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## E Regulatory reform in the States and Territories

This appendix focuses on the regulatory processes of the Australian States and Territories. It discusses various changes made during 2005-06 to regulatory impact analysis, developments in regulatory governance, consultation policies, review processes and compliance reporting.

Regulation Impact Statements (RIS) continue to be the most used tool to ensure regulatory quality in Australian jurisdictions. Other measures to improve regulatory quality include stakeholder consultation, mandatory sunset and review provisions, and public evaluation of RIS compliance.

Regulatory reform was an important undertaking for State/Territory governments in 2005-06, with most States and Territories implementing or continuing regulatory reform programs. In February 2006, the States and Territories (in addition to the Commonwealth) agreed to a National Reform Agenda (NRA), which is likely to be the catalyst for further regulatory reform and regulatory coordination in the future. (See appendix C for a discussion of the February 2006 COAG agreement).

### E.1 Victoria

#### *Regulatory Impact Analysis*

Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare RISs where a proposed regulation is likely to impose an appreciable economic or social burden. As a complement to the RIS process there is also an additional requirement for a Business Impact Assessment (BIA) to be prepared, if primary legislation has a significant impact on business or restricts competition. The Victorian Competition and Efficiency Commission (VCEC) is the independent assessor of RISs and BIAs. It also conducts public inquiries and investigations into competitive neutrality.

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### *Developments in regulatory governance*

In May 2006, the Victorian Government announced a regulatory reform initiative in its 2006-07 budget, setting aside \$42 million over four years for:

- cutting the existing administrative burden of regulation by 15 per cent over 3 years, with a target of cutting 25 per cent over the next 5 years;
- ensuring the administrative burden of any new regulation is met by an offsetting simplification in the same area; and
- making available a pool of funds to undertake ‘hot spot’ reviews in areas of undue compliance burden and to reward reduction of the burden.

During 2005, three mergers affecting regulators were implemented:

- Energy Safe Victoria was formed by merging the Office of the Chief Electrical Inspector and the Office of Gas Safety;
- the Legal Services Board and Commissioner have replaced the Legal Practice Board and the Legal Ombudsman; and
- Sustainability Victoria was formed by merging the Sustainability Energy Authority Victoria, which accredited energy rating organisations, with EcoRecycle Victoria, which had no regulatory functions. (Victorian Government 2006)

In addition, the Victorian Government has announced a future merger of the Registered School Board with the Victorian Qualifications Authority. A new regulator, the Working with Children Checks Unit within the Department of Justice, will commence operation in mid 2006 to administer the requirements of the Working with Children Act 2005.

A number of new Acts have also been introduced in Victoria to simplify and consolidate the legislative framework:

- *The Education and Training Reform Act 2006* replaces 12 Acts.
- *The Health Professions Registration Act 2005* replaces 11 Acts.
- *The Infringements Act 2006* provides a consistent framework for the issuing and enforcement of infringement notices for offences.

The Victorian Parliamentary Secretary for the Environment recently led a review to identify opportunities to streamline the planning permit process and made 15 recommendations (Victorian Government 2006).

In 2005-06, the VCEC released the following reports:

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- *The Victorian Regulatory System (2<sup>nd</sup> edition)*. This annual survey reports on regulatory developments in each of the Victorian Government business regulators. In 2006, there were 71 Victorian Government business regulators, responsible for administering 189 Acts and 211 regulations.
  - *Housing Regulation in Victoria: Building Better Outcomes* (VCEC 2006a). The Victorian Government supported 44 of the 47 recommendations made by the VCEC, one of which is to develop cost recovery guidelines. The guidelines should complement the current RIS framework.
  - *Making the right choices: options for managing transport congestion* (VCEC 2006b). The draft report explored 43 options aimed at improving the efficiency and management of transport congestion in Melbourne, Ballarat, Bendigo and Geelong. The final report is to be provided to the Government in late 2006.

### *Compliance reporting*

The VCEC reports annually on compliance with the Victorian Government's best practice processes for making regulations and legislation, as well as the findings of inquiries into matters referred to the Commission by the government and compliance with competitive neutrality. Its 2005-06 Annual Report will be released in the latter half of 2006. In its last reporting period, the VCEC assessed 33 RISs and 17 BIAs.

