
C Regulatory reform in the States and Territories

This appendix outlines existing mechanisms and developments in regulation review in the States and Territories during 1999-2000. A table at the end of the appendix summarises regulatory review mechanisms in place in each jurisdiction.

C.1 New South Wales

Responsibility for streamlining and simplifying New South Wales' regulatory environment rests with the Inter-governmental and Regulatory Reform Branch of the New South Wales Cabinet Office.

Existing mechanisms for regulation review

Review mechanisms that operate in New South Wales include the following.

Regulatory Impact Statement requirements — The *Subordinate Legislation Act 1989* requires the preparation of a RIS for all new principal statutory rules. The RIS must include a statement of objectives, an identification of options by which those objectives can be achieved, an assessment of the costs and benefits of options, and a consultation statement. The RIS, along with written comments and submissions received, is forwarded to the Regulation Review Committee of the New South Wales Parliament within 14 days of a statutory rule being published in the Gazette. The RIS is tabled in Parliament when notice is given of the making of a new regulation, or as soon as possible thereafter.

Staged repeal of statutory rules — Section 10 of the *Subordinate Legislation Act 1989* provides for the automatic repeal of statutory rules after five years.

Best practice guidelines — The New South Wales Government issues 'best practice' guidelines with which all agencies must comply when proposing regulatory measures. The guidelines are contained in the publication *From Red Tape to Results*. The guidelines prompt regulators to regulate ends not means and use commercial incentives rather than command and control rules.

Cabinet minutes — All Cabinet minutes that propose new (or amended) regulatory controls must demonstrate that the ‘best practice’ approach has been applied in assessing the regulatory impact of the proposal.

Regulatory plans and reports — A Premier’s Memorandum requires Ministers to provide the Premier with an annual ‘regulatory plan’ and report for each department and agency within their portfolio. However, compliance with this requirement is low. The New South Wales Government is reviewing this arrangement.

Legislation reviews — The New South Wales Government is reviewing some 171 statutes pursuant to National Competition Policy. As at 30 June 2000, reviews of 63 Acts were complete and 100 were in progress. The other eight are yet to commence.

Developments in regulation review

In June 2000, the New South Wales Parliament passed legislation that established competitive neutrality complaints, investigation and reporting roles for the Independent Pricing and Regulatory Tribunal and the State Contract Control Board. The Tribunal has been given responsibilities for all complaints that are applicable to public authorities, except those that relate to tender bids, which are covered by the Board. Usually the investigation and reports are to be completed within ten weeks of receiving the complaint and the report is to be publicly available.

C.2 Victoria

The Victorian Office of Regulation Reform (VORR), which is located within the Department of State and Regional Development, provides assistance to both government and industry in the development of efficient regulation.

Existing mechanisms for regulation review

The institutional arrangements in place for regulation reform are described briefly below.

RIS requirements for new regulations — RIS requirements apply to all regulations that impose an ‘appreciable’ economic or social burden on any sector of the public. The *Subordinate Legislation Act 1994* requires that independent advice be sought to confirm that RISs adequately meet the requirements contained in section 10(1).

RIS requirements for existing regulations — Under the Subordinate Legislation Act, regulations are automatically repealed after ten years. This encourages appropriate

review of regulation to assess whether it is still needed. RIS requirements apply to all reviews of sunseting regulations that impose an ‘appreciable’ economic or social burden on any sector of the public.

Cabinet requirements for proposed legislation — The Victorian Cabinet Handbook requires agencies preparing Cabinet submissions to justify the use of legislation as the most appropriate means of implementing the proposal, including consideration of whether the policy can be implemented by non-legislative means. Where the proposal may have a major impact, agencies are required in their submission to identify the costs and benefits for both the government and the community.

Annual Regulation Alert — Essentially a regulatory plan that provides information to business and the general public on those regulations due to sunset and details on new regulations proposed for the coming financial year.

