

Strengthening Foundations for the Next Decade

**An Inquiry into Victoria's regulatory
framework**

Summary Report

April 2011



Victorian
Competition & Efficiency
Commission

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About the Victorian Competition and Efficiency Commission

The Victorian Competition and Efficiency Commission, which is supported by a secretariat, provides the Victorian Government with independent advice on business regulation reform and opportunities for improving Victoria's competitive position.

VCEC has three core functions:

- reviewing regulatory impact statements, measurements of the administrative burden of regulation and business impact assessments of significant new legislation
- undertaking inquiries referred to it by the Treasurer, and
- operating Victoria's Competitive Neutrality Unit.

For more information on the Victorian Competition and Efficiency Commission, visit our website at: www.vcec.vic.gov.au

Disclosure of interest

The Commissioners have declared to the Victorian Government all personal interests that could have a bearing on current and future work. The Commissioners confirm their belief that they have no personal conflicts of interest in regard to this inquiry.

Terms of reference

Inquiry into Victoria's Regulatory Framework

I, John Lenders MP, Treasurer, pursuant to section 4 of the *State Owned Enterprises (State Body — Victorian Competition and Efficiency Commission) Order* ('the Order'), hereby direct the Victorian Competition and Efficiency Commission ('the Commission') to conduct an inquiry into improving regulation in Victoria.

Background

Victoria is a national leader in streamlining and reducing the regulatory burden on business, and not-for-profit organisations, while enhancing the effectiveness of regulation, to benefit the community.

To maintain Victoria's leadership in regulatory reform it is timely to consider in a systematic manner the priority policy areas for future regulatory reform. Further, it will enhance Victoria's reform agenda to consider the institutional framework that encourages appropriate reforms, and to investigate the greater use of innovative regulatory and non-regulatory tools to achieve the Government's objectives.

This review by the VCEC is aimed at further improving the competitiveness of Victorian businesses and identifying a clear evidence-based set of priority areas for reducing the burden of regulation on Victorian businesses.

Scope of the inquiry

The Commission is to inquire into and report on:

- 1) specific areas of Victoria's regulation which are unnecessarily burdensome, complex, redundant or duplicative
- 2) those areas of regulation that should be reformed or reduced as a matter of priority
- 3) the scope for improvements to the institutional framework which influences regulatory reform in Victoria, which could include consideration for reform to regulatory agencies and legislative processes
- 4) a framework for achieving the largest net reductions in Victoria's 'red tape' burden on businesses, including small businesses, with indicative estimates of potential cost savings where possible
- 5) ways to strengthen support for regulatory reform
- 6) the scope for greater use of non-regulatory options for achieving desired outcomes, including greater application of market-based instruments

- 7) the scope for greater use of risk-based regulation and other methods for enhancing the efficiency and effectiveness of regulators
- 8) the scope for improvements to processes for evaluating the effectiveness and efficiency of regulations once in place.

The Commission should take into account any substantive studies or developments undertaken in Victoria and elsewhere — including within the Council of Australian Governments, by the Commonwealth and other States, and international best practice — that may help it provide advice on this Reference.

Inquiry process

In undertaking this inquiry, the Commission is to have regard to the objectives and operating principles of the Commission, as set out in section 3 of the Order. The Commission must also conduct the inquiry in accordance with section 4 of the Order.

The Commission is to consult with key interest groups and affected parties, and may hold public hearings. The Commission should also draw on the knowledge and expertise of relevant Victorian Government departments and agencies.

The Commission is to release an issues paper at the beginning of the inquiry process and produce a draft report, outlining recommendations for consultative purposes. A final report is to be provided to me as soon as possible, but not later than twelve months after receipt of these terms of reference.

JOHN LENDERS MP
Treasurer

Received 29 June 2010

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Key messages

- Regulation is a key policy tool to achieve the government's social environmental and economic objectives. It is strategically important for Victoria that its regulatory management system is a competitive strength and achieves the government's regulatory objectives in a way that also supports productivity growth, competitiveness and improved liveability.
- Victoria's regulatory management system has a long-standing positive reputation, being well-regarded by independent international experts and business, including the OECD and the Business Council of Australia.
- Despite the strengths of Victoria's regulatory management system, there is considerable scope for improvement: business perceives that regulation continues to accumulate; and the Commission's work in reviewing regulation and conducting public inquiries routinely identifies weaknesses.
- The Victorian regulatory system can make a more effective and focused contribution to the Victoria's competitiveness, productivity growth and liveability, and it is important that it does so.
- The recommendations in this report were developed following consultation with those experienced in developing, administering and complying with regulation and review against good practice principles supported by the OECD. The recommendations would deliver important benefits:
 - improving policy outcomes and minimising unnecessary impacts
 - introducing regulation only when needed, and in the best form
 - continuously improving the operations of regulators
 - anticipating and flexibly adapting regulation to respond to significant change, such as technology shifts, population and community expectations
 - enhancing Victoria's reputation as a good place to live and do business.
- Overall, the recommendations aim to increase the strategic and ongoing contribution of the regulatory management system by:
 - building whole of Victorian Government attention to improving the performance of regulators
 - strengthening the impact assessment process to improve the design of regulation, better consult with affected parties and increase transparency
 - addressing some gaps in current arrangements, including improving the evaluation and implementation of regulation
 - reducing the regulatory burden on business and other sectors.
- The Commission considers that should the Victorian Government support and adopt the changes proposed in this report then it should establish a single point of accountability for improving, reporting and promoting the regulatory management system.

Summary report

Why this inquiry is important

Regulation is a key instrument available to government to achieve its social, economic and environmental objectives. Ensuring the regulatory framework delivers high quality outcomes and reduces regulatory burdens requires a deliberate purpose. It calls for government actively manage the stock and flow of regulation to ensure it has clear objectives, is designed to achieve net social benefit, and is applied and enforced efficiently by regulators.

The Victorian Government has indicated its intention to ‘reduce the regulatory burden to improve Victoria’s competitive position’ (de Kretser 2010, p. 4). The Commission notes the Government’s view that:

The fundamental purpose of the government in the economy is to foster the creation of wealth, products and jobs by individuals in the private sector, and to encourage innovation to help deliver sustainable prosperity through higher living standards and greater employment growth. (de Kretser 2010, p. 4)

These comments indicate that, if anything, the relevance and timeliness of this inquiry has increased since it was commissioned in June 2010.

The inquiry terms of reference covered a broad remit, with two key outcomes:

- recommendations for improving Victoria’s regulatory framework, through
 - significant changes to address gaps in the framework
 - improving what Victoria does well
 - strengthening processes in areas that are not done well
- identification of areas of Victoria’s regulation that are wasteful and should be reformed or reduced, and recommendations for priority reform or reduction.

This report addresses the first group of issues that deal with improvements to the regulatory framework.

In accordance with the terms of reference received from the Victorian Government on 29 April 2011, the Commission’s draft recommendations in relation to potential priorities for regulatory reform in its draft report *Priorities for Regulatory Reform* (VCEC 2011h) will be examined in more detail through its inquiry into a State-Based Reform Agenda. The Commission welcomes further submissions and consultations on these and related matters.

The systems that support the development, implementation, enforcement and review of effective and efficient regulation are matters of ongoing attention and importance for several reasons.

No regulation lasts indefinitely. Changing economic and social structures, community views, and technology, may mean that regulation has become outdated or less effective. Old regulation may need to be amended to address emerging problems and issues (such as adaptation to climate change and population growth), or in some areas state regulation may no longer be appropriate or necessary.

Regulation that is ineffective or imposes unnecessary burdens on business and the community can diminish community outcomes, discourage innovation, adversely affect investment and lead to fewer jobs, higher prices and reduced consumer choice. Constant attention to good regulatory design and review are essential to reducing such burdens.

In the context of the Australian Federation, Victoria's competitiveness and its liveability depends on built advantages and endowments other than the considerable mineral wealth of other jurisdictions. Consequently, the State needs to work harder than those other jurisdictions to put in place conditions for a competitive, sustainable economy that underpins growing living standards, employment and liveability. A first class regulatory framework is a strategic competitive strength for Victoria.

What difference would this report make to Victorians?

Victoria's regulatory framework has been independently assessed as rating favourably in relation to other Australian jurisdictions. But the inquiry process has nevertheless identified deficiencies that, taken together, imply that the system is operating well below its potential. In a best practice regime, regulation is only introduced when it is needed, the best instruments are implemented, administration and enforcement are effective and efficient, and regulation is systematically evaluated to ensure that it remains fit for purpose. Victoria's framework is some way from this ideal.

Despite considerable effort to reduce regulatory burdens, the perception among business and not-for-profit organisations (NFPs) is that the burden is still large. Six in ten businesses and nearly half of NFPs believe that the regulation they have dealt with in the last three years is unnecessarily burdensome (Wallis 2011b, p. 14). Nearly half believe that the Victorian (rather than the Commonwealth or local) Government imposes the greatest regulatory burden (Wallis 2011b, p. 8). In addition, more than half believe regulation is getting more costly (Wallis 2011b, p. 18) and just over 40 per cent believe it is getting more complex (Wallis 2011b, p. 19). Five per cent or less believe that the cost and complexity of regulation is reducing (Wallis 2011b, p. 19).

When Victoria's regulatory framework is compared with good practice principles, the scope for further improvement becomes evident. For example, there are a number of areas in which the system does not set clear roles and responsibilities.

The feedback from departments, business and NFPs supports this conclusion. While it is well recognised that Victoria's approach has a number of strengths, many participants in the inquiry have identified areas for improvement. For example:

- Business groups pointed to deficiencies in the consultation process. This may make the business community less inclined to engage actively in consultation.
- The Department of Justice noted that more emphasis has been on the design stage of regulation, and less on other stages, such as the performance of regulators (sub. 23, p. 13).
- Others are critical of the way policy is implemented, and independent reviews have identified deficiencies in implementation processes.