### *Resources for regulatory review*

Approximately 3.8 full-time equivalent staff within the VCEC are responsible for assessing the adequacy of RISs and BIAs (based on 2004-05 figures). In total, the VCEC comprises 14.6 full-time equivalent staff, including Commissioners. From a total budget of \$2.39 million, the VCEC allocated approximately \$490,000 to RIS and BIA assessment.

## **E.2 South Australia**

### *Regulatory Impact Analysis*

In South Australia, all Cabinet submissions require an assessment of regulatory, business, regional, environmental, family and social impacts. Where the regulatory impact is significant, a RIS must be attached to the submission. Where there is a proposed restriction on competition, the assessment must demonstrate that the benefits outweigh the costs, and that the objectives can only be achieved by

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restricting competition. The RIS process applies to all new Acts, regulations, mandatory standards and codes.

In addition, a formal Regional Impact Assessment Statement (RIAS) must be prepared where there is a significant change proposed in relation to services or infrastructure in regional areas. After Cabinet consideration, RIAs are lodged in Parliament and published on the website of the Office of Regional Affairs.

### *Developments in regulatory governance*

In early 2006, the South Australian Government appointed a Minister Assisting the Premier with Cabinet Business and Public Sector Management. One of the roles of the Minister is to improve the quality of regulatory proposals submitted to Cabinet.

The South Australian Government has recently established a target of reducing red tape by at least 25 per cent by July 2008. This is being supported by:

- the creation of a Competitiveness Council, as a sub-committee of the Economic Development Board, which will report to the Premier and the Executive Committee of Cabinet on a regular basis regarding the implementation across government of initiatives to reduce the compliance costs to business of government regulations, plus other measures and indices of competitiveness;
- mandated use of the Business Cost Calculator for all regulatory proposals and any other proposals with an impact on business (to be evaluated after 12 months);
- changing the requirement for a “Small Business Impact Statement” in Cabinet submissions to a requirement for a “Business Impact Statement” (incorporating use of the Business Cost Calculator);
- continuation of the sunset program, whereby all regulations, except those detailed in section 16A of the *Subordinate Legislation Act 1978*, expire on 1 September in the year following the tenth anniversary of their promulgation; and
- a range of projects to inform the process of regulatory planning, including a small business survey to “identify and reduce ‘red tape’ hotspots”, and a July 2005 Review of Government Red Tape and Impediments to Exports.

### *Compliance reporting*

Compliance with the Government’s community impact assessment requirements is reported in South Australia’s annual report to the National Competition Council on

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*Implementation of National Competition Policy and Related Reforms in SA*, and is also reported in the annual report of the Department of the Premier and Cabinet.

#### *Resources for regulatory review*

There are six officers throughout five portfolio agencies whose duties include advising upon the adequacy of the assessments of community impacts. Actual budget figures relating to regulatory review activities are not available.

### **E.3 Queensland**

#### *Regulatory Impact Analysis*

In Queensland, proposed subordinate legislation that is likely to impose appreciable costs on the community or a part of the community, is subject to the preparation of a Regulatory Impact Statement (RIS) as prescribed under Part 5 of the *Statutory Instruments Act 1992* (Qld) (the SIA). Where a regulatory proposal is likely to restrict competition, arrangements are also in place to enable a combined RIS/Public Benefit Test document to be prepared.

The Queensland Department of State Development provides an advisory service to Queensland agencies on the application of RIS requirements prescribed under the SIA. As part of this service, the Department has published RIS guidelines. These guidelines were reviewed and updated in 2005.

#### *Developments in regulatory governance*

The Red Tape Reduction Taskforce is the Queensland Government's main business body advising on regulatory reform. In 2005-06, the Taskforce, supported by the Department of State Development, completed the 2004-05 Red Tape Reduction Stocktake. This stocktake identified 26 government initiatives resulting in savings to business of more than \$14 million. Since 1999, savings to business of over \$90 million have been identified through annual stocktakes.

