which is responsible for enforcement. The Dairy Authority of South Australia is responsible for dairy food safety, and the Meat Hygiene Unit of the Department of Primary Industries and Resources regulates meat products for food safety purposes (DHSA 2004).

- New South Wales has recently established the NSW Food Authority, under the responsibility of the Minister of Primary Industries. The authority is responsible for whole of chain food safety regulation, from primary production to retail, with the exception that NSW Health has retained responsibility for the surveillance of food-borne diseases, nutrition policy and health promotion activities. The authority coordinates a whole-of-chain approach to food safety, with the involvement of public health units and local government (NSW Food Authority 2003).

Internationally, the United Kingdom, Ireland, Canada and New Zealand have all moved towards integrated food safety regulatory agencies (Government of NSW 2002).

These approaches in other states and countries suggest two questions:

1. Should a single entity undertake the regulation of meat, seafood and dairy industries?

A single food regulator?

The New South Wales Food Authority was established following a substantial review of food safety regulation in the state, which suggested that having a single agency would deliver four benefits:

1. better allocation of regulatory resources, commensurate with risks
2. consistency of approach in key areas such as risk assessment and risk management, the balance between enforcement and prevention, the interpretation of standards, and the management of cross-border food regulation issues
3. more efficient and effective resource use
4. a single New South Wales Government interface for stakeholders, which will encourage accountability, transparency and visibility (Government of NSW 2002).

The review’s support for the integrated model was based on a thorough consultation process (with 84 submissions being received) and a cost–benefit analysis, which concluded that the cost of the proposal is likely to be exceeded by the benefits from reduced food-borne illness and industry compliance costs.

An integrated model might also yield benefits in Victoria, but Victoria’s circumstances differ in important ways from those in New South Wales. In New South Wales, public health units of the State Government are also involved in enforcement. The results of the New South...
Wales review, therefore, cannot be assumed to apply in Victoria. Whether an integrated model is appropriate for Victoria would need to be decided from the state’s own thorough review (much more extensive than is possible in this inquiry), taking into account the characteristics of Victoria’s regulatory arrangements, such as the roles played by local and state governments.

A single meat, dairy and seafood regulator?

A less far-reaching re-organisation would be to combine the DSFV and PrimeSafe into one organisation. While this could reduce operating costs, the Commission notes the following constraints:

- The salary costs of the boards of PrimeSafe and the DSFV, as reported in their annual reports, are less than $120,000 and $60,000 respectively (DFSV 2004b, p. 36; PrimeSafe 2004b, p. 40).
- The number of staff employed by PrimeSafe and DSFV are 10 and 17 respectively, with staff and salary costs of $656,000 and $1.6 million respectively (DFSV 2004b, p. 30; PrimeSafe 2004b, p. 36; VCEC 2005, pp. 146, 56).
- The two regulators are dealing with different industries. Their staff spend a great deal of their time visiting farms and businesses in these industries. It is not obvious an amalgamated organisation would reduce the costs of doing so.

On balance, there could be some cost savings from amalgamation, but they may not be large. A strong case for amalgamation would need to rely on less tangible benefits of the type outlined for integration of all food regulation activities.

Amalgamation could also have some disadvantages. Both the dairy and meat industries accept regulation provided on a self-funded basis. If there were a single regulator, the joint costs of regulation would need to be allocated between the industries on the basis of an inevitably arbitrary formula. This could lead to disputes, which, unless handled carefully, could erode industry support for regulation. In addition, with a higher proportion of joint costs, the costs of regulating particular industries would be less transparent.

The Commission invites comments on whether the potential benefits from further integration of food regulators are sufficiently large for it to recommend in its final report that there be a review (involving public consultation) of this issue.

Reducing overlap with AQIS requirements

Some inquiry participants claimed that there is overlap between AQIS, the Australian Government export regulator, and PrimeSafe. Specifically, seafood exporters, which are registered and audited by AQIS, are now also required to be licensed by PrimeSafe. Mr David Wilkes from Seafood Training Victoria claims that PrimeSafe does not offer additional services to AQIS:

Specifically I know of one trout processor in Alexandra who exports product and has had significant assistance in plant design, processes and export documentation procedures from AQIS and that business accordingly pays a fee to AQIS. The same business received a tax invoice for a similar fee from PrimeSafe who does nothing and provides no assistance whatsoever to the business, in fact does little but interfere.

Another is an exporter of European carp to Europe. The same can be said of this business in relation to PrimeSafe. A fee similar to the AQIS fee is levied but no service. (sub. 1, p. 2)

Wales review, therefore, cannot be assumed to apply in Victoria. Whether an integrated model is appropriate for Victoria would need to be decided from the state’s own thorough review (much more extensive than is possible in this inquiry), taking into account the characteristics of Victoria’s regulatory arrangements, such as the roles played by local and state governments.

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Another is an exporter of European carp to Europe. The same can be said of this business in relation to PrimeSafe. A fee similar to the AQIS fee is levied but no service. (sub. 1, p. 2)
The Department of Primary Industries has informed the Commission that:

... the Victorian Government policy is that all food businesses operating in Victoria are required to be licensed with only one Victorian authority. Therefore, food businesses operating in Victoria and registered with AQIS are not exempt from being licensed in Victoria. If a food business is licensed by both AQIS and PrimeSafe it has the advantage of being able to choose to sell produce into both the domestic and export markets, depending on which provides the best economic returns. (DPI 2004a, p. 13)

PrimeSafe informed the Commission that there is no duplication of auditing requirements for meat exporters, which are licensed and audited by AQIS. PrimeSafe is negotiating similar mutual recognition arrangements with AQIS for audits for the seafood industry:

Pending the outcome of these negotiations, PrimeSafe audits will not be required provided AQIS confirms compliance with the Food Standards Code for all product produced at a facility. PrimeSafe will however continue to supervise these facilities. (PrimeSafe, pers. comm., 26 November 2004)

One of PrimeSafe’s key strategies for the next five years is to:

Advocate and work with AQIS for the removal of distinctions between AQIS supervised and PrimeSafe supervised plants through the recognition of the PrimeSafe system as equivalent to the AQIS system of regulation for food safety. (PrimeSafe 2004c)

The Commission believes that this is a particularly useful initiative.

**Draft recommendation 8.3**

That PrimeSafe recognise that the Australian Quarantine and Inspection Service audits can be deemed to comply with its own requirements, unless the integrity of the food safety regulatory system would be compromised.

Reducing overlap with private sector quality assurance requirements

There is increasing pressure for food producers and processors to adopt private sector food safety programs (also known as quality assurance programs) in addition to those required by regulators. Woolworths requires its suppliers to implement a quality management system that meets the Woolworths Quality Assurance Standard, and to be regularly audited by a Woolworths certified auditor (Woolworths 2004). Similarly, Coles Myer requires its suppliers to meet food safety requirements set in the Coles Myer Food Standards, and to be audited by an appropriate Coles Myer Supermarket representative or delegated third party (Coles Myer 2004).

Businesses supplying products to national customers can potentially be subject to as many as five different stakeholder audits a year (PrimeSafe 2004b). Not only are there financial costs associated with complying with and managing different quality assurance programs, but the time required to prepare for the audit, and the loss of production when an audit is conducted, can add significantly to the cost of operating the business.

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Increasing the transparency of audit decisions

As discussed in the previous section, paying for and complying with audits of food safety programs are a significant part of the costs involved in complying with food safety regulation. Given that audits for all regulators other than the DFSV are conducted by third parties, regulators do not directly control the price that they charge. PrimeSafe is phasing in the implementation of audits of the seafood industry. The Commission has been informed that ‘provided a seafood business is able to demonstrate compliance with the Food Standards Code, one audit in this first year of implementation of these arrangements will be sufficient’ and PrimeSafe will conduct the initial audit for aquaculture and wild catch businesses at no cost to the business (PrimeSafe, pers. comm., 26 November 2004). Transparency about important implementation decisions, such as those relating to the scope and minimum frequency of audits, would help to ensure these decisions are based on a full understanding of their implications and would increase their acceptance by those being regulated. This would be achieved by consultation with the industry, which (given the experience with introducing regulation to the seafood industry) may need to involve individual licensees, as well as industry associations.

Draft recommendation 8.4

That PrimeSafe publish a timetable for achieving its objective of promoting mutual recognition of audit systems, to reduce the cost imposed on a business that supplies multiple customers. The Commission encourages Dairy Food Safety Victoria to pursue similar initiatives.
Mr Lucas argued that the level of fees set by PrimeSafe is excessive:

PrimeSafe have got the licensing costs totally out of whack with reality and totally at odds with the intent of the FSANZ standard. There is deep concern that the level of auditing is going to be totally out of whack as well. (Geelong transcript, pp. 65–6)

Meat and poultry is worth about $3.6b a year in Victoria. The seafood industry, the landed value of the catch is about $110m. On the basis of that alone, the licensing budget for PrimeSafe should be in the region of $36 000, not $550 000. (Geelong transcript, p. 56)

... processors pay about $900 odd for AQIS Certification ... PrimeSafe required the same processors to pay $6000 currently and all PrimeSafe do is come along into a processes facility and have a look to see if they’ve got an AQIS Certificate, that’s it. (Geelong transcript, p. 59)

PrimeSafe’s annual licence fees for seafood businesses range from $614 to $6135.

Mr Wilkes noted inconsistencies in the charges imposed on the meat and seafood industries:

A meat processor pays $1086 for application fee to process 5000 tonnes of product and an annual fee of $1961 to maintain that licence category. A seafood processor pays $1841 application fee for 500 tonnes of product and an annual fee of $6135 to maintain that licence.

(sub. 1, p. 4)

While the Commission has been informed that no cross-subsidisation between the two industries is intended, inquiry participants’ concerns raise the question of whether there are sufficient constraints to ensure PrimeSafe’s fees are kept at the minimum level required for it to undertake its functions.

Under the Meat Industry Act and the Seafood Safety Act, PrimeSafe has the authority to set its own fees directly for all licences, except for those applying to meat transport vehicles, which can be set by either regulation or PrimeSafe. This means that only the latter fees are potentially subject to the Subordinate Legislation Act 1994 and thus that a RIS may be required. The fees for licences could, however, be made subject to the Subordinate Legislation Act if Regulations were made under s.4 of the Act, so that the instrument setting licence fees was to be treated as a statutory rule.

In the absence of a RIS process, and given that PrimeSafe has a monopoly as the regulator for the industry, the main constraint on the level of fees is likely to be the PrimeSafe board’s concerns about industry reactions to fee increases. The government...
appoints PrimeSafe’s board eight to 10 board members with relevant skills and expertise in various areas, as set out in s.48 of the Meat Industry Act and s.74 of the Seafood Safety Act. Seven board members are proposed by a selection committee comprising the chairperson, and four are representatives from the livestock, meat and pet food, poultry processing industry and seafood industries. The Minister for Agriculture must consider the recommendations of the selection committee but may reject them.

The board structure appears to be designed to ensure the board has industry expertise, but without being dominated by members of industry associations. The presence of board members with industry backgrounds may provide some constraint on PrimeSafe’s fee levels.

PrimeSafe has released a discussion paper on its licence fees and invited industry comment on a wide range of pricing issues (PrimeSafe 2004a). While this process will encourage a more transparent approach to setting fees, there could be benefits from making all PrimeSafe licence fees (and not just licence fees for meat transport vehicles) potentially subject to the RIS process applied to fees for other agencies. A RIS is required only when these fees are to be increased by more than the annual rate approved by the Treasurer in the relevant state budget, and when the fee increase imposes an appreciable economic or social burden. The process of preparing a RIS for consultation provides a transparent mechanism for encouraging fees to be set at an efficient level.

Similar issues arise in the case of the DFSV. Its fees are set by a funding review committee within its board, in consultation with the industry, based on the projected funding needs of the organisation and trends in dairy industry production. The DFSV board consists of seven members who are appointed on the basis of skill requirements defined under s.9 of the Dairy Act. The Minister for Agriculture appoints the chairperson, and one member is nominated by the Secretary of the Department of Primary Industries. The remaining five members are appointed on the recommendation of a selection committee (comprising three industry representatives). Again, the Minister for Agriculture is not obliged to accept these recommendations.

Draft recommendation 8.6

That fees for licences administered by PrimeSafe and Dairy Food Safety Victoria be prescribed by Regulations (under the Subordinate Legislation Act 1994) to be statutory rules and consequently potentially subject to regulatory impact statements.

In the case of councils, the Department of Human Services informed the Commission that businesses are concerned about the variation in registration fees across councils. Ms E. Veal claimed a variation in registration fees within a council when registering her bed and breakfast establishment:

… I think we now pay about $250 a year. So basically what they [the council] started saying is that it’s definitely not negotiable and obviously it was. (Ballarat transcript, p. 29)

The Food Act allows for councils to determine fees or for fees to be set in Regulations (s.41a). It also allows the fees determined by a council to vary according to the size or nature of the food premises, but not to exceed the amount published in the Government Gazette. The Food Safety Unit informed the Commission that this maximum amount has not been set and that fees are not set in Regulations (pers. comm., 2 December 2004). This suggests there is little external scrutiny of fees set by councils.

While the government can set maximum fees, defining an appropriate maximum amount would be difficult, given the different circumstances of each council, and could lead to fees moving towards this maximum. An alternative would be for the Food Safety Unit and the
Municipal Association of Victoria to work with councils to develop guidelines on the method to be used in setting fees, and for councils to publish their fees. Registration fees could also be entered into the central database, VicFin, to facilitate comparisons across the state. This approach would increase transparency and discourage excessive charges, while making it easier for those councils that are recovering small proportions of their costs to increase their fees.

### Draft recommendation 8.7

That the Food Safety Unit of the Department of Human Services, in conjunction with the Municipal Association of Victoria, work with councils to develop guidelines for setting registration fees. These guidelines and the fees charged should be reported publicly.
9 Industry-specific regulation

9.1 Introduction

Chapters 5–8 focus on regulations that apply throughout regional Victoria. There are also industry-specific regulatory frameworks. This chapter discusses the frameworks applying to four industries that are, or could be, particularly important in regional Victoria, namely:

1. mining
2. forestry
3. aquaculture
4. broiler chickens.

9.2 Mining

In 2002-03, the total value of mineral production in Victoria was $638.2 million (DPI 2004d, p. 5), almost all of which was generated in regional Victoria. Brown coal accounted for 84 per cent of the value of total mineral production in 2002-03. Gold is the other significant contributor, accounting for 10 per cent. Gypsum, kaolin and feldspar, along with the mineral sands ilmenite, rutile and zircon, are also mined (DPI 2004b). The mining sector is a significant exporter, as illustrated in chapter 3.

Victoria is less richly endowed with minerals than are many other parts of Australia, and mining activity in the state more frequently occurs close to residential areas. Nevertheless, the Minerals Council of Australia (Victorian Division) estimates that the minerals industry in Victoria has the potential to increase the real value of production by more than $1 billion per year over the short to medium term, with potential developments in brown coal, gold and mineral sands (sub. 17, p. 16).

Regulation of mining in Victoria

The Mineral Resources Development Act

The primary Victorian legislation applying to the industry is the Mineral Resources Development Act 1990 (MRD Act).

The purpose of the MRD Act is:

… to encourage an economically viable mining industry which makes the best use of mineral resources in a way that is compatible with the economic, social and environmental objectives of the state. (s. 1)

Balancing different objectives is the core issue for this legislation, as it is for most areas of regulation discussed in this report.

1 The oil and gas sector is another important part of Victoria’s resources sector. The Commission did not review regulation of this sector because inquiry participants did not raise this issue; the Commonwealth Government administers much of the relevant legislation; and chapter 7 discusses some of the relevant regulatory issues, in relation to environmental regulation.
The MRD Act’s objectives are to foster the establishment and continuation of mining operations’ while:

- providing for ‘an efficient and effective system for the granting of licences and other approvals and for a process for coordinating applications for related approvals’
- ensuring mineral resources are ‘developed in ways that minimise impacts on the environment’. (s.2)

Minerals are defined in the MRD Act as all substances that occur naturally as part of the earth’s crust, excluding water, stone, peat and petroleum (s.4). Property rights in minerals are vested in the Crown, even on private land (s.9). Property passes to the holder of a licence or miner’s right when the minerals are separated from the ground in accordance with the licence or right (s.11).

Anyone searching for minerals needs to have appropriate authorisation under the MRD Act, principally by holding a miner’s right, an exploration licence or a mining licence. A miner’s right permits fossicking for minerals on unreserved Crown land or private land, with the consent of the landowner. It restricts activity, however, to certain ‘low impact’ forms of prospecting, such as metal detectors, hand tools, pans or simple sluices (s.56).

**Exploration activity**

Exploration is defined under the MRD Act to include activities such as geophysical and geological surveys, drilling and minerals extraction, other than for the purpose of producing them commercially (s.4). Section 15 of the MRD Act provides that a person may apply to the Minister for Resources for an exploration licence or a mining licence. The Secretary of the Department of Primary Industries (DPI) must give notice of the application to the appropriate person or body under the Archaeological and Aboriginal Relics Preservation Act 1972 and the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwlth) (s.18). If a licence application covers unrestricted Crown land, the Minister must consult with the Ministers administering the Crown Land (Reserves) Act 1978 and the Forests Act 1958 in relation to work on that land. Those Ministers may recommend to the Minister for Resources any conditions to which the licence should be made subject (s.15(5A)). Any person may object to a licence being granted (s.24) and, after considering any objections, the Minister may grant or refuse a licence (s.25).

An exploration licence grants the holder the exclusive right to explore for minerals in the area covered by the licence, for a period of up to five years (s.13), although the Minister may reduce the area covered by the licence on the second and fourth anniversary of the licence registration (s.38A).

An exploration licence allows the holder to conduct ‘low impact’ exploration that involves the use of nonmechanical tools and that does not involve explosives, remove or damage any tree or shrub, or disturb any Aboriginal place or object or any place or object on the Victorian Heritage Register or any archaeological site or relic (s.43).

To conduct any other form of exploration, the licensee must have:

- an approved work plan
- entered into a rehabilitation bond
- obtained the necessary consents and other authorities relating to the land affected under the MRD Act and any other Act (s.43(1)).

To obtain approval for a work plan, the licensee must lodge the work plan with the Secretary of DPI (s.40). If the land covered by the licence is Crown land, the Secretary must lodge the plan with the Ministers administering the Crown Land (Reserves) Act and...
Moreover, for some events, the Minister may grant an extension of the time in which they last of these events, the period of time within which some of the events may occur is open ended—for example, where an environment effects statement has to be prepared. Although the Secretary has to provide the licensee with written notification within 30 days of the last of any of a number of events, including:

- the licensee notifying the department Secretary that all required planning approvals have been granted
- the Minister notifying the Secretary that he or she has considered any comments received from the Ministers administering the Crown Lands (Reserves) Act and the Forests Act. It is not necessary for the Ministers to give approval and, in this sense, they do not have a power of veto (s.40(4)).

Although the Secretary has to provide the licensee with written notification within 30 days of the last of these events, the period of time within which some of the events may occur is open ended—for example, where an environment effects statement has to be prepared. Moreover, for some events, the Minister may grant an extension of the time in which they are to occur. The Minerals Council of Australia claimed that companies seeking approval of work plans and work plan variations can thus wait several years to gain that approval:

> Whilst work plans and work plan variations are subject of a statutory timeframe, in reality they are seldom processed within the required timeframe. (sub. 17, p. 29)

Under s.44, the licensee must obtain consents before work can occur on restricted Crown land, lands vested in the Melbourne Water Corporation and land on which there is a public highway or road. Consents must be granted or refused within 28 days, unless the Minister agrees to an extension of time. Consent is deemed to have been given if it is not given or refused within 28 days of any permitted extension (s.44(6)).

**Mining activity**

If a mineral deposit is found, and an applicant wishes to develop it, that person needs a mining licence that grants exclusive rights to the mineral deposit. Before undertaking mining works, the licensee must have an approved work plan, entered into a rehabilitation bond, and obtained all necessary consents—similar to the requirements for holders of an exploration licence wishing to undertake exploration work that is not low impact. A difficulty may arise if the licensee must obtain a planning permit—that is, if an environmental effects statement has not been prepared (s.42(6)). A local government authority can grant the planning permit after it has reviewed the licensee’s approved work plan. The Minerals Council of Australia pointed out that when local government receives the planning permit application, it refers the application back to the various agencies for comment:

> This practice involves another 28 days delay and opens the possibility for the planning permit to be challenged by objectors through the advertising of the permit application in the local press. (sub. 17, p. 33)

Significant delays may also occur where reliance is placed on an environment effects statement as an alternative to a planning permit. These issues are discussed in chapter 7.
The mining operation must comply with all other relevant legislation, including:

- the Planning and Environment Act 1987
- the National Parks Act 1975
- the Crown Land (Reserves) Act
- the Forests Act
- the Conservation, Forests and Lands Act 1987
- the Water Act 1989
- the Occupational Health and Safety Act 1985
- the Archaeological and Aboriginal Relics Preservation Act

A mining or exploration licence does not provide absolute security. The Minister can vary a licence or the conditions of a licence (but not the period for which it has effect) if, for example, he or she decides a variation is necessary to protect the environment or stabilise the land to which the licence applies. (s.34). The Minister can also cancel a licence if:

- in the case of an exploration licence, the licensee has not commenced work within three months (or any longer period allowed by the Minister) of the licence being granted.
- in the case of a mining licence, the licensee has not applied for a work authority within 12 months (or any longer period allowed by the Minister) of the licence being granted. (s.38)

These conditions, when combined with the process for reducing progressively the size of exploration licences, appear designed to bring forward exploration and mining activity once the approval processes have been completed, rather than leaving commercial considerations to drive timing. There do not appear to be equivalently strong incentives to encourage completion of the approval processes in a timely manner.

Coordinating decision making

Apparent recognition of this risk, in late 2003, the Secretaries of DPI and of the Department of Sustainability and Environment (DSE) signed a memorandum of understanding (MOU), which is ‘intended to facilitate streamlined and consistent decisions in relation to work approvals’ (DPI, pers. comm., 18 October 2004). The MOU applies only to mining and extractive industry work approvals that do not require an environment effects statement (EES) and where a planning permit is required before work can commence. It does not cover exploration activity. The key elements of the MOU are:

- coordination of the various government units by the Minerals and Petroleum Division of DPI
- arising from early discussions with the proponent, the circulation of a simple description and location map of the proposal to the appropriate divisions of DPE, DSE and the Department for Victorian Communities
- the early identification of all interested divisions
- a site meeting for all interested parties
- the identification by appropriate business units, particularly the land manager (if on Crown land), of all the major issues to be addressed in the work plan—for example, the need for a flora and fauna survey, the need for Ministerial Consent, native vegetation issues and so on.
• a review of the work plan by all relevant business units, and endorsement from the region when finalised
• submission of the endorsed work plan by the proponent to the local council, along with the planning permit application
• if a planning permit is not required (as for some work plan variations), consultation with all relevant divisions.

The MOU provides that nominal timeframes for each stage should be determined during drafting of detailed procedures. These times are subject to modification with the agreement of all parties. If an officer exceeds the agreed timeframe, responsibility continues to escalate to more senior officers until the work has been completed.

Trends in exploration and mineral activity and licences

Data on expenditure and licence approvals indicate that:

• expenditure on private mineral exploration has risen in nominal terms in recent years (figure 9.1)
• the proportion of national expenditure on exploration for gold and mineral sands in Victoria has been higher in most recent years than it was in the 1990s (figure 9.2)
• the number of exploration licences that have been granted and renewed has fallen since 1996–97, although there has been a slight upward trend in the number of licences granted in the past few years (figure 9.3)
• the number of mining licences has fallen from the number in 1996-97, but has broadly stabilised in recent years (figure 9.4).

Figure 9.1: Expenditure on private mineral exploration and mining development in Victoria

Source: DPI (2004b)
Figure 9.2: Victorian expenditure on minerals exploration as a proportion of Australian expenditure


Figure 9.3: Exploration licence grants in Victoria

Source: DPI (2004b)
The smaller number of licences granted since the late 1990s does not necessarily indicate that the regulatory regime is less favourable towards mining and exploration than it was in the 1990s. DPI suggested that the number of licences granted and renewed is a ‘broad indicator of exploration and mining activity’, but that a significant number of licence amalgamations contributed to the lower number of exploration and mining licences on issue in 2003 compared with 1997 (DPI 2004b, p. 9). Moreover, mining industry exploration and mining activity will be influenced by many factors in addition to the regulatory environment, including:

• current and projected mineral prices
• views about mineral prospectivity
• taxation.

It is difficult, therefore, to draw conclusions about the impact of the regulatory environment in Victoria compared with that in other states, or with its impact in the 1990s. The data presented, however, do not indicate a deteriorating relative position.

**Inquiry participants’ concerns**

While it is difficult to infer from published data whether the regulatory environment is unduly constraining exploration and mining activity, there appear to be widespread perceptions in the industry of such an effect. This was made clear in submissions to the Victorian Competition and Efficiency Commission from industry associations and from a roundtable with senior mining executives.

According to the Prospectors and Miners Association of Victoria, which represents recreational prospectors and small mining companies:

> Explorers and miners have less and less faith in the Victorian system and in fact many companies won’t touch Victoria with a barge pole. (sub. 40, p. 3)
The Minerals Council of Australia (Victorian Division) considered that the results of a recent international survey of mining companies (box 9.1) suggest:

... regulation affecting the minerals industry in Victoria is a significant disadvantage to the sector’s competitiveness. They also constitute a significant discouragement to investment in mineral exploration, mining and minerals processing in the state, and therefore to the sector’s ability to contribute to employment creation in regional Victoria. (sub. 17, p. 5)

Whether such impacts are adverse from the perspective of the community as a whole will depend on whether regulation is discouraging activities that would have proceeded after proper consideration of their environmental impacts.

Box 9.1: The Annual Survey of Mining Companies

The Fraser Institute’s Annual Survey of Mining Companies 2003/04 attempts to assess how mineral endowments and public policy factors, including regulation, affect exploration investment. The survey covered 53 jurisdictions, including the Canadian provinces and territories, the Australian states, selected states of the United States, and other countries. The survey is based on responses from industry executives in 159 mining companies about the attractiveness of governments’ policies from the point of view of an exploration manager. Victoria ranked quite favourably in international terms, at 13th of the 53 jurisdictions included in the survey, but second last among the Australian states, ahead of only Western Australia.

Victoria performed moderately well by international standards but behind other Australian states in the following areas in the survey:

- environmental regulations—Victoria was rated 38th out of 53 jurisdictions
- regulatory duplication and inconsistencies—26th out of 53
- uncertainty concerning the administration, interpretation and enforcement of existing regulations—17th out of 53
- uncertainty concerning which areas will be protected as wilderness or parks—33rd out of 53.

In all but the last of these categories, in which it was second last, Victoria ranked last among the Australian states. In the areas of infrastructure, taxation, and labour regulation/employment agreements, Victoria was rated equal last of the 53 jurisdictions.

The Victorian respondents are likely to have come from gold and mineral sands producers, whereas a wider range of minerals may be mined in many other jurisdictions. Moreover, the number of survey respondents was not large, and perceptions can be slow to adjust when a regulatory environment is changing. While these factors suggest that the survey results should be used cautiously, the Commission is not aware of alternative surveys.

Source: Fredricksen (2004)

While the Commission received a number of submissions from the mining sector, it received none from environment groups or others whose interests might be positively or adversely affected by mining developments. A number of the issues raised by mining industry participants related to planning controls, environmental and native vegetation regulation, the fire services levy and occupational health and safety regulations, which have been examined in previous chapters. Issues were also raised about specific mining industry regulations, particularly for land access and the work approvals process.
Access to land

As noted, s.44 of the MRD Act requires that a licensee who proposes to do work under the licence on restricted Crown land must obtain consents from the Ministers administering the Crown Land (Reserves) Act and the Forests Act. The Minerals Council of Australia estimated that the delays associated with consents could cost the industry more than $2 million per year (sub. 17, p. 25), although it did not indicate how this cost was estimated.

Under s.6(1)(b) of the MRD Act, new exploration and mining licences cannot be obtained in national parks, state parks or wilderness parks. When a new park is established, however, existing exploration or mining licence holders keep their licences and can continue to work. The Minerals Council of Australia asserted that the impacts on existing exploration and mining operations of a decision to create a new park are not factored into the cost–benefit analysis that is undertaken before the park is established. It argued, however, that it becomes increasingly difficult to secure approval for work plan variations and exploration licence renewals in these circumstances, and that there has not yet been a successful application for a mining operation that has resulted from exploration in a new park (sub. 17, p. 28).

Work approvals

The Minerals Council of Australia pointed to four ways in which the process of securing works approvals can increase costs:

1. Although under the MRD Act, work plans and work plan variations are subject to statutory timeframes, inquiry participants noted that plans and variations are seldom processed within the timeframes. In some instances, companies have waited years for approval of work plans and variations. These delays are estimated to cost the industry in Victoria in excess of $1 million a year (sub. 17, p. 28).
2. Under s.45 of the MRD Act, work to be conducted within 100 metres of a dwelling, farm building, windmill or garden, for example, requires the consent of the owner or occupier. A Victorian Civil and Administrative Tribunal determination in Tech-Sol Resources Pty Ltd v Minister for Energy Industries & Resources [2004] VCAT 1648 stated that consents do not survive change of ownership and can be withdrawn by the owner or occupier at any time. The Minerals Council of Australia suggested that the resulting uncertainty about the security of current investments may make future investment less attractive (sub. 17, p. 30).
3. There is a discrepancy between conducting exploration work under a mining licence on unrestricted Crown land and doing so under an exploration licence. Exploration undertaken under an exploration licence on unrestricted Crown land does not need to be referred for approval to Ministers other than the Minister responsible for the MRD Act. Exploration undertaken under a mining licence within unrestricted Crown land, however, does require the comment of the appropriate Minister (under s.40(2A)) before the work plan can be approved. This comment should be given in 28 days, although the Minister can extend this time for review (sub. 17, p. 30).
4. When the government accepts recommendations for new parks and reserves, the land effectively becomes either restricted Crown land or exempt Crown land. This raises uncertainty over park and reserve boundaries because the land is surveyed and accurately located only once it is proclaimed, which can take 10 years or more. As a result, work near these boundaries is often treated as if it were located on restricted Crown land, introducing increased costs and delays from the use of more complex approval and consent application processes (sub. 17, pp. 30–1).
Regulation and regional Victoria: challenges and opportunities

Improvements proposed by the Minerals Council of Australia

The Minerals Council of Australia proposed ‘improvement strategies’ to streamline approvals processes, including:

- establishing a ‘one-stop-shop’ for all government applications, grants, consents and approvals for exploration and mining, operated by the Minerals and Petroleum Division of DPI
- taking a whole-of-government approach, with strong interagency coordination for all regulatory processes
- setting sensible and effective time limits on the approval and consent processes for exploration and mining work
- resolving and implementing the Ministerial delegations for consents on restricted Crown land
- resolving the significant risk of exposure to the 100-metre consent present with all mines in the state
- using only confirmed government policy and guidelines in project approval processes.

The Commission’s view

Characteristics of the mining sector

The mining sector is characterised by long lead times and high levels of risk, particularly in the exploration stage. Investments in mining developments are often large. While mining operations have to locate where the mineral deposits are, there are prospective deposits in many different areas. Exploration activities are ‘footloose’, therefore, in the sense that they will move to the areas where the prospective returns are highest. Similarly, firms considering developing a mineral deposit will often have different alternatives from which to choose, and are footloose until the investment has been made.

Mining developments can have large environmental and social impacts. Moreover, it is not unusual for them to be the largest economic activity in the small communities in which they are frequently located, which means that their economic and social impacts appear magnified relative to other industries. It is appropriate, therefore, that the regulatory framework account for social and environmental impacts. It is also important, however, that this framework allows for transparent evaluation of these considerations in a timely and predictable manner. On the information available, the Commission considers that the current arrangements do not pass this test. In forming this view, the Commission has not found comprehensive data on, for example, the length of time that it takes to complete particular stages in the works approval process.2 It considers that such information should be available (see below). Given the lack of data, the Commission has relied in part on examples provided by the industry. It has found that some aspects of the regulatory processes could be improved. In doing so, it has focused on whether the regulatory framework could be improved by:

- using only confirmed government policy and guidelines in project approval processes.
- establishing a ‘one-stop-shop’ for all government applications, grants, consents and approvals for exploration and mining, operated by the Minerals and Petroleum Division of DPI
- taking a whole-of-government approach, with strong interagency coordination for all regulatory processes
- setting sensible and effective time limits on the approval and consent processes for exploration and mining work
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2 DPI has provided data for exploration and licence approvals that shows that 60 per cent of exploration licences and 63 per cent of mining licences in 2003 and 2004 that were approved during that period were approved in under 26 weeks. The industry’s concerns about timing, however, relate more to works approval processes once licences have been granted.
• simplifying or streamlining processes
• improving coordination
• imposing time limits for decision making
• improving reporting.