Finally, despite substantial whole-of-government attention on processes that scrutinise new and amended regulation, Victoria is facing the same pressure that all governments face to increase regulation. This risks expanding the regulatory burden.

- Over the past five years the cost of new regulation has increased on average by about \$60 million per year, despite the impact assessment process removing, on average, a further \$18 million per year of cost increases that might otherwise have occurred (VCEC 2010c, p. 3, VCEC 2011a).
- While most regulatory impact statements (RISs) conclude that the benefits of regulatory proposals exceed their costs, few provide quantitative evidence. In most RISs, the quantified costs exceed the quantified benefits (for example, see VCEC 2010c, pp. 113-115).
- The number of pages of legislation and statutory rules (admittedly a crude indicator) rose by 2.4 per cent and 8.5 per cent respectively between 1 January 2009 and 1 January 2011. In 2011 there were 26 677 pages of legislation and 9226 pages of statutory rules (VCEC 2011e, p. 11).

All of these factors have led the Commission to conclude that focused reform is needed to address specific problems and strengthen the governance of Victoria's regulatory framework.

The package of recommendations in this report is designed to improve the operation of the regulatory management system as a whole, and of its components, to ensure that:

- the Government can deliver better regulation, including in areas where benefits are difficult to measure
- regulation is introduced when (and only when) it is needed, in the best form possible
- there is less unnecessary regulatory burden on those who are regulated
- risks are recognised and appropriately managed

- there is less need for sudden change because the regulatory system is more robust, flexible and adaptive
- Victoria's reputation as a good place to live and do business is enhanced.

The recommendations are designed to build the capability of those who operate the system and to strengthen their incentives to improve it. This recognises that the system context is continuously evolving, and that changes made today will be out-of-date tomorrow unless there is an ethos of continuous improvement.

The Commission sought input from participants on its draft report analysis and draft recommendations through submissions, roundtables and meetings. The overall response was positive and generally supported the Commission's direction and draft recommendations.

A number noted that the Commission's recommendations would lead to an increase in activity and some costs for, regulators and agencies. The Commission accepts this is the case especially in the area of evaluation — where currently little is done. In other areas the Commission's recommendations — such as those around the good governance of regulators — are likely to impact on parties differently. In this case large regulators are not likely to face additional costs, while the impost will be greater for smaller regulators.

Overall many of the Commission's recommendations are designed to give effect to, and improve compliance with, good practices which already exist in some areas. The Commission is seeking to create a continuous improvement ethos.

Quantifying the costs and benefits of the recommendations is difficult. However, the Commission considers the cost savings from the existing impact assessment process — some \$900 million — would be significantly increased by sound evaluation, and would greatly outweigh the additional costs of evaluation. Moreover, a number of the Commission's inquiry reports identified substantial savings from more efficient approaches by regulators. Consequently, the Commission considers the costs of its recommendations to be far smaller than their benefits.

This inquiry is occurring at the same time as the independent review of state finances which, among other things, will review the efficiency and effectiveness of agency approaches to service delivery. The inquiry into Victoria's regulatory framework can be seen to some extent as complementing that review. The review will focus on expenditure policy and service delivery, while this inquiry provides a parallel stocktake of one of the other main arms of government policy.

What is Victoria's regulatory management system?

Potentially the definition of regulation is very broad. It can cover a spectrum from rules backed by government authority, through to approaches such as education and public information. This report focuses largely on rules-based

instruments, but the Commission recognises that there are many other forms of intervention that could be included in a broader definition of regulation. These other interventions are not central to this report.

The Commission defines the Victorian regulatory framework as comprising:

- Victorian and local government regulation and its application and enforcement by regulators
- the Victorian Government and local government processes for adding, changing and removing regulation
- the roles, accountabilities and relationships that give effect to managing and operating regulation.

Broadly speaking, this definition includes processes for policy development, impact assessment, monitoring and evaluating existing regulation; the work of regulators; and the bodies involved in this work (including policy makers, regulators, and review and support agencies). It also includes system-wide measures to limit or reduce the overall burden of regulation (such as targets).

The Commission's definition of the Victorian regulatory framework is very similar to the OECD's concept of a 'regulatory management system', which the OECD has applied in analyses of regulation in member countries. The Commission uses the OECD's term for the remainder of this Report. This nomenclature usefully highlights that the Victorian regulatory management system (VRMS) is one of Cabinet's critical policy instruments to be managed actively, with significant accountability requirements, and important opportunities for further improvements. The notion of a 'system' also signals interdependencies and linkages between parts that form a complex whole. Similar systems exist for the other two key types of policy instruments: expenditure and taxation.

Two key contributions to better economic and social outcomes for Victoria from the VRMS are:

- ensuring the flow and stock of regulation are managed effectively to achieve the objectives of better regulation and reducing regulatory burden
- embedding operational excellence by regulators in the task of administering and enforcing regulation, and in improving their performance.

The extent to which these two contributions are purposefully and actively managed and improved by government has a strong bearing on the contribution that regulation makes to competitiveness, productivity growth and liveability.

The governance arrangements for the VRMS — broadly, the structure of accountabilities within the system for getting things done, together with the accountabilities for the oversight and improvement of the regulatory management system as whole — have a significant impact on its effectiveness

and efficiency. A combination of leadership, incentives and accountability is needed to generate the cultural change required to embed regulatory excellence as a key objective of departments.

Other regulatory areas and processes are linked to the VRMS, without being part of it. For example, Victoria is part of the Australian Federation, and its regulations are set in a federal context. As such, Commonwealth regulation and Council of Australian Government (COAG) initiatives may require changes to Victorian regulation. Such external influences require some adaptation in the VRMS to optimise the potential opportunities, while minimising adverse impacts.

Figure 1 depicts the instruments and processes (both internal and external to the VRMS) that modify and manage the overall impact of regulation.

Figure 1 The Victorian regulatory management system

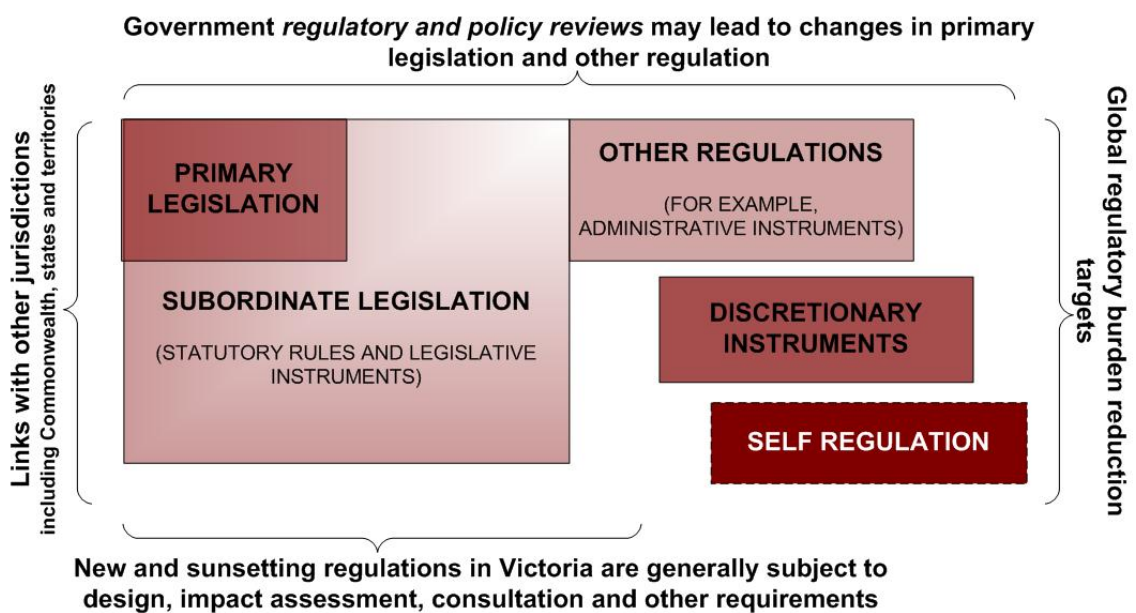
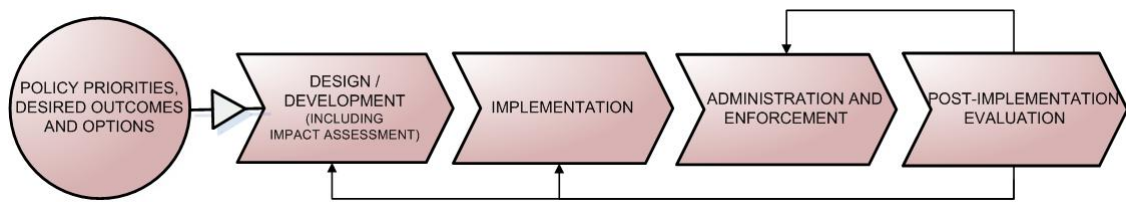


Figure 2 outlines the four stages of the regulatory life-cycle. The main instrument used in the design stage in Victoria is impact assessment — this requires identifying a problem that requires intervention, and identifying and assessing options for addressing the problem, to ensure that the best response is chosen. Implementation then should ensure that regulations are capable of being administered and enforced, efficiently and effectively. Finally, post-implementation evaluation informs regulators about how to improve their performance, and policy makers about how design and implementation can be improved.

Figure 2 **Stylised regulatory life cycle**



What does a good regulatory management system look like?

