
1 Progress in review and reform of existing legislation

A national program of review and reform of existing legislation which potentially restricts competition commenced in 1996. Under the terms of the Competition Principles Agreement it is required to be completed by 31 December 2000.

This chapter reports on the status of Commonwealth reviews. In addition, it examines how well these reviews have complied with various obligations and requirements, such as those concerning terms of reference, the content of reports, publication, consultation and reform efforts.

While compliance can be improved further, the process requirements have generally been met. There are, however, grounds for questioning whether the program can be completed in time.

1.1 Obligations and requirements for reviews

1997–98 was the second year of a national four–year program of review of existing legislation. The Commonwealth’s review program covers legislation which potentially restricts competition or which imposes costs or confers benefits on business. *Regulation and its Review 1996–97* detailed the origins of the review program, preparation of the Commonwealth’s Legislation Review Schedule and progress in 1996–97. Details of progress during 1997–98 are provided in this chapter, together with suggestions for improvement in the remaining two years of the program.

The Commonwealth’s obligations under the Competition Principles Agreement

One element of the Competition Principles Agreement (COAG 1995a) was a commitment by all Australian governments to review and, where appropriate, reform any existing legislation that restricts competition, by 31 December 2000.

While each government has discretion over what is reviewed, the review bodies, and the timing of reforms, the Agreement contains clear obligations for the analytical approach to reviews. Clause 5(1) of the Competition Principles Agreement specifies:

The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

Further, clause 5(9) states:

Without limiting the terms of reference for reviews a review *should*:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

These requirements largely reflect the issues addressed in a Commonwealth Regulation Impact Statement (RIS) (see chapter 2). Consequently, if clause 5(9) is fully addressed in the review, any subsequent RIS requirements for regulatory change can usually be met.

While governments are not bound by the findings and recommendations of reviews, the National Competition Council (NCC) has sought justification in cases where pro-competitive review recommendations were not supported.

The Commonwealth Legislation Review Schedule

In accordance with its obligations under the Competition Principles Agreement, the Commonwealth Government announced its review timetable on 28 June 1996 (Treasurer 1996). It comprised 98 reviews, 13 of which were already under way. The program of review not only included legislation which potentially restricts competition, but was expanded to include legislation which may impose costs or

confer benefits on business. The full schedule is in appendix A, including a brief description of the potential impact of the legislation and the status of the review.¹

In announcing the Legislation Review Schedule, the Commonwealth outlined a number of requirements for reviews. Apart from the timing and coverage of the program, each review is required:

- to be approached according to ‘the guiding principle’ (clause 5(1));
- to include an assessment of the impact on small business and report on ways to reduce the compliance and paperwork burden associated with the legislation;
- to identify the costs and benefits of the legislation and likely consequences of reform; and
- to include public consultations with those affected by the legislation.

In addition, the Government decided that:

- terms of reference should note the processes for responding to the review’s recommendations; and
- any amendment to the schedule must be agreed by the Prime Minister, the Treasurer and the Minister(s) responsible for the relevant legislation.

The Office of Regulation Review’s role

The ORR’s role is to advise Ministers as to whether terms of reference meet the requirements of the Competition Principles Agreement and the Commonwealth’s Legislation Review requirements. To that end, officials responsible for reviews:

- should consult early with the ORR on the terms of reference — the ORR has suggested to portfolios that consultation commence at least three months before the scheduled commencement of reviews; and
- are encouraged to consult the ORR on the structure and composition of review bodies.

The ORR also developed template terms of reference (see box 1.1) which can be adapted by departments to fit the specific requirements of each review.

¹ Appendix A lists the full title of each piece of legislation to be reviewed. The items are numbered (1 through 98) according to the original schedule. In this chapter, a shorthand title is sometimes adopted when referring to specific legislation listed for review. The review number is included in parentheses to facilitate cross referencing to appendices A and B.

Box 1.1 **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.
 - (e) compliance costs and the paper work 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].
 - (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.

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Box 1.2 (continued)

- (h) determine a preferred option for regulation, if any, in light of objectives set out in (2).
 - (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 a report.
5. 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.

1.2 The status of reviews

This section provides an overview of progress against the schedule as announced by the Treasurer on 28 June 1996. Section 1.3 provides an assessment of how the reviews have performed against a number of indicators.

Of the 98 reviews on the *original* schedule:

- 13 were under way when the program was announced on 28 June 1996;
- 26 were to commence in 1996–97;
- 28 were to commence in 1997–98;
- 21 were to commence in 1998–99; and
- the remaining 10 were to commence in 1999–2000.

There have been a number of variations to the 67 reviews originally scheduled to begin by 30 June 1998:²

- 5 reviews have been removed from the schedule (#17, #22, #52, #53, and #55) — see appendix A for the reasons;

² Variations to reviews originally scheduled in 1998–99 and 1999–2000 are noted in appendix A. Reviews may also be added to the schedule — for example, the Government is considering including the *Disability Discrimination Act 1992* for review in 1999–2000. This Act aims to remove discrimination against persons on the grounds of disability. However, there is considerable uncertainty about how business should comply with the Act. Furthermore, there are concerns about the potential costs of compliance and about which groups in the community should bear those costs.