Simplifying or streamlining processes

The process for authorising work plans appears cumbersome. Could it could be simplified or streamlined?

Altering the definition of low impact exploration

One option is to alter the definition of ‘low impact’ exploration, to allow more substantial exploration activity without an approved work plan. Three options seem possible:

1. Under s.4(b) of the MRD Act, low impact exploration is defined either in terms of specified activities (for example, ‘without removing or damaging any tree or shrub on the land’) or as any exploration activity that is jointly declared by the Minister for Resources and the Minister administering the Conservation, Forests and Lands Act to be low impact exploration under s.7B. Section 7B appears to give the Ministers the option of widening the definition of activities allowed as low impact exploration on a case-by-case basis.

2. Second, under s.7B of the MRD Act, the Ministers appear to have the option to jointly declare an exploration activity to be low impact exploration for all explorers. This option would have wider coverage than the first option, but possibly with a higher risk of environmental damage.

3. Third, the definition of ‘low impact’ in s.4(b) of the MRD Act could be reviewed to focus more directly on the impact of the exploration activity rather than the exploration process. This would have the advantage of avoiding the prescription that is part of the current approach, while securing desired outcomes.

The Commission is inclined towards the third option, but recognises that it would involve more fundamental change than the other two.

The Commission seeks comments on whether the definition of low impact exploration should be reviewed to focus more on the impact of exploration rather than the exploration process.

Allowing an exploration licence to also provide the right to mine

A second way to streamline approval processes would be to allow an exploration licence, when it has Ministerial consent for exploration with more than a low impact, to also provide the right to mine. This would not be appropriate, however. The information that is generated during exploration permits a more informed decision to be made about the costs and benefits of mining than could have been made before exploration was undertaken. That said, if there is uncertainty when exploration is undertaken about the approval processes that will subsequently be required to secure a mining licence (and the ways in which they may be implemented), this may increase the risks associated with exploration, with a dampening effect on activity. As the Industry Commission pointed out:

While explorers should not be given an absolute right to mine, there should be substantial degree of certainty as to the processes which will be followed and how decisions will be made should exploration yield an economic deposit. (IC 1991, volume 1, p. 59)
Reducing the number of referrals

A third option for simplifying the licence grant process would be to reduce the number of referrals that are required before decisions are made to grant work approvals. Box 9.2 lists the referrals required by an applicant who is seeking an exploration licence, a mining licence or a variation to either of these licences. The large number of referrals is one reason that the process of securing a licence can become protracted.

Box 9.2: Referral requirements for exploration and mining licences

1. After accepting a licence application covering unrestricted Crown land, and notifying the proponent that their application has priority, the Minister must, as soon as practicable, consult with the Ministers administering the Crown Land (Reserves) Act and the Forests Act in relation to the work on that land. Those Ministers may recommend to the Minister any conditions to which the licence should be made subject (s.15(5A)).

2. After accepting a licence application covering unrestricted Crown land, and notifying the proponent that their application has priority, the department Secretary must, within 14 days, give notice of the application to the appropriate person or body under the Archaeological and Aboriginal Relics Preservation Act and the Aboriginal and Torres Strait Islander Heritage Protection Act (s.18).

3. Low impact exploration work under a mining licence does not require a work authority. The licensee must, however, obtain all the necessary consents and other authorities relating to the land affected that are required by the MRD Act or any other Act (s.39(4)(b)).

4. If a licensee lodges a work plan or a work plan variation, or the Minister determines that a work plan should be varied, and any part of the land covered by the mining licence is Crown land, the department Secretary must, without delay, lodge a copy of the work plan (or work plan variation) with the Ministers administering the Crown Land (Reserves) Act and the Forests Act. These Ministers must comment on the rehabilitation plan included in the work plan and may recommend changes to the work plan before it is approved, or conditions to which an approval should be made subject. These comments and recommendations must be made within 28 days of the work plan being lodged with them, or any longer period allowed by the Minister (s.40(2A), s.40(3A) and s.41(4)).

5. Before a work plan can be approved, the licensee must be granted all the necessary planning approvals (s.40(4)(a)).

6. If a work plan or a work plan variation lodged by the holder of an exploration licence proposes to make roads to gain access to Crown land, or to do bulk sampling, the Minister may require the licensee to submit a statement assessing the impact of the proposed work on the environment. This statement must be forwarded by the Minister to the Ministers administering the Planning and Environment Act, the Crown Land (Reserves) Act and the Forests Act, and request comments on it. The Minister must consider these comments (s.41A).

7. For a work authority to be granted to the holder of a mining licence, the licensee must have obtained all the necessary consents and other authorities that are required by the MRD Act or any other Act (s.42(2)).

8. Before work can commence under an exploration licence (other than low impact exploration), the licensee must have obtained all the necessary consents and other authorities relating to the land affected that are required by the MRD Act or any other Act (s.43(1)(c)).

9. A licensee who proposes to do work on restricted Crown land must obtain the consent of the Ministers administering the Crown Land (Reserves) Act and the Forests Act. The consent may be granted subject to conditions. It must be granted (or refused) within 28 days; if not, consent is deemed to have been granted (s.44(1) and s.44(4)(d)).

Reducing the number of referrals (continued next page)
While reducing the number of referrals would simplify approval processes, it could prevent the consideration of some legitimate interests. Each case, however, will be different, ranging from situations in which there are no alternative uses of land through to cases where there are many competing uses. The processes for allocating licences need to be able to accommodate these extremes and intermediate cases. There are provisions within the MRD Act for different levels of assessment, although the Commission is not aware of data that outline the extent to which different levels of assessment are undertaken. It is also possible within the MRD Act to use alternatives (such as rehabilitation bonds) that reduce the need to assess projects in detail before they commence.

In the Commission’s view, the issue is not so much about reducing the number of agencies and other parties that can represent their interests when exploration and mining licences and work plan authorisations are being considered. Rather, a coordinated process is needed to ensure these interests are considered in a predictable and timely way.

**Re-introducing Ministerial delegations**

One measure that would enable some referrals to be handled more rapidly would be to implement Ministerial delegations for the granting of consents for exploration and mining activities on restricted Crown land. In the situation outlined in point 4 in box 9.2, the Minister for Primary Resources must refer a work plan (or variation) for a mining licence that includes Crown land to the Ministers administering the Crown Land Reserves Act or the Forests Act (whichever is the relevant Minister). The relevant Minister is determined by the underlying Crown land status, which may not be straightforward and may not match the current land management. With no delegations, extra work has to be done to determine the correct Minister, and it is then necessary to secure Ministerial approval, which can involve delay. If there were delegations under these Acts to the same officer, these delays would be avoided.

The Commission understands that such delegations existed before the Department of Natural Resources and Environment was split to form DSE and DPI, and that the re-introduction of delegations is being undertaken once the necessary administrative orders are made.

### Box 9.2: Referral requirements for exploration and mining licences (continued)

10. A licensee who proposes to do work on land that is owned by, vested in or managed or controlled by an authority under the Water Act must obtain consent from that authority. The consent must be granted (or refused) with 28 days; if not, consent is deemed to have been given (s.44(2)(b), s.44(5) and s.44(6)).

11. A licensee who proposes to do work on land on which there is a public highway, road or street must give 21 days notice of the proposed work to the person or body having the care or management of the public highway, road or street (s.44(2)(c)).

12. A licensee may do work at a depth of more than 0-75 metres below any land that is within 100 metres of a waterway, main drain, sewer, aqueduct, channel or pipeline that is controlled by an authority under the Water Act only after consultation with, and in compliance with any conditions specified by, that authority (s.44(8)).

13. A licensee must not do any work within 100 metres laterally of, or 100 metres below, a dwelling house, substantial farm building, factory, windmill, bore, spring, dam, garden, orchard, vineyard, reservoir, lake, church, hospital, public building, cemetery or archaeological area without the consent of the owner and occupier or appropriate authority (s.45(1)-(4)).

While reducing the number of referrals would simplify approval processes, it could prevent the consideration of some legitimate interests. Each case, however, will be different, ranging from situations in which there are no alternative uses of land through to cases where there are many competing uses. The processes for allocating licences need to be able to accommodate these extremes and intermediate cases. There are provisions within the MRD Act for different levels of assessment, although the Commission is not aware of data that outline the extent to which different levels of assessment are undertaken. It is also possible within the MRD Act to use alternatives (such as rehabilitation bonds) that reduce the need to assess projects in detail before they commence.

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The Commission understands that such delegations existed before the Department of Natural Resources and Environment was split to form DSE and DPI, and that the re-introduction of delegations is being undertaken once the necessary administrative orders are made.
Whether there should be a one-stop shop

The Minerals Council of Australia proposed a one-stop shop for all applications, operated by the Minerals and Petroleum Division of DPI. Similarly, in its 1991 review of mining and mineral processing, the Industry Commission recommended that there be a government agency responsible and accountable for processing mining applications within set time limits.

The Commission agrees in principle with the Industry Commission’s view. It notes, however, that the MRD Act works in conjunction with other legislation, most of which is administered by DSE. That is, separate statutory responsibilities have to be exercised irrespective of whether there is a one-stop shop.

Nevertheless, a range of measures could encourage coordination across the government agencies involved:

- The Business Development and Technology Branch of DPI is responsible for tracking particular licence applications (with a case officer attached to each applicant) and trying to resolve bottlenecks.
- The MOU between DPI and DSE provides a framework for coordinating the activities of the two agencies, but covers only mining licences.

Whether time limits should be applied to decisions relating to grants of exploration and mining licences

Time limits have been imposed on many of the events that are regulated under the MRD Act. However, these are subject to extensions that the Minister may permit. The MOU between DSE and DPI should contribute to reducing the time taken to process applications. One suggestion for further improving the predictability and timeliness of approval processes under the MRD Act could be to make time limits binding, by removing

1 The time periods allowed for some events appear to be open ended—for example, where consideration must be given to an environment effects statement.

Draft recommendation 9.1

That the Department of Sustainability and Environment and the Department of Primary Industries negotiate a memorandum of understanding to facilitate streamlined and consistent decisions on applications for exploration licences.

The MOU in relation to mining is a complicated document, and one relating to exploration may also be complex. Following sufficient experience with these agreements to indicate their effectiveness, a review would reveal whether there is scope to improve them.

Draft recommendation 9.2

That the Department of Primary Industries review both the existing memorandum of understanding (which covers mining and extractive industry work approvals) and the proposed memorandum (which would cover exploration) five years from the date of their commencement.

Whether time limits should be applied to decisions relating to grants of exploration and mining licences

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1 The time periods allowed for some events appear to be open ended—for example, where consideration must be given to an environment effects statement.
the capacity of the Minister to make extensions, and by having default approval if the deadline is not met. This approach, however, would have its own problems:

- If short and binding deadlines were imposed, licences or work approvals might be granted when, had there been time to undertake a proper evaluation, they might have been refused or granted only with conditions. This risk could be avoided by setting deadlines long enough to allow full consideration of more complex cases, but this would not create pressure for early resolution of simpler cases.
- Under s.44(6) of the MRD Act, an agency is deemed to have provided its consent if it does not provide that consent within the allowed time. Firms may be unwilling to invest if they are granted a licence through this default mechanism, unless they could be assured that the conditions could not be subsequently varied. The MRD Act (s.34) allows such variations to be made, however.
- While the provision to make variations after a licence has been granted could be removed, this would reduce the capacity for the government to respond to changing circumstances. Moreover, if this provision were removed, Ministers may be less willing to give their initial consent, which could delay licence approvals.
- To maintain the flexibility for varying conditions while also giving businesses the confidence to invest, the government could be required to compensate miners who are required to vary their plans once a licence has been granted. Provision for compensation could encourage strategic behaviour, however, because firms may accelerate their expenditures or change their behaviour in other ways to increase the chance that they will receive compensation.

An alternative approach, which would be less exposed to these problems and which could help to avoid undue delays in the approval process, would be to assign time limits to each stage of the process but permit the Minister to extend these time limits. The Minister would be required to publish the reasons for any extension of time and to define a new time limit. This approach could add to pressures for compliance with deadlines but permit flexibility where it is warranted.

Draft recommendation 9.3

That the Minister responsible for the Mineral Resources Development Act 1990 be required to publish reasons for granting extensions of time for any stage in the approval processes for exploration and mining licences and work approvals.

Whether there should be more complete reporting of the progress of licence applications

The numbers of licences and work plans processed within a target time period are already published in the DPI annual report. These figures, however, differ substantially from the anecdotal evidence given by industry to this inquiry, because the published figures account for only the time that these applications are ‘on the department’s desk’. That is, the published times do not account for the time taken by other departments to meet their requirements or the time taken for the proponent to adjust the application.

While the currently published data may be appropriate for determining the efficiency of DPI in processing applications, they are not a good measure of the efficiency of the regulatory framework as a whole. Publishing the time taken for the entire process and each stage would better indicate efficiency and timeliness. It would suggest process improvements and guide the allocation of resources between various parts of the process. It would also provide the information on which to base the recommended reviews of the existing and proposed memoranda of understanding between DPI and DSE.

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While the currently published data may be appropriate for determining the efficiency of DPI in processing applications, they are not a good measure of the efficiency of the regulatory framework as a whole. Publishing the time taken for the entire process and each stage would better indicate efficiency and timeliness. It would suggest process improvements and guide the allocation of resources between various parts of the process. It would also provide the information on which to base the recommended reviews of the existing and proposed memoranda of understanding between DPI and DSE.
That said, such indicators need to be interpreted with caution, because part of the reported delays may be due to incomplete information or inadequate work plans being submitted by project proponents. This problem can be reduced by ensuring project proponents have adequate information and guidelines about regulatory requirements. DPI is already providing such information.

**Draft recommendation 9.4**

That the Department of Primary Industries review its existing performance indicators on the time taken to grant exploration and mining licences and work approvals, with the aim of reporting the total amount of time between the submission of applications and the decisions made on those applications, as well as the time taken by individual agencies for specific stages of the approval processes.

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**Whether time limits should be imposed on miners and explorers**

The time limits imposed on explorers and miners to conduct work in licence areas seem more binding than those imposed on the government when it is deciding whether to issue licences or work approvals. An argument used to support time limits is that licensees may hold on to licences rather than develop them, in the hope that they can sell them for a higher profit in the future. If markets are functioning well, however, such behaviour would withold supply until the time when it is most valued, and seems more likely than arbitrary legislated deadlines to coincide with the timing that will maximise the value of the deposits to society. As the Industry Commission observed:

> Ideally, then, the system should confer rights over minerals which provide incentives for miners to behave as if they owned the deposits they seek to discover and develop, unencumbered by conditions which effectively dictate how or when such resources, once discovered, should be mined. By analogy, it is hard to imagine governments telling farmers which field to plough or when to plough it. (IC 1991, volume 1, p. 38)

The '100-metre rule'

In Tech-Sol Resources Pty Ltd v Minister for Energy Industries & Resources [2004], the Victorian Civil and Administrative Tribunal considered the operation of s.45 of the MRD Act. Section 45 provides that the holder of a mining licence must not do any work under the licence within 100 metres of a dwelling house, substantial farm building, dam and other structures, unless the licence holder has the consent of the owners and occupiers of the land on which the dwelling house and other structures are situated.

The tribunal concluded that under s.45(2) of the MRD Act:

> [a] licensee requires consent of current owners and occupiers of the land and consent given by the former owners and occupiers does not 'run with the land'.

In addition, the tribunal considered an owner or occupier could withdraw consent and that such buffer line could be effectively redrawn by such acts as the construction of a new dam close to the boundary of the owner’s or occupier’s land.

The Commission invites comments on the advantages and disadvantages of Mineral Resource Development Act requirements that work commence within specified times after exploration and mining licences are issued.

**The '100-metre rule'**

In Tech-Sol Resources Pty Ltd v Minister for Energy Industries & Resources [2004], the Victorian Civil and Administrative Tribunal considered the operation of s.45 of the MRD Act. Section 45 provides that the holder of a mining licence must not do any work under the licence within 100 metres of a dwelling house, substantial farm building, dam and other structures, unless the licence holder has the consent of the owners and occupiers of the land on which the dwelling house and other structures are situated.

The tribunal concluded that under s.45(2) of the MRD Act:

> [a] licensee requires consent of current owners and occupiers of the land and consent given by the former owners and occupiers does not 'run with the land'.

In addition, the tribunal considered an owner or occupier could withdraw consent and that the buffer line could be effectively redrawn by such acts as the construction of a new dam close to the boundary of the owner’s or occupier’s land.
The tribunal noted that s.46 provides some protection for a licence holder affected by the capricious or unreasonable withholding of consent, the withdrawal of an existing consent or the redrawing of the buffer line by a new structure. Section 46 permits the Minister to authorise work by the holder of a licence, notwithstanding there being no current consent from the owner and occupier. Nonetheless, this protection appears of limited value, given uncertainty about the Minister’s decision.

The tribunal further noted support for its conclusion that consent does not run with the land to bind new owners and occupiers, in that there is no current mechanism to draw their attention to binding consents that would affect the value of the land.

The Minerals Council of Australia argued that:

...at least six mines with a capital investment in excess of $1 billion are currently at risk of being in breach of the Act. In addition, the future investment decisions of companies currently preparing development plans could be placed on hold until security of the existing 100-metre consents is assured. (sub. 17, p. 30)

The Commission agrees that s.45 of the MRD Act, even when combined with the possibility of Ministerial approval of works under s.46, introduces significant uncertainty for the mining industry when owner and occupier consents are absent. The Commission considers that the MRD Act should be amended to eliminate such uncertainty.

One option is to amend the MRD Act to provide for a 100-metre buffer that properly balances the respective interests of licence holders and owners and occupiers, and that cannot be withdrawn, as is now the case following the tribunal’s determination. The elements of such provision could include consent agreements that are in writing and executed by all parties; are binding on licence holders, owners and occupiers for an agreed period; and provide for payment by the licence holder for loss of amenity and other restrictions on property rights that the owners and occupiers experience for the duration of the consent agreement. In addition, there could be a mechanism for notifying a prospective new owner or occupier of the existence of the consent agreement and the restrictions it imposes. The consent agreement could be freely renegotiated if any party wished to vary its terms at any time during its currency—for example, if the licence holder wished to engage in further works.

Another option would be to undertake a more substantial review of how best to protect the interests now protected by s.45 and to propose amendments to the MRD Act based on this review. The Commission favours this option.

**Draft recommendation 9.5**

That the Department of Primary Industries review s.45 of the Mineral Resources Development Act 1990 to provide for a reasonable balancing of the respective interests of licence holders, and existing and future owners and occupiers of adjacent land, and the holders of other interests now protected by s.45.
9.3 Forestry

The Victorian Government estimated that Victoria’s forest industry has an annual turnover of around $540 million, generating direct employment of over 4000 people. Indirect employment is estimated at around 10 000 people (DNRE 2002b). If jobs in forest management, transport, distribution and further processing are considered together, the employment figures increase to 50 000 (DNRE 2002c, p. 8). Victoria accounts for 24 per cent of Australia’s timber production (DNRE 2002c, p. 8).

The main stakeholders in the Victorian industry can be outlined as follows:

Victoria has a forest cover of 8 million hectares. The major plantation companies in Victoria include Hancock Victorian Plantations Pty Ltd, which owns about 170 000 hectares of the total 345 000 hectares of softwood and hardwood in the State. Grand Ridge Plantations Pty Ltd, a subsidiary of Hancock Victoria Plantations Pty Ltd, manages around 35 000 hectares of hardwood plantations and Midway manages around 15 000 hectares softwood and hardwood plantations on behalf of investors, including Mitsui and Nippon (of Japan). Processing capacity is dominated by Carter Holt Harvey softwood sawmill, Sumitomo [medium density fibreboard] mill, Australian Paper, and consortiums of smaller hardwood mill owners (focusing on value rather than volume) and export companies such as Redex and Midway (using the port at Geelong) and Auspine and Green Triangle Forest Products (using the port at Portland). (AFFA and Invest Australia 2003, p. 5)

Within this industry, there are two distinct sectors: (1) logging in native forests and (2) plantation timber. About two thirds of Victoria’s timber production is from plantations and about one third is from native forests.

In 2002, the Victorian Government announced a major new policy for regulating the forests sector. Our Forests, Our Future. That policy is based on the objective of balancing economic, environmental and social objectives:

Our Forests, Our Future will ensure our forests, the timber industry and their communities are protected for the long term ...

The government believes the timber industry has great potential to create long-term jobs and valuable exports, but this future depends on the ability of our forests to regenerate. (DNRE 2002b)

In the two industry sectors—logging in native forests and plantations—the issues that arise in balancing these objectives are different and the regulatory environments are different. This chapter thus considers the two sectors separately.

Logging in native forests

Logging in native forests involves harvesting timber resources from mainly government owned forests. These forests are also valuable for their contribution to conservation, recreation and community amenity. In Our Forest, Our Future, the government decided to reduce the sawlog supply from native forests by one third. There are now 532 000 cubic metres available each year. There is also a small amount of timber available from privately managed native forests (sub. 11, p.2).
The National Forest Policy Statement 1992 sets the overarching policy framework for the ecologically sustainable management of Australian forests, outlining objectives and policies agreed by the Commonwealth, state and territory governments (DSE 2004i). This statement provided for regional forest agreements, which are 20-year plans for the conservation and sustainable management of Australia’s native forests on public land, which have been negotiated between the Commonwealth and state governments.

The Code of Forest Practices for Timber Production lays down statewide goals and guidelines that apply to timber harvesting, the transport of logs, regeneration and reforestation in native forests, as well as the establishment and management of softwood and hardwood plantations on private land. The most recent code was endorsed in 1996:

The purpose of this Code of Forest Practices is to ensure that commercial timber growing and timber harvesting operations are carried out on both public land and private land in such a way that:

1. promotes an internationally competitive forest industry;
2. is compatible with the conservation of the wide range of environmental values associated with the forests; and
3. promotes the ecologically sustainable management of native forests proposed for continuous timber production. (DSE 2004j)

The key Victorian legislation governing forestry is the Forests Act and the Sustainable Forests (Timber) Act 2004 (the SFTA). These Acts provide for regulation of harvesting in state forests. Licences were issued to sawmills and identify the volume, species and grade of logs that can be harvested from each of Victoria’s forest management areas. The licences provide for the right to harvest logs from the designated area for up to 15 years. The licensee pays a licence fee and royalties for the logs harvested.
This licensing system will be replaced by a new pricing and allocation system that is being developed by VicForests. In future, logs will be sold via contracts, and the new arrangements will be implemented progressively, as existing licences expire.

The Forests Act also provides for management plans, which are developed using a consultative approach drawing on biological, social and cultural data. The plans cover each forest management area and are developed to be consistent with the regional forest agreements and the Code of Forest Practices. They set out management principles for balancing economic, environmental and cultural values (DSE 2004k).

At a more operational level, the activities of those harvesting native timber are governed by the Management Procedures for Timber Harvesting and Associated Activities in State Forests in Victoria (DSE 2004h). These procedures set out environmental and operational requirements that must be followed for timber harvesting and associated activities in state forests. Forestry activities must also comply with the 15-year timber release plans, which are made by the Minister under the SFTA. Annual allocations of timber resources are then controlled by the timber release plans (covering up to five years) developed by VicForests and forest coupe plans (which detail a particular harvesting operation). Timber release plans provide information on areas selected for timber harvesting and associated road access.

Several key processes are underway in relation to harvesting logs from native forests. The implementation of Our Forests, Our Future is associated with the Victorian Auditor-General developing a framework of performance indicators and measures that can be used to assess the success of the policy. This framework focuses on the achievement of the government’s objectives to reduce logging in native forests and manage the adjustment process associated with that change.

Native forest harvesting on private land is conducted under the provisions of the Code of Forest Practice for Timber Production. Local government is responsible for enforcing of the code on private land. Harvesting is also regulated through native vegetation controls, which are enforced by DSE.

Inquiry participants’ concerns

Inquiry participants interested in the harvesting of timber from native forests were primarily concerned about the complexity of regulation and the controls placed on the access to timber. There was also concern about the flexibility of forestry regulation:

Detailed coupe harvesting plans are also required and must comply with all the statutory and regulatory overlays. Consequently it can take two years to finalise a coupe plan, making it difficult to readily adjust harvesting schedules for weather, fire, or protest action or changing market constraints and opportunities. (sub. 30, pp. 9–10)

The Victorian Association of Forest Industries argued that regulatory, bureaucratic and political constraints following the 2003 bushfires led to delays in developing harvesting schedules and sales agreements. It claims that harvesting was delayed by 100 days, which significantly reduced in the quality and marketability of logs, such that their value fell by $50 million (sub. 30, p.10).

Overall, the Victorian Association of Forest industries made the following recommendations in its submission.

- Commercialisation of the industry be based on less complicated regulations with the intention of giving all existing participants the greatest opportunity of long term profitable involvement in the industry.

This licensing system will be replaced by a new pricing and allocation system that is being developed by VicForests. In future, logs will be sold via contracts, and the new arrangements will be implemented progressively, as existing licences expire.

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Forests, Our Future

The main drivers of activity in the native forests sector are access to and pricing of logs. Access involves the amount of native forests available for logging and the conditions under which logging can occur. Pricing involves the royalties that businesses must pay for the right to extract native timber. These policy issues have either been determined or are being considered by the Victorian Government.

Our Forests, Our Future explicitly set a level of reduction in access to native forests, as well as the process by which that reduction would be managed. As government policy decisions, these issues are beyond the scope of this inquiry. Further, given the stage of policy implementation, it is difficult for the Commission to comment on other aspects of regulation. There is an extensive, integrated program of reform associated with Our Forests, Our Future: all components of the reform package are interrelated, so the government’s policy on access to logs has a significant impact on other reforms.

In addition, the Victorian Auditor-General has initiated the process for evaluating this policy, but it is still too early to analyse the effectiveness of the policy’s implementation. The Commission supports the government conducting such an evaluation process and ensuring sufficient information is collected by the Department of Sustainability and the Environment to allow an effective evaluation.

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The Commission does not intend to make any recommendations on the regulation of harvesting timber from native forests, because the key government intervention is beyond the scope of this inquiry and it is too early to consider the implementation issues.

Plantation forests

Plantation forests involve the planting of native or exotic species of timber with the intention of later harvesting that timber for sale. In 2002, Victoria had the largest area under plantation of any state and territory—359 873 hectares (Australian Government 2002, p.2). Unlike other states, its plantation sector is wholly privately owned. The national average is 46 per cent. (DNRE 2002c, p.8)

Both the Commonwealth and state governments perceive plantation forests as a growth sector. According to the Commonwealth Government Department of Agriculture, Fisheries and Forestry, plantations supply 50 per cent of Australia’s domestic wood needs (AFFA 2004b). Under the 2020 vision for plantations (agreed by the Commonwealth Government and all state and territory governments in 1995), the goal is to treble the effective area of all plantation forests from approximately 1 million hectares in 1996 to 3 million hectares in 2020 (AFFA 2004b). This was agreed in the context of the perceived contribution that private forestry can make to:

- the environment, by reducing salinity and soil erosion, and reducing greenhouse gas levels by absorbing carbon dioxide
- the economy, by maintaining and expanding the regional employment levels required to plant, maintain, harvest and process plantation timber.

The Victorian Government also supports the expansion of plantation forests. The Minister for Environment and Conservation commented:

Victoria remains committed to the need to expand forestry on private land. There has already been substantial growth in the area of commercial tree plantations on private land in this state over the last three years, with over 80 000 hectares of new plantations established. My expectations are that this level of investment by the private sector will continue, provided these commercially focused plantations are integrated with other farming systems and where appropriate continue to deliver a range of catchment and related benefits to the community. This integration should allow for diversity of scale to meet industrial and niche product outcomes, yet be conducted in an empathic way. Opportunities also need to be grasped for the establishment of strategically located hardwood sawlog plantations to augment log supplies from public land. (DNRE 2002c, p. 5)

This view was reinforced in the Victorian Government’s white paper, Securing Our Water Future Together, which states that the government encourages private forestry investment in Victoria to deliver economic, environmental and regional development benefits for the state. It also states, however, that the potential impacts of plantations on water resources must be understood and recognised in the planning frameworks within which these developments take place (DSE 2004a, p. 35).

Regulatory environment

The regulation of plantation forestry is based on principles similar to those for the harvesting of native timber—that is, balancing environmental, economic and social objectives. The mechanisms used, however, are somewhat different. In Victoria, plantation forestry involves activities on private land, as well as the Crown land held under perpetual

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Securing Our Water Future Together
lease by Hancock Victorian Plantations, following the sale of the government owned plantations. Much of the key regulation is administered through the planning system.

The State section of all planning schemes incorporates the Code of Forest Practices for Timber Production, and the planting and harvesting of commercial forests must be conducted in accordance with the code:

The Secretary of the Department of Natural Resources and Environment is specified in the state section of planning schemes as a referral authority in relation to certain matters concerning private forests, and a developer of private land for commercial forestry purposes must comply with the code to the satisfaction of the responsible authority.

This code recognises that plantations are established primarily for timber production. Thus planning controls concerned with the development of plantations must explicitly permit their subsequent management and harvesting. It is also recognised that these operations must be carried out in the manner provided for in this code. (DSE 2004j)

Zoning and planning overlays affect plantation forestry (chapter 5). While the establishment of plantations up to 40 hectares is generally supported as an ‘as of right’ activity in the rural zone in Victoria, overlays are sometimes put in place that impose additional regulatory control. As noted in chapter 6, controls on the removal of native vegetation, also implemented through the planning scheme, have a significant impact on plantation forests.

Plantations are established through the lodgement of a plantation development notice with the relevant planning authority or local council. The harvesting of private forests is managed through a timber harvesting plan or, in some cases, a planning permit that details controls for a particular timber operation. Regulation of the use and management of local roads is also relevant to plantation timber at the time of harvesting.

Inquiry participants’ concerns

Issues raised by the forestry sector regarding the regulation of planning and native vegetation have already been discussed in chapters 5 and 6. In addition, inquiry participants had concerns about the combined effects of regulation and its impact on risk, and the regulation of plantations compared with alternative land uses such as agriculture.

Several inquiry participants argued that the overall regulation of the plantation sector is having an adverse effect on the industry. According to Gippsland Private Forestry:

Victorian regulation has been found to be inefficient, ineffective, and inequitable; and presents significant barriers to plantation development and sustainable socioeconomic development in regional Victoria and is impeding favourable environmental outcomes. (sub. 11, p. 1)

A number of inquiry participants agreed that the regulation is increasing risk and discouraging investment in the industry. The effects of native vegetation controls provide a good example of how industry perceives the impact of regulation on plantation development (box 9.3).

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Box 9.3: Impact of native vegetation regulation on forestry plantations

The development and harvesting of private plantations are a controversial issue for communities, with concerns ranging from the impact on water tables and soil erosion, plantations being havens for vermin such as foxes, the loss of productive land for other agricultural activities such as farming, and the loss of visual amenity when harvesting occurs.

The native vegetation controls provide that a permit is not required if the native vegetation has been planted for timber production. There is some uncertainty, however, about whether a permit will be required for harvesting native vegetation regrowth that commonly occurs on private plantations (and is older than 10 years). Given the long cycles involved in timber plantations, particularly for hardwood, it is common for native vegetation to regrow alongside planted trees. On pine plantations, the native regrowth is easily identified, but in plantations of native species such as eucalypts, it is often difficult to identify natural regrowth from planted trees because the size of trees is often not a reliable guide to their age.

