
D Developments in States and Territories

In 2002-03, some States and Territories strengthened their RIS requirements or made further regulatory reforms. The Northern Territory Government introduced a new regulatory process which substantially aligns with the Australian Government RIS process. The South Australian Government strengthened its Regional Impact Analysis Statement requirements. The Business Regulation Reform Unit (BRUU) in Queensland developed strategies to improve the efficacy of the regulatory reform program. In Victoria, the Government responded to the findings of the Scrutiny of Acts and Regulations Committee (SARC), indicating its partial support for most of the Committee's recommendations to strengthen the RIS process. (A summary of State/Territory RIS requirements and review mechanisms is provided in tables at the end of this appendix.)

D.1 Northern Territory

New requirements for the scrutiny of the impact of new and amended primary and subordinate legislation on competition and business were introduced August 2003 (Department of Chief Minister 2003). (Previously, only consultation requirements applied to regulatory proposals.) The Territory now requires a comprehensive impact assessment for all regulatory proposals that may restrict competition and/or confer a significant cost on business. In these cases, a Competition Impact Analysis should be prepared and include a cost-benefit analysis of all the important economic, social and environmental impacts. The new process is based on the Australian Government RIS requirements.

An implementation plan has been developed with the aim of assisting Northern Territory Government agencies to adapt to the new process. The implementation plan includes monitoring and evaluation of the process. 'Competition Impact Analysis Principles and Guidelines' have been prepared as a guide for Northern Territory Government officers who are involved in the preparation of legislation.

D.2 South Australia

In April 2002, the South Australian Premier, the Hon. Michael Rann MP, announced that assessments of the potential regulatory impacts on small business, environment, regions and families of all proposals considered by Cabinet, should be prepared. In May 2003, the South Australian Cabinet strengthened this requirement by formally requiring departments and agencies, from 1 July 2003, to prepare and make publicly available Regional Impact Analysis Statements prior to implementing significant changes to Government services to rural and regional areas. The Cabinet also approved guidelines to assist in the preparation of Regional Impact Analysis Statements.

D.3 Queensland

Queensland's Regulation Impact Statement (RIS) requirements apply to subordinate legislation where they are likely to impose an appreciable cost on business and/or the community and to quasi-regulation where it is referenced or called up in subordinate legislation. RISs consider all relevant issues pertaining to the regulatory proposal and its alternatives, on a state-wide basis.

During 2002, an evaluation of the BRRU was undertaken by the Queensland Department of the Premier and Cabinet. The evaluation sought to identify ways of refining BRRU's role and strategies for regulation reform. It compared BRRU's strategies and activities with the principles and characteristics of leading regulatory reform practice in other Australian States and Territories, the United Kingdom, Canada, New Zealand and the OECD.

The evaluation team identified seven leading practice principles as necessary to stimulate the development of regulatory efficiency systems. These include:

- the preparation of regulatory impact statements;
- effective consultation with business and the wider community;
- effective enforcement and compliance; and
- periodic and systematic reviews of regulations.

Queensland has a large number of local governments and there is a growing awareness that this third tier of government can have wide-ranging regulatory impacts. During 2002, the BRRU, in cooperation with the Logan City Council in south-east Queensland, undertook an extensive study examining regulatory issues.

The study led to the development of a comprehensive framework to examine regulatory issues at the local government level. The framework can be applied by all local governments throughout Queensland. The BRRU is commencing a second study in the Sunshine Coast area in 2003-04.

To complement this initiative, a set of non-mandatory guidelines for local governments was developed in 2002-03 to assist them with the process of making local laws. The guidelines (Department of State Development 2003) build on leading practice approaches in regulation making.

D.4 Victoria

Victoria has an impact assessment framework where RISs are prepared for all subordinate legislation anticipated to cause an appreciable economic or social burden, cost or disadvantage on a sector of the community.

During 2002-03, SARC conducted a comprehensive review of the Victorian Government's regulation-making process and examined comparable interstate and overseas systems. The inquiry recommended that the basic framework of the *Subordinate Legislation Act 1994* be retained. However, the Committee considered that there was scope for improvement and made a number of recommendations, including broadening the coverage of legislative instruments covered by the Act, enhancing quality assurance measures in the RIS process and utilising modern information technology.

The Government responded to the findings in March 2003. It supported most of SARC's recommendations but did not support the recommendation to extend the scope of the Act to apply to instruments of a legislative character. It considered that to do so would reduce flexibility in determining the appropriate level of scrutiny for an instrument, given the Parliament can determine the form of a legislative instrument and the Governor in Council can prescribe instruments to be subject to the Act.

Following the 2002 state election, the Victorian Government implemented its commitment to establish the office of the Small Business Commissioner (SBC). The role of the SBC is to enhance a competitive and fair operating environment for small business. Its broad areas of responsibility include:

- providing assistance and support on retail tenancy matters;
- resolving business-to-business disputes; and
- monitoring government procedures.

The SBC will also encourage agencies to develop small business service charters and monitor the impact of legislation and government procedures (for example, procurement practices) on small business.

D.5 Australian Capital Territory

The Australian Capital Territory (ACT) Government requires RISs to be prepared for proposals that impose ‘appreciable costs’ on the community or part of the community when introduced by primary or subordinate legislation.