A public review of 'hot spots' for regulatory reform was also undertaken in 2005-06 under the banner of the Taskforce, as well as three industry specific reviews focused on the manufacturing (including food processing and production), retail and tourism sectors. These reviews were aimed at identifying opportunities to improve Queensland's regulatory environment, with the outcomes being intended to inform

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the Queensland Government's future focus on regulation reform and red tape reduction.

At the national level, the Queensland Government is working with the Australian Government and the other States and Territories through the Council of Australian Governments to improve regulatory efficiency.

### *Consultation*

Section 45 of the SIA requires that the preparation of a RIS be notified in the Queensland Government Gazette and in a newspaper(s) likely to be read by people particularly affected by the proposed legislation. A period of at least 28 days must be allowed from publication of the notice for public comments on the RIS.

### *Compliance reporting*

Queensland does not have a formal procedure for reporting on compliance with the formal RIS requirements. However, it is the Queensland Parliament's intention that there is compliance with RIS requirements before subordinate legislation is made.

In order to achieve this, Director-Generals are required to complete a regulation compliance certificate prior to the making of subordinate legislation.

## **E.4 New South Wales**

### *Regulatory Impact Analysis*

In New South Wales, the *Subordinate Legislation Act 1989* (NSW) (SLA) requires the preparation of a formal RIS for a proposed statutory rule. Before a statutory rule can be made, the Minister responsible must ensure that the guidelines in Schedule 1 of the SLA are complied with. Subsequently, regulatory impact analysis is required for all new legislation and regulation in NSW. The Act requires that the RIS take into account economic and social costs and benefits of proposals, and that costs and benefits be quantified, wherever possible. Also, the objectives of the regulation must be outlined and tested to ensure they are appropriate and not inconsistent with other regulations. Alternative options must also be canvassed. Further to the requirements of the SLA, regulatory impact analysis is required for all new legislation and regulation in NSW, and consultation is recommended.

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### *Developments in regulatory governance*

In 2005, the New South Wales Independent Pricing and Regulatory Tribunal (IPART) commenced a review of the undue burden of government regulation on business and the community in New South Wales. The review had to identify priority areas in which regulatory reforms could provide significant immediate gains, and develop recommendations to reduce unnecessary regulatory burden on business and the community.

In July 2006, IPART published the draft *Investigation into the burden of regulation and improving regulatory efficiency* report (IPART 2006). The report made a number of draft recommendations for regulatory reform, including recommendations for addressing regulatory process issues to improve the efficiency of regulation. The review also identified inconsistencies, duplication, or overlap between NSW regulations and those of other jurisdictions, including in the areas of occupational health and safety, worker's compensation, environmental assessment, and children's services. The NSW Government is expected to respond to IPART's final report later this year.

On 17 January 2006, the NSW Premier announced a dedicated review of regulation impacting on small business. This review consists of a rolling program of sector-by-sector reviews of regulatory and administrative burdens faced by the small business sector. The reviews will assess identified regulatory burdens that impact on small firms and recommend government actions to reduce those burdens.

In 2006, the NSW Government also initiated a 'Government Red Tape Review' – an internal review of undue administrative burdens imposed on NSW government agencies. Unnecessary administrative requirements and red tape within government can reduce responsiveness and divert public resources from essential front line services.

### *Consultation*

There is a requirement for public consultation on a RIS prepared for principal statutory rules. Consultation also occurs, as considered appropriate, throughout the policy development and regulation-making process.

### *Compliance reporting*

There are no formal compliance reporting requirements within New South Wales. However, the Legislation Review Committee can report to the parliament on

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compliance with the RIS requirements under the *Subordinate Legislation Act 1989* (NSW).

#### *Resources for regulatory review*

Within the NSW Cabinet Office there is a regulatory reform team. However, the quality control process for legislation and regulation making is not solely that team's responsibility.

Each NSW government agency has generally assigned to an officer responsibility for ensuring that best practice regulatory principles are followed in the preparation of legislation.

## **E.5 Tasmania**

#### *Regulatory Impact Analysis*

Under the Tasmanian Government's Legislative Review Program, a RIS is required to be prepared for all proposed primary legislation anticipated to have significant restrictions on competition or significant negative impacts on business. Proposed subordinate legislation, assessed as imposing a significant cost, burden or disadvantage on any sector of the public, also requires a RIS under the *Subordinate Legislation Act 1992* (Tas). Restrictions on competition are the trigger for the preparation of a RIS for both primary legislation and subordinate legislation. A restriction on competition or an impact on business is considered to be significant where it has economy-wide implications, or where it significantly affects a sector of the economy, including consumers.