In recent years, the VORR has enhanced its research and benchmarking role with a focus on industry sector reviews. The industry sector review approach has been designed to ensure that Victorian industries are served by efficient regulation and administration. Reviews of the tourism, aquaculture, and cut flowers and nurseries industries were the first undertaken. The next series of reviews is being planned and a review of the textiles, clothing, footwear and leather industries has commenced.

The VORR’s website can be found at <http://www.dsd.vic.gov.au/regreform>. The site is tailored to the needs of business, industry associations and government agencies and offers:

- improved access to up-to-date information on current reform initiatives;
- publications on benchmarking of best practice regulation across a wide range of sectors;
- the full suite of Office publications for improving regulatory quality; and
- links to key sites covering a range of regulatory issues in Victoria, Australia and overseas.

Legislation reviews — In 1996, Victoria published a timetable for legislation reviews containing some 400 Acts, regulations and other forms of legislation. Some of these were aggregated into 100 reviews over the life of the program. In 1999-2000, significant progress was made, including deregulation of farm gate price controls in the dairy industry that were accompanied by an adjustment package for dairy farmers and concessions on stamp duty from the Victorian Government. Victoria has also emphasised a broad and rigorous public interest test, which includes extensive opportunities for input from the community.

Developments in regulation review

The VORR has broadened its role in providing advice and assistance to agencies throughout the policy development process rather than waiting until the end of the process. Avenues it uses to do this include:

- participation in interdepartmental working groups;
- providing advice and assistance in the preparation of RISs;
- National Competition Policy legislation reviews; and
- Cabinet.

A review of the eight per cent limit on liquor license holdings in the *Liquor Control Reform Act 1998* was conducted by the VORR in response to the National Competition Council's second tranche assessment of the review of the Act.

As part of its wider role, the VORR and the Department of Justice prepared a joint paper on 'Multi-Disciplinary Practices and the Incorporation of Legal Practices' on behalf of the Attorney General. In addition, further joint work has been undertaken with the Department of Treasury and Finance in relation to the development of regulatory management systems to improve the policy-making and decision-making process for regulatory proposals.

Research was undertaken into regulation governing business, recreational and community access to the Yarra River and regulation impacting on the government's e-commerce capability with the general public. This research forms part of the reviews into these issues.

With greater involvement in the policy development of principal legislation, the VORR provided advice and assistance on many proposals; notably on food safety, tobacco and legionnaires' disease.

The Victorian Scrutiny of Acts and Regulations Committee has been asked to inquire into the *Subordinate Legislation Act 1994*. The Committee has appointed a subcommittee of five members called the Regulation Review Subcommittee to perform this task. It is due to report by 31 December 2000.

C.3 Queensland

It is the role of the Business Regulation Reform Unit to instill change across government in relation to legislative intervention by working with government and industry to improve the regulatory environment and the business/government regulatory interface. The Unit is part of the Department of State Development.

The Business Regulation Reform Unit undertakes research into regulation reform issues, provides assistance and advice to government agencies on regulatory proposals in relation to the RIS requirements under the Queensland *Statutory Instruments Act 1992*, provides training to agencies in areas relating to regulation review and the RIS process, and develops policy and provides advice to government on improving the regulatory environment. The Business Regulation Reform Unit also administers the *Retail Shop Leases Act 1994*, which provides low cost, informal and formal dispute resolution services for retail tenants and landlords.

Existing mechanisms for regulation review

Specific regulatory review mechanisms that operate in Queensland are listed below.

The Statutory Instruments Act 1992 — This Act was amended in 1995 to require the preparation of a RIS for all new or amended subordinate legislation that is likely to impose an ‘appreciable’ cost on business and/or the community in general. The Act provides that a RIS must include a statement of objectives, options for achieving the objectives and a cost-benefit analysis of each option. The Act also requires that the RIS be made available for consultation for a period of no less than 28 days.

RIS guidelines and software — Software has been developed to help agencies prepare RISs. The software incorporates the requirements of the RIS and is used in conjunction with the RIS Guidelines.