The Report identifies characteristics of an effective regulatory management system, drawing on OECD criteria, the Commission’s previous research, and input from participants. A good system will:

- manage the interdependencies between its components
- focus on achieving clear objectives
- establish roles and responsibilities for the participants in the system, with clearly aligned incentives to achieve system objectives
- have capable people and organisations
- focus on the most important issues
- learn from experience and achieve continuous improvement
- be regarded as important by political leadership.

Interdependencies managed

This report has analysed the four interdependent systems for designing, implementing, administering and enforcing and reviewing regulation, which are linked into the larger VRMS. The interdependencies are illustrated in figure 2 — the design of regulation influences how can be implemented, administered and enforced, and lessons learned through evaluation need to feed back into the other stages.

Strong practices in one area can sometimes help to mitigate weaknesses in others. But the system will only reach its full potential when all its parts are working well. Many of the Commission’s recommendations are therefore aimed at strengthening links in the VRMS, especially in parts that previously had little or no whole-of-Victorian-Government attention.

Clear objectives

The VRMS is a means to an end, not an end in itself. The ‘end’ is the achievement of the Government’s regulatory policy objective. It is important that

the Government sets a clear regulatory objective, because the VRMS can be designed and operated differently, depending on the outcome being sought. For instance, if the primary objective is improved competitiveness, the focus would be on minimising the costs of regulation imposed on business. If the primary objective is a broader measure of community wellbeing, on the other hand, the focus would be on ‘better regulation’ — or regulation that delivers the greatest net benefits to the community. Removing unnecessary burden remains important, to counteract the incentives for regulatory burden to grow, but is not dominant.

Clear roles and responsibilities

This report identifies a large number of roles and tasks for those who operate the VRMS. The Commission recommends clearly specifying roles, tasks, and responsibilities in order to remove confusion, focus effort and enhance predictability and accountability.

Incentives aligned with objectives

Clear objectives, roles and responsibilities signal to those who operate within the VRMS what they need to do to achieve the Government’s objectives. The Report also highlights the importance of strengthening incentives for people to behave in this way, particularly by ensuring that the incentives are aligned with the Government’s objectives. There are pressures on government to increase and retain regulation, and incentives need to be designed carefully to discourage undue growth in regulatory costs.

People capability

To be effective in delivering outcomes, task allocation and incentives need to be supported by significant investment in skills, expertise and experience, to equip those who are allocated tasks with the capability and resources to carry them out.

Organisational capability

Organisations, as well as individuals, need to be properly resourced, tasked and accountable. Organisations in the VRMS perform different roles and tasks. Within Government, these include policy advisory units, independent review and advisory bodies such as the Victorian Competition and Efficiency Commission, the State Services Authority and the Victorian Auditor-General’s Office; and regulators. The design of these organisations needs to be matched to the tasks they are required to carry out.

Capacity to focus effort on the most important issues

No matter how well trained the people and how well designed the organisations they work in, regulatory resources will always be scarce in relation to the demands

that are placed on them. Consequently, the importance of allocating these resources where they yield the highest returns is a theme throughout this report.

Capacity for continuous improvement

The context in which the VRMS is operating is continuously evolving. Best practices today will be out-of-date tomorrow. Hence the VRMS will fall behind unless it has processes that are designed into it, which encourage the lessons from experience and from good practices elsewhere to be drawn on and applied, in order to strive for continuous improvement.

Strong leadership

A common theme in reviews of regulatory reform is the essential role of leadership by governments — the Victorian Government is the owner of the VRMS, and its level of commitment is one of the most important determinants of its effectiveness. Regulation is a whole-of-government responsibility because it impacts on virtually every policy area. Unless the government has a strong commitment to regulatory reform and adopts good regulatory practice and processes, the VRMS cannot prevent ineffective or overly costly regulation from being introduced.

How can Victoria's regulatory management system be improved?

The VRMS is currently in a sound position, having built solid foundations in regulatory policy over decades. Victoria is acknowledged as a leading jurisdiction in Australia in its focus on reducing regulatory burdens and for the quality of its regulatory reform framework (BCA 2010; OECD 2010a). But the Commission's research for this inquiry has shown there is plenty of scope to lift performance, and that other jurisdictions are introducing new practices from which Victoria can learn. The Commission has identified broad deficiencies in the VRMS as a starting point for suggesting ways to correct them. It has done this both for the system as a whole and for its key components.

The system as a whole

Context

The OECD argues that an effective regulatory management system will be based around an 'explicit, dynamic and consistent "whole of government" policy to pursue high quality regulation' (OECD 2010b, p. 68). While many countries appear to have a regulatory policy, closer inspection reveals 'a series of often disjointed regulatory policies' (OECD 2010b, p. 10). The Commission contends that this is a reasonable description of the situation in Victoria, where it is

difficult to pin down a unifying regulatory policy that integrates the key elements of the VRMS within one clearly identifiable policy framework.

There is no single statement of overall policy purpose. Principles for guiding behaviour are outlined in the *Victorian Guide to Regulation* (Government of Victoria 2007a, p. 3-2), but tend to apply only to the design stage of the VRMS. There is scope to clarify the roles and responsibilities of the participants in the system and in particular to define the accountabilities for its overall stewardship.

Recommendations for improvement

Many of the Commission's recommendations are aimed at ensuring that there are no weak links in the VRMS, and at encouraging coordination between its interdependent components. This is not a matter of assigning responsibility for coordination to a person or agency. Rather it is about developing conditions to build coordination into the system, by clearly articulating objectives, roles, responsibilities and tasks; and embedding incentives to achieve the Government's objectives.

Objectives

The Commission recommends that the Government publish a regulatory policy statement to clarify its objectives, the principles that should guide actions to achieve these objectives, and the responsibilities of key agencies. This policy statement would provide a unifying framework for the Government's regulatory activities, making it more likely that they would be conducted consistently towards a common goal. The policy objective is a matter for the Government to determine. In the Commission's view, an objective of ensuring the VRMS facilitates the achievement of net social benefits would be a good starting point for discussion.

Principles

Principles for delivering better regulation play an important role in regulatory policy in many jurisdictions. The principle of proportionality, for example, focuses the RIS process on regulations with the largest impact and encourages regulators to target enforcement where the risks are largest. OECD member countries have collectively adopted principles for effective regulatory management (OECD 2010b, p. 18).

To increase consistency among regulators and across stages of the regulatory cycle, the Commission believes that the Government should review the characteristics outlined in the *Victorian Guide to Regulation* and clarify whether they are indeed applicable across the system. One option is a single set of principles, supported by explanation of their meaning in each stage of the cycle. Another option is a separate set of more focused principles for each stage. The choice between these options is largely a matter of presentation. It is important that the

characteristics of good regulatory systems in the *Victorian Guide to Regulation*, provides consistent guidance for the operation of Victoria’s overall regulatory management system and for its various components.

Accountabilities

Effective implementation of regulatory policy requires that key accountabilities are defined and then performed in a purposeful and integrated manner. Cabinet is the overall owner of the VRMS, but the Commission recommends appointing a Minister for Regulatory Reform, who would be the overall custodian of the system on behalf of Cabinet. The Minister would be responsible for monitoring the VRMS and taking action to improve it.

The Minister’s accountabilities would be to:

- develop, for the approval of Cabinet, an accountability framework, addressing clear and explicit roles and accountabilities in the processes for:
 - designing regulation
 - implementing regulation
 - administering and enforcing regulation
 - evaluating the effectiveness of regulation
- monitor and advise Cabinet on the coordination of regulatory effort across different areas
- monitor the adequacy of training for roles in the VRMS
- lead the promotion of regulatory reform on behalf of the Government, encouraging participation from across the community
- report annually to Parliament on the progress of the regulatory reform agenda, including improvements to the VRMS.

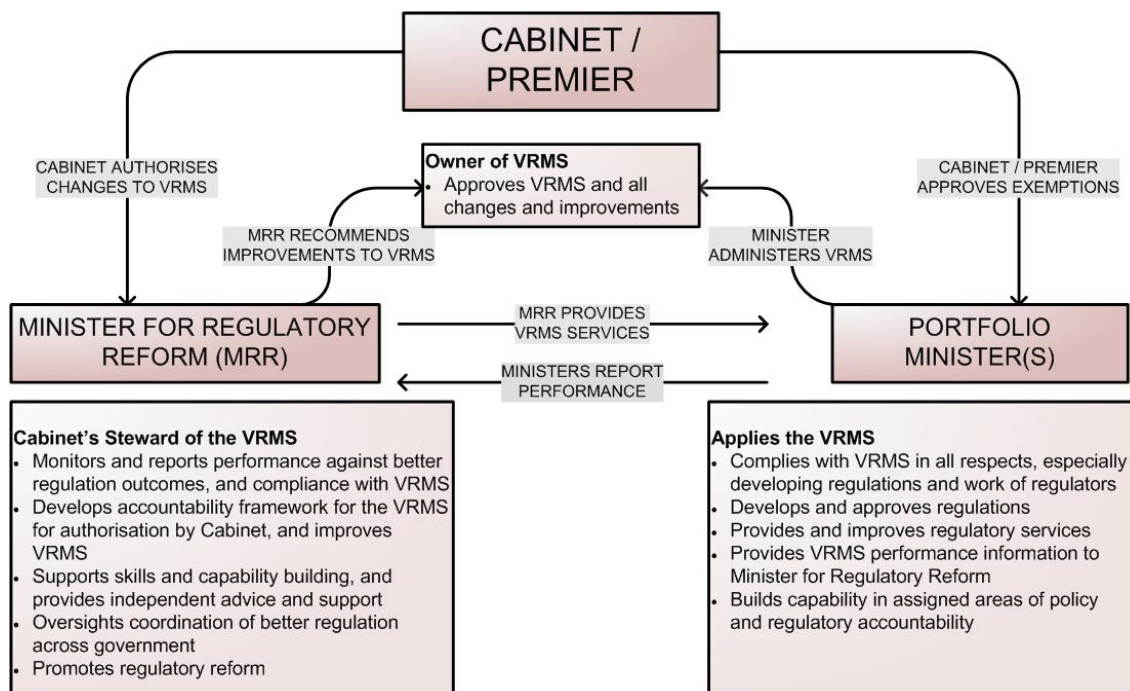
Organisational architecture

Given the importance of the VRMS, the Commission considers the Minister for Regulatory Reform would best be part of central government (given the whole-of-government focus), and would advise Cabinet. While the Minister would have accountability for the system as a whole, he or she would not be responsible for the performance of individual regulations or regulators. Portfolio ministers would remain accountable for regulation in their portfolios, and for regulators that administer and enforce it (figure 3).