#### *Developments in regulatory governance*

A review of the *Subordinate Legislation Act 1992* (Tas) is currently being undertaken with the intent of reducing unnecessary administrative burdens, whilst ensuring that the Act continues to provide a scrutiny process for new and amending subordinate legislation, and to facilitate the removal of outdated or inappropriate subordinate legislation from the statute book.

#### *Consultation*

It is a requirement of both the Legislative Review Program and the *Subordinate Legislation Act 1992* (Tas) that mandatory public consultation of not less than 21

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days be undertaken in respect of primary or subordinate legislation that has been assessed as requiring a RIS. The RIS forms the basis of the public consultation and a copy of the proposed draft primary legislation or draft subordinate legislation must accompany the RIS.

#### *Resources for regulatory review*

There are currently five officers within Tasmania's Economic Reform Unit. All officers undertake regulatory review work and other related tasks. The Unit's budgeted wage cost (including payroll tax, workers compensation premiums and superannuation) for 2006-07 is \$368 288, of which around 60 per cent can be directly attributed to regulatory review work. This proportion, however, will depend on the economic policy and regulatory issues in any given year.

## **E.6 Western Australia**

#### *Regulatory Impact Analysis*

Western Australia does not have comprehensive RIS requirements. It is the responsibility of each agency to ensure that proposed legislation and the review of existing legislation is conducted in an open and transparent manner.

Cabinet submissions seeking endorsement of regulatory, legislative or policy initiatives that will significantly impact on small business must be accompanied by a Small Business Impact Statement (SBIS). Similarly, Cabinet proposals affecting regional Western Australia must include a Regional Impact Statement.

#### *Developments in regulatory governance*

A number of initiatives, coordinated by the Small Business Development Corporation (SBDC), provide avenues for small business operators and their representatives to raise their views and concerns with the Western Australian Minister for Small Business. These meetings are useful in identifying emerging issues in the State's small business sector, in particular red tape, and include:

- Small Business Ministerial Link Forums, designed to provide small business representatives with the opportunity to discuss a range of issues affecting the sector directly with the Minister; and
- Small Business Roundtables, to complement the Link Forums, specifically designed to provide small business operators with an informal environment to

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raise issues affecting their businesses directly with the Minister. The first Roundtable was held in May 2006.

In addition, as part of the 2005-06 state budget, the Western Australian Government announced a state tax review to shape tax reform over the next five years in consultation with the Western Australian community, and has released an interim report containing preliminary findings on 1 June 2006.

### *Consultation*

The Small Business Impact Statements must list the small business representatives/associations consulted about the proposal and indicate whether overall they were “supportive”, “not supportive” or had “mixed views”. Where appropriate, a brief summary of the nature of the consultation process undertaken with small business may be provided.

Further, the SBIS asks for an estimate of the costs, both direct and indirect, to small business of the proposal, including business compliance costs and red tape.

### *Compliance reporting*

Western Australia does not have formal reporting on compliance with the SBIS or Regional Impact Statement requirements. However:

- the Cabinet Standing Committee on Regional Policy may have a Regional Impact Statement referred to it for further assessment prior to it being considered by Cabinet;
- the Small Business Development Corporation (SBDC) closely monitors any Cabinet submissions that impact on small business. Where an SBIS is necessary but not included, or is inadequate, the SBDC may make a report to that effect in its Cabinet comments; and
- the Cabinet Services Branch of the Department of the Premier and Cabinet may decline to accept a Cabinet submission with inadequate material.

## **E.7 Australian Capital Territory**

In the Australian Capital Territory, any policy proposal that may have a regulatory impact and potentially introduce new or amending legislation requires a RIS to be completed as part of the policy development process.

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Specifically, the ACT Government Cabinet Handbook requires a RIS to be attached to all Cabinet Submissions seeking approval for regulatory policy proposals. The Cabinet Handbook was updated and re-issued in September 2005.

