

---

## D Regulatory reform in the States and Territories

This appendix outlines existing mechanisms and developments in regulation review in the States and Territories during 1998-99.

### D.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 which operate in New South Wales include the following.

*Regulatory Impact Statement requirements* — The *Subordinate Legislation Act 1989* requires the preparation of a Regulatory Impact Statement (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 at the time 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 submissions* — All Cabinet minutes which propose new regulatory controls must demonstrate that the ‘best practice’ approach has been applied in assessing the regulatory impact of the proposal.

*Regulatory plans and reports* — In order to assist with the coordination and integration of regulatory proposals across government, Ministers are required to provide to the Premier an annual ‘regulatory plan’ for each department and agency within their portfolio. The plan briefly describes the regulatory proposals to be considered in the forthcoming financial year, including any anticipated reform of the existing stock of regulation administered by the department or agency. Reports on achievements in regulatory reform over the previous 12 months are also required.

## **Developments in regulation review**

In January 1999, the Regulation Review Committee of the Parliament of New South Wales released a report prepared by the Public Management Service of the OECD on Regulatory Impact Assessment in New South Wales. The report (RRC 1999) found that the basic approach taken to regulatory impact assessment contained in the *Subordinate Legislation Act 1989* is sound and has delivered important gains in terms of regulatory quality and public participation in the regulation-making process. The report also identified several areas where improvements could be made to the New South Wales system. The suggested improvements will be considered along with other options for improving regulatory quality.

## **D.2 Victoria**

The Victorian Office of Regulation Reform, which is located within the Department of State Development, provides assistance to both government and industry in the development of efficient regulation. In addition to its role of providing advice and assistance to agencies on Regulation Impact Statements (RISs) and National Competition Policy legislation reviews, the Victorian Office of Regulation Reform provides research and secretariat support to the Government’s Industry Sector Review Program. This Program is designed to develop a more streamlined regulatory environment and improve government services to key industry sectors. The Victorian Office of Regulation Reform also maintains an ongoing role in benchmarking best practice regulation across a wide range of industry sectors and jurisdictions and in examining industry concerns in relation to specific regulatory instruments.

---

## Existing mechanisms for regulation review

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

*RIS requirements for new subordinate legislation* — RIS requirements apply to all subordinate legislation which imposes an ‘appreciable’ economic or social burden on a sector of the public.<sup>1</sup> The *Subordinate Legislation Act 1994* requires that independent advice be sought to confirm that RISs adequately meet the requirements contained in section 10(1) of the Act.

*Cabinet requirements for proposed legislation* — The Victorian *Cabinet Handbook* requires that all Cabinet submissions 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, submissions are required to identify the costs and benefits for both the Government and the community.

*Sunset clauses* — Under the *Subordinate Legislation Act 1994* all regulations are automatically revoked after 10 years to ensure that regulation is still appropriate to the needs of society.

*Annual Regulation Alert* — A publication designed to allow business and the general public to know in advance those regulations due to sunset and it includes details of many new regulations proposed for the coming financial year.

## Developments in regulation review

As noted in the last edition of *Regulation and its Review*, the Victorian Office of Regulation Reform has enhanced its research and benchmarking role with a focus on industry sector reviews. In the main, private independent consultants now undertake the certification of RISs under the *Subordinate Legislation Act 1994*.

The industry sector approach to reviews has been designed to ensure that Victorian industries are served by best practice regulation and administration. The tourism industry was the first review in this series and implementation of the Tourism Industry’s Task Force recommendations is now complete. To date, the Office has provided secretariat support to two further reviews of the Victorian Aquaculture and Cut Flowers and Nurseries industries.

---

<sup>1</sup> The guidelines published under section 26 of the Act discuss the question of defining what constitutes an appreciable burden.

---

The recommendations made as a result of these reviews have received widespread industry support and implementation strategies are now being developed. The Office is currently in the process of identifying further industry sectors for inclusion in the Program on the basis of their potential growth and regulatory burden.

In March 1999, the Victorian Office of Regulation Reform launched its new Website which can be found at <http://www.dsd.vic.gov.au/regreform>. The site is tailored to the needs of business users, industry associations and government agencies and offers:

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

The recommendation of the Victorian Law Reform Committee report (1997), *Regulatory Efficiency Legislation*, to permit businesses to obtain approval for alternative compliance mechanisms, was endorsed by the Victorian Government. This provides an opportunity for industry associations and businesses to develop alternative compliance mechanisms which will allow business to meet the objectives of regulatory regimes in a more efficient manner than provided for under prescriptive regulations. It is further anticipated that, in the near future, the Victorian Parliament's Scrutiny of Acts and Regulations Committee will be given the terms of reference to conduct a review of the Victorian RIS process.