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- 10 reviews have been deferred beyond 1997–98 (#41, #42, #43, #47, #49, #60, #63, #65, #66, #67); and
 - 2 reviews have been brought forward from beyond 1997–98 (#75, #77).

After accounting for these changes, there were 54 reviews which should have commenced by 30 June 1998. Figure 1.1 provides an overview of progress, which is discussed below.

Reviews completed

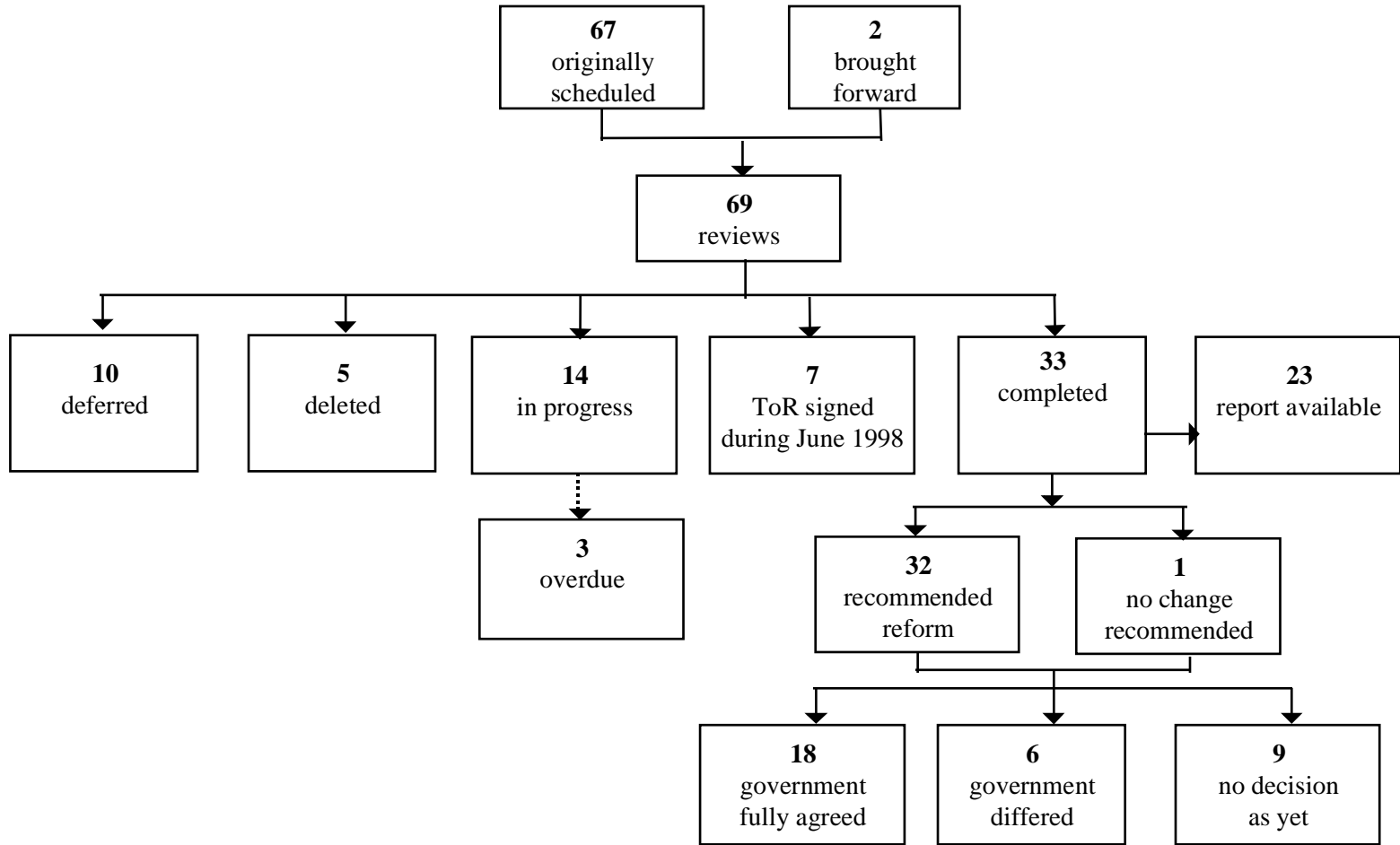
As at 30 June 1998, of the 54 reviews expected to have begun, 33 reviews (or 61 per cent) had been completed (see the status column in appendix A).

