INDUSTRY COMMISSION

Regulation

and its Review: 1995-96

SEPTEMBER **1996**

ISSN 1324-6909

Office of Regulation Review
Industry Commission
PO Box 80
BELCONNEN ACT 2616

Phone: (06) 240 3290
Fax: (06) 240 3355
Internet: ORR@mail.indcom.gov.au

Forming the Productivity Commission

The Federal Government, as part of its broader microeconomic reform agenda, is merging the Bureau of Industry Economics, the Economic Planning Advisory Commission and the Industry Commission to form the Productivity Commission. The three agencies are now co-located in the Treasurer's portfolio and amalgamation has begun on an administrative basis.

While appropriate arrangements are being finalised, the work program of each of the agencies will continue. The relevant legislation will be introduced soon. This report has been produced by the Industry Commission.

PREFACE

Under the general policy guidelines embodied in the *Industry Commission Act 1989*, the Commission is required, amongst other things, to seek 'to reduce regulation of industry (including regulation by the States and Territories) where this is consistent with the social and economic goals of the Commonwealth Government.' In addition, the Office of Regulation Review (ORR) — within the Commission — has administrative and advisory functions relating to the review of regulation.

This report forms part of the Industry Commission's annual report suite of publications for 1995–96. Its content differs from that of *Regulation and its Review: 1994–95* which covered a range of regulatory *issues* including cost recovery by regulatory agencies, prices surveillance, occupational licensing and food safety regulation. In this report the focus is on developments in government *process* which are designed to achieve more effective (yet less intrusive) regulations.

CONTENTS

LIST OF TABLES

LIST OF FIGURES

LIST OF BOXES

ABBREVIATIONS

ABA	Australian Broadcasting Authority
ABCB	Australian Building Codes Board
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service
ACT	Australian Capital Territory
AMSA	Australian Maritime Safety Authority
ANTA	Australian National Training Authority
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Standard Council
AQIS	Australian Quarantine and Inspection Service
ASC	Australian Securities Commission
ATO	Australian Taxation Office
Austel	Australian Telecommunications Authority
AUSTRAC	Australian Transaction Reports and Analysis Centre
BIE	Bureau of Industry Economics
CASA	Civil Aviation Safety Authority
COAG	Council of Australian Governments
COBR	Council on Business Regulation
CPA	Competition Principles Agreement
DIST	Department of Industry, Science and Tourism (Commonwealth)
EPA	Environment Protection Agency
EPAC	Economic Planning Advisory Commission
FBCA	Federal Bureau of Consumer Affairs
FORS	Federal Office of Road Safety
GBE	government business enterprise
IC	Industry Commission
ISC	Insurance and Superannuation Commission
LIP	Legislative Instruments Proposal
NCC	National Competition Council
NCP	National Competition Policy
NCSC	National Companies and Securities Commission

NEPC	National Environment Protection Council
NFA	National Food Authority
NFSC	National Food Standards Council
NHMRC	National Health and Medical Research Council
NIA	National Interest Analysis
NOHSC	National Occupational Health and Safety Commission
NRA	National Registration Authority for Agricultural and Veterinary Chemicals
NRTC	National Road Transport Commission
NSW	New South Wales
NT	Northern Territory
OECD	Organisation for Economic Co-operation and Development
ORR	Office of Regulation Review
PM&C	Prime Minister and Cabinet (Department of the)
PSA	Prices Surveillance Authority
Qld	Queensland
RBA	Reserve Bank of Australia
RIA	Regulatory Impact Analysis
RIS	Regulation Impact Statement
SA	South Australia
SBDTF	Small Business Deregulation Task Force
SSCRO	Senate Standing Committee on Regulations and Ordinances
SMA	Spectrum Management Agency
Tas	Tasmania
TGA	Therapeutic Goods Administration
TPC	Trade Practices Commission
UK	United Kingdom
USA	United States of America
Vic	Victoria
WA	Western Australia
WTO	World Trade Organization

OVERVIEW

The review and reform of government regulations are an essential part of microeconomic reform. This report focuses on the significant progress made by the Commonwealth in establishing processes to achieve a more effective, yet less intrusive, regulatory regime.

In 1995–96, as in many other years, the amount of Commonwealth primary legislation increased substantially and Acts which can be characterised as 'economic regulation' formed a significant portion of the new legislation. There was also a further large expansion in subordinate legislation (including regulations, by-laws, statutory instruments, notices, ordinances and proclamations).

While acknowledging the improvements that new regulations provide, they can also have adverse effects. The cumulation of adverse effects resulting from the growth in legislation has prompted the establishment of a range of processes to assist in: slowing the growth of primary and subordinate legislation; reducing the regulatory burden of the existing stock; and/or ensuring that new regulations meet certain minimum quality requirements.

Some of these initiatives were reported in last year's *Regulation and its Review*, including:

- the national program of legislative review flowing from the Competition Principles Agreement signed by the Council of Australian Governments in April 1995;
- the requirement for Ministerial Councils and other national standard setting bodies to apply 'regulation impact analysis' and other screening criteria to proposals for new regulations; and
- extension of the national scheme for mutual recognition to include New Zealand.

These initiatives were all progressed during 1995–96.

Of these, the national program of legislative review under the Competition Principles Agreement has considerable potential to improve the performance of the Australian economy. By the year 2000 each government will have reviewed and, in the absence of offsetting public benefits, reformed those parts of its legislation which restrict competition.

The Commonwealth program consists of 85 reviews, to be conducted over the next four years. This will be the most comprehensive and systematic review of regulation ever undertaken by the Commonwealth. Examples of legislation for review include:

- *Radiocommunications Act 1992* and related Acts;
- *Higher Education Funding Act 1988* and *Vocational Education & Training Funding Act 1992* and any other regulation with similar effects to the *Higher Education Funding Act 1988*;
- Intellectual property protection legislation (*Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968,* and may include the *Circuit Layouts Act 1989*); and
- *Customs Tariff Act 1995* — Textiles Clothing and Footwear Arrangements (with a view to determining the arrangements to apply post-2000).

Other initiatives during 1995–96 included:

- the release of revised guidelines for the preparation of regulation impact statements, which must accompany any Commonwealth regulatory proposal considered by Cabinet;
- the tabling in Parliament of the Legislative Instruments Bill requiring agencies to document the need for any proposed regulation, its costs and benefits as well as any alternatives — additional features include mandatory consultation and five-year sunset clauses;
- reforms to the processes for participating in international treaties in order to ensure that they are in the national interest, with particular attention to the domestic regulatory implications; and
- the formal establishment of the National Environment Protection Council (of Ministers), with the power to develop national environment measures which must be subject to a full impact analysis.

In 1996, the new Coalition Government started to implement its policies, with particular initiatives directed at reducing the paperwork and regulation compliance costs of small businesses. These included the establishment of a Small Business Deregulation Task Force. It is to report to the Government by November 1996 on revenue-neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent.

In addition, the first National Small Business Summit was held in June 1996, attended by Commonwealth, State and Territory Ministers responsible for small business, and local government representatives. Governments agreed to a charter of principles for developing and implementing regulations, the continued development of the Business Licence Information System and encouragement of more accountability in licensing and registration procedures.

As well as these broad-ranging developments, many specific reviews were progressed or initiated in 1995–96. For example, there were some achievements in the Corporations Law Simplification Program, and in May 1996 the Government initiated a major inquiry into the Australian financial system.

This report also assesses the use made of regulation impact analysis and the contribution it can make to a more effective regulatory regime.

The activities of the Office of Regulation Review, and how they fit into the broad regulatory review environment, are summarised in the final chapter.

CHAPTER 1
Features of Commonwealth regulation

This chapter examines the nature of the stock of Commonwealth legislation. It also analyses recent trends in both Commonwealth primary and subordinate legislation. The amount of regulation, and its complexity, continues to increase.

Over the past three decades there has been a considerable increase in the amount of Commonwealth primary and subordinate legislation. Associated with this has been an increase in their length and complexity.

Increased regulatory activity is reflected in greater expenditure by Commonwealth and national regulatory agencies. Staffing has remained fairly constant in recent years, cost recovery (particularly by traditional agencies) has become more widely used, and there has been growth in new areas of regulation.

ANALYSIS OF THE STOCK OF COMMONWEALTH LEGISLATION

When considering the extent of any regulatory impact, the effects on all groups in the community are relevant, including businesses, consumers, taxpayers and other community groups.[1] However, traditionally the Office of Regulation Review's (ORR) focus has been on evaluating regulations which affect business, such as those which affect pricing policies, business income and management decision-making. For this reason, the regulatory impact on business is the principal focus of Chapter 1.

---

[1] For example, with submissions to the Commonwealth Cabinet, the impact on business is the trigger mechanism for conducting regulatory impact analysis (a Regulation Impact Statement), however the analysis itself covers significant impacts on all groups and on the community as a whole.

While the focus is on the impact of legislation on business, this does not imply that this impact is necessarily 'negative' in terms of the effects on the economy and/or the aggregate well-being of society.

There are currently some 1200 Commonwealth Acts in operation. Table 1.1 provides a breakdown of this stock of Acts into nine broad functional categories. The categories in the table are then ranked according to the extent to which they are likely to affect the behaviour and earnings of business.

While there is a degree of arbitrariness in such a classification, as individual Acts will sometimes fall within more than one functional grouping, it does provide a broad indication of the nature of the Commonwealth's legislation.

Table 1.1: Stock of Commonwealth legislation by functional category, as at February 1996[a]

Category	*Number*
Economic regulation	162
Assistance to industry	83
Social regulation	
Environmental	50
Other	92
Revenue raising	
Taxation	97
Non tax charges	180
International obligations	107
Expenditure legislation not included elsewhere	212
Commonwealth administration	213
Total stock of Commonwealth legislation	**1196**

a Excludes supply and appropriation Acts.

Source: Office of Regulation Review estimates

Acts which have been classified as 'economic regulation' or 'assistance to industry' are those which have a clear impact on business, and together comprise 20 per cent of total Commonwealth legislation. Economic regulation may have either a narrow impact (such as the *Australian Wine and Brandy Corporation Act 1980)* or a broad impact (such as the *Corporations Act 1989).* Acts under the category of 'assistance to industry' generally apply to a relatively narrow sector — such as the *Bounty (Machine Tools and*

Robots) Act 1985 — although they can have flow-on effects to a large group of users and consumers.

The principal objective of most Acts described as 'social regulation', may not be to change business behaviour, but rather to change certain social behaviour. However, it can have an incidental effect on business decision-making. This broad category comprises about 10 per cent of total Commonwealth legislation.

Environmental acts can be very broad in application, such as the *Ozone Protection Act 1989*, or very specific in application, such as the *Environment Protection (Alligator Rivers Region) Act 1978*. Other types of social legislation, within the Commonwealth's jurisdiction, include occupational health and safety guidelines and motor vehicle design standards.

Revenue-raising Acts are also not primarily aimed at changing business behaviour or outcomes; however, they do in fact impact on business and affect decision-making. The costs of complying with tax regulations is a particular concern of business. Revenue-raising Acts account for nearly 25 per cent of all legislation.

Domestic legislation which enforces international obligations represent approximately 10 per cent of all Acts. Whether they have a significant effect on business will depend on the nature of the treaty ratified.

The remaining 35 per cent of the stock of Commonwealth legislation has little or no impact on business.

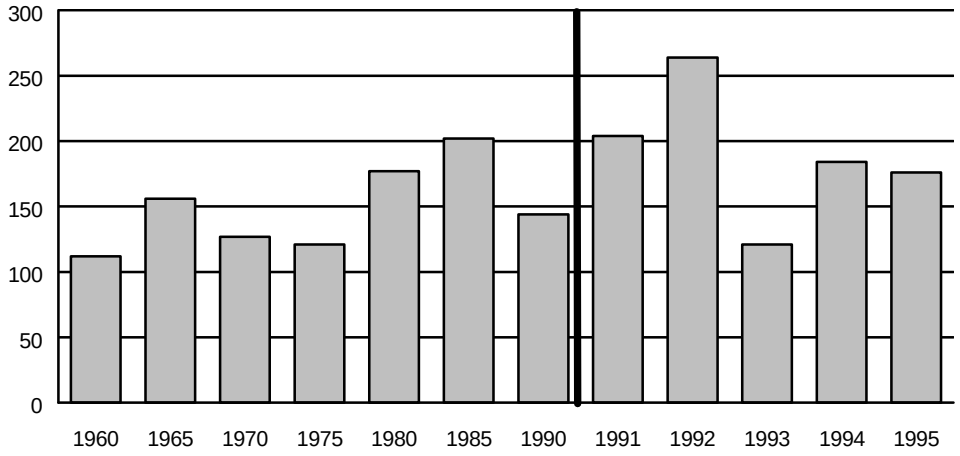
TRENDS IN COMMONWEALTH LEGISLATION

The stock of Commonwealth legislation has been increasing over the past three decades (see Figure 1.1).

The average annual number of Commonwealth Acts promulgated since 1990 was 180, compared with only 130 in the 1960s and 1970s. However, no such clear trend is evident over the past 15 years — the number of enactments in the 1990s appears, on average, not to be substantially more than in the 1980s.

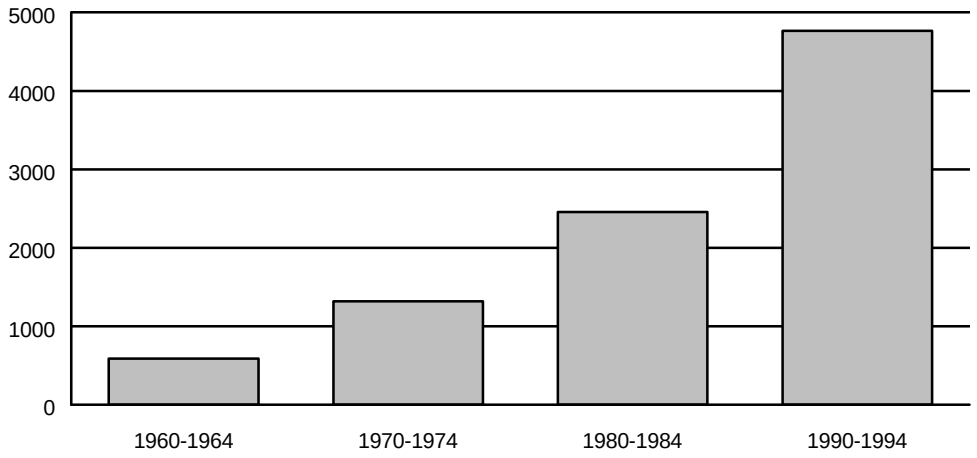
A much clearer pattern is illustrated in Figure 1.2, which shows accelerated expansion in the total number of pages of legislation promulgated each year.

Figure 1.1: Enactments of primary legislation, selected years, 1960 to 1995 (number of Acts)



Sources: Institute of Public Affairs Regulation Review Unit and Chamber Research Office estimates

Figure 1.2: Average annual number of pages enacted, 1960 to 1994



Source: Institute of Public Affairs Regulation Review Unit

On average, over the five years from 1980 to 1984, some 2500 pages of legislation were enacted each year for an average of around 170 Acts. However, over the five years from 1990 to 1994, about 4800 pages of legislation were added to the stock of Commonwealth legislation each year, in some 180 Acts.

Although some Acts simplify and reduce procedures for business, much of the new legislation adds to the compliance costs faced by business. If the number of pages per Act is an indicator of the complexity of legislation, then there was a substantial rise in complexity and consequent compliance costs during the last decade. A comparison between the 1960s and the 1990s shows an even more dramatic increase.

The large rise in the number of Acts and their average length suggests an increasing regulatory burden. This is because most Commonwealth legislation affect business — either where the principal purpose is to regulate or where it is an incidental effect.

During 1995–96, 119 Acts were passed by the Federal Parliament. This compares with 164 Acts in 1994–95. Of those passed during 1995–96, 86 were amendments to existing Acts, six were either supply or appropriation in nature, and 27 were other new Acts. Of the new or amended Acts, 33 (28 per cent) can be regarded as having an impact on business. Those with a substantial impact on business are listed in Table 1.2, together with a brief description of their main features.

Most of the 1995–96 Acts were passed in the six months to 31 December 1995. In the first half of 1996, only 24 Acts were passed, a consequence of the Federal election and the ensuing change of government.

In 1995–96, there has been considerable variety in the types of new legislation affecting business. They range from environmental laws to those which regulate the relationship between a firm and its employees.

Over the four years from 1992–93 to 1995–96, 664 Acts were passed by the Commonwealth Parliament. Of these, the ORR estimates that approximately 200 (30 per cent) had an impact on business. Those having a more substantial effect on business have been further categorised in Figure 1.3, according to their prime purpose, such as environmental, economic or social.

Table 1.2: Selected Commonwealth legislation having a substantial effect on business, 1995–96

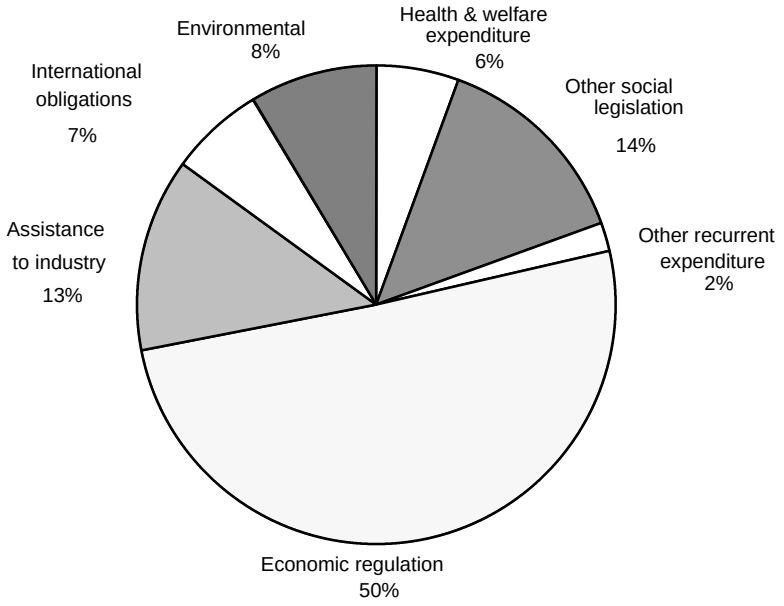
Legislation	*Features*
Aircraft Noise Levy Act 1995	Imposes a noise levy on aircraft landings at certain airports.
Bounty Legislation Amendment Act 1995	Continues the fuel ethanol bounty with stricter eligibility criteria. Extends the computer bounty until 2000.
Broadcasting Services Amendment Act 1995	Revises current laws designed to protect free-to-air broadcasts of events deemed to be of national significance.
Competition Policy Reform Act 1995	Extends the *Trade Practices Act 1974* to certain government operations and unincorporated businesses.
Customs Tariff Act 1995	Brings Australia's tariff structure into line with the World Customs Organisation.
Dairy Produce Amendment Act 1996	Revise the definitions of market milk and manufacturing milk to allow the established milk payment practices of the Australian dairy industry to continue unchanged.
Education and Training Legislation Amendment Act 1996	Repeals the *Training Guarantee Act 1990* and the *Training Guarantee (Administration) Act 1990* and amends the *Higher Education Funding Act 1988* and the *States Grants (Primary and Secondary Education Assistance) Act 1992*.
Export Market Development Grants Amendment Act (No 1) 1996	Reduces the maximum annual grant for small and medium exporters, and limits the amount by which a claim for grant can be increased between the time of lodgement and its assessment.
First Corporate Law Simplification Act 1995	Applies new disclosure requirements to small businesses for audit purposes.
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996	Ensures that Australia can discharge its obligations under international instruments relating to the control of transboundary movements of hazardous wastes.
Health and Other Services (Compensation) Act 1995	The cost of Medicare services for claimants is to be repaid by compensation payers such as general insurance companies. The administrative cost of the scheme is also to be borne by the compensation payer.
Human Services and Health Legislation Amendment Act (No. 2) 1995	Restricts temporary resident doctors and occupational trainees from participating in Medicare benefits by amending the definition of 'medical practitioner' in the *Health Insurance Act 1973*.

Table 1.2 (continued)

Legislation	*Features*
Industrial Relations and Other Legislation Amendment Act 1995	Changes current unfair dismissal legislation under the *Industrial Relations Act 1988*. All applications are to be made in the Australian Industrial Relations Commission. If conciliation fails, the AIRC may conduct consent arbitration if the parties agree. Remedies will only be available once the court considers all the circumstances and not automatically.
Industry Research and Development Amendment Act 1995	Retrospectively validates lapsed guidelines detailing how business can get a tax concession on research and development under the *Industry Research and Development Act 1986*.
National Food Authority Amendment Act 1995	Establishes a joint food standards system in Australia and New Zealand. It seeks to provide the Australian food industry with secure access to the New Zealand market.
Ozone Protection Amendment Act 1995	Extends regulatory control of ozone-depleting substances by establishing a licensing system for hydroflourocarbons and methyl bromide. It bans their export and manufacture, but 'essential uses' will be permitted.
Primary Industries and Energy Legislation Amendment Act (No. 1) 1996	It will return a proportion of the wool tax to woolgrowers, and will enable the wool industry contribution to be made to the Australian Animal Health Council.
Sex Discrimination Amendment Act 1995	Provides employers with a defence of reasonableness against a claim of indirect discrimination. Prevents discrimination against employees who may later bear children.
Superannuation Industry (Supervision) Legislation Amendment Act 1995	Enhances the prudential supervision of the superannuation industry; requires fund trustees to arrange for a qualified auditor to carry out yearly compliance audits.
Sydney Airport Curfew Act 1995	Prohibits take-offs during curfew periods and provides penalties for breaches.
Telecommunications (Carrier Licence Fees) Amendment Act 1996	Increases annual carrier licence fees.
Trademarks Act 1995	Creates a presumption of registrability for a trademark. Widens the definition of a trademark to include sounds and smells.

Source: Office of Regulation Review — based on Parliament of Australia, Senate and House of Representatives Hansard, various

Figure 1.3: Legislation having a substantial effect on business, by type, 1992–93 to 1995–96[a]



a Excludes Acts relating to levies and taxes, where the primary purpose is to collect revenue.
Source: Office of Regulation Review estimates

Over the last four years, economic regulation was the most significant type of legislation affecting business. Within this category, one of the biggest growth areas has been pro-competitive legislation, which is generally intended to improve economic performance. The statutory implications of the Competition Principles Agreement are just starting to be felt with the passing of the *Competition Policy Reform Act 1995*, and further Acts promoting competition are likely to follow.

Reforms to corporations law over the last four years can also be linked to competition reforms. During 1995–96, the *First Corporate Law Simplification Act 1995* was passed in what will be a series of such Acts designed to further simplify corporations legislation. In part, these reforms make firms more competitive by reducing the compliance costs associated with regulations.

The prime purpose of industrial relations legislation can be either economic, or social, depending on the nature of the legislation. In this analysis, it has been grouped under economic regulation. A recent trend in Australia, and in a number of OECD countries, has been to reduce the social component of industrial relations regulation.

Social regulation has been prominent over the past four years, representing around 30 per cent of all new legislation affecting business. Although much of this legislation may not have the principal purpose of regulating business decision-making, it typically has a substantial incidental impact on business.[2]

In summary, there has been a considerable increase in the volume and complexity of Commonwealth primary legislation. This has led to an increase in the stock of regulations, a large proportion of which affects business.