The ACT has produced guidelines to assist Government departments and agencies in preparing a RIS (ACT Government 2003). The guidelines incorporate recent trends in regulatory best practice and provides agencies with a process to undertake regulatory cost-benefit analysis for the proposed regulation.

The *Legislation Act 2001* (ACT) also formally requires a RIS to be prepared for subordinate laws and disallowable instruments in certain prescribed circumstances. This allows regulations made outside the Cabinet process also to be subjected to a RIS style of analysis.

To strengthen RIS processes in the ACT, in 2006 the Microeconomic Reform Unit within the Department of Treasury has undertaken in-house training with ACT departments and agencies to increase awareness and compliance.

#### *Regulatory Impact Analysis*

A RIS is used in the ACT to analyse all the realistic options in order to best meet the Government's policy objectives.

The Microeconomic Reform Unit (MRU) is responsible for the regulatory oversight of policy proposals. The MRU offers assistance to departments and agencies in the preparation of a RIS and assesses all Cabinet submissions for their compliance with RIS requirements.

#### *Consultation*

The ACT's RIS process requires that consultation with all affected and (potentially affected) stakeholders take place as part of the assessment of new or amended regulations. Government departments and agencies are encouraged to involve stakeholders in the policy development process, and provide feedback to those who have been involved in the consultation process.

#### *Resources for regulatory review*

Within the MRU the equivalent of one full-time employee is responsible for this work, with an approximate budget for salary and administrative expenses of \$100 000 for 2005-06.

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## E.8 Northern Territory

### *Regulatory Impact Analysis*

All new legislative proposals must be subject to a Competition Impact Analysis (CIA), unless an exemption is granted.

The requirement to complete a CIA will be triggered if the proposed or amended legislation seeks to govern the entry or exit of firms or individuals into or out of a market, controls prices or production levels, restricts the quality, level or location of goods and services available, confers significant costs on business or provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.

A quantitative figure for compliance costs is encouraged to be developed as far as possible in each CIA. Where it is not possible to do this in a formal manner, the Agency is encouraged to submit plausible costing options or estimates in the statement and outline assumptions made in the development of such figures. The CIA process affords a measure of efficiency and flexibility in the targeting of resources by allowing for the level and depth of analysis required to be proportionate to the magnitude of the problem and the size of the potential impact of the legislation.

The cost/benefit analysis is not limited to the affected sector alone. Agencies are required to outline the economy wide cost/benefits of the proposed legislation, including:

- financial/economic;
- environmental; and
- social.

Distributional effects and opportunity costs are also required to be examined in the CIA.

### *Developments in regulatory governance*

The Northern Territory Government commenced a review of its regulatory review framework in 2004. This was subsequently placed on hold pending the outcomes of national processes, including the review of National Competition Policy and subsequent endorsement of the National Reform Agenda at the COAG meeting on 10 February 2006, and the Australian Government response to the Taskforce on

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Reducing Regulatory Burdens of Business report. The review is now expected to be completed for consideration in late 2006.

Also a priority is aligning the Northern Territory's CIA process with COAG's National Reform Agenda Best Practice Regulation principles. This includes compliance with the priority review and reform areas under the National Reform Agenda commitments.

Administration of the Northern Territory's CIA process was transferred from the Department of the Chief Minister to the Northern Territory Treasury in May 2006.

### *Consultation*

The CIA Principles and Guidelines state that consultation with potentially affected parties, other agencies, and other levels of government should occur when legislation is being proposed. Public consultation is mandatory where the proposed legislation would have a major impact on the community.

The Guidelines are not prescriptive and allow the agency sponsoring a proposal to decide whether to make the draft CIA available to target groups. A consultation statement is required as part of the CIA, which provides a broad outline of who has been consulted, the method used and details of views expressed by those consulted, and how those views would be addressed.

### *Compliance Reporting*

Aside from the reporting requirements that applied under National Competition Policy, the CIA Unit provides bi-annual reports on the operation, compliance and reform progress of the CIA process to the appropriate Northern Territory Government Minister (ie, the Chief Minister prior to 1 May 2006 and the Treasurer post 1 May 2006). These reports provide information on the number of CIAs prepared, exemption details, the quality of CIAs, identification of training requirements within agencies, and any suggested process amendments.