Staged automatic expiry of subordinate legislation — In order to reduce the regulatory burden and ensure that subordinate legislation is relevant to current economic and social circumstances, subordinate legislation automatically expires after ten years.

Legislation reviews — There are a total of 131 reviews to be done under the Queensland legislation review program. Half of these reviews have been completed or the relevant legislation repealed, 48 of the reviews are under way, 11 are at the stage of determining the scope of the review, and seven are yet to begin.

Developments in regulation review

The business licence rationalisation program has progressed towards the target of a 50 per cent reduction in the number of business licences (from 520 to 270) and a total of 112 business licences are being extended in term. The nominal reduction in business licences is being achieved by ‘rolling up’ similar licences into one licence and abolishing other unnecessary licences. The extension in term will offer longer licence terms to business as an option. These initiatives will reduce compliance

costs to business. To date, approximately half of licence rationalisation reforms have been achieved.

Guidelines on Alternatives to Prescriptive Regulation (Department of State Development 2000a) were published and distributed to government and business agencies. The aim is to improve regulations and create a more flexible regulatory environment for business. The guidelines will encourage agencies to introduce and promote non-regulatory means of achieving their objectives.

Guidelines for Improving Service Delivery in Government Agencies (Department of State Development 2000b) were published and distributed to all government departments to provide a framework to improve service for business clients of regulatory agencies. The guidelines encourage agencies to identify the needs of business and improve service, including flexible and efficient regulatory systems.

Following on from a consultancy study, an interdepartmental working group has been established to improve the consistency and quality of government dispute resolution processes.

The Red Tape Reduction Task Force has been re-established. The Task Force comprises representatives of business and industry and reports to the Minister for State Development on ways to reduce red tape for business, in particular, small business.

A Red Tape Reduction Stock Take was published to promote progress made by government agencies and units in reducing the regulatory burden on business.

The Government is considering the merits of developing a regulatory communication system to alert business to the regulatory intentions of government agencies and allow business more opportunity to engage in consultation.

C.4 South Australia

Regulatory reform in South Australia is the primary responsibility of the Economic Reform Branch located in the Department of Premier and Cabinet. The Department of Industry and Trade oversees regulatory reform that focuses on small business.

Existing mechanisms for regulation review

Regulatory review mechanisms that operate in South Australia include the following.

Ten year sunset program — In 1987, South Australia introduced a requirement for ten year sunset clauses for existing and all new regulations (*Subordinate Legislation Act 1978*, Part 3A). Since then, agencies have reviewed existing regulations, updated those for which a need remained and allowed others to lapse. In addition, all by-laws made under the *Local Government Act 1999* sunset after seven years.

Parliamentary scrutiny — Regulations made by the South Australian Government and by-laws made under the *Local Government Act 1999* are subject to scrutiny and possible disallowance by the Legislative Review Committee.

Cabinet requirements for proposed legislation — The *Cabinet Handbook* gives effect to the Treasurer's Instruction that requires agencies preparing Cabinet submissions to justify the use of legislation as the most appropriate means of implementing the proposal, including consideration of whether the policy can be implemented by non-legislative means. Where the proposal may have a major impact, agencies are required in their submissions to identify the costs and benefits for both the government and the community.

Consultation requirements — The South Australian *Cabinet Handbook* requires that for all Cabinet submissions, relevant Ministers are responsible for ensuring that their agencies consult with those who are likely to be affected by the proposal.

Business Licence Information System — Licences and forms are now accessible via the Internet through the Business Channel project that is managed by the Business Centre in the Department of Industry and Trade. The fully integrated Commonwealth, State and Local Government Business Licence Information System was officially launched in October 1997.

Legislation reviews — Under the *Competition Principles Agreement*, South Australia undertook to review and, where appropriate, reform 178 Acts that contain restrictions on competition. As at June 2000, approximately two thirds of the reviews were complete, and the remainder were underway.

Developments in regulation review

The *Trans-Tasman Mutual Recognition (South Australia) Act 1999* came into operation in September 1999.