### **D.3 Queensland**

It is the role of the Business Regulation Reform Unit to instil change across Government in relation to legislative intervention by working with public and private sector agencies to improve the development and review of regulation and the client/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 in relation to compliance of Queensland government agencies with the RIS requirements of the Queensland *Statutory Instruments Act 1992*, provides training to agencies in areas relating to regulation review and develops policy and provides advice to Government on improving the regulatory environment.

---

## Existing mechanisms for regulation review

Specific regulatory review mechanisms which 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 which is likely to impose an ‘appreciable’ cost on business and 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 not less than 28 days.

*RIS Guidelines and Software* — Software has been developed to assist agencies undertaking a RIS. 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 10 years.

## Developments in regulation review

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.

The nominal number of business licences is being reduced by 50 per cent and 115 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 96 licences. The extension in term will offer longer licence terms to business as an option. These initiatives will reduce compliance costs to business and are being implemented over a two year period. To date, approximately 50 per cent of licence rationalisation reforms have been achieved.

Guidelines on regulatory alternatives are being developed to improve regulations and create a more flexible regulatory environment for business. The guidelines will encourage agencies to introduce and promote non-regulatory ways of achieving the required objective.

Guidelines on customer service standards have been developed to improve service for business clients of regulatory agencies. The guidelines encourage agencies to

---

identify the customer needs of business and improve service, including flexible and efficient regulatory systems.

A consultancy study has been completed to identify ways of improving enforcement and appeal processes and making them simpler for business. Based on the major findings of the study, an interdepartmental working group has been established to develop consistent dispute resolution processes.

## **D.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. Regulatory reform which focuses on small business is the primary responsibility of the Department of Industry and Trade.

### **Existing mechanisms for regulation review**

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

*10 year sunset program* — In 1987, South Australia introduced automatic or sunset clauses in existing and in all new regulations (*Subordinate Legislation Act 1978*, Part 3A). Since then agencies have reviewed all their existing regulations, updating those for which a need remains and allowing others to lapse. All updated and new regulations now have a 10 year sunset clause. In addition, all by-laws made under the *Local Government Act 1934* sunset after seven years.

*Parliamentary scrutiny* — Regulations made by the South Australian Government and by-laws made under the *Local Government Act 1934* are subject to scrutiny and possible disallowance by the Legislative Review Committee.

*Cabinet requirements for proposed legislation* — The South Australian *Cabinet Handbook* gives effect to the Treasurer's Instruction which requires that all Cabinet submissions 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, submissions are required 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.

## **Developments in regulation review**

South Australia passed the *Trans-Tasman Mutual Recognition (South Australia) Act 1999* in March 1999, however, the Act has not yet commenced operation.

Business Licence Information System licences and forms are to become accessible via the Internet through the Business Channel project which is being 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.

All codes of practice referenced in South Australian legislation have been identified so they can be added to the national Business Information Service.

## **D.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 a suitable period of 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 government 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, which is convened by the Corporation, 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 over business regulation and compliance. To date, forums have been held on regulation in the tourism and food industries and on local government and employee relations. 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.

## **Developments in regulation review**

*Local Laws Management and Review System* — Developed by the Small Business Development Corporation, the Local Laws Management and Review System is a software tool designed to assist local governments to better manage their local laws and associated regulatory controls and, in doing so, minimise the regulatory burden placed on small business. The Local Laws Management and Review System provides small business and/or their representatives with the opportunity to be advised of, and involved in, regulation review and development processes that impact on the operation of a small business.

## **D.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 1992* covers new subordinate legislation and has sunset arrangements for existing subordinate legislation.

## Existing mechanisms for regulation review

### *The Subordinate Legislation Act 1992*

The key review mechanisms contained in the *Subordinate Legislation Act 1992* 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, a RIS is submitted to the Regulation Review Unit for consideration and endorsement by the Secretary of the Department of Treasury and Finance 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 estimate 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 in a negative manner are appropriately justified in the public interest.