Reviews in progress at 30 June 1998

Of the 14 reviews in progress at 30 June 1998, three will be completed somewhat later than originally planned:

- the review report of the *Tradesmen's Rights Regulation Act 1946* (#25) was due by 31 October 1997; however, the review did not commence until December 1997. An interim report was circulated to major stakeholders for comment in September 1998. A final report is due to be submitted to the Minister in November 1998 for consideration by government;
- the review of the *Pooled Development Funds Act 1992* (#29) was due to be completed by 30 June 1997, but was postponed because of the Government's consideration of tax reform during 1997–98. The review taskforce is expected to report to the Minister for Industry, Science and Resources and the Treasurer after October 1998; and
- the review of the *Mutual Recognition Act 1992* (#45) was commenced in October 1997 by the COAG Committee on Regulatory Reform, but the March 1998 reporting date was extended to 30 June 1998. The final report was not available by October 1998.

Figure 1.1 Summary of review status as at 30 June 1998



Terms of reference not settled until June 1998

For seven reviews, their terms of reference were only settled late in the financial year and, for some of these, no other steps had been taken to progress them further by 30 June 1998. Comments on these seven reviews follow.

- The review of the *Aboriginal Land Rights (Northern Territory) Act 1976* (#33) was originally scheduled to commence in 1996–97. However, there were a number of changes to the proposed conduct of the review. During 1997 it was proposed that it be subsumed within a major review of the Act to be undertaken during 1997–98. However, the Minister for Aboriginal and Torres Strait Islander Affairs decided that the CPA review of the Act would be conducted separately from the major review. Terms of reference for a review of Part IV of the Act, addressing the CPA requirements, were drafted and expressions of interest for tenders for the consultant were advertised in June 1998. The review was to commence once the consultant had been appointed.
- The review of the registration provisions of the *Bankruptcy Act 1966 and Bankruptcy Rules* (#40) will be undertaken by a consultant over a five month period.
- The review of the *Customs Act 1901 (Sections 154–161L)* (#50) is to be undertaken by a taskforce of officials and is to report by 20 February 1999. The legislation deals with valuation of imported goods.
- The Primary Industries Levies Acts and related Collection Acts (#54) will be reviewed by a committee of officials and is to report by 31 December 1998.
- The review of the *National Residue Survey Administration Act 1992* and related Acts (#57) will be conducted by a committee of officials and is to report by 30 November 1998.
- A committee of officials will review the *Pig Industry Act 1986* and related Acts (#58) and is to report by 31 January 1999.
- The review of the *Agricultural and Veterinary Chemicals Act 1994* (#77) will be covered by the National Review of Agricultural and Veterinary Chemicals Legislation, which is to be undertaken in accordance with the Victorian Government's *Timetable for the Review and Reform of Legislation that Restricts Competition* (Department of Premier and Cabinet 1996).

1.3 Performance indicators for review and reform of existing legislation

Together, the obligations under the Competition Principles Agreement, the Commonwealth's requirements for the Legislation Review Schedule and the RIS requirements provide 'benchmarks' against which to assess legislation review and reform performance. Based on these requirements, the ORR has developed 11 performance indicators, covering the three stages of planning the review, conducting the review and implementing reforms (see box 1.2). These performance indicators are a mixture of process requirements and timing issues.

The objective of the assessment is not to identify specific reviews as exhibiting elements of less than ideal performance. Rather, it is about drawing lessons for the future. By clarifying the obligations and requirements for review and reform, including what constitutes best practice or good performance, future reviews are likely to be more effective, providing a better basis for reform decisions.

Figure 1.2 summarises some broad results — details for each review are presented in appendix B. In summary:

- Performance was good for those processes concerned with *planning* for reviews, such as consulting early with the ORR and adopting the type of review body decided by the Government.
- Performance for the *conduct* stage was more varied — for example, while adequate consultation (indicator (g)) was exhibited in all cases, fewer than 50 per cent of review reports, where relevant, explicitly referred to elements of the guiding principle of the Competition Principles Agreement in the executive summary (indicator (h)).
- The performance indicators for the reform stage show that steady progress is being made in announcing and *implementing* reforms. Inevitably, there will usually be a certain amount of 'unfinished business' at any one point of time, because of the lag involved in preparing regulatory change and obtaining approval for change.
- Full compliance with the RIS requirements, for regulatory change consequent upon a review (indicator (k)), was achieved in 50 per cent of cases.

The results for each indicator are discussed in more detail below.

Box 1.3 Performance indicators for review and reform of existing legislation

Stage I – Planning the reviews

- (a) Did the review commence as scheduled? If not, was approval sought from the Prime minister, the Treasurer and the responsible Minister, and have reasons for the variation been publicly stated? Did reviews commence late in the financial year?
- (b) Was the ORR consulted at least 3 months before the scheduled commencement?
- (c) Did the ORR agree that the terms of reference met the requirements of the Competition Principles Agreement and the Commonwealth's review requirements?
- (d) Was the review body as specified by the Government?