TRENDS IN COMMONWEALTH SUBORDINATE LEGISLATION

Subordinate legislation comprises all rules or instruments which have the force of law but which have been made by an authority to whom Parliament has delegated part of its legislative power. Subordinate legislation is also known by various titles such as regulations, rules, by-laws, statutory instruments, notices, ordinances and proclamations.

There are three main types of subordinate legislation:

- statutory rules which must be approved by the Governor-General in Council and are subject to review by the Senate Standing Committee on Regulations and Ordinances (SSCRO) and possible disallowance by Parliament;
- disallowable instruments which are made by Ministers or government agencies and are subject to review by the SSCRO and possible disallowance by Parliament; and
- other subordinate legislation such as many orders, determinations and by-laws which are not subject to Parliamentary scrutiny.

Reliable statistics on the last of these categories are not compiled.

The volume of new and amended Commonwealth subordinate regulation introduced into the Parliament has continued to expand, as shown in Table 1.3. In 1994–95, the latest year for which data are available, a total of

---

[2] Refer to ORR (1993, p. 20) for further details about the economic impacts of social regulation.

2087 subordinate instruments were introduced, considerably more than in recent years, although some new instruments repealed outmoded ones.

Table 1.3: Subordinate legislation introduced in the Commonwealth Parliament, 1983–84 to 1994–95

Year	*Statutory rules*	*Disallowable instruments excluding statutory rules*	*Total subordinate legislation subject to parliamentary scrutiny*
1983–84	553	240	793
1984–85	581	501	1 082
1985–86	426	428	854
1986–87	322	510	832
1987–88	345	690	1 035
1988–89	398	954	1 352
1989–90	411	847	1 258
1990–91	484	1 161	1 645
1991–92	531	1 031	1 562
1992–93	408	1 244	1 652
1993–94	490	1 313	1 803
1994–95	419	1 668	2 087

Source: Senate Standing Committee on Regulations and Ordinances (1995)

Statutory rules covered a diverse range of Commonwealth law-making activity. They accounted for 419 or 20 per cent of the total number of new instruments subject to scrutiny by the Parliament.

There was more subordinate legislation for civil aviation than in any other area (715 or 34 per cent). Another important area was that of veterans' entitlements (316 or 15 per cent).

New areas of Commonwealth law under which instruments are beginning to be made include Native Title, where eight such instruments were made in 1994–95. Also of interest is the increasing number of instruments affecting the financial sector, especially in the complex area of superannuation.

RESOURCES OF REGULATORY AGENCIES

This section presents an overview of the changes over the past 10 years in resources of 23 Commonwealth and national regulatory agencies. It indicates trends in expenditure and employment patterns of these agencies and draws on the detailed examination of individual agencies in Appendix A.

The 23 agencies selected are among those with the highest level of expenditure on regulatory activities. Most of these agencies have a substantial regulatory impact on business — affecting decision-making either across a broad range of activities (wide scope) and/or to a large extent (high impact).

The level of resources employed by an agency on regulatory activities is clearly only a very crude proxy for the impact of the regulations they administer. Indeed, some agencies with small budgets and/or low staffing can have substantial regulatory impacts. Examples are the Foreign Investment Review Board and the Australian Accounting Standards Board.

In some cases, an agency's functions are not primarily aimed at changing behaviour or outcomes, but they can still have this effect. For example, the main function of the Australian Tax Office (ATO) is to raise revenue, but the imposition of taxes obviously has an impact on business. However, as the regulatory impact of the ATO is inextricably related to its revenue-gathering functions, it has not been included in the analysis.

Even where regulatory activities comprise only a small proportion of an agency's total operations, expenditure on regulatory activities can be high. Thus, certain large agencies which are not primarily regulatory in nature have been included. The Reserve Bank of Australia, for example, devotes only approximately 10 per cent of its resources to financial system surveillance, but this still accounts for around $20 million in regulatory expenditure per annum.

The agencies selected have been classified in Table 1.4 into six broad functional categories: trade regulation, finance, consumer protection and competition, environment, health and safety, and communication. The resource figures shown are for the 1994–95 financial year — at the time of finalising this report, final 1995–96 data were not available.

Table 1.4: The resources of Commonwealth and national regulatory agencies, 1994–95

Agency (by category)	*Total staff (number)*	*Total expenditure ($ million)*
Communication	**690**	**59**
Austel[a]		
Australian Broadcasting Authority[a]		
Spectrum Management Agency[a]		
Consumer protection and competition	**307**	**29**
Federal Bureau of Consumer Affairs[a]		
National Competition Council		
Australian Competition and Consumer Commission		
Environment	**194**	**26**
Environment Protection Agency		
Finance	**2264**	**200**
Australian Securities Commission[a]		
Australian Transaction Reports & Analysis Centre		
Insurance & Superannuation Commission		
Reserve Bank of Australia[b]		
Health &/or Safety	**2042**	**253**
Australian Building Codes Board		
Australia New Zealand Food Authority[a,d]		
Australian Maritime Safety Authority[a]		
Civil Aviation Safety Authority[c]		
Federal Office of Road Safety[a]		
National Health & Medical Research Council[a]		
National Occupational Health and Safety Commission		
National Registration Authority for Agricultural and Veterinary Chemicals[a]		
National Road Transport Commission[a]		
Therapeutic Goods Administration[a]		
Trade Regulation	**5892**	**526**
Australian Customs Service		
Australian Quarantine and Inspection Service[a]		

a Also a national standard setting body (see Appendix B).
b Assumed to be the regulatory component of the Reserve Bank of Australia.
c Assumed to be the regulatory component of the Civil Aviation Authority.
d This organisation used to be called the National Food Authority.

Sources: Budget related papers, Annual Reports, and correspondence with agencies

In addition to these categories, a distinction can be drawn between traditional areas of regulation and relatively new areas. Agencies such as the Australian Customs Service, the Australian Quarantine and Inspection Service[3] and the Australian Maritime Safety Authority (AMSA) have been part of the regulatory environment (in one form or another) since federation. They are also among the largest government regulators in terms of resource use. On the other hand, many agencies have been created only in the last 10 years, including the Australian Securities Commission (ASC), the Environment Protection Agency (EPA), the Insurance and Superannuation Commission (ISC), and the National Competition Council (NCC). While many of these new agencies assumed functions of previous organisations, they generally have a broader range of functions.

While budget appropriations to traditional areas have generally decreased, many of these agencies have been able to maintain activities by increasing their rate of cost recovery through fees and charges for certain regulatory activities.[4] However, the most significant growth in regulation expenditure has occurred in sectors of the economy which are only recently experiencing regulation and where cost recovery does not yet play an important role in revenue-raising.

The method of creating regulations differs considerably across the 23 agencies listed. Some create subordinate legislation directly through executive action — such as by the authority of Ministers, Secretaries, or other officials. Other agencies are national standard setting bodies, providing advice on regulations (in their capacity as secretariats) to Ministerial Councils. For example, the Australia New Zealand Food Standards Council considers recommendations made to it by its secretariat, the Australia New Zealand Food Authority (ANZFA — until recently know as the National Food Authority), on draft food standards. Further information on Ministerial Councils and national standard setting bodies is provided in Appendix B.

---

[3] AQIS has been classified as a 'trade regulation' agency as it regulates product imported to, or exported from, Australia. It is recognised that the activities could have also been classified as 'health and safety'.

[4] Refer to ORR (1995, pp. 22-28) for further discussion of issues relating to cost recovery.

Some agencies, such as the ASC, are involved in enforcing their own regulations through the imposition of penalties. In contrast, agencies such as ANZFA focus on developing standards, leaving enforcement to State and Territory agencies.

The extent to which an agency is required to enforce its regulations can have implications for the level of resources it needs. Financial regulation is one area where the regulators enforce their own rules and this partly explains the significant increase in resource use over the last decade.

The 23 selected regulatory agencies spent a total of $1100 million in 1994–95 and had approximately 11 500 staff (see Figure 1.5). By comparison, the total number of permanent staff employed in Commonwealth Government departments was around 130 000 in December 1995.

This significantly understates the level of Commonwealth and national resources which are devoted to regulatory activities. If the activities of the ATO and other agencies which affect business were included, as well as the regulatory activities of Commonwealth departments, the estimate for total expenditure on Commonwealth and national regulatory activities would be much higher.

Figure 1.4 shows the level of expenditure by broad function in 1994–95.[5] Although it is clear that the traditional area of trade regulation — customs and quarantine — represents almost half of all Commonwealth regulation expenditure, it involves only two agencies. In contrast, health and safety accounts for around one quarter of all regulatory activity, but there are ten agencies in this class, performing a variety of different safety functions ranging from maritime safety to occupational health and safety.

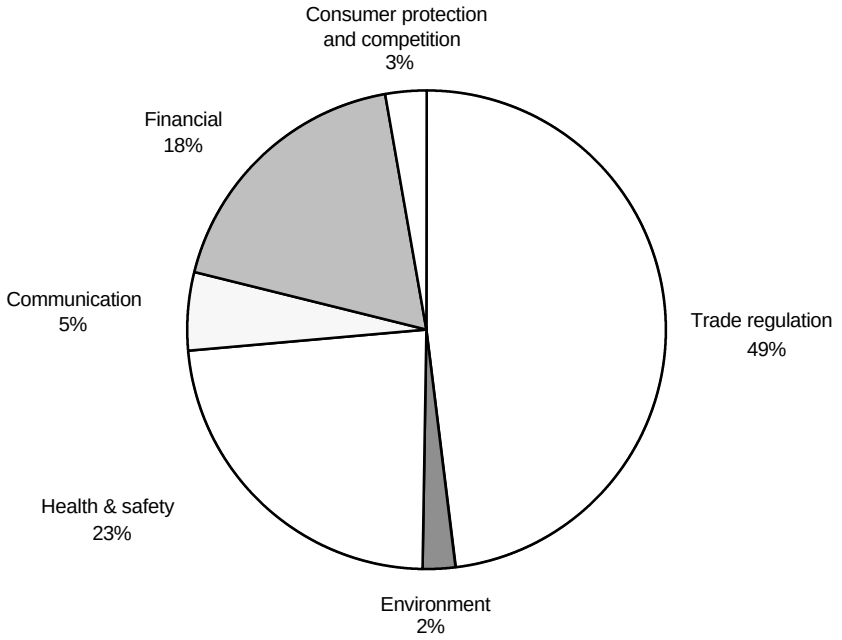
TRENDS IN RESOURCE USE

As Figure 1.5 illustrates, there has been a considerable increase in the agencies' aggregate expenditure in real terms over the last decade. Much of this has been funded by increased cost recovery, rather than budget appropriations. In contrast, staffing has remained fairly constant.

---

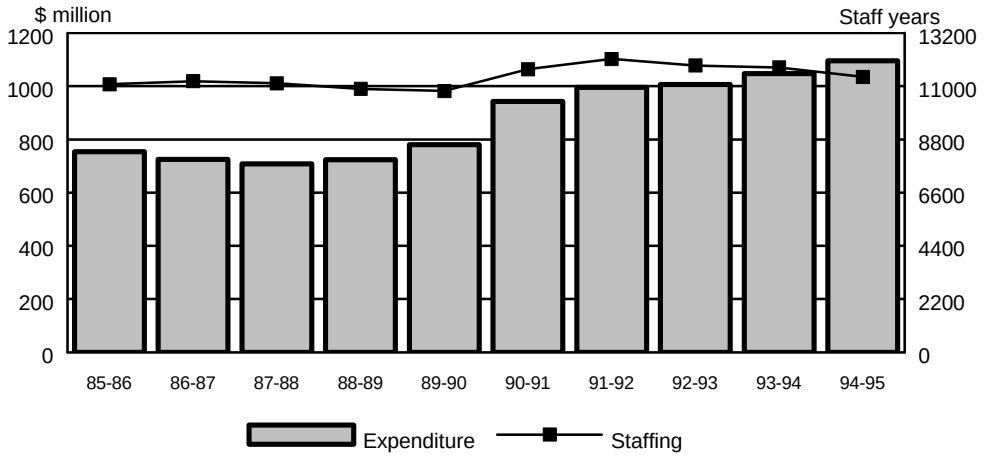
[5] Expenditure can be financed by either cost recovery or budget appropriations.

Figure 1.4: Share of regulatory expenditure, by broad functions, 1994–95 (per cent)



Sources: Budget related papers, Annual Reports, and correspondence with agencies

Figure 1.5: Commonwealth and national regulatory agencies: resource trends, 1985–86 to 1994–95[a,b]



a Expressed in terms of 1994–95 prices.

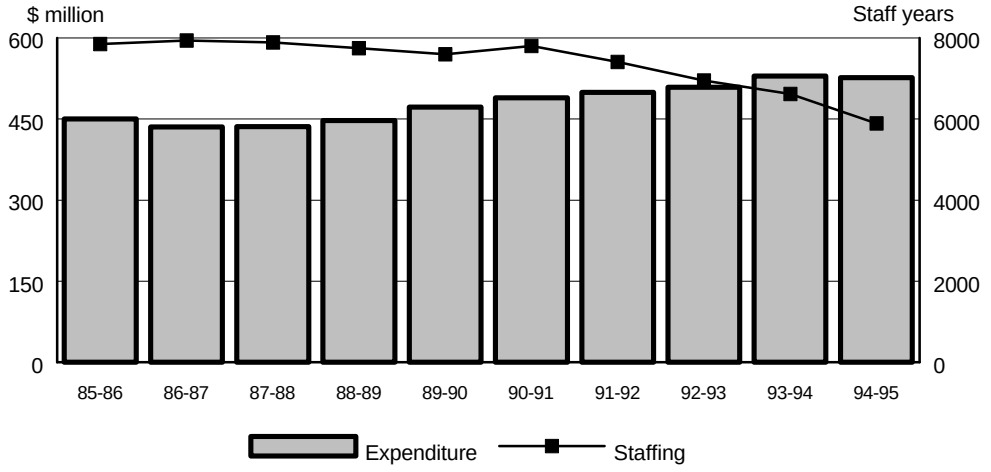
b For certain agencies data were not available for all years. Where figures could not be obtained for an agency in a particular year, resource levels for the following year were assumed to apply.

Sources: Budget related papers, Annual Reports, and correspondence with agencies

The general trend in aggregate expenditure masks significant changes in resource use for different types of regulation. For example, Figure 1.6 shows that staffing in trade regulation agencies has fallen by 25 per cent since 1985–86. In contrast, expenditure (funded by either budget appropriations or cost recovery) has gradually increased over the decade.

As budget appropriations have fallen, trade regulation agencies have supplemented their income increasingly with revenue obtained through cost recovery. As the increase in cost recovery measures has outstripped the fall in budget appropriations in most years, expenditure generally has increased each year.

Figure 1.6: Trade regulation regulatory agencies: resource trends, 1985–86 to 1994–95[a]



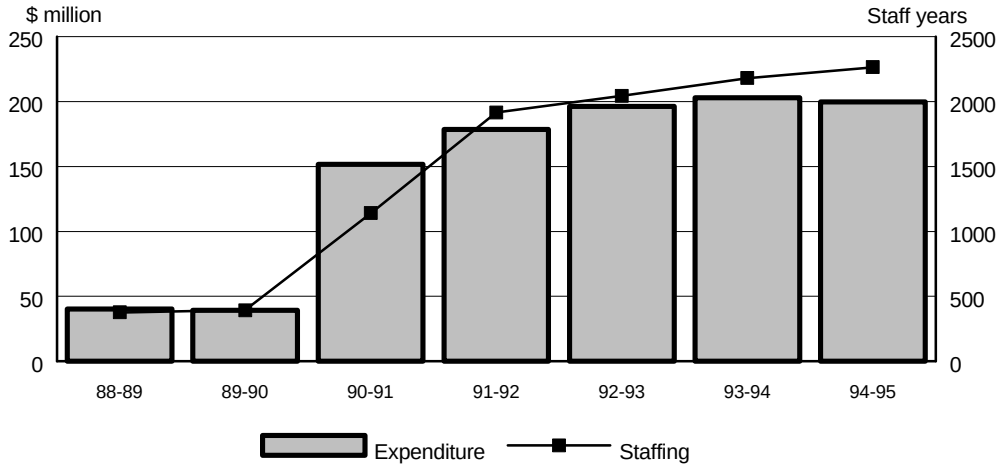
a Expressed in terms of 1994–95 prices.

Sources: Budget related papers, Annual Reports, and correspondence with agencies

While there has been a decline in staffing in the traditional areas of Commonwealth regulation, the reverse has occurred in financial regulation. Figure 1.7 shows resource changes only from 1988–89, since the ISC commenced operations in November 1987.

The significant increase in resource use in financial regulation during 1990–91 reflects the establishment of the ASC to administer and enforce the national corporations laws. While the predecessor of the ASC, the National Companies and Securities Commission, merely coordinated State-based regulation, the formation of the ASC led to the transfer of State corporate regulatory powers to the Commonwealth.

Figure 1.7: Financial regulatory agencies: resource trends, 1988–89 to 1994–95[a]



a Expressed in terms of 1994–95 prices.

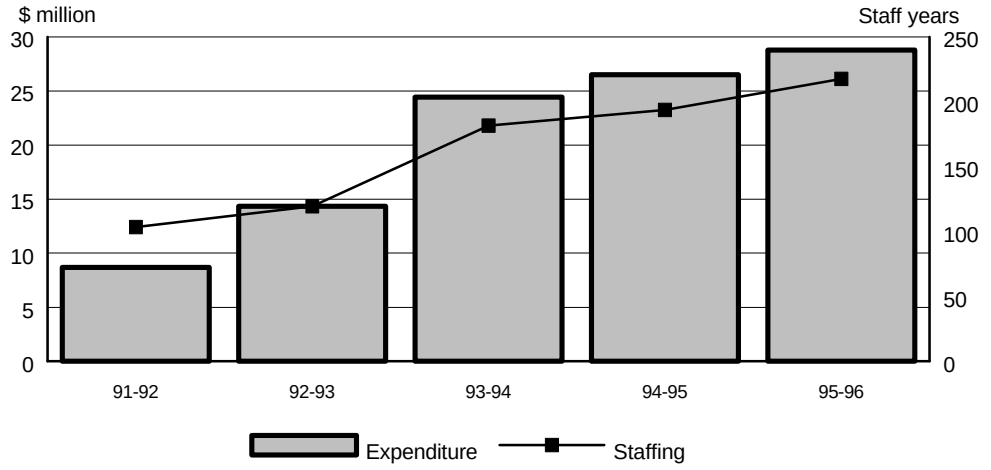
Sources: Budget related papers, Annual Reports, and correspondence with agencies

There has been a big increase also in staffing and expenditure in Commonwealth environmental regulation (see Figure 1.8). However, this may not be indicative of overall trends in environmental regulation as environmental issues are largely a State matter.

Expenditure on environmental regulation remained flat in real terms until 1991–92 with environmental issues comprising only a sub-program within the Department of the Arts, Sport, the Environment and Territories. However, the establishment of the Commonwealth's EPA in 1991–92 with expanded functions, led to a large increase in expenditure.

In contrast, expenditure on consumer protection and competition regulation has increased only gradually, although an expansion occurred in 1995–96 with the formation of the Australian Competition and Consumer Commission. This organisation has a wider mandate than the Trade Practices Commission and the Prices Surveillance Agency which it subsumed.

Figure 1.8: Commonwealth environmental regulation: resource trends, 1991–92 to 1994–95[a,b]



a Administered by the Commonwealth's EPA.

b Expressed in terms of 1994–95 prices.

Sources: Budget related papers, Annual Reports, and correspondence with the agency

The NCC — which will review, *inter alia*, anti-competitive regulation and third party access regimes — will play a larger role in competition regulation in the future.

Aggregate expenditure and staffing on regulation of health and safety have not followed clear trends over the decade, largely as a result of the diversity of safety activities within this functional group.

CONCLUSION

The foregoing examination of the available information on the extent of Commonwealth legislation and regulation indicates that its growth is continuing.

The remainder of this report outlines a range of processes, which — if effective — will ensure that regulations meet certain quality assurance guidelines, thereby helping to achieve the goal of minimum effective regulation.

CHAPTER 2

Legislative review under the National Competition Policy

One of the most important developments in regulatory review and reform in 1995–96 has been the implementation of the first phase of a comprehensive and coordinated review of existing legislation at the Commonwealth, State and Territory levels of government, as agreed to by Heads of Governments in the Competition Principles Agreement. This chapter looks at the processes that have been developed by the Commonwealth to meet its legislative review obligations under the Agreement and discusses what is in prospect.

In April 1995 the Council of Australian Governments agreed to a process of legislative review as part of the Competition Principles Agreement (CPA).[1] The CPA is one of several inter-governmental agreements which gave effect to the competition policy reforms — based largely on the report on National Competition Policy (Hilmer *et al*, 1993).

The Agreement requires all governments to develop, by June 1996, a four-year program to review all existing legislation (including Acts, ordinances or regulations) which significantly restricts competition. Any such legislation

---

[1] The other key elements of the National Competition Policy reforms are: (i) universal application of the competitive conduct rules in the *Trade Practices Act 1974* to all sectors of the economy; (ii) competitive neutrality principles which neutralise any net competitive advantage enjoyed by government businesses by reason of their public sector ownership; (iii) structural reform of public monopolies where a government has decided to introduce competition or undertake privatisation; (iv) enabling access to services provided by means of significant infrastructure facilities; and (v) prices oversight of firms (including government businesses) with a high degree of market power.

must be reformed by the year 2000, unless it can be demonstrated to be in the public interest, using criteria specified in the CPA.

Each government has determined its own agenda for the reform of its legislation. The emphasis in this chapter is on the processes that have been adopted by the Commonwealth. Appendix C includes information on how each of the other jurisdictions is meeting its obligations to review legislation that restricts competition.

SCOPE AND OVERVIEW OF REVIEW PROCESS

The Commonwealth's legislative review program is broader than required by the CPA. The scope of the Commonwealth's review program was widened by the previous Government to cover legislation imposing costs on, or benefiting, business, thereby fulfilling a commitment made in the Working Nation Statement.