All codes of practice referenced in South Australian legislation have been added to the national Business Information Service.

A Small Business Government Network has been formed comprising representatives from government agencies at all levels, which have a role in

working to assist small business operators. A key role for the Network is to identify, at an early stage, new legislation and regulation that might have an impact on small business.

A decision has been made to keep the Office of the Small Business Advocate for another three years. The office acts as a mediator between government and business and is the first point of contact for business if they are having difficulties with government processes.

C.5 Western Australia

The Federal and Constitutional Affairs Division of the Ministry of Premier and Cabinet is responsible for coordinating and overseeing regulatory reforms on a whole-of-government basis.

Each Minister and government agency is responsible for ensuring that reviews of legislation within their portfolios are conducted in an open and transparent manner, including allowing a suitable period for public consultation.

The Competition Policy Unit of the Department of the Treasury is responsible for ensuring that the objectives of the National Competition Policy are carried out by state and local government agencies responsible for legislation and local laws. The Unit also advises and assists agencies to undertake reviews of existing and proposed legislation that potentially restrict competition.

Existing mechanisms for regulation review

Review initiatives in Western Australia are outlined below.

Regulation Review Panel — The Small Business Development Corporation and the Regulation Review Panel maintain a watching brief over legislation and policies that impact on small business. The Corporation and the Panel submit comments and make recommendations to the Minister for Small Business on any proposed, or existing, legislation that is considered to have an adverse impact on small business.

Red tape forums — These forums were introduced by the Small Business Development Corporation to assist small business operators to present their concerns to government about business regulation and compliance. To date, forums have been held on: regulation in the tourism and food industries; local government; employee relations; and the building industry. Forums are also conducted in regional areas in order to identify the ‘red tape’ concerns of regional small business.

Business impact requirements and explanatory memoranda — Subordinate legislation going before Parliament or the Joint Standing Committee on Delegated Legislation requires an explanatory memorandum outlining the purpose of the law, its justification and the consultation undertaken. Departments are also required to consider the impact on small business of legislative proposals put to Cabinet.

Legislation reviews — Legislation Review Guidelines were prepared in 1996 to explain and support the process of review of new and existing legislation in accord with the *Competition Principles Agreement*. The conduct of a review is the responsibility of the relevant Minister who, on completion of the review report, forwards it to the Government Cabinet Management Standing Committee for its decision and recommendation to Cabinet. WA Treasury's Competition Policy Unit is responsible for providing support to reviewers and providing an independent report to the Government Cabinet Management Standing Committee on the quality and conduct of the review when the relevant Minister submits it for approval.

Developments in regulation review

Local Laws Management and Review System — This system is a software tool designed to assist local governments in managing their local laws and regulations. It also provides small business with the opportunity to be advised of, and involved in, regulation review and development processes that impact on the operation of a small business. The new system is now operational and training is being provided to local governments in its use.

Business Licence and Information System — The software for the system has been extensively redeveloped to accommodate, for the first time, business licence information from all 144 local governments in Western Australia. This is in addition to the Commonwealth and State business licence information currently on the system.

An Internet facility is also being developed to further enhance the system. When the system goes online in late 2000, clients will be able to conduct their own on-line business licence searches and download information via the Internet.

C.6 Tasmania

The Regulation Review Unit is located within the Department of Treasury and Finance and is responsible for administering Tasmania's regulation review system. This system comprises two elements, namely the *Subordinate Legislation Act 1992* and the Legislation Review Program.

These two review mechanisms share a common objective — to ensure that the State’s legislative framework does not unnecessarily impede or restrict overall economic activity and that businesses are only subject to well-targeted and appropriately justified legislation.

The Legislation Review Program principally covers primary legislation, incorporating both a review mechanism for existing legislation and ‘gatekeeper’ arrangements for new legislation. The Subordinate Legislation Act, as its name suggests, covers new subordinate legislation and has sunseting arrangements for existing subordinate legislation.