Technically, the native vegetation controls prevent native vegetation regrowth that is more than 10 years old from being harvested on a plantation without a permit, because this regrowth was not ‘planted’. In practice, however, a number of councils have taken a flexible approach by issuing ‘estate permits’, which are allowed under the framework and enable private forestry businesses to harvest without needing to obtain a permit every time they want to remove native vegetation regrowth.

Given continuing community concerns about the impact of private forestry operations within local communities, private forestry operators are uncertain whether the current flexible approach to granting estate permits is sustainable. Further, native vegetation controls are becoming more complex and technical, increasing the perception that future levels of regulation could be more stringent. Combined, these factors increase risk and could affect future investment in plantation forestry in Victoria.

Sources: Discussions with Gippsland Private Forestry, Hancock Plantations and Grand Ridge Plantations (November 2004).

There is also concern that private forestry is unfairly subject to regulatory requirements that do not apply to other forms of agriculture, with the result that its ability to compete with agricultural activities for land is constrained. Gippsland Private Forestry claimed that the regulatory burden on private forestry activities from state regulation is much higher than the burden on broadacre farmers:

[The] Agricultural and Veterinary Chemicals Act 1992 and Regulations 1996 inadvertently disadvantage private forestry through the prohibition of off-label use given the private forestry market is too small to warrant seeking label approval for some applications.

Section 23AA of the Country Fire Authority Act 1958 discriminates against private forestry by requiring private forest growers to form or financially support industry brigades but at this stage no other large land users have been required to form industry brigades. Another inequity is that fire fighters operating under industry brigades are not covered by CFA WorkCover insurance (like volunteers) when fighting, because they are paid by the company. ...

[The] Local Government Act 1989 provides [local government areas] with the power to discontinue roads, close roads on a seasonal basis, apply weight or speed restrictions and prohibit traffic on unsealed roads (schedule 10 and 11). The power may be used unreasonably.

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There also appears to be some concern about the regulation of plantation forests compared with the management of native forests:

[The] Fences Act 1968 binds private forest growers to share in the cost of boundary fences but exclude public forest authorities from this obligation. This is considered to be inequitable and may be anti-competitive. (sub. 11, p.16)

The Commission’s view

For the plantation industry, long-term certainty is a major issue:

I think if you look at plantation investment it's characterised by a substantial investment up front and a tremendously long wait until you receive some returns. So clearly, you know, a supportive regulatory framework, sovereign risk, investor confidence are all important in relation to that. (Traralgon transcript, p. 11)

A plantation could take 20–30 years between planting and harvesting. As a result, real and perceived regulatory risk can have a significant impact on investment.

There is potential for investment in the plantation sector to be affected by regulation in closely related sectors such as agriculture and also, potentially, by the regulation of harvesting from native forests. Plantations and native forests will, to some extent, compete in the market for timber and timber products.

Plantations have the potential to provide an alternative supply of particular products to the timber industry, particularly pulpwood and small diameter sawlogs. Plantations in south-eastern Australia are typically of native species (Eucalyptus spp.), referred to as hardwood, or exotic Monterey pine (Pinus radiata), known as softwood. To date, hardwood plantations in Australia have largely been managed to produce short rotation pulpwood for paper manufacturing, however it is anticipated that technology will eventually enable economic sawlog production from hardwoods, as is currently possible from softwoods. (DPI 2004c)

Therefore, if the regulatory environment favours or inhibits either sector relative to the other, an inefficient split of production between the two sectors would result. For example, if native vegetation and planning regulation combine to disadvantage plantation forestry, then plantation forestry is less able to compete with harvesting from native forests and less timber would be grown in plantations. There would be more pressure to maintain the logging of native forests.
On the input side, land is a key input into both plantation forestry and agriculture. Only a limited supply of land is suitable for these activities, so both industries will be competing for the same resources in some cases. This tension was clearly illustrated in the Willmott case, which Gippsland Private Forestry Inc. raised in meetings subsequent to the public hearings. In this case, the Victorian Civil and Administrative Tribunal decided to deny a permit for Willmott Forests to establish a 450-hectare pine plantation because it would:

... further compromise and restrict the capacity of this remote grazing community to compete and survive. ...

The community is unique in its isolation and the limited amount of private cleared land that is available for farming purposes and it will inevitably suffer if it is replaced with the proposed pine plantation. (Willmott Forests Pty Ltd v East Gippsland SC [2004] VCAT 1524)

Overall, if the regulatory environment does not treat activities with similar risks in a similar way, adequately taking into account all economic, environmental and social issues, then it can give one sector an advantage when it competes with the other sector for scarce resources.

Given that the key regulations affecting plantation forests are planning and controls on the removal of native vegetation, the Commission has focused on these issues in preparing the draft report (chapters 5 and 6). The Commission intends to consult with stakeholders between the draft and final reports to determine whether any other regulatory issues, relevant to this inquiry, affect the industry’s ability to contribute to regional economic development. This consultation and analysis will focus on regulation that affects long-term certainty and investment in the plantation forestry industry.

The Commission invites further views on the nature and impact of regulations affecting the development of the plantation forestry industry.

9.4 Aquaculture

Victoria’s region based aquaculture industry is a small component of the regional economy, but one with strong growth potential. That potential may be enhanced by the United States’ abolition of all tariffs on fish and fish products under the Australia–United States free trade agreement. Some inquiry participants considered that current regulatory arrangements are constraining industry’s growth in Victoria.

Significance of Victoria’s aquaculture industry

Aquaculture is the farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants. It is perceived by some as an important means of increasing fishing supplies without placing increased pressure on wildcatch fisheries, some of which may be approaching their sustainable limit (Hoj et al. 2002).

According to the Food and Agriculture Organisation of the United Nations:

Aquaculture is growing more rapidly than all other animal food producing sectors. Worldwide, the sector has increased at an average compounded rate of 9.2 per cent per year since 1970, compared with only 1.4 per cent for capture fisheries and 2.8 per cent for terrestrial farmed meat production systems. (FAO 2002, p. 26)

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Figure 9.6: Value of aquaculture production, by state

The data in figure 9.6 are for ‘grow-out’ production only—that is, the stage in aquaculture during which fish are raised from the juvenile phase to maturity or market size. Hatchery fish are not included.

Sources: ABARE (2003b); Brown et al. (1997); Love and Langenkamp (2003)

Figure 9.6 shows the growth of aquaculture production by state since 1990-91. Growth has largely been generated by five species suited to aquaculture production: southern bluefin tuna (in South Australia), pearl oysters (in Western Australia), salmon (in Tasmania), prawns (mainly in Queensland) and edible oysters (in New South Wales, South Australia and Tasmania) (PC 2004c). In 2002-03, these five key industry sectors generated around 90 per cent of Australian aquaculture production value (DPI 2004d). These species also require particular climatic and environmental conditions that are not necessarily present in Victoria. Victoria produces mostly freshwater species, unlike the other states.

Between 1990-91 and 2002-03, output in Victoria grew (from a low base) by 15 per cent per year, faster than in Tasmania and New South Wales but more slowly than in Queensland and South Australia.

Regulation of aquaculture in Victoria

Aquaculture is subject to a wide variety of regulatory requirements. Aquaculture operations may be subject to fisheries, environmental, planning and water legislation, and are typically required to deal with a number of regulatory bodies.

The Fisheries Act 1995 provides the legislative framework. Under ss 42 and 43, persons are not permitted to undertake aquaculture for commercial purposes without a licence. Licences are issued by the Secretary of DPI, who can attach to licences any conditions that he or she thinks are appropriate. Licensees can appeal the Secretary’s decision to the Licensing Appeals Tribunal, which is established under the Fisheries Act.

Table 9.1 shows a contraction in the number of aquaculture licences held in Victoria since 1998-99, largely because the number of licences for yabbies dropped from 81 in 1998-99 to 60 in 2002-03. The number of licences in other sectors has been mostly steady, except in the abalone sector, where the number of licences increased from 10 to 17.

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The regulatory requirements for a given aquaculture operation depend on the nature of the operation. There are three main types of aquaculture operations:

1. land-based aquaculture operations that use freshwater, such as trout or yabby farms
2. land-based operations in a coastal area that use seawater, such as abalone farms
3. marine aquaculture operations, such as mussel farms.

Table 9.2 outlines the mandatory and potential approvals requirements for each of these types of operation. Other matters that may require consideration but are not listed include state building, native wildlife, native title and heritage, cultural and archaeological site legislative requirements, and Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and Native Title Act 1993 requirements.

It is clear from table 9.2 that the regulatory framework for aquaculture is complex. The Commission has been unable to review the framework as a whole. Rather, it has assessed progress in implementing a major 1999 review of the industry and has considered two specific issues raised by inquiry participants.

The Aquaculture Regulatory Reform Task Force

In 1998, the Victorian Government established the Aquaculture Regulatory Review Task Force to provide advice on a supportive legislative, regulatory and administrative government framework for the industry. The resulting review, commonly referred to as the Harris review, identified regulatory issues that it considered ‘fundamental to the successful establishment of a diversified, ecologically sustainable aquaculture industry’ (ARRTF 1999, p vii).
<table>
<thead>
<tr>
<th>Requirement</th>
<th>Act</th>
<th>Agency</th>
<th>Marine Land based (coastal area)</th>
<th>Land based (freshwater)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mandatory</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aquaculture licence</td>
<td>Fisheries Act</td>
<td>DPI</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Planning permit</td>
<td>Planning and Environment Act</td>
<td>Local government</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Works approval</td>
<td>Environment Protection Act</td>
<td>EPA Victoria</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Discharge licence</td>
<td>Environment Protection Act</td>
<td>EPA Victoria</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Water licence</td>
<td>Water Act</td>
<td>Rural water authorities</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td><strong>Potential</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General permit</td>
<td>Fisheries Act</td>
<td>DPI</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Lease of Public land</td>
<td>Land Act or Crown Land (Reserves) Act</td>
<td>DSE</td>
<td>✓e</td>
<td>✓</td>
</tr>
<tr>
<td>Land vegetation permit</td>
<td>Planning and Environment Act</td>
<td>Local government or DSE</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Licence to construct a dam</td>
<td>Water Act</td>
<td>Rural water authorities or DSE</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td><strong>Other requirements</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coastal Crown land consent</td>
<td>Coastal Management Act</td>
<td>Minister for Environment</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

- For associated land-based facilities.
- For land use.
- Where the discharge exceeds 0.2 megalitres per day.
- To take and use freshwater.
- To lease the foreshore or coastal or marine waters (may not be required).
- A planning permit on coastal Crown land cannot be issued without prior consent of the Minister for Environment.

Source: PC (2004c)

The Harris review’s recommendations were directed at streamlining the regulatory environment and providing greater certainty for the industry. The Victorian Government endorsed these recommendations, noting that they provided for:

... [a] more supportive government framework for business operators within the aquaculture industry... (Asher and McNamara 1999)
Fisheries Victoria suggested that it has made considerable progress in implementing the recommendations. The Gippsland Aquaculture Industry Network (GAIN), on the other hand, asserted that progress has been too slow, citing minimal production growth, a contraction in licence numbers, and a drop in employment as evidence of a ‘failure in Victorian policy, legislation and regulation’, including a failure to implement the recommendations of the Harris review (sub. 29, p. 2).

Given these different views about progress, the Commission reports here on progress in implementing the Harris review’s key recommendations, based on the submission by GAIN, discussions with Fisheries Victoria and papers released by DPI (DPI 2003, 2004d, Ratio Consultants 2004). While progress has been made, a number of the initiatives have been implemented recently.

That an aquaculture ‘one-stop shop’ or single point of entry to State Government be established at Fisheries Victoria

The Harris review recommended the establishment of a ‘one-stop shop’ to simplify current licence approvals processes. It accepted that a fully integrated approvals process was not feasible at the time of the review, because this would involve significant delegations of approvals authority to one agency, and require substantial legislative change. As table 9.2 demonstrates, many agencies have statutory responsibilities in relation to aquaculture. The review suggested, however, that Fisheries Victoria should be the single point of contact between State Government agencies and potential aquaculturalists, to facilitate the interactions of licence applicants with the agencies involved.

The Harris review argued that the system would be improved by:

- allocating a case development officer to each application
- allocating perpetual permit and licence numbers
- standardising the licence system.

Fisheries Victoria responded to this recommendation by assigning a case development officer to each applicant, to provide the applicant with information about regulatory requirements and to facilitate contacts with relevant agencies. It has assigned a perpetual licence number to each licence holder. Fisheries Victoria has also imposed on itself timelines for handling applications and reports these internally, but not externally. This reporting covers its own responsibilities but not those of the other agencies involved in assessment processes.

Recognising that aquaculture is a comparatively young industry, Fisheries Victoria provides information to other regulatory agencies about the features of the industry, to help them to make more informed decisions.

That guidelines setting out relevant agencies’ requirements be prepared for use by aquaculture applicants

The Harris review recommended that Fisheries Victoria ‘in consultation with industry and other relevant agencies should develop simple, user friendly guidelines which address the application requirements for different aquaculture systems, species and the issuing of research and development permits’ (ARRTF 1999, p. 12). These guidelines have been developed but are under review, so are not available in electronic form from the website.

That legislation and regulation be reviewed to provide sufficient flexibility while still ensuring the sustainability of fisheries stock for all purposes

The Harris review noted industry concern that fisheries regulations and legislation are an ‘unintended burden’ on the Victorian aquaculture sector. It recommended that the
Department of Natural Resources and Environment review legislation and regulations to provide flexibility in regulatory arrangements, to ensure they recognise the needs of aquaculture relative to those of the wild capture sector, while ensuring protection of the natural wildstock resource (ARRTF 1999, p. 13).

Fisheries Victoria pointed out that no specific legislative issues were identified in the Harris review, and that the agency routinely reviews legislation and regulations in accordance with the requirements of the Subordinate Legislation Act 1994.

That guidelines outlining aquaculture planning issues be prepared for local councils

The objective of this recommendation is to reduce difficulties faced by potential aquaculturists in obtaining planning permits from local councils. These guidelines were released in draft form in August 2004. Fisheries Victoria intends to finalise these guidelines by January 2005.

That a closed system, recirculating aquaculture ventures complying with established conditions, be categorised as an ‘as of right’ planning issue in industrial zones

This issue is mentioned in the draft planning guidelines, which recommend that:

In assessing permit applications for aquaculture considerable weight should be given to the fact that the successful and sustainable development of this industry is encouraged by government policy… (Ratio Consultants 2004, p. 39)

Fisheries Victoria pointed out that the new farming and rural activity zones allow aquaculture to proceed without the need for a planning permit—that is, aquaculture can proceed ‘as of right’. In industrial zones, however, aquaculture remains listed as a land use requiring a planning permit, although planning guidelines will assist local government to assess the amenity impacts from a range of aquaculture farming systems.

GAIN had a different perspective:

... not a single municipal body across the whole of Victoria has a planning policy in regards to aquaculture activities. Each application is a “one off event”… This leads to an open ended planning process where the applicant can get lost. (sub. 29, p. 6)

This suggests that a more strategic approach by local government to aquaculture investment could improve the investment climate for the industry.

That industry, EPA Victoria and Fisheries Victoria develop performance based Best Practice Environmental Management Guidelines (BPEMG) and replace prescriptive EPA Victoria licences with monitoring by independent auditors

The Harris task force considered that such guidelines could be attached as conditions to aquaculture licences, permitting the requirement to hold a discharge licence to be removed for operations conducted in accordance with the guidelines. The Commission understands that progress towards this objective has been mixed. Guidelines have been developed for inland intensive aquaculture in open systems (the salmonid sector) and drafted for the recirculation sector. The industry and EPA Victoria have been unable to agree on the required content of best practice guidelines for the land-based marine sector.

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Inquiry participants’ concerns

Given the variety of legislation under which the aquaculture industry operates, inquiry participants raised a number of regulatory issues. Earlier chapters considered the operation of planning, environmental and food safety regulations, which affect a range of industries, including the aquaculture sector.

Cost recovery

A number of inquiry participants engaged in aquaculture (particularly the yabby industry) were concerned about the level of fees and levies for research and other services that provide little or no benefit to the yabby sector. The licence fees for an Aquaculture (Private Lands—Yabbies) Licence, as outlined in the Fisheries Regulations 1998, are summarised in Table 9.3. The licence fees include levies for Fisheries Management Services (FMS), for services provided by Fisheries Victoria, for the Fisheries Research and Development Corporation (FRDC) and for the peak body (the Victorian Aquaculture Council).

Table 9.3: Aquaculture (Private Lands – Yabbies) Licence fees

<table>
<thead>
<tr>
<th>Management FMS levy</th>
<th>Compliance FMS levy</th>
<th>Research FMS levy</th>
<th>FRDC levy</th>
<th>Peak body levy</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$64</td>
<td>$26</td>
<td>$0</td>
<td>$154</td>
<td>$181</td>
<td>$425</td>
</tr>
</tbody>
</table>

Source: Fisheries Regulations 1998, version no. 045

GAIN suggested that ‘57 of 60 Victorian licensed yabby growers have indicated they cannot justify retaining their licences under the proposed fee schedule’ (sub. 29, p. 2). According to Little Nippa Yabbies, the yabby industry receives no benefit from paying these fees and subsequently perceives the levies as ‘unreasonable’ (sub. 9, p. 2). Fisheries Victoria pointed out that ‘considerable resources have been provided to the inland aquaculture including extension services (visitations to 57 per cent of licence holders),
research and development, policy development and quality assurance programs’ (pers. comm., 13 December 2004).

Given that cost recovery has been an issue for other industries, as well as for aquaculture, the Commission has looked at the issue in this broader context (chapter 12).

**Access to Crown land**

For land-based marine aquaculture operations, inlet pipes and discharge pipes are typically required to extract water from, and discharge water to, the ocean. This requires access to the foreshore, which is often Crown land. Under the Coastal Management Act 1995:

> A person must not use or develop coastal Crown land unless the written consent of the Minister has first been obtained. (s. 37)

Consents are also required under the Crown Land (Reserves) Act if the land concerned is reserved Crown land. If consent of the Minister is required for the laying of pipes on reserved land that is of ecological or other special significance (including protection of the coastline), then s.17DA of the Act requires the consent to have been tabled in both Houses of Parliament, either of which has the power to disallow the consent.

In its submission, GAIN highlighted the complexity and time consuming nature of the current process for gaining access to foreshore Crown lands and argued that this puts Victoria at a disadvantage relative to other states (sub. 29). It cited the example of Kilcunda Abalone, which intended to invest $12 million in expanding an abalone venture but could not gain access to the foreshore.

In 2000, the Victorian Government asked the Environment Conservation Council to recommend areas suitable for marine aquaculture. During its investigation, the council found widespread concern about perceived environmental risks associated with aquaculture in marine waters, and concluded that the community prefers land-based aquaculture (ECC 2000). In its final report, the council concluded:

> … that there are major opportunities, and broad community support, for land-based aquaculture, and encourage[d] its development (ECC 2000, p. xiii).

This view is reinforced by the Victorian Coastal Strategy, which stated:

> The priority for coastal aquaculture development will be land-based systems which provide appropriate waste minimisation, containment and treatment to ensure that impacts on the receiving marine environment are minimised. (VCC 2002, p. 46)

However, according to the Chairman of the Victorian Coastal Council:

> The Crown remains a difficult landlord, as often it is difficult for proponents who have projects on or affecting coastal Crown land to obtain a clear position from government. (James 2002, p. 210)

This issue is of particular concern for the land-based abalone industry, which is ‘showing much promise’ (DPI 2004d, p. 11), with sales from this rapidly growing sector expected to:

> … dominate industry growth over the next five years and reach a value of $15+ million. (DPI 2004d, p. 11)
The chicken meat industry in Victoria faces some significant challenges. Many are problems being encountered by farmers across Australia, such as heightened community concerns about environmental and animal welfare issues. Industry responses to these issues increase production costs, which, along with a lack of large-scale enterprises and the current high price of feed inputs, are constraining industry expansion and profitability (DPI 2004e).

Another major challenge facing the industry in Victoria is the encroachment of residential developments into traditionally agricultural areas. This results in tension between competing land uses (chapter 5). Farmers have an interest in continued production, based on existing land use rights, which is often incompatible with the rural lifestyles that many new residents expect.

While such planning issues have presented a challenge to the industry for some time, the problem is becoming more acute. Compliance with higher environmental standards (chapter 7) is intended to reduce the impact of farming on neighbours by containing noise, odour and dust emissions, and requires either the employment of specialised technology (such as bio-filters) to control odour levels, or farm areas large enough to ensure the vast majority of the odour is contained within the boundary of the property. Although progress is being made in this area, these technological solutions are not yet economically feasible for
this industry (Smith 2003, pp. 107–10). The decreasing availability and increasing price of land, however, has meant that increasing farm sizes is frequently not possible in areas where the industry has traditionally been located in Victoria, particularly in the Mornington Peninsula region (sub. 39).

**Victorian Code for Broiler Farms**

Expansion of the chicken meat industry is currently regulated through the Victorian Code for Broiler Farms, which came into effect in September 2001 following an extensive process involving all of the major stakeholders. The code acknowledges existing land use rights, but places rigorous conditions on the development of all new farms and the expansion of existing broiler farms (Government of Victoria 2001d), thereby regulating growth in the industry. The code gains force through its incorporation in the Victoria Planning Provisions and all planning schemes in Victoria under the Planning and Environment Act. It is government policy to apply the code uniformly across the state.

The purpose of the code is to ‘provide a framework for the economically and environmentally sustainable development and operation of the broiler farming industry in Victoria, recognising the needs of the industry and the community’ (Government of Victoria 2001d, p. 1). It is intended to clarify expectations of both industry and the community by addressing potentially contentious issues, particularly odour impacts at the planning stage, rather than later when the cost of remedy is likely to be significantly larger (DPI, pers. comm. 9 December 2004).

The Code classifies farms and development proposals as Class A, Class B, Class C or Special Class. Class A are those with the largest buffer distances and thus the least likely to generate significant community concerns, while class C are those unable to meet the minimum buffer distances set out in the code. Farms that are designated as class C are ineligible for any expansion unless superior technology is used and clearly demonstrated as an effective odour management tool. No such technology is economically viable at this stage (Smith 2003, pp. 107-110).

**Inquiry participants’ concerns**

The Commission has heard concerns regarding aspects of regulation from both growers, through the Victorian Farmers Federation Chicken Meat Group, and processors. These inquiry participants claimed that the regulatory requirements, particularly as they relate to planning and environmental issues, are more onerous in Victoria than in other states (box 9.4). The industry contends that this is placing Victoria at a distinct disadvantage as a destination for future investment in the industry, and that the regulatory requirements are

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4 The code was prepared by a technical committee comprising representatives of the then Department of Natural Resources and Environment, the Department of Infrastructure, EPA Victoria, the Municipal Association of Victoria, the Mornington Peninsula, Cardinia and Golden Plains shire councils, the Victorian Chicken Meat Council, the Victorian Farmers Federation Chicken Meat Group and the Chicken Meat Research and Development Committee. A draft code was made available for public comment. The Minister for Planning subsequently appointed an advisory committee to review the draft code and public submissions. The Victorian Government considered the recommendations of the advisory committee, and the government’s response to those recommendations provided the basis for the final version of the code (Government of Victoria 2001c).

5 Very large farms, with more than 320,000 birds, are deemed Special Class. Their likely impact on the surrounding area is assessed in detail on an individual basis.
acting as a barrier to regional economic development. The Victorian Chicken Meat Council claimed:

What is clear is that any chicken meat producer planning to establish a new farm or expand an existing farm would find it much easier and cost effective in any other state other than Victoria. (sub. 39, p. 22)

There are four distinct strands to the industry’s concerns.

**Flexibility of requirements**

The majority of existing broiler farms were designed and situated before the implementation of the code. The location of the broiler sheds was often set in a way that met environmental standards at the time, but that now inhibits any expansion because the site may be unable to meet the necessary boundary buffers. Over 90 per cent of Victoria’s broiler farms are prohibited from expanding for this reason (sub. 39, p. 22). These farms are predominantly located on the Mornington Peninsula, where the average farm size is relatively small, and encroachment means that producers cannot meet the required buffer distances:

The best intentions of producers during original construction have unintentionally led to severe restrictions. The [Victorian Farmers Federation] is aware of a number of cases where producers could expand by constructing additional shedding in compliance with the code, but due to siting of original sheds breaching the code’s boundary buffer requirements, are unable to do so. (sub. 39, p. 21)

This approach contrasts with that of other some states, notably Western Australia, where expansion is allowable in these circumstances as long as it does not diminish the prevailing amenity levels (EPA (WA) 2002).

**Stringency of odour requirements**

A guiding principle of air quality environmental management is that industry must avoid any adverse impacts on the community. This means that odours should be barely perceptible outside the boundary of the property responsible for the emission. The distance that odour travels is a function of the prevailing weather conditions, however, so neighbouring properties will experience different odour levels at different times.

The common approach taken by regulatory authorities is to require that the odour levels at the property boundary not exceed a specified threshold for a given percentage of modelled weather conditions. In Victoria, the code requires for any expansion or new farm development that:

99.9 per cent of model predictions of maximum odour levels (calculated as three-minute averages) shall not exceed five odour units (that is, five times the odour detection threshold as measured with EPA method B2) at and beyond the boundary buffer. (Government of Victoria 2001d, p. 30)

During the development of the code, the advisory committee recommended a 99.5 per cent tolerance (with minority opinions from EPA Victoria and community representatives). The government rejected the committee’s recommendation and accepted the EPA’s more stringent criteria, however. This is a higher standard than applied elsewhere in Australia. In New South Wales, the policy is based on the same five-odour unit criterion but requires only 99.5 per cent of model predictions to be below the threshold. In South Australia, in rural areas, 10 odour units are the allowable limit, with the standard applied at the sensitive receptor and not at the property boundary as in Victoria (sub. 39, p. 23).

A guiding principle of air quality environmental management is that industry must avoid any adverse impacts on the community. This means that odours should be barely perceptible outside the boundary of the property responsible for the emission. The distance that odour travels is a function of the prevailing weather conditions, however, so neighbouring properties will experience different odour levels at different times.

The common approach taken by regulatory authorities is to require that the odour levels at the property boundary not exceed a specified threshold for a given percentage of modelled weather conditions. In Victoria, the code requires for any expansion or new farm development that:

99.9 per cent of model predictions of maximum odour levels (calculated as three-minute averages) shall not exceed five odour units (that is, five times the odour detection threshold as measured with EPA method B2) at and beyond the boundary buffer. (Government of Victoria 2001d, p. 30)

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Compliance with tighter odour standards necessitates larger buffer zones between the operation and the property boundary. The Victorian Farmers Federation Chicken Meat Group claims that buffer distances required in Victoria are larger than elsewhere in Australia. This translates into larger land requirements for a given number of birds, and the resulting increased cost places the Victorian industry at a competitive disadvantage relative to other states in Australia (box 9.4).

### Box 9.4: Examples of the less stringent requirements in other states

- Western Australia sets a boundary buffer distance of 100 metres for new developments.
- South Australia recommends a separation distance of 20 metres from a side or rear boundary (whereas the minimum in Victoria is 180 metres).
- New South Wales has a recommendation of a 150-metre buffer to a sensitive land use before an environmental impact statement is required. No specific boundary buffer is stipulated. (The minimum in Victoria is 300 metres.)
- Queensland has no mandated or specific recommendations on buffer or separation distances.

Sources: sub. 39; NSW Agriculture (2003, p. 2); PIRSA (1998); EPA (Qld) undated; Western Australian Planning Commission (1998)

The evidence suggests that environmental regulations relating to odour levels are more stringent in Victoria than in other Australian states, and that this may negatively affect some businesses in industries emitting significant odours, such as broiler chicken farms. Prior to the implementation of the Victorian Code for Broiler Farms, however, a review of the State Environment Protection Policy on Air Quality Management was conducted, which considered input from all sectors of the community, including industry and community groups.

**Impact of the introduction of Green Wedge zones**

A third topic of concern raised with the Commission is the impact on those wishing to leave Green Wedges. The Mornington Peninsula is one of the 12 non-urban areas that surround the built-up urban areas of metropolitan Melbourne that have been designated as Green Wedges as part of the government’s Melbourne 2030 planning strategy (DOI 2002e). The Victorian Farmers Federation expressed concern that the introduction of the zones prevents the subdivision of land as a small-farm exit strategy:

> This introduction of the green wedge is preventing the timely closure of encroached farms and a transfer of this growing capacity to farms who... are able to operate more efficiently. Seriously encroached farms in the Morning Shire that were intending to close down will now be forced to continue to operate. Without the capacity to recover at least some of the significant capital loss incurred by the removal of the broiler sheds, the farm owners are compelled to keep the farms operating. This prevents an appropriate and fair outcome for the community and the sector being achieved. (sub. 39, pp. 18–19)

Although the high prices that would be available for residential land cannot be realised, land can be used for high valued uses, such as wine growing or hobby farming. Although the Green Wedge zones codify and expressly articulate certain restrictions, state and local strategies and land use zoning have long taken a similar approach when assessing planning proposals. Although some farmers may have expected to be able to now be forced to continue to operate. Without the capacity to recover at least some of the significant capital loss incurred by the removal of the broiler sheds, the farm owners are compelled to keep the farms operating. This prevents an appropriate and fair outcome for the community and the sector being achieved. (sub. 39, pp. 18–19)

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areas and have been raised as a concern:

**Infrastructure provision and industry support**

During the development of the Victorian Code for Broiler Farms, the advisory committee’s report to government concluded that the ‘eventual relocation (of the broiler chicken industry) from the Mornington Peninsula is inevitable’ (Government of Victoria 2001c, p. 2), and that broiler farms on small lots are ‘not sustainable in economic or environmental terms’. This view was predicated on the belief that underlying trends towards ever-larger farms and more intensive farming practices, as well as higher government and community expectations of amenity, mean that ‘it is likely that even without intervention by the code they would eventually disappear as a result of continuing industry growth and restructure’ (Broiler Code Advisory Committee 2000, p. 102).

This reality, along with requirements for larger land sizes to provide the appropriate buffer zones, are pushing broiler farms towards locations in more remote areas. There is a strong preference, however, for the processors to be within one hour’s travel of the farms (sub. 39). Infrastructure requirements, including access to three-phase power and a large and reliable supply of quality water, are also less likely to be available in non-traditional farming areas and have been raised as a concern:

The ability to purchase the larger land parcels required at an affordable price with access to the necessary services, while still being within a suitable distance of the processing works is limited.

(sub. 39, p. 22)

Relocation of the industry will involve significant costs, particularly in terms of capital equipment (box 9.5).

**Box 9.5: Inghams Enterprises**

Inghams is one of Victoria’s largest chicken meat processors, accounting for 21 per cent of the state’s annual output of around 115 million chickens (ACCC 2004). Inghams is a significant employer in areas of the state, employing approximately 1300 people in Victoria and more than 170 full-time subcontractors, mostly in the Mornington Peninsula where the company is the second largest single employer. As a national company with operations in all Australian states, it is well placed to compare the regulatory arrangements of the different states.

In discussions with the Commission, Inghams claimed that the stringent government restrictions relating to broiler chickens in Victoria are increasing the likelihood of a future downsizing of operations in this state as producers look to move to other states with a regulatory framework more conducive to the needs of their industry.

Inghams’ operations in Victoria are centred around its processing facility on the Mornington Peninsula. Increasing residential developments in this area have rendered any significant expansion of operations unfeasible, given the separation distances and odour thresholds mandated by the Victorian Code for Broiler Farms.

While Inghams estimated the cost of relocating its operations to regional Victoria to be in excess of $150 million, it claimed that expansion opportunities in other states would achieve equivalent production outcomes at an approximate cost of $80 million. The company also estimated that the larger, consolidated farms would enable efficiency savings of around $9.7 million per year.

*Source: Inghams Enterprises (pers. comm., 6 December 2004)*

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*Source: Inghams Enterprises (pers. comm., 6 December 2004)*
The level of infrastructure and the relocation support given to an industry are clearly major concerns to those in the industry. Support given to one firm in the industry, however, will provide it with an advantage relative to others in the industry.

