

OFFICE OF REGULATION REVIEW (ORR) SUBMISSION TO THE AUSTRALIAN TAXATION OFFICE (ATO) INTERNET AND ELECTRONIC CASH PROJECT

The Office of Regulation Review (ORR) — located within the Productivity Commission — provides advice on the Commonwealth Government’s regulation review policy: it reviews new regulations; and monitors the progress and participates in programs for the reform of existing regulations. The ORR also advises Cabinet on regulatory proposals affecting business, liaises with departments and agencies in the development of regulations, and comments publicly on regulatory issues.

This submission by the ORR focuses on three matters:

- the importance of developing an optimal regulatory environment for electronic commerce;**
- the use by Commonwealth government agencies of a Regulation Impact Statement (RIS) when justifying and reviewing regulations that impact on business; and**
- analysis of the potential impact of new or amended tax regulations on taxpayer compliance costs.**

1 Optimal regulation review and reform of electronic commerce

Electronic commerce involves financial transactions and commerce over the internet. This sector is at a very early stage of development but is likely to grow very quickly over the next few years. Electronic commerce may become an important method for conducting commerce and could become a major sector of the Australian (and world) economy.

Electronic commerce raises a host of major economic, social and regulatory issues that need to be addressed by governments and the community. It is important that an optimal regulatory environment is developed for electronic commerce, that redresses any market failures and unintended consequences, but does not unnecessarily inhibit the development and growth of this important sector. Indeed, the development of an optimal regulatory environment could place Australia at the leading edge of technological and economic development of electronic commerce.

Electronic commerce has implications for a wide range of issues, such as consumer protection, privacy, crime and money laundering, regulation of financial markets and taxation. There is a danger that when developing regulations individual agencies will focus only on a narrow range of issues, thus ignoring the broader implications and impacts of any regulations they may implement. For example, regulations designed to impede the use by

criminals of electronic commerce could significantly stymie development of electronic commerce and/or undermine the goal of protecting privacy etc.

The ORR considers that at this early stage of development of regulation of electronic commerce, regulatory agencies such as the ATO should interpret terms of reference broadly to take account of:

- the wide range of likely economic and social impacts of electronic commerce; and**
- the likely impact of any new regulations on the development of this sector and on the effectiveness of regulations made by other agencies.**

2 The importance of using Regulation Impact Statements (RISs)

RIS type guidelines are currently being used by the Commonwealth government to promote regulation review through a variety of processes:

- the Competition Principles Agreement obliges all Australian governments to publish a consolidated list of legislation which restricts competition and which should be reviewed by the year 2000. The terms of reference for all reviews must include the principle elements of a RIS. The ORR reports to the Treasurer and responsible Minister(s) about the adequacy of the terms of reference for each Commonwealth review. These initiatives are designed to improve the stock of existing regulations;**
- a RIS must accompany any submission to Cabinet that impacts on business. This RIS must be provided to the ORR prior to going to Cabinet. This initiative is designed to improve the quality of new or amended regulations considered by Cabinet;**
- whilst the guidelines for preparing RISs have to date applied only when agencies seek Cabinet approval for new or amended regulations, it is anticipated that their essential elements will apply more broadly in the future. The *Legislative Instruments Bill 1996* provides for similar tests — to be certified by the ORR — which agencies would have to apply to a wide range of legislation including subordinate regulation; and**
- *Principles and Guidelines for National Standard Setting and Regulatory Action* was adopted by the Council of Australian Governments (COAG) and took effect from September 1995. Ministerial Councils and National Standard Setting Bodies must now prepare a RIS for new standards. The guidelines bring these inter-governmental bodies under regulatory quality standards similar to those used at State and Commonwealth levels. Regulation impact statements must be lodged with the ORR.**

Such guidelines provide a useful indication of ‘best practice’ for all public sector organisations seeking to introduce new or amended regulations. RIS guidelines ensure that before a proposed regulation is adopted, the problem to be addressed is properly specified, and that its impact and associated costs and benefits are considered. In addition, it provides a framework within which to explore alternative methods of achieving the objective for which the regulation was designed.

The use of RISs in the above processes is designed to improve the quality of the stock of existing regulations and the flow of new regulations, by ensuring that consistent and rigorous regulation making and review processes are implemented by institutions making regulations. The success of these Commonwealth initiatives in improving regulations depends, in part, on all important regulation making institutions — including the Australian Taxation Office — adhering to agreed processes, including the use of a RIS framework to review existing and new regulations.

The ORR recommends that the Internet and Electronic Cash Project use the RIS framework to assist with analysing issues and in order to provide a sound basis for recommendations.

The overall costs and benefits of regulating and implementing a taxation system for electronic commerce should be clearly identified by this review. Only if there are clear net benefits to society from establishing a regulatory regime should the ATO then assess the feasibility, benefits and costs of different regulatory alternatives. A copy of the Commonwealth's RIS guidelines are attached.

3 Tax compliance costs

The efficiency of the taxation system is a microeconomic reform issue. If the costs of raising revenue are greater than they need be, unnecessary costs are imposed on industry and the welfare of taxpayers is affected. Various costs can be generated by the tax system:

- economic costs that arise because taxes distort firms' and consumers' behaviour;**
- the costs of running the ATO; and**
- the costs to firms and individuals in complying with the taxation system.**

The last of these are sometimes referred to as the compliance or paper burden costs. They are commonly perceived as part of the wider regulatory burden which governments impose on business. Accordingly, the ORR has an interest in these issues.

Tax compliance issues have a considerable impact on business decision making, and are among the most significant regulatory burdens imposed on business by governments.

In response to a rapid growth in the complexity of the tax system, a number of processes are underway within the Australian Taxation Office (ATO) to improve the efficiency of the tax system. These include the Tax Law Improvement Project (TLIP), and the requirement that Tax Impact Statements assessing compliance costs accompany changes to tax legislation. The new Government has taken initiatives, including the inquiry by the Small Business Deregulation Task Force, to reduce compliance costs. The ORR has drawn attention to the importance of compliance costs in a

recent staff information paper (attached) detailing the types and magnitudes of compliance costs of taxation.

In addition, the Joint Committee of Public Accounts recommended in August 1996 that the ATO undertake further research to quantify the cost of tax compliance in Australia.

The terms of reference for the Electronic Cash Project seek to develop responses to taxation issues arising from E-cash usage, while ensuring that no 'undue' costs will be imposed on users or tax administration.

The ORR considers that it is important that this ATO review consider and measure likely tax compliance costs, as part of its broader assessment of the desirability, feasibility and options for regulating electronic commerce through the tax system.