### *Resources for regulatory review*

From July 2005 to April 2006, the CIA Unit consisted of two part time policy officers (0.2 full-time equivalent) and one senior policy officer (0.15 full-time equivalent) from the Department of the Chief Minister. From May 2006 to June 2006, the CIA Unit consisted of one full time senior research officer (0.6 full-time equivalent) and one Director (0.15 full-time equivalent) from NT Treasury.

Salaries and on-costs for the CIA Unit for 2005–6 are estimated at \$73 600 (July – April). Total costs are estimated to remain similar at NT Treasury, however this excludes time attributed to CIA Committee members in assessing and advising Agencies on CIAs.

## E.9 Comparisons across jurisdictions

### *RIS requirements*

Table E.1 **RIS requirements<sup>a</sup> in Australian jurisdictions**

<i>Jurisdiction</i>	<i>Bills</i>	<i>Subordinate Instruments</i>	<i>Quasi-regulation</i>	<i>RIS required for consultation</i>	<i>RIS for decision maker</i>
COAG	✓	✓	✓	✓	✓
Australian Government	✓	✓	✓	–	✓
NSW	–	✓	– <b>b</b>	✓	✓
Vic	✓	✓	–	✓	✓
Qld	–	✓	– <b>c</b>	✓	✓
SA	✓ <b>d</b>	✓ <b>d</b>	✓ <b>d</b>	–	✓
WA	– <b>e</b>	– <b>e</b>	– <b>e</b>	–	– <b>e</b>
Tas	✓	✓	✓	✓	✓
ACT	✓	✓	– <b>b</b>	–	✓
NT	✓	✓	–	–	✓

<sup>a</sup> RISs are generally required only when the regulatory proposals impose a significant economic or social burden on business. <sup>b</sup> Not a formal requirement, but agencies proposing quasi-regulation are expected to comply with best practice for regulatory impact assessment. <sup>c</sup> The RIS requirements apply if these instruments are called up or referenced in subordinate legislation. <sup>d</sup> Every cabinet submission is to consider community impacts — which include regulatory, small business, regional, environmental, families and society. <sup>e</sup> A SBIS is required to accompany any cabinet submission seeking endorsement of a regulatory, legislative or policy initiative that will significantly impact on small business.

*Source:* ORR and correspondence from States and Territories.

**Table E.2 RIS processes 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>	<i>RISs - Local Government</i>
COAG	✓	✓	✓	..	✓	..
Australian Government	✓	✓	✓	✓	–	..
NSW	✓	✓	✓	–	✓	–
Vic	✓	✓	✓	✓	✓	–
Qld	✓	✓	✓	✓	✓	–
SA	✓	✓	✓	–	✓	✓
WA	–	–	–	–	✓	–
Tas	✓	✓	–	–	✓	✓ <sup>a</sup>
ACT	✓	✓	–	–	–	✓ <sup>b</sup>
NT	✓	✓	✓	–	–	–

.. Not applicable. <sup>a</sup> Under the *Local Government Act 1993* (Tas), the Director of Local Government must issue a certificate of adequacy of the RIS process undertaken by Council before a proposal may progress to full public consultation. <sup>b</sup> Responsible for both State and local government.

Source: ORR and correspondence from States and Territories.

**Table E.3 Resources for state and territory regulation review units and related activities, 2005-06<sup>a</sup>**

<i>Jurisdiction</i>	<i>Full time equivalent staff</i>	<i>Budget \$ (including salary &amp; on-costs)</i>
Victoria	3.8 <sup>b</sup>	490 000
South Australia	n/a	n/a
Queensland	n/a	n/a
New South Wales	n/a	n/a
Western Australia	n/a	n/a
Tasmania	3.0	220 000
ACT	1.0	100 000
NT	1.0	80 000
Total	8.8	890 000

n/a – Not available. <sup>a</sup> In 2005-06, the ORR had 17.9 full time equivalent staff and a budget of about \$2.8 million. <sup>b</sup> Based on 2004-05 figures.

Source: Information provided by State and Territory Regulation Review Units.