The Minister for Regulatory Reform and portfolio ministers would typically be supported by policy units within their respective departments. The suite of independent assessment and support activities for the VRMS as a whole — impact assessment, regulatory inquiries, competitive neutrality and other relevant matters — logically fits within the purview of the proposed Minister for Regulatory Reform.

Figure 3

Organisational architecture of the Victorian Regulatory Management System (VRMS)



To improve the capability of the people who operate the VRMS, the Commission recommends that two ‘communities of practice’ be established. One would focus on the design and review of regulation, and the other on administration and enforcement. The first would be particularly relevant to policy officers and the second to regulators, but there may be some overlap. The groups would improve regulatory outcomes by providing fora to exchange good practice, share the lessons from experience, and provide training.

Figure 4 outlines the relationships between the key participants in the VRMS.

Figure 4 **Key roles and relationships in the Victorian Regulatory Management System**

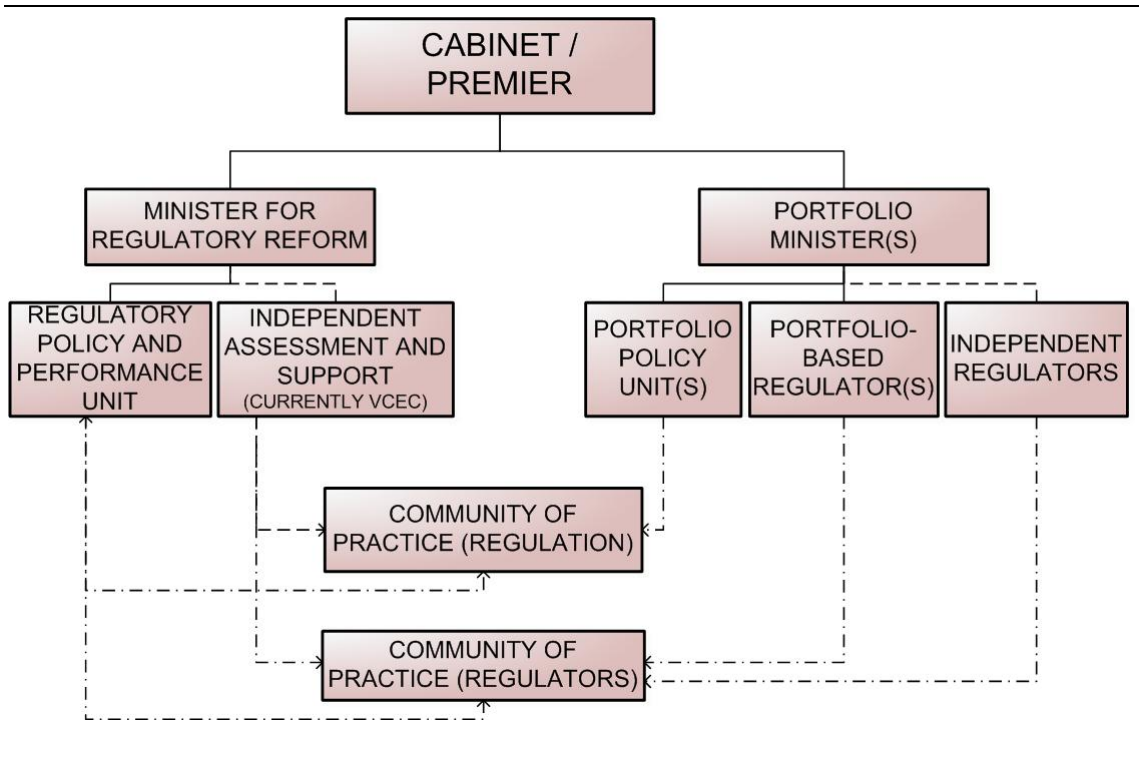
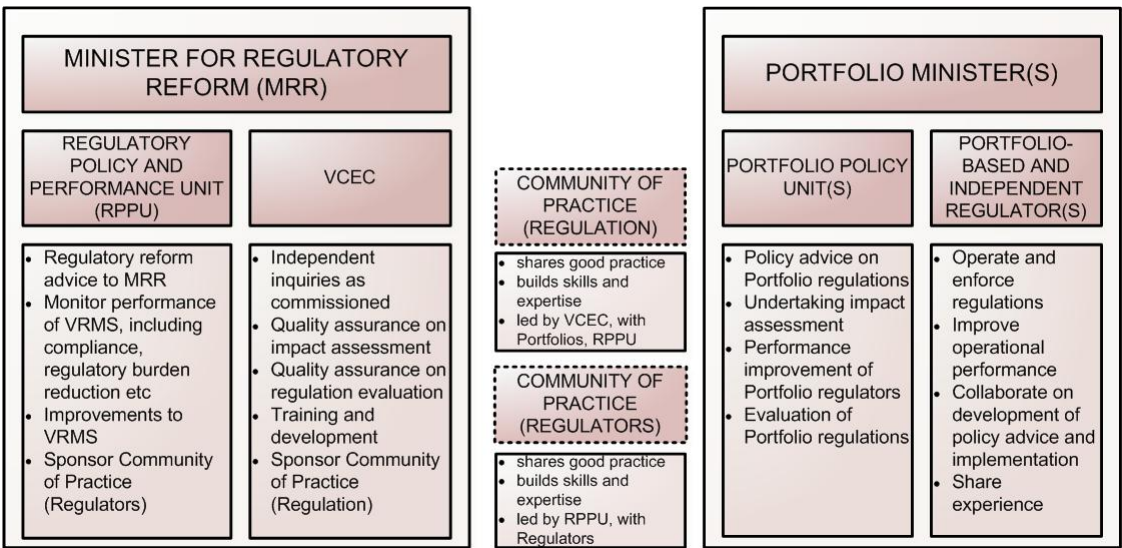


Figure 5 outlines the proposed accountabilities of the agencies that report to ministers. Policy support to the Minister for Regulatory Reform would be provided by the Regulatory Policy and Performance Unit (RPPU), that would perform the roles currently performed by the Better Regulation Unit, in the Department of Treasury and Finance, as well as other roles required to support the Minister in his/her key responsibilities. The additional responsibilities that the Commission envisages include monitoring and reviewing the regulatory system as a whole, and overseeing regulator performance. The reference to ‘policy and performance’ draws attention to the responsibilities of the unit throughout the whole of the regulatory life cycle.

The Commission considers that there is a role for an independent or neutral source to provide independent assessment and support functions that go beyond the current roles. These additional functions include the assessment of ex post evaluations and skills training (in areas such as impact assessment, cost benefit analysis and evaluation). While these independent functions could be spread across a number of organisations, the Commission considers it would be logical to consolidate them into a single independent body, which would have the advantage of simplicity and a single point of contact.

Figure 5 **Supporting functions in the Victorian Regulatory Management System (VRMS)**



The Minister for Regulatory Reform may have other functions in addition to the work of regulatory reform. In such circumstances some perceived conflicts may need to be acknowledged and managed appropriately. For example, locating the whole-of-Victorian-Government regulatory reform function with a specific service or portfolio may reduce attention to regulation outside the portfolio. On the other hand, locating the function in a central portfolio may require attention to potential tendencies to rely on regulation rather than tax or spending instruments.

Involvement of regulated sectors

In addition to these reforms, there is a critical need for business and other regulated sectors to involve themselves in regulatory improvement and reform, especially by commenting on regulation design, engaging in ex post evaluation of regulation, and by discussing priorities with government. The proposed changes in this report would substantially increase the value to business and other regulated sectors of engaging with government on these issues. The Commission has also recommended that the Minister for Regulatory Reform encourage business and other regulated entities to be more proactive in their engagement with government on regulation, especially in providing evidence of regulatory issues and monitoring regulatory burdens experienced by them.

Impact assessment

Context

In Victoria, business impact assessments (BIAs) and RISs are the main instruments for analysing the impacts of new primary and subordinate legislation respectively. The RIS process is also used to review replacements to sunseting regulations. Impact assessment has two related purposes:

- to improve the information available to decision makers
- to facilitate public consultation, and so increase the transparency of government decision-making and improve the quality of regulation.

Victoria has different approaches to impact assessment of primary and subordinate legislation, for reasons that are not clear. A BIA is triggered when a proposal has potentially significant effects for business or competition, whereas the threshold for a RIS is a significant economic or social burden on a sector of the public. The coverage of RISs has recently been broadened, but the RIS for the *Subordinate Legislation (Legislative Instrument) Regulations* includes a list of over 600 legislative instruments that have been proposed for automatic exemption. In addition, statutory rules or legislative instruments that only impose a burden on public sector bodies are exempt from the process.