**The Commission’s view**

In establishing the Victorian Code for Broiler Farms, the government envisaged major reviews to occur approximately every five years, or more often if justified (Government of Victoria 2001b, p. 4). The first such review is due late in 2006. The purpose of such reviews would be to assess the effectiveness of the code in achieving its stated objective:

To provide a framework for the economically sustainable development and operation of the broiler farming industry in Victoria, recognizing the needs of the industry and the community. (Government of Victoria 2001d, p. 1)

The Victorian Farmers Federation contended that an immediate review of the code is warranted ‘in light of its failure to deliver an economically viable way forward for the Victorian broiler industry’ and that this review should focus on buffer zones, odour standards and the definition of superior technology for broiler sheds (sub. 39, p. 25).

The Commission considers that a review should be conducted, as provided for by the code, but that it could appropriately occur by 2006, five years after the code’s introduction. The Commission notes that significant changes have affected the industry since the introduction of the code, such as the removal of a regulated process that set the standard growing fee, and the introduction of Green Wedge zones in the Mornington Peninsula. These changes, while not covered by the regulatory provisions of the code, could change the underlying cost–benefit calculations used in its development. The review of the code should ensure these changes are appropriately considered.

**Draft recommendation 9.7**

That an extensive review of the Victorian Code for Broiler Farms be conducted by 2006, five years after the implementation of the code. This review should be conducted through a transparent and consultative process similar to that preceding the introduction of the code, and should focus on the effects of significant developments occurring since the inception of the code.
10 The need for broader reforms

10.1 Introduction

By international standards, Australia has a positive business environment in areas such as ease and consistency of starting a new business. Within Australia, it is generally recognised that Victoria has been proactive in reviewing and reforming legislation and improving its development and implementation of regulation (section 2.4). Even so, the analysis in part B illustrates how some areas of regulation are imposing unnecessary costs on regional Victoria. This seems to be occurring because these areas of regulation:

- are particularly significant for industries that are important drivers of growth in regional Victoria
- cover industries that are located predominantly in regional Victoria
- because of the particular characteristics of regional businesses.

Regulation that raises business costs, increases delays, creates greater uncertainty or reduces the flexibility of regional businesses could reduce regional economic development (chapter 3). The Victorian Competition and Efficiency Commission’s terms of reference require it to consider ways of lessening this impact on regional economic development while protecting other community and environmental objectives. To this end, the Commission has examined two ways to address deficiencies in regulation: (1) a targeted suite of reforms that solve specific regulatory problems; and (2) systemic reforms of the policies and processes for developing and administering regulation, and of the governance of the agencies involved in regulatory processes.

In part B, the Commission has proposed targeted recommendations on ways to improve individual regulations or alleviate the impact of regulation on particular industries. Implementing these targeted recommendations would go a long way to reducing the adverse impact of regulation in regional Victoria. If implemented, however, these targeted reforms would not address all of the problems identified by the Commission. They cannot:

- ensure similar problems do not emerge in the future
- systematically address problems that span regulations and industries.

This chapter draws together the part B analysis of areas of regulation to identify any recurrent problems, suggesting broader systemic reforms. Chapter 11 identifies systemic reforms designed to address recurrent problems in policy development, administration and enforcement processes. Chapter 12 discusses systemic reforms that would assist in addressing recurrent problems in cost recovery, and governance and institutional arrangements.

10.2 Ensuring continuing good regulation

The Commission’s proposed targeted recommendations in part B are designed to address some significant deficiencies in regulation affecting regional Victoria. A number of problems would still exist, however, and new problems may emerge. Each time new regulation is introduced, or substantial amendments are made to existing regulation, there is the potential for anomalies and unintended impacts. Further, over time, the circumstances of individual industries will likely change, such that the old approaches to regulation are no longer appropriate.
The Victorian Government has stressed that new regulation can impose significant costs on those being regulated, and regulation must be strongly justified before it is introduced. In the April 2004 economic statement, Victoria: Leading the Way, it thus extended the process for formal scrutiny of regulation to new legislative proposals (Government of Victoria 2004a, p. 25). Current Victorian guidelines, outlining the principles of good regulation, state:

… government should not use regulation unless it has clear evidence that —

- a problem exists;
- government action is justified; and
- regulation is the best alternative open to government.

(ORR 1996a, p. 4)

Before a major regulatory proposal is introduced, the Victorian Government requires it to be analysed to test whether its benefits outweigh its costs, and whether the proposed solution is the best way of addressing the identified problem. This analysis is done through regulatory impact statements (RISs) and business impact assessments (BIAs), looking at subordinate legislation and primary legislation (chapter 2), and policy impact assessments (PIAs) in the case of environmental protection policies (chapter 7).

The government also recognises that changes in industry structure, technology and other factors can require a major rethink about the approach to regulation. The potential for private train operators to compete with the previously government-owned operator, for example, is causing a major rethink of the management and regulation of the rail sector.

The Victorian Government deals with these changes by conducting reviews when problems are identified and by requiring subordinate legislation (Regulations) to sunset every 10 years and undergo reassessment before being remade and/or amended. Departments and regulators are also responsible for ensuring the regulation they manage continues to meet the government’s policy objectives without imposing excessive costs on regulated activities.

Despite these existing processes, regulatory problems continue and new problems emerge. This is illustrated by the breadth of regulatory problems in regional Victoria, as shown in part B. This inquiry has confirmed that these processes are not comprehensively identifying and addressing issues that impact on regional Victoria.

10.3 Addressing problems that span regulations and industries

The Commission looked broadly at problems that emerged from the analysis in part B to determine whether commonalities could be identified. The analysis highlighted similar problems across regulations and industries, which suggest deficiencies in the underlying systems for developing and implementing regulation. The eight themes discussed in this section illustrate these recurring problems.
Assessment of economic, social and environmental objectives

In November 2001, the government released Growing Victoria Together, a key policy document that set out the government’s vision for the future. That document states:

Growing Victoria Together balances economic, social and environmental goals and actions. It is clear that we need a broader measure of progress and common prosperity than economic growth alone. That is the heart of our balanced approach—a way of thinking, a way of working and a way of governing which starts by valuing equally our economic, social and environmental goals. (Government of Victoria 2001a, p. 3)

This statement illustrates the government’s overarching commitment to balancing economic, social and environmental objectives, and introducing regulation only where there is a net community benefit. This objective is reinforced by the RIS and BIA processes, which require a cost–benefit analysis for new, amended or sunsetting regulation to demonstrate that the preferred regulatory approach would generate a net benefit.

In practice, most government departments have a specialised focus that will favour one type of objective—that is, economic, social or environmental. Consequently, a failure to achieve the intended balance between these objectives can occur if decision-making processes are not fully transparent and well coordinated. There is some evidence that for regional Victoria, the regulatory system may not guarantee that the balance between conflicting objectives is always consistent with government policy intentions.

Planning regulation is an area in which competing objectives need to be balanced. Overall, the objectives of the Planning and Environment Act 1987 can be summarised as seeking to ensure the fair, orderly, sustainable and economic use and development of land, having regard to environmental, social, heritage and community interests. Through the use of planning schemes, competing and differing considerations are to be balanced, integrated and reconciled, having regard to the principles of net community benefit and sustainable development.

One issue is the degree of power that referral authorities wield in the process of planning scheme amendments and permit applications. Referral authorities are bodies, agencies or groups specified in the Act or planning schemes whose interests may be affected by the amendment of the scheme or the granting of a permit that authorises the use or development of land. EPA Victoria, VicRoads and catchment management authorities are examples of referral authorities. The responsible authority must refuse a permit if a referral authority objects to granting the permit. A refusal can be reviewed only by the Victorian Civil and Administrative Tribunal. The potential power (and prioritisation of objectives) that this accords to referral authorities makes it important that these authorities be fully integrated into the planning process. That power also makes it important that referral authorities receive all the information needed to make well-informed decisions (chapter 5) and can show that their decisions provide a balanced approach to achieving the government’s overall policy objectives.

Comments made to this inquiry indicate that participants consider that competing objectives are not being balanced effectively in practice. Typical of these comments were those by the Victorian Farmers Federation, which argued that applications to remove native vegetation are assessed only on the loss of trees and their conservation status. The federation argued that such assessments do not consider broader environmental, economic and social objectives (chapter 6).

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This view was supported by submissions from individual farmers, such as Dawn Parker and Warren Thomas, who argued that regulation should be based on:

… clear goals encompassing each sphere of effect, and oblige regulators to state social and financial as well as environmental outcomes. Disqualify any regulation which does not or will not fulfill all three requirements simultaneously. (sub. 31, p. 4)

The agricultural sector’s concerns about the balance achieved by regulation of the removal of native vegetation are shared by the mining sector (chapter 6). The Commission notes that mining developments can have large environmental and social impacts, and can be the largest economic activity in small communities. It is appropriate, therefore, that the regulatory framework accounts for social and environmental, as well as economic, impacts. It is also important that the framework allow for a timely and predictable evaluation of these considerations. There is a strong view within the mining sector that the current arrangements do not always pass this test (chapter 9).

The Commission’s analysis in part B, illustrated by the above examples, indicates that several areas of regulation pose a risk that some decision-making processes will not achieve the intended balance between the government’s economic, social and environmental objectives. Despite overarching government frameworks that set objectives such as net community benefit and sustainable development, the outcomes of regulation sometimes fall short of the intent in these frameworks. The Commission has identified problems in regulation in areas such as planning and native vegetation, which are affecting industries such as agriculture and mining.

Achievement of objectives

Frequently, inquiry participants suggested that the government’s policy intent behind a particular regulation is usually a worthwhile objective but not always being realised. Sometimes, policy intent and regulatory outcome disconnect somewhere along the chain of enacting, implementing, administering and enforcing regulations. The result is that regulatory objectives are not achieved, while government and industry pay the costs of administering and complying with the regulation. Further, the unintended outcomes may detract from, rather than promote, the original policy objective.

The results of a survey conducted by the Victorian Employers Chamber of Commerce and Industry indicated that 56 per cent of respondents considered that their greatest difficulty with regulation related to compliance or administration, not the regulatory standards themselves (sub. 52, p. 3).

The Commission is aware of regional businesses that have been adversely affected by regulation that was designed to manage broad problems, such as halting environmental degradation, increasing the amount of native vegetation, providing safe food or ensuring appropriate land use. While stakeholders may not dispute the overall objective of this regulation, the regulation’s application can impose costs on some regional industries. This may occur because those developing the regulation do not fully consider the characteristics and circumstances of small regional businesses. This contributes to a number of problems (discussed below), such as regulation that does not accommodate regions’ capacity for implementation, and the effects of inappropriate regulation on small, niche and emerging industries. The problems facing small businesses and small industries are discussed in more detail in later sections. They are also relevant to this discussion, however, because they mean that the outcomes of the regulation fall short of the original policy intent.

The analysis in part B highlighted areas where the outcomes of regulation diverge from its original policy intent. This breakdown is affected by the capacity of councils to implement...
and enforce the regulation when these responsibilities have been delegated to the local level (discussed in more detail in chapter 12). Areas of regulation such as planning and food safety have been long-standing local government obligations, but the range and complexity of the obligations is increasing and councils’ capacity to manage the regulation has not always increased commensurately.

The native vegetation policy provides a good case study (box 10.1) of regulatory outcomes sometimes not reflecting policy intent.

**Box 10.1: Native vegetation**

The primary objective of native vegetation policy in Victoria is to achieve a net gain in the extent and quality of native vegetation. It is envisaged that increasing the quantity and quality of native vegetation will improve biodiversity, help protect rare and threatened species and ecological communities, and improve land and water quality.

The native vegetation controls may be producing unintended outcomes. Several inquiry participants considered that the native vegetation controls are unintentionally undermining the environmental objective of achieving a net gain in native vegetation. The argument was put that restrictions on clearing provide an incentive for landholders to reduce their management efforts or even actively degrade existing native vegetation so as to reduce the potential for restrictions to be imposed. The Commission notes that a lack of public information makes it difficult to assess the extent to which landholders are engaging in activities that undermine the intent of native vegetation controls (chapter 6).

Regional Victoria is more heavily reliant than metropolitan Victoria on small business. As noted in chapter 3, 64 per cent of people in regional Victoria work in businesses with fewer than 50 employees, compared with 53 per cent in Melbourne. Typically, small businesses have fewer specialised staff who can develop expertise in the regulatory requirements and monitor changes in the regulation. Regulation is more likely to divert managers away from core tasks such as planning and operating the business.

Several inquiry participants drew out the problems facing small business in regional areas. The concerns of the Macedon Ranges Shire Council about the impact of regulatory changes on small businesses in its region were noted in chapter 3. In addition, Tim Stewart, representing Albury–Wodonga Business, stated:

*Businesses spend a lot of time in just trying to understand what the regulations mean. In many cases the regulations are very complex for small business operators who do not have the luxury of an HR person within their business. Often they find it difficult to contact anyone, as they don’t know where to go to for assistance. Often businesses will get differing versions re regulations if they speak to more than one person within government.* (sub. 34, p. 3)

Capacity to implement and enforce regulation in regional Victoria

Implementing and enforcing regulation may present more of a challenge in regional Victoria, given the high proportion of small businesses, the longer distances and the relative shortage of specialised staff. These challenges are not always well understood or taken into account when regulation is established, so compliance and enforcement costs for regional businesses can be high. The risks of inappropriate or inconsistent regulation are also higher if regional councils do not have the capacity to administer and enforce regulation effectively.

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Inquiry participants also argued that small businesses within regional industries such as forestry (Colac transcript, p. 33) and mining (sub. 40) face difficulties complying with regulation that larger businesses in those sectors do not face.

People in regional areas face difficulties due to distance. Access to training, for example, can be hindered by the distances to training institutions or the restricted range of courses offered in regional centres. The costs of regional businesses meeting regulations that have mandatory training requirements are thus increased, because businesses need to meet not only the time and cost of the training but also the substantial travel time and cost. Similarly, distance can make it more difficult for regional businesses to resolve their regulatory problems, because they may need to travel to Melbourne to discuss issues face to face with the regulator.

Chapter 4 describes how the Liquor Control Reform Act 1998 requires new liquor licence holders to undertake an initial one-day training course in the responsible serving of alcohol, yet only one TAFE institute in Melbourne has been accredited to deliver this training. The Chief Executive Officer of AKD Softwood stated that maintenance filters need to attend night classes in Geelong to obtain an S Class electrical licence, and assessors must be brought in from either Geelong or Warrnambool to assess forklift drivers, log grab and crane operators. AKD Softwood estimated that this accreditation and training cost thousands of dollars per year (Colac transcript, p. 20).

The Mildura Rural City Council noted:

> Currently the Mildura region is responsive to government regional offices in Bendigo or Ballarat depending on government departments. This creates inefficiencies in time delay with communication or the need to travel to these locations and on some occasions a lack of understanding of the need and prevailing conditions in the region.

(sub. 21, p. 2)

There is some evidence that accessing appropriately skilled labour is more of a challenge in regional Victoria. The percentage of the workforce that is employed in a professional occupation is higher in Melbourne than in even the largest regional centres (ACIL Tasman 2004, p. 75). Similarly, in the smallest town, less than 10 per cent of the population has a tertiary qualification, compared with nearly 15 per cent in the largest towns and nearly 20 per cent in Melbourne (ACIL Tasman 2004, p. 74). These results illustrate two problems. First, those in regional businesses are less likely to have staff with relevant academic qualifications that could assist in managing regulatory obligations. Second, regional areas are less likely to have specialist advisors who can assist regional businesses with questions arising from their regulatory obligations.

The characteristics of the regions not only make it more difficult for businesses to manage their regulatory obligations, but can also affect the ability of local governments to fulfil their regulatory responsibilities. A shortage of skilled staff can be as much of a problem for regional councils as for regional businesses. These problems can be exacerbated if councils are required to implement or enforce regulation but do not have the resources, money and training to undertake that role effectively.

Several chapters in part B, such as those on planning, native vegetation and food safety regulation, identified common issues arising from councils’ administration and enforcement of regulation, such as the lack of financial resources, training and skills, and inconsistent outcomes. The following are examples:

- The Planning Institute of Australia identified that rural and regional areas suffer from a long-term shortage of planners, and that it is costly and difficult for planners in regional areas to access professional development courses (PIA 2004b).
reviews have been significantly reduced. The Commission has not received any evidence that the problems identified in these approaches were often inconsistent (PC 2004a).

In 2002, a report on the management of food safety by the Auditor-General found that only a few councils were meeting their legislative responsibilities. The majority of councils exhibited poor compliance in areas such as annual inspections of registered food businesses, follow-up of non-compliant businesses, and the amount of food sampling undertaken. (AGV 2002)

The Commission has not received any evidence that the problems identified in these reviews have been significantly reduced.

Finally, regional businesses can have less flexibility to cope with excessive regulatory costs. In Melbourne, council areas are relatively small. If one council is taking an extreme approach to interpreting regulatory requirements, new businesses can choose to locate in another council area, and some existing businesses may be able to move. In regional Victoria, the local government areas are much larger and the opportunities to move between councils to avoid regulatory problems are much fewer.

For existing businesses, the costs of inappropriate regulation can be high in centres where the economic base is relatively thin. If a business in a regional area proves uneconomic, for whatever reason (regulatory or another reason), there may be fewer alternative uses for its assets and thus fewer opportunities to on-sell the buildings and other fixed capital. As a result, the financial consequences of a failed business can be greater in the regions.

Consultation with regional businesses and communities

All regulatory changes cause disruption and adjustment costs. There is usually considerable industry concern about any new or amended regulation at the early stages of its implementation. This disquiet will often subside once the new arrangements have bedded down, for the following reasons:

- Much of the initial concern may result from uncertainty associated with change. Once this uncertainty has gone, the level of concern about the new regulation is reduced.
- Businesses often need to adjust the way they operate to accommodate new regulation. Once this adjustment has been made, the level of concern (and cost) decreases.

If, however, the policy design and implementation process is poor, it will increase the period of risk and uncertainty, potentially discouraging new investment and making it difficult for businesses to adjust or challenging the viability of more businesses. The Commission has identified the following examples of recurring problems with the processes for consultation, access to information, and developing and amending regulation:

- In some cases, consultation during the regulation’s development or implementation was inadequate. The government may not be fully aware of the consequences of the regulation, therefore, and industry may not have an adequate opportunity to provide input into the regulatory process. Native vegetation regulation (chapter 6), for example, is implemented through the planning scheme so can be amended without consultation.
- The requirement for councils to administer and enforce the native vegetation regulation was introduced without any additional assistance or funding. The requirement for councils to administer and enforce the native vegetation regulation was introduced without any additional assistance or funding. The Productivity Commission report into native vegetation concluded that the implementation of this regulation was costly to councils and that councils’ approaches were often inconsistent (PC 2004a).
- In 2002, a report on the management of food safety by the Auditor-General found that only a few councils were meeting their legislative responsibilities. The majority of councils exhibited poor compliance in areas such as annual inspections of registered food businesses, follow-up of non-compliant businesses, and the amount of food sampling undertaken. (AGV 2002)

The Commission has not received any evidence that the problems identified in these reviews have been significantly reduced.

Finally, regional businesses can have less flexibility to cope with excessive regulatory costs. In Melbourne, council areas are relatively small. If one council is taking an extreme approach to interpreting regulatory requirements, new businesses can choose to locate in another council area, and some existing businesses may be able to move. In regional Victoria, the local government areas are much larger and the opportunities to move between councils to avoid regulatory problems are much fewer.

For existing businesses, the costs of inappropriate regulation can be high in centres where the economic base is relatively thin. If a business in a regional area proves uneconomic, for whatever reason (regulatory or another reason), there may be fewer alternative uses for its assets and thus fewer opportunities to on-sell the buildings and other fixed capital. As a result, the financial consequences of a failed business can be greater in the regions.

Consultation with regional businesses and communities

All regulatory changes cause disruption and adjustment costs. There is usually considerable industry concern about any new or amended regulation at the early stages of its implementation. This disquiet will often subside once the new arrangements have bedded down, for the following reasons:

- Much of the initial concern may result from uncertainty associated with change. Once this uncertainty has gone, the level of concern about the new regulation is reduced.
- Businesses often need to adjust the way they operate to accommodate new regulation. Once this adjustment has been made, the level of concern (and cost) decreases.

If, however, the policy design and implementation process is poor, it will increase the period of risk and uncertainty, potentially discouraging new investment and making it difficult for businesses to adjust or challenging the viability of more businesses. The Commission has identified the following examples of recurring problems with the processes for consultation, access to information, and developing and amending regulation:

- In some cases, consultation during the regulation’s development or implementation was inadequate. The government may not be fully aware of the consequences of the regulation, therefore, and industry may not have an adequate opportunity to provide input into the regulatory process. Native vegetation regulation (chapter 6), for example, is implemented through the planning scheme so can be amended without consultation.
• In some cases, the information provided to industry on the regulation was either inadequate or not accessible. Inquiry participants felt that the advice received from government agencies on environmental policies and guidelines was not well coordinated and sometimes conflicting (chapter 7). There also appears to be confusion about the application of food safety standards in the seafood sector (chapter 8). PrimeSafe informed the Commission that regulation of the wildcatch and harvesting sector was to be phased in, with all businesses being licensed first (and paying a licence fee) and audits not being required until after 1 July 2005. This would allow a transition time for businesses and for PrimeSafe to work with businesses to develop food safety programs and the number of audits required. This process has demonstrated the difficulty of communicating detailed regulatory and implementation strategies in industries comprising many small and diverse businesses.

• There are processes for developing and changing regulation that are also creating uncertainty. The Commission recommended in chapter 7 that the government release a response to the 2002 review of environmental effects assessment procedures, because concerns about the outcomes of this review are creating uncertainty about the future regulatory environment facing proponents of major projects. There is a perception that regulations relating to native vegetation, environmental protection and some aspects of food safety are becoming progressively more onerous. This perception adds to risk and could affect decisions on future investment.

• Finally, the reliance on draft policies to guide decision making in areas such as planning, native vegetation and environmental regulation are adding to industry uncertainty (chapters 5–7).

Coordination across governments

Frequently, more than one government is involved in the regulatory process. Businesses complying with a particular area of regulation may need to comply with rules that involve a combination of Commonwealth, state and/or local government requirements. The involvement of different governments can cause problems for industry when:

• the requirements set by different levels of government are inconsistent, making it difficult to comply
• the requirements set by different levels of government overlap, increasing compliance costs
• inconsistency or overlap causes confusion and increases the cost to businesses of understanding their regulatory obligations.

The analysis in part B addressed issues arising from interactions between Commonwealth and state regulation; for example, overlap between AQIS and PrimeSafe audits. The most significant systemic issues, however, appear to arise from a lack of coordination between the State Government and local governments, and between Victoria and other states. These systemic issues are particularly important for the regulation of planning, native vegetation and food safety, where policies are set at the state or national level and then administered and enforced by local government.

The previous discussion on the skills and resources available to local government highlighted challenges facing regional local governments required to administer and enforce increasingly complex regulatory arrangements set at the state level. Sometimes, these challenges appear to have contributed to the divergence between state policy objectives and the regulatory outcomes at the local level, and to inconsistencies in the outcomes across local government areas.
Consistency in state regulations is a major issue for those businesses operating across state borders. These businesses often need to comply with the regulatory requirements of two or more state governments. The Mildura Rural City Council noted:

Mildura is at the junction of three states. The requirements of the three state governments differ in relation to various licences and standards. This results in businesses in the region incurring additional costs in meeting the requirements of each of the states. (sub. 21, p. 2)

Albury Wodonga Business, a business development and marketing agency in the Albury–Wodonga area, identified the following issues for businesses in that region:

The big issue is the duplication in paperwork for all professionals and tradespeople living on the border and working both sides. There is a real need for the two state governments to get together to eliminate duplication and work towards one set of rules for licences, registrations and regulations, which can apply across the border.

For example, the Building Code of Australia was launched in 1995 as a national code of regulations for the building industry, to replace the separate codes then operating in the different states. Since that time, the regulations in each state have been busily added to each state appendix to the point where each appendix is almost as big as the original code.

Another example is one of our local bus companies, Mylons, which operates both within Victoria and New South Wales. Their buses need to be fitted with two separate flashing light mechanisms—one for Victoria and one for NSW. In addition, the automatic doors on the buses need to operate in a different manner in Victoria vs New South Wales. This type of unnecessary regulation, due to the cross border area, has a significant negative impact on its bottom line. They have 22 buses requiring the flashing light mechanisms at a cost of $1000 per bus (total $22 000).

Health regulations differ between Albury and Wodonga.

There are different regulations re WorkCover between the two states.

Meat licences differ between Albury and Wodonga. (sub. 34, pp. 2–3)

Similar examples were provided by other inquiry participants.

- The Wimmera sustainable development committee, Wimmera 2020, noted duplication in occupational health and safety regulation as a significant issue for businesses that work across state borders (sub. 14, p. 2).
- Restaurant and Catering Victoria noted that ‘a café owner who has a business in both Victoria and New South Wales has limited ability to interchange staff on a ‘needs basis’ without the added complexity of ensuring compliance to two sets of regulations such as industrial relations’ (sub. 37, p. 4).
- Training providers for transport licensing must conduct training for drivers of articulated vehicles on Victorian routes for a Victorian licence and New South Wales routes for a New South Wales licence, despite licensed drivers being able to operate in either state (Wodonga transcript, p. 20).

The need for broader reforms

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A plumber operating in Wodonga noted that expanding his business across the border doubled his administration requirements. As well as having to comply with two sets of licensing and regulatory requirements, the business is required by state based regulators, such as WorkCover, to estimate the amount of activity conducted on either side of the border. This businessman noted that many small businesses opt to operate on one side of the border only, given the additional compliance costs of regulation (Wodonga transcript, pp. 29–33).

The regulations for the transport of large machinery vary across Victoria, South Australia and New South Wales. It requires time and resources to manage the loading and transport of agricultural equipment across a state border, even if the equipment is being transported only a short distance from manufacturing plant to farm (Ballarat transcript, pp. 39–40).

Wakefield Transport noted the difficulties it experiences with different mass limits and dimensions for loads carried by road transport in New South Wales and Victoria (Mildura transcript, pp. 36–40).

There are claims that inconsistencies in regulation not only increase business costs but also encourage businesses to locate in other jurisdictions that have a more favourable regulatory environment. The Commission has not analysed whether these inconsistencies are warranted, but notes claims that they are affecting business investment decisions in areas such as mining (sub. 17; sub. 40), aquaculture (including yabbies and rock lobster) (sub. 29; Traralgon transcript, p. 32; Geelong transcript, p. 61), biotechnology research (sub. 24) and hunting based tourism (sub. 12).

**Effects of regulation on small, emerging or niche sectors**

Many areas of regulation affect a range of industries. Examples of such regulation are food safety, occupational health and safety, and environmental management regulation. The same area of regulation may affect different industries differently, however. The impact of occupational health and safety requirements for working at heights, for example, will be very different for the building sector, the manufacturing sector and farming. This diversity makes it difficult for regulators to consult effectively and account for the issues facing all industries.

In practice, regulators cannot talk to every business affected by a new regulation, so they usually rely on feedback from industry associations, major industry sectors and responses to public advertisements. The groups most likely to be left out of this consultation process are:

- those with whom the regulator does not have a history of regular engagement
- small businesses that do not belong to an industry association and may not be aware of public advertisements
- new industries that do not have an established representative association
- small industry sectors that are not well represented by the existing industry associations.

As a result, even where there is extensive consultation, regulation may have unintended consequences for smaller, emerging or niche sectors because the issues of those sectors were not adequately identified and considered in the development of that regulation. A number of small industries argued that their views are not being heard. The concerns raised by the aquaculture sector are typical. The Gippsland Aquaculture Industry Network stated:

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Prescriptive regulation can exacerbate these problems. Such regulation is inflexible because it mandates how businesses must comply with the regulatory requirements and limits the scope for innovation. Innovation is often the only way small businesses in regional areas can gain a competitive edge and expand. Limiting innovation will limit the ability of these businesses to grow. In many instances in this inquiry, smaller industry sectors described problems they experience with complying with regulatory requirements that span a range of sectors:

- ‘At a very micro level, the need for mandatory food safety programs for small businesses establishments who may only provide limited range of services such as a ‘bed and breakfast’ establishment is an obvious example of over-regulation’ (sub. 37, p. 4).
- Mobile food vendors, which move from event to event, are required to comply with the same regulations that apply to restaurants and cafés with fixed premises. They have to produce a food safety program for each event they attend, which can be time consuming, taking approximately two to three hours. They may attend 30–50 events per year (sub. 53, p. 3).
- Rock lobster fishermen are required as part of their licence conditions to report, before entering a port or mooring area, information such as their licence number, catch numbers, port of entry, and estimated time of entering the port and landing the lobsters. This involves telephoning Fisheries Victoria an hour before the lobsters are landed using a mobile phone, but mobile coverage can be marginal. The call requires responses to an automated set of prompts, and the call often drops out before the process is completed (Geelong transcript, pp. 52–3).
- The yabbie sector argued that there is uncertainty about the implementation of PrimeSafe food standards. It raised concerns about proposed cost-recovery arrangements, particularly given this uncertainty (Wodonga transcript, pp. 5–8).
- There is a shortage of taxi licences in some regional towns such as Wodonga, and regulation prohibits the issue of new taxi licences (Wodonga transcript, p. 41).
- The amount of paperwork, delays and complexity of the regulation involved in establishing marine based aquaculture projects has been blamed for projects being abandoned for seahorses in Welshpool, black bream in the Gippsland lakes, shellfish at Corner Inlet, and abalone at Kilcunda (Traralgon transcript, pp. 31–5).
- Inquiry participants commented that EPA Victoria emission regulations are preventing the expansion of the trout industry (sub. 46, pp. 2–3).
- In Victoria, kangaroos are legally killed as pests on farming land, under destruction permits. Unlike the rest of Australia, it is ‘legally necessary to leave the carcasses on the ground to rot. It’s actually illegal to take the carcasses and even to use the meat for dog meat or personal use. Neither the skin nor the meat can be used. This is blatant waste of resources, is totally inconsistent with any global principles for conservation and nor is it consistent with the concept of ecologically sustainable development’ (Bendigo transcript, p. 30).
- Wineries are required to comply with health regulations for cellar door sales. ‘In the building of a winery it appears that … you have to adhere to the food preparation guidelines as if you were handling a food which was … perishable. The alcohol content in wine, however, makes it a very different product from perishable food’ (Bendigo transcript, p. 42).
- The manager of an innovative native tree fern plantation raised concerns about the impact that an adjoining national park may have on its rights to manage and harvest the plantation (Colac transcript, pp. 23–4).
The Commission has not analysed each of these claims, other than in the context of the matters discussed in chapters 4–9. The number and scope of these claims, however, indicate that concerns about regulation often arise for smaller, emerging or niche industries. There is a perception among these smaller industries that larger, established industries receive more assistance in cutting through red tape.

**Tension between prescriptive and outcome focused regulation**

Prescriptive regulation focuses on inputs and processes, and may specify the technical means to achieve the objective of the regulation. Outcome focused regulation uses more performance based rules or specification of standards, which outline the desired outcomes in a broad sense (for example, driving in a manner appropriate to the conditions). Businesses then have the flexibility to choose how they will achieve those outcomes.

Prescriptive regulation may provide certainty about how the regulation must be met. Outcome based regulation gives businesses flexibility and encourages innovation. A single business may want to achieve certainty and flexibility simultaneously, or different businesses covered by the same regulation may place different weights on these two characteristics. This creates some tension in formulating the best approach to regulation.

