
C Commonwealth legislation reviews

In 1995, as part of the Competition Principles Agreement (CPA), the Council of Australian Governments (COAG) agreed to a program of review of existing legislation which potentially restricts competition. Jurisdictions agreed to conduct reviews and implement any required reforms over a four year period ending in the year 2000. At its meeting on 3 November 2000, COAG decided that this deadline would be extended to 30 June 2002.

The Commonwealth's legislation review program is broader than required by the CPA. In addition to legislation which potentially restricts competition, it includes legislation that may impose costs or confer benefits on business. The Commonwealth's program, when announced in June 1996, identified 98 separate reviews. Further reviews were later added to the Schedule, bringing the total number of reviews listed to 101. As at 30 June 2001, 75 of the reviews on the Commonwealth's schedule had either been completed or were in progress. Table C.1 provides an overview of the status of the Commonwealth's legislation review program.

Table C.1 Overview of Commonwealth's Legislation Review Program as at 30 June 2001

<i>Status of reviews</i>	<i>No. of reviews^a</i>
Completed reviews	60
Reviews in progress	11
Reviews subsumed into other reviews or reforms	4
Reviews deleted from the schedule	11
Deferred or delayed reviews	2
Reviews not yet commenced	14

^a Total does not add to 101 as the Review of the *National Food Authority Act 1991* and Food Standards Code, scheduled for review in 1998-99, has been split into the reviews of: the *Australia New Zealand Food Authority Act 1991* which has been completed; and the Food Standards Code which is in progress.

Source: ORR estimates in consultation with departments and agencies.

As can be seen from the above table, some 16 reviews remain on the Commonwealth's program to be undertaken by 30 June 2002. Table C.2 contains a list of the outstanding reviews.

Table C.2 Reviews Outstanding as at 30 June 2001

<i>Review No.</i>	<i>Reviews still to be undertaken</i>	<i>Dept.</i>	<i>Status as at 30 June 2000</i>	<i>Status as at 30 June 2001</i>
16 & 42	<i>Radiocommunications Act 1992 & related Acts & Review of market based reforms & the Spectrum Management Agency^a</i>	DoCITA	ToRs signed off but review not commenced	Review still not commenced
47	<i>Environment Protection (Nuclear Codes) Act 1978</i>	DHAC	Not commenced	Seeking to delist
49	<i>Anti-Dumping Authority Act 1988, Customs Act 1901 Pt XVB & Customs Tariff (Anti-Dumping) Act 1975</i>	AG's	Deferred until 1999 but did not commence	Not commenced
52	<i>Petroleum Retail Marketing Sites Act 1980</i>	DISR	Not commenced	Not commenced
53	<i>Petroleum Retail Marketing Franchise Act 1980</i>	DISR	Not commenced	Not commenced
72	<i>Defence Force (Home Loans Assistance) Act 1990</i>	Defence	Not commenced	Not commenced
76	<i>Export Finance & Insurance Corporation Act 1991 & EFIC (Transitional Provisions & Consequential Amendments) Act 1991</i>	DFAT	Deferred	Deferred
78	Dairy Industry Legislation	AFFA	Not commenced	Deferred
80	Dried Vine Fruits Legislation	AFFA	Deferred to 2 nd half of 2000	Not commenced
88	Treatment Principles (under section 90 of the <i>Veterans' Entitlement Act 1986</i> (VEA)) & Repatriation Private Patient Principles (under section 90A of the VEA)	DVA	Not commenced	Not commenced
89	<i>Defence Act 1903</i> (Army & Airforce Canteen Services Regulations)	Defence	Not commenced	Not commenced
91	<i>Home & Community Care Act 1985</i>	DHAC	Not commenced	Seeking to delist
94	<i>Native Title Act 1993</i> & Regulations	PM&C	Not commenced	Not commenced
97	Section 2D exemptions (local government activities) of the <i>Trade Practices Act 1974</i> ^b	Treasury	ToRs signed off but not commenced	Not commenced
101	<i>Disability Discrimination Act 1992</i>	A-G's	Not commenced	Not commenced

^a The reviews of the *Radiocommunications Act 1992* (originally scheduled for review in 1996-97) and the market based reforms and activities undertaken by the Spectrum Management Agency (originally scheduled for review in 1997-98) have been merged to form one review. The review commenced on 16 July 2001.

^b Commenced 2 October 2001.

Source: ORR estimates in consultation with departments and agencies

Adequacy of terms of reference

The ORR provides guidance to departments and regulatory agencies on appropriate terms of reference and the composition of review bodies in relation to reviews under the Commonwealth legislation review program. The Government requires the ORR to advise the Minister for Financial Services and Regulation and the responsible portfolio Minister as to whether terms of reference meet the CPA requirements and the Commonwealth's legislation review requirements.

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.

Other desirable features in terms of reference include mention of the intention to publish a report, reporting dates for review bodies and processes for a response by government.

To assist departments to meet the Government's requirements, the ORR has developed template terms of reference which can be adapted by departments to fit the specific requirements of each review (see box C.1). The template draws together the various elements of the CPA and reflects the Government's broader review requirements.

In 2000-01, the ORR cleared only one terms of reference, for the review of the *Commerce (Trade Descriptions) Act 1905*.¹ These terms of reference met all of the requirements.

¹ This review stems from the review of the Commerce (Imports) Regulations and Customs Prohibited Imports Regulations which was listed as a review under way when the Commonwealth's program was announced. The review initially concentrated on removing redundant and superfluous regulations. The review of the *Commerce (Trade Descriptions) Act 1905* will complete this review.

Box C.1 The template terms of reference

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

(Continued next page)

Box C.1 (continued)

- (g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;
 - (h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and
 - (i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the [legislation] and, where it differs, the preferred option.
4. In undertaking the review, the [Review Body] is to advertise nationally, consult with key interest groups and affected parties, and publish the report.

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

Source: ORR.