Notwithstanding the long history, impact assessment is often not integrated with policy development. It is often treated as a compliance exercise and may not fulfil its ‘basic purpose’ identified in the *Victorian Guide to Regulation*; namely, to ensure that regulation is only implemented when there is a justified need and that only the most efficient forms of regulation are adopted (Government of Victoria 2007a, p. 4-15). Evidence to support this contention includes that the majority of new regulations are implemented without evidence that the quantified benefits exceed the quantified costs.

The level of analysis required is not always proportionate to the size of the impacts, and consultation is sometimes held back by documents that are inaccessible, or a perception that decisions have already been made by the time a RIS is published. This is an important concern, given that one of the two key purposes of impact assessment is to inform decision-making through the evidence generated from public consultation.

The Commission is mindful that inquiring into impact assessment necessarily involves reviewing some of its own activities. For that reason, it requested the Department of Treasury and Finance to supervise an independent review by Access Economics (2011) of the impact assessment process, including the Commission’s role. The review is available on the Commission’s website.

Some of the conclusions of that independent review identify matters that are beyond the Commission’s authority to implement, and have therefore been

incorporated into recommendations in chapter 3. The Commission is addressing those conclusions that are within its authority to implement.

Recommendations for improvement

The Commission's complementary recommendations would significantly strengthen impact assessment to improve the application and form of regulation, if needed, after proportionate and transparent consideration of relevant options.

- Victoria would move towards a single impact assessment system by reducing the current discrepancies between the RIS and BIA processes. Under the proposals, the same grounds for exemption from these processes and the same threshold would apply to both primary and subordinate legislation. This would broaden considerably the coverage of BIAs. To reflect this broader scope, the Commission proposes that the term 'business impact assessment' be replaced with a more generic term, such as 'impact assessment' or 'legislative impact assessment'.
- The types of instruments and sectors of the economy subject to impact assessment would be increased, while retaining a targeted and proportionate approach. This would be achieved through clearer guidance on the determinants of proportionate analysis; extending coverage of the RIS process to include instruments that impose a significant burden on the public sector and amendments to planning schemes that have significant state-wide or regional impacts; and broadening the coverage of the BIA process. The Commission also makes recommendations aimed at promoting rigour and transparency in the way legislative instruments are prescribed as exempt from the RIS process under the Subordinate Legislation Regulations.
- The incentives to produce good quality impact assessments would be strengthened by requiring that all of the Commission's assessment letters be published or given to Cabinet in the case of a COAG RIS. This would include assessment letters that identify gaps or weaknesses in the BIA or RIS. This change would increase the pressure on departments to respond to reservations that the Commission has about a RIS and would encourage richer consultation, by identifying specific matters that need to be clarified.
- RISs and BIAs would be more effective consultation tools if they were simplified and made more accessible. This could be achieved through a range of measures, including amending the Premier's Guidelines and *Victorian Guide to Regulation* to specify that:
 - preliminary consultation about a proposed statutory rule must consider the problem that needs to be addressed and indicate a range of possible options, without indicating the preferred option
 - a preliminary consultation document be required for interventions with large and/or complex impacts

- the RIS summarise the additional options proposed by stakeholders during preliminary consultation and explain why any that are not assessed in the RIS were considered infeasible
- the Commission consider the adequacy of the preliminary consultation or preliminary consultation document as part of its assessment of the RIS
- RISs and BIAs must be accessible to broad and non-technical audiences.
- The proposed community of practice and improved training would increase the contribution of impact assessment to evidence-based policy development and the capabilities of Victorian public servants to achieve this.

The practice and knowledge of impact assessment will continue to evolve. The Commission consequently supports a further independent review in, say, five years, to ensure that the system continues to make the optimal contribution to Victoria.

Implementation

Context

Implementing regulation is the process of putting law into effect, with the support of other systems and structures necessary to give effect to government's policy intentions. Implementation is a process by which an intention — a regulatory design — is transformed into operating reality.

The Commission's analysis and advice from stakeholders suggest reasons why 'good implementation' may not result in practice.

- The impacts of poor implementation may not be realised until long after the regulations are made. Where there is no evaluation of regulation, poor implementation may not be recognised until significant implementation failure is evident (for example, a crisis).
- It can sometimes be unclear who is accountable for implementation. In some cases, a government department may be primarily responsible for implementation, whereas in others it may be the regulator. If accountability is not clear, it is likely that the task will not be adequately done.
- While arms-length arrangements between policy designers and administrators reduce risks of regulatory creep and regulatory capture, they sometimes lead to a disconnection between policy development and the administration of a regulation.
- There is no whole-of-Victorian-Government guidance on implementing regulation in the same way as there is for designing regulation. This may make it harder to ensure that implementation practices are optimal.

Recommendations for improvement

Good practice guidance for implementing regulation could improve the consistency and the quality of implementation practices in Victoria. This could cover:

- when comprehensive implementation plans are needed
- a smooth transition to new regulatory approaches, and appropriate use of mechanisms such as grandfathering and transitional periods
- a strategy for monitoring the implementation of the regulation.

For regulations with significant implementation considerations, the Commission recommends that responsible regulators and departments jointly develop an implementation plan, in consultation with regulated parties. In this plan, regulators and departments would agree that:

- the designed regulations are feasible to implement for the anticipated resources
- possible implementation risks, and their impacts, have been identified.

Administration and enforcement

Context

There has been little whole-of-Victorian-Government policy on improving the performance of Victoria's 55 business regulators, although guidance on improving governance of regulators was recently issued. All regulators are subject to the *Public Administration Act 2004* (Vic). Some significant improvement initiatives have been implemented at portfolio level.

The Commission has heard examples of Victorian regulators that are well regarded — with a number being identified as performing comparably with, or better than, regulators in other jurisdictions. The perceptions survey found that almost half of businesses that had contacted a regulator in the previous three years were satisfied with their dealings (Wallis 2011b, p. 37).

A common theme in meetings and submissions, however, is that there is significant scope for improvement. For example, the Commission heard that regulatory costs are often the result of the administrative decisions of regulators, rather than being an innate element of the regulatory design. In the perceptions survey, 33 per cent of businesses that had contacted a regulator in the previous three years were dissatisfied with their dealings (Wallis 2011b, p. 37).

The Commission has not comprehensively reviewed the arrangements, practices and approaches adopted by individual regulators in Victoria, but the evidence it has gathered indicates that common problems include:

- a cumulative burden from multiple overlapping regulators, particularly when regulators do not coordinate information collection, reporting and audit requirements
- ineffective enforcement, which can lead to adverse outcomes, reduces respect for regulation and shifts the burden of compliance onto people who would have respected the law anyway.

These problems may sometimes indicate poor performance by regulators but the capacity of regulators to implement good regulatory practices can be constrained by the regulatory framework they are required to implement. For example, whether they can access an appropriate range of enforcement tools or whether the objectives of their regulation are clear.

The Commission has not examined the existing structure of regulators in Victoria. This decision was taken to constrain the scope of the inquiry to a manageable task given the available resources. However, the Commission notes that many businesses regarded dealing with multiple regulators to be burdensome. In addition, the thrust of the recommendations made by the Commission affecting regulators may be difficult for some smaller regulators to implement. Given that these reforms are necessary elements of good regulatory practice they may, therefore, prompt consideration of whether some regulatory functions might be consolidated.

Recommendations for improvement

Performance can be improved by building on strengths, addressing specific areas of relative weakness and strengthening regulators' incentives and capacity to make improvements. The Commission has identified three important thrusts to improve the overall performance of administering and enforcing regulation by Victoria's population of regulators:

- strengthening governance — by implementing *Improving Governance of Regulators: Principles and Guidelines* and extending its use to support systematic and objective assessments of the governance arrangements by every regulator
- building capability and capacity — by facilitating greater cooperation and coordination among regulators and increasing transparency and accountability for the timeliness of regulatory processes
- improving performance — by developing a performance framework, in conjunction with regulators, that as a first step measures administrative, compliance and enforcement activities against a 'good practice' standard and that includes a 'peer review' process with public reporting as the basis for undertaking assessments.

Strengthening governance

The Commission recommends that within 12 months, ministers, agencies, and their associated regulators assess regulators' compliance with *Improving Governance of Regulators: Principles and Guidelines*, and that regulators incorporate actions to address assessed gaps in compliance in their business plans. An initial comprehensive assessment and reporting of the governance arrangements of all Victorian regulators against these principles and guidelines would provide a common set of parameters. This would identify whether organisations are complying with the principles — and highlight any relative weaknesses that warrant further attention. It would also help identify which arrangements work and why. Agencies should report their progress on addressing gaps in their compliance annually to the proposed Minister for Regulatory Reform, who would draw on this in an annual report on the state of the VRMS.

Building capability and capacity

To greater facilitate cooperation and coordination, the Commission recommends that Victorian regulators establish fora of regulators (on a portfolio or area of regulation basis) to share their experiences, drawing from the current models that exist in several portfolios. The fora should be established by June 2012 and convene regularly. A community of practice between regulators, which complements and draws from the fora, should also be established to address whole of government issues, support consultation, facilitate feedback and accelerate the diffusion of knowledge and learning in areas such as stakeholder consultation and engagement, the application of risk based approaches and measuring and reporting performance.

To increase transparency and accountability for the timeliness of regulatory processes, the Commission recommends that ministers provide a clear expectation that regulators publish target timelines, collect and report timeliness measures and identify options for continuous improvement.