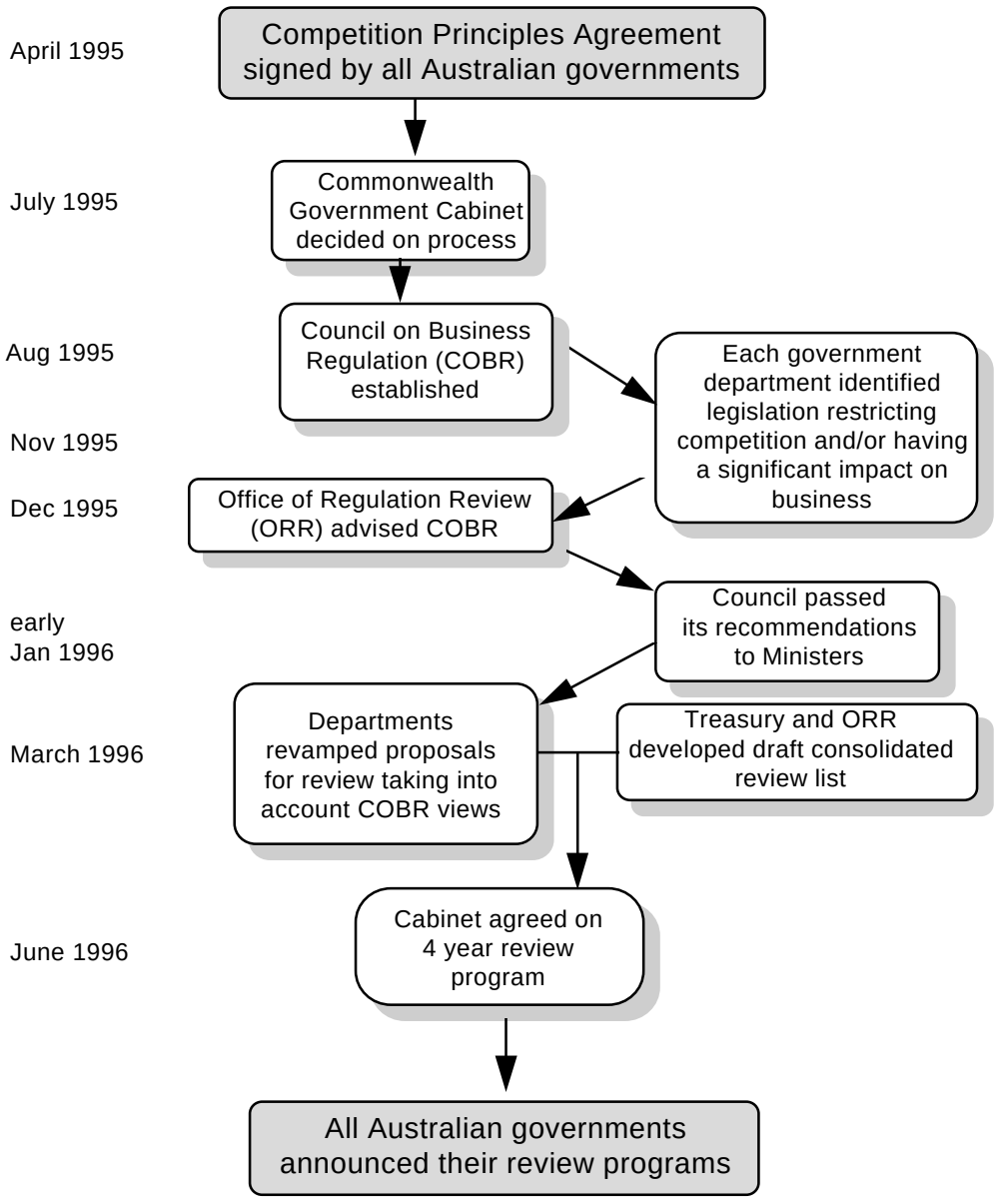
Box 2.1 below depicts the Commonwealth Government's review processes. The first phase was effectively a filtering process whereby legislation most deleterious to competition, or having substantial effects on business, was selected for review.

Each department prepared a schedule listing all the legislation it administers and proposed to review. These were considered by the Council on Business Regulation (COBR) in December 1995.[2] The Council provided comments on the review schedules, including priorities and exclusions, to Ministers and departments.

---

[2] The COBR was established in August 1995. It was made up of business, union, environmental, consumer and social services representatives. The Council was chaired by the Chairman of the Industry Commission and the ORR serviced the Council as secretariat. The Council was an advisory body and made recommendations to the Government on the legislative review process. It has since been disbanded. (See Chapter 5.)

Box 2.1: Legislation review program, Commonwealth Government processes



Source: Office of Regulation Review

Departments then reviewed their schedules, in light of the Council's comments. Revised schedules were consolidated and submitted by the Treasurer, along with the Council's recommended four-year timetable, for consideration by Cabinet. With some modifications, the final program was approved by Cabinet in mid-June 1996.

LEGISLATION SCHEDULED FOR REVIEW

At the end of June 1996, the Commonwealth's consolidated review schedule was made public. The schedule lists 98 separate reviews, of which 13 are already in progress and 85 will be conducted over the next four years. Appendix D contains the complete list, including the timetable for reviews. The purpose of the review schedule is to promote reform initiatives on a systematic basis. Each review is required to identify the costs and benefits of the legislation and the likely consequences of any reform measures proposed. The review processes require consultation with those affected by the legislation.

The Treasurer has stated:

> The reviews will assist the Government to develop reforms aimed at boosting productivity and enhancing Australia's competitiveness.
>
> The review schedule will complement other initiatives to reduce business compliance costs and to reform or repeal unnecessary or poorly drafted legislation. ..., the legislation review schedule will form a central part of the Government's overall Regulation Efficiency program (Press Release, No. 40, 28 June 1996).

The CPA requires that all legislation which restricts competition be systematically reviewed every ten years. Hence, relevant legislation not included on this schedule may face scrutiny at a later date.

Various principles and guidelines for the review program have been adopted by the Commonwealth and these are discussed below under three headings: criteria for selecting legislation for review; conduct of reviews; and reporting and implementation.

CRITERIA FOR SELECTING LEGISLATION FOR REVIEW

There is considerable scope for judgement as to which regulations restrict competition. The report on National Competition Policy recognised that

almost no regulatory activity is neutral in its implications for competition, but that two broad categories affect competition most directly. These categories are regulations restricting market entry and regulations restricting competitive conduct by market participants — such as control of prices or production levels (Hilmer *et al*, 1993, p. 191).

Some States and Territories have developed specific definitions of the types of measures that could fall within the two categories.

The COBR applied the following criteria to determine which legislation warranted being reviewed:

- the legislation has been the subject of complaints;
- it has not been reviewed for some time (say seven years);
- it has been identified by past inquiries as requiring review;
- it has objectives which may no longer be relevant; and/or
- it has been difficult to administer or involves high compliance costs.

Because of the need to avoid any duplication of review effort, and to ensure that any review is cost-effective, the Council considered exemption from review on the following grounds:

- the legislation was reviewed only recently;
- it is currently subject to comprehensive, ongoing and transparent review through industry or other consultative processes;
- it is already scheduled for comprehensive review; or
- it would not be cost-effective to review some particular legislation.

Where an exemption was sought on any of the first three grounds, it had to be demonstrated that the relevant review involved public consultation and satisfied the review requirements of the CPA (see below).

CONDUCT OF THE REVIEWS

Reviews of legislation restricting competition must satisfy the requirements of the CPA, which states that reviews are to:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;

- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result, including non-legislative approaches (*Competition Policy Reform Act 1995*, Competition Principles Agreement, clause 5 (9)).

With respect to the Commonwealth's review program, the legislation selected for review because of its impact on business must be assessed in a manner consistent with the Commonwealth's Regulatory Impact Statement (RIS) requirements. There is substantial similarity between the CPA review guidelines above, and the criteria set out in the Commonwealth's RIS guidelines.

The removal of impediments to competition is a common objective of legislative reviews under the CPA. The guiding principle in the CPA is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community outweigh the costs; and
- the objectives of the legislation can be achieved only by restricting competition.

The CPA indicates that, where relevant, the following shall be taken into account when balancing the benefits and costs:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

Thus, although competitive and economic impacts are the prime triggers for review, they are not the only determinants of the recommendations of reviews. Non-economic and social objectives must be taken into account when assessing whether, on balance, particular regulatory action is in the public interest.

The Commonwealth has agreed that the legislative reviews should be conducted in public and allow for public consultation, unless this would be excessively costly.

It is appropriate that regulatory agencies should participate in reviews. However, ideally they should not review their own legislation and operations unless provision is made for some independent external scrutiny or oversight — for example, by regulatory review units.

However, it clearly would not be cost-effective to expect the same standard of review for regulations considered to be having a minor effect as for those where the issues are more substantive. Trade-offs must be made in relation to appropriate review bodies, the extent of public consultation, quantitative versus qualitative assessments and the time allocated for the review.

Reviews conducted inhouse by departments are likely to have certain advantages. Departments have the most detailed knowledge of the regulations they administer and internal reviews may be able to be conducted in a short time frame and at low cost. In addition, recommendations are more likely to have departmental and Ministerial support which is important when reforms are being implemented.

Conversely, based on past evidence, there are risks that internal reviews will not be conducted with the same impartiality, openness and transparency as independent reviews.

The National Competition Council (NCC) may conduct, or provide assistance with, legislative reviews under the CPA as well as performing a coordination and monitoring role (see below).[3] Where particular reviews concern more than one jurisdiction (for example, occupational regulation, rural marketing arrangements and regulation of utilities), the report on National Competition Policy envisaged that the NCC could coordinate or

---

[3] Under the CPA, a government may request that the Council undertake a review, in accordance with the Council's work program, where legislation has a national dimension or effect on competition (or both).

undertake the review in question. An economy-wide review, undertaken or overseen by the NCC or some other independent review body, would help ensure that national interests are given due weight and also could provide some economies of scale in resources and expertise.

Where particular regulations have impacts only within a jurisdiction, but are similar in nature to those operating in other jurisdictions, governments may be able to cooperate and make use of review findings from other States and Territories.

Within jurisdictional boundaries, it is also important that laws are not considered in isolation. The conduct of overarching or framework reviews of groupings of related laws (for example, financial regulation, or intellectual property legislation) would facilitate simplicity and consistency between different laws. In some cases, a review across the responsibilities of several departments may be necessary and consideration must be given to how best to coordinate such reviews.

REPORTING AND IMPLEMENTATION

The main output of the legislative review process will be the reports of the reviews themselves and ultimately reforms to legislation. Nevertheless, the individual portfolio review schedules and the consolidated timetables released in June 1996 were important intermediate outputs.

Progress in developing review timetables, carrying out reviews and implementing reforms will be monitored by the NCC. The Council will assess the progress of the Commonwealth, State and Territory governments and will provide advice to governments to assist them in meeting their obligations under the CPA. Each government is required to publish a report annually on progress, with the first reports due at the end of 1996–97. The NCC will publish an annual report consolidating the reports of each government.

With the implementation of the CPA, the Commonwealth agreed to make additional general purpose payments (called Competition Payments) to be distributed to the States and Territories and determined by the size of population of each. These substantial payments are conditional on each government meeting certain obligations, including meeting the deadlines for regulatory review. The Competition Payments are to be made in three tranches. The first tranche totalling $400 million will be paid over two years, commencing in July 1997. The second tranche of $800 million is also to be

paid over two years, commencing in 1999. The third tranche involves annual payments of $600 million, commencing in 2001 and to be paid each year thereafter.[4]

The NCC will advise the Commonwealth on whether the conditions for payment of each tranche have been met by each State or Territory.

---

[4] The three tranches are estimated to be equivalent to approximately 1.3 per cent, 2.6 per cent and 3.9 per cent, respectively, of total general revenue assistance to be paid by the Commonwealth to the States and Territories in each year of the Competition Payments.

CHAPTER 3

Developments in regulation review

Many Commonwealth and inter-governmental reviews of existing legislation and regulation have been conducted recently or are ongoing, independently of the legislative review program of the Competition Principles Agreement. This chapter reports on a selection of such reviews, including recent initiatives to ease the regulatory burden on small business. Other major developments during 1995–96 have been the decision to table in Parliament legislation which will greatly enhance the quality of *new* Commonwealth subordinate legislation, the establishment of the National Environment Protection Council, and recent reforms to treaty-making processes. Finally, brief overviews of State, Territory and international developments are provided.

COMMONWEALTH AND NATIONAL DEVELOPMENTS

Various guidelines have been established to ensure a consistent approach to the development or review of different types of Commonwealth and national regulations. The guidelines are based on common principles for regulatory impact analysis and have the goal of minimum effective regulations. The guidelines and the review processes for the different forms of regulation at the Commonwealth and national level are summarised in Table 3.1.

Table 3.1: Regulatory forms, review processes and guidelines

Form of regulation	*Review Process*	*Available Principles/Guides*
Existing legislation (includes subordinate instruments)	Systematic review program across portfolios, approved by Cabinet.	Competition Principles Agreement (Legislative Review Principles) and regulations affecting business (Regulation Impact Statement (RIS) guidelines).
New or amended legislation affecting business for Cabinet endorsement	RIS Statement provided as an attachment to the Cabinet submission.	RIS Guidelines.
New subordinate instruments	Preparation of Legislative Instruments Proposal.	Legislative Instruments Handbook.
National regulations/standards	A regulatory impact assessment must be prepared, and lodged with the Office of Regulation Review before it is certified by the relevant Ministerial Council or standard setting body.	Council of Australian Governments (COAG) Principles and Guidelines on National Standard Setting.
National environment protection measures	National Environment Protection Council must prepare an impact statement before making any national environment protection standard, guideline etc.	Requirements set out in *National Environment Protection Council Act 1994.* Substantial overlap with COAG requirements.
International treaties	National Interest Analysis.	Broadly compatible with the requirements of a RIS.

Source: Office of Regulation Review

The principles and guidelines for new nationally applicable regulations or standards made by Ministerial Councils and national standard setting bodies have applied since September 1995. (For a discussion on these principles and guidelines see IC 1995, p. 141, and for information on the background and role of Ministerial Councils and national standard setting bodies see Appendix B.) As a Ministerial Council, the National Environment Protection Council (NEPC) must meet these principles and guidelines, but in addition must satisfy specific requirements applying to environment protection standards (see discussion below).

The guidelines for subordinate instruments are expected to take effect when the *Legislative Instruments Bill* is passed. This is also discussed below.

EXISTING LEGISLATION

The main development in the review of existing legislation has been the Competition Principles Agreement (CPA). The Commonwealth's review program was discussed in Chapter 2 and key features of the State and Territory review programs are highlighted in Appendix C.

Many other regulatory reviews — covering particular sectors or industries or particular areas of regulation, as well as some more generic reviews — have been conducted recently, are ongoing, or are scheduled. A selection of the more important reviews completed in the last 12 months or under way are included in Table 3.2, together with a brief description of some of the main features of each review.

The Government has announced the goal of reducing the paperwork and regulation compliance cost burden, particularly on small business. Specific measures have been announced, including the establishment of a general Regulation Efficiency Program, a Small Business Deregulation Task Force, a National Small Business Summit, Micro Business Consultative Group, the introduction of a five year sunset clause for all new regulation and the development of a three year action plan for small business.

The *Small Business Deregulation Task Force (SBDTF)* was established in May 1996 with wide ranging terms of reference (see Appendix E). The Task Force is to report by November 1996 to the Government on revenue neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent. In doing so, the SBDTF is asked to have regard to a number of specific areas including statistical collections, taxation compliance, federal regulatory requirements, and State and local government regulation requirements. With this goal in mind, some changes in taxation administration and data collection by the Australian Bureau of Statistics were announced by the Government in May 1996.

The first *National Small Business Summit*, organised by the Commonwealth Government, was held in Sydney in June 1996. Commonwealth, State and Territory Ministers responsible for small business and local government representatives agreed (*inter alia*) to:

- a Charter of Principles articulating good regulatory practice;
- more accountable and transparent licensing and registration procedures;

Table 3.2: Selected reviews recently completed or under way

Description	*Main features*	*Timing/stage of completion*
Financial Services Industry	The Inquiry will make recommendations on the nature of the regulatory arrangements that will best ensure an efficient, responsive, competitive and flexible financial system.	To report to the Treasurer by 31 March 1997.
Corporations Law Simplification Program	Task force aims to improve the language, layout and structure of the law; and to improve the policy reflected in the law, especially by removing unnecessary obligations.	First stage concluded with the *First Corporate Law Simplification Act 1995*. Work proceeding on stages two to four; expected to be completed in October 1997.
Tax Law Improvement Project	A major three year review by the Australian Tax Office aims to reduce compliance costs by simplifying and rewriting the *Income Tax Assessment Act 1936* and related Acts. Not a review of tax policy.	Commenced in 1994–95 and to be completed during 1996–97.
Environmental Impact Assessment Review	A comprehensive public review, by the Environment Protection Agency of the Commonwealth's Environmental Impact Assessment legislation and process, commenced in October 1993. The aim of the review is to ensure regulations meet their objectives at the lowest cost to society.	Package of reforms dealing mainly with procedural changes was agreed to by the previous government. It has been resubmitted to the current Minister for the Environment.
Quarantine Act 1908	Comprehensive review of quarantine arrangements by Independent Committee.	Committee to report in October 1996.
Review of Tariff Concession System	*Customs Tariff Act 1987* Part XVA and related regulations reviewed by the Commonwealth Department of Industry, Science and Tourism (DIST), the Australian Customs Service and the Bureau of Industry Economics. Recommended that the tariff concession be abolished.	Review completed in 1995. Previous government agreed to gradually phase out the Tariff Concession System (TCS). New government recently announced it would retain a modified TCS.

Table 3.2 (continued)

Description	*Main features*	*Timing/stage of completion*
Telecommunications Act 1989 and related Acts	Reviews of telecommunications legislation, involving the re-drafting of some 11 Acts.	Exposure Draft covering some elements of the revised legislation released in December 1995. Legislation to Parliament later in 1996.
Product labelling regulations	Review by DIST to reduce unnecessary prescription and duplication between jurisdictions.	Review to be completed by the end of 1996. A guide to performance based labelling regulation is to be prepared by 30 June 1997.
Product Safety Recall Regulations under the *Trade Practices Act 1974* and equivalent State and Territory legislation	Review by DIST.	Review to be completed by the end of 1996.
Trade Practices (Consumer Product Safety Standards) Regulations	Review conducted by the Commonwealth in consultation with States and Territories. Initiated by the Ministerial Council on Consumer Affairs.	Recommendation to the Minister on 30 June 1996.
Review of Occupational Health and Safety	Review by the Industry Commission recommended streamlining regulations, reforming cooperative national arrangements between governments, and strengthening enforcement in order to reduce work-related injury and disease.	Review completed in September 1995.

Source: Office of Regulation Review

- continued development of the Business Licence Information Service; and
- exchange of information on the development of benchmarking and compliance cost assessment methods to assist the regulatory reform process.

The *Micro Business Consultative Group* was established in June 1996. The Group is to advise the Government on the specific policy requirements of businesses which employ fewer than five people or are owner operators. It comprises operators of 21 micro businesses drawn from all States and Territories. The group will assess, amongst other things, the impact of Government policies on micro businesses, including the impact of regulation.

NEW REGULATION

As well as reviews of existing legislation, several developments at the Commonwealth or national level have been aimed at improving the quality of new primary and subordinate legislation. These include:

- improved scrutiny of new Commonwealth subordinate instruments;
- requirements for impact statements in respect of national environment protection measures made by the National Environment Protection Council; and
- reforms to the treaty-making process.

Subordinate instruments

Continuing rapid growth in the amount of Commonwealth subordinate legislation was shown in Chapter 1 (Table 1.2).

Acts regulating subordinate legislation exist in all States except Western Australia, but neither Territory. These Acts generally require regulatory impact statements to be prepared for new regulatory proposals (see State reports in Appendix C). The Commonwealth does not have an equivalent subordinate legislation Act, but draft legislation has been submitted to Parliament.

The *Legislative Instruments Bill 1996,* which was introduced into Parliament in June, proposes a new regime governing standards and procedures for the making, publication and scrutiny of delegated legislation. The Bill is a revised and strengthened version of the *Legislative Instruments Bill 1994*, discussed in 'Regulation and its Review: 1994–95' (IC 1995, p. 59).

The legislation, if passed, would require a regulatory impact assessment for new Commonwealth regulations affecting business. The rule maker would be required to prepare and make available a 'Legislative Instruments Proposal' (LIP), which sets out the need for the regulation, its costs and benefits, and an assessment of any alternative ways of achieving the objectives of the regulation.

A LIP should contain details similar to those provided in a Regulation Impact Statement (RIS) as required for new or amended legislation and regulation which affects business. As proposed by the Bill, the process would be rendered mandatory by the requirement that LIPs be certified by the prescribed body (the Office of Regulation Review (ORR) is the only

prescribed body at this time). The ORR is to assist regulators in complying with the Act. Other important features of the Bill are:

- all new legislative instruments would expire automatically after five years, through sunset clauses, or after one year where a LIP is not prepared;
- a formal process of consultation must be undertaken for instruments affecting business; and
- a publicly accessible electronic Register of Legislative Instruments is to be established to help expose outdated or unnecessary regulations, thereby assisting programs of review.[1]

A Legislative Instruments Handbook is being prepared by the Attorney-General's Department to assist departments and agencies that are developing these instruments.

National Environment Protection Council

The NEPC was formally established when it met for the first time in December 1995. The NEPC is a Ministerial Council comprising Commonwealth, State and Territory Ministers with responsibility for the environment. (The role and activities of Ministerial Councils are discussed in Appendix B.)

Under the *National Environment Protection Council Act 1994*, the Council has the power to develop national environment protection measures (that is, standards, goals, guidelines or protocols) which will be adopted automatically as law in every State and Territory.

The NEPC will deal with such matters as air, water and soil pollution, assessment of site contamination, the impact of hazardous wastes, reuse and recycling of used materials, noise abatement and motor vehicle emissions.

The development of measures by the NEPC will entail public consultation and the preparation of impact statements. The impact statements must consider the economic and social impacts of measures on the community,

---

[1] A legislative instrument made after the commencement of the Act must be included on the Register to be enforceable. The Bill also establishes a timetable for existing instruments to be registered. If an instrument is not registered by the due date, it will become unenforceable.

alternative methods of achieving the desired environmental outcomes, regional environmental differences and timing.

The NEPC is required to prepare an impact statement for all proposed environment protection measures. This is in addition to the requirement on all Ministerial Councils to prepare a regulation impact statement under the Council of Australian Government (COAG) Principles and Guidelines. While there is substantial overlap between these two sets of requirements, there are differences. For example, the COAG (1995) Principles and Guidelines require quantification of costs and benefits to a greater extent than NEPC impact statements.

Reforms to the treaty-making process

Australia's participation in international treaties can have a significant impact on the domestic regulatory environment. When treaties are ratified, international standards or regulatory regimes may need to be introduced into Australian law.

The Minister for Foreign Affairs and the Attorney-General announced jointly in May 1996 a number of reforms to the treaty-making process.

Treaties will be tabled in Parliament at least 15 sitting days before the Government proposes to take binding action. This means that the treaties will be tabled after the treaty has been signed for Australia, but before action is taken which would bind Australia under international law (usually by ratification or accession).

For each treaty, a National Interest Analysis (NIA) must be prepared and tabled in the Commonwealth Parliament. The NIA will set out the reasons for Australia becoming a party to the treaty, including a discussion of the foreseeable economic, environmental, social and cultural effects of the treaty, the obligations imposed by the treaty and its direct financial costs.

A NIA also will involve analysis of methods of implementation, consultation, and provisions for withdrawal and denunciation. Although there are some important differences, the NIA process is broadly similar to that involved in preparing a RIS.

Other initiatives include:

- more public consultation arrangements for major treaties;
- new arrangements tabling all treaties in the Commonwealth Parliament;

- a Joint Standing Committee of the Parliament on Treaties is to be established;
- an audit of treaties is to be conducted to provide a full list of treaties to which Australia is a party;
- an annual report by the Government to the Parliament outlining developments in treaty-making;
- the development of a treaties database; and
- a Treaties Secretariat which is to be established in the Department of Foreign Affairs and Trade.

As the new arrangements do not operate prior to the signature of an international agreement, negotiations under the auspices of the World Trade Organization and other multilateral treaty negotiations will not be directly affected by the NIA or tabling requirements.

However, because the main objective of the new initiatives is to improve public and Parliamentary access to information on treaty proposals in general, it is likely that the text of multilateral treaties under negotiation will become more accessible to interested groups.

As well as these Commonwealth developments, on 14 June 1996, COAG agreed to the establishment of a Treaties Council and related improvements to the provision of information about and consultation concerning treaties and other international instruments of sensitivity or importance to the States and Territories. The Treaties Council will have an advisory role and will comprise the Prime Minister and all Premiers and Chief Ministers.