There are some benefits for regional economic development from well-designed outcome focused regulation. Because compliance is assessed against the outcome (that is, the policy objective), there is less risk that the regulator will determine a set of desired outcomes that does not deliver on the desired policy objective. Several earlier sections in this chapter summarised the shortcomings of many areas of regulation discussed in part B, such as unintended consequences or outcomes that fall short of the original policy intent. Reducing the risk of such regulatory shortcomings occurring could improve economic development in regional Victoria. Similarly, outcome focused regulation can more readily accommodate regional differences, so regional businesses are not automatically locked into a predetermined approach. Inquiry participants raised concerns about the effects of prescriptive regulation in several areas:

- Native vegetation controls have prescriptive exemptions to the general requirement that landholders lodge a permit application each time they wish to remove, destroy or top native vegetation. These exemptions may limit flexibility and contribute to uncertainty for industry (chapter 6).
- The Civil Contractors Federation argued that greater flexibility in regulation would reduce the costs to consumers. ‘We’re dealing with a matter with one of the water boards now in Melbourne and it will apply across regional Victoria where our people are saying you can achieve the same outcome through a performance based approach, with inspection shafts rather than expensive concrete manholes … it is over-regulation without adequate thought about the total cost of risk assessment and alternatives’ (Geelong transcript, pp. 21–2). The Victorian Association of Forest Industries is critical of inflexibility in harvest scheduling. Detailed coupe harvesting schedules are required to harvest timber and can take two years to finalise, ‘… making it difficult to readily adjust harvesting schedules for weather, fire, protest action or changing market constraints and opportunities’ (sub. 30, pp. 9–10) (chapter 9).
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Outcome focused regulation usually has lower ongoing compliance costs than has prescriptive regulation. This arises because individual businesses are free to choose a compliance strategy that suits their circumstances. In some cases, however, the initial costs of determining the business practice changes needed to achieve the required outcome will be high. This could be the case for small businesses in particular, which do not have ready access to expert advisors. The balance of costs between initial
establishment costs and ongoing cost savings will depend on the scope for meeting the regulatory objectives in a range of ways. If there is little scope for different businesses to adopt varying approaches, then set-up costs may outweigh the ongoing cost savings.

When businesses discuss their preferred regulatory approach, their arguments are often characterised by the tension between a desire for certainty and a desire for flexibility. In planning, for example, the problem of imprecise and poorly understood policy was often associated with attempts to maintain flexibility, so a range of relevant considerations could be taken into account when making planning decisions (chapter 5).

The Gippsland Aquaculture Industry Network argued that this tension also affects regulators. It claimed that the Chairman of EPA Victoria was proposing:

... the EPA was becoming more responsive to the community in which it operated and regional managers were being given the autonomy required to move away from prescriptive responses to development needs within their regions and communities. (sub. 29, p. 7)

The network also claimed that when the industry referred to the Chairman’s comments, EPA Victoria’s regional manager responded, saying, ‘anything other than a uniform approach would be inequitable’ (sub. 29, p. 7).

Cumulative effects of regulation
There is a myriad of ways that the approach to regulation can be improved. Each improvement may seem small, but the combined benefits for business can be large, as can the combined costs of ignoring the regulatory issues. The evidence before this inquiry reinforces the conclusion that the cumulative impact of regulation can pose significant problems for businesses in the regions.

The sheer volume of regulation and the number of regulators can increase the risk of regulatory overlap and inefficiencies. At 1 November 2004, there were approximately 69 Victorian business regulators (excluding local government), which administered 170 Acts (over 19,600 pages of legislation). These Acts have been amended approximately 3500 times. There are 176 Regulations associated with these Acts, which have been amended approximately 340 times (Chapter 2).

Several industries argued that the cumulative effects of regulation impose real costs on regional businesses. The Civil Contractors Federation made the following comments:

... every council across the state has a different fee regime for permits for road opening. This is where a plumber comes to install a pipe along the nature strip, invariably they’re not allowed to dig the road up but they have to bore under there, they still pay, there’s a plethora of permit fees, a plethora of permit requirements. I know the Kennett Government rationalised local government from 210 back to 79 but there’s still 79 councils out there all doing a different thing, which does impose. To quantify it’s probably going to be difficult but you can imagine if you’re a tenderer operating in four different municipalities and you’ve got four different regimes, the constant dealing with each of those can only be covered in your overheads, so eventually the community will be paying for it. (Geelong transcript, pp. 9–10)

Chapter 9 examined regulatory arrangements in the mining, forestry and aquaculture industries. The Commission concluded that the regulatory structures in each of these industries are extensive and complex. In the case of aquaculture, the Harris (ARRTF 1999) and Productivity Commission (2004c) reviews found that Victoria’s regulatory arrangements were complex and needed streamlining. A number of inquiry participants

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supported this view. They claimed that the cumulative effects of regulation have a significant impact on the viability of the aquaculture sector (subs. 1 and 5).

**Table 10.1: Legislation governing the activities of mining and forestry businesses**

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<tr>
<th>Forestry</th>
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<tr>
<td>• Conservation, Forests and Lands Act 1987</td>
<td>• Mineral Resources Development Act 1990</td>
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<td>• Forests Act 1958</td>
<td>• Extractive Industries Development Act 1995</td>
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<td>• Catchment and Land Protection Act 1994</td>
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<td>• Country Fire Authority Act 1958</td>
<td>• Archaeological and Aboriginal Relics Preservation Act 1972</td>
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Sources: sub. 17; sub. 30.
For the forestry and mining industries, the Acts that peak bodies claim cover activities in their industry are listed in Table 10.1. Regulations and other regulatory instruments also govern activities in these industries. Given the number of different areas of regulation, and the diversity of regulators involved, relatively small problems in regulation can quickly add up and have a significant impact on the industry. Gippsland Private Forestry noted:

Some of the individual regulatory impacts identified in this submission may appear of marginal consequence on their own. However, collectively they do give rise to a sense within the industry that private forestry receives undue and inequitable treatment in the regulatory regime that applies in the state. (sub. 11, p. 2)

Other sectors also claim that the cumulative impact of regulation has a significant affect on business. The Victorian Farmers Federation, for example, argued: 1

In recent times we have seen a tidal wave of rules, regulations, impositions, taxes and charges crushing our farmers and their businesses. For example:

- Native vegetation controls which are hampering environmental protection rather than improving it;
- Orders to keep fire fighters from going in and attacking fires aggressively in the first instance resulting in 1.1 million hectares of public land burnt in last year’s north east Victoria and east Gippsland bushfires;
- Pest control regulations which put farm businesses and livestock at risk;
- Unfair and inconsistent regulations governing stubble burning, stock movements and basic farm expansion;
- Local council and EPA regulations on noise and odours requirements which make Victorian farms uncompetitive;
- A genetic modification moratorium on canola which opposes innovative new farming technology;
- Green Wedges legislation that constrains farm activity;
- Child employment laws banning kids under 13 years from doing farm chores, requiring family members to obtain an employment permit and neighbours to undergo police checks;
- Industrial relations laws putting thousands of jobs at risk;
- WorkCover regulations that ignore practical farming reality;
- Falls from heights restrictions which will see the end of farm windmills and grain silos;
- Transport regulations prohibiting basic road usage;
- Unworkable ground water assessments protocols;
- Local council overreach in regards to food safety regulations and permits
- Irresponsible farm access issues surrounding RSPCA inspectors; and,

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1 The Commission has not analysed all of these claims.
• Cultural heritage requirements, which impose heavy costs on producers.

Not only are there the above mentioned regulations, impositions, taxes and charges, there are also a number of additional regulations currently under government development, including:

• Impression of costly metering of producers’ groundwater use as proposed in the government’s water white paper;
• Ammonium nitrate control regulations and licensing, and on other nitrogenous fertilisers producers use;
• Maxwell review into occupational health and safety has proposed even further restrictions and impositions, including:
  – farm access for unions
  – roving health and safety representatives
  – industrial manslaughter; and
• Increased access to farms by part-time RSPCA inspectors. (sub. 39, p. 4)

There has also been criticism of planning and environmental processes (chapters 5 and 7), arising from the complexity of approval processes that involve multiple government agencies. The Commission notes that these processes are not necessarily well coordinated, and responsibility for managing the process is often left to the proponent of the project.

The Commission used the business licensing information system to look at the regulatory requirements that must be met to set up a new business in several areas (appendix C). These case studies illustrate that new businesses need to understand and comply with a complex array of regulation. This complexity can be particularly difficult for small businesses and may encourage noncompliance by businesses that find dealing with this complexity too difficult or costly.

### 10.4 Impact of recurrent problems on regional economic development

Combined, the recurrent problems identified above can affect regional economic development. While these effects are difficult, if not impossible, to quantify accurately, it is clear that they are significant. Chapter 3 discussed the link between regulation and regional economic development. It noted that poorly developed regulation can impede regional economic development by distorting business decisions, reducing flexibility, stifling innovation, diverting business from its core activities, increasing costs, adding to risk and reducing investment. The Commission has found evidence of these effects in a number of the areas of regulation examined in this report.

Regulation that does not achieve its objectives or is set without accounting for all economic, social and environmental objectives will result in greater costs and lower benefits. Such increases in cost exacerbate the effects of regulation on regional economies, because these costs are not accompanied by commensurate benefits to the community. These recurrent problems can affect regional economic development by increasing business costs and uncertainty for investment (section 10.3).

As noted, regulation appears to be having a disproportionate effect on smaller, emerging and niche businesses and can be introduced without an adequate understanding of the capacity of regions to implement and enforce that regulation. When this occurs, regulation
can impose costs on regional businesses, stifle innovation and investment in new high growth industries, distort the decisions of these businesses, and divert their limited resources away from business activities towards potentially complex regulation. These effects can all hinder regional economic development.

Poor consultation or information processes make it more difficult for businesses to gain an understanding of the regulation and how it applies to them. This difficulty increases business costs and uncertainty for investment. Multiple layers of regulation and poor coordination across Commonwealth, state and local governments will also increase costs and uncertainty. This is an area of considerable frustration for business, diverting resources from business activities towards the reconciliation of different, potentially conflicting messages from a range of regulators.

Finally, regulation that does not balance certainty and flexibility, which is either too open ended or too prescriptive, can affect investment. This uncertainty or inflexibility will have the greatest effect in industries with long-term investment horizons, such as mining and forestry.

The Commission’s view

In addition to the Commission’s identification of recurrent problems that exhibit characteristics likely to affect regional economic development, the evidence put before this inquiry supports a conclusion that regulation is having an unwarranted adverse impact on business activity and investment. Some major industries described the way regulation and its administration is affecting investment decisions, others estimated the costs of complying with regulation, and many individual enterprises illustrated how dealing with regulation is diverting them from their core business activities.

For the mining industry, the Commission notes the industry’s concern that different state government departments present conflicting submissions to the independent panel reviewing environment effects statements (chapter 7). The Victorian Division of the Minerals Council of Australia argued that this is confusing for the panel and places the project proponent in the impossible position of needing to resolve conflicting positions from various state agencies. This is one of several areas in which the council argued that uncertainty and complexity increase delays and result in investors perceiving Victoria as an extremely difficult state to deal with (chapter 9).

The forestry sector argued that the consistency envisaged in the state response to the Federal Government’s 20x20 Vision for Plantation Expansion is not being realised at the local level (chapter 5). It argued that planning overlays are creating uncertainty that affects investment decisions on plantation expansion.

There is also some evidence that the costs of regulation are large enough to affect regional business activity. Some inquiry participants attempted to quantify the costs to their business or industry from regulation. The Commission has not verified these estimates. Given the size of the estimated costs, however, and the fact that they exclude many intangible costs, there is a significant margin for error in concluding that these costs have a significant impact on business.

The Victorian Division of the Minerals Council of Australia estimated that the compliance costs imposed on the minerals industry by inappropriate and ineffective regulation exceed $7 million per year. This estimate does not include the costs of lost economic opportunities when projects do not proceed as a result of poor regulation (sub. 17, p. 6). Several small businesses also discussed the cost of regulatory compliance and how it is taking up a significant part of their limited administration resources (for example, Ballarat roundtable transcript, p. 41; Wodonga transcript, pp. 29–33).
The Australian Industry Group estimates that compliance costs per full time employee (Australia-wide) are higher in regions than in the metropolitan area, mainly because environmental management is associated with higher costs. It estimated that regional businesses spend on average 1.23 hours a month, for each employee, on compliance with regulation and environmental management requirements. The amount of time spent per employee is much larger in small businesses.

Businesses, particularly small businesses, commented on how regulation diverts them from their core activities. The focus on regulation, rather than the business, can require managers or employees in the regions to travel to undertake training or consult with the regulator, and to spend time developing their understanding of the regulation or providing feedback to the regulator. Diverting time away from business activities reduces the opportunities these businesses to develop and expand. The Victorian Farmers Federation noted:

Regulations also impact upon overall economic development by reducing the time producers can devote to normal farm business operations. Consequently, the opportunity cost of complying with government regulations is that of effort diverted away from developing and expanding profitable farm businesses. This heavy cost has widespread ramifications for the regional community as the additional side effects include the creation of fewer regional employment opportunities, reduced time for participation in local community activities and more work focused lives. (sub. 39, p. 5)

Overall, the submissions to this inquiry indicated that those businesses operating in the regions have a general perception that regulation is adversely affecting development, beyond the effect that is justified or appropriate. This perception alone reduces business confidence and can reduce investment in the regions. The Commission has identified recurrent problems that are likely to have effects on regional business that reduce economic development. Many businesses described examples of having experienced these effects, and many provided case studies where regulation affected business costs, investment and performance. Overall, evidence from a range of sources leads to the conclusion that recurrent problems in regulation are adversely affecting regional economic development, although the precise extent of this problem is not possible to quantify.

Regulation and regional Victoria: challenges and opportunities
11 Improving regulatory processes

11.1 Introduction

While Victoria’s regulatory system has many positive features, it could be improved. Chapter 10 identified recurrent problems arising from the current regulatory system barriers, which are unnecessarily impeding regional economic development. This chapter examines possible systemic reforms to address these problems.

Systemic reforms establish a framework for developing, implementing and reviewing regulation that promotes ongoing improvement. They often take longer to implement and longer to achieve results, particularly if intended to change culture or attitudes. A good regulatory system will: encourage the development of good regulation; ensure regulation is implemented and enforced effectively, efficiently and fairly; and support processes for continually improving the regulation and the regulator. Such a system would result in outcomes that align with the best practice principles listed in chapter 2.

The Victorian Competition and Efficiency Commission has sought to identify systems that will generate outcomes that meet society’s economic, social and environmental objectives, whilst minimizing the costs to the community. In many sectors of the economy, the market is best placed to meet society’s objectives. In others, such as electricity and water, the government can use mechanisms to facilitate desired market outcomes. The Commission supports the use of market forces where possible, because it avoids the need for policy makers to explicitly value and weigh competing objectives, which can be costly and complicated, and is notoriously difficult.

The need to value explicitly and weigh competing objectives cannot, however, always be avoided. Sometimes, alternative, market based solutions are not available, and the consequences of not intervening are large enough to warrant a regulatory approach. In these cases, simple, transparent, well-informed, accountable processes are necessary to identify which approach will generate the greatest net benefit to the community.

A regulatory system has three aspects: (1) the processes for developing regulations (or rules); (2) the administration of those rules; and (3) the governance and institutional structures supporting the first two tasks. The recurrent problems, identified in the previous chapter, could be the result of deficiencies in any or all of these three aspects. This chapter discusses the first two aspects of the regulatory system, while chapter 12 deals with the third.

The Commission has focused on those areas of systemic reform where: deficiencies are likely to contribute to the recurrent problems discussed in chapter 10; the information provided to the Commission or its own research has identified problems that are relevant to this inquiry; and reform would benefit regional economic development. It has not comprehensively reviewed the regulatory system, because such an analysis would be beyond its terms of reference. Given their systemic nature, however, some of the recommendations in this chapter would have additional benefits for metropolitan businesses. Systemic reforms are also likely to help address the problems raised in relation to other areas of regulation (chapter 4).
The Commission has identified the following issues as important to regional economic development:

- the processes for analysing the regional costs and benefits of new, amended or sunsetting regulation before its introduction (that is, business impact assessments (BIAs) and regulatory impact statements (RISs))
- the regulator’s provision of information and consultation with regional stakeholders
- the enforceability of some regulation that has a regional focus
- the processes to encourage continual improvement in the administration and enforcement of regulation in the regions.

11.2 Reviewing the costs and benefits of regulation

Chapter 2 noted three main processes in Victoria for reviewing the costs and benefits of regulation before its introduction: BIAs; RISs and policy impact assessments (PIAs). The scope for improving the PIA process was examined in chapter 7. There also appears to be scope to improve other assessment processes, including improving:

- the analysis of regional costs and benefits when regulation is being developed
- the time provided for consultation
- the consideration of approaches that would achieve regulatory consistency with other states
- the coverage of BIAs and RISs.

Analysis of regional costs and benefits

To ensure regulation is introduced only where it will deliver a net benefit to the community, its benefits and costs (including the costs of compliance, implementation and enforcement) need to be assessed. Such an assessment should extend to understanding the impact on key sectors or groups, such as businesses or industries located in regional areas. Cost–benefit analysis is a key tool for assessing whether regulation will generate a net community benefit.

The recurrent problems identified in the previous chapter suggest that regulation development may not always fully understand or account for regional issues. The result is regulation that imposes unnecessary costs or does not achieve the anticipated benefits. Examples of such problems (chapter 10) include:

- unintended effects arising from regulation on the removal of native vegetation and, as noted in chapter 6, the capacity of councils to implement this regulation
- the effect of food safety regulation on small regional industries
- mandatory requirements for training and accreditation, when training institutions or accreditors are not available locally
- the practicality of requirements for rock lobster fishers to phone in before landing their catch.

Some inquiry participants were critical of the cost–benefit analysis that preceded the introduction of some regulation. While those opposed to regulation will be critical of this analysis, there is a strong concern among some sectors that the compliance costs of
The problems raised in this inquiry are supported by previous reviews of the regional impact of regulation. Those reviews noted that regulation had unintended costs and was not delivering the desired outcomes. In the case of regulations applying to the removal of native vegetation, the Productivity Commission concluded:

... the policy does create incentives for landholders to fail to manage, or even actively to degrade, any areas of vegetation that they consider they may wish to clear in the future, in order to minimise required offsets ... Where application of the regulations causes landholder disenchantment they can lead to the loss of landholder input in achieving environmental goals. (PC 2004a, p. 361)

Developing comprehensive and robust estimates of the costs and benefits of regulation is not easy or costless, but this should not be a reason for not undertaking quantitative analysis (box 11.1). The analysis of the occupational health and safety Regulations for prevention of falls is a good example of the challenges (chapter 4). The review of the Regulations involved a detailed analysis of the issues, including consultation with groups representing regional interests. Nevertheless, practical problems are emerging in the implementation of the regulation (chapter 4). This case illustrates that good processes will assist, but not guarantee, good outcomes. A focus on implementation and processes for continual improvement are also necessary (discussed later).

Box 11.1: Data collection and cost–benefit analysis

Good information on costs and benefits is necessary to ensure conclusions about the net community benefit of regulation are based on realistic assumptions about the size of economic, social and environmental effects. The amount of effort and resources put into this analysis should reflect the significance of the regulation, the costs of collecting data and whether more accurate data could change the conclusion on the approach to regulation. The data could be obtained from a range of sources, including:

- the agency’s information on the cost of administering regulation
- consultation with local government on the costs of administration and with industry on the costs of compliance
- other reviews conducted interstate, internationally or on similar issues in Victoria
- surveys
- case studies on regulated businesses
- information collected through monitoring of previous regulation.

Moreover, the current approaches to cost–benefit analysis rarely address the cumulative effect of regulation. One option for addressing this shortcoming is to require agencies that are considering new or expanded regulation to canvass whether other regulations could be reduced or removed to offset the costs to business of the new regulation.

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Moreover, the current approaches to cost–benefit analysis rarely address the cumulative effect of regulation. One option for addressing this shortcoming is to require agencies that are considering new or expanded regulation to canvass whether other regulations could be reduced or removed to offset the costs to business of the new regulation.
The Commission looked at the policy development processes to examine whether there is evidence that regional costs and outcomes have been taken into account. For primary legislation (Acts), until recently, there was no formal process for assessing the costs and benefits of new arrangements. BIAs are now required for primary legislation. This will involve an analysis similar to that in a RIS, but it must also cover the costs and benefits for small business. Another key difference with RISs is that BIAs are Cabinet-in-Confidence documents and, therefore, are not publicly released unless agreed by the responsible Minister and the Premier. Agencies are not required to use public comment to test the assumptions or estimates of costs and benefits contained in the BIA.

The introduction of the BIAs is a significant advance in ensuring primary legislation is subject to adequate scrutiny before it is introduced. It is too early, however, to judge the effectiveness of these assessments in ensuring regulation is justified and well designed. It is too early to judge, for example, how frequently the government will publicly release BIAs and, if it does, how policy development is affected. The Commission notes that the public release of RISs has been important in identifying deficiencies in the analysis in those documents.

Given that no BIAs have yet been completed, it has not been possible to assess how adequately they consider regional costs and benefits. Given the similarities between the BIA and RIS processes, however, the Commission has analysed several RISs relevant to this inquiry (box 11.2) to provide insights into the potential to improve both the RIS and BIA processes.

**Box 11.2: Review of previous regulatory impact statements**

To analyse the potential for improving the approach to assessing the costs and benefits of regulation, the Commission has reviewed RISs that were prepared in the past few years for the following Regulations:

- the Fisheries (Amendment) Regulations 2003
- the Fisheries (Fees and Levies) Regulations 2003
- the Livestock Disease Control (Amendment) Regulations 2003
- the National Parks (Park) Regulations 2003
- the Meat Industry (Amendment) Regulations 2002

This analysis identified some deficiencies in these documents—deficiencies that might also be expected in BIAs. These deficiencies are consistent with the most common areas of weakness in RISs currently being provided to the Commission for assessment.

- Many documents did not adequately identify the problem that the regulation is trying to solve. Most did not analyse the magnitude of the problem or the risk of it continuing. If the problems are not well understood, it is extremely difficult to ensure the proposed regulation effectively targets the underlying problems.
- The majority of the documents did not fully analyse the costs of the regulation. In most cases, the costs were not quantified. In several cases, the costs to industry were not identified, and the impact of the regulation on business activity was not analysed. In most cases, it was not evident that a good understanding of the size of the costs or their impact on different industry sectors had been developed.

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None of the RISs quantified the benefits of the regulation. One that did attempt to quantify the benefits based these estimates on the whole of the regulatory environment, not just on the regulation under review. It did not adjust those estimates for the more limited effect of the regulations.¹

Often, the alternatives considered only non-regulatory options or no action. They did not consider different approaches within the regulations, such as adopting less onerous requirements.

Improving the regulatory impact statement process

Improving the analysis of the costs and benefits of regulation would help to identify and take account of the impact of regulation on Victoria’s regions. Ideally, this analysis should be done early in the policy development process, before a strong commitment is made to the preferred policy response. This approach is consistent with the Victorian guidelines on the principles for good regulation, which noted that the early analysis of costs and benefits:

... will help policy officers to assess the merits of regulatory and non-regulatory alternatives in the light of identified problems, to determine appropriate policy in the given circumstances and to present cogent arguments for a proposed set of regulations in a regulatory impact statement (where applicable). (ORR 1996a, p. 4)

The Commission endorses government agencies adopting a comprehensive analysis early in the policy development process, but it considers that a mandated process for undertaking this analysis would be inappropriate. Diversity in the complexity, significance and nature of regulatory issues makes it impossible to design a mandatory process that would not be unduly restrictive.

Nevertheless, strengthening the RIS process and training for that process would, over time, increase agencies’ awareness of good policy development processes and improve the approach to developing regulation. The Commission is planning to provide training on how to prepare RISs and BIAs in 2005, following the release of the government’s new guidelines on these processes.

In analysing ways to strengthen the RIS process, the Commission has not identified any restrictions or deficiencies in the current framework that prevent agencies from considering regional issues. The guidelines for preparing a RIS encourage agencies to consider all gains and losses regardless to whom they accrue:

... the individual groups within society who will be affected by the regulations must be identified and a broad indication of how they will be affected given. This will, in turn, assist with the later completion of the cost/benefit analysis. (ORR 1996b, p. 17)

And also:

A fundamental requirement is to ensure no significant impact of the proposal is overlooked. (ORR 1996b, p. 18)

To the extent that there is a breakdown, therefore, it appears to be in the application of the RIS framework, not in the framework itself. The Commission has considered whether there should be a more explicit requirement for RISs to analyse regional effects. Such a requirement, however, could impose a significant burden on government agencies to

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analyse regional issues in situations where this would not add any useful information to the RIS.

It is important, nevertheless, for agencies to look at regional issues when the outcomes for regional communities and businesses are expected to differ from the outcomes expected across the state. Identifying these differences should be part of a general analysis of whether there are particular groups for whom the effects of the regulation will differ from the most common outcomes. As noted, such an analysis is already envisaged within the current guidelines. This information allows the government to consider whether the regulation should be withdrawn, amended to reduce the costs and increase the benefits to the smaller group, or introduced anyway because the overall benefits of the regulation are large and cannot be achieved without imposing costs on the smaller group.

Draft recommendation 11.1
That the Victorian Government endorse, consistent with current guidelines for developing regulatory impact statements, agencies preparing regulatory impact statements or business impact assessments identifying whether there are groups, including regional groups, for whom the costs and benefits of regulation are likely to differ from the most common outcomes. The Commission would look for this analysis in its assessment of the adequacy of regulatory impact statements and business impact assessments.

The time provided for stakeholder feedback

Failure to give stakeholders adequate time to provide feedback on RISs would contribute to recurrent problems by, for example, increasing concerns about the fairness and effectiveness of regulation and reducing the scope to use stakeholder feedback to identify the cumulative impact of regulation.

One of the primary purposes of the RIS is to be a document for consultation. This consultation is essential to help identify all of the relevant issues and appropriately quantify the costs and benefits. The role of the Commissioner, as the independent assessor, is to ensure the evidence in the document adequately supports the conclusions reached. With only limited time available, however, the Commission cannot fully check the validity of all of the facts and assumptions in the RIS. Feedback from stakeholders is thus an important part of this checking process.

To provide this feedback, stakeholders need sufficient time to analyse and respond to the RIS once it is released. Several participants in this inquiry argued that there is insufficient time to respond. Distance can exacerbate this problem, by increasing the time needed to notify stakeholders about the consultation process and to send and receive documents.

The RIS process requires a minimum of 28 days consultation. This is less than that allowed for some other similar processes. The PIA process, for example, allows for 60 days consultation on a draft state environmental protection policy (chapter 2).

In its review of the Subordinate Legislation Act 1994, the Scrutiny of Acts and Regulations Committee looked at the time period for consultation on RISs. It recommended that the Subordinate Legislation Act be amended to extend the minimum time for public consultation to 42 days (box 11.3).

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The Victorian Government did not support the committee’s recommendation. It considered that the case for an extension of time had not been made adequately and was concerned that the longer period might inhibit the ability of departments and agencies to act in a timely and responsive manner. The government argued that many departments and agencies have a thorough and longer time period for public comment and should retain flexibility and discretion.

The Commission considers, however, that 28 days is inadequate for consultation on significant or complex issues, particularly when regional stakeholders are involved and are not well informed about the process. Nevertheless, setting a minimum timeframe could create difficulties when a shorter consultation process is appropriate and necessary. It is also difficult at this stage to obtain an accurate picture of the amount of time that agencies currently allow for consultation.

### Draft recommendation 11.2

That, where possible, 60 days should be allowed for public consultation on regulatory impact statements covering significant or complex issues. Each regulatory proposal going to the Scrutiny of Acts and Regulations Committee should document the time allowed for the consultation period and explain why that period was adequate. In its annual report on regulation, the committee could report on the time periods allowed for consultation.
Consideration of approaches to achieve regulatory consistency across states

In section 10.2, the Commission identified inconsistency across governments as a systemic problem. It recognised that there are costs and benefits associated with regulatory consistency. Differences in regulatory practices across states provides a pool of experience, such that improvements in regulation can draw on this experience, and regulation can be tailored to meet local preferences in each state. Differences also avoid the risk that the regulatory regime is compromised because all states cannot agree on the appropriate level of regulation.

Consistency, however, can reduce the time and effort required to comply with regulation in different jurisdictions, and uncertainty about the regulatory requirements. Further, inconsistencies can distort businesses’ decisions on where to locate (section 10.3).

In considering whether to recommend reforms to increase consistency between regulation in Victoria and that in other states, the Commission has considered whether existing processes are addressing these issues. To some extent, the Council of Australian Governments initiatives to negotiate nationally consistent approaches to regulation and Australia’s policy on mutual recognition are intended to reduce the regulatory inconsistencies across states.

Australian governments have agreed to undertake joint reviews of regulation or to negotiate nationally consistent approaches to reform in several areas. National reviews have been conducted into the regulation of agricultural and veterinary chemicals; undersea petroleum resources; drugs, poisons and controlled substances; national food standards; pharmacies; architects; radiation protection standards; trustee companies; travel agents; consumer credit providers; and measuring instruments used in trade. While this is an extensive list, it is a small part of the total pool of regulation. It is often difficult to move issues onto the national agenda and even more difficult to procure states’ agreement to an appropriate regulatory regime.

Mutual recognition makes it easier for goods and people engaged in registered occupations to move between states and territories:

If goods meet the regulatory requirement of their home jurisdiction, they can be lawfully sold in all other participating jurisdictions. Similarly, if people meet the registration requirements for their home jurisdiction, they can be registered for the equivalent occupation in other participating jurisdictions. (PC 2003, p. xv)

Occupations are registered if people wishing to engage in the occupation require any form of regulatory approval. Mutual recognition often does not negate the need to register with a state regulator. While it may reduce the need to prove compliance, interstate operators may still be subject to a registration fee and delays involved in the registration process. Mutual recognition does not cover:

- the manner of sale of goods
- transport, storage and handling, and inspection of goods
- the manner of carrying on an occupation
- regulation of the use of goods
- business licensing
- non-traditional forms of occupational regulation, such as negative licensing. (PC 2003, p. 227)

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Consistency, however, can reduce the time and effort required to comply with regulation in different jurisdictions, and uncertainty about the regulatory requirements. Further, inconsistencies can distort businesses’ decisions on where to locate (section 10.3).

In considering whether to recommend reforms to increase consistency between regulation in Victoria and that in other states, the Commission has considered whether existing processes are addressing these issues. To some extent, the Council of Australian Governments initiatives to negotiate nationally consistent approaches to regulation and Australia’s policy on mutual recognition are intended to reduce the regulatory inconsistencies across states.

Australian governments have agreed to undertake joint reviews of regulation or to negotiate nationally consistent approaches to reform in several areas. National reviews have been conducted into the regulation of agricultural and veterinary chemicals; undersea petroleum resources; drugs, poisons and controlled substances; national food standards; pharmacies; architects; radiation protection standards; trustee companies; travel agents; consumer credit providers; and measuring instruments used in trade. While this is an extensive list, it is a small part of the total pool of regulation. It is often difficult to move issues onto the national agenda and even more difficult to procure states’ agreement to an appropriate regulatory regime.

Mutual recognition makes it easier for goods and people engaged in registered occupations to move between states and territories:

If goods meet the regulatory requirement of their home jurisdiction, they can be lawfully sold in all other participating jurisdictions. Similarly, if people meet the registration requirements for their home jurisdiction, they can be registered for the equivalent occupation in other participating jurisdictions. (PC 2003, p. xv)

Occupations are registered if people wishing to engage in the occupation require any form of regulatory approval. Mutual recognition often does not negate the need to register with a state regulator. While it may reduce the need to prove compliance, interstate operators may still be subject to a registration fee and delays involved in the registration process. Mutual recognition does not cover:

- the manner of sale of goods
- transport, storage and handling, and inspection of goods
- the manner of carrying on an occupation
- regulation of the use of goods
- business licensing
- non-traditional forms of occupational regulation, such as negative licensing. (PC 2003, p. 227)
A Productivity Commission evaluation of mutual recognition concluded that there would be benefits in improving the awareness of mutual recognition. The ability of mutual recognition to resolve interstate inconsistencies in regulation is limited by the scope of the mutual recognition scheme and by people’s awareness of how to use it to reduce the regulatory requirements.

Neither the Council of Australian Governments processes nor mutual recognition comprehensively cover the issues of regulatory consistency identified as recurrent problems in regional Victoria. The Productivity Commission report and the evidence provided to this inquiry confirm that there are gaps in Australia’s approach to addressing regulatory consistency across states, and that these gaps are affecting regional businesses. To address this problem, Victoria could either promote regulatory consistency through intergovernmental processes or adopt regulatory processes in Victoria that are consistent with those in other jurisdictions. Recommendations on intergovernmental processes are beyond the scope of this inquiry. The Commission has considered, therefore, whether Victoria should increase the focus on consistency within its own regulatory processes.

The costs and benefits of consistency should be weighed, along with other costs and benefits, when new or amended legislation is considered or sunsetting regulations are remade. The guidelines for preparing RISs and BIAs already require agencies to document alternative policy approaches to the one preferred by the agency proposing the regulation. Of the RISs reviewed by the Commission, however, only those that were advocating a nationally uniform regulatory approach considered interstate arrangements. None of the others included any interstate approach among the feasible alternatives.