Existing Mechanisms for Regulation Review

The Subordinate Legislation Act

The key review mechanisms contained in the Subordinate Legislation Act are listed below.

RIS requirements — The Act requires that a RIS be prepared for all new subordinate legislation imposing a significant cost, burden or disadvantage on any sector of the public. In these circumstances, the relevant agency submits a RIS to the Regulation Review Unit for consideration and endorsement prior to being publicly released for a mandatory 21 day period. Following this process, the proposed subordinate legislation is submitted to the Governor for approval.

Staged repeal — The Act establishes a timetable for the staged automatic repeal of all existing subordinate legislation and provides for all subordinate legislation made on, or after the commencement of the Act (13 March 1995) to be automatically repealed on its tenth anniversary.

Guidelines for making subordinate legislation — These guidelines require regulators to consider alternative options for achieving the Government’s objectives and to examine the impact of proposed subordinate legislation on competition.

The Legislation Review Program

The Legislation Review Program was introduced in 1996 and meets Tasmania’s legislation review obligations under National Competition Policy. The Legislation Review Program outlines both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new

legislative proposals that restrict competition or significantly impact on business are appropriately justified as being in the public interest.

Assessment of new legislation — All proposed legislation is assessed by the Regulation Review Unit. Where it is considered that proposed legislation contains a major restriction on competition which has economy-wide implications or significantly affects a sector of the economy, a RIS must be prepared and public consultation undertaken. More than 400 legislative proposals have been considered under this ‘gatekeeper’ provision of the Legislation Review Program since its inception in 1996.

Reviews of existing legislation — Where it is considered by the Regulation Review Unit that existing legislation contains major restrictions on competition, review bodies are required by their terms of reference to prepare a RIS in relation to those restrictions and undertake a mandatory public consultation process. The RIS will assist in identifying whether the benefits to the public of the restriction outweigh the costs. Where a restriction is considered to be minor, review bodies are only required to conduct a brief assessment of the costs and benefits of the restriction. While public consultation is encouraged, it is not mandatory for minor reviews. In conducting reviews of legislation, any subordinate legislation that accompanies the primary legislation must also be considered in the review.

Some 253 Acts were identified as restricting competition in some form (out of a total of 712) and placed on the initial schedule for review. Of those 253 Acts, 77 were, or have been, subsequently repealed and a further 35 removed from the schedule. The current status of the remaining 141 Acts is shown in table C.1.

Table C.1 Current status of the Tasmanian Legislation Review Program

<i>Status</i>	<i>Number of reviews</i>
Yet to commence	3
Underway	18
Complete	54
Complete (but yet to go to Cabinet)	11
National	12
Legislation expected to be repealed	43
Total	141

Source: Tasmanian Government estimates.

C.7 Australian Capital Territory

The Micro-economic Reform Section in the Department of Treasury and Infrastructure is responsible for the policy, coordination and implementation of regulatory reform in the ACT. The Business Support and Employment Unit in the Chief Minister's Department is responsible for business-related reforms and programs.

Existing mechanisms for regulation review

Regulatory reform — The Government requires that a RIS accompany each regulatory proposal. A *Guide to Regulation in the ACT* provides guidelines on preparing RISs. The Micro-economic Reform Section also provides advice. The RIS brings together a Red Tape Task Force strategy and National Competition Policy requirements.

Agency regulatory plans — The plans provide information on the regulatory proposals to be considered during the year. In addition, agencies provide information on achievements against the objectives published for the previous year. In September each year, the Government publishes the consolidated report *ACT Government – Agency Regulatory Plans*.

Independent Competition and Regulatory Commission — *The Independent Pricing and Regulatory Commission Act 1997* gives the Commission powers in the areas of pricing and access. *The Independent Competition and Regulatory Commission Amendment Act 2000*, gazetted on 23 March 2000, extended the Commission's role by including regulatory investigation functions covering competitive neutrality complaints and government-regulated activities.

