- costs to be shared among the members of the group and deducted from compensation when received
- no costs to be paid if the case is lost and for costs to be assessed at a special rate (but not as a percentage of any award) if the case is successful.

scope of the proposals. The ALRC's report relates only to proceedings in the Federal Court and covers

- actions under federal laws including the Trade Practices Act, administrative law Acts and Acts covering industrial and intellectual property
- proceedings against the Commonwealth and
- matters under the laws of the Australian Capital Territory.

The report is available from Australian Government Publishing Service bookshops.

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deregulate or perish?

Work is the curse of the drinking classes.

Mike Romanoff

The Victorian Law Reform Commission (VLRC) and the Victorian Regulation Review Unit (RRU) have produced the second of a series of reports in a 'rolling' reference on regulatory laws. The report's purpose is set out in its title, *Principles of Occupational Regulation.* It sets out a series of principles which, it recommends, should be applied in every case where any form of occupational regulation is proposed.

occupational regulation defined. Occupational regulation is complex. It may operate at a number of different levels. It has a number of different functions, including protection of the public by establishing standards which must be met by those seeking to provide different types of services, and the maintenance of a monopoly of services by particular groups. The report identifies 166 different occupational groups who are subject to some form of occupational regulation in Victoria, from abbatoirs and meat inspectors to zoologists, barriesters, chicken sexers and sheep skin buyers.

costs and benefits. The report identifies the major cost of occupational regulation as a reduction in competition. This provides a benefit to the members of the occupational group at the expense of the public. However, there are four major types of public benefit which flow from occupational regulation:

- protection of public health and safety
- protection against financial risks (especially in the case of those occupations entrusted with money belonging to others)
- provision of information to the public, enabling informed choices
- prevention of criminal activity.

The report acknowleges that all activities in society involve risks, and that nothing will eliminate risks entirely. It concludes that some occupational regulation is necessary. But before any scheme is introduced, it should be justified by those who propose it. In addition, all schemes of occupational regulation should be subject to periodic review, so that no regulatory scheme is retained when it is no longer justified.

main recommendations. Among the main recommendations in the report are:

- The Victorian Government should adopt the principles set out in the report, and require agencies proposing occupational regulation to complete a standard questionnaire, attached to the report, to assess whether regulation is justified.
- Administrative responsibility for government controls should not normally be given to the occupational groups which are subject to regulation.

- Bodies administering occupational regulation should include a majority of representatives of the public.
- Occupational regulation should be framed so that it does not discriminate between applicants or practitioners on the basis of race, sex, age, marital status, disability or religion.
- Not only should schemes of regulation themselves be subject to regular review, but there should also be regular reassessment of the practitioners subject to regulation within each scheme.
- Regulatory bodies should be required to observe principles of justice and fairness of their occupation, but administrative responsibility for occupational regulation should be removed from the courts, and given to bodies directly accountable to government. Appeals against the decisions of regulatory bodies should lie to the Administrative Appeals Tribunal, rather than to the courts.

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insider trading

> Thou shalt not steal; an empty feat,
> When it's so lucrative to cheat.
>
> Arthur Hugh Clough, *The Latest Decalogue*

The share market practice of insider trading has again been in the news in the last few months. The law in relation to the practice has been reformed or come under review in New Zealand, the United States and Japan. In Australia, action is being taken under the existing insider trading laws and, at a meeting of securities regulators held in Melbourne, suggestions were made for greater international co-operation to enforce laws against the practice.

nz reform. The proposed NZ reform would impose civil penalties rather than making insider trading a criminal offence. There are two principal reasons for this:

- the high standard of proof required for criminal cases causes many corporate prosecutions to fail because of the complexity of the transactions
- the right to silence available to persons accused of criminal offences impedes the investigation of cases of insider trading.

Under the proposed law, insiders who have judgments against them will be automatically disqualified from holding office in a company for five years.

The NZ Bill addresses the problem of the cost of litigation which would discourage small shareholders from bringing an action for insider trading. Where insiders deal in shares of a company in contravention of the law, the company will be able to bring an action against them. Any shareholder will be able to ask for an opinion of a barrister or solicitor as to whether the company has a cause of action. The company will be liable for the lawyer's fees. Alternatively, the court will be able to authorise a shareholder to bring an action against the insider in the name of the company which would then be liable for the shareholder's costs of bringing the action. The Bill protects legitimate transactions by providing an immunity for directors and officers who buy or sell shares in their company in accordance with a procedure approved by the Securities Commission.

US reforms. In the United States of America, a Bill has been enacted to increase penalties for insider trading. It has the following features.

- The maximum term of imprisonment for insider trading has been doubled to 10 years and the maximum fine for individuals increased from US$100 000 to US$1m and for corporations and partnerships from US$500 000 to US$2.5m.
- The Securities and Exchange Commission (SEC) will be able to seek civil fines against companies if they knowingly or recklessly fail to detect and prevent in-