- *Assessment of new legislation* — All new legislation is assessed by the Regulation Review Unit. Where it is considered that proposed legislation contains a major restriction on competition (that is where a restriction has

---

economy-wide implications or significantly affects a sector of the economy), a RIS must be prepared and public consultation undertaken.

- *Reviews of existing legislation* — Some 240 Acts have been scheduled for review in terms of restricting competition. 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 will only be 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, it is a requirement that any subordinate legislation that accompanies the primary legislation in focus be also considered.

## **Developments in regulation review**

The Tasmanian Government remains committed to reducing the burden of red tape and has also emphasised the importance of consultation in the policy process.

## **D.7 Australian Capital Territory**

The National Competition Policy Unit in the Chief Minister's Department is responsible for the policy, coordination and implementation of regulatory reform in the ACT. The Business Support Unit within the Chief Minister's Department is responsible for business-related reforms and programs.

### **Existing mechanisms for regulation review**

*Regulatory reform* — The *Manual for Regulatory Reform*, currently being re-drafted, provides guidelines on preparing Regulatory Needs Analyses and Business Impact Assessments. As mandated by the *Cabinet Handbook*, both documents are required when submitting regulatory proposals for Cabinet's consideration.

*Legislation reviews* — In the ACT, responsibility for conducting reviews has been devolved to agencies. The National Competition Policy Unit, in the Chief Minister's Department, oversees the timeliness, rigour and robustness of the reviews and any subsequent reforms and delivers the Chief Minister's Department review program.

---

All agencies, under clause 5(3) of the *Competition Principles Agreement*, are required to review and, where appropriate, reform portfolio legislation containing anti-competitive provisions by 2000. Legislation reviews are proceeding according to the revised schedule which reflects the schedule published in 1996, but modified with the benefit of experience from reviews since that time.

*Agency regulatory plans* — As part of the ACT Government's response to the recommendations of the Red Tape Taskforce, the Government agreed that agencies should develop regulatory plans each year. The plans provide information on the regulatory proposals to be considered during the year including any anticipated reform to existing regulations administered by the agencies and any reform initiatives planned by the agencies. In addition to this information, this year agencies will also provide information on achievements against the objectives published for the previous year. Each year in September, the Government publishes the consolidated report *ACT Government - Agency Plans*.

## **Developments in regulation review**

### *Expansion of Independent Pricing and Regulatory Commission*

On 15 June 1999, the Government agreed to amend the *Independent Pricing and Regulatory Commission Act 1997* to broaden the powers of the Independent Pricing and Regulatory Commission.

The effect of the amendments will be to expand the powers of the Commission from prices and access to encompass the reform of utilities regulatory arrangements and the development of a general regulatory role in the ACT.

### *Business Advisory and Regulatory Review Team*

The Team was appointed by the ACT Government in May 1999 to advise on matters relating to small business and provides a mechanism for ongoing dialogue between the public and private sectors. It replaces the former Consultative Panel of Business Representatives.

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 provides advice to the Government, when requested, on regulatory reform

---

and red tape issues in general, and specific regulatory proposals and issues as appropriate.

## **D.8 Northern Territory**

The Northern Territory Department of Industries and Business continues to provide a regulatory review role within the Northern Territory.

### **Existing mechanisms for regulation review**

The mechanisms for regulatory review continue with the Department of Industries and Business scrutinising any proposed regulation and its accompanying explanatory memorandum. Regulations which 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 continues to work 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 of the proposed regulation on business is, where possible, minimal.

### **Developments in regulation review**

A review of regulatory functions, including statutory boards commenced in 1998 as part of the 'Planning for Growth' exercise. The review will continue during the next two years.

One of the outcomes arising from the Planning for Growth exercise was the consolidation of agencies which provide services or regulatory functions to business and industry into a single Department. The Department of Industries and Business, was established in October 1998 and incorporates functions relating to:

- industry development (business services, industry investment, regional development, territory business centres and defence, tourism and major industry support);
- racing, gaming, liquor and licensing (policy and development and licensing inspectorate); and

- 
- business practices (work health, fair trading, business registrations, trade measurement, procurement review, consumer and business affairs).

The Department was further enhanced in May 1999 with the introduction and establishment of Territory Business Centres in the four main regional centres, Darwin, Alice Springs, Katherine and Tennant Creek. These centres provide a single coordinated delivery and referral point for the services provided by the Department and can process various business licences.