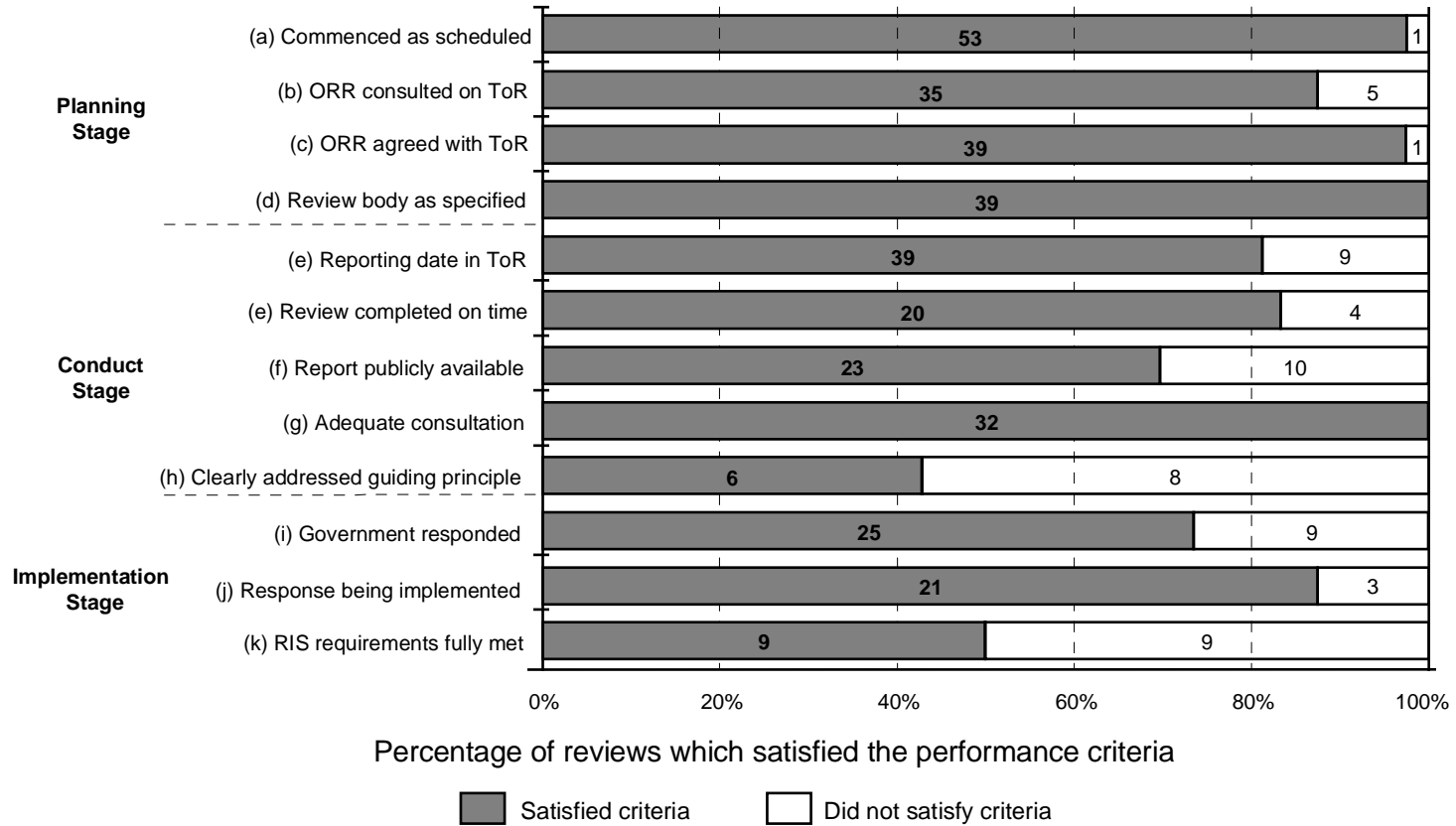
Stage II – Conducting the reviews

- (e) Has the review been completed? Was a reporting date included in the terms of reference? If so, was the review completed accordingly? Where appropriate, was approval sought for an extension?
- (f) Has the report been made publicly available? If so, how long after completion of the review?
- (g) Is there evidence of appropriate consultation opportunities?
- (h) Did the report contain a conclusion with respect to the guiding principle of the CPA?

Stage III – Implementing reforms

- (i) Has the Government responded? If so, how long after release of the report? Were the review recommendations accepted?
- (j) Where the Government has announced regulatory reforms, have the reforms been fully implemented? If so, how long after the announcement?
- (k) Where appropriate, was there full compliance with Regulation Impact Statement requirements?

Figure 1.2 Summary of legislation review performance



Note: The number of observations is each indicator are shown in the relevant area of each bar. The total number of observations is not the same for each indicator because the indicator may not be applicable and because data were not available in some cases (see Appendix B).