Where the proposed regulation differs from regulation in other jurisdictions, the approach applied elsewhere would be an obvious alternative. The appropriateness of an approach consistent with that of other jurisdictions should be considered when alternatives are selected for analysis in the RIS or BIA. Including these consistent options in the analysis of alternatives would ensure the agency advocating inconsistent regulation demonstrates how the proposed approach is superior to the consistent alternative. This approach would address interstate consistency for regulation that is being implemented through primary legislation or subordinate legislation, which are the only types of regulation subject to the RIS and BIA processes (see the following section).

Draft Recommendation 11.3

That the Victorian Government endorse that agencies advocating regulation that is not consistent with that of other jurisdictions analyse, where appropriate and relevant, the costs and benefits of a consistent approach as one of the alternatives included in their regulatory impact statements or business impact assessments. The Commission would take this analysis into account in its assessment of the adequacy of regulatory impact statements and business impact assessments.

Regulation not covered by formal review processes

The formal processes for assessing the costs and benefits of new, amended or sunsetting regulation cover only some regulatory instruments: that is, primary legislation, subordinate legislation, state environment protection policies and waste management policies. For other approaches to regulation (such as guidelines, codes of practice, Ministerial directions, and accreditation and licensing standards) there is no formal process for assessing costs and benefits. Consequently, there is no formal system for monitoring whether this other regulation will ensure outcomes that do not contribute to the recurrent problems identified in chapter 10.

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It appears that several of the areas of regulation of concern to inquiry participants were not subject to any formal assessment processes. The BIA process was only introduced recently, so the legislation that currently regulates sectors such as mining, forestry and fisheries was not subject to a formal cost–benefit analysis (although legislation under this legislation might have been subject to the RIS process). Several other areas of regulation were implemented through mechanisms other than subordinate legislation, so were not subject to the RIS process—for example, planning policies, native vegetation controls, food safety regulation and cost recovery arrangements for the seafood sector.

The costs and benefits of these policies were not required to be fully assessed, therefore, and the adequacy of the analysis was not required to be subject to independent scrutiny or public consultation. Rather, the extent of review, analysis and consultation was at the discretion of the agency implementing the regulation. While some agencies may conduct rigorous transparent processes, this is not guaranteed, and the risk that some regulations will be introduced without adequate analysis is increased. There is also a risk that agencies will choose regulatory instruments that are outside the mandatory processes to avoid the formal requirements and increased scrutiny that are required under an RIS or BIA.

It may be possible, for example, to implement the new framework for the environmental effects statements through guidelines (chapter 7). These guidelines would be outside the current RIS and BIA processes, not withstanding that they would apply to a number of significant future investment proposals in regional Victoria.

The Victorian process for reviewing subordinate legislation compares favourably with that in other Australian jurisdictions. The process is transparent and rigorous, primarily as a result of the requirements to publicly release the statement, consult and obtain an independent assessment of the adequacy of the analysis. The extension of cost–benefit analysis to primary legislation is a major improvement in the scope of regulatory instruments subject to review. Victoria’s processes for other regulatory instruments however, are narrower than those in some other jurisdictions. The Commonwealth, Queensland, South Australian and Tasmanian governments already require a cost–benefit analysis of other regulatory instruments (table 11.1).

In its review of the Subordinate Legislation Act, the Scrutiny of Acts and Regulations Committee looked at the coverage of the legislation:

... many regulations outside the Subordinate Legislation Act 1994 are subject to little consultation, not subject to any cost–benefit analysis and are not necessarily subject to any form of review. The committee heard evidence from various organisations expressing dissatisfaction with the regulatory process for regulations not subject to the Subordinate Legislation Act 1994. ... The committee considers that the most appropriate regulatory or non-regulatory response can only be achieved after subjecting regulatory proposals to adequate consultation and cost–benefit analysis. (SARC 2002, p. 32)

The committee expressed concern that legislative instruments such as guidelines, codes of practice and Ministerial directions can affect people’s rights and livelihood but are not subject to parliamentary scrutiny in Victoria. It analysed several options and made two recommendations. First, it recommended:

... the Subordinate Legislation Act 1994 be amended to apply to instruments which are legislative in character and that a similar definition to that contained in the Legislative Instruments Bill 1996 [no. 2] (Cwlth) be adopted. (SARC 2002, p. 38)
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Primary legislation (Acts)</th>
<th>Subordinate legislation (regulations)</th>
<th>Other regulatory instruments</th>
</tr>
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<tbody>
<tr>
<td>Commonwealth</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>New South Wales</td>
<td>No. Cabinet submissions for new Bills must meet best practice requirements. Rural community impact statements are required where proposal affects rural and regional communities.</td>
<td>Yes</td>
<td>No. Not a formal requirement, but agencies proposing quasi-regulation are expected to comply with best practice for regulatory impact assessment.</td>
</tr>
<tr>
<td>Victoria</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Queensland</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>South Australia</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Western Australia</td>
<td>No. A business impact assessment is required to accompany any Cabinet submission seeking endorsement of a regulatory, legislative or policy initiative that will significantly impact on small business. An RIS must also accompany all Cabinet submissions.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>ACT</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: PC (2004d, p. 102)
This would extend Victoria's RIS process to the same legislative instruments subject to review at the Commonwealth level—that is, it would cover guidelines, codes of practice and Ministerial directions.

Second, in relation to local government laws, the committee recognised that local government is a separate tier of government and recommended that the Minister for Local Government, in consultation with councils, consider establishing an appropriate scrutiny process for local laws.

The Victorian Government rejected the first recommendation, arguing:

- The definition in the Legislative Instruments Bill 1996 [no 2.] (Cwlth) is too wide. It would also reduce the flexibility of Parliament to determine the methodology of the scrutiny mechanism, as it deems appropriate in individual cases. The government notes that:
  - s4(1)(a) of the Subordinate Legislation Act 1994 (the Act) enables the Governor in Council to prescribe an instrument or class of instruments to be a statutory rule; and
  - ultimately it is a matter for the Parliament to determine the form/character of legislative instruments generally.

The recommendation would result in an overwhelming workload and an increase in cost that in most cases would outweigh any benefits to the public. (SARC 2003, p. 67)

The government supported the Minister for Local Government giving consideration to the second recommendation. The Commission is not aware of the progress in relation to this second recommendation.

11.3 Regulators' provision of information and stakeholder consultation

Throughout this report, the Commission recognises the importance of effective two-way communication between the regulator and the regulated industry and other stakeholders. Without a good flow of information between government agencies and stakeholders, regulation affecting regional Victoria can be poorly targeted at the identified problems, set standards that do not account for the realities of business, and have low levels of compliance. That information exchange can be more challenging in the regions.

Information provision by regulators

While the provision of information by the regulator affects Victorian businesses regardless of location, poor information provision particularly disadvantages regional businesses for three reasons.

- Distances and the skills mix in regions mean that regional businesses have less access to specialist assistance from advisors, industry associations and the like.
- Given that the time a business needs to understand regulation is largely unaffected by the size of the business, the greater prevalence of small business in regional areas (chapter 3) means that this cost may fall more heavily on regional business. A small business faced with high information costs will either be at a cost disadvantage, relative to larger firms, or choose to minimise these costs by not seeking information about the regulation. The second option increases the risk that small regional businesses will not comply.

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Problems are compounded for migrants in regional areas when information is not readily available in their first language, interpreter services are not easy to access and the usual migrant support services and community support networks are unavailable because they are Melbourne based. These problems may make it harder for regional areas to attract some migrants.

Two key issues appear to contribute to these recurrent problems:

1. the priority given to information provision in regional areas when policies are being implemented
2. the availability of information to people with non-English speaking backgrounds

The priority placed on information provision

Insufficient timely information appears to contribute to several of the recurrent problems identified in this inquiry. First, it contributes to concerns about the effectiveness and fairness of regulation. A lack of information about the details of regulation and how it will be implemented increases business risk. Section 10.3 noted that inquiry participants were critical of the level and timeliness of information and the consistency of information provided by government agencies on environmental policies and guidelines and food safety standards, particularly in the seafood sector.

Second, a lack of information exacerbates (1) problems that affect regional businesses’ capacity to comply with regulation and (2) the impact of regulation on smaller, emerging or niche sectors. Not only do regional businesses need to overcome general disadvantages caused by distance, with less capacity and resources to cope with regulation, but they must also do this in an environment of uncertainty.

Third, poor information can increase the tension between prescriptive and outcome focused regulation. The benefits of outcome-focused regulation rely on businesses being able to understand the outcome that they are required to achieve and developing a strategy that suits their business. A lack of clarity about the desired outcomes of regulation would quickly undermine businesses’ ability to develop appropriate strategies.

These recurrent problems illustrate that failure to provide timely information creates unnecessary uncertainty and risk for regional businesses. The provision of information is not costless, however, to either the regulator or the regulated business, which has to understand and use that information. The key is thus to provide useful, concise information at the right time in the process.

A survey of regional businesses by the Victorian Employers Chamber of Commerce and Industry indicated that 69 per cent of businesses believed that Victorian regulators keep them ‘poorly informed’ and 70 per cent believe there would be benefits in being kept better informed of proposed new regulation (sub. 52, p. 2) International Power Hazelwood supported this view, saying it was provided with insufficient and conflicting information on environmental regulation (chapter 7). It argued that project proponents need good information:

For a proponent to effectively assess potential environmental impacts government agencies must provide sound advice on applicable policies, guidelines and standards instead of the current practice of relying on the proponent to identify the relevant information and then determining if there are any gaps in the proponents knowledge or adequacy of the assessment. (sub. 48, p. 2)

In the Commission’s survey of 69 Victorian regulators, 59 responded that they make guidance publications available to stakeholders. Fifty-one make their publications available
in hard copy and electronically. Six regulators produce no guidance publications. Of the 69
regulators, 44 (64 per cent of those responding to the question) indicated they make
special arrangements for regions and 75 per cent (48 out of 64) conduct professional
development seminars and activities in regional areas, but less than half (31 out of 64
responses) have regional offices.

One way of ensuring information provision is an integral part of policy implementation is for
agencies to develop implementation strategies for regulation. At the Commonwealth level,
an implementation unit was established in the Department of Prime Minister and Cabinet in
2003. This unit is preparing a best practice guide to program implementation. Its current
guide on preparing implementation plans identifies the provision of information as an
important component of stakeholder engagement within an implementation plan (PM&C
undated, p. 31).

The Commission is interested in views on whether new or amended regulations that have
a material impact on regional Victoria should be accompanied by an implementation
strategy that includes providing information to regional businesses early in the process.

Availability of information to people from non-English speaking backgrounds

Some areas in regional Victoria have significant populations of people from non-English
speaking backgrounds. The most common countries are Italy, the Netherlands and
Germany. In some regional centres, other groups will also be important. Local communities
perceive migrants as major contributors to local economic development. The Community
Development Office in Warrnambool, for example, noted that key objectives of its migrant
project are to achieve population stability and address skill shortages (chapter 4).

People with poor English skills can have problems dealing with regulation and regulators.
This was discussed at some length at the Warrnambool public hearing. The experience in
Warrnambool illustrates that the limited access to community support services in the
regions has an impact on peoples’ ability to navigate regulatory processes, from
requirements to have past qualifications recognised through to obtaining a drivers licence
(Warrnambool transcript, pp. 50–61).

Currently, all regulators do not appear to meet the needs of these groups. This
exacerbates recurrent problems in the regulatory system by reducing the ability of a key
population group to understand and comply with regulation. It would affect the ability of
migrants to set up their own business, for example.

Of the 69 regulators surveyed by the Commission, 27 (45 per cent of respondents)
reported publishing material in languages other than English and 23 (40 per cent of
respondents) offer translation services. Less than half, therefore, provide services for
people whose first language is not English. For those that do provide multiple languages,
the range of languages is often limited.

These issues are not simple to resolve, for a range of reasons:

- Providing services in multiple languages can be expensive, particularly given that
  some languages have different dialects.
- Often, written information is not sufficient because those seeking to understand the
  regulation have poor literacy skills and would benefit more from oral translator
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- Often, written information is not sufficient because those seeking to understand the
  regulation have poor literacy skills and would benefit more from oral translator
  services.
In some cases, compliance problems not only result from a poor understanding of the regulation, but can be affected by culture. Two issues affect compliance with food safety standards, for example—first, language and, second, a tradition in some countries of preparing food in ways that may not meet Australian Standards. The Department of Human Services works with communities to establish appropriate food safety templates (DHS 2004b, p. 3).

Innovative and strategic approaches are thus needed to target problems and work with communities to resolve them.

The Commission is interested on views on which regulators (if any) should be required to provide more information in languages other than English or translation services for people from non-English speaking backgrounds, taking into account the costs and benefits of doing so.

Obtaining feedback from stakeholders

Obtaining timely feedback from the right people significantly improves regulation and its administration, by tapping the knowledge of industry, experts external to government and those whom a regulation is designed to protect. This feedback can clarify whether a proposed approach is likely to work effectively and has taken account of all of the likely economic, social and environmental effects, and thus reduce the risk that the outcomes of the regulation will diverge from its policy intent. The arguments presented by some inquiry participants suggest that regulatory problems can result from the regulator’s failure to listen to those subject to the regulation. By tapping into the knowledge of stakeholders, regulators can reduce the risk of many of the recurrent problems outlined in chapter 10. Good information can alert regulators to, for example, unintended side effects of regulation, the problems that regions would face in implementing and enforcing the regulation, and the impacts that regulation could have on smaller, emerging or niche industries. Good information would also help regulators to identify possible areas of overlap or inconsistency with the regulatory activities of other levels of government, or the impact of the cumulative effects of regulation.

Consultation plays a key role in addressing stakeholders’ concerns about the effectiveness and fairness of regulation. As noted in section 10.3, however, some stakeholders have concerns about the extent of regulators’ consultation with regional businesses. The Civil Contractors Federation, the Australian Milk Producers Association and the Prospectors and Miners Association of Victoria, respectively, identified the following concerns they have with the level of consultation:

The Falls Regulations, ‘No-Go’ Zones, trench compaction standards are but a few of the new regulatory controls that were introduced without sufficient input from the practitioners to which they apply.

It is accepted that in some instances, the federation may have been consulted in regard to proposed regulatory controls; in other instances it was not. But consultation without adequate engagement will almost certainly lead to the situations that have been the catalyst for the concerns expressed herein. (sub. 22, p. 8)

Consultation: the only consultation that’s been with the industry, which the Act says has been with the manufacturers who have absolutely nothing to do with our licence. Dairy Food Safety has a review committee there, which consists of 10 people, and there’s only one farmer on that, and its questionable whether that person actually represents farmers or represents the manufacturer. So there’s been no consultation in regard to this system. (Colac transcript, p. 39)
Their consultation was a sham, they didn’t listen to our issues—they only held meetings so they could claim that they had followed the required process—we were simply ticked off the list. … The above is typical of ‘consultation’ regarding environmental matters in Victoria. We often attend meetings but believe it is rare that anyone really listens. (PMAV 2003, p. 4)

Effective consultation can be difficult. In some situations, consultation is not appropriate because it could delay the government’s response to an emergency situation or undermine the effectiveness of the regulation. The introduction of native vegetation retention controls without public consultation, for example, probably reflected the perceived urgency of the situation and fears about possible ‘panic clearing’ (chapter 6). These arguments do not apply, however, once the regulation is introduced and the approach is being amended or reconsidered.

In most cases consultation will be appropriate, but it is still time consuming (both for participants and government) and costly, and can lead to delays. It needs to be done judiciously if it is to achieve its objectives efficiently. The consultation process can also be complicated by difficulties in engaging stakeholders and encouraging them to participate. In response to these practical difficulties, agencies often target their consultation around industry associations.

While industry associations provide a good avenue for accessing a range of views of industry participants, they should not be assumed to represent the whole industry. Inquiry participants raised concerns about the reliance on industry associations for consultation on regulation in the seafood and aquaculture sectors, for example (chapter 8). The best approach to consultation will vary, depending on the nature of the issue and the characteristics of the industry. Further consultation should be considered when:

- the impact of the new regulation on a sector is particularly high because, for example, the sector was previously unregulated or there has been a substantial change in the regulation, and it is important to consider whether the costs of regulation are greater than the benefits
- industries or sectors within an industry have operating characteristics different from those of the main sectors subject to the regulation. The regulation could have adverse unintended impacts or impose much higher costs on these industries/sectors.
- niche or emerging industries affected by the regulation are not well represented by existing industry associations. Unless the views of these groups are sought, the regulation could stifle new regional growth sectors.

The Commission considers that effective consultation should be a focus of Victorian regulators and agencies responsible for developing regulation. Adopting the Commission’s recommendation to ensure adequate time for consultation in the RIS process would improve consultation for policy development where an RIS is required. The discussion in section 11.2, however, noted the limits on these processes. In the case of regulators, the Commission considers that regional consultation should be a priority of the Victorian Regulators Forum (section 11.5). It recommends (section 11.5), therefore, that the Victorian Regulators Forum include on its agenda an exchange of information on regional issues, including consultation mechanisms.
11.4 Enforcement of regulations

Enforcement is usually part of a package of measures to enhance regulatory compliance. There is considerable literature on the best ways to encourage compliance, but full analysis of these issues is beyond the scope of this inquiry. The Commission has identified two issues that have arisen during this inquiry as relevant to regulatory enforcement in regional Victoria:

1. the challenges facing local government where it has been delegated responsibility to enforce regulation
2. other problems with the design of regulation and the resourcing of regulators that are affecting enforcement.

While reliance on formal enforcement measures is usually a last resort for regulators, regulation must be designed so it can be enforced consistently and agencies can adequately resource their enforcement functions. Regulation that is not enforced consistently:

- discourages compliance
- disadvantages compliant businesses compared with noncompliant businesses and may encourage business to set up in areas where non-enforcement is expected
- increases uncertainty and potentially discourages investment
- undermines community support for the regulation, reducing compliance and undermining efforts to detect noncompliance.

An inability to enforce regulation would contribute to several of the recurrent problems identified in chapter 10. Overall, poor enforcement and the accompanying decreased compliance would reduce the regulation’s ability to achieve policy objectives and, thus, increase the divergence between policy intent and outcomes. The uncertainty created by inconsistent enforcement would exacerbate the problems that regional businesses already face in complying with regulation. It would also increase the uncertainty faced by smaller, emerging or niche sectors, which already have difficulty understanding their regulatory obligations.

If inconsistent enforcement leads to doubts about the effectiveness and fairness of regulation, it could undermine community support for that regulation. Finally, poor enforcement, along with the resulting continuation of the problem that the regulation is intended to mitigate, would increase the pressure to introduce more regulation or more prescriptive regulation. The regulatory burden could thus increase when simply better enforcing the existing arrangements could resolve the problem.

Part B identified some problems in the enforcement of regulations in the regions. These problems usually involve inconsistency in, or low levels of, enforcement. In the area of planning, the Victorian Government discussion paper on improving the planning system (DSE 2003b) included options for improving enforcement.

The Commission’s discussion on native vegetation regulation noted that the Municipal Association of Victoria recently released the results of a survey that found that most councils undertook limited or no monitoring of permit compliance, and limited enforcement of permit breaches (MAV 2004b, pp. 23–6). While all survey respondents said they were aware of illegal removal of native vegetation, less than half had taken enforcement action.

Concerns about inconsistent approaches to the enforcement of native vegetation regulation were also raised by the Productivity Commission in its report on native vegetation (PC 2004a).
While recognising that uniformity is not ideal or practical, the discussion in chapter 8 noted some factors that seem to be working against achieving an appropriate level of consistency in food safety regulation:

- No agency oversees councils’ food safety responsibilities.
- Councils do not have to report their performance against their food safety responsibilities.
- Councils can differ in the level of resources available to them for food safety regulation.

These conclusions are supported by the Auditor-General Victoria report on the management of food safety in Victoria. That report highlighted poor practices in the follow-up of noncompliant businesses in many regional areas, and the difficulties that councils face in taking legal action against noncompliant businesses (AGV 2002, pp. 51–52).

Some inquiry participants have suggested that there are areas of regulation where effective enforcement is very difficult:

- The Mildura Shire Council argued that its ability to enforce native vegetation regulations was significantly constrained because it lacked funding from State Government (Mildura transcript, p. 10).
- Many small bed and breakfast places may not comply with food regulations: ‘Most other operators were ducking for cover, they knew they weren’t operating with the right regulations and fees and all of that but it was just all too hard’ (Ballarat transcript, p. 28).
- The Victorian Farmers Federation argued that regulatory requirements for moving farm machinery between properties are unworkable: ‘each time the [agricultural] machinery crosses the [VicRoads dimensional] boundary, a permit costing $48 is required. When conducting regular farming operations, it is not uncommon for a farmer to move machinery between properties 2–3 times a day. Clearly, these regulations are not practical or sensible’ (sub. 39, pp. 29–30).

It is also difficult to detect noncompliance with some regulations, such as those regarding the employment of child labour on a relative’s farm and the lopping of a small amount of native vegetation.

Regulations must be enforceable or they are likely to fail to resolve the underlying problem that they were designed to address, impose unnecessary costs, add to uncertainty for businesses, and disadvantage complying firms. The Victorian processes for developing RISs already require agencies to consider, when regulation is being developed, how it will be enforced. Enforcement can be more complicated in the regions, given factors such as distance, which increases the travel time of investigators and inspectors. The focus on identifying and considering these different characteristics in regions would be improved by the adoption of the Commission’s recommendation that RISs and BIAs adequately identify situations in which the costs and benefits of regulation are likely to diverge from the most common outcome.

Local government appears to face additional challenges in gaining access to the resources and skills necessary to enforce regulation. These issues are considered in chapter 12.

### 11.5 Continual improvement by regulators

In section 10.2 the Commission noted that regulatory problems in regional areas are continuing and new problems are emerging. This indicates a failure in the processes for reporting on the performance of regulation and regulators, evaluating the outcomes of enforcement.
regulation and making agencies accountable for those outcomes (processes that are noted in appendix B). Failure to identify and resolve regulatory problems will also contribute to all of the recurrent problems identified in section 10.3, because many of these problems would not continue if these processes worked well. They would be progressively identified and resolved.

Part B recognised the need for better processes to enhance the evaluation of regulation and the accountability of regulators, in the areas of:

- planning—where the Commission recognised the need for a better database to monitor the performance of the planning system, and for more rigorous monitoring processes that measure performance against expected outcomes (chapter 5)
- environmental regulation—where the Commission identified shortcomings in the information base needed to assess the effectiveness of native vegetation policy, as well as opportunities to improve the processes for assessing proposed environmental protection policies via the PIA process (chapters 6 and 7)
- food safety—where the Commission identified the need for better reporting and the benefits that it is likely to bring by improving the implementation of regulation (chapter 8)
- mining—where the Commission argued that agencies need to be more accountable for the time taken to process licence applications (chapter 9).

Several submissions argued that processes that establish good reporting and accountability and continual improvement are an important issue. Typical of these submissions was that of the Victorian Farmers Federation, which recommended:

All native vegetation biodiversity policies should be subject to ongoing monitoring and regular independent review of all costs and benefits in the light of articulated objectives. Reviews of performance should be published. (sub. 39, p. 8)

The Victorian Auditor-General and Parliament’s Scrutiny of Acts and Regulations Committee raised these issues in a broader context. In 2004, the Auditor-General’s performance audit of three public sector agencies’ policy development processes identified the need to improve the provisions for project evaluation (AGV 2004b, p. 81). The Scrutiny of Acts and Regulations Committee, in its review of the Subordinate Legislation Act, also noted the importance of ongoing evaluation and assessment of regulation:

The committee notes the comments concerning the need for ongoing review and monitoring of the impact and effectiveness of regulations, so that modification can be made, if necessary, before the expiry of 10 years. The committee considers that this could best be achieved by requiring departments and agencies to produce a report on the effectiveness and impact of regulations at the end of five years and for this report to be publicly available from a centralized website dedicated to all types of legislation. (SARC 2002, p. 114)
The government rejected this recommendation, concluding that it may be an inappropriate use of resources, given that regulations sunset every 10 years and must be reviewed before they are remade.

A system that encourages continual improvement has two features:

1. Evaluation—agencies should define their criteria for success, collect relevant information regularly on the performance of regulation, and use that information to assess the regulatory outcomes against the criteria. In practice, this process can be difficult. This difficulty could be reduced, however, if agencies consider evaluation approaches when the regulation is developed, so the evaluation strategy is built into the regulatory process. Currently, defining evaluation processes is not a formal part of the RIS or BIA processes.

2. Accountability—the system has mechanisms to ensure regulators actively and transparently identify deficiencies and rectify them. All regulators are accountable to Parliament, through their Minister. This provides high-level scrutiny, often in politically sensitive areas, but its primary purpose is not to ensure ongoing improvement in regulation. Other mechanisms should also be considered so each regulator has a degree of direct accountability to those it regulates: regulators should have clear points of access for information and complaints; decisions should be clearly explained (including against tests of consistency); timelines for responses should be advised; and the process for internal review of decisions should be clear.

Overall, continual improvement helps to overcome problems with existing regulation and better inform the development of future regulation. The analysis of the costs and benefits of any new regulatory proposal, for example, often involves judgments about the likely effects of regulation. Evaluation can ensure these judgments are tested against experience.

As noted, regulators sometimes do not understand all of the issues faced by regional businesses. Deficiencies in regulation that result from a poor understanding can impose costs on regional businesses where other challenges, such as distance and limited access to information and skills, have already reduced those businesses’ capacity to cope with unnecessary regulatory costs. Consequently, good evaluation and accountability systems are particularly important for regional Victoria.

The Commission is interested in views about whether the RIS and BIA processes should explicitly require the specification of evaluation and data collection strategies.

Continual improvement in regulation can also be enhanced by agencies learning from each other. The Regulators Forum in Victoria is a good example of an initiative that has the potential to significantly improve coordination and consistency among regulators. This forum was initiated in May 2004. Over 40 different agencies were represented at that initial meeting, ranging from small industry-specific regulators (such as the Chinese Medicine Registration Board) to large regulators that span several industries (such as the Victorian WorkCover Authority). The forum’s main focus is on improving regulatory practice by facilitating discussion on operational and governance issues that relate to Victorian regulation. The forum has met again once, in October 2004, and regulators appear to support continuing and developing the forum.

Consumer Affairs Victoria produced a background paper on the benefits of the forum. It recognised the commonality of interests and issues faced by regulators and how sharing views and experience can contribute to better regulation.
Box 11.4: Why have a forum of regulators?

Although the object of regulation—the activity or behaviour to be influenced—is diverse and the scale of regulatory operations varies greatly, institutional structures, administrative processes and instruments of regulation (such as licences) have many similarities.

This functional similarity means that some operational issues and problems are likely to be shared, such as achieving transparent rule making, effectively informing and educating the regulated, promoting compliance, providing certainty in regulatory outcomes, responsively engaging stakeholders, ensuring optimal enforcement of the rules, and being accountable to stakeholders and the public.

In addition to these shared concerns, the legislative review process prescribed under the National Competition Policy has exposed regulators in Victoria over the past decade to a common set of principles regarding their impacts on markets. Although that specific process is nearing completion, government and public policy participants continue to be interested in pursuing improved regulatory quality.

Not only is there much commonality in functions and operational issues, but regulators generally face the ongoing challenge of continually improving the quality of regulation in dynamic economic, social and environmental contexts. Some state regulators face challenges arising from external pressures for national (or even international) regulatory reform.

The proposed focus of the forum, as a gathering of practitioners, is on operational factors that may contribute to higher quality regulation, although general governance issues too may be of interest. The forum provides an opportunity to discuss issues of common interest, share instructive experiences and consider the potential for future collaboration to improve the effectiveness and efficiency of regulation to the benefit of the Victorian public.


The Commission considers that Victoria would benefit from encouraging this forum, and that the forum would benefit from examining issues relevant to regulation affecting the regions.

Draft recommendation 11.4

That Ministers encourage the regulators for whom they are responsible to participate actively in the state forum of regulators. The forum should include on its agenda an exchange of information on regional issues, including consultation mechanisms.
12 Cost recovery and governance

12.1 Introduction
Chapter 11 discussed systemic reforms in the development of regulation (or rules) and the administration of those rules. This chapter looks at two related issues: (1) the approach regulators use, in some cases, to recover the costs of regulation and (2) the governance and institutional structures around regulatory agencies.

12.2 Cost recovery
Cost-recovery arrangements for the following government activities are relevant to this inquiry:

- the administration of regulation—for example, the registering and accrediting of businesses, ongoing monitoring and inspection of businesses, the processing of licences and enforcement. Permit fees for PrimeSafe and planning are examples of this type of charge.
- government activities to mitigate environmental damage, such as land management and rehabilitation (for example, cleaning waterways) or broad environmental monitoring. These activities cannot be linked back to an individual business but may be necessary to deal with the combined results of an industry sector’s activities.
- goods and services that the customer must purchase—for example, mandatory research and development in the agriculture and fisheries industries.

A related, but separate, issue is when an industry or other group is required to undertake activities, at its own cost, to meet community objectives. One of the main ways by which the Victorian Government is attempting to increase the amount of native vegetation, for example, is by requiring landholders who receive a permit to clear, to undertake replanting and other activities that deliver a net gain in the extent and quality of native vegetation.

A rigorous framework for considering cost-recovery arrangements would benefit both economic efficiency and equity, by ensuring the cost of a regulated product incorporates all the costs of bringing that product to market, including the administration costs of regulation (PC 2002, p. xii). Appropriate levels of cost recovery mean that activities requiring high levels of regulation, given their broad social and environmental effects, are not favoured over activities requiring low levels of regulation. In addition, to the extent that cost recovery reduces the call on general taxation, it avoids the efficiency losses of collecting tax revenue to fund activities that are more appropriately funded from cost recovery. It also avoids all taxpayers paying for the costs of the regulation when they may not receive any benefits (thus improving equity).

In Victoria, cost-recovery arrangements that are introduced through regulation, and that impose an appreciable economic or social burden on a sector of the public, must be scrutinised through the regulatory impact statement (RIS) process. An RIS for fees is similar to other RISs (chapter 2); in addition, it must justifiy the level of the fee, identify the impact on affected groups and examine the merits of alternative fee structures. The RIS must justify each task involved in providing the service and accurately cost those tasks. The Victorian Department of Treasury and Finance’s guidelines, Setting Fees and Charges Imposed by Departments and Budget Sector Agencies (DTF 2004), were last updated in 2004. Some other agencies, such as Fisheries Victoria (2000), have released their own guidelines.

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For cost-recovery arrangements that are not introduced through regulation, the level of analysis and consultation is at the discretion of the responsible agency.

During this inquiry, several cost-recovery concerns were raised with the Commission, and a number were discussed in part B:

1. The Commission identified mechanisms (chapter 8) that could reduce the cost of food safety regulation by PrimeSafe and Dairy Food Safety Victoria. This would reduce the cost base for cost-recovery charges. The Commission also recommended that the fees for licences administered by PrimeSafe and Dairy Food Safety Victoria be set by regulation so they are subject to the RIS process, and that more guidance be provided to local government on the setting of registration fees. (Cost recovery for food safety regulation was raised in a number of submissions, including sub. 1, pp. 3–4; sub. 4, p. 3; sub. 5, pp. 3–4; sub. 33, p. 3; sub. 36, p. 2; and sub. 42, p. 2).

2. Inquiry participants in the fishing and aquaculture sector raised concerns about the cost-recovery arrangement for fisheries management licence fees (chapter 9; sub. 29, pp. 7–8; sub. 35, p. 3; Geelong transcript, p. 49, Wodonga transcript, pp. 9–10).

3. Regional businesses in the manufacturing, forestry, agriculture and mining sectors raised concerns about the level of the fire services levy in regional Victoria compared with metropolitan Melbourne (chapter 4; sub. 6, p. 2; sub. 17, p. 39; sub. 39, p. 17; sub. 45, pp. 2–5; Geelong transcript, p. 82).

These concerns reflected three broad questions.

1. Is cost recovery based on an efficient level of costs?
2. Is the split of funding responsibilities between the industry and taxpayers appropriate?
3. Is the approach to cost recovery generating incentives that undermine other economic, social or environmental objectives?