The agreed changes are incorporated in revised *Principles and Procedures for Commonwealth-State Consultation on Treaties.* An important principle is that the Commonwealth should, wherever practicable, seek and take into account the views of the States and Territories in formulating Australian negotiating policy and *before* becoming party to a relevant treaty or instrument. An important procedure is the provision of a list of current and forthcoming negotiations and of matters under consideration for ratification and accession to the States and Territories on a regular basis.

STATE AND TERRITORY DEVELOPMENTS

All States and Territories have regulation review policies. Elements common to most include:

- the existence of a regulatory review unit;
- a formal requirement for proposed subordinate legislation to be accompanied by a RIS;
- the staged repeal or review of subordinate legislation;
- a requirement, or proposed requirement, for a RIS to be prepared for regulatory proposals going to Cabinet;
- reviews (under the CPA) of legislation which restricts competition;
- sectoral and generic reviews of regulations; and
- involvement in national fora to coordinate and harmonise regulations across the Commonwealth, States and Territories.

Table 3.3 summarises the regulation review mechanisms in place in each State and Territory. Appendix C provides more detail.

Several regulatory review units have been involved recently in developing and encouraging new regulatory approaches to assist in the adoption of more flexible, outcome focused regulations. Victoria's proposed Regulatory Efficiency Legislation and New South Wales' Regulatory Innovation proposals are two examples, both of which allow business to put forward alternative ways of meeting regulatory objectives.

Table 3.3: State and Territory review mechanisms

State/ Territory	*Regulation review unit*	*Subordinate Legislation Act*	*RIS for subordinate legislation*	*RIS for Cabinet proposals*	*Staged repeal*	*Systematic review of legislation*
NSW	✓	✓	✓	✓	✓	✓
Vic	✓	✓	✓		✓	✓
Qld	✓	✓	✓		✓	✓
WA	☑		✓		✓	✓
SA	✓	✓	planned	planned	✓	✓
Tas	✓	✓	✓	✓	✓	✓
NT	☑					✓
AC	✓	✓	✓	✓		✓

☑ WA and the NT do not have formal regulation review units. However, regulatory review functions are undertaken largely by the Ministry of Premier and Cabinet and by the Small Business Development Corporation in WA, and by the Department of Asian Relations, Trade and Industry in the NT.

Sources: Industry Commission 1995, Table 3.1 and unpublished Office of Regulation Review research

Victoria and New South Wales (NSW) also have introduced requirements to publish anticipated regulatory reforms. These initiatives are aimed at improving consultation processes by providing early notice of regulatory changes. Other developments have included the Australian Capital Territory assigning a Minister to be directly responsible for regulatory reform.

All the States and Territories are involved in implementing the legislation review requirements of the CPA (see Chapter 2). By June 1996, all jurisdictions had developed a schedule of their legislation that restricts competition. These pieces of legislation will need to be reviewed by the year 2000. Other aspects of the CPA which also involve regulatory change in the States and Territories include the structural reform of public monopolies, competitive neutrality between public and private sector businesses, the provision of access rights to essential facilities, and the application of National Competition Policy to local governments.

In addition, the States and Territories have conducted sector specific reviews, such as the review of regulations governing the legal profession in Victoria, and broad-ranging reviews of all legislation such as that undertaken in Queensland between 1991 and 1996.

Other recent efforts to streamline and rationalise regulations include NSW's review of all licences imposed on business, the continuation of Victoria's Licence Simplification Program, Queensland's small business policy initiative to review all regulations, licences and fees affecting business, and Tasmania's Systematic Review of Business Legislation and its Subordinate Legislation Act (which, during 1995, resulted in the lowest number of regulations being introduced since 1960).

The States and Territories are involved also in various activities to coordinate and harmonise regulations across Commonwealth, State and Territory jurisdictions. Each jurisdiction is a member of numerous Ministerial Councils and other national fora concerned with regulatory issues, such as the Commonwealth/State Committee on Regulatory Reform.

Improved coordination is being promoted by business licence information systems. These computer systems operated by the States and Territories provides information to interested persons regarding probable Commonwealth, State and Territory licensing arrangements. At the National Small Business Summit held in June 1996, all governments agreed to continue to develop and improve these services.

INTERNATIONAL DEVELOPMENTS

Over the last decade many developed countries have instituted regulation reform strategies with the goal of improving the quality of regulation making (see Appendix F).

The various problems which have led countries to institute these strategies have been identified as:

- unemployment and low growth which have become less responsive to macroeconomic instruments;
- prescriptive regulations inhibiting the ability of enterprises to adopt new technologies quickly;
- growing interdependence among countries and their increased difficulties in insulating themselves from external developments; and
- complaints from businesses that existing regulations are too complex and too cumbersome.

Countries expect that improved regulation making and review will achieve the following objectives:

- increased economic growth;
- better choice of policy instruments by government, thus making government more effective;
- compatibility of domestic and international regulatory systems; and
- increased flexibility of industry so that it is better able to meet consumer demands.

The Organisation for Economic Co-operation and Development (OECD 1995a) analysed the reform strategies of 14 of its member countries. It found that most have established an explicit regulatory reform policy and most are pursuing harmonisation and mutual recognition. To varying degrees, most of the countries reviewed have also dismantled some anti-competitive regulation in selected economic sectors, established explicit quality standards for regulations and a regulatory impact analysis program, and introduced public consultation programs.

Australia, Canada, the United Kingdom (UK) and the United States of America (USA) stand out as the countries with the greatest commitment to improving the quality of their regulations. Even among these countries, though, there is considerable variation in how some review programs are conducted and in the criteria used for assessment. For example, while the UK focuses on the impact on business when assessing a new regulation, Australia and Canada look at the impact on all identified groups. But only Canada and the USA have strict cost-benefit tests for new regulations.

The OECD (1995a) considers that the following areas present the most significant challenges to developed countries in improving the management of regulation making and regulation reform:

- instilling the required expertise and skills among regulators so that they can develop better quality regulations;
- addressing the problem presented by an accumulation of outdated and inflexible regulations; and
- resisting the demands of pressure groups when these will result in significant costs to other groups which are less vocal and organised[2].

---

[2] The OECD considers that this particular problem results in the costs of regulations outweighing the benefits, imposition of avoidable economic costs, inhibition of

It is also significant that a number of countries have moved their reform focus from deregulation to improving the quality of regulations. A program of regulation impact analysis (also known as Regulation Impact Statements in Australia) has been implemented, to varying degrees, in ten of the 14 member countries examined by the OECD.

In a new development, some countries have been devising ways to manage the functioning of the regulatory system as a whole. The objective is to shift the focus from assessing particular instruments to addressing problems that arise from the functioning and growth of the regulatory system as a whole. Such problems include the aggregate costs of many regulations, the complexity and quantity of regulations, consistency amongst regulations, accountability and openness, intrusion on private life and so on.

---

technological innovation, inflexible regulations, lack of wide consultation and inconsistent regulations.

CHAPTER 4
Regulation impact analysis

Regulation impact analysis can make a significant contribution to improving the quality of regulation by making regulation development and review more systematic and transparent. Because of this, Australian governments have been increasingly embracing it. Nevertheless, greater adherence to regulatory impact analysis requirements is essential if it is to be effective in improving regulatory outcomes. The incentives for compliance must be adequate and the analysis properly integrated into policy making.

This chapter briefly outlines the role of regulatory impact analysis in the process of making and reviewing regulation and the contribution it can make to good regulatory outcomes. The level and quality of adherence to Commonwealth Cabinet and Ministerial Council regulatory impact analysis requirements are then examined, and some areas for improvement in preparation and compliance noted.

Appendix G provides more detailed information on Commonwealth regulation impact analysis requirements (as contained in Regulation Impact Statement Guidelines). Although these relate specifically to proposals affecting business which require endorsement from the Commonwealth Cabinet, they are similar to the regulatory analysis requirements under other review processes.

THE ROLE OF REGULATION IMPACT ANALYSIS

Regulation impact analysis is designed to contribute to better quality regulations by providing a framework for adopting good practice in regulation making and review. This involves a consistent, systematic and transparent process of assessing alternative approaches to problems which may give rise to government intervention (see Box 4.1 for the key elements of regulation impact analysis).

Integrating impact analysis into the decision making process has the potential to focus attention on understanding the nature and magnitude of the problem, and giving due consideration to a range of alternative regulatory and non-regulatory responses, as well as enforcement mechanisms. This can assist in the adoption of regulations that are proportionate to the size of the problem and most cost-effective in overcoming it.

Box 4.1: Key elements of regulation impact analysis

Regulation impact analyses outline:

- the perceived **problem** and the related **objective** of the proposed regulation;
- **alternative approaches** for dealing with the problem;
- assessment of the expected **benefits and costs** to the community of various alternatives, often including a breakdown of these impacts on government, business, consumers and other groups;
- the process and results of **consultation**; and
- **enforcement and review** mechanisms.

Source: Office of Regulation Review

Regulation impact analysis calls for an economy-wide perspective in identifying who benefits from the regulations, who incurs the costs and whether the regulation achieves its objectives without excessively burdening the community.

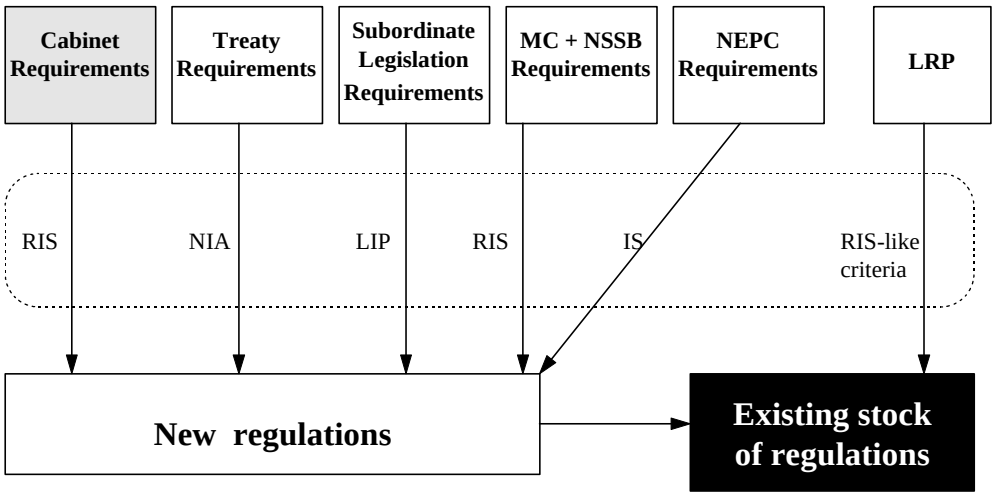
If implemented appropriately, impact analysis can provide greater assurance that the solution adopted not only provides a net benefit to the community, but also meets its objectives with minimum negative side effects on competition, prices, compliance costs, consumer choice, environmental amenity and other community goals.

Regulation impact analysis also has its limitations. Sound analysis can be difficult and, even if done well, cannot guarantee good regulatory outcomes. Nevertheless, as noted by the Organisation for Economic Co-operation and Development (OECD):

> ...experience makes clear that the most important contribution to quality decisions is not the precision of calculations, but the action of analysis — questioning, understanding real-world impacts, exploring assumptions (1995a, p. 11).

In light of the benefits of regulatory impact analysis, governments across Australia have been increasingly requiring their use. At the Commonwealth and national level, analyses of this type are now required for various regulation making processes (see Box 4.2). (Appendix C contains information on review processes and the role of impact analysis in the States and Territories.)

Box 4.2: Regulation impact analysis in the review process



Required before 1995

Required from 1996

MC = Ministerial Council
NSSB = national standard setting body
NEPC = National Environment Protection Council
LRP = Legislative Review Program (part of the Competition Principles Agreement)
NIA = National Interest Analysis
LIP = Legislative Instrument Proposal
IS = Impact Statement
RIS = Regulation Impact Statement

Source: Office of Regulation Review

Australia is not alone in moving towards greater quality control in regulation making and review. Improving the basis for decisions through regulatory impact analysis is one of the most widespread strategies adopted in OECD countries to reform regulation making (see Appendix F). Indeed, the OECD recently adopted the first international standard on regulatory quality as contained in its *Recommendation on Improving the Quality of Government Regulation* (see IC 1995). This standard contains the same type of requirements as for impact analysis in Australia.

Whilst there are some differences in the specific requirements for regulation impact analysis under each of the review processes at the national and Commonwealth level, they are all based on the same broad principles. (Although for NIAs, the assessment of alternatives will be limited to the different measures which may be used to implement the international treaty already signed. Moreover, because the requirements are specified in very general terms, it is unclear to what extent different implementation alternatives will be assessed, and whether the impacts on different groups will be included.) The specific requirements under each initiative are summarised in Table 4.1.

ADHERENCE TO RIS REQUIREMENTS

Regulation impact analyses are now required under various review processes, as discussed above and in Chapter 3. However, several of these have only recently come into effect and it is therefore too early to gauge their effectiveness. NIAs have only been required since May 1996, Impact Statements for environment protection measures since December 1995 (with no measures made in the first half of 1996), and Legislative Instrument Proposals (LIPs) will not come into effect until after the Legislative Instruments Bill before Parliament is passed. Reviews under the Commonwealth's legislative review program only began in July 1996.

That said, RISs have been required for all Commonwealth Cabinet proposals affecting business since 1986. Ministerial Councils and national standard setting bodies have been required to prepare a RIS for each proposal with a regulatory impact since September 1995.

COMMONWEALTH AGENCIES

The level and quality of adherence by Commonwealth agencies to RIS requirements has generally been disappointing. Commonwealth agencies have not always prepared RISs, or have done so only after the decision to regulate has been made. Part of the reason for this is that agencies sometimes consider the impact of a regulation on business as indirect and that the proposal should therefore be excluded from the RIS process, even though it may have significant indirect effects. At other times, the oversight may have been due to a more general lack of knowledge as to the requirements and the benefits regulatory analysis can offer decision makers.

Nevertheless, during the first half of 1996 several agencies adopted the RIS framework at an early stage, using it to guide policy development.

MINISTERIAL COUNCIL AND NATIONAL STANDARD SETTING BODIES

The extent of adherence to RIS requirements for Ministerial Councils and national standard setting bodies has been mixed.

Some national standard setting bodies have been preparing RISs for some time. For most of these bodies, RISs have become an integral part of general policy development, and have been operating quite successfully for several years. The National Road Transport Commission is an example, having used impact analysis since 1991.

Other bodies, such as the Australia New Zealand Food Authority (ANZFA) — formerly the National Food Authority (NFA) — have made genuine attempts to adopt the RIS process. Whilst the integration of RISs into the decision making process of ANZFA has taken time, progress has been made, and both the frequency of use and their quality have improved.

That said, with the exception of ANZFA[1], Ministerial Councils and national standard setting bodies have presented very few RISs to the ORR — although this is partly because very few regulatory developments have occurred at the Ministerial Council level since September 1995, reflecting the lumpy work loads and infrequent meeting of Ministerial Councils, along with elections in various jurisdictions during late 1995 and early 1996.

Of the few RISs that the ORR has received, most have been relatively early drafts for comment and of a reasonable standard. While a few RISs have not considered enough alternatives or inadequately explained the magnitude of certain impacts, most have been structured in a manner consistent with the RIS requirements and have identified the different regulatory impacts. In some cases RISs have led to changes to the preferred regulatory approach. For example, in 1995 the National Occupational Health and Safety Commission (NOHSC) changed its original position on approaches to cost

---

[1] The ANZFA regularly receives applications from the public (usually from food manufacturers) to vary standards in the Australian Food Standards Code — which regulates the composition, labelling and advertising of food sold in Australia. The ANZFA can also propose changes to the Code.

recovery for the National Industrial Chemicals Notification and Assessment Scheme on the basis of regulatory impact analysis. Moreover, in nearly all cases, transparency has been improved — particularly by providing information on the nature and magnitude of the problem and the alternatives considered.

A NEED TO INTEGRATE REGULATION IMPACT ANALYSIS

Sound regulation is an essential element of good government and greater regulatory effectiveness means better government. Sound regulation depends on the quality of the decision making processes and the way policy instruments are chosen.

The quality control provided by effective regulatory impact analysis is an important aspect of the decision making process. Such analysis helps to ensure that all important factors and impacts are known when decisions are made. One advantage of impact analysis is that it focuses on the factors relevant in choosing the best of the feasible alternatives to a policy issue. Impact analysis tries to establish the likely magnitude of the costs and benefits of alternative ways of addressing an issue, as well as making clear the areas where quantitative values cannot be calculated. It is the areas where dollar values cannot be attributed that most require judgements to be made by governments as to the relative merits of alternatives.

Table 4.1: Summary of regulation impact analysis requirements under Commonwealth and national initiatives

Requirements	*Cabinet Handbook requirements (RIS)*[a]	*Legislative Instrument Bill require-ments (LIP)*	*Treaty require-ments (NIA)*	*Ministerial Council & National Standard Setting require-ments (RIS)*	*National environ-ment protection measure require-ments (IS)*	*CPA require-ments*[b]
Problem identification/ restriction on competition	✓		✓	✓	✓	✓
Regulatory objective	✓	✓		✓	✓	✓
Identification of alternatives	✓	✓	☑	✓	✓	✓
Assessment of alternatives (costs/benefits)	✓	✓	☑	✓	✓	✓
Impact on affected parties	✓			✓	c	
Quantification	✓ (where possible)			✓		
Consultation	✓	✓	✓	✓	✓	
Administrative simplicity	✓			✓	✓	
Enforcement/ implementation	✓		✓		✓	
Plans for review	✓			✓		
Provisions for withdrawal and denunciation			✓			
Sunset provision	✓	✓		✓		

a For proposals affecting business going to Cabinet and the Commonwealth's LRP.

b However, different jurisdictions may expand on these requirements if they wish — as is the case in the Commonwealth where reviews will need to meet Cabinet Handbook RIS requirements.

c Involves a statement of how any regional environmental differences have been addressed in developing the requirements.

☑ Alternatives will be limited to those allowed within the treaty.

Source: Office of Regulation Review

At the Commonwealth and national levels, full use has yet to be made of regulation impact analysis. In part, this is because there are no effective sanctions on the failure to fulfil requirements, apart from encouragement and persuasion by the ORR.

The decision-making process would be improved if impact analysis were integrated from the beginning of the formulation of proposals instead of being prepared late in the process, as often happens simply to comply with externally imposed requirements. Among other things, integration would help earlier consideration of a greater variety of solutions, whether regulatory or non-regulatory.

Better integration into the policy making process does not necessarily require an extension of regulation impact analysis. Rather, it requires more effective application of the RIS framework. This is likely to be achieved only through training and other means to demonstrate to agencies the value of such analysis in presenting feasible options to government, thereby obtaining from regulators a commitment to regulation impact assessment. Such strategies may also need the backing of improved gatekeeper mechanisms and tangible sanctions when approved processes are not observed.

CHAPTER 5

Activities of the Office of Regulation Review

The activities of the Office of Regulation Review are all directed at the overall objective of improving the quality of the regulatory environment to benefit the Australian community.

The role of the Office of Regulation Review (ORR) is to assist Commonwealth agencies and the Government to work towards introducing regulations which are effective in meeting community needs and objectives, while imposing the minimum of adverse effects.

The ORR's principal activities fall into two main groups:

- those primarily internal to the Commonwealth Government's operations, such as vetting Regulation Impact Statements (RISs), advising Commonwealth agencies on the merits of particular regulations, and, until recently, providing secretariat support to the Council on Business Regulation (COBR); and
- those primarily external to the day-to-day operations of the Commonwealth Government, such as publishing analyses of particular regulatory issues and collaborating with the State and Territory regulation review agencies.

The ORR is a small unit within the Industry Commission staffed by public servants who have expertise in microeconomics, law and regulatory design. The ORR reports to the Chairman of the Industry Commission, through the Executive Commissioner who guides the work program and acts as spokesperson for this aspect of the Commission's activities.

In comparison with recent years, the balance of the ORR's activities during 1995–96 involved less research work and more emphasis on liaison and advisory work with government agencies. This was a consequence mainly of the active role given to the ORR in relation to the Commonwealth's legislative review program (see below).

ADVISORY SERVICES FOR REGULATORS

The ORR works together with Commonwealth regulatory agencies and policy departments — see Chapter 1 and Appendix A for the wide range of such agencies — to design and implement the minimum necessary regulations needed to achieve government objectives. In working both with regulatory agencies and with departments, the general principles which the ORR seeks to have adopted are encompassed in guidelines for preparing RISs (see Chapter 4).

The ORR provides such advisory services in order to assist the staff of regulatory agencies to view their roles in a wider context, and to apply the principles embodied in RISs. It does this through, for example:

- distribution of a user friendly 'Guide to Regulation Impact Statements' (ORR 1995);
- commenting on RISs prepared by regulatory agencies;
- briefings by ORR staff, tailored to the specific needs of those agencies and/or to particular regulatory issues with which they may be grappling; and
- secondment of ORR staff to agencies for limited periods.

If a department or agency intends to introduce regulation affecting business, the Cabinet Handbook requires that the proposal be referred to the ORR at the earliest opportunity, whether or not it is intended to be considered by Cabinet (PM&C 1994a, pp. 28–29).

The purpose of these procedural requirements is to make the economy-wide ramifications of particular regulations as clear as possible, and to document for consideration and decision the various options (including non-regulatory approaches) for achieving the Government's objectives.

THE COMMONWEALTH'S LEGISLATION REVIEW PROGRAM

During 1995–96 the ORR assisted in the early stages of the Commonwealth's four-year legislative review and reform program which was described in Chapter 2. The ORR helped departmental officials develop, by end-November 1995, draft schedules of what legislation and regulation should be

reviewed, in what year, and by what type of review body. The departmental schedules accounted for some 1200 pieces of Commonwealth legislation.

The ORR assessed the schedules, and advised the COBR (see below) of issues it might take into account when considering the proposals. In late June 1996, the Government announced details of its legislation review program for the next four years, thereby meeting an initial obligation of the Competition Principles Agreement (CPA) — details are in Chapter 2 and Appendix D.

THE COUNCIL ON BUSINESS REGULATION

The COBR was established in 1995 to advise the Commonwealth Government on regulatory issues with particular effects on business. The ORR served as the secretariat for the Council, which was disbanded in August 1996.

The Council's main task was to advise what legislation should be reviewed, and with what priority, for the Commonwealth to meet its obligations under the CPA. It examined the proposals of each of 20 portfolios and decided on the approaches it wished to take and the advice it would give to the Government. Subsequently, the Council conveyed its comments to Ministers, giving particular attention to reviews which:

- departments proposed be undertaken within the agency responsible for administering the regulations, but which the Council recommended as warranting more open and independent review; and
- the Council regarded as necessary but which were not proposed by the relevant department.

The Council subsequently prioritised the 80 or so reviews that it had recommended to Ministers. The Council's schedule of reviews was included in a submission considered by Cabinet.

COAG'S PRINCIPLES AND GUIDELINES FOR REGULATION MAKING

In April 1995, the Council of Australian Governments (COAG) agreed to new procedures for setting national standards and nationally applicable regulations, the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies.*

These guidelines require, in essence, that Commonwealth/State Ministerial Councils and national standard setting bodies (see Appendix B for a listing) must adhere to a nationally consistent minimum assessment process involving preparation of RISs.

In August 1995, the then Prime Minister wrote to the Chairs or Chief Executive Officers of all such bodies, formally advising them of the need to adhere to the guidelines. That letter instructed the bodies to provide the ORR with copies of completed RISs, and indicated that the ORR was able to provide feedback on whether or not particular RISs are consistent with the COAG Principles and Guidelines.

