
A Commonwealth legislation reviews

1999-2000 was to have been the final year of the national four-year program of review of existing legislation agreed to in 1995 by COAG as part of the *Competition Principles Agreement* (CPA)¹. Under the CPA, all governments made a commitment to review and reform legislation that restricts competition, by the end of 2000². The Commonwealth's legislative review program is broader than required by the CPA. In addition to legislation which potentially restricts competition, it includes legislation that may impose costs or confer benefits on business.

The ORR provides guidance to departments and regulatory agencies on appropriate terms of reference and the composition of review bodies in relation to reviews under the Commonwealth legislation review program. The Government requires the ORR to advise the Minister for Financial Services and Regulation and the responsible portfolio Minister as to whether terms of reference meet the CPA requirements and the Commonwealth's legislation review requirements.

Allowing for variations made to the Commonwealth's schedule of reviews, the ORR cleared terms of reference for 15 of the 24 reviews that were to have commenced in 1999-2000. All terms of reference cleared met relevant CPA and Commonwealth legislation review requirements.

A.1 Status of reviews

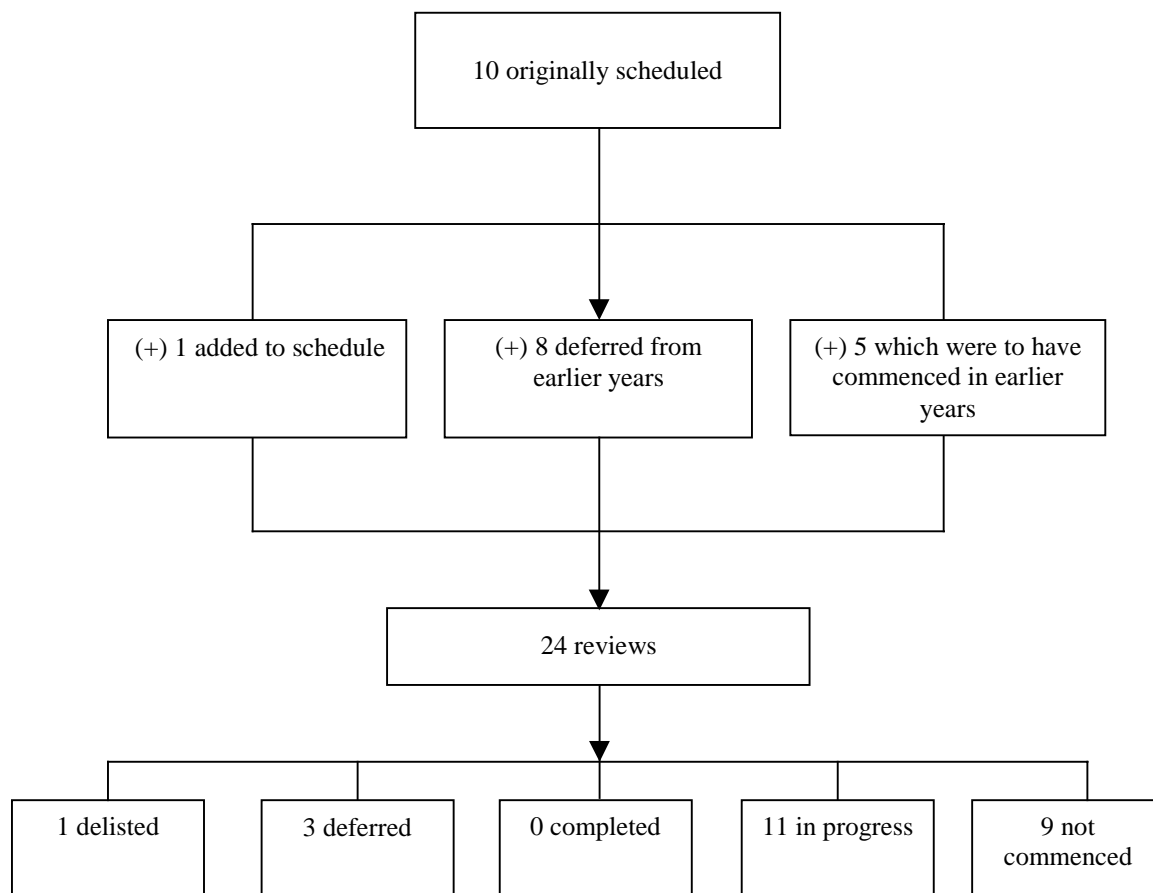
Figure A.1 provides an overview of the status of reviews. It shows that some ten reviews were originally scheduled to commence during the year, but a number of approved variations were made, adding 14 reviews to the schedule for commencement in 1999-2000.

The ORR cleared terms of reference for 15 of the 24 reviews scheduled, although at 30 June 2000 only 11 of these reviews were in progress and none had been completed.

¹ *Regulation and its Review 1996-97* (IC 1997) detailed the origins of the review program and preparation of the Commonwealth's Legislation Review Schedule.

² COAG, at its meeting on 3 November 2000, decided that this deadline would be extended to 30 June 2002.

Figure A.1 **Status of 1999-2000 Commonwealth legislative reviews**



As illustrated in figure A.1, three reviews were deferred and one, the review of the access provisions of the *Moomba-Sydney Pipeline System Sales Act 1994*, was delisted. Nine reviews did not commence as scheduled and the appropriate approval for delay had not been sought before 30 June 2000. These reviews are indicated with a cross in the first two columns of table A.1.