**Basing cost recovery on efficient costs**

For cost-recovery arrangements to be efficient, an efficient cost base must underpin them. Two aspects are involved in such an efficient cost base:

1. The activities subject to cost recovery must be the minimum needed to achieve the government’s objectives. In other words, the level of regulation must be efficient.
2. The government agencies responsible for developing and administering the activities must be operating efficiently.

If there is over regulation, or if the regulation is delivered inefficiently, cost recovery will impose excessive costs on those paying the fees.

Moreover, these inefficiencies can be cumulative. Regulation that is more onerous than necessary will increase the costs of the regulated industry. This cost increase is compounded if the industry is then charged for the cost of delivering these excessive regulatory requirements. Finally, if the regulator is also operating inefficiently, this will further inflate costs and increase the burden on industry.
The importance of basing cost-recovery arrangements on an efficient level of costs was recognised by the Productivity Commission in its inquiry into Cost Recovery by Government Agencies (PC 2002, p. xiii). The need to ensure costs are efficient is implied, but not explicit, in the Victorian Department of Treasury and Finance guidelines for setting fees and charges (DTF 2004), and the handbook on preparing regulatory impact statements (ORR 1996b). The government is updating this handbook.

Given the challenges already facing regional Victoria, excessive cost recovery could exacerbate these problems and affect some regional businesses, particularly small businesses operating in emerging or niche sectors. The Commission thus considers that an appropriate cost base should underpin all cost-recovery arrangements affecting regional Victoria. This should be a fundamental principle of the government’s cost-recovery policy.

### Splitting costs between industry and taxpayers

How funding responsibility will be split between the industry and taxpayers is a complex question, and the best approach will depend on factors such as:

- the type of activity subject to cost recovery—for example, the administration costs of regulation, the cost of work to mitigate environmental damage, or the prices of government provided goods and services
- whether cost recovery would unduly stifle competition and innovation in the industry in which charges are levied
- the feasibility and cost effectiveness of calculating and collecting appropriate charges
- whether cost recovery would undermine other government policy objectives.

The Commission considers that achieving economic efficiency should be a primary objective of cost recovery and recognised in any cost–benefit analysis of cost-recovery arrangements. Several principles could underpin approaches to cost recovery, including:

- charging those that benefit from the regulation, or environmental mitigation work, for the costs of that government activity (often called ‘beneficiary pays’)
- charging those whose activities generate the need for the government to undertake the regulation or mitigation work, usually the regulated business (often called ‘impacter pays’)
- charging those that use, and thus benefit from, government provided goods and services (often called ‘user charges’).

Applying any of these principles is not straightforward, as the following examples illustrate. First, in many cases, charging those that benefit from regulation and those whose activities generate the need for regulation, will have similar results. This occurs in areas such as food safety, where the main beneficiaries are the customers of the regulated businesses. In these cases, charging either the businesses or consumers would increase the price of the products being produced by the regulated activities. How much of this increase consumers pay and how much businesses absorb into their costs, will depend on the characteristics of the particular market.

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**Draft recommendation 12.1**

That the new Victorian guidance for developing regulatory impact statements and business impact assessments, and any new cost-recovery guidelines make it clearer that agencies must demonstrate that an appropriate cost base underpins their cost-recovery arrangements.

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Second, in some cases, the principle used as a basis for cost recovery may affect who bears the cost-recovery charges—for example, with cost-recovery arrangements for regulation to reduce costs imposed on third parties, such as monitoring standards for effluent from intensive agriculture (such as piggeries). The beneficiaries are the broader community, while the agricultural businesses’ activities generate the need for the government to regulate. As there is no direct commercial link between the beneficiaries and the regulated businesses, the burden of cost recovery will depend primarily on whether charges are levied on agricultural businesses or beneficiaries.

Third, there are further complexities in applying cost-recovery principles for government work that mitigates the damage caused by past activities—for example, work undertaken to reduce salinity caused by past farming practices, or to clean up an area of land affected by chemicals from previous industrial activities. Applying charges to those that caused the damage may be impossible because the businesses are difficult to identify or no longer exist. It may also have economic costs. If these businesses were previously operating legally, penalising them for past activities because society has changed its standards would not improve that past behaviour. It does, moreover, raise the risk of uncertainty about the impact of future changes in standards.

Given this complexity, the costs and benefits of each new or modified cost-recovery arrangement that would place an appreciable burden on business should be fully analysed. Cost-recovery arrangements should also be reviewed regularly to ensure changing circumstances have not altered their effects.

The principles and application of cost-recovery arrangements in Victoria appear somewhat confused. The Department of Treasury and Finance guidelines for setting fees and charges appear to adopt a cost-recovery approach that is based on user pays for goods and services, and beneficiary pays for other government activities. The department noted the following about regulatory fees:

Regulatory activity is intended to elicit a particular behaviour and generally produces some form of public benefit. It is therefore not appropriate to recover the full cost of compliance where the benefits/costs of the activity are not fully restricted to the person being charged the fee. This form of fee setting may include consideration of the level of benefit captured by the firm versus the user/customer of the activity. (DTF 2004, p. 3)

It is not clear from this statement how the department envisages that the passing on of costs from a regulated business to its customers should be taken into account in the setting of cost-recovery charges. As long as the cost base for cost-recovery arrangements is efficient, and the regulated business does not have monopoly power, this passing on of costs should provide incentives for customers to choose between goods and services that incorporate the costs of regulation. This is an efficient outcome.

Fisheries Victoria’s principles for cost recovery distinguish between three categories of activities: (1) the state stewardship role of managing the community’s aquatic resources that is taxpayer funded; (2) commercial services that directly benefit particular user groups that are cost recovered; and (3) management services that benefit both the community and particular user groups that may be either partly or fully cost recovered (Fisheries Victoria 2000, pp. 2–3).

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Monopoly power would allow the regulated business to exploit its customers by passing on excessive charges.
The principles that agencies use to justify cost-recovery arrangements do not clearly align with the Department of Treasury and Finance guidelines. In RISs, agencies do not always articulate the principle on which cost recovery is based, or conduct the analysis necessary to apply that principle effectively. In other cases, a user pays justification (usually applied to charges for goods and services) is used for recovering the administration costs of regulation. One RIS justified cost recovery based on a user pays principle as follows:

The basic justification for the charging of application fees, renewal fees, transfer fees and other transaction fees by the government is to recover the costs of providing the required administrative services, whether in full or part. Hence there is a user pays principle involved in the provision of fees and rentals whereby those who use the regulatory services should be obliged to pay for those services, rather than the general taxpayers.

Adopting the recommendation in the following section would help to clarify the principles for splitting costs between industry and taxpayers.

Understanding the impact of cost recovery on other government objectives

In some situations, cost recovery could generate incentives that undermine other economic, social or environmental objectives. These incentives could affect the regulatory agency or the regulated activity. The Productivity Commission made the following observations about regulated activities:

It is difficult to separate the effects on industry of cost recovery from the effects of: the regulations (many of which are designed to keep certain products out of the market); data access conditions (such as privacy and technological constraints); and general market conditions (such as market size and expected market life). Evidence presented to the commission indicated that regulatory and information cost-recovery charges (in conjunction with these other factors) might have discouraged the market entry of some firms and products, particularly where potential sales were judged to be too small to cover the additional cost of the regulatory or information charges. (PC 2002, p. 122)

The Productivity Commission noted that well-designed cost-recovery arrangements could promote efficiency by making regulatory agencies cost conscious. For these incentives to be effective, however, the agencies’ cost-recovery activities need to be accountable, transparent and responsive:

Poorly designed cost-recovery arrangements can create incentives that run counter to agency efficiency and encourage undesirable practices such as ‘regulatory creep’, ‘gold plating’ and ‘cost padding’. (PC 2002, p. 96)

Government should consider these incentives when cost-recovery arrangements are being designed. The Department of Treasury and Finance guidelines on setting fees and charges do not give agencies clear guidance on how to ensure charges are set according to an efficient cost base, the principles for splitting costs between industry and taxpayers, or how to design robust cost-recovery arrangements that do not generate unintended incentives. This lack of guidance appears to be causing confusion among agencies trying to design and implement cost recovery, and among industries subject to cost-recovery arrangements. The confusion is illustrated in industry responses to this inquiry and the arguments presented for cost-recovery arrangements in RISs.

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These deficiencies have the potential to affect regional Victoria, given:

- the number of regional industries that are subject to one or more cost-recovery regimes
- the resulting impact (particularly on smaller businesses and niche and emerging industries)
- other regulatory challenges that have already diminished the capacity of regional businesses to cope with cost-recovery arrangements that are poorly designed or that set prices too high.

The need for clarity is illustrated by the level of concern that has arisen in sectors (such as aquaculture) that argue that cost-recovery charges include cross-subsidies and are based on an unnecessarily high level of service that is not proportional to the risks associated with the industry.

**Draft recommendation 12.2**

That the Department of Treasury and Finance be responsible for developing more extensive Victorian cost-recovery guidelines that better impart how to ensure charges are set according to an efficient cost base, the principles for splitting costs between industry and taxpayers, and how to design robust cost-recovery arrangements that do not generate unintended incentives. These guidelines should be developed using a consultative process and publicly released.

The guidelines could be tested against two or three existing Victorian cost-recovery regimes, to identify any implementation issues, before being applied more broadly.

### 12.3 Governance and institutional arrangements

A good regulatory system needs more than good processes and approaches to developing, implementing and enforcing regulation. It also needs effective institutional and governance arrangements. The ideal institutional and governance arrangements ensure decisions are objective and fair, by minimising conflicts of interest and encouraging open and transparent approaches to regulation. They support the development and maintenance of expertise within the regulator and facilitate a consistent and equitable approach to regulation. They create incentives to search for better ways of meeting regulatory objectives, while minimising the costs of regulation. The Victorian Auditor-General divides good governance into four key elements (box 12.1).

There is significant overlap between the issues discussed elsewhere in this report and institutional and governance issues. Part B analysed the operations of key regulators, and chapter 11 addressed several issues relevant to good governance—for example, effective consultation and continual improvement. A comprehensive review of governance and institutional arrangements is beyond the scope of this inquiry. There are, however, two governance and institutional issues that are directly relevant to the Commission’s terms of reference, potentially contribute to the systemic problems identified in chapter 10, and are related to the systemic reforms discussed in chapter 11:

1. the allocation of responsibility to local government
2. advisory bodies.
The State Government allocates responsibility to local governments to implement and enforce regulation for a number of reasons.

+ In some cases (notably, planning), this allocation reflects a desire for locally elected bodies to be responsible for decision making that requires local trade-offs and judgements. Implicitly, a similar project might be expected to be deemed suitable in one location, but not in another where local preferences and circumstances differ. Where allocation of responsibility to local government works well, it should produce outcomes responsive to local views, albeit at the expense of some consistency.

+ In other cases, administration and enforcement have been allocated to local government because this approach is considered to be more efficient (given that it complements existing local government regulatory activity). The aim is to achieve consistent regulation, while using local resources, knowledge and expertise. Examples of this type of regulation include food handling, public health and restrictions on smoking in food establishments.

The Commission’s survey of regulators provided information on instances where state regulators have allocated enforcement responsibility to local government bodies.

Local government’s role, responsibility and relationship with the state vary considerably for different types of regulation. In some cases, the state directly funds local government for carrying out these activities. In other areas, state regulation allows local government to cost recover from the regulated individuals or businesses. In others, the local government funds regulatory activities through its rates.

Problems with regulatory outcomes where regulatory responsibility has been allocated to local government have been a recurring theme throughout this inquiry. In all the systemic problems identified in chapter 10, some of the examples covered regulation that is administered by local government. Chapter 10 also raised local government issues in its discussion of the divergence between policy intent and outcomes, regulation that does not adequately accommodate the capacity of regions for implementation and enforcement, insufficient coordination across governments, and the cumulative effects of regulation.

In chapter 11, the Commission noted specific issues in relation to local government, particularly:
In part B, the Commission identified problems in regulation that is implemented and enforced by local government (such as delays and inconsistencies in planning decisions) (chapter 5), problems with the way in which native vegetation regulation is being applied (chapter 6), and inconsistency in the outcomes of food regulation (chapter 8). These problems appear to have two potential sources:

1. inadequate local skills and resources to implement and enforce regulation
2. a lack of accountability mechanisms to detect and correct problems in the implementation and enforcement of regulation.

### Inadequate skills and resources

To implement regulation effectively, local governments need access to sufficient skills and resources. Without this access, there will be poor, inconsistent decision making and/or delays. The difficulties that face local government in attracting skilled employees were discussed in section 10.3. Several local governments and other inquiry participants also expressed concern about the level of funding for local governments to implement regulation, and the impact of under-funding on the effectiveness of regulation (sub. 21, p. 2; and sub. 23, p. 2).

Part B raised several comments about insufficient skill levels and funding at the local level. Chapter 5 (on planning) noted that a recurring theme in submissions and hearings was that insufficient resources, instructions or training in the implementation of state and local planning policy and regulation. The Commission recommended that the Department of Sustainability and the Environment consider the added costs to councils when developing new planning strategies and amendments, and develop criteria to give greater certainty about the assistance provided to councils to deal with planning issues.

In its discussion on food regulation, the Commission noted that resource constraints are inevitable (chapter 8). It agrees with the Commonwealth’s Office of Regulation Review that ‘in practice, it is not possible to calculate the optimum level of resources for food law enforcement at the aggregate level’ (ORR 1995, p. 18). Given that resources will inevitably remain constrained, however, councils must understand where these resources are yielding the highest returns. The Commission argues that performance reporting would provide useful information to guide resource allocation.

The ability of local government to raise resources to meet the costs of regulation varies across regulations (box 12.2). The government should take resource constraints into account when it considers allocating new or expanded regulatory responsibilities to local government. It should also account for the resources and assistance that should accompany these functions. Previous recommendations made in part C will assist this process. The Commission has already recommended, consistent with the current guidelines for preparing RISs, that agencies identify whether there are groups (including regional groups) for whom the costs and benefits of regulation are likely to differ from the usual outcomes. Also, clearer guidance on the principles for adopting cost recovery would assist in considering the best ways of funding local government responsibilities.

Funding local government regulation from direct fees may be appropriate if it makes sense to charge regulated businesses for the costs of administering the regulation. Rate based funding may be appropriate if the beneficiary pays principle is used and the beneficiaries are confined to the local government area. If, however, the beneficiary pays principle is

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used and the beneficiaries are beyond the local area, the State Government may need to be involved in funding the regulation (section 12.2). In providing funding for broader community benefits, the State Government should balance the incentives for cost minimisation with the need to provide a fair level of funding. Processes designed to achieve this balance should involve:

- analysing cost-recovery issues before allocating responsibility for administering and enforcing the regulation
- obtaining information from both the regulator and local government on the implications of allocating the regulatory responsibilities
- designing processes for transparency and accountability so deficiencies in the arrangements can be rectified over time.

Box 12.2: Funding local government regulatory activities

The way in which local government is funded to administer and enforce state laws varies from law to law. It depends on factors such as whether local government is legally responsible for that area of regulation or the responsibilities have been allocated from the State Government.

In some cases, the State Government may negotiate a performance agreement with local government, with payment to accompany that agreement. The implementation of restrictions on smoking in food establishments is an example of this type of arrangement. For planning and native vegetation, under the Planning and Environment Act 1987, the Governor in Council sets permit fees in planning regulations. These fees apply across the state and do not vary according to the circumstances of individual councils. In contrast, each council has the power to set the fees for the registration of food premises at a level that meets the costs of regulation and all associated activities.

Councils are also permitted by the Local Government Act 1989 to raise funds for activities regulated by local laws and to impose rates and charges under s.155 of the Act. Local government does not have any power to require the State Government to meet the costs incurred by councils in performing regulatory responsibilities.

Lack of accountability mechanisms

Sufficient resources and skilled staff will not guarantee efficient regulatory outcomes. Local governments also need to be accountable for their activities (as was recognised in Good Governance Advisory Group 2004, pp. 16–17). Part B of this report noted some areas where local government accountability for regulatory outcomes is an issue.

In the planning area, the Commission’s recommendation on reviewing the reforms implemented as a result of Better Decisions Faster reflects the need to improve monitoring of the performance of past reforms and to respond to deficiencies in those reforms. In food safety, the Auditor-General concluded that councils are not adequately informing the public of their performance against their obligations, which is compounded by the lack of clarity as to which agency is responsible for monitoring councils’ achievements under the Food Act 1984 (AGV 2002, p. 107). The report also noted that the Food Safety Unit in the Department of Human Services considers that it does not have the legislative power to monitor councils’ performance, and recommended that “this legislative ambiguity should be addressed” (AGV 2002, p. 75). The Commission recommended that councils periodically publicly report their performance against obligations under the Food Act, using a set of key performance indicators negotiated between the state and local governments.

Many mechanisms can be used to improve accountability, all have strengths and weaknesses. To varying degrees, they involve clearly setting expectations, collecting information that allows performance to be measured against those expectations, making
The most appropriate approach depends on circumstances, such as the type of regulation being implemented, which level of government is responsible for that regulation, and whether the funding is being raised at the local or state level. These issues should

- **Political accountability**—local government is accountable to its local community through elected councillors. This type of accountability, however, requires the issue to be large enough to affect the voters’ future decisions, and the elected representatives to recognise and respond to that risk.

- **More prescriptive regulation**—the State Government could set more prescriptive requirements on local government so it has more controls over the specific regulatory obligations and/or how the regulation is implemented. This could, however, undermine one of the reasons for allocating responsibility to the local level, which is to allow the flexibility to accommodate local conditions. In addition, more prescriptive regulation may not increase the cost to government of implementing the regulation, but could increase the costs of compliance for industry.

- **Increased oversight**—the State Government could set up more detailed processes for overseeing the activities of local government. This approach imposes additional costs on the State Government. It could be difficult too if local conditions require flexibility in the implementation of regulation and if the state body cannot make informed judgements on the validity of the various local approaches. Heavy-handed oversight could also create confusion among stakeholders about which level of government is responsible for the regulation.

- **Increased performance reporting**—the State Government could require local governments to report against benchmarks for the implementation of the regulation. Some local government activities are already reported through the Best Value Program. The collection of information for performance reporting imposes additional costs on local government, however. This mechanism also relies on it being practicable to identify meaningful, measurable performance indicators. It has been advocated in the United Kingdom, however, in a review into reducing the administrative burdens of regulation (Hampton 2004, p. 48). One form of performance reporting is benchmarking, which involves cross comparisons across local governments, so the performance of one council can be compared against others. The extent of the benchmark analysis and the indicators used affect the cost and usefulness of the analysis. Benchmarking is most useful when the outcomes or approaches to regulation are expected to be similar in different regions, so meaningful comparisons can be made without complex adjustments for legitimate regional differences.

- **Memoranda of understanding**—local governments could individually, or as a group, negotiate a memorandum of understanding with the State Government. This document would set out the roles and responsibilities of each level of government. It could improve transparency but may be difficult to enforce, particularly if there are no detailed provisions on the outcomes expected and how those outcomes would be measured.

- **Performance agreements**—performance agreements are more like a contract between the two levels of government and can be used when there are sanctions for not meeting certain conditions. A performance agreement may be used when, for example, the obligation to implement regulation is accompanied by a State Government commitment to provide funding. In this situation, the State Government could set standards and conditions on that funding.

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Advisory bodies

The terms of reference asks the Commission to identify mechanisms for simplifying advisory mechanisms in regional Victoria. These mechanisms are discussed in part A, which identified advisory bodies that inform both regulatory decisions and policy making more generally.

Formal advisory bodies can provide Ministers, departments and regulators with independent and expert advice and/or stakeholder feedback on the operation of specific areas of government. Their advice is often critical to developing effective regulation that achieves its objectives and meets the needs of industry. These bodies allow the regulators to explore specific issues in detail, drawing on the expertise of a range of people. This advice is not costless, however. In addition to the direct staff costs of operating an advisory body, there are potential costs from reductions in accountability and openness; while perhaps less tangible than the direct costs, these costs are no less real. There are also potential costs for industry that participates in these bodies or that needs to liaise with these bodies.

If the arrangements for advisory bodies are not working effectively, this could contribute to systemic problems such as regulation not adequately accommodating the capacity of regions to implement and enforce regulation, the impact of consultation on concerns about the fairness and effectiveness of regulation, and the cumulative effects of regulation.

In regional areas, the costs of ineffective advisory bodies are potentially significant. There is already some confusion among regional stakeholders about the regulatory framework. This is exacerbated if various bodies are involved in particular areas of regulation when their roles and responsibilities are not clear. Regional businesses can have difficulty identifying whom they should speak to, waste time raising issues with the wrong body, or obtain conflicting or confusing responses from different bodies.

With so many advisory bodies in operation, there is a risk that their functions may overlap. This not only increases confusion but is also a problem when stakeholders volunteer their time to participate in these processes. In areas with small population, often a few industry leaders participate in advisory processes. The opportunity cost of these individuals’ time is significant because their involvement in these advisory processes diverts them from running their businesses.

There are potential problems if the limits of these bodies to represent fully industry interests are not recognised. As demonstrated in this inquiry, regional interests are diverse. There are few areas of regulation where one advisory body could effectively represent all interested groups. Significant problems would arise if the advisory body were used as an excuse to avoid wider consultation.

Moreover, advisory bodies should not have undue influence over regulatory decisions. Their advice should be considered, but they should not have de facto decision-making

Draft recommendation 12.3

That the Victorian Government, where it requires local government to administer or enforce new or reviewed State regulation, first discuss with local government how the regulation will be funded, what training or assistance will be provided, and how ongoing performance will be monitored, all of which should be public. The performance of local government against the agreed monitoring regime should also be made public.

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powers. These bodies do not have effective arrangements in place to ensure accountability or preclude a ‘closed club’ on policy advice. Further, they will not necessarily balance all economic, social and environmental interests: the interests of some key groups (such as consumers and potential industry entrants) are difficult to capture within the membership of advisory bodies. Such risks are lessened if advisory bodies focus on administration and implementation issues, and leave policy development through regulatory change to other, more transparent processes.

While effective advisory bodies can provide valuable input into the regulatory process, ineffective bodies can increase confusion and raise the costs of regulation. If other forms of consultation are not also used, the risks of significant regulatory costs being overlooked also increases. The Victorian Government has recognised the need to look closely at these broader issues with advisory bodies.

**Improving the transparency of the activities of advisory bodies**

The Commission considers that transparency in the use of advisory bodies, their charter and their membership would assist in improving the clarity of their role in regulation in the regions. The Victorian Government does not require systematic reporting or maintenance of a complete database of these bodies, although other governments (for example, that of South Australia) apparently do.

Departments and stand-alone regulators are responsible for the funding and governance to ensure the effective and efficient operation of the advisory bodies they support. Basic information about the operations of these advisory bodies is not contained, however, in all annual reports or other publicly available documents in a consistent manner. This information could be readily included in annual reports, although the level of information required should be mindful of any associated costs.

A complementary approach would be to collate this basic information in a single report, along the lines of the UK Government’s annual Public Bodies report (Cabinet Office (UK) 2003), and the Commission’s The Victorian Regulatory System (VCEC 2005). Such a compilation would improve the accessibility of information to assess the performance, efficacy and relevance of advisory bodies, and allow readers to compare and contrast the approaches used in different policy areas. It would not include financial accounts or other onerous reporting requirements, which in most cases would be included in the accounts of the sponsoring department or regulator. The report could include, however, basic information on the advisory body and its role and functions. A one-off report (at least initially) containing basic information on each advisory body should be able to be prepared for a relatively modest cost. If the cost is onerous for the departments and regulators that are accountable for effectively and efficiently managing these bodies, then there may be scope for significantly better governance and record keeping in this area.

The Commission is interested in inquiry participants’ views on whether it should make the following recommendation in its final report.

**Draft recommendation 12.4**

That Victorian Government departments and regulators include in their 2004-05 annual reports information on each advisory body that they support. This information should include:

- how each body’s activity contributes to improved policy outcomes
- details of membership of the body, including any changes that took place during the year
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Reviewing advisory bodies

When they work effectively, advisory bodies can provide important input that improves the quality of new regulation and its administration and enforcement. It is important, however, to have processes of regular review that ensure the existing processes are still necessary and identify any scope for improvements.

Different governments have taken various approaches to this issue. The Economic Development Board in South Australia noted:

... there is a myriad of advisory bodies and committees that have been established by Ministers and their departments.

While the exact number is not known, the [board] believes there has been an unnecessary proliferation of statutory authorities, advisory bodies and committees across government over the past few years. (EDB 2003, p. 27)

The board recommended that the South Australian Government: develop a policy framework for identifying the criteria to establish a new statutory authority or advisory body; consider spilling all existing statutory authorities, advisory bodies and other government boards and committees, if they do not meet the criteria; and give all new bodies a sunset clause to ensure they are reviewed regularly for performance and relevance (EDB 2003, p. 28). The South Australian Government accepted these recommendations.

The UK Government has taken a different approach, gradually reviewing each body, based on clear and publicly available criteria and guidance material. The number of UK advisory bodies consequently declined from 1485 in 1979, to 422 in 2003 (Cabinet Office (UK) 2003). Until 2000, the UK Government required each body to be reviewed every five years, although the nature and extent of the review differed depending on the issues at stake, with a ‘light handed model’ outlined for use where appropriate.

An alternative would be to have sunset provisions for advisory bodies, as already applied to regulation in Victoria under the Subordinate Legislation Act. Such reviews, when done well, can be costly. The UK Better Regulation Task Force has developed useful criteria for sunsetting—a form of systematic review whereby the regulation automatically lapses after a fixed period unless something happens to keep it in place (Better Regulation Task Force (UK) 2001).

Based on the information that the Commission has received and the limited publicly available information on advisory bodies, the Commission does not consider there is sufficient evidence at this stage to warrant recommending widespread and systematic reviews of these bodies.

In late 2004, the Public Administration Bill was passed, creating the State Services Authority and creating the means to improve governance arrangements for public entities, including ‘advisory entities’. The State Services Authority could advise government on criteria that could be used to assess proposals for new advisory bodies, and on guidance

- indicative estimates of the costs of administrative support of the body
- date of formation, and when any reviews of the body’s roles occurred
- a point of contact in the sponsor department or regulator, from whom further information can be obtained.
material to assist those charged with reviewing existing bodies. This material could be modelled on the UK Cabinet Office materials.

**Draft recommendation 12.5**

That the Victorian Government develop criteria and associated guidance material (along the lines of the UK Cabinet Office publications) for establishing any new advisory body, and the process of reviewing an existing body.

The analysis required to identify ways of simplifying and improving advisory mechanisms, including the operation of any standing bodies, can (and often should) be undertaken in the context of a broader review. The Occupational Health and Safety Review (Maxwell 2004), for example, examined consultative advisory mechanisms in the context of improving the Occupational Health and Safety Act 1985. As noted earlier in this report, the effectiveness of consultative mechanisms is a key determinant of the performance of regulatory systems. Further, the evaluation of advisory bodies, which are only one component of the consultative process, needs to be informed by the outcomes that are being achieved by the regulation and its administration.

**Draft recommendation 12.6**

That the terms of reference of all major policy reviews include an examination of the efficiency and effectiveness of relevant government advisory mechanisms, and have regard to the criteria and associated guidance material outlined in recommendation 12.5.
Appendix A: Consultation

A.1 Introduction

In keeping with the Commission’s charter to consult widely, the inquiry into regulatory barriers to regional economic development sought extensive public participation. This appendix describes participation in the inquiry.

Shortly after it received the inquiry terms of reference, the Victorian Competition and Efficiency Commission advertised the inquiry in Victorian newspapers. To help identify the scope of the inquiry, the Commission then held a regional roundtable with invited participants in Ballarat on 17 July 2004 (section A.2).

The Commission subsequently published an inquiry issues paper on 16 August 2004 (VCEC 2004) to:

- provide inquiry participants with background information on the inquiry
- describe the Commission’s processes
- guide inquiry participants in framing submissions.

The issues paper invited inquiry participants to make submissions, and the Commission received more than 50 submissions before the release of this draft report (section A.3).

In September, the Commission held public hearings in Ballarat, Bendigo, Colac, Geelong, Mildura, Traralgon, Warrnambool and Wodonga. Hearings were widely advertised in the regional media. The hearings attracted around 50 participants, representing a diverse range of industries and interests (section A.4).

Throughout October and November 2004, the Commission also held targeted meetings with industry and government representatives (section A.5). To enable a full response to concerns raised by inquiry participants, the Commission forwarded specific questions to a number of government departments. It used the responses received to formulate the views set out in this report, which were treated as public evidence.

During the inquiry, the Commission appointed consultants to assist with particular aspects of the report.

- ACIL Tasman prepared a report on economic development in regional Victoria
- Rob Milner from Coombes Consulting assisted in preparing material on Victoria’s planning system.

A.2 Ballarat roundtable

The roundtable was held on Friday 30 July 2004 at the Greenhill Enterprise Centre at the University of Ballarat (Mount Helen). Participants were:

- Mr Graham Evans AO, Chair, Victorian Competition and Efficiency Commission
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Regulation and regional Victoria: challenges and opportunities

- Ms Kay Macaulay, Regional Manager—Ballarat, Australian Industry Group
- Mr George Fong, Manager, Lateral Plains
- Mr Asher Judah, Policy Adviser, Victorian Farmers Federation
- Mr Robert Crompton, Executive Director, Information City
- Mr Phillip Crone, Manager—Ballarat Office, Victorian Employers Chamber of Commerce and Industry
- Mr Alan Bliss FCPA, President, CPA Australia
- Mr Grant Wiltshire, Area General Manager—South West Victoria, Telstra Countrywide
- Ms Heidi Jarvis, Managing Director, Organised Success
- Mr Adrian Doyle, Board Member, Commerce Ballarat.

As part of the Commission’s commitment to open and public processes, the preliminary roundtable was recorded and the transcript is available on the Commission’s website.

A.3 Submissions

The invitation to make submissions was open to any member of the public, including businesses, employees, industry associations, community groups, State Government departments and agencies, and local governments. The Commission received 56 submissions from individuals and organisations (table A1).

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<td>29</td>
<td>Mr Tony McLennan</td>
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<td>Ms Dawn Parker</td>
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<td>32</td>
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<td>Ms Wendy Jones</td>
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<td>38</td>
<td>Mr Scott Ashby</td>
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<td>39</td>
<td>Mr Paul Weiler</td>
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<td>40</td>
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<td>41</td>
<td>Mr Alan Moran</td>
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<td>42</td>
<td>Mr Graham Grant</td>
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<td>Mr John Tesoriero</td>
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<td>46</td>
<td>Mr SB Yong</td>
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<td>47</td>
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<td>Latrobe City Council</td>
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<td>48</td>
<td>Mr Geoff Horne</td>
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<td>49</td>
<td>Mr Will Studd</td>
<td>Fromagent Australia</td>
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<tr>
<td>50</td>
<td>Mr John Morgan</td>
<td>Diversified Agricultural Investments</td>
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<tr>
<td>51</td>
<td>Mr Timothy Piper</td>
<td>Australian Industry Group</td>
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<tr>
<td>52</td>
<td>Mr Neil Coulson</td>
<td>Victorian Employers Chamber of Commerce and Industry</td>
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<td>53</td>
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<td>19</td>
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<td>20</td>
<td>Mr RJ Sander</td>
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<tr>
<td>23</td>
<td>Ms Jan Boynton</td>
<td>City of Greater Bendigo</td>
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<td>24</td>
<td>Mr Kay C Khoo</td>
<td>Bayer CropScience</td>
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<td>25</td>
<td>Ms Paris Brooke</td>
<td>AusBiotech</td>
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<td>26</td>
<td>Mr Roland Wahlquist</td>
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<td>27</td>
<td>Mr John G Brown</td>
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<td>28</td>
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<tr>
<td>53</td>
<td>Mr Richard Hiscock</td>
<td>Whats On In Victoria.com</td>
</tr>
</tbody>
</table>
A.4 Public hearings

The Commission held public hearings in eight regional locations:

- Colac, Monday 6 September 2004, Colac Performing Arts Centre
- Warrnambool, Monday 6 September 2004, Regal Café
- Ballarat, Tuesday 7 September 2004, Doherty Ballarat Lodge
- Bendigo, Tuesday 7 September 2004, Victorian Business Centre
- Traralgon, Friday 10 September 2004, Latrobe City Council
- Mildura, Monday 13 September 2004, Mildura Grand Hotel
- Wodonga, Wednesday 15 September 2004, Civic Centre
- Geelong, Friday 17 September 2004, Mercure Hotel.