In the remaining months of 1995, the ORR received only one completed RIS from a Ministerial Council secretariat, although it provided advice on many RISs prepared by national standard setting bodies such as the National Food Authority and the Australian Building Codes Board.

THE ORR AND THE OECD

As already noted, efforts to improve the quality of regulation are under way in countries all over the world, reflecting an increasing appreciation that each country's regulatory environment has an important influence on its international competitiveness.

The ORR keeps abreast of relevant developments in other countries, mainly through the information provided by a small cell within the Organisation for Economic Cooperation and Development (OECD). In this way, 'best practice' developments in any of the OECD member countries can quickly be made known in Australia.

As a collaborator in those international arrangements, the ORR keeps the OECD informed of developments in Australia, and that information is disseminated to other countries. Australian developments have been of particular interest to those countries which also have Federal structures, such as Germany, Canada, and Mexico. Australia's national legislative review program has been noted within the OECD as an example of what can be achieved. The ORR has participated in these information exchanges in four main ways during 1995–96:

- an ORR official has attended OECD meetings on new developments in regulatory reform;

- the ORR has prepared papers on Australian developments for those meetings;
- copies of ORR publications are sent to the OECD; and
- the ORR commented on a paper prepared by the OECD describing Australian regulation review, part of a study covering most OECD member countries.

OTHER ACTIVITIES

The ORR has seconded a senior official to the secretariat of the Small Business Deregulation Task Force (as have other relevant Commonwealth agencies). The Task Force is 'to suggest ways of improving the existing regulation reform processes so that they better meet the Government's reform objectives, taking particular note of the role played by the Office of Regulation Review' (Prime Minister 1996). To assist the Task Force, the ORR has briefed its secretariat on these issues. The Chairman of the Industry Commission met with the Task Force and addressed aspects of its inquiry.

Another activity of the ORR is to maintain contact with regulation review units in the States and Territories. In April 1996, the ORR hosted in Canberra a one day meeting of representatives from all these units to discuss recent developments. There is ongoing liaison with the OECD and regulation review units in other countries (see above).

ORR staff make presentations to conferences and interested groups. For example, during 1995–96 a presentation on regulation and competitiveness was given to the Committee for the Economic Development of Australia, staff spoke with health officials and food inspectors on compliance with food regulations; and a conference of real estate agent regulators was given a presentation on competition policy and its application to that industry. The ORR liaises with a range of non-government bodies with an interest in regulatory issues, such as the Business Council of Australia, the Australian Chamber of Commerce and Industry, and the Institute of Public Affairs.

A program of research and publication of results continues, though to a lesser extent in 1995–96 than in the previous year, because of other priorities, notably the ORR's role in the development of the Commonwealth's legislative review program. Recent publications included:

- 'A Guide to Regulation Impact Statements', ORR, September 1995;

- 'An Economic Analysis of Copyright Reform', ORR submission to the Copyright Law Review Committee's review of the *Copyright Act 1968*, October 1995; and
- 'Enforcing Australia's food laws — A survey and discussion of the practices of Australian food regulation enforcement agencies', ORR Information Paper, November 1995.

In addition, the ORR made a substantial contribution to a number of reports by the Industry Commission.

APPENDIX A

Commonwealth and national regulatory agencies — functions and resources

This appendix presents an overview of functions, expenditure and staffing levels for 23 of the principal Commonwealth and national regulatory agencies from 1985–86 to 1995–96 (where the figures are available). An overview of this material is provided in Chapter 1.

While total expenditure by Commonwealth and national regulatory agencies has gradually risen over the past decade, staffing has remained fairly constant.

However, resource use has varied considerably among different groups of regulatory agencies. In particular, the resources of financial and environmental agencies have increased dramatically. In contrast, resource use in the traditional areas of regulation, such as trade regulation and maritime safety, has grown more slowly.

The agencies covered in this appendix are not a comprehensive list of Commonwealth and national regulatory agencies. Rather, an attempt has been made to cover the majority of agencies that spend considerable amounts on regulatory activities. The information was collected from the budget related papers of the relevant Commonwealth Government departments, annual reports and correspondence with the agencies.

The 23 regulatory agencies covered in this report are:

- Australian Broadcasting Authority

- Australian Building Codes Board
- Australian Competition & Consumer Commission[1]
- Australian Customs Service
- Australia New Zealand Food Authority
- Australian Maritime Safety Authority
- Australian Quarantine and Inspection Service
- Australian Securities Commission
- Australian Telecommunications Authority
- Australian Transaction Reports and Analysis Centre
- Civil Aviation Safety Authority
- Environment Protection Agency
- Federal Bureau of Consumer Affairs
- Federal Office of Road Safety
- Insurance and Superannuation Commission
- National Competition Council
- National Health and Medical Research Council
- National Occupational Health and Safety Commission
- National Registration Authority for Agricultural and Veterinary Chemicals
- National Road Transport Commission
- Reserve Bank of Australia
- Spectrum Management Agency
- Therapeutic Goods Administration

A brief description of the objectives, expenditure and staffing of each agency follows.

---

[1] The PSA and TPC merged to form the ACCC in 1995.

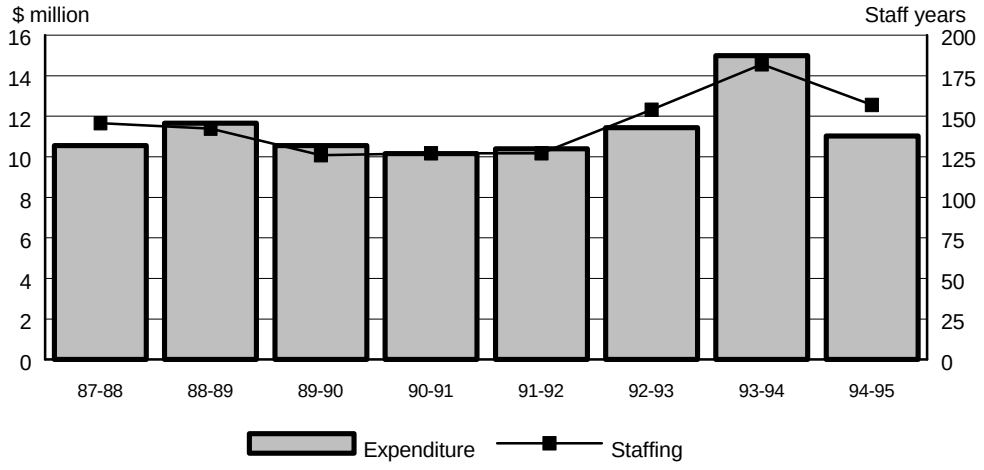
AUSTRALIAN BROADCASTING AUTHORITY

The objective of the Australian Broadcasting Authority (ABA) is to ensure that the broadcasting and television industry remains efficient, competitive and provides a wide range of services.

Specific functions of the ABA under the *Broadcasting Services Act 1992* are:

- planning broadcasting services consistent with Ministerial directions;
- licensing and collecting licence fees;
- monitoring compliance with the Act and taking action in the event of a breach;
- developing and reviewing broadcasting standards;
- conducting research into community attitudes on issues relating to programs; and
- assisting in the development of industry codes of practice.

Figure A1: ABA: real expenditure and staffing levels, 1987–88 to 1994–95[a,b]



a Expressed in terms of 1994–95 prices.

b The 1987–88 to 1992–93 figures are for the Australian Broadcasting Tribunal.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

The ABA was created on 5 October 1992 by a merger of the former Australian Broadcasting Tribunal and the Station Planning Branch of the

then Department of Transport and Communications. Staffing and expenditure were fairly constant until 1993–94. Expenditure in that year includes payments due to restructuring and the inclusion of the planning function in the ABA's activities.

The decrease in resources in 1994–95 reflects government decisions to reduce the overall level of resources in broadcasting regulation.

AUSTRALIAN BUILDING CODES BOARD

In March 1994, an inter-governmental agreement established the Australian Building Codes Board (ABCB) as the peak national body responsible for developing a consistent regulatory framework for design, construction and the use of buildings in Australia.

The objective of the ABCB is to increase efficiency in the building industry by initiating reforms in building regulations and improving uniformity of regulations throughout Australia.

The ABCB regulatory reform program was initiated in December 1994, and included:

- a performance basis for building code provisions;
- a housing code tailored to housing industry needs; and
- research to reform fire-related aspects of the building code.

In the near future, training and publishing strategies will be implemented to facilitate ongoing reforms.

The total expenditure of the ABCB in 1994–95 was $1.9 million. Total staff numbers are currently 18, up from six in July 1994. Additional administrative and personnel support is provided by the Department of Industry, Science and Tourism.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

The Australian Competition and Consumer Commission (ACCC) was created under the *Competition Policy Reform Act 1995*. It subsumed the Prices Surveillance Authority (PSA) and the Trade Practices Commission (TPC), and has received an increase in resources of $6.6 million in 1995–96.

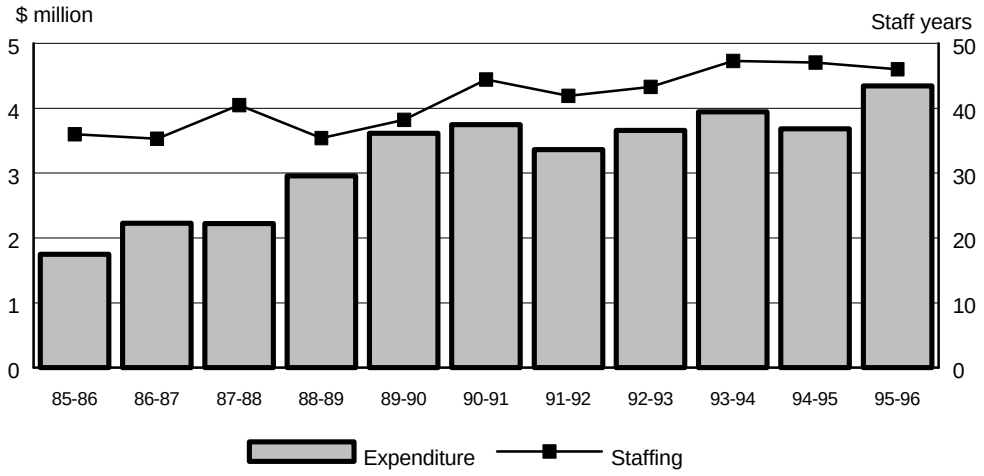
As the ACCC has taken over many of the functions of the TPC and the PSA, these agencies are discussed below.

PRICES SURVEILLANCE AUTHORITY

The functions of the PSA under the *Prices Surveillance Act 1983* included:

- price surveillance of companies declared under the Act;
- formal monitoring of prices in certain industry sectors; and
- additional prices oversight functions for Commonwealth Government business enterprises such as Australia Post and the Federal Airports Corporation.

Figure A2: PSA: real expenditure and staffing levels, 1985–86 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

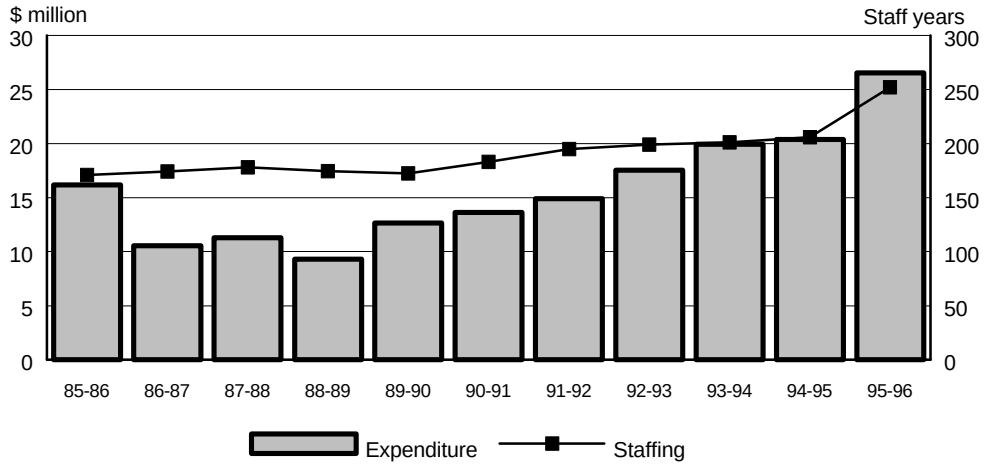
The gradual increase in the expenditure and staffing levels over the decade reflected a move from price monitoring to a more pro-active approach. However, under recent pricing policy arrangements, prices surveillance will be used more sparingly, with more reliance placed on prices monitoring for identifying markets where excessive price increases may be occurring.

TRADE PRACTICES COMMISSION

The primary function of the TPC was to secure compliance with the *Trade Practices Act 1974*. It did this by responding to complaints by observing market conduct and initiating legal action where necessary. Its other functions included:

- fostering competition, fair trading and protecting consumers by taking initiatives to overcome market problems; and
- informing the community about the Act and its specific implications for business and consumers.

Figure A3: TPC: real expenditure and staffing levels, 1985–86 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

Special funding of $3.5 million for legal costs was given in 1985–86.

The increased resource and staffing levels in 1995–96 reflect the broader scope of anti-competitive principles brought about by the *Competition Policy Reform Act 1995*. In particular, the ACCC will become heavily involved in micro-economic reform, stemming from the application of trade practices principles to government trading enterprises and statutory marketing authorities.

AUSTRALIAN CUSTOMS SERVICE

The objectives of the Australian Customs Service (ACS) are to:

- facilitate trade and the movement of people across the Australian border while protecting the community and maintaining appropriate compliance;
- assist Australian industry through the delivery of Government support measures; and
- collect customs and excise revenue.

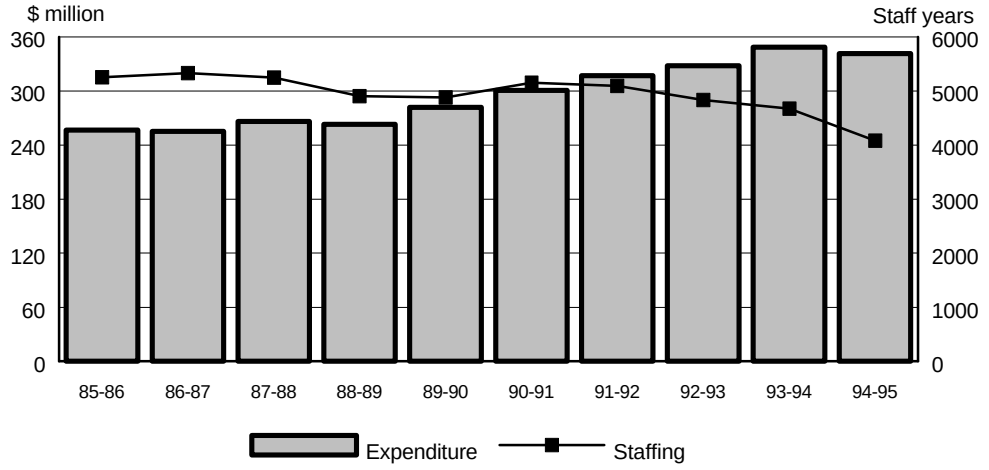
The specific regulatory functions of the ACS are to ensure compliance with the relevant legislative requirements in the following areas:

- the importation and the exportation of all goods;
- the entry into Australia, and the departure from Australia of all persons, vessels and aircraft;
- the collection and rebate of government revenue; and
- the application of government industry assistance measures.

Over the past decade, staffing levels have fluctuated, reflecting the following developments:

- in 1987, an internal review of tariffs, tariff concessions and quotas led to a reduction in staffing resources;
- in 1990–91, staffing trended upwards due to significant increases in the passenger processing and barrier control sub-programs;
- in 1992–93, falls in staffing levels were largely due to staffing reductions in the import export, barrier control and corporate services sub-programs; and
- during 1994–95 staffing declined, following on from the Review of the Australian Customs Service. A long term staffing target of 4347 was adopted as at June 1996.

Figure A4: ACS: real expenditure and staffing levels, 1985–86 to 1994–95[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

Significant increases in expenditure for corporate support functions has contributed to the rise in running costs over the decade.

AUSTRALIA NEW ZEALAND FOOD AUTHORITY

The Australia New Zealand Food Authority (ANZFA), formerly the National Food Authority (NFA), is responsible for developing, varying and reviewing standards for food available in Australia and New Zealand.

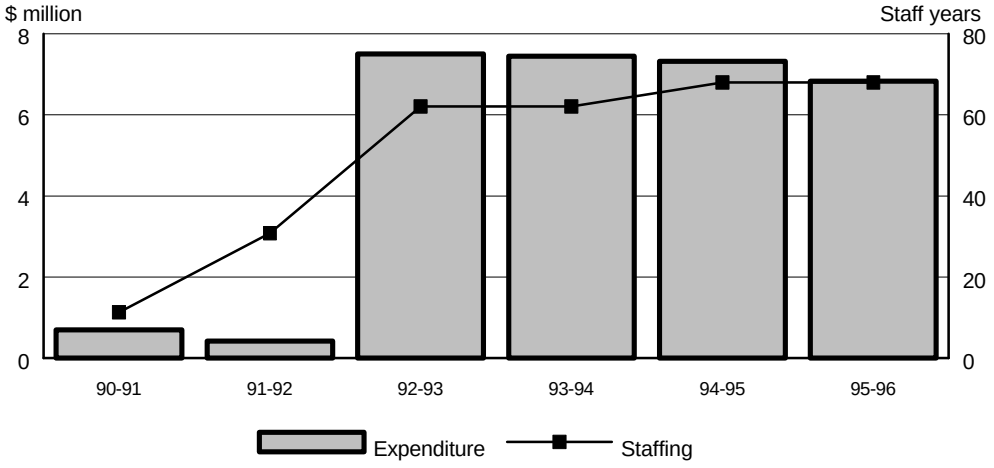
Its specific functions include:

- dealing with applications and proposals for the development or variation of food standards, and making recommendations to the Australia New Zealand Food Standards Council (which if approved, are adopted by reference into State, Territory and New Zealand law);
- reviewing food standards;
- coordinating the surveillance of food available in Australia, including the co-ordination of food recalls;
- developing assessment policies in relation to food imported into Australia;

- developing codes of practice for the food industry;
- conducting research and surveys; and
- coordinating food safety education.

ANZFA came into operation on the 30 June 1996 as a result of a treaty between Australia and New Zealand signed in December 1995.

Figure A5: ANZFA: real expenditure and staffing levels, 1990–91 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

ANZFA must take into account the following objectives, in order of priority, when developing or varying standards:

- protecting public health and safety;
- providing adequate information relating to food to enable consumers to make informed choices and to prevent fraud and deception;
- promoting fair trading in food;
- promoting trade and commerce in the food industry; and
- promoting consistency between domestic and international food standards, where these are at variance.

During 1995, an independent review found that the NFA required an ongoing budget in the order of $7 million.

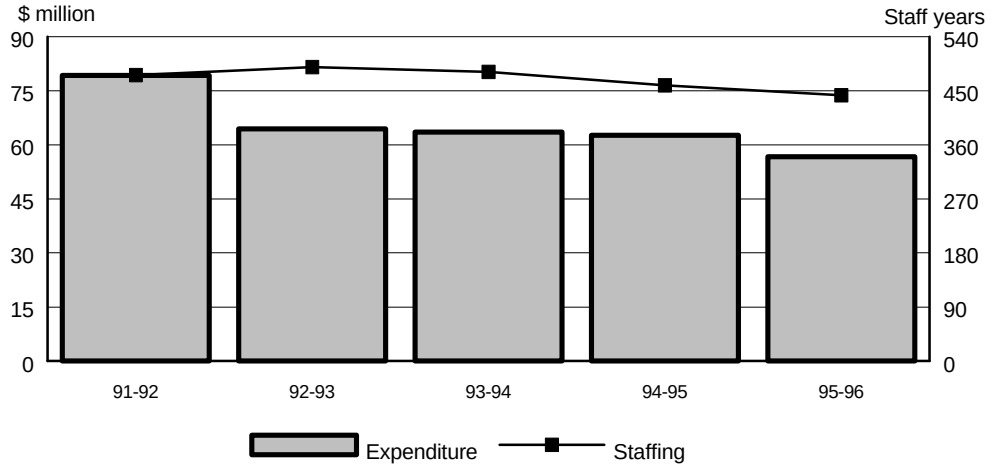
AUSTRALIAN MARITIME SAFETY AUTHORITY

The Australian Maritime Safety Authority (AMSA) was established in 1991 as a government business enterprise under the *Australian Maritime Safety Authority Act 1990*. Its objective is to enhance the safety of seafarers and shipping and to protect the marine environment from pollution.

AMSA's specific functions are to:

- enhance maritime safety;
- provide a national system of navigational aids and services;
- coordinate maritime search and rescue services;
- administer programs to prevent and combat marine pollution; and
- provide services to the maritime industry on a commercial basis.

Figure A6: AMSA: real expenditure and staffing levels, 1991–92 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

AMSA's commercial and regulatory functions are divided within the organisation. The formation of AMSA in 1991 led to a reduction in government funding for maritime functions as most of the authority's functions became financed off-budget through levies and charges on the maritime industry. The residual budget sourced funding relates to payments

made to AMSA for performing Community Service Obligations, such as the coordination of search and rescue services.

Staffing levels have fallen significantly over the past decade due to a number of factors including:

- the decommissioning of four ships;
- a decision in 1988–89 to reduce the direct supervision of the engagement and discharge of seamen; and
- improvements in the efficiency of service delivery including the adoption of new technology.

In general terms, AMSA has reduced staff working in maritime functions, other than safety regulation, in order to achieve lower staffing levels. However, the introduction of the 'Marine Navigation Regulatory Functions Levy' has enabled AMSA to recover, from industry, resources applied to its regulatory functions.

AUSTRALIAN QUARANTINE AND INSPECTION SERVICE

The Australian Quarantine and Inspection Service (AQIS) provides quarantine and inspection services to protect the Australian environment from the entry of foreign diseases and pests and to assist Australian exporters in complying with overseas quarantine and inspection regulations, and in improving the access of rural exports to overseas markets.

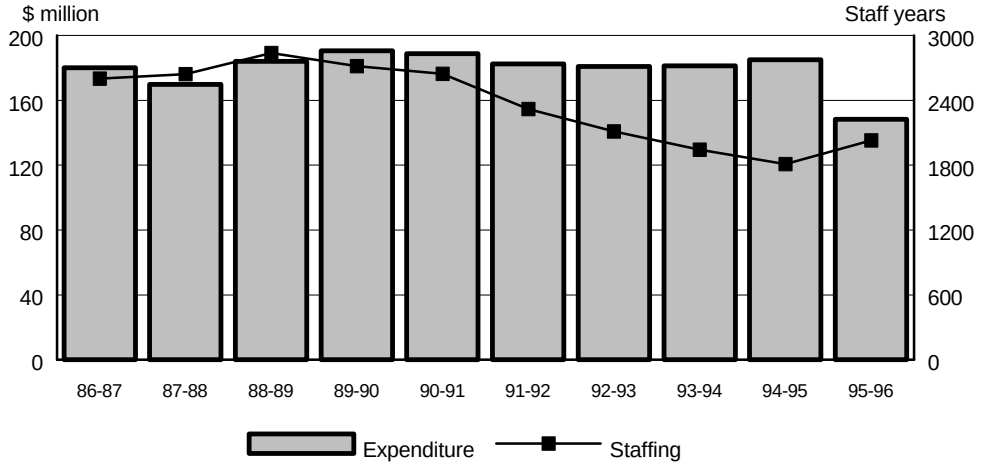
AQIS is charged with quarantine and inspection services arising out of the *Quarantine Act 1908.*

Its functions include:

- promoting access to overseas markets for Australian agricultural commodities and processed food through domestic, bilateral and multilateral measures;
- liaising with international bodies to ensure consistency in national food entry standards;
- ensuring an acceptable cost-effective level of protection against the entry into Australia of unwanted pests and diseases; and

- ensuring food, animal and plant products are safe and accurately described and that mandatory health requirements and international obligations are met.