(a) *Did the review commence as scheduled? If not, was approval sought from the Prime Minister, the Treasurer and the responsible Minister, and have reasons for the variation been publicly stated? Did reviews commence late in the financial year?*

One discipline on with the program is the requirement to obtain approval from the Prime Minister, Treasurer and responsible Minister(s) for variations to the timing and scope of reviews. Approved variations to the original schedule have included:

- deletion of five reviews and deferral of 10 reviews, in some cases because the legislation has become redundant or new arrangements have been implemented and it is sensible to postpone the review;
- the combining of reviews for reasons of greater efficiency and effectiveness; for example, two reviews dealing with Migration Agents legislation (#23 and #24) were combined into a single review, as were the reviews of International Air Services Agreements (#34) and the *International Air Services Commission Act 1992* (#61); and
- two reviews where the Commonwealth's obligations are being met via national reviews — the *Australia New Zealand Food Authority Act 1991* (#75a) and the *Agricultural and Veterinary Chemicals Act 1994* (#77).

There has been only one case where a review did not commence as originally scheduled without the appropriate approval having been sought.

Some practices, however, can be improved. Based on the experience of the first two years, there appeared to have been scope for approval to be sought earlier, when it was clear that a variation would be desirable or necessary. There also appeared to have been scope for approved variations to have been made public sooner.

There is some evidence of an increasing trend towards reviews being started later in the financial year (see box 1.3). If this trend continues, particularly for those reviews scheduled for 1999–2000, it will prove difficult to complete the review program and implement reforms before 31 December 2000.

Box 1.4 Indications that reviews are starting later in the financial year.

In 1996–97, six reviews (of 19) began in the first quarter (July–August–September), and the average commencement date was 6–7 months into the year.

In 1997–98, only one review (of 13) began in the first quarter and the average start-date was over 9 months into the year. Seven reviews did not have terms of reference settled until June 1998.

Of the revised list of 27 reviews scheduled to commence in 1998–99 — refer appendix A — none had started by end-September 1998.

(b) Was the ORR consulted at least 3 months before the scheduled commencement?

The Government requires the ORR to advise the Treasurer and the responsible Minister on the draft terms of reference. A minimum of three months prior to the expected commencement has been encouraged as an appropriate period of consultation.

The suggested three month consultation period was observed in most cases and proved to be sufficient time to resolve any concerns with terms of reference. Although consultation occurred less than three months prior to planned commencement in four cases, satisfactory terms of reference were developed. The three month consultation period has contributed to good outcomes and will continue to be encouraged.

(c) Did the ORR agree that the terms of reference met the Competition Principles Agreement and Commonwealth’s review requirements?

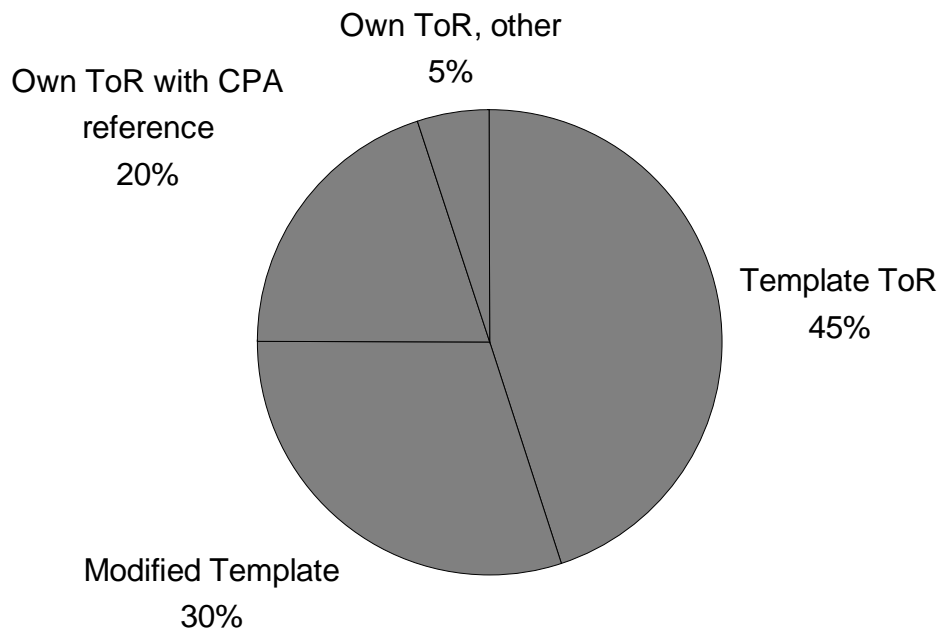
The ORR advised that the draft terms of reference met the requirements in all cases except one — there are no terms of reference for the review of Foreign Investment Policy (#39).

For the ORR to agree, the terms of reference must:

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

While the template terms of reference is only a guide, it was used as the basis for agreed terms of reference in about 75 per cent of cases (see figure 1.3).

Figure 1.1 Use of the template as an agreed terms of reference



(d) Was the review body as specified by the Government?

In announcing the Legislation Review Schedule, the Government stated:

the priority and importance of the legislation identified on the schedule varies. Accordingly, the method of reviewing the legislation will take account of its significance and the likely benefits of reform (Treasurer 1996, p. 2).