Business Advisory and Regulatory Review Team — This team is drawn from the private sector and industry bodies to advise the Government on matters relating to small business. It also provides a mechanism for ongoing dialogue between the public and private sectors. Specifically, the team provides an important link to the business community and, in particular, assists the Government by providing feedback on government business initiatives. It consults with a range of business individuals, groups and associations on an ad hoc basis and coordinates business community responses. In addition, the team advises the Government, when requested, on regulatory reform and red tape issues in general, and specific regulatory proposals and issues as appropriate.

Legislation reviews — In the ACT, responsibility for conducting reviews has been devolved to agencies. The Micro-economic Reform Section oversees the

timeliness, rigour and robustness of the reviews and any subsequent reforms and delivers the review program.

Developments in regulation review

ACT Business Gateway — The Gateway was launched in July 1999. It provides a contact point for ACT business information that can be accessed through the Internet or telephone. It includes the *Business Licence Information Service* which is a one stop shop for obtaining information on Commonwealth and ACT licences, permits and registrations required for operating a business in the ACT.

C.8 Northern Territory

The Department of Industries and Business provides a regulatory review role within the Northern Territory.

Existing mechanisms for regulation review

The Department of Industries and Business scrutinises any proposed regulation and its accompanying explanatory memorandum. Regulations that are complex or those that have wide ranging impacts on government and non-government agencies are referred to the Coordination Committee, which includes the Chief Executive Officers of all departments and government agencies, for consideration.

The Department of Industries and Business works in partnership with the Chief Minister's Cabinet Office to ensure that, when prospective regulations are being sponsored by an agency, there is wide consultation with business and the relevant industry bodies. This aims to ensure that the impact on business of proposed regulations is, where possible, minimal.

Legislation reviews — In the Northern Territory, each Department and Agency is responsible for conducting reviews of the legislation they administer. The Northern Territory has 84 reviews on its legislation review program. As at 31 December 1999, relevant legislation for approximately ten reviews had been repealed, 12 reviews had finished, 43 were underway, 14 were yet to begin, one had been removed from the program and four were part of a national review.

Developments in regulation review

The Department of Industries and Business distributed to government agencies copies of the Small Business Ministerial Council's 2000 publications *Giving Small Business a Voice – Developing Strategies for Informing Business about Regulation* and *Giving Small Business a Voice – Achieving Best Practice Consultation with Small Business*. This should assist in the development and amendment of regulation impacting on the small business environment. It also provides guidance on how to conduct industry consultation.

* * *

Regulation review mechanisms within State and Territory governments are summarised in table C.2.

Table C.2 State and Territory regulation review mechanisms

<i>Jurisdiction</i>	<i>RIS requirements for</i>			<i>RIS guidelines</i>	<i>RIS adequacy criteria</i>	<i>Regulatory plans</i>
	<i>Bills</i>	<i>subordinate instruments</i>	<i>Sunset clauses</i>			
New South Wales	a	✓	✓	✓	✓	
Victoria		✓ b	✓	✓	✓	✓
Queensland		✓ c	✓	✓		
South Australia	d	d	✓	✓		
Western Australia	e	e				
Tasmania	✓ f	✓ g	✓	✓	✓	
Australian Capital Territory	✓ h	✓ i		✓	✓	✓
Northern Territory	j	j				

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 Agencies preparing Cabinet submissions must justify the use of legislation and identify costs and benefits for proposals that have a major impact.

e The Small Business Development Corporation publishes a watching brief on legislation and policies that adversely impact on small business. Cabinet submissions must indicate whether a proposal impacts on small business and the extent of any impact must be explained.

f For new Bills assessed by the Regulation Review Unit to contain a major restriction on competition.

g For new subordinate instruments imposing a significant cost, burden or disadvantage on any sector of the public.

h Exceptions apply for Bills that are mechanical or administrative in nature.

i For proposals the Micro-economic Reform Section considers to be major.

j The Department of Industries and Business scrutinises proposed regulations and accompanying explanatory memoranda.

Source: Correspondence from the States and Territories.