Advance notice of the public hearings was provided in the issues paper, on the Commission’s website and via advertisements in 27 regional newspapers. A total of 53 individuals appeared at the public hearings, representing 48 different businesses, or community organisations (table A2). Hearing transcripts are available on the Commission’s website.

Table A2: Public hearing participation

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<thead>
<tr>
<th>Public hearing</th>
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<tr>
<td>Colac</td>
<td>Mr Patrick Hutchings</td>
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<td>Colac</td>
<td>Mr John Hayden</td>
<td>AKD Softwoods</td>
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<tr>
<td>Colac</td>
<td>Ms Rosemary Vulcz</td>
<td>Mr Fern</td>
</tr>
<tr>
<td>Colac</td>
<td>Mr Chris Mead</td>
<td>CM Timber Processors</td>
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<tr>
<td>Colac</td>
<td>Mr Alex McKenzie</td>
<td>Australian Milk Producers Association</td>
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<td>Colac</td>
<td>Mr Steven Lawson</td>
<td>Farmer</td>
</tr>
<tr>
<td>Warrnambool</td>
<td>Ms Tamara Mahony</td>
<td>Fish Tails and Fish Sails</td>
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<td>Warrnambool</td>
<td>Dr Greg Walsh</td>
<td>Gregory F Walsh and Associates</td>
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<td>Warrnambool</td>
<td>Mr Robin Stark</td>
<td>South West Institute of TAFE</td>
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<td>Warrnambool</td>
<td>Mr Brendan Howard</td>
<td>Urbanomics</td>
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<td>Ms Anne Waters</td>
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<td>Warrnambool</td>
<td>Mr Thomas Akoch</td>
<td>Sudanese community representative</td>
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<tr>
<td>Ballarat</td>
<td>Ms Christine Baker</td>
<td>Lecturer/University of Ballarat</td>
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Table A1: Submissions received (continued)

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<td>Mr Peter Dudley</td>
<td>Maddingley Brown Coal</td>
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<td>55</td>
<td>Mr Howard Ronaldson</td>
<td>Department of Infrastructure</td>
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<td>56</td>
<td>Mr Tony Neilson</td>
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<tr>
<td>Public hearing</td>
<td>Name</td>
<td>Business/organisation</td>
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<tr>
<td>Ballarat</td>
<td>Ms Eleanor Veal</td>
<td>Ballarat Heritage Homestay</td>
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<td>Ms Kirrilee Read</td>
<td>Gekko Systems</td>
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<td>Ballarat</td>
<td>Mr Phillip Sabien</td>
<td>Wimmera Development Association, and Wimmera 2020</td>
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<td>Ballarat</td>
<td>Mr Mike Kaufmann</td>
<td>Kaufmann Property Consultants</td>
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<td>Mr Trevor Domaschenz</td>
<td>Victorian Yabby Growers Association</td>
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<td>Bendigo</td>
<td>Ms Toni Riley</td>
<td>President, Hargreaves Mall Traders Association</td>
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<tr>
<td>Bendigo</td>
<td>Mr Rod Drew</td>
<td>Field and Game Australia</td>
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<tr>
<td>Bendigo</td>
<td>Ms Debbie Davis</td>
<td>Boardwalk Restaurant and Café</td>
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<td>Bendigo</td>
<td>Mr Wes Vine</td>
<td>Mandurang Valley Wines</td>
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<td>Bendigo</td>
<td>Mr Ian Aberdeen</td>
<td>The Countryside Academy</td>
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<td>Mr Rob Willersdorf</td>
<td>Gippsland Private Forestry Inc</td>
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<td>Mr John Cameron</td>
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<td>Mr Tony McLennnan</td>
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<td>Mr Mick Kerr</td>
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<td>Mr Neil Stuckey</td>
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<td>Mr Chris Fraser</td>
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<tr>
<td>Mildura</td>
<td>Mr Phil Pearce</td>
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<td>Mr John Irwin</td>
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<td>Mr Don Carazza</td>
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<td>Mr Ken Wakefield</td>
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<td>Mr Robert Mansell</td>
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<td>Larmon (SunSalt)</td>
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<td>Ms Christine Milton</td>
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<td>Mr Chris Langdon</td>
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A.5 Discussions with stakeholders

To obtain further information on regulatory issues raised during the inquiry, the Commission held discussions with a large number of individuals, businesses and government agencies and regulators (table A3).

Table A3: Stakeholder consultations

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<td>BHP Billiton</td>
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<td>Browns Motors</td>
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<td>Department of Human Services</td>
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<td>Department of Infrastructure</td>
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<td>Department of Innovation, Industry and Regional Development</td>
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<td>Department of Primary Industries</td>
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Table A2: Public hearing participation (continued)

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<tr>
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<td>Mr Frank Costa</td>
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<td>Mr David Lucas</td>
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<td>Geelong</td>
<td>Mr Asher Judah</td>
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Table A3: Stakeholder consultations (continued)

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<td>Gippsland Private Forestry</td>
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<td>Wimmera Development Association</td>
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<td>Wimmera Development Association</td>
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Appendix B: Best practice principles of regulation

The purpose of regulation is typically to correct some form of market failure, which may be associated with the existence of an externality, a public good or asymmetric information between different participants in a market. The benefits of regulation are typically associated with the correction of the market failure (environmental regulations that target pollution, for example, have amenity and health benefits). These marginal benefits will usually decline as the regulated activity is further reduced. The costs of regulation are largely associated with the costs of administering and complying with the regulation, and will tend to increase as the level of regulation increases. The optimal level of regulation—such that the net benefit to the community is maximised—is where the marginal social costs and benefits of the regulation are the same. A best practice approach to regulation will try to push the level of the regulated activity towards this optimal level. There are several widely recognised principles (Argy and Johnston (2003), Banks (2000), Better Regulation Task Force (2003), OECD (1995), ORR (1996a)) that are designed to capture the benefits of regulation while minimising the costs, and to assist in setting the appropriate level of regulation. These are summarised below.

Regulations should be understandable and introduced only after proper consultation

Regulatory frameworks and regulations should be introduced after an appropriate period of consultation about the problem to be solved, alternative solutions and their impacts. Wide-ranging consultation with all potentially affected parties (including those who benefit from the proposal and those who lose, and others with a legitimate interest) has a number of advantages:

- It helps to ensure the regulation is imposed only after its impacts on different community groups are considered.
- It provides an opportunity for the possible unintended effects of regulation to be identified, considered and built into regulation design, thereby improving the quality of regulations.
- It enables alternatives to regulation to be canvassed.
- It is likely to encourage compliance, both by informing relevant parties about forthcoming regulation and by reducing opposition to the regulation.

Once regulations have been introduced following a proper consultation process, the community’s understanding of regulations and the reasons for their existence will be enhanced if:

- regulations are expressed in clear, concise and plain language
- there are clear systems for rule making
- all laws and regulations are available to the public through a variety of means
- regulators provide understandable and consistent advice about the regulatory framework
- regulators’ decisions are clearly expressed and accessible, with understandable decision-making processes and compliance requirements
- regulators’ decisions are predictable, in the sense that they emerge logically from the regulatory prescriptions and from precedent. (Predictability is particularly important for those making long-term investments.)
- the activities of regulators are regularly reported.

Appendix B: Best practice principles of regulation

The purpose of regulation is typically to correct some form of market failure, which may be associated with the existence of an externality, a public good or asymmetric information between different participants in a market. The benefits of regulation are typically associated with the correction of the market failure (environmental regulations that target pollution, for example, have amenity and health benefits). These marginal benefits will usually decline as the regulated activity is further reduced. The costs of regulation are largely associated with the costs of administering and complying with the regulation, and will tend to increase as the level of regulation increases. The optimal level of regulation—such that the net benefit to the community is maximised—is where the marginal social costs and benefits of the regulation are the same. A best practice approach to regulation will try to push the level of the regulated activity towards this optimal level. There are several widely recognised principles (Argy and Johnston (2003), Banks (2000), Better Regulation Task Force (2003), OECD (1995), ORR (1996a)) that are designed to capture the benefits of regulation while minimising the costs, and to assist in setting the appropriate level of regulation. These are summarised below.

Regulations should be understandable and introduced only after proper consultation

Regulatory frameworks and regulations should be introduced after an appropriate period of consultation about the problem to be solved, alternative solutions and their impacts. Wide-ranging consultation with all potentially affected parties (including those who benefit from the proposal and those who lose, and others with a legitimate interest) has a number of advantages:

- It helps to ensure the regulation is imposed only after its impacts on different community groups are considered.
- It provides an opportunity for the possible unintended effects of regulation to be identified, considered and built into regulation design, thereby improving the quality of regulations.
- It enables alternatives to regulation to be canvassed.
- It is likely to encourage compliance, both by informing relevant parties about forthcoming regulation and by reducing opposition to the regulation.

Once regulations have been introduced following a proper consultation process, the community’s understanding of regulations and the reasons for their existence will be enhanced if:

- regulations are expressed in clear, concise and plain language
- there are clear systems for rule making
- all laws and regulations are available to the public through a variety of means
- regulators provide understandable and consistent advice about the regulatory framework
- regulators’ decisions are clearly expressed and accessible, with understandable decision-making processes and compliance requirements
- regulators’ decisions are predictable, in the sense that they emerge logically from the regulatory prescriptions and from precedent. (Predictability is particularly important for those making long-term investments.)
- the activities of regulators are regularly reported.
Regulatory effort should be the minimum necessary consistent with the scale of the problem

Regulations should be implemented only when there is:

- clear evidence of a problem that needs to be addressed
- a precise definition of the regulation’s objective
- evidence that regulation is the best way to address the problem.

Typically, such a situation involves a market failure stemming from uncompetitive market structures, incomplete property rights (externalities or public goods) or inadequate information. Regulations may also be implemented to achieve a social (equity or redistributive) objective—for example, utilities may be prevented by regulation from withdrawing supply from late-paying customers.

The scale of the intervention should be related to the size of the problem being addressed. An activity with potentially irreversible consequences (particularly a threat to human life), for example, is likely to warrant higher levels of regulatory intervention than one with less extreme, reversible consequences. Food safety regulation is an area that would seem likely to justify a large regulatory effort. Although, to the extent that the risk and impact of activities that breach regulations differ for different types of food or food supplier, there may be a case for different intensities of regulatory effort.

On the other side of the ledger, regulation introduces compliance and administrative costs. It can also distort competition in the market for the regulated service, markets that provide inputs to that service, or other related markets. Occupational regulations (such as mandatory qualifications), for example, may reduce entry by new professionals, which may reduce competitive pressure on incumbent providers of regulated services. Regulations may also favour some service providers over others.

Differences in the costs caused by regulation should lead to differences in regulatory intensity, other factors being equal. From an efficiency perspective, the aim should be to equate the marginal social costs and benefits of regulation, where regulation is the preferred form of intervention. Cost–benefit analysis is the tool that is usually used to assess the type of regulation needed and the target level of the regulated activity.

One suggestion for moving towards regulation that is proportional to the problem is to exempt particular businesses or individuals from regulation or allow them to face less onerous requirements. Such businesses/individuals might include those for whom the compliance costs would be particularly high and the risks of adverse outcomes would be relatively low. Differential approaches will, however, add to administrative costs and distort resource allocation by placing those firms that remain regulated at a competitive disadvantage.

Regulations should not be unduly prescriptive

Prescriptive rules focus on inputs and processes, and may specify the technical means to achieve the objective of the regulation. Less prescriptive instruments might be performance based rules or specification of standards, which outline the desired outcomes in a broad sense (for example, driving in a manner appropriate to the conditions).
The advantage of prescriptive approaches is that they provide a comparatively high degree of certainty. This may be desirable in situations where deviating from the prescribed behaviour could have serious consequences, and where the opportunities for innovation are limited. The disadvantages of a prescriptive approach include the following:

- It is likely to be costly to design rules for behaviour that leads to the desired outcomes.
- Prescriptive rules defining how service providers should operate may discourage initiative and flexibility, which may be particularly damaging in an environment in which change is rapid. It is difficult for regulators to predict how technology or consumer tastes will change, so prescriptive rules may lock in old ways of doing things.
- The rules may focus on production processes rather than the desired outcome, with the consequence that the desired outcome may not be attained.
- People may be tempted to break prescriptive rules when the costs of complying with them become burdensome.

Lattimore et al. (1998) noted that small businesses may prefer prescriptive regulations, because they do not have the skills to develop their own compliance methods. They suggested that one way to meet the wishes of both larger and smaller businesses may be to have performance or principle based regulations, supported by voluntary prescriptive provisions that meet the performance standards (Lattimore et al. 1998, p. 199).

**Regulations should be consistent with other laws and regulations, across industries and across businesses**

As of 1 November 2004, Victorian business regulators administered a combined total of 170 Acts that total over 19 600 pages (chapter 2). Such a large amount of regulation presents risks of duplication or inconsistencies across different regulatory instruments, and risks that firms in the same circumstances may be treated differently because regulations differ or because their interpretation and enforcement are inconsistent. Inconsistencies and duplication can create confusion among those required to comply with the regulations and increase the costs of doing business. Inconsistencies can also distort competition if firms in similar circumstances are treated differently. They may occur between all kinds of regulation, but could be particularly problematic in the case of prescriptive regulations, because the regulated firm would have to choose a regulation with which to comply.

Consistency does not necessarily imply uniformity in the way regulation is administered. Consistency could be achieved by analysing the activities of firms in an industry within the same risk assessment framework—it would not, for example, be efficient to audit with the same frequency food businesses with different food safety risks and performance records.

Lattimore et al. (1998, p. 213) suggested two main ways to improve regulatory consistency:

- clarifying the role and scope of regulations of different agencies
- requiring an evidence-based assessment of regulatory requirements.

Other mechanisms include:

- mutual recognition
- nationally-uniform legislation
- where appropriate, a reduction in the number of regulators.

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There should be pressures for continual improvement of regulation

In addition, regular reviews of regulations—for example, through sun-setting provisions—will help to ensure regulations continue to achieve their objectives, notwithstanding changes in the environment within which they operate. There is a balance to be achieved here. Undertaking reviews involves costs: changes to regulations could increase compliance costs for those who are being regulated; and reviews may also create some uncertainty. Long periods between reviews, however, increase the risk that regulations no longer generate net benefits, or that inconsistencies or duplication builds up. There should be mechanisms for evaluating the operation of regulations, to assess how well they are achieving their intended outcomes. This assessment can provide the information that is needed to determine how to improve regulations.

Regulators should be accountable

There should be clear criteria for assessing each regulator’s performance, along with public reporting of information, to allow the Parliament and the community to judge. Moreover, regulators should also be accountable to those being regulated, by making prompt and well-explained decisions, by showing that their decisions are consistent and properly related to legislative authority, and by allowing for internal review.

Regulations should be enforceable

Regulations need to be enforceable, with penalties for noncompliance. The size of the penalties should be commensurate with the scale of the costs that would arise from noncompliance with the regulation. Penalties that are too small may encourage noncompliance, while excessive penalties could dampen innovative behaviour, discourage the regulator from enforcing the regulations and lead to community dissatisfaction with the regulatory framework.

Underpinning the enforcement of regulations should be a framework that recognises the rights of those affected by the enforcement process. This framework requires regulators to be accountable for their decisions.

Regulators should clearly explain how and why decisions have been reached.

Proposals should be published and all those affected should be consulted before decisions are taken.

Regulators and enforcers should establish clear standards and criteria against which they can be judged.

Complaints and appeals procedures should be well publicised, accessible, fair and effective.

Lines of accountability for Ministers, parliaments and the public should be clear. (Better Regulation Task Force (UK) 2003, p. 42)

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Appendix C: Starting a business in Victoria

This appendix presents examples of the regulatory compliance requirements for those who are establishing a new business. As the following example demonstrates, a real component of the costs associated with compliance requirements are the search times associated with becoming aware of the relevant requirements.

[It is just the regulations, the million different things you need to be registered for ... We did have access to a lot of information but basically it was too much information. It was sorting through what was ... vital to get this business running ... We can read it and understand it and improve and be more efficient but it’s at the forefront of, okay, what do we have to do? And also in what order does it have to be done in? You know, we had to research all the laws that related to us and, you know, from a state level, federal level and local level. It was just finding out, well, who do you even call? Where do you get the number? (Ballarat transcript, pp. 21-22)

The Business Licence Information Service (BLIS)—a service provided by the Victorian Government to assist new businesses to navigate the regulatory requirements—can be used to identify the licences needed to start up a particular business in a given location. This service can be a useful resource in assisting prospective small business owners, in particular, to become aware of their compliance obligations. The Department of Innovation, Industry and Regional Development maintains and operates BLIS, which can be accessed on-line at www.business.channel.vic.gov.au/BLIS. Some hypothetical examples, with a regional Victorian perspective were processed through the BLIS system and revealed a significant number of licensing compliance requirements.

Case Study 1: Opening a bed and breakfast in the Hepburn Shire

Immediately north of Ballarat, the Hepburn Shire is a popular location for regional tourism and an ideal place to operate a bed and breakfast establishment. To do so, however, a number of licensing and registration obligations must be fulfilled before trading can commence:

- **Registration of a business name** for three years costs $71.60 and is organised through Consumer Affairs Victoria. This process can be completed on-line as well as in person.
- If the bed and breakfast wants to distinguish itself from others sufficiently, it may wish to register a trademark. This process is conducted through IP Australia.
- **Planning permits** are required from the local council before any change in the use or development of land. Opening a business from home, placing display signs or hoardings on property, constructing a building, renovating a building, demolishing a structure and subdividing land all require a planning permit. When any planning application is lodged, it must be accompanied by, at a minimum, a copy of the title to the land and any registered restrictive covenants, at least three copies of scaled and dimensional plans showing existing conditions and relevant information, and at least three copies of scaled and dimensional plans showing the proposed development.
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Compliance with tax regulations requires the proponent to obtain an Australian Business Number and GST registration. This is compulsory for businesses with an annual turnover in excess of $50,000. Small businesses may also elect to register as a PAYG withholding. This applies when a supplier does not quote an ABN on an invoice or in some other manner, for example.

A small bed and breakfast will probably avoid having to register for payroll tax. In Victoria, a general exemption is available if the total annual wage bill is below $550,000 in a financial year.

Employment of a single part-time staff member will probably ensure the bed and breakfast reaches the $7,500 annual wage bill threshold for registration for WorkCover. This needs to be arranged through the Victorian WorkCover Authority. Registration as a group employer will also be needed under Superannuation Guarantee legislation, which mandates that a specified level of payment (currently 9 per cent of the employees’ earnings base) be paid by the employer into a complying superannuation fund or retirement savings account.

A key ingredient of a bed and breakfast is the food. Preparation for selling or serving food from fixed premises requires food premises registration. This requires council inspections before business commences, and thereafter on an annual basis. Ongoing adherence to the Food Standards Code is a mandatory requirement.

Registration of prescribed accommodation is required if more than five people are to be accommodated, not counting the family of the proprietor. This is also done through the local council on an annual basis.

If wine is to be made available, then a Limited Renewable Liquor Licence needs to be obtained annually. The initial cost is $52.70, with a further $24.20 payable each year thereafter. In addition to the direct monetary cost of the licence, the time spent obtaining and lodging the necessary documents is not insignificant. A plan or depiction of the premises, a planning permit or permission, completed police questionnaires and a completed statement of display are all required to obtain a limited licence.

Bed and breakfasts gain a sizeable portion of their custom from tourists driving through the nearby area. A permit to erect hoardings or advertisements is required to erect any signs near a declared road. In rural areas, only signs on properties to which they refer are permitted. VicRoads manages this approval process.

Case Study 2: Electrical contracting in the Wellington Shire

One consequence of the ‘downsizing’ in the electricity sector has been the presence of a number of individuals with highly specialised skills who no longer have the security of long-term employment. Operating individually as an electrical contractor may be one option available to some people in this situation.

An electrician’s licence is mandatory for any person to carry out any electrical installation work. A prerequisite for the licence is the completion of four years dedicated training as an electrician, including at least 12 months experience in carrying out electrical installation work. The process involved in obtaining a five-year licence consists of lodging an application form, along with a certificate of completion of apprenticeship, the Licensing of Electrical Mechanics Assessment Certificate, a letter from an employer confirming at least 12 months work experience in carrying out electrical installation work, and evidence from a TAFE provider that the learning outcomes of the Licensing of Electrical Mechanics Module

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Bed and breakfasts gain a sizeable portion of their custom from tourists driving through the nearby area. A permit to erect an advertising sign on a road or footpath is required for any such advertising to occur. Local government manages this process. Alternatively, a permit to erect hoardings or advertisements is required to erect any signs near a declared road. In rural areas, only signs on properties to which they refer are permitted. VicRoads manages this approval process.

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have been achieved (or, alternatively, evidence of holding a Certificate III in Electrical (Electrician)).

- Offering a business of electrical contracting to the general public requires registration of electrical contractor. This is available from the Office of the Chief Electrical Inspector and is valid for one year unless cancelled or suspended. In addition to the application form and the $240 prescribed fee, a certificate of currency for public liability insurance, business trading details, evidence of directors etc. and copies of successful completion of Licensing of Electrical Mechanics Assessment and the Registration of Electrical Contractor Business/Commercial component (Establishing a Contracting Business) must be provided.

- Cabling Provider Rules were introduced in October 2000. Registration allows the registered cabler to perform or supervise cabling installation and maintenance. Depending on the scope of work to be performed, one of three registration options can be chosen—open registration for cablers, lift registration for cablers or restricted registration for cablers. The licensing requirements differ somewhat, but all require six months minimum knowledge and experience of building cabling work, and the completion of a relevant occupational health and safety course. Cabling work performed under these registrations must comply with the AS/ACIF S009-2001 or its replacement.

- If the contractor wishes to sell or supply electrical equipment that is certified as being safe, a Certificate of Approval should be obtained. Some classes of equipment (including kitchen goods, socket outlets and plugs) are prescribed, and it is an offence to sell such electrical equipment unless it has been approved. Required lodgement documentation for obtaining a Certificate of Approval includes a compliant test report from an approved laboratory; a sample of the equipment; installation and operating instructions for the equipment; component and material list for the equipment; and a circuit diagram of the equipment.

- The Office of the Chief Electrical Inspector licenses people to carry out electrical inspection work through the granting of an Electrical Inspector’s Licence. Valid for one year, the licence has an application fee of $240.

- To carry out electrical installation of low voltage equipment or inspection work, a Disconnect-Reconnect Worker’s Licence is required. To obtain this five-year licence, a self-employed contractor must draft a letter describing the type of equipment for which the licence is required and demonstrate that the learning outcomes of the modules NREL-1 and NREL-2 have been satisfied. The application fee is $200.

- Some tax and business regulation requirements apply across the majority of businesses. As for the case of the bed and breakfast, business name registration, GST registration and obtaining an Australian Business Number are all likely requirements. Registration as a PAYG withholder will also probably be necessary. If the contractor decides to employ an assistant, particularly an apprentice, further requirements may apply. Specifically, registration for WorkCover and registration as a group employer will be necessary.

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In addition to these requirements, electrical contractors must comply with a number of mandatory codes.
Case Study 3: Agricultural chemicals manufacturer in Greater Shepparton

Those parts of regional Victoria in close proximity to the main transport routes linking Melbourne and Sydney are ideal locations for manufacturing operations. Land is cheap and abundant relative to larger centres, and wage costs tend to be lower. Centrally located in the state and relatively well serviced by local infrastructure, especially transport, the area around Shepparton is an attractive location for medium to large-scale manufacturing plants.

- Any use of an active constituent in an agricultural chemical product requires consent in the form of Approval: Agricultural/Veterinary Chemical Active Constituent. This is obtained at a national level from the Australian Pesticides and Veterinary Medicines Authority.

- Any participation in the manufacture of veterinary chemical products (including processing and blending, assembling, filling, packaging, labelling, sterilising, storing, and testing) requires an NRA Manufacturer’s Licence to be obtained from Australian Pesticides and Veterinary Medicines Authority. This licence obliges applicants to comply with the authority’s manufacturing principles and all associated codes of good manufacturing practice.

- Registration of agricultural and veterinary chemicals is required for any products that are proposed for sale. Thorough checking of the safety and suitability of the product is conducted by the regulating agency, which is the Agricultural and Veterinary Chemicals Evaluation Section of the Australian Pesticides and Veterinary Medicines Authority. This checking requires a number of processes to be completed before any registration can occur. A complete data package on the product must be assembled and submitted, as well as a draft label conforming to the authority’s current code of practice for labelling agricultural/veterinary chemicals. The research trials performed for to obtain data for the registration of the product need a permit to trial agricultural or veterinary chemicals. Additionally, if the substance is a hormonal growth promotant, then notification of intention to sell hormonal growth promotants is also required.

- Given the dangerous nature of chemicals manufacturing plants, it may be deemed appropriate to employ guard dogs to protect the premises. All dogs must be registered with the Greater Shepparton Council. Those trained to attack or specifically act as guard dogs must be registered through a declaration of attack trained or guard dogs as dangerous dogs.

- A range of licences covers the discharge of waste to the environment. Prior to the commencement of operations, works approval must be obtained to ensure any new premises, processes, plant or equipment is assessed for environmental impact before installation. If the company is conducting research and development, then research, development and demonstration approval is required. Generally, any discharge of waste to the air, water or land environment from a manufacturing concern requires a Licence to Discharge Waste to the Environment. Different schedules apply to air, water and land discharges. Significant noise discharges do not require a licence, but EPA Victoria must be advised. Any process to burn manufactured chemicals will require a permit to burn offensive materials, as well as a permit to light a fire. Both can be obtained from the Greater Shepparton Council.

- In Victoria, all major hazard facilities must be either registered or licensed. This requires notification registration and licensing of a major hazard facility. Major hazard facilities are classified by the amount of hazardous materials with the potential to cause a major incident that are stored, handled or processed on site. Chemicals manufacturers may fall under this requirement.

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• The potential dangers associated with many manufacturing processes demand that staff are appropriately qualified and that businesses implement and adhere to procedures designed to minimise the risk of damage to staff and property. For this reason, a range of licences relating to general manufacturing processes must be obtained:
  — To operate vehicles of excessive mass and dimension, in the transport of final chemicals perhaps, the business needs mass and dimension permits and the driver needs a National Heavy Vehicle Driver Licence
  — Use of any pressure vessels (including boilers, turbines or steam engines) requires a Certificate of Competency—Pressure Equipment. A Competency Qualification—Load shifting is needed to operate load-shifting equipment such as forklifts.
  — Notification of storage and handling of dangerous goods at premises is required for a wide range of chemicals, with the threshold quantity depending on the class of chemical.

• The increase in proximate risk to the community when chemicals are transported means additional regulatory requirements apply. A Licence for the Transport of Dangerous Goods is required, as is Licensing of Drivers of Bulk Transporters. These are administered by the Victorian WorkCover Authority. For certain chemicals, a permit to transport prescribed waste is needed. All waste transport must also comply with the Environment Protection (Prescribed Waste) Regulations 1998.

• In addition to the licensing requirements specific to agricultural/veterinary chemicals and manufacturing more broadly, several regulations apply to all businesses. Planning permits will be required to alter the use of land in any substantive way, compliance with which will be confirmed through a Certificate of Final Inspection. Prior to any roadside signage being erected, a permit to erect hoardings or advertisements must be obtained from VicRoads for declared roads, or a permit to erect an advertising sign on a road or footpath for non-declared roads.

• On the financial side, the business needs the following before start-up:
  — registration as an Australian company
  — GST registration
  — registration of a business name
  — registration for WorkCover
  — registration as a PAYG withholder
  — registration for payroll tax
  — registration as a group employer.

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Case Study 4: Commercial fishery in the East Gippsland Shire

Commercial fishing is a major industry in the far eastern parts of the state. Abalone, rock lobster, and finfish sales contribute significantly to Victoria’s economy each year. The south-Pacific Ocean, just off the coast at Mallacoota, is particularly suited to commercial operations, as are the nearby Mallacoota Lakes.

- Given the increased risks incurred on the open seas, a raft of regulations apply to commercial fishing operations. Distress beacon (406 megahertz distress beacon) registration allows search and rescue organisations to access details of the vessel on activation. While not strictly compulsory, this is a strongly recommended, commonsense measure. No fee is payable to register the beacon, which is available from the Australian Maritime Safety Authority.

- Boat registration is compulsory for all commercial fishing vessels. Valid for 12 months and costing $36 annually, this is available from the Fisheries Division of the Department of Primary Industries.

- Additional requirements apply to vessels operating outside of Australian waters. An Australian Shipping Registration Certificate is required for all fishing boats travelling overseas. Part of this process involves an annual survey and certification by the Australian Maritime Safety Authority.

- As part of the supply chain, a Seafood Safety Licence is required for all commercial fisheries. To obtain this, the business must satisfy PrimeSafe, the Victorian seafood regulator, that it has an appropriate quality assurance or food safety program in place.

- Marine Safety Victoria administers licences designed to ensure only qualified people operate marine vessels. A Certificate of Local Knowledge can be obtained in certain circumstances, exempting a master from using a pilot for particular port limits if the vessel is not operated solely within the port waters, or if the vessel is less than 15 metres long. To operate a marine vessel as a master, the appropriate Certificate of Competency is required. A range of certificates also apply for skippers, mates and coxswains, marine engineers, and engineers. A Certificate of Proficiency as Integrated Rating enables the holder to serve in both deck and engine room departments of Australian ships on interstate and overseas voyages. Without this, a Certificate of Safety Trading is required.

- Access to Victoria’s fisheries is separated into several geographically based licences. To conduct fishing activities in the Mallacoota Lower Lake, for example, requires a specific Mallacoota Lower Lake Fishery (Bait) Access Licence. From this year, the annual cost of this licence is $620, comprising a licence fee ($36), an application fee ($185) and a levy ($399). Separate licences are required to fish in marine waters. Depending on the exact nature of the commercial operation, one or more of the following licences will be needed:
  - Scallop (Ocean) Fishery Access Licence
  - Ocean Fishery Access Licence
  - Purse Seine (Ocean) Fishery Access Licence
  - Trawl (Inshore) Fishery Access Licence
  - Wrasse (Ocean) Fishery Access Licence
  - Bait (General) Fishery Access Licence

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  - Wrasse (Ocean) Fishery Access Licence
  - Bait (General) Fishery Access Licence
These licences are in addition to the more general fishing permit required to fish commercially for Commonwealth managed species within the Australian Fishing Zone.

- Any commercial fishing on the high seas outside the Australian Fishing Zone (approximately 200 nautical miles from the coast) requires a high seas fishing permit from the federal government.
- Any activity such as commercial fishing that may incidentally interfere with cetaceans (such as dolphins) requires a permit for incidental interference with cetaceans. This is organised through the Environment Australia branch of the Commonwealth Department of the Environment and Heritage.
- With few exemptions (such as for some television remote controls and garage door openers), all radio transmitters require a licence. Commercial fishing boats need a Radiocommunications (Apparatus) Licence–Transmit from the Australian Communications Authority.
- In addition to these requirements, the range of general business licences discussed in the previous case studies also apply to commercial fishing operations. These include WorkCover, business registration and payroll tax compliance.

**Conclusion**

These case studies show that starting or running a business in Victoria requires dealings with multiple authorities. For a typical bed and breakfast start-up, the proponent is likely to deal with local government, VicRoads, the Victorian WorkCover Authority, the Australian Tax Office, Consumer Affairs Victoria, Liquor Licensing Authority, Food Safety Victoria and IP Australia in some way. While there is an argument for having separate business regulators with specialised experience and abilities, the diffuse regulatory framework makes the provision of services designed to minimise the compliance burden most important. The ability to not only request information but also complete application forms on-line or over the phone would be of particular help to those in regional Victoria.

In its April 2004 economic statement, Leading the Way, the Victorian Government indicated that it intends to introduce the Victorian Business Master Key initiative (Government of Victoria 2004a), which will move in this direction. Currently in the pilot phase, the Business Master Key is intended to serve as a single entry point for business dealings with government and, when completed, to be fully integrated and customised for each business user.

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