The Government identified eight types of review body, but did not make public the type of review body provisionally indicated for each review. The extent to which the eight different types have been used to date is shown in box 1.4.

The membership of a review body or reference group/steering committee is integral to whether the review and its conduct conforms to the Government's requirement. While the ORR does not formally clear the membership of a review committee, departments are encouraged to discuss the committee's make-up. For example, consideration needs to be given to whether the review committee includes appropriate representation from major stakeholders other than producers, such as consumers, and whether the technical and analytical challenges of the review require a specialist not aligned with the stakeholder groups.

As indicated in figure 1.2, compliance with the review body requirement was met in all cases.

**Box 1.5 The types of review bodies for reviews conducted between
30 June 1996 and 30 June 1998**

The numbers for the different types of review bodies were:

- five by an independent committee specifically appointed for the review;
- two by the National Competition Council;
- four by the Industry Commission (now part of the Productivity Commission);
- eleven by a taskforce of seconded officials, with a reference group of independent members in some cases;
- two by private consultants;
- none by Commonwealth research bureaus (for example, the Australian Bureau of Agriculture and Resource Economics, and the Bureau of Transport Economics);*
- twelve by a committee of officials from key government agencies (with public submissions sought from interested parties); and
- one by a committee of officials drawn from within the department responsible for the legislation.

In addition, two reviews became part of national reviews.

* Officials from the research bureaus have been represented on some review bodies and/or reference groups.

(e) Has the review been completed? Was a reporting date included in the terms of reference? If so, was the review completed accordingly? Where appropriate, was approval sought for an extension?

Thirty-three reviews have been completed, with conduct of reviews taking from three to 18 months.

Departments are encouraged to include reporting dates in the draft terms of reference. This was done for around 80 per cent of reviews. Of those which are now completed, almost 85 per cent met due date — or the amended date where an extension was sought. The ‘over-runs’ (and extensions) were generally no more than a few months.

If an extension is required, departments are encouraged to seek approval from the Treasurer or, to at least, notify the Treasurer of the responsible Minister’s approval.

While it is not clear from the statistics alone whether inclusion of a reporting date acted as a discipline on reviews — for example, those without reporting dates may have better met departments’ internal timeliness — there are benefits to stakeholders from explicit reporting dates, and consideration should continue to be given to the inclusion of a reporting date in the terms of reference.

(f) *Has the report been made publicly available? If so, how long after completion?*

Review reports should be made publicly available — that is, they should at least be provided to interested parties and their availability should be made known. Reports from 23 reviews (of the 33 completed) are now publicly available.

The length of time between completion of a report and when it became publicly available ranged from a few days to nine months. Most of the reports from reviews conducted by the Industry Commission, the National Competition Council and independent committees were released within one month of completion.

While it may be desirable in some cases to delay release of the report until the government response is prepared, this need not be the case. For example, the report of the review of *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and Regulations* (#18) was released by the Minister for Foreign Affairs on 23 July 1997, who indicated that a response could be expected within three months.

(g) *Is there evidence of appropriate consultation opportunities?*

What constitutes appropriate consultation? The NCC has commented:

reviews ... should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate (NCC 1997, p. 74).

There are many ways in which a review can provide opportunities for stakeholders to participate — for example, through meetings, open hearings and the opportunity to make submissions. What is appropriate or cost effective will vary among reviews.

One threshold indicator is whether a review was advertised nationally, since making it widely known that a review is being conducted is a precursor to providing the opportunity to participate. All reviews were advertised nationally except for the review of *Foreign Investment Policy* (#39).

Of the publicly available reports examined by the ORR, all adequately detailed the consultation process, usually quite comprehensively.

While there is no legislation review requirement to prepare a draft report, some terms of reference do specify preparation and release of a draft report and for at least eight reviews draft reports were issued. These reviews were generally of greater significance, as reflected in the choice of review body, such as independent

committees. For at least 14 other reviews, background or issues papers were released and for some of these reviews there may subsequently be a draft report.

(h) Did the report contain a conclusion with respect to the guiding principle of the CPA?

Reviews of regulation which potentially restrict competition are to be approached according to the guiding principle of the CPA. That is, a review report should make a clear statement (ideally in the executive summary) as to whether the regulation:

- restricts competition; and, if so
- whether the benefits of the restriction to the community as a whole outweigh the costs; and, if so
- whether the objectives of the legislation can be achieved only by restricting competition.

Not all of the Commonwealth regulations listed for review potentially restrict competition. Of those that do, no completed report could be said to have explicitly addressed the guiding principle in the executive summary in the manner outlined above. However, at least six reports did state clearly in the executive summary whether or not the regulation(s) restrict competition, but without addressing the remaining elements. In a further eight cases, it is relatively easy to identify discussion in the body of the report about costs and benefits and competition impacts.

(i) Has the Government responded? If so, how long after release of the report? Were the review recommendations accepted?