Figure A7: AQIS: real expenditure and staffing levels, 1986–87 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

Staffing levels have fallen from a peak in 1988–89 reflecting efficiency gains arising from the 1986 amalgamation of the quarantine and inspection functions.

From 1989–90 to 1991–92 further changes to inspection practices involving relocation, retraining and voluntary redundancies led to inspection, clerical and administrative staff declining by 206 in 1992–93.

While full cost recovery for all user attributable AQIS services commenced in January 1991, leading to declining budget appropriations, recent upgrading of information systems will mean expenditure will only start falling in 1995–96.

AUSTRALIAN SECURITIES COMMISSION

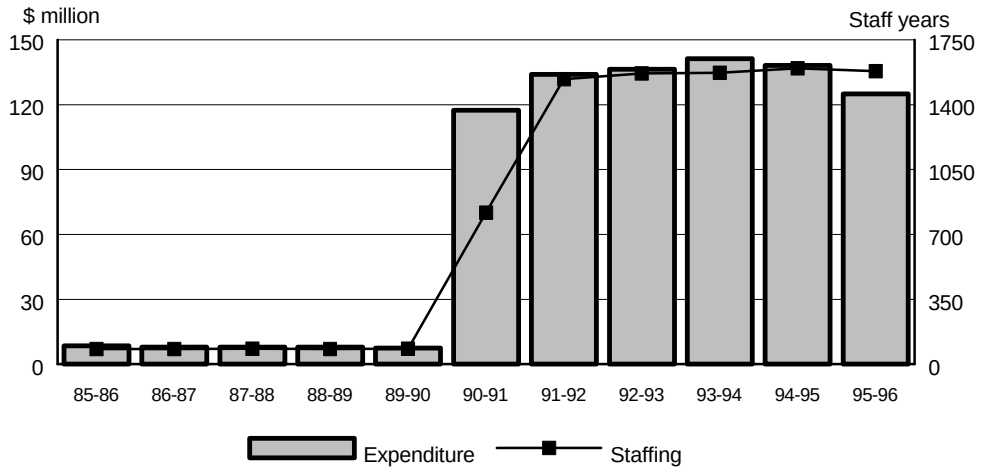
The objective of the Australian Securities Commission (ASC) is to administer national corporate legislation.

The functions of the ASC include:

- registering company auditors and liquidators;
- enforcing compliance with accounting and financial reporting standards; and
- regulating corporations and securities markets.

The predecessor of the ASC was the National Companies and Securities Commission (NCSC). Its operations ceased in December 1990, when it was replaced by the ASC with its broader mandate.

Figure A8: ASC: real expenditure and staffing levels, 1985–86 to 1995–96[a,b]



a Expressed in terms of 1994–95 prices.

b Figures prior to 1990–91 reflect the operations of the NCSC.

Sources: Budget Related Papers and correspondence with the agency

The NCSC coordinated State-based corporate regulation and disseminated policy directions and practice notes on corporate regulation. The NCSC delegated its regulatory powers to the various State funded Corporate Affairs Commissions in each State. The formation of the ASC led to centralised Commonwealth funded corporate regulation, with expanded powers, necessitating an increase in resources.

The fall in expenditure in the current financial year is due to a $6 million reduction in plant and equipment purchases.

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

The Australian Telecommunications Authority (Austel) was formed in July 1989 to supervise the introduction of competition into the Australian telecommunications industry.

Austel's functions, as defined in the *Telecommunications Act 1991,* include:

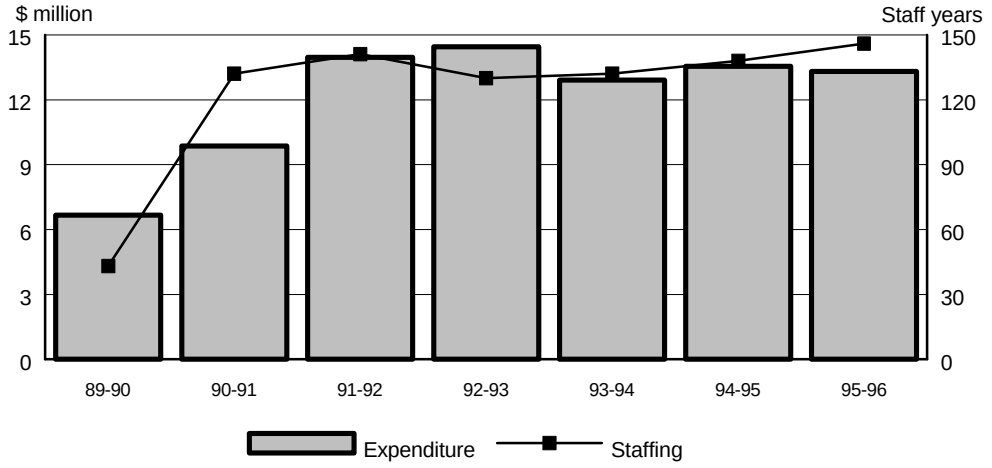
- economic and technical regulation of the Australian telecommunications industry in order to promote fair and efficient market conduct within the industry; and
- the implementation of the Commonwealth Government's industry policies relating to telecommunications.

It also gives advice and assistance to the Australian telecommunications industry. From 1 July 1997, Austel will merge with the Spectrum Management Agency and its competition functions will move to the ACCC.

In 1988–89, there was a small level of expenditure by the Austel Implementation Unit in order to make preparatory arrangements for Austel's establishment in 1989–90.

In July 1991, the new *Telecommunications Act 1991* became effective, replacing the 1989 Act. The increase in functions resulting from the new Act led to a rise in expenditure and staffing.

Figure A9: Austel: real expenditure and staffing levels, 1989–90 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE

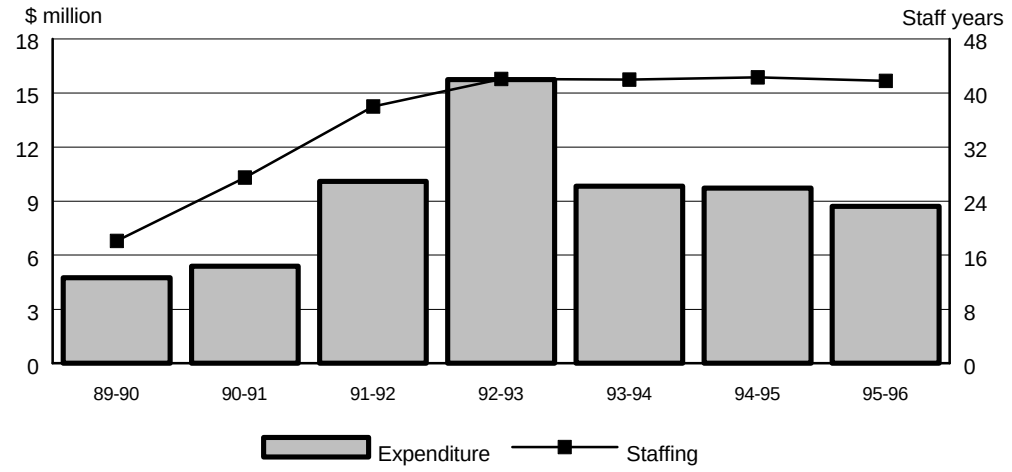
The objective of the Australian Transaction Reports and Analysis Centre (AUSTRAC) is to protect Commonwealth revenue by the monitoring, collection, analysis and dissemination of financial transaction reports information under the *Financial Transaction Reports Act 1988.*

The functions of AUSTRAC (formerly the Cash Transactions Reports Agency) include:

- monitoring international funds transfers;
- monitoring suspect transactions within the financial system; and
- overseeing significant movements of cash through the financial system.

The large increase in expenditure in 1992–93 reflects purchases of plant and equipment which accounted for almost half of total expenditure in that year.

Figure A10: AUSTRAC: real expenditure and staffing levels, 1989–90 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

In 1992, the *Financial Transactions Reports Act* was amended to allow AUSTRAC to monitor all telegraphic transfers to and from Australia, leading to increased staffing from 1992–93.

CIVIL AVIATION SAFETY AUTHORITY

The objective of the Civil Aviation Safety Authority (CASA) is to maintain, enhance and promote the safety of civil aviation in the interests of the Australian public:

- through effective safety regulation; and
- by encouraging a greater acceptance by industry of its obligations to maintain high safety standards.

The core business of CASA is to regulate the safety of civil aviation by:

- setting sound and appropriate rules and policy;
- controlling entry of new participants into the aviation system through licensing and certification; and
- securing adherence to safety rules through effective compliance and enforcement strategies.

CASA's budget for 1995–96, the first year after establishment, is $86.3 million. Of this, $34.6 million represents the public benefit components of aviation safety regulation and will be funded by the Commonwealth Government. Of the remaining costs, $46.8 million is met through a levy on aviation fuels and $4.9 million comes from fees and charges for services provided to industry.

CASA currently has a staff of 652, which is a 50 per cent increase on the number of staff who were devoted to safety regulations and standards activities in the Civil Aviation Authority in July 1993. This may reflect recent initiatives in safety regulation.

ENVIRONMENT PROTECTION AGENCY

The Environment Protection Agency (EPA) was created in 1991–92, and works with all levels of government, business and the community to help find nationwide solutions to Australia's environment problems.

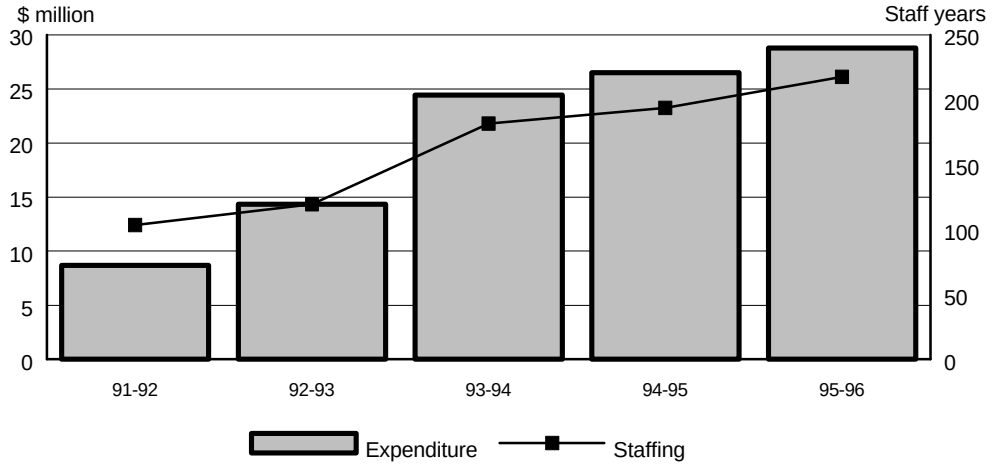
The EPA manages Commonwealth environmental protection responsibilities, administers Commonwealth environmental protection legislation (11 Acts in all) and fulfils our international environmental protection obligations.

The EPA's functions include:

- working with other Commonwealth agencies, State, Territory and local governments and stakeholder groups;
- establishing the National Environment Protection Council under Commonwealth legislation;
- identifying and recommending ways to reduce environmental damage caused by industrial, veterinary and agricultural chemicals and the products of biotechnology;
- advising government and other decision makers about the impact of environmental proposals;
- reducing environmental damage by using educational and informational programs to change behaviour;
- ensuring Australian requirements are reflected in relevant international environmental agreements and international obligations are met;

- facilitating agreement between governments, industry, and community organisations on standards and guidelines for environmental protection and on measures for minimising wastes and pollution; and
- progressing the establishment of a National Environmental Pollutant Inventory to meet the needs of the Australian community for information about releases to the environment.

Figure A11: EPA: real expenditure and staffing levels, 1991–92 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

In 1993–94, the EPA was merged with the Office of the Supervising Scientist, resulting in a large increase in staff resources.

FEDERAL BUREAU OF CONSUMER AFFAIRS

The objective of the Federal Bureau of Consumer Affairs (FBCA) is to influence policy formulation and use statutory powers to ensure consumers' interests and rights are recognised and accepted in the Australian market.

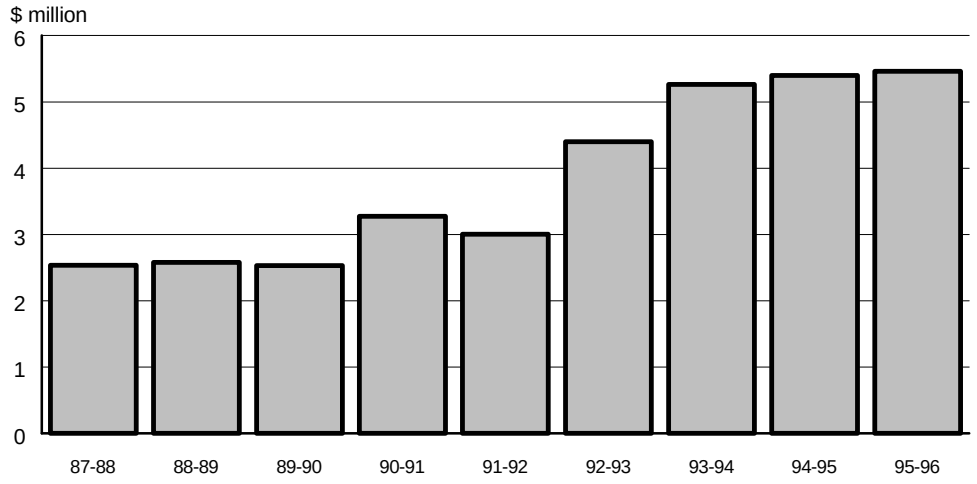
The functions of the FBCA are:

- implementing consumer product safety and information standards and imposing bans and recalls on unsafe goods;
- giving advice on all matters of consumer policy and consumer protection law, including the consumer protection and related

provisions of the *Trade Practices Act 1974* and aspects of the *Mutual Recognition Act 1992;*

- giving advice to industry to facilitate the development of industry based consumer protection mechanisms such as dispute resolution schemes and codes of conduct;
- acting as a contact point for consumer product matters referred to Australia under international agreements;
- promoting consumer interests in the financial and services industries and in packaging and labelling; and
- developing policies on packaging and labelling.

Figure A12: FBCA: real expenditure levels, 1987–88 to 1995–96[a,b]



a Expressed in terms of 1994–95 prices.

b Excludes grants to Australian bodies.

Sources: Budget Related Papers and correspondence with the agency

Spending increased in 1992–93 as the Consumer Financial Services section was established within the FBCA. Also, there was a further devolution of previous centralised funds to divisions (for example, inclusion of funds for information technology and other corporate support against divisional budgets).

Estimated resource use for 1995–96 has remained high due to a large carry forward of unspent funds for the Australian Origin Labelling project and the inclusion of employer superannuation contributions in divisional salaries.

While detailed staffing figures are generally unavailable, the actual staffing level of the FBCA in March 1996 was 47. Staffing levels have declined in 1995–96 due to the transfer of certain functions to the ACCC.

FEDERAL OFFICE OF ROAD SAFETY

The Federal Office of Road Safety (FORS) guides the development of measures to reduce the incidence and severity of road crashes.

The functions of FORS are administered by two branches. The Road User Branch focuses on the human aspect of road crashes, and covers all areas of road safety behaviour. It researches the causes of road crashes and develops standards, policies and road safety public education programs to improve the safety of road users.

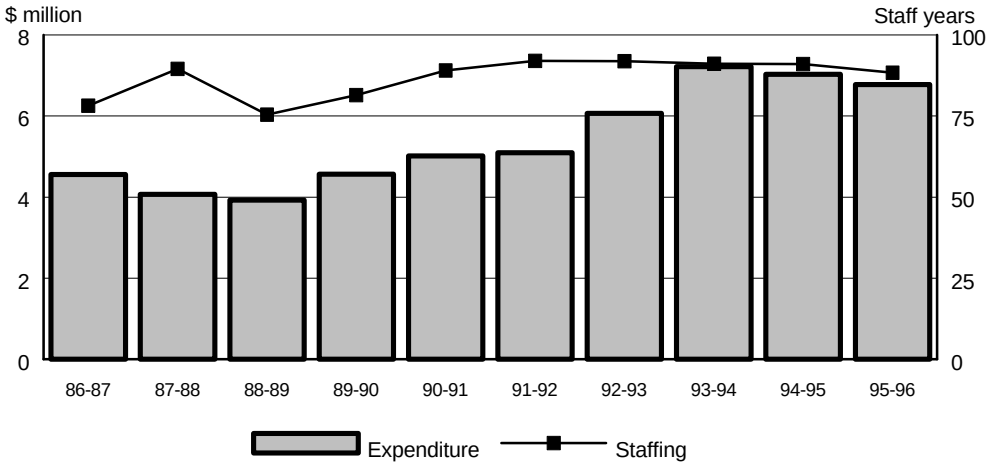
The Motor Vehicle Branch administers the *Motor Vehicles Standards Act 1989* which sets uniform national vehicle safety, emissions, and noise standards for all vehicles entering the Australian market for the first time. The branch's responsibilities also encompass vehicle safety-related defects, the transport of dangerous goods and trade facilitation in the vehicles and components sector.

Staffing levels have been quite flat over the decade, while expenditure has gradually increased.

In 1987–88 there was a slight increase in staffing levels due to the increased resources needed to administer the upgraded motor vehicle certification audit and approvals systems.

In 1989–90, the increased staffing levels and expenditure were allocated to administer new vehicle safety regulations, namely the *Motor Vehicle Standards Act 1989.*

Figure A13: FORS: real expenditure and staffing levels, 1986–87 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

INSURANCE AND SUPERANNUATION COMMISSION

The objective of the Insurance and Superannuation Commission (ISC) is to promote public confidence in the Australian insurance and superannuation industries through a system of prudential supervision.

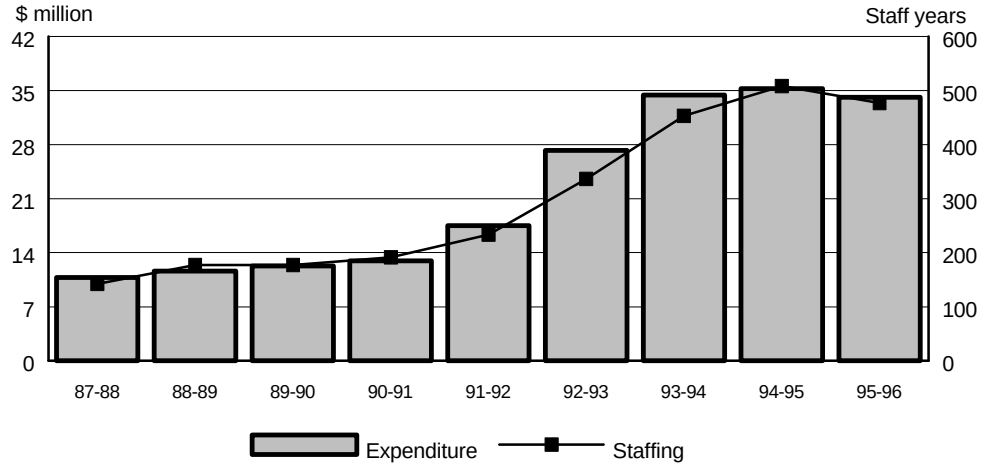
The functions of the ISC under the *Insurance and Superannuation Commissioner Act 1993* are:

- ensuring that assets controlled by life insurance, general insurance and superannuation entities are managed prudently;
- promoting retirement savings and capital formation through the development of insurance and superannuation industries; and
- enhancing competition within the insurance and superannuation sector by requiring the mandatory disclosure of information about financial products and their performance.

The ISC also provides actuarial services to Commonwealth Government departments and authorities on a fee recovery basis through the Office of the Australian Government Actuary. Superannuation entities are also supervised by the ISC to ensure that the superannuation taxation concessions are used only for approved purposes.

The ISC was established in November 1987 from the former Offices of the Insurance Commissioner, Life Insurance Commissioner, the Australian Government Actuary, as well as the office relating to Occupational Superannuation. It also incorporated that area of the Department of the Treasury responsible for policy advice on insurance and superannuation matters.

Figure A14: ISC: real expenditure and staffing levels, 1987–88 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

The increases in resource use from 1992–93 can be partly attributed to the commencement of a program of on-site visits to life insurance companies in November 1991. This on-site function has since been expanded to include superannuation funds.

Further expansions in regulatory resources were necessary in 1993–94 to administer the *Superannuation Industry (Supervision) Act 1993*, which is designed to increase protection to fund members. This included the establishment of regional offices in all State capital cities, except Hobart.

NATIONAL COMPETITION COUNCIL

The objective of the National Competition Council (NCC) is to promote microeconomic reform by providing policy advice to the Commonwealth, State and Territory governments. The establishment of the NCC was a result

of the Competition Principles Agreement signed by all Australian governments in April 1995.

The functions of the NCC include:

- reviews of inter-governmental agreements which impact upon competition;
- assessing the progress of State and Territory governments in implementing national competition policy reforms; and
- advising Ministers on whether third party access to particular infrastructure projects should be declared essential under the *Trade Practices Act 1974.*

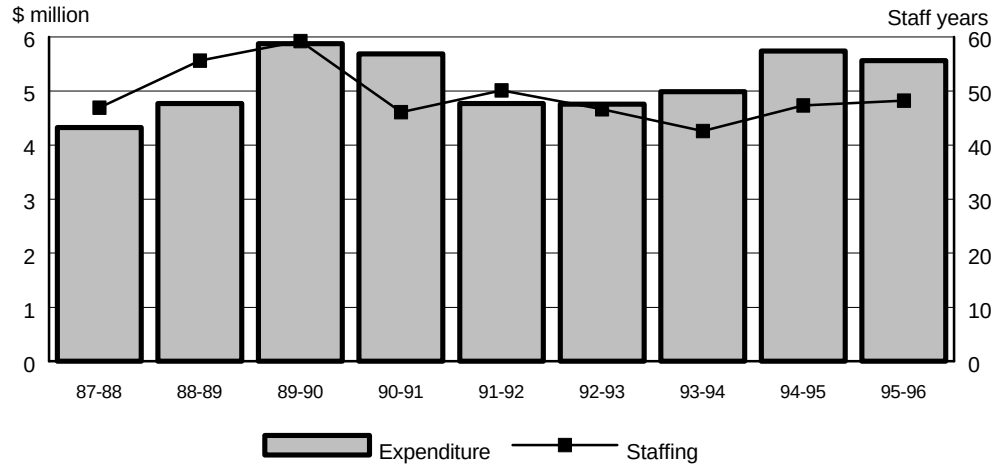
The NCC's budget in 1995–96 was $2.34 million, supporting a staff of 12.

NATIONAL HEALTH AND MEDICAL RESEARCH COUNCIL

The National Health and Medical Research Council (NHMRC) seeks to contribute to the pool of health knowledge which may be used to develop better strategies to improve the well-being of Australians.

The regulatory function of the agency under the *National Health and Medical Research Council Act 1992* is to assist in the development of uniform national policies and standards to minimise exposure of the public to environmental hazards.