In March 2002, the Business Regulation Review Committee was asked to identify any regulatory processes that impose unnecessary burdens, costs or disadvantages on business activities in the ACT and to recommend a course of action. The Committee completed its report and presented it to the Government in September 2002. A number of the Committee’s recommendations related to the ACT’s regulatory impact statement process. For example, the Committee recommended that the March 2000 *Guide to Regulation in the ACT* be endorsed by the Government and be re-issued to all agencies.

Twenty-four of the Committee’s 26 recommendations were accepted by the ACT Government, and will be implemented over the coming twelve months. The ACT Government did not accept the Committee’s recommendation that RISs for primary legislation be published.

In 2002-03, ACT Treasury commenced a program to review all existing quasi-regulation. The Treasury will consider how best to ensure that proposed quasi-regulation is subject to regulatory assessment.

D.6 Comparisons across jurisdictions

As shown in table D.1, five jurisdictions currently require RISs for some proposals introduced via Bills, seven require RISs for proposals introduced via subordinate instruments and five require RISs for quasi-regulation. Five jurisdictions require RISs at both the consultation and decision-making stages, while two others require RISs at the decision-making stage only. One jurisdiction requires small business impact statements and regional impact statements for Cabinet minutes, and another requires a regional impact assessment statement for all Cabinet submissions.

Table D.1 RIS requirements in Australian jurisdictions

<i>Jurisdiction</i>	<i>Bills</i>	<i>Subordinate Instruments</i>	<i>Quasi-regulation</i>	<i>RIS for consultation</i>	<i>RIS for decision maker</i>
Australian Government	✓	✓	✓	-	✓
New South Wales	✓ ^a	✓	✓	✓	✓
Victoria	-	✓ ^b	-	✓	✓
Queensland	-	✓ ^c	✓ ^d	✓	✓
South Australia	✓ ^e	✓ ^e	✓	-	✓
Western Australia	^f	^f	^f	-	^g
Tasmania	✓	✓	✓	✓	✓
Australian Capital Territory	✓ ^h	✓ ⁱ	-	✓ ^j	✓
Northern Territory	✓	✓	-	✓ ^k	✓

^a Cabinet submissions for new Bills must meet best practice requirements. ^b For proposals that impose an appreciable economic or social burden. ^c For proposals likely to impose an appreciable cost on business and/or the community. ^d The RIS requirements apply if these instruments are called up or referenced in subordinate legislation. ^e A Regional Impact Assessment Statement (RIAS) is to be prepared for all Cabinet submissions. ^f A Small Business Impact Statement (SBIS) is required to accompany any Cabinet minute seeking endorsement of a regulatory, legislative or policy initiative that will impact upon small business. A Regional Impact Statement must also accompany all Cabinet Minutes. ^g The SBIS and RIS are considered by Cabinet before making its decision. ^h For new and amended legislation that restricts competition. ⁱ For proposals likely to impose an appreciable cost on the community. ^j Either a discussion paper or draft RIS. ^k At agency discretion whether draft RIS made public.

Source: Correspondence from States and Territories.

Seven jurisdictions currently have formal RIS guidelines. South Australia has guidelines for regional and national competition impacts only (table D.2). Seven jurisdictions include state-wide cost/benefit analysis in RIS requirements, an eighth takes a case-by-case approach to the breadth of geographic cost-benefit analysis required and a ninth prepares analysis on specific sectors only.

Five jurisdictions report on departments' and agencies' compliance with the RIS requirements and a sixth reports only to the Premier and Parliament as requested. Three prepare regulatory plans. The ACT discontinued this practice in June 2003 following a recommendation by the Business Regulation Review Committee. Six jurisdictions have sunset clauses included in legislation for periodic reviews. A seventh has clauses inserted at the discretion of individual ministers.

Table D.2 RIS practices in Australian jurisdictions

<i>Jurisdiction</i>	<i>RIS guidelines</i>	<i>Cost/benefit assessment</i>	<i>Report on RIS compliance</i>	<i>Regulatory plans</i>	<i>Sunset clauses</i>
Australian Government	✓	✓	✓	✓	-
New South Wales	✓	✓	✓	-	✓
Victoria	✓	✓	✓	✓	✓
Queensland	✓	✓	- ^a	✓	✓
South Australia	✓ ^b	- ^c	✓ ^d	-	✓
Western Australia	-	-	-	-	✓ ^e
Tasmania	✓	✓ ^f	-	-	✓
Australian Capital Territory	✓	✓	✓	- ^g	- ^h
Northern Territory	✓	✓	✓	-	✓

^a In 2003-04, the Business Regulation Reform Unit will start recording statistics on the number of agencies that comply with BRRU's advice to undertake a RIS. ^b For regional and national competition impacts only. ^c Focuses on regions, small business, environment, family and society and competition policy. ^d Not to departments and agencies. Compliance results are sent to the NCC in the State's annual report on progress implementing the Competition Principles Agreement and to the Premier and Parliament as requested. ^e At the discretion of individual Ministers. ^f Coverage depends on the issue at hand and may be state-wide or regional. ^g Discontinued in line with the Business Regulation Review Committee's recommendation that found scope for duplication of effort and/or inconsistency with government policy. The ACT Government's legislative program provides the basis for all detailed public consultation on the Government's legislative intentions. ^h The ACT Treasury is overseeing the implementation of a formal process to regularly review the ongoing relevance and effectiveness of all legislation and related instruments on an industry-by-industry basis every five years.

Source: Correspondence from States and Territories.