Improving performance

The Commission recommends that within 6 months the RPPU, in conjunction with regulators, develop a framework that allows all regulators to measure their administrative, compliance and enforcement activities against a 'good practice' standard. This would:

- provide regulators, their stakeholders, the community more broadly, and the Government with a clearer picture of the strengths and weaknesses of regulators' practices and processes
- strengthen incentives to improve performance
- provide information that regulators could use to identify improvements to their systems and practices
- provide insights into strengths and weaknesses in practices and processes across Victoria's regulators. This would inform the Minister for Regulatory

Reform's consideration of ongoing priorities for the VRMS and allow regulators to draw lessons from the experience of others.

Once developed, the Commission considers that a 'peer review' process with public reporting could usefully form the basis for undertaking assessments.

The community of practice for regulators could make an important contribution to developing and implementing the performance assessment framework.

Evaluating regulation

Context

Evaluations of existing regulation should address three questions:

- (1) Is the regulation still necessary — is there a convincing underlying problem that the regulation seeks to rectify?
- (2) Is the regulation effective — does it achieve its objectives?
- (3) Is the regulation efficient — does it achieve its objectives at a lower cost than feasible alternatives? (Lattimore et al. 1998, p. 114).

The general approach toward evaluating existing regulation in Victoria is patchy. Some systems and initiatives currently encourage evaluation. The *Victorian Guide to Regulation* suggests it is 'good practice' for an impact assessment to include an evaluation strategy, but not mandatory. Most impact assessments contain evaluation strategies (of variable quality) and only about half are implemented. There is no follow-up process for assessing whether proponents of regulation have implemented the evaluation strategies to which they have committed. This suggests that the incentives for evaluation are insufficient.

Primary legislation does not sunset, and there are usually no ex post evaluations for primary legislation through the BIA process. The Commission's regular regulator survey, the *Victorian Regulatory System*, reveals that few regulators publish evaluation information (VCEC 2011e).

This means that Victoria has a regulatory system that is not functioning at its optimal level. In particular, a lack of evaluation leads to:

- the absence of an evidence base for policy development, including the targeting of reform priorities
- weaker incentives to have effective and efficient regulations
- a lack of clarity about the impact of regulation (which also reinforces perceptions that regulators do not understand business realities).

Inquiry participants suggested that improving ex post evaluation would have the biggest impact on improving regulatory quality in Victoria.

Related to ex post evaluation is repeal of redundant regulation. There have been 647 Acts repealed in Victoria over about four years (Government of Victoria 2010a, p. 75). The Department of Justice noted that removing redundant legislation is not necessarily a focus of government:

... there are large portions of government concerned with the making of new regulations, there are very few parts of government directed to the removal of old regulation. Thus new regulation does not replace old regulation, but rather augments old regulation, which becomes outdated and often unenforced and redundant. (sub. 23, p. 8)

The Office of the Chief Parliamentary Counsel has in place processes to identify and remove redundant legislation. Some government departments, in particular the Department of Justice, have internal processes for ensuring its stock of legislation is up-to-date and fit for purpose.

Recommendations for improvement

Evaluations are more likely to be effective if data collection, monitoring and evaluation strategies are implemented when regulations are introduced. To encourage agencies to think about evaluation early, minimising its costs and improving its effectiveness, the Commission recommends that the Government:

- require that a proportionate evaluation strategy be prepared for all primary and subordinate legislation requiring an impact assessment, to ensure that information is gathered to enable assessment of effectiveness and efficiency
- require that the responsible department or agency certify at specified periods that the evaluation strategy is being implemented and the required data is being collected.

This would help to ensure that adequate data are available to assess the effectiveness of regulation. While this would impose costs, a proportionate approach would help to ensure that costs are well targeted, and justified by the scale of the regulatory issue.

To ensure that evaluation is undertaken, the Commission believes that it should be mandated. Mandated evaluation would be targeted at regulation that requires an impact assessment — including both new and amending primary legislation, and subordinate legislation. To maintain quality, the evaluations should be assessed by the Commission against minimum quality guidelines developed by Government, and the evaluations and assessments should be published. The rigour of data collection and assessment should be proportionate to the impact of the regulation.

This proposed model has a number of costs. In particular, it would require additional resources for:

- departments to improve data collection and conduct evaluations
- businesses and other parties affected by regulation to develop evidence to inform evaluation
- the Commission to assess and monitor ex post evaluation.

This expenditure would, in part, be complementary to existing processes. For example, thorough ex post evaluations would reduce the time and cost of carrying out ex ante impact assessment, as quality data would be more readily available when regulations are remade.

Ultimately, this cost would need to be justified by improvements to Victorian regulation. The Commission's work both in regulatory review and inquiries suggest significant gains can be made through high quality analysis of regulation. By extending requirements on departments and ultimately developing a system that supports a culture of continuous improvement in regulation, even more significant gains can be realised. The Commission considers that the benefits of this approach are potentially far greater than the costs.

Burden reduction

Context

Reducing unnecessary regulatory burdens frees up resources, enabling firms to boost their productivity and make Victoria a more attractive place to do business. Resources previously used to fill in forms and comply with regulation can instead contribute directly to production. And building Victoria's reputation as a place where it is easy to do business attracts firms to the State.

The new Government has indicated its policy commitment to cut red tape by 25 per cent by an 'independent verified method delivering millions of dollars value to business' (Victorian Liberal Nationals Coalition 2010, p. 10).

Given the broad purpose of a target for reducing regulatory burden on business, the Commission considers that the credibility with stakeholders is a critical requirement. To that end, what ever burden target is chosen the Commission considers it critical that there be independent and transparent reporting of performance against the target.

Recommendations for improvement

Coverage of burden reduction target

Although not recommending a particular burden reduction target, the Commission considers that the following issues be given explicit consideration in developing a future burden reduction target for Victoria:

- Which sectors should be included in the target?
- Which regulatory costs should be included in the target?

The Commission has recommended that the burden reduction target adopted by the Victorian Government:

- include burdens imposed on businesses, the NFPs, government services and the economic activity of individuals
- adopt a wide definition of regulatory burden to include administrative burdens, compliance costs, delays costs, and fees and charges.

Independent verification

The rigour of independent verification of progress against any target could be increased by publishing departments' regulatory change measurements (RCMs); by more RCMs being assessed by the Commission, to take advantage of its independent status, through reducing the threshold for its involvement from \$10 million annual cost savings to \$5 million; and by requiring the Commission to publish its assessment letters.

The Commission proposes that the Government publish its plan for achieving the target (whether defined in gross or net terms) and follow this up with a report verifying progress. The plan would include departments' proposals for reducing regulatory burden over a specified period with provision for costs of new regulation that may be unknown at the start of the planning period.

Performance against the plan would be revealed through credible, complete and regular measurement and reporting of progress. This reporting would need to include independently verified reductions in burden, the costs of new regulations within the period. RCMs can indicate the achieved reduction, provided that it is undertaken after the cost-reduction project has been implemented. RCMs would therefore need to be verified independently after the proposal has been implemented. Publication of all RCMs and of the independent assessments of them, as suggested above, would enhance the credibility of the process.

The Commission believes that a process such as this would satisfy the Government's commitment to independent verification and in so doing would:

- ensure that the proposed reductions in costs are actually achieved
- build the credibility of the program as a whole.

Regulatory reform in a federation

Victoria is part of a federation, which shapes key aspects of its regulatory management system. It is therefore not possible to look at the VRMS in isolation from the Australian regulatory framework.

Context

A significant minority of businesses and NFPs emphasise the costs of inconsistency and overlap between Commonwealth and Victorian regulation, and across state and territory regulation. Those expressing these views often argue harmonisation is the best way to reduce regulatory costs.

Harmonisation can have clear benefits. It can reduce burdens from regulatory complexity and duplication and lower the cost to government of administering multiple regulatory schemes. It may also avoid market fragmentation, where different regulatory regimes create smaller markets because businesses and individuals focus on a single jurisdiction, rather than engaging in the wider market. In addition, it can promote equity as people in equal situations are treated equally across jurisdictions.

There are, however, potential costs to greater harmonisation and national consistency. An agreed national approach may lift the regulatory burden in some jurisdictions, without compensating those adversely affected. Transition costs of moving to new regulation may also be incurred by the 71 per cent of businesses and 72 per cent of NFPs who do not benefit from harmonisation because they do not experience costs from overlapping regulations (Wallis 2011b, p. 39).

There is also less incentive for states and territories to reduce regulatory costs as they no longer gain a first mover competitive advantage, and so have less incentive to have innovative policies. In addition, developing the harmonised arrangements can be time consuming and costly.

Victoria's challenge is to devote its scarce resources to engaging with those harmonisation processes that benefit the State most. This requires focusing on reform where the potential gains are large; ensuring national processes are well informed by good analysis of the costs and benefits of policy options and mechanisms that accommodate policy innovation; and making good use of the lessons learned from the experience of different jurisdictions.

Recommendations for improvement

The current COAG reform agenda is very broad — covering 27 deregulation reform priorities and eight competition reforms. Such a broad agenda runs the risk that resources and political will are spread too thinly and individual issues are given less attention than they warrant. As the COAG agenda continues to grow, COAG's publication of guiding principles for including additional areas on the national reform agenda is timely and appropriate. The Commission, however, has recommended that Victoria, in consultation with other jurisdictions, seek to enhance the agreed list of principles.

Improving the return from national approaches and optimising subsidiarity

For reforms that continue to be a focus of COAG, the Commission's consultation has suggested there is scope to improve national processes. First, while COAG RISs are an important tool to facilitate public consultation and improve the information available to decision makers, they are most effective if they are prepared early in the policy development process. A common issue is the extent to which these RIS documents are integrated in the policy formation process, rather than being an add-on after the preferred policy is decided. This is potentially a risk given that COAG discussions are usually the result of negotiation and compromise.