Figure A15: NHMRC: real expenditure and staffing levels, 1987–88 to 1995–96[a,b]



a Excludes grants for research.

b Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

In 1994–95, running cost appropriations were four per cent of total actual outlays, the bulk of funds being grants for research.

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION (WORKSAFE AUSTRALIA)

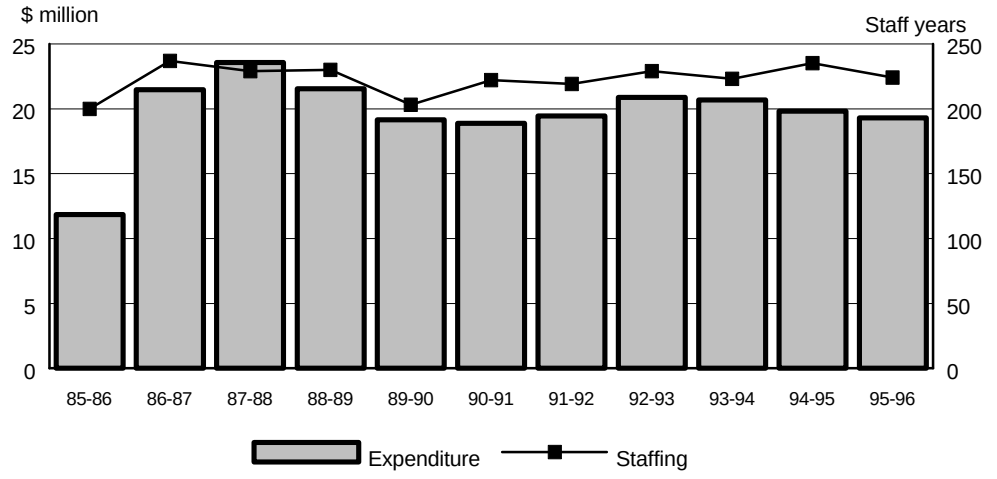
The objective of the National Occupational Health and Safety Commission (NOHSC) is to lead national efforts to provide healthy and safe working conditions, and to reduce the incidence and severity of occupational injury and disease.

NOHSC was established under the *National Occupational Health and Safety Commission Act 1985* and operates under the corporate title of 'Worksafe Australia'.

The functions of NOHSC include:

- developing uniform national OHS standards and codes of practice;
- promoting improved industry performance in OHS through best practice projects, enterprise bargaining and OHS education; and
- conducting research into Australian OHS hazards.

Figure A16: NOHSC: real expenditure and staffing levels, 1985–86 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers, Annual Reports, and correspondence with the agency

In the financial year to June 1987, staff numbers increased by nearly 20 per cent, leading to a substantial increase in salary expenditure.

Staffing levels in the NOHSC increased in 1990–91, after reaching its nadir in 1989–90. This was due to a significant increase in the number of specific research projects and the improved revenue generation which occurred through increased sales of products and publications.

From 1990–91, the NOHSC has administered the National Industrial Chemicals Notification and Assessment Scheme under the *Industrial Chemicals (Notification and Assessment) Act 1989.* This has been partly responsible for the higher levels of expenditure and staffing from 1990–91.

NATIONAL REGISTRATION AUTHORITY FOR AGRICULTURAL AND VETERINARY CHEMICALS

The objective of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) is to maintain an efficient, world class national registration scheme for agricultural and veterinary chemicals, and thus help to achieve a sustainable environment for people, plants and animals; protect the health of the community; and assist industries to optimise their economic contribution.

The NRA's functions under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* include:

- operating a national scheme to register and regulate agricultural and veterinary chemicals;
- assessing veterinary products before they enter the Australian market; and
- evaluating changes to products already on the Australian market.

In 1993–94, the NRA had an expenditure of $6.64 million, with a staff of 60. By the end of 1995–96, expenditure increased to almost $13 million, with a staff of 84.

In 1994–95, funding for the NRA and its registration scheme changed from almost total reliance on Commonwealth appropriations to cost recovery in the form of levies and fees imposed on the agricultural and veterinary chemicals industries.

NATIONAL ROAD TRANSPORT COMMISSION

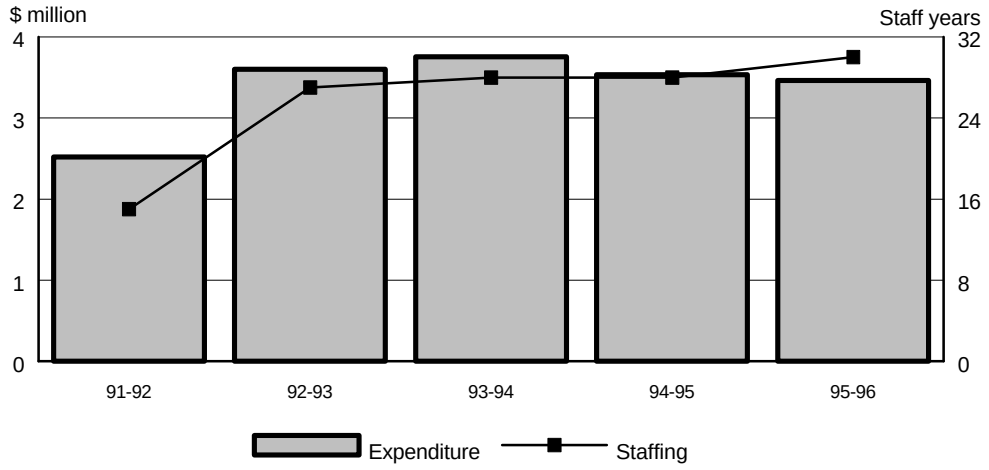
The objectives of the National Road Transport Commission (NRTC) are to improve road safety and transport efficiency and reduce the administration costs of road transport.

The NRTC is an independent body established in 1992 under two Commonwealth, State and Territory agreements.

Its specific functions include:

- developing uniform national rules and regulations for road transport and related matters; and
- making recommendations on policy and legislation to the Ministerial Council for Road Transport.

Figure A17: NRTC: real expenditure and staffing levels, 1991–92 to 1995–96[a]



a Expressed in terms of 1994–95 prices.

Sources: Budget Related Papers and correspondence with the agency

The passage of the *Road Transport Reform (Dangerous Goods) Act 1995* and the creation of an initial draft of the *Road Transport Reform (Heavy Vehicles Registration) Bill 1995*, have prevented falls in expenditure and staffing in 1994–95.

RESERVE BANK OF AUSTRALIA

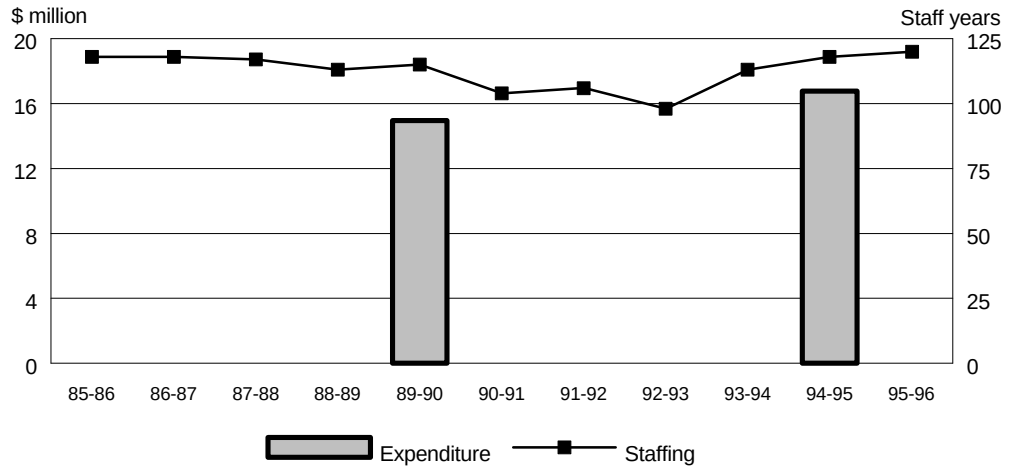
The charter of the Reserve Bank of Australia (RBA), as laid down in the *Reserve Bank Act 1959*, is to exercise its powers in a way which will best contribute to the stability of the currency of Australia; the maintenance of full employment in Australia; and the economic prosperity and welfare of the people of Australia.

The central element of the RBA's financial system surveillance function is its supervision of banks under the *Banking Act 1959*. It also authorises dealers in foreign exchange.

Recently, bank supervision has focussed on:

- ensuring that banks maintain adequate capital buffers;
- encouraging the development of sound risk management systems; and
- strengthening mechanisms for the early detection of potential problems.

Figure A18: RBA: real expenditure and staffing levels, 1985–86 to 1995–96[a,b]



a Expressed in terms of 1994–95 prices.

b Accurate figures for expenditure on financial system surveillance were only available for 1989–90 and 1994–95.

Sources: Annual Reports and correspondence with the agency

Financial system surveillance is conducted mainly by the Head Office in Sydney, with some assistance from the RBA's representative offices in London and New York.

While over the past decade there has been little change in the staff resources allocated to financial surveillance, aggregated staff numbers in the RBA have fallen, reflecting increased productivity, mainly in processing areas.

SPECTRUM MANAGEMENT AGENCY

The objective of the Spectrum Management Agency (SMA) is to facilitate the efficient allocation of the radio frequency spectrum, while improving access to it.

The SMA was established in July 1993 through the transfer of functions from the Department of Transport and Communications. The staff who transferred included most of the Department's Radiocommunications Operations Division. In addition, approximately 60 staff of the Department's Corporate Management Division were also transferred to SMA.

The SMA:

- manages the radio frequency spectrum;
- seeks to ensure the efficient allocation of the spectrum; and
- encourages the use of efficient radiocommunications technologies.

The estimated expenditure of the SMA in 1995–96 was $36 million, with staff of 380. Almost all of this expenditure is funded by radiocommunications licence fees and charges.

THERAPEUTIC GOODS ADMINISTRATION

The objective of the Therapeutic Goods Administration (TGA) is to ensure the quality, safety and efficacy of therapeutic goods available in Australia at a standard equal to that of comparable countries, and that pre-market assessment of therapeutic goods is conducted within a reasonable time.

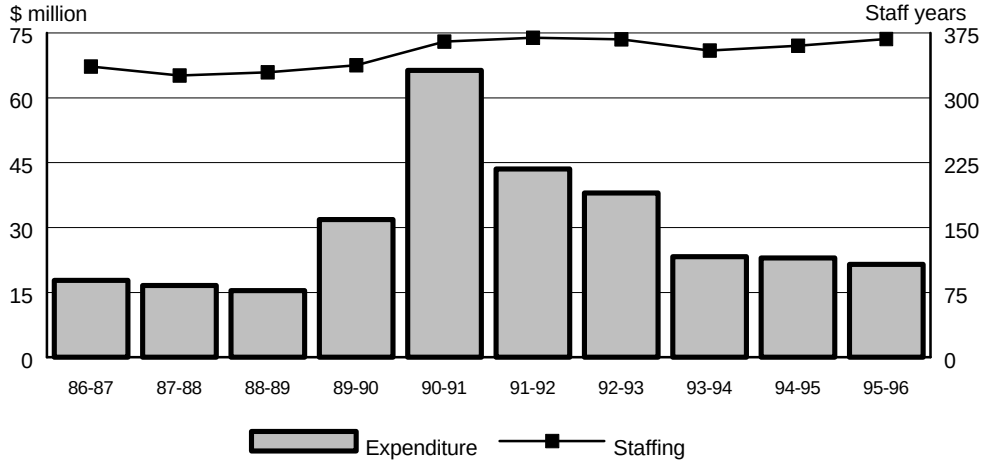
The TGA was established in August 1989 to administer the *Therapeutic Goods Act 1989*.

Its functions include:

- conducting a pre-market assessment of therapeutic goods within a reasonable time; and
- ensuring that manufacturing standards are enforced through the licensing of all manufacturers and suppliers of such goods.

Prior to the establishment of the TGA, a patchwork of regulatory controls operated for medicines, with controls shared by Commonwealth and State governments.

Figure A12: TGA: real expenditure and staffing levels, 1986–87 to 1995–96 [a,b]



a Expressed in terms of 1994–95 prices.

b Figures prior to 1989–90 are estimates of activities conducted by Commonwealth and State governments, which later were undertaken by the TGA.

Sources: Budget Related Papers and correspondence with the agency

- The processes leading to the introduction of the *Therapeutic Goods Act* 1989 dramatically increased staffing and expenditure levels in 1989–90. Many of these resources were devoted to developing a registration system for the then 40,000 drugs and devices which would come under the Act.
- The high expenditure figure for 1990–91 reflects $32 million spent on the construction of new departmental facilities.

APPENDIX B
Ministerial Councils and national standard setting bodies

The opening up of the economy and the push for microeconomic reform, have raised the pressure for a more integrated economy with fewer State barriers and greater consistency and uniformity across jurisdictions. With the States having constitutional responsibility in many areas of government activity, this has meant an increasing need for cooperation between governments. In recent years, Ministerial Councils and national standard setting bodies have been playing an increasingly important role in achieving greater policy and regulatory consistency across Australia.

This appendix explains the background to, and role of, Ministerial Councils and national standard setting bodies. It also includes a comprehensive list of these bodies and provides a brief description of their objectives.

More information on the functions and resources of those national standard setting bodies which play a significant role in regulation making is presented in Appendix A.

BACKGROUND AND ROLE OF MINISTERIAL COUNCILS AND NATIONAL STANDARD SETTING BODIES

MINISTERIAL COUNCILS

Ministerial Councils comprise various State, Territory and Commonwealth Ministers and have long played a role in relations between Australian

governments, acting as an important inter-governmental mechanism in Australia's federal system of government.

While several definitions of a Ministerial Council exist, the review of Ministerial Councils initiated by the Heads of Government in 1992 described them as:

> ... a formal meeting of Ministers of the Crown from more than four jurisdictions, usually including the Commonwealth, States and Territories of the Australian Federation, which meet on a regular basis for the *purpose of inter-government consultation and cooperation, joint policy development and joint action between governments* (italics added). Ministerial Councils may include representatives of the Australian Local Government Association and the Government of New Zealand (or other regional Governments) by invitation (PM&C 1994b, p. 1).

There are three broad categories of Ministerial Councils:

- Heads of Government Councils (central councils);
- policy councils; or
- 'other Ministerial Fora' (specific issue councils).

Heads of Government Councils, or central councils, bring together the heads of each government (Premiers, Chief Ministers and the Prime Minister) and have an economy-wide perspective, crossing all portfolios. The first such Council was the Australian Loan Council, which coordinates Commonwealth and State borrowing. The next to be established was the Premiers' Conference which focuses on the level and distribution of general revenue assistance among the States and Territories. More recently the Council of Australian Governments (COAG) was established, becoming the centre piece of cross-jurisdictional coordination and a leading catalyst for microeconomic reform. One of its important decisions has been the 1995 agreement to implement the National Competition Policy reforms. In June 1996, another Heads of Government Council was created — the Treaties Council. This Council is to consider treaties and other international instruments of particular sensitivity and importance to the States and Territories.

In contrast to Heads of Government Councils, policy oriented councils cover either a portfolio area, such as the Australian and New Zealand Environment and Conservation Council, or specific aspects of a policy area, such as the Corrective Services Ministers Conference. All policy oriented councils have more than four jurisdictions represented and therefore meet the formal definition of a Ministerial Council.

The final category, specific issue councils, tend to focus on particular industries, geographic areas, programs, or aspects of policy. They include councils such as the Australian Forestry Council and the Great Barrier Reef Ministerial Council. However, only one specific issue council, the Murray-Darling Basin Ministerial Council, has more than four jurisdictions represented. Thus, these councils are formally referred to by the Commonwealth-State Relations Secretariat (part of the Department of the Prime Minister and Cabinet) as 'other Ministerial Fora' rather than Ministerial Councils.

In 1993, Ministerial Councils underwent a process of rationalisation with the aim of reducing the number of councils. Councils responded to this task in various ways. Some, such as the Industry, Technology and Regional Development Council and the Meeting of Commonwealth, State, Territory and New Zealand Ministers Responsible for Small Business, amalgamated. Others, while maintaining their separate identity, formed new 'combined councils'. These act as a plenary session, with meetings of individual councils held back to back after or before them. The Ministerial Council on the Administration of Justice is an example, bringing together the Australasian Police Ministers' Council, the Inter-governmental Committee on the National Crime Authority and the Corrective Services Ministerial Council.

There are currently 43 Ministerial Councils which meet COAG's definition (including the four heads of government councils). Five of these are 'combined Councils', which in total overarch a further 17 councils. This leaves 26 broad or plenary councils. There are also seven 'other Ministerial Fora'. Table B1 lists these councils and 'other Ministerial fora'.

In terms of functions, most councils perform mainly advisory or coordinating roles, acting as a forum for discussion and cooperation on inter-jurisdictional and nationally strategic issues. National policy agendas or agreements often result from these discussions, commonly translating into laws and regulations which all or most jurisdictions agree to adopt. Examples of these include the Strategic National Consumer Affairs Agenda and the agreement to introduce national gun laws. A few councils also have statutory powers and give authority to national standards. The Australia New Zealand Food Standards Council (ANZFSC) is an example. It considers recommendations made to it by its secretariat, the Australia New Zealand Food Authority (ANZFA — until recently known as the National Food Authority), on new and amended food standards. Other councils with direct regulatory powers include the

Ministerial Council for Road Transport and the National Environment Protection Council.

In terms of the structure of councils, Ministers from all States and Territories and the Commonwealth are represented at Heads of Government Councils, and nearly all policy councils. 'Other Ministerial Fora' councils have selected representation. All councils have secretariat arrangements, although only some are permanent — permanent secretariats are typically located in the relevant Commonwealth department. Further, all Heads of Government councils, most policy councils, and some 'other Ministerial Fora' councils are supported by meetings of senior officials. Several councils have also set up various task forces, committees and working parties.

As with functions and structures, the procedures used by Ministerial Councils and 'other Ministerial Fora' in conducting their activities vary, although they are guided by common protocols established by COAG. In particular, there can be variation with respect to the process for making regulations and implementing policy decisions, the frequency of meetings, and public reporting.

Some councils have their decisions adopted automatically by reference in State, Territory and Commonwealth legislation and, as such, do not need to go through the various lower and upper houses. Decisions made by the ANZFSC with respect to food laws is one example. For others, decisions need to be ratified by each jurisdiction's Parliament. Some jurisdictions may also go through a different set of bureaucratic processes before agreeing to a council's proposal.

While most councils meet only once a year, some meet more frequently. Some councils also use electronic link-ups to make decisions out of session.

As far as public reporting goes, some publish the resolutions of meetings (for example, the Australian Fisheries Council), some publish an annual report (for example, the Australian Education Council), while others receive brief coverage in departmental annual reports.

NATIONAL STANDARD SETTING BODIES

Unlike Ministerial Councils, national standard setting bodies are inter-government regulatory agencies made up of officials, not Ministers.

That said, they play a similar role to Ministerial Councils in assisting the coordination and harmonisation of various government action across Australia.

While the specific functions of these bodies vary, they all develop standards to be applied across Australia, and sometimes New Zealand. Examples include ANZFA, the National Occupational Health and Safety Commission, and the Australian National Training Authority.

Other functions of national standard setting bodies include the monitoring and enforcement of existing regulations, administering registration and licensing arrangements and conducting research. Acting as a secretariat to a Ministerial Council is another function some national standard setting bodies perform, including ANZFA which services the ANZFSC.

Most national standard setting bodies are concerned with health and safety issues (see Table B2).

As with Ministerial Councils, the structure and processes of national standard setting bodies vary.

In terms of structure, some of these bodies are established under Commonwealth legislation and are funded by the Commonwealth, such as ANZFA. Others, such as the National Road Transport Commission (NRTC), are made up of appointees agreed to by the States, Territories and the Commonwealth, with funding shared across jurisdictions.

The processes can vary from recommendations to relevant Ministerial Councils, as with the NRTC, to decisions being adopted by reference in State and Territory law, as with the Australian Building Codes Board (ABCB)[1].

National standard setting bodies are listed along with a brief description of their objectives in Table B2. Selected national standard setting bodies are discussed further, in terms of functions and resources, in Appendix A.

---

[1] Some jurisdictions, however, require the introduction of separate legislation or regulations before ABCB decisions become law.

SUMMARY OF MINISTERIAL COUNCILS AND NATIONAL STANDARD SETTING BODIES

This subsection lists all Ministerial Councils and national standard setting bodies, and provides a brief outline of their objectives and functions (see Table B1 and B2).

Table B1: Summary of Ministerial Councils: 1995-96

Ministerial Council	*Objectives/function*
Heads of Government Councils	
Council of Australian Governments (COAG)	Provide for cooperation and consultation among governments on reforms to achieve an integrated, efficient national economy and a single national market — such as the adoption of the National Competition Policy. The Council also provides for consultation on major 'whole-of-government' issues arising from other Ministerial Councils.
Premiers' Conference	Discuss matters of common interest to the Commonwealth, States and Territories, with a focus on inter-government financial relations (including the distribution of general revenue grants among the States and Territories).
Australian Loan Council	Coordinate the borrowings of the Commonwealth and State governments to ensure that overall public sector borrowing in Australia is consistent with a sustainable fiscal strategy. Recent emphasis has been placed on arrangements for credible budgetary processes and facilitating financial market scrutiny of public sector finances through uniform and comprehensive reporting.
Treaties Council	Consider treaties, and other international instruments, of particular sensitivity and importance to the States and Territories with the aim of ensuring the best outcome for Australia in both the negotiation and implementation of international treaties.
Policy Ministerial Councils	
Agriculture and Resources Management Council of Australia and New Zealand	Develop integrated and sustainable agricultural, land, water and waste management policies, strategies and practices to enhance the efficiency, effectiveness, safety, and quality of these resources. Includes policies for research and development, education and training, as well as promoting a uniform policy on external marketing and water pricing.
Australian and New Zealand Environment and Conservation Council	Facilitate coordination and consultation between governments on national and international environment and conservation issues.

Table B1 (continued)

Ministerial Council	*Objectives/function*
Australian and New Zealand Minerals and Energy Council	Promote the welfare and sustainable development of mineral and energy resources by, among other things, progressing changes to legislation and policy frameworks (including improving coordination and, where appropriate, consistency of policy regimes across jurisdictions), encouraging investment, and providing an opportunity for information exchange.
Australian Transport Council — incorporating the Ministerial Council for Road Transport	Assist the coordination and integration of all transport and road policy issues at the national level.
Commonwealth/State Ministers' Conference on the Status of Women	Coordinate and develop policies which affect the status of women, especially those policies which cross Commonwealth/State and Territory borders, and to refer agreed issues or strategies to other Ministerial groupings.
Cultural Ministers' Council	Exchange views on issues affecting cultural activities in Australia and New Zealand and encourage cooperative effort to provide cultural benefits for citizens of both countries. This involves, among other things, commissioning studies and providing advocacy and financial support for cultural activities.
Health and Community Services Ministerial Council	Promote a consistent and coordinated national approach to community services and health policy development and implementation. Provide a plenary forum (for (a), (b) and (c) directly below) for Ministers responsible for health or community services.
a) Australian Health Ministers' Conference	Provide consultation on matters of mutual interest concerning health policy, services and programs, in order to promote consistent and coordinated national health policy. The Council also considers matters submitted to it by the Australian Health Ministers' Advisory Council.
b) Community Services Ministers' Conference	Promote a consistent and coordinated national approach to social welfare policy development and implementation.
c) Australia New Zealand Food Standards Council (ANZFSC)	Oversee the implementation and operation of uniform food standards in Australia (and from 30 June 1996 New Zealand), and in particular to consider recommendations made to it by the ANZFA on new food standards or variations to existing standards.