A.2 Clearance of terms of reference

Officials responsible for reviews are to consult with the ORR on the terms of reference at least three months prior to the commencement of the review to allow sufficient time to resolve any concerns. This occurred for 11 of the 15 reviews for which the ORR cleared terms of reference. While consultation occurred later than desirable for the remaining four reviews, satisfactory terms of reference were developed. The three month consultation period has contributed to good outcomes (see table A.1).

Adequacy of terms of reference

The terms of reference must:

- recognise the guiding principle under the CPA; and
- have an analytical framework centred around cost-benefit analysis, such as provided by the RIS guidelines or clause 5(9) of the CPA.

Other desirable features in terms of reference include mention of the intention to publish a report, reporting dates for review bodies and processes for a response by government.

In most cases, the ORR's template terms of reference (see PC 1999, p. 49) was used. Where the template was not used, or where the guiding principle was not specifically recognised, the terms of reference noted that the CPA requirements would need to be met.

A reporting date or period was included in all 15 of the terms of reference cleared in 1999-2000. Fourteen included a government response process and an intention to make the report publicly available.

A.3 Composition of review bodies

While the ORR does not have a formal clearance role on the composition of review bodies, it is often consulted by departments.

In setting up the Legislation Review Schedule, the Government identified eight types of review modality, ranging from an independent committee for major reviews to an intradepartmental committee for minor reviews. The Government acknowledged that it would not be cost effective to expect the same standard of review for all legislation.

For 1999-2000 reviews, there were some changes to the review body from that originally specified by Government; however, in all cases the Government approved of the variation.

Table A.1 Status of reviews for 1999-2000 and terms of reference cleared

<i>Review</i>	Review preparation					
	<i>Review commenced as scheduled</i>	<i>Review in progress at 30 June 2000</i>	<i>ORR consulted 3 months prior to start</i>	<i>ToR met CPA and LRS requirements</i>	<i>Review body as specified in LRS</i>	<i>TOR included reporting date or period</i>
42 Review of market based reforms & the Spectrum Management Agency	x	x	x	✓	✓	✓
49 <i>Anti-dumping Authority Act 1988 & Customs Act 1901 Pt XVB & Customs Tariff (Anti-dumping) Act 1975</i>	x	x				
60 Export Control Unprocessed Wood Regulations under the <i>Export Control Act 1982</i>	✓	✓	✓	✓	✓	✓
63 Superannuation Acts	x	x	✓	✓	✓	✓
66 <i>Insurance (Agents and Brokers) Act 1984</i>	Deferral approved					
69 <i>Financial Transactions Reports Act 1988 & Regulations</i>	(x)	✓	✓	✓	✓	✓
74 <i>Hazardous Waste (Regulation of Imports & Exports) Act 1989, Hazardous Waste (Regulations of Imports & Exports) Amendment Bill 1995</i>	✓	✓	✓	✓	✓	✓
75b Food Standards Code	x	✓	x	✓	✓ ^a	✓
76 <i>Export Finance & Insurance Corporation Act 1991 & Export Finance & Insurance Corporation (Transitional Provisions & Consequential Amendments) Act 1991</i>	Deferral approved					
80 Dried Vine Fruit Legislation	Deferral to 2 nd half of 1999-2000 approved					
87 <i>Prices Surveillance Act 1983</i>	✓	✓	✓	✓	✓	✓
89 <i>Defence Act 1903 (Army and Airforce Canteen Services Regulations)</i>	x	x				

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Table A.1 (continued)

<i>Review</i>	Review preparation					
	<i>Review commenced as scheduled</i>	<i>Review in progress at 30 June 2000</i>	<i>ORR consulted 3 months prior to start</i>	<i>ToR met CPA and LRS requirements</i>	<i>Review body as specified in LRS</i>	<i>TOR included reporting date or period</i>
90 <i>Ozone Protection Act 1989 & Ozone Protection (Amendment) Act 1995</i>	✓	✓	✓	✓	✓	✓
91 <i>Home and Community Care Act 1985</i>	✗	✗				
92 <i>Petroleum (Submerged Lands) Act 1967</i>	✓	✓	✓	✓	✓	✓
93 <i>Wheat Marketing Act 1989</i>	✓	✓	✓	✓	✓	✓
94 <i>Native Title Act 1993 & regulations</i>	✗	✗				
95 Part IIIA (access regime) of the <i>Trade Practices Act 1974</i> (including exemptions)	✗	✗	✓	✓	✓	✓
96 Part 6 (access provisions) of the <i>Moomba-Sydney Pipeline System Sales Act 1994</i>	Delisted					
97 2D exemptions (local government activities) of the <i>Trade Practices Act 1974</i>	✗	✗	✓	✓	✓	✓
98 Fees charged under the <i>Trade Practices Act 1974</i>	✓	(✓)	✓	✓	✓	✓
99 <i>Health Insurance Act 1973</i> Part IIA	✗	✓	✗	✓	✓	✓
100 <i>Marine Insurance Act 1989</i>	✓	✓	✗	✓	✓	✓
101 <i>Disability Discrimination Act 1992</i>	✗ ^b	✗				

The symbols used generally have the following interpretation. ✓ Affirmative. (✓) Question not able to be fully answered in the affirmative, but the outcome generally satisfied the requirements. (✗) Negative to a very limited extent and/or the outcome largely failed to satisfy the requirements. ✗ Negative. ^a The review modality was, in consultation with the ORR and the Treasury, changed to a consultant overseen by an interdepartmental steering committee. ^b Informal discussions about deferring the review until 2000-01 have taken place, but, at 30 June 2000, A-Gs had not sought formal approval for the delay.