The Government has announced a response to 24 of the completed reviews.³ In 18 cases the Government agreed fully with the review findings. In the other six cases the Government differed on major recommendations, choosing instead an alternative reform option. For example:

- in response to the reviews of the *Customs Tariff Act 1955 (Automotive Industry Arrangements)* (#26) and the *Customs Tariff Act 1995 (Textiles, Clothing and Footwear Arrangements)* (#27), the Government announced a slower pace of reduction in tariffs than the majority recommendation(s) of the reviews; and
- in the case of the review of the *Australian Postal Corporation Act 1989* (#15), while the NCC recommended that the bulk, pre-sorted business letter mail be

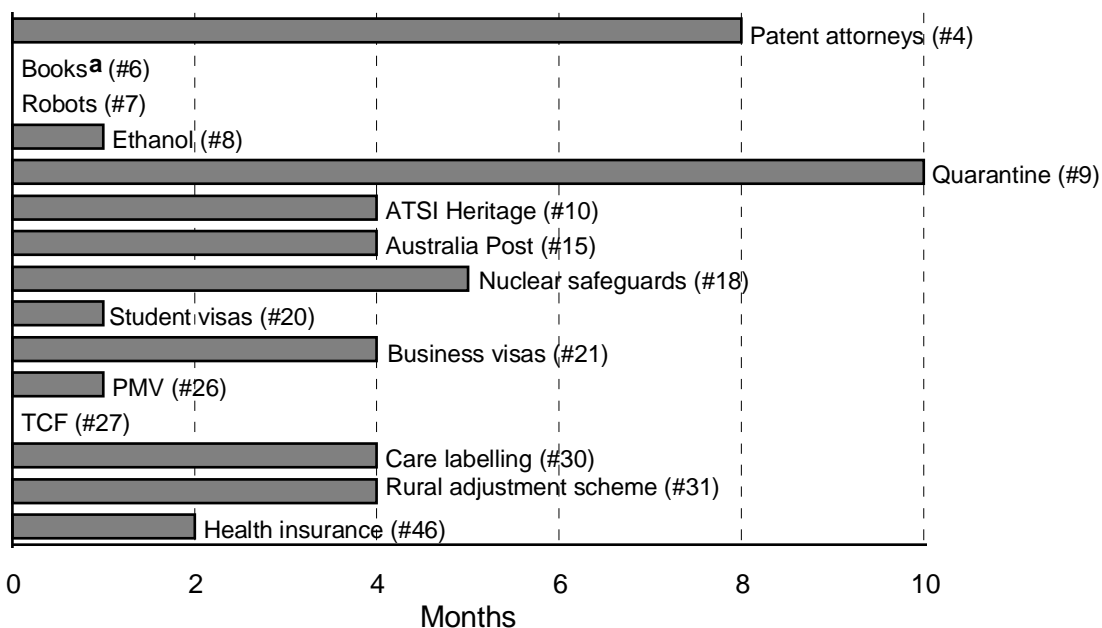
³ In addition, reforms have been announced (and implemented) in respect of two reviews still in-progress (#5 and #28).

fully opened to competition, the Government decided to extend competition to only approximately eight per cent of this market.

The timing of the Government's response is an important performance measure in light of the year 2000 deadline. In most cases, the Government's response has been within five months of completion of a report (see figure 1.4). Note, however, that the Government may make an initial response (perhaps on the major review findings) followed by subsequent decisions on other matters addressed in the review. For example, the Government's tariff decision in response to the review of Passenger Motor Vehicle arrangements (#26) was announced within one month of completion of the review, while the decision to establish the Automotive Competitiveness and Investment Scheme was announced 10 months later. In some cases, the Government has responded to a review's major findings, with some minor matters remaining to be addressed or announced.

The terms of reference for at least 15 reviews specified that a government response would be made within a certain period — ranging from three to six months. No clear pattern emerged as to whether such a clause provided added discipline on progress with reform efforts. In some cases the response to the review was not forthcoming by the date indicated, but equally there were reviews in which the Government responded within a few months, despite no response period having been specified in the terms of reference. Nonetheless, it is important that the question of whether a response period should be specified in the terms of reference, should at least be considered.

Figure 1.2 **Passage of time between completion of review and announcement of Government's initial response to review findings**



^a The Government made its decision on the book bounty after the Industry Commission had released its draft report, but two months before it completed its final report.

Clearly, any delay in the response beyond that indicated in the terms of reference does not necessarily imply poor performance or non-compliance. Reform decisions by government on a single issue are taken in the wider context of other issues which may impinge upon the sector, and the general priorities of government. There remains, however, the overriding CPA obligation to complete appropriate reforms by 31 December 2000.

(j) *Where the Government has announced regulatory reforms, have the reforms been fully implemented? If so, how long after announcement?*

Since commencement of the Legislation Review program, the Government has fully implemented its announced reforms in 14 cases.

