
D Australian Government legislation reviews

In 1995, as part of the *Competition Principles Agreement* (CPA), the Council of Australian Governments (COAG) agreed to a program of review of existing legislation which restricts competition. Jurisdictions implemented programs to review and reform legislation over a four year period ending in the year 2000. At its meeting on 3 November 2000, COAG extended the period to 30 June 2002.

The Australian Government's legislation review program is broader than that required by the CPA. In addition to legislation which restricts competition, it also includes legislation which may impose significant costs or benefits on business. The Government's program covered a total of 101 reviews.¹ As at 30 June 2005, approximately 76 per cent of the reviews on the Australian Government's schedule had either been completed or were underway, approximately 14 per cent of the total had been deleted from the schedule, and approximately 9 per cent of reviews were deferred, delayed or not yet commenced. Table D.1 contains a list of the outstanding reviews.

A more comprehensive assessment of Australian Government, State and Territory progress against legislation review and reform obligations will be available in the National Competition Council's 2005 *Assessment of Governments' Progress in implementing the National Competition Policy and Related Reforms*. At the time of writing, COAG is undertaking a review of the National Competition Policy. This review, to be completed by the end of this year, will inform its decision about whether, and how, to continue the national economic reform program. In the meantime, the future of the legislation review program is uncertain.

It should be noted that while most of the legislation reviews in the Australian Government's schedule have been completed, clause 5(6) of the CPA provides for legislation on the schedule to be systematically reviewed at least once every ten years. As the schedule was announced in 1996, many pieces of legislation will be due for review once again from 2006.

¹ When it was announced in June 1996, the Schedule identified 98 separate reviews. Additional reviews were later included on the Schedule, bringing the total number of reviews to 101.

Table D.1 Reviews outstanding as at 30 June 2005

<i>Reviews still to be undertaken</i>	<i>Department</i>	<i>Status as at 30 June 2004</i>	<i>Status as at 30 June 2005</i>
<i>Environment Protection (Nuclear Codes) Act 1978</i>	DHA	Not commenced	Not commenced ^a
<i>Anti-Dumping Authority Act 1988, Customs Act 1901 Pt XVB & Customs Tariff (Anti-Dumping) Act 1975</i>	A-G's	Not commenced	Not commenced
<i>Petroleum Retail Marketing Sites Act 1980</i>	DITR	Not commenced	Not commenced ^b
<i>Petroleum Retail Marketing Franchise Act 1980</i>	DITR	Not commenced	Not commenced ^b
<i>Defence Force (Home Loans Assistance) Act 1990</i>	Defence	Not commenced	Not commenced ^a
Dried Vine Fruits Legislation	DAFF	Not commenced	Not commenced ^a
Treatment Principles (under section 90 of the <i>Veterans' Entitlement Act 1986</i> (VEA)) & Repatriation Private Patient Principles (under section 90A of the VEA)	DVA	Not commenced	Not commenced ^a
<i>Defence Act 1903</i> (Army & Airforce Canteen Services Regulations)	Defence	Not commenced	Not commenced ^a
<i>Native Title Act 1993</i> & regulations	A-G's	Not commenced	Not commenced ^a

^a Departments have advised that, for various reasons, they will be seeking to delist these reviews. Formal moves to delist these reviews appear not to have occurred as yet. ^b Legislation to be repealed following the introduction of an industry code under the *Trade Practices Act 1974*.

Source: Information provided by Australian Government departments and agencies.

Role of the ORR

The ORR provides advice to departments and agencies on the appropriate terms of reference and the composition of review bodies for reviews under the Government's legislation review program. The Government requires the ORR to advise the Parliamentary Secretary to the Treasurer and the responsible portfolio Minister as to whether proposed terms of reference meet both the CPA requirements and the Australian Government's legislation review requirements.

To assist departments and agencies to meet the Government's requirements, the ORR has developed a template terms of reference (box D.1) which can be adapted by departments to fit the specific requirements of each review. This template may assist departments and agencies to meet their requirements for the 10-year review of legislation as required under clause 5(6) of the CPA.

Box D.1 **The template terms of reference**

1. The [legislation], and associated regulations, are referred to the [Review body] for evaluation and report by [date]. The [Review Body] is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.
2. The [Review Body] is to report on the appropriate arrangements for regulation, if any, taking into account the following:
 - (a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;
 - (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;
 - (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;
 - (d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards; and
 - (e) compliance costs and the paperwork burden on small business should be reduced where feasible.
3. In making assessments in relation to the matters in (2), the [Review Body] is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the [Review Body] should:
 - (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the [legislation] seeks to address;
 - (b) clarify the objectives of the [legislation];

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Box D.1 (continued)

- (c) identify whether, and to what extent, the [legislation] restricts competition;
- (d) identify relevant alternatives to the [legislation], including non-legislative approaches;
- (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of [legislation] and alternatives identified in (d);
- (f) identify the different groups likely to be affected by the [legislation] and alternatives;
- (g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;
- (h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and
- (i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the [legislation] and, where it differs, the preferred option.

4. In undertaking the review, the [Review Body] is to advertise nationally, consult with key interest groups and affected parties, and publish the report.

In undertaking the review and preparing its report and associated recommendations, the [Review Body] is to note the Government's intention to announce its responses to the recommendations, after obtaining advice from [the Secretary/Minister] and, where appropriate, after consideration by Cabinet.

Source: ORR.

The Future

On 14 April 2005, the Productivity Commission released its inquiry report, *Review of National Competition Policy Reforms*. The report analysed the impact of NCP and related reforms on the Australian economy and community more broadly, and provided recommendations on future reform priorities. Its recommendations focused on areas offering ‘...opportunities for significant gains to the Australian economy from removing impediments to efficiency, and enhancing competition, including through a possible further legislation review and reform programme...’ (PC 2005, pp. IV-V).

The report found evidence of substantial economic benefits from the NCP, and recommended that a future legislation review program similar to the current one be implemented. Drawing on some of its findings about the perceived weaknesses of the current program the report recommended that a new reform program be limited to legislation which is likely to provide significant net benefit to the community,

place a greater emphasis on transparency and independence through formal requirements to make reports public, and involve greater consultation requirements and independence of review bodies (PC 2005, pp. 250-255).

The Treasurer stated that as the Commission's report was intended to inform the COAG review of NCP arrangements later in 2005, there would be no formal government response to this report (Costello 2005). The response would instead be the outcome of the COAG review.