One way to ensure that RIS-type analysis informs decision-making is to require that the elements of a RIS — such as clearly analysing the problem, options, and costs and benefits of each option — form the basis of policy options. In this way each party to the negotiations would be aware of the options considered by others and the costs and benefits of those options. The Commission has therefore recommended that Victoria set an example, by ensuring its submissions to COAG bodies are in a RIS framework and advocating that other jurisdictions be required to do the same.

There appears to be scope to improve the quality of national analysis of harmonisation and reform processes. To ensure transparency of information on proposals the Commission has recommended that where Victorian agencies seek the Commission's advice on the analysis that this advice be published on the relevant agency's and Commission's websites.

Similarly, when there is an exemption from undertaking a Victorian impact analysis because a national level one has already been undertaken, the Commission has recommended the *Victorian Guide to Regulation* be amended to require that the relevant Victorian departments:

- provide the Commission with the COAG consultation RIS when it is published, with the Commission to comment on whether, in the Commission's view, the COAG RIS has reported the likely impacts on Victorians
- publish the comments on the RIS that are provided by the Commission
- provide the Commission's comments to the relevant Ministerial Council or working group to ensure the issues are addressed in the final decision RIS
- provide Cabinet with the Commission's comments on the most recent version of the COAG RIS, before final ratification of the COAG initiative by the Victorian Government.

One of the potential advantages of a federation is that different jurisdictions can trial innovative approaches to deal with policy issues. Trialling can provide information on how well a policy achieves its objectives, what costs it imposes

and lessons on how it is best implemented and enforced. Evaluating such trials would help to inform future potential national approaches and reforms. The Commission has therefore recommended that if Victoria adopts an approach different from a national approach, or that adopted by most other jurisdictions, it should publicly evaluate and report on the costs and benefits within three years.

In some cases the issues do not appear to warrant a full harmonisation process. In the spirit of trialling new approaches, the Commission has recommended that in the case of bus and taxi regulation affecting transport services between Albury and Wodonga that Victoria seek agreement from New South Wales to allow the free border crossing of taxis and buses. If implemented, this trial should be reviewed after 2 years to determine whether it is to continue and whether there are lessons which can be applied to other regulatory proposals.

Recommendations

The 42 recommendations are listed in the order they appear in the report, and need to be understood in the context of the discussion in respective chapters.

Many of these recommendations have been cast assuming the Commission's recommendations regarding the creation of a Minister for Regulatory Reform and a supporting Regulatory Policy and Performance Unit are accepted. If these recommendations are not accepted, the references to them in other recommendations should be amended to the Treasurer and existing Better Regulation Unit within the Department of Treasury and Finance respectively, reflecting existing allocations of responsibilities.

Chapter 2: Improving the regulatory management system

Recommendation 2.1

That the Victorian Government issue a statement of its overall regulatory policy, to set out clearly what it wants to achieve through regulatory reform and how those objectives should be achieved. The regulatory policy statement would cover:

- the policy objective
- principles to guide the behaviour of those responsible for achieving the objective
- responsibilities of key agencies.

Recommendation 2.2

That the Regulatory Policy and Performance Unit review the characteristics of good regulatory systems in the Victorian Guide to Regulation, to ensure that they provide consistent guidance for the operation of Victoria's overall regulatory management system and for its various components.

That the Regulatory Policy and Performance Unit expand the Victorian Guide to Regulation to include Victorian Government guidance on its expectations across the regulatory life cycle.

Recommendation 2.3

That the Victorian Government establish a Minister for Regulatory Reform, at a senior minister level, who is accountable for maintaining and improving Victoria's regulatory management system.

Recommendation 2.4

That the Minister for Regulatory Reform develop, for the approval of Cabinet, an accountability framework, addressing clear and explicit roles and accountabilities for the following processes in Victoria's regulatory management system:

- designing new regulations
- implementing regulations
- administering and enforcing regulation
- evaluating existing regulations.

This accountability framework would incorporate such recommendations from this report that are supported by the Victorian Government.

Recommendation 2.5

That the:

- Victorian Government clarify its priorities for, and encourage improvement in, Victoria's regulatory management system by publishing annually the outcomes it is seeking from the system (and the matters covered in recommendation 2.1) and its strategy for improving it
- Minister for Regulatory Reform report annually to Parliament on the progress of the regulatory reform agenda, including improvements to the regulatory management system.

Recommendation 2.6

That the:

- Minister for Regulatory Reform be responsible for monitoring and advising Cabinet on the effectiveness of coordination of regulatory effort across different portfolios
- relevant portfolio ministers be responsible for coordinating effort among agencies within their portfolios.

Recommendation 2.7

That, to build support for and understanding of the regulatory management system and improvement processes, the Minister for Regulatory Reform, lead the promotion of regulatory reform on behalf of the government, encouraging participation from across the community.

Recommendation 2.8

That:

- the Minister for Regulatory Reform report on the adequacy of training for roles in Victoria's regulatory management system

- ministers are accountable for ensuring attention is given by portfolio agencies to the effectiveness of training and capability development for policy officers responsible for developing regulation and regulators in the minister's area of portfolio responsibility.

Recommendation 2.9

That the Regulatory Policy and Performance Unit, with the Office of the Chief Parliamentary Counsel, undertake a cost benefit analysis of the options for increasing accessibility to legislation; for example, by extending the existing electronic database of Acts and statutory rules to include legislative instruments.

Following the cost benefit analysis, the Regulatory Policy and Performance Unit and the Office of the Chief Parliamentary Counsel publish their intended response to improve the accessibility of regulation in Victoria.

Chapter 3: Optimising impact assessment

Recommendation 3.1

That, to encourage greater integration of policy development and impact assessment:

- the Regulatory Policy and Performance Unit establish and support a community of practice on impact assessment and policy development and begin a review of its effectiveness 18 months after the community of practice is established
- the State Services Authority and/or the Australia and New Zealand School of Government encourage training on integrating impact assessment processes into policy development.

Recommendation 3.2

That the Department of Treasury and Finance identify specific areas in which market-based instruments may be appropriate, and work with relevant departments to investigate, develop, test and implement market-based solutions in those identified areas.

That:

- the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to include criteria, developed by the Department of Treasury and Finance, to guide departments as to whether, and how, market-based instruments are potentially applicable to their business impact assessments or regulatory impact statements
- the amendment to the *Victorian Guide to Regulation* recognise the different roles of supporting legislation needed to give effect to market-based approaches.

Recommendation 3.3

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to include additional guidance on:

- the determinants of a proportionate analysis for regulatory impact statements and business impact assessments
- how to undertake cost-effectiveness and/or break-even analysis for proposals for which the benefits are difficult to monetise
- how to apply multi-criteria analysis, including when it is appropriate to use this tool, the selection of appropriate criteria, and the standard of analysis required.

Recommendation 3.4

That the Victorian Government initiate and publish:

- a follow-up independent review of the impact assessment process in five years
- regular independent reviews thereafter, possibly every five to 10 years
- annual ‘desk top’ reviews of the performance of the impact assessment process. Annual reviews should be conducted by the Victorian Competition and Efficiency Commission in conjunction with the Department of Treasury and Finance.

Recommendation 3.5

That the Victorian Government amend the *Subordinate Legislation Act 1994* so that:

- the list of criteria in section 12F be expanded to include a public interest criterion that is clearly defined
- instruments can only be prescribed as exempt if they meet one of the criteria for exemption specified in section 12F of the Act.

Recommendation 3.6

That the Minister for Regulatory Reform complete, by 2016, a public review of the *Subordinate Legislation (Legislative Instruments) Regulations 2011* (Vic), examining the effectiveness of the Regulations, including testing the appropriateness of the instruments prescribed (or not prescribed), and the basis on which they have been prescribed.

That the emphasis of the review be on instruments that have been prescribed on public interest grounds (particularly in light of any further guidance provided on the tests to be applied), instruments prescribed on the basis of RIS-equivalent or national processes, and instruments about which stakeholders have raised concerns.

That the review report explain the criteria used and the reasons for deciding whether or not individual instruments should be prescribed.

Recommendation 3.7

That the Victorian Government amend the *Subordinate Legislation Act 1994* (Vic) to bring into the Act's framework, planning scheme amendments that have significant state-wide or regional impacts.

Recommendation 3.8

That the Victorian Government amend the *Subordinate Legislation Act 1994* (Vic) to remove the exemption from the regulatory impact statement process of statutory rules and legislative instruments that only impose a significant burden on a public sector body.

That the Premier amend the Guidelines to the Subordinate Legislation Act to set out criteria for RIS-equivalency. These criteria should include that to be RIS-equivalent the analytical document prepared for a legislative instrument must:

- include an analysis of the nature and extent of the problem being addressed and an assessment of the options, including costs and benefits
- be subject to an independent assessment advising of the adequacy of the analysis
- be subject to a structured consultation process, of no less than 28 days, including public release of an exposure draft of the instrument.

Recommendation 3.9

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to clarify that a minister may seek advice from the Victorian Competition and Efficiency Commission to inform his or her department's preliminary view on whether statutory rules and legislative instruments that are not prescribed may qualify for exemption. Accountability for the final decision would remain with the minister.

Recommendation 3.10

That the Premier amend the Guidelines to *the Subordinate Legislation Act 1994* (Vic) to require that the Victorian Competition and Efficiency Commission's assessment letters:

- are published at the same time as the regulatory impact statement
- include comment on whether the VCEC believes it is likely that the costs of the proposed statutory rule or legislative instrument will exceed its benefits, in addition to noting gaps in the data and analysis.

That departments be required to provide the Commission's assessment letter to ministers, where regulatory proposals are considered by Cabinet before public release of the Regulatory Impact Statement.

That, where a proposal is considered by Cabinet before a Regulatory Impact Statement has been completed, the Commission's comments on the most recent draft of the Regulatory Impact Statement be provided to Cabinet.