In a further eight cases, reforms are progressing — for example: where part of a package of announced reforms has been implemented; where legislation has been tabled, but not passed; and/or where the implementation date has yet to take effect, but will do so before 31 December 2000.

Clearly, time is required to prepare regulatory changes and obtain approval for change, most commonly by Parliament. The time from the Government's announcement to full implementation has ranged from about six months to two years.

While regulatory reforms may not become fully effective until some time after the passage of legislation — for example, due to delayed commencement dates or

phasing-in arrangements — such lags need not imply poor reform performance, as adjustment arrangements or transition periods may be an important aspect of the implementation strategy. In such cases, it is important the reform timetable be made public.

In sum, in some instances the implementation stage may be a more time-consuming element than the review stage.

(k) Where appropriate, was there full compliance with the RIS requirements?

The Commonwealth's RIS requirements, announced by the Prime Minister in his statement *More Time For Business*, apply when the Government proposes regulatory change following a review, if such changes impact on business.

Although reviews are to use a cost-benefit framework similar to that embedded in the RIS framework, the RIS requirement does not necessarily represent duplication, for four reasons:

- the RIS is prepared by the Government as a transparency mechanism in its decision-making, whereas the review report is prepared by the review body, which may be independent of the Government;
- review reports often contain quite detailed analysis while the preparation of a RIS streamlines the presentation of this material, particularly as it uses a standard format;
- the RIS may deal with only one, or a subset, of the recommendations of the review; and
- there may be options additional to those recommended or analysed by the review which can be addressed by the RIS.

Chapter 2 explains in detail what full compliance with the RIS requirements entails. According to criterion (k), full compliance was achieved in 50 per cent of cases where regulations were made following reviews on the Legislation Review Schedule. Non-compliance involved failure to prepare a RIS for the decision-making stage and/or failure to prepare an adequate RIS. This performance is somewhat disappointing because a review report could be expected to provide a ready basis for the RIS.

1.4 Improving compliance with review requirements

Is the program on track?

The Legislation Review program is ambitious.

To complete the *review* element on time remains a challenging task as some slippage is evident — by 30 June 1998 about 35 per cent of reviews had been completed, but nearly half of the time allocated for *both review and reform* had elapsed. Further, this result includes 12 reviews which were already underway when the program was announced.

There are around 40 reviews yet to be commenced. The deferred reviews — which include some of high priority — must now be accommodated in the remaining years, along with those originally scheduled.

Even if the review element is completed on time, full implementation of all appropriate *reforms* may not be achievable by 31 December 2000. Significant time can be required for due consideration of review recommendations and the preparation (and passage) of regulatory changes. In addition, where phasing or transitional arrangements are involved, full implementation of reforms may not be achieved until quite a while after completion of a review. Thus, priority should continue to be given to legislation which (widely) restricts competition or imposes significant costs on business.

Some observations about timing

For the 14 cases thus far, the complete process from preparing terms of reference through to fully implementing the reforms has taken from about ten months to three years. Typically, the time to complete each step has been:

- settlement of terms of reference and other preparation [3 months];
- conduct of review [6–9 months];
- government response after completion [2–4 months]; and
- full implementation of announced reforms [6–12 months].

Timing, however, should not take precedence over quality. It is important that the reviews are not rushed for the sake of completion. It is more important that good quality reviews are conducted and useful reports produced. Establishing sound terms of reference, choosing appropriate review bodies, fully addressing the guiding

principle of the CPA and conducting appropriate consultation are all important to good outcomes.

There may be good reasons for some delays. For example, limited departmental resources or the availability of appropriate committee members may dictate a late start and/or the review being conducted over a longer period than might be ideal. In some cases, ‘over-runs’ on reviews may be beyond the control of good planning.

However, there is scope for timing to be improved, notably by consultation with the ORR on the terms of reference earlier in each financial year — for about 50 per cent of reviews, consultation has not begun until the second half of the financial year.

Some observations about review and reform processes

Drawing on the experience of some 60 reviews, areas where performance was good were:

- consultation with the ORR on the terms of reference generally occurred at least three months prior to the scheduled commencement of reviews — notwithstanding the concern about the increasing trend towards consultation occurring in the second half of the financial year;
- terms of reference were agreed in all but one case;
- the type of review body suggested by the Government was adopted, or up-graded, in all cases; and
- consultation appears to have been of a very high standard — all reviews were advertised nationally, review reports listed consultation details and many draft reports and other papers were issued during the conduct of reviews.

Areas where performance could be better include:

- ensuring that the report of any review of legislation with the potential to restrict competition addresses the guiding principle of the CPA in an explicit way, ideally in the executive summary;
- making the review report publicly available as soon as practicable after the conclusion of each review, including giving consideration to releasing the report even when a government response is not yet available, in which case it could be indicated when a response may be forthcoming;
- seeking approvals for variations to the schedule — deletions and deferrals — at an early stage, from the Prime Minister and Treasurer, and announcing promptly the variation when approved; and
- fully complying with the RIS requirements where regulatory changes result from the review.