Recommendation 3.11

That the Premier amend the Guidelines to the *Subordinate Legislation Act 1994* (Vic) to provide greater guidance on the level of consultation expected prior to the preparation of a Regulatory Impact Statement, including that:

- a preliminary consultation document be required for interventions with large and/or complex impacts
- preliminary consultation about a proposed statutory rule cover consideration of the problem that needs to be addressed and indicate a range of possible options, without indicating the preferred option
- the Regulatory Impact Statement summarise the additional options proposed by stakeholders and explain why any options that were presented in the preliminary consultation document but not assessed in the Regulatory Impact Statement were considered infeasible
- the Commission consider the adequacy of the preliminary consultation or preliminary consultation document as part of its assessment of the Regulatory Impact Statement.

Recommendation 3.12

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to include a requirement that regulatory impact statements and business impact assessments be accessible to broad and non-technical audiences through measures including:

- a one page pro forma summary sheet
- the executive summary being accessible to non-technical audiences as a stand-alone document, with technical analysis in attachments.

That the amendment also requires that submissions made during the consultation period on the Regulatory Impact Statement be published, with appropriate safeguards for genuinely confidential information.

Recommendation 3.13

That the threshold for regulatory impact statements and business impact assessments be the same; namely, when proposed primary or subordinate legislation is expected to impose 'a significant economic or social burden on a sector of the public or government'.

Recommendation 3.14

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to:

- apply the same grounds for exemption to business impact assessments as apply to regulatory impact statements
- replace the term ‘business impact assessment’ with a more generic term, such as ‘impact assessment’ or ‘legislative impact assessment’.

Recommendation 3.15

That Ministers publicly release business impact assessments for which they are responsible along with the Commission’s final assessment letter no later than when legislation is introduced into Parliament.

Chapter 4: Achieving consistent implementation

Recommendation 4.1

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* by January 2012 to provide guidance on the essential aspects of implementation to be considered in impact assessments, including:

- aspects of regulatory design that impact on how the regulation can be implemented, administered and enforced
- clear accountability between the responsible regulator and department for implementation
- a strategy for monitoring the implementation of the regulation.

Recommendation 4.2

That the Regulatory Policy and Performance Unit develop ‘good practice’ guidance on implementing regulatory changes by January 2012, including:

- when comprehensive implementation plans are needed
- mechanisms to facilitate a smooth transition to a new regulatory approach, and criteria for their use:
 - providing guidance and training to regulated parties
 - grandfathering existing requirements
 - using transitional periods between the making of regulation and its commencement
- monitoring implementation, including:
 - using stakeholder reference groups to monitor how the regulation is working (and identify risk and uncertainty).

To supplement and support the good practice guidance, the community of practice for regulation share experience and lessons learned.

Recommendation 4.3

That for regulations with significant implementation considerations (defined in the *Victorian Guide to Regulation*), responsible departments and agencies jointly develop an implementation plan, in close consultation with regulated parties.

In the implementation plan, responsible departments and agencies would certify their agreement that:

- the designed regulations appear feasible to implement, given the anticipated resources
- possible implementation risks, and their impacts, have been identified.

Chapter 5: Building excellence in administration and enforcement

Recommendation 5.1

That Ministers issue a Statement of Expectations for each regulator in accordance with *Improving Governance of Regulators: Principles and Guidelines*, that includes an explicit requirement that regulators establish and publish timelines for regulatory and approval processes.

That Victorian regulators, in general:

- include target or expected time limits for approval processes in their corporate plans
- advise applicants about the target or expected time to process their applications
- collect timeliness measures relating to their regulatory or approval processes
- report these measures in annual reports.

Recommendation 5.2

That the Minister for Regulatory Reform encourage industry associations to:

- develop and conduct regular, statistically valid surveys of business and not-for-profit perceptions of regulatory burdens
- provide specific information regarding regulatory burdens to the Regulatory Policy and Performance Unit.

Recommendation 5.3

That portfolio ministers, through establishing portfolio-based fora, encourage their regulators to share experiences and build capability. The arrangements should be established by June 2012.

That the Victorian Government establish a community of practice for regulators with links to these portfolio fora, to accelerate diffusion of good practice and

build professional capability among regulators, sponsored by the Regulatory Policy and Performance Unit.

Should the Victorian Government decide that the Regulatory Policy and Performance Unit not be the sponsor, it would still be a member of the community of practice.

Recommendation 5.4

That Ministers and agencies assess regulators' compliance with the *Improving Governance of Regulators: Principles and Guidelines* within 12 months, and incorporate actions to address assessed gaps in compliance in their business plans.

That progress on improving governance arrangements, including compliance with the *Improving Governance of Regulators: Principles and Guidelines*, be reported annually to the Minister for Regulatory Reform.

Recommendation 5.5

That a robust performance reporting framework be developed by the Regulatory Policy and Performance Unit, in conjunction with regulators and drawing on the process adopted in developing the *Improving Governance of Regulators: Principles and Guidelines*. This would include developing a framework within six months to assess all Victorian regulators' current practice against a 'good practice' standard, and commence assessments against the standard within 12 months.

Progress on the development and implementation of the performance framework would be reported to the Minister for Regulatory Reform.

Recommendation 5.6

That the Regulatory Policy and Performance Unit, in conjunction with the community of practice for regulators, develop a peer review process for regulators, taking into account the experience in the United Kingdom with the Hampton Implementation Reviews.

Chapter 6: Embedding evaluation and review

Recommendation 6.1

That the Regulatory Policy and Performance Unit amend the *Victorian Guide to Regulation* to make it mandatory for proponents of primary and subordinate legislation that requires an impact assessment to:

- include within the impact assessment a proportionate evaluation strategy that would enable the effectiveness and efficiency of the regulation to be assessed
- certify progress towards implementing the proposed evaluation strategy, including that adequate data is being collected to enable evaluation.

Recommendation 6.2

That the Victorian Government require departments to conduct ex-post evaluation of regulation. The requirement would operate as follows:

- Departments are required to evaluate any subordinate legislation and new and amended primary legislation that imposes a ‘significant impact’ (to be interpreted in the same way as for the preparation of an impact assessment).
- Evaluations are to meet consistent whole-of-government guidance on quality (proportionate to the impact of the regulation), and be prepared in accordance with this guidance. Evaluations are usually conducted internally, and usually include public consultation and published findings.
- The Victorian Competition and Efficiency Commission is responsible for assessing adequacy of analysis contained in evaluations prior to publication, against guidance to be set out in the *Victorian Guide to Regulation*.
- Evaluations should be finalised no later than ten years after regulation commences (or eight years for significant regulation) so that the findings from evaluations are available for sunseting regulations.

To facilitate the operation of the requirement to evaluate:

- Departments are to prepare a timetable for conducting required evaluations.
- The Regulatory Policy and Performance Unit is to develop evaluation guidance for inclusion in the Victorian Guide to Regulation, and amend the guidance for sunseting regulation to ensure no unnecessary duplication.

Chapter 7: Reducing the regulatory burden on business

Recommendation 7.1

That the Victorian Government's regulatory burden reduction target:

- include burdens imposed on businesses, the not-for-profit sector, government services and the economic activity of individuals
- adopt a broad definition of regulatory burden to include administrative burdens, compliance costs, delays costs, and fees and charges.

Recommendation 7.2

That the Victorian Government:

- publish all Regulatory Change Measurements (RCMs), reduce the threshold above which the Commission assesses RCMs to those with cost savings above \$5 million per year, and require the Commission to publish all RCM assessment letters

- publish an annual plan outlining the cost reduction proposals that will contribute to the target during that year
- publish an annual report on the verified progress, through assessed RCMs, of cost reduction projects, projects that have increased regulatory costs.

Chapter 8: Regulation in a federation

Recommendation 8.1

That to facilitate the setting of national reform priorities, the Victorian Government, in consultation with other jurisdictions, seek to enhance the guiding principles for COAG's future regulatory reform agenda.

Once agreed amongst jurisdictions, Victoria advocate that these enhanced principles be incorporated into the best practice regulation guide for ministerial councils and national standard setting bodies.

Recommendation 8.2

That to facilitate building the impact assessment process into Council of Australian Governments (COAG) proposals earlier, the Victorian Government ensure that its submissions to COAG bodies are consistently presented in a regulatory impact statement framework. Victoria should also advocate that all other jurisdictions be required to submit their proposals in the same format.

Recommendation 8.3

That the Regulatory Policy and Performance Unit amend the Victorian Guide to Regulation to require that the relevant Victorian departments:

- provide the Victorian Competition and Efficiency Commission with the COAG consultation RIS when it is published, with the Victorian Competition and Efficiency Commission to comment on whether, in the Commission's view, the COAG RIS has reported the likely impacts on Victorians
- publish the comments on the RIS that are provided by the Victorian Competition and Efficiency Commission
- provide the Victorian Competition and Efficiency Commission's comments to the relevant Ministerial Council or working group to ensure the issues are addressed in the final decision RIS
- provide Cabinet with the Victorian Competition and Efficiency Commission's comments on the most recent version of the COAG RIS, before final ratification of the COAG initiative.

Recommendation 8.4

That if the Victorian Government adopts an approach different from a national approach, or that adopted by most other jurisdictions, it should publicly evaluate its approach, and report on the costs and benefits, within three years.

Recommendation 8.5

That the Victoria Government initiate discussions with New South Wales to agree to allow buses and taxis to operate freely between Albury and Wodonga. If an agreement is reached, its operation should be reviewed in two years to determine its success and whether there are lessons that could be applied to other areas of regulatory overlap between jurisdictions.