Table B1 (continued)

Ministerial Council	*Objectives/function*
Industry, Technology and Regional Development Council	Promote a national, consistent and coordinated approach to the development of industry, technology, regional development and small business policy, in particular encouraging the restructuring and increased international competitiveness of industry.
Labour Ministers' Conference	Discuss industrial relations issues of mutual interest and make recommendations to Commonwealth, State and Territory governments.
Ministerial Council of Aboriginal and Torres Strait Islander Affairs	Discuss Aboriginal and Torres Strait Islander issues of mutual interest and consider reports on relevant Commonwealth, State, Territory and local government activity.
Ministerial Council on the Administration of Justice	The MCAJ is the amalgamation of three Ministerial Councils: (a), (b) and (c) directly below. However, due to statutory constraints and some limited overlap of functions, meetings are still held for each constituent part (which are described below).
a) Australasian Police Ministers' Council	Promote a coordinated national response to law enforcement and to maximise the efficient use of police resources. In particular, the Council advances the professionalism of policing, identifies major policy issues, establishes agreed positions on critical national issues, and raises awareness and understanding in the community of those issues and measures to address them.
b) Inter-governmental Committee of the National Crime Authority	Monitor, receive and transmit to all Australian governments reports from the National Crime Authority (NCA), and consider matters put forward for NCA investigation. The Committee also advises the Commonwealth Minister where the Commonwealth proposes to refer a matter to the NCA under s.13 of the National Crime Authority Act, and recommends persons for office of the NCA.
c) Corrective Services Ministers' Conference	Consider and deal with problems relating to both prison and community based correction issues, including prison management and illegal use of drugs in custody. The Conference also considers alternatives to imprisonment.

Table B1 (continued)

Ministerial Council	*Objectives/function*
Ministerial Council of Attorneys-General	Provide a plenary forum for the following three Councils.
a) Standing Committee of Attorneys-General	Achieve uniform or harmonised legislation or other action relating to the Attorney-General portfolio wherever appropriate. The Committee also oversees the national classification scheme for film, video and print, as well as provides a forum for discussion on issues of mutual interest.
b) Ministerial Council for Corporations	Consider legislative proposals relating to the 'national companies and securities scheme'. It also assists in the appointment of members of the Australian Securities Commission, the Corporations and Securities Panel, and the Companies and Securities Advisory Committee and its Legal Sub-committee.
c) Ministerial Council for Financial Institutions	General oversight of the Financial Institutions Legislation and exercise of discretionary functions under it; approval of amending legislation to bring other State based financial institutions under the Financial Institutions Scheme; general oversight of Australian Financial Institutions Commission and recommendations on appointments to its board; and recommendations for appointments to the Australian Financial Institutions Appeals Tribunal.
Ministerial Council on the Australian National Training Authority	Oversee the functions, objectives, priorities, budget, membership and operation of the Australian National Training Authority (ANTA), covering such issues as vocational education and training, national strategic plans on training policy. The Council also provides advice to the Commonwealth Minister on growth funding requirements and the resolving of disputes between ANTA and State training agencies.
Ministerial Council on Consumer Affairs	Discuss consumer affairs issues of mutual interest and, where possible, develop a uniform approach including uniform legislation, and agree on matters of national priority.
Ministerial Council on Drug Strategy	Oversee and coordinate Commonwealth and State and Territory action on the National Drug Strategy and other drug related issues.
Ministerial Council for Education, Employment, Training and Youth Affairs	Coordinate strategic policy, share information and agree on shared objectives relating to youth policies and programs; all levels of education; and employment links with education and training.

Table B1 (continued)

Ministerial Council	*Objectives/function*
Ministerial Council of Immigration and Multi-cultural Affairs	Facilitate consultation and the development of appropriate strategies on immigration and multiculturalism.
Ministerial Council on Forestry, Fisheries and Aquaculture	Promote effective management and coordinate research of Australian forests, fisheries and aquaculture, and advance the development of industries based on them. Achieve this by facilitating consultation and coordination between Commonwealth, State, Territory and New Zealand governments, especially on matters having interstate, national or international implications.
National Environmental Protection Council	Ensure equivalent protection from air, water, noise and soil pollution wherever Australians live, and that variation in major environmental protection measures between jurisdictions do not distort business decisions and fragment markets. To achieve this, the Council may make national environmental protection standards (which are mandatory), guidelines, goals and associated protocols. The Council also monitors and reports on the implementation and effectiveness of any such measure.
Planning, Housing and Local Government Ministerial Council	Provide a consistent and coordinated national approach to planning, housing, local government, construction and heritage policy development and implementation, and provide a mechanism for regular plenary consultation between Ministers for the following five Councils .
a) Planning Ministers' Conference	Promote an integrated approach to urban and regional planning which covers regulatory, microeconomic, environmental and social issues.
b) Housing Ministers' Conference	Facilitate formal liaison between the Commonwealth, States and Territories on major issues concerning housing policies and programs, and to manage research into housing matters of concern to Ministers.
c) Local Government Ministers Conference	Share/exchange information on Commonwealth, State, Territory and local government initiatives, and to sponsor projects of national significance to local government.
d) Construction Industry Ministerial Council	Coordinate the activities of the Commonwealth, State and Territory governments regarding the construction and management of public buildings and infrastructure.
e) Heritage Ministers' Meeting	Consider matters pertaining to the Conservation of Australia's Cultural Heritage.

Table B1 (continued)

Ministerial Council	*Objectives/function*

Sport and Recreation Ministers' Council (plenary)	Provide a plenary forum for the following three Councils.
a) Sport and Recreation Ministers' Council	Coordinate the development of recreation and sport.
b) Racing Ministers' Council	Coordinate responses on issues of national significance relating to the regulation and development of the racing industry.
c) Gaming Ministers' Conference	Exchange information on, and promote uniform regulation of, the gaming industry.
Tourism Ministers' Council	Coordinate government policy on tourism.
Other Ministerial Fora	
Australian Coal Industry Council	Provide a forum for consultation on coal industry policy and encourage discussion about longer term trends in the industry.
Australian Housing Council	Provide advice to the Commonwealth Minister responsible for housing issues, and provide a forum for discussion.
Great Barrier Reef Ministerial Council	Coordinate policy between the Commonwealth and Queensland governments on the Great Barrier Reef.
Ministerial Council on the Development of Albury-Wodonga	Supervise the development of the Albury-Wodonga Development Project and the programs of the Albury-Wodonga Development Corporation.
Murray-Darling Basin Ministerial Council	Promote and coordinate planning and management for the equitable, efficient and sustainable use of the land, water and environmental resources of the Murray-Darling Basin.
Tasmanian World Heritage Area Ministerial Council	Discuss policy, management and financial matters relating to the Tasmanian World Heritage Area.
Wet Tropics Ministerial Council	Coordinate policy and funding for the Wet Tropics management between the Commonwealth and Queensland governments, including the approval of management plans, Wet Tropics Management Authority (WTMA) annual reports, annual budgets and other programs for implementing management plans, and the recommendation of financial appropriations from the Commonwealth and Queensland governments. It also nominates members to the WTMA.

Source: Department of the Prime Minister and Cabinet (1994b)

Table B1: Summary of national standard setting bodies

National standard setting body	*Objectives/functions*
Federal Bureau of Consumer Affairs[a]	Responsible for developing, maintaining and enforcing mandatory consumer product safety and information standards prescribed under the *Trade Practices Act 1974*. Secretariat to the Ministerial Council on Consumer Affairs.
Australian Building Codes Board[a]	Establish minimum mandatory requirements for safety, health and amenity of occupants of all building work in Australia.
Australian Council on Healthcare Standards	Improve the quality of patient care in Australian hospitals, nursing homes, community health services and day procedure facilities. Develop healthcare standards and carry out 'accreditations' of healthcare facilities to these standards.
Austroads	Develop proposals for the effective management and safe use of the nation's roads. Provide advice and support to Ministerial Councils and other national standard setting bodies.
Federal Office of Road Safety[a]	Develop, coordinate and promote road safety policies and standards for motor vehicles and road users on a national basis. Carry out research and development.
National Road Transport Commission[a]	Support the development of a viable, safe and competitive road transport system via a framework of national rules and regulations, and consult widely with industry, government, other interested bodies and the community.
Chemical Safety Unit	Establish appropriate measures to reduce community exposure to chemical health hazards via the setting of environmental health standards, and standards for labels and warning statements regarding safety. Provide technical advice to agencies such as ANZFA, NRA and the National Occupational Health and Safety Commission (Worksafe Australia)[a].
Electrical Regulatory Authorities Coordinating Committee	Coordinate the programs of electrical technical/safety regulators within Australia and New Zealand. Ensure that the content of national technical standards is consistent with regulatory directions and requirements.
Australia and New Zealand Food Authority[a]	Maintain and develop uniform national food standards through the *Food Standards Code* to be adopted and enforced by the States and Territories and New Zealand.

Table B2 (continued)

National standard setting body	*Objectives/functions*
National Health & Medical Research Council[a]	Develop uniform policies and standards to minimise exposure of the public to environmental health hazards. Standards developed by the Council are intended for incorporation into State and Territory legislation.
National Occupational Health & Safety Commission (Worksafe Australia)[a]	Set national standards for occupational health and safety, and encourage their adoption by State and Territory authorities which have responsibility for occupational health and safety.

a More information on this body is provided in Appendix A.

Source: Office of Regulation Review

APPENDIX C

Regulatory review in the States and Territories

This appendix presents a brief summary of regulatory review mechanisms and related activities in each State and Territory, along with some examples of recent regulatory reform and progress on the legislative review program under the Competition Principles Agreement.

NEW SOUTH WALES

REGULATORY REVIEW MECHANISMS

New South Wales (NSW) has several regulatory review mechanisms in place. Central to these is the Inter-Governmental and Regulatory Reform Branch (IRRB) — previously the Regulation Review Unit — located in the Cabinet Office. It has responsibility for simplifying and streamlining New South Wales' regulatory environment. The Branch provides policy advice on regulatory reform issues to the Premier, the Minister assisting the Premier and to Cabinet. The Branch has both a monitoring and educative role with regard to Government agencies.

Other review mechanisms include:

- *Subordinate Legislation Act requirements* — new regulations must be subjected to cost-benefit analysis to help ensure they generate the greatest net benefit for the community when compared to other options. The Act also progressively repeals existing regulations;
- *new requirements for Cabinet submissions* — all regulatory proposals going to Cabinet must be justified in terms of the public interest and designed to minimise business costs;

- *publication of a reform program* — all agencies must propose a program each year which sets out anticipated reforms to the existing stock of regulations, and publicly report on their outcomes; and
- *'Best practice' guidelines for new proposals and reviews* — published in the booklet *From Red Tape To Results.*

REGULATORY DEVELOPMENTS

Over the last 12 months several regulatory developments have occurred. Some of these are listed below.

- *A 'Regulatory Innovation' paper* — the development of a green paper on the introduction of 'Regulatory Innovation', designed to encourage a shift in regulatory focus from 'rules to results', was announced by the Premier in 1996. The paper puts forward a number of proposals including:
  - performance based regulations;
  - negotiated rule making;
  - 'class' exemptions for small business;
  - regulatory flexibility; and
  - third party certification.
- *Consolidation and simplification of key legislation* — a package of reforms is being undertaken to reduce the complexity of a number of areas of legislation. Most notably, reform is occurring in the areas of:
  - occupational health and safety;
  - agriculture; and
  - forestry.
- *Planning approvals reform* — the Premier has directed that all concurrences and referrals required by agencies when a local council considers an application for development be revoked, unless justified by reference to a checklist developed by the IRRB.
- *A review of partially registered occupations* — the Vocational Education, Employment and Training Committee Review of Partially Registered Occupations identified a number of licences for repeal in

NSW. This program is aimed at facilitating the mutual recognition of occupations across States and Territories and enhancing the mobility of labour.

- *A Licence Reduction Program* — this Program has involved a review of over 250 licences (with over 50 for abolition), and has resulted in the Regulatory Reduction Bill. Further modifications have also been recommended for a large number of other licences in order to streamline those that are retained.

- *Reviews of statutory marketing authorities* — systematic reviews of individual statutory marketing authorities are being carried out to satisfy the requirements of the Competition Principles Agreement (CPA). They include reviews of the Rice Marketing Board, the wine grape industry and Meat Industry Authority.

- *Motor trades regulation review* — this review is particularly significant as the industry affects a large number of operators and consumers.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

The IRRB is coordinating the review of legislation restricting competition. A schedule of reviews to be completed by the year 2000 has been finalised in conjunction with departments. An impact test to determine whether reviews will be minor or major is currently being developed.

A number of programs already commenced by the IRRB, including the Licence Reduction Program and the review of statutory marketing authorities, are aimed at satisfying other requirements under the CPA.

VICTORIA

REGULATORY REVIEW MECHANISMS

In Victoria, the Office of Regulation Reform (ORR) acts as a catalyst for reform initiatives, particularly of a systemic nature, and provides technical assistance for agencies engaged in reform activity. It is located within the Ministry of Small Business, part of the Department of State Development.

Specific review mechanisms include:

- *regulation impact statement (RIS) requirements for new subordinate regulation* — these requirements apply to all subordinate legislation which is likely to impose an appreciable burden on any group in the community, and require agencies to consult the Victorian ORR on these proposals;
- *consultation requirements for Cabinet proposals* — the Cabinet Handbook requires that the Victorian ORR be consulted on matters being submitted to Cabinet which have a significant impact on business; and
- *sunset clauses* whereby all regulations are automatically revoked after 10 years.

A 'Regulatory Plan' is intended to be published in mid-1997. This document will set out all proposals for new regulation, providing earlier consultation and giving business a greater input into the shape of regulation. (This regulatory database is seen as operating in parallel with the existing Business Licence Centre and is seen as having significant benefits for regulatory reform units via its ability to highlight elements of 'regulatory burden'.)

A former Victorian ORR monopoly on the provision of advice as to the adequacy of RISs was removed in the *Subordinate Legislation Act 1994*. The Act opened this function to competition from all independent and suitably qualified sources. However, in practice, the great majority of RISs are still approved by the Victorian ORR.

REGULATORY DEVELOPMENTS

By way of statistical overview, the rate of new regulation has declined consistently in Victoria since 1992, with 38 per cent fewer regulations being introduced in 1995 than 1992. The total number of principal regulations in force is now fewer than in 1992 (Victorian ORR, 1996).

Specific regulatory reform issues in Victoria are listed below.

- *Regulatory Efficiency Legislation* — the Victorian Law Reform Committee is considering legislation aimed at lowering regulatory compliance costs by allowing business to propose alternative means of meeting their regulatory responsibilities. Under such legislation alternative means of compliance with regulatory objectives put forward by business will, if approved by the relevant regulator, be treated as if it were law.

- *Developing a Regulatory Information Database* — this will act as a single source of information for business on the legislation and regulation with which it must comply.

- *Continuation of the Licence Simplification Program* — this program identifies and repeals licences considered redundant. A 24 per cent reduction in the number of business/occupational licences was achieved over the course of 1995, with a total 31 per cent reduction foreshadowed by the end of 1996.

- *Legal profession reform* — an exposure draft on an entirely new Legal Practice Bill has been released for public comment, prior to probable Spring 1996 passage. Key points are: the removal of statutory backing for the monopolies of the Law Institute and Bar Council over lawyer representation; greater independence in complaints handling and disciplinary procedures; easier access to incorporation for solicitors; and *per se* prohibition of most of the Bar's restrictive practising rules.

- *Plant safety regulations* — these regulations, based closely on the national model, were introduced in July 1995 and represent a major rationalisation of legislative controls in this area, repealing the *Boilers and Pressure Vessels Act*, the *Lifts and Cranes Act* and the *Scaffolding Act*, and their respective regulations. Controls are performance based and implement the 'Robens'-type hierarchical method of the authorising *Occupational Health and Safety Act 1985*.

- *Building Act reforms ¾* the full implementation of the private certification and compulsory insurance system established by the Building Act is now essentially complete, and virtually all commercial design building approvals are being obtained from the private sector. A strong positive effect on service standards in the public approvals sector has been noted by the Victorian ORR. Proposals for the regulation of plumbing to be brought within the same system have been considered by Cabinet and are expected to be implemented during 1996.

- *Reform of regulation of Government Business Enterprises (GBEs)* — regulation of GBEs is being revamped as a result of the ongoing restructuring of these industries and the need to split up the producer and the regulator. In the process, major shifts toward both performance based regulation and random audit processes are being implemented. Electricity reform has made significant progress towards completion while progress has also been made in gas, ports and water.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

Implementation of the National Competition Policy (NCP) is generally being coordinated within the Premier's Department via the Competition Policy Task Force (CPTF). The CPTF has established two working groups; the Legislative Review Scheduling Group and the Methodology Working Group, to assist it in the task. The Victorian ORR is represented on both these working groups.

Development of a review schedule was initiated by the CPTF. It circulated guidelines to all agencies setting out criteria for identifying legislation potentially requiring review and providing a *pro forma* for responses. The *pro forma* included requests for a priority ranking of reviews (high, medium or low, based on potential gains from reform), potential starting dates, and an indication as to whether the reviews should be national or State based.

The working party considered the consolidated responses and, together with other Cabinet Office input, made some amendments to the proposals, which were then approved by agencies. Other States' Cabinet Offices were contacted in order to reach a consensus as to those reviews which should be conducted nationally.

Draft guidelines for the commissioning of reviews have been circulated to agencies and are expected to be finalised by August 1996.

Matters to be addressed include:

- the level of aggregation for conducting reviews;
- the required degree of independence in conducting reviews (with appropriate variations according to review priority rankings);
- monitoring processes during reviews;
- processes for considering recommendations and implementation issues;
- processes for eliminating from the draft review schedules legislation which has no material impact on NCP;
- identifying appropriate resources for the conduct of reviews (issues include the extent reviews should be conducted within government as opposed to externally, and who should pay for the reviews); and
- 'Border' concerns, which include consideration of appropriate approaches and requirements where reviews illuminate other, wider

concerns, and where the removal of anti-competitive provisions may only be possible or desirable in the context of wider reforms.

QUEENSLAND

REGULATORY REVIEW MECHANISMS

Regulatory reform in Queensland is the primary responsibility of the Business Regulation Review Unit (BRRU), located in the Department of Tourism, Small Business and Industry. Among other things, the Queensland BRRU is responsible for harmonisation with national regulations and investigating regulatory complaints.

Specific regulatory review mechanisms operating in Queensland include:

- *Cabinet handbook requirements* — these require RISs to be prepared, and for agencies to consult with Queensland BRRU on proposed legislation or regulation which has an economic, social or environmental impact; and
- *Recently amended Statutory Instrument Act requirements* — these require a RIS to be prepared, and made public, for subordinate legislation which is likely to impose an appreciable cost on the community. It includes a sunset program which requires new subordinate legislation to be reviewed after it has been in operation for 10 years. Queensland BRRU advises all State government departments on whether a RIS should be done, taking into account economic, social and environmental considerations, and assists in the development of RISs when necessary and reviews completed RISs.

To further support the regulatory reform process, Queensland BRRU has developed RIS guidelines and is developing proposals on a systematic risk assessment and management policy.

REGULATORY DEVELOPMENTS

Recent regulatory developments in Queensland are outlined below.

- *Systematic Review of Business Regulations ¾* this review of business regulations and legislation began in 1991. It has been estimated that the review program, covering over 400 pieces of legislation, has resulted in

benefits in excess of $370 million per annum (Goss 1995, p. 23). An important part of the Systematic Review is the identification and removal of duplicated activities and resources between agencies. Other benefits include the reduction in the number of licences and certificates required by business and the simplification of forms and compliance procedures.

- *Environmental Protection Act ¾* the Environmental Protection Act and associated regulations were introduced to replace the Clean Waters, Clean Air, Noise Abatement and State Environmental Acts. Businesses previously required to hold multiple licences can now hold a single authority covering all aspects of environmental management at a particular site. A Ministerial advisory committee has been established by the new Coalition Government in Queensland, with broad industry representation, to review the Act and regulations and identify further issues which can be resolved.

- *Planned changes to risk assessment and management policy ¾* A proposal in relation to Risk Assessment Criteria for inspection, sampling and audit programs is being developed. The aim is to minimise undesirable practices in industry by focusing on consumer risk and reducing the duplication of government resources. To date, risk assessment and management processes have been fragmented across agencies with no consistency in application. The proposals will be developed so that they can readily be incorporated into agencies' cost-benefit analyses for RISs and management processes.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

In Queensland, the implementation of the NCP, including legislation review, is being coordinated by the NCP Unit in the Treasury Department.

All government departments have identified regulations that may contain a potential restriction on competition. In doing so they used a definition of 'restricting competition' developed by a working group including representatives of the NCP Unit, Queensland BRRU, and other agencies. The definition covers barriers to entry into a market and restrictions on competition within a market. The definition is comprehensive, with the aim of catching all anti-competitive activity.

Legislation will be reviewed using an agreed cost-benefit methodology and public interest test. The NCP Unit and Queensland BRRU will be assisting departments with reviews. Where a national approach is taken to reviewing legislation, the NCP Unit will coordinate with the National Competition Council, the other States and the Commonwealth.

SOUTH AUSTRALIA

REGULATORY REVIEW MECHANISMS

Improving South Australia's regulatory environment is a function of the Microeconomic Reform Branch located in the Strategic Policy and Cabinet Division of the Department of Premier and Cabinet. It acts as a coordinator and specialist adviser to agencies proposing and reviewing regulations, and receives and acts on queries from industry and the general public. (These functions were previously undertaken by the Deregulation Office — which was also located in the Department of Premier and Cabinet.)

The regulatory reform program is supported by the South Australian Regulation Reform Advisory Council, comprising seven private sector members. As well as supporting and guiding the Microeconomic Reform Branch, the Regulation Reform Advisory Council liaises with the private and public sector, and reports to the Premier on the progress, or lack of it, of regulatory reform.

Regulatory review is also conducted under the 'Sunset Program' in the Subordinate Legislation Act. Under this program, all regulations made after 1988 are automatically revoked after 10 years and pre-1988 regulations are revoked according to a timetable set by Parliament. The program is designed to encourage regular review of all subordinate legislation. The timetable is currently being adjusted to bring it into line with the timetable for the review of legislation which restricts competition under the CPA.

REGULATORY DEVELOPMENTS

Recent regulatory developments are listed below.

- *Licence reform* — a review of licences has been commissioned by the Regulation Reform Advisory Council with the aim of abolishing licences which fail to meet a defined public interest test, streamlining

remaining licences, reducing compliance costs and improving customer service.

- *Reform in the tourism industry* — consultations and industry forums are under way with a view to adopting measures to increase the efficiency of the regulatory environment regarding tourism.
- *Reforms to WorkCover ¾* changes have been made to the management of dispute claims, and a new 'single Channel Reporting System' has been introduced to reduce reporting obligations and streamline paperwork.
- *Retail motor trades reform* — changes have included streamlined licensing for petrol stations, tightening of regulations to deter 'backyard' and unlicensed dealers, and a simplified and more flexible system for traders to register vehicles on a temporary basis.
- *Aquaculture reform* — including streamlined and rationalised licensing, and improved information for government decision makers and investors.
- *The Real Estate Review* — this review has involved several specific issues, including community titles and the development of a database to coordinate information held by 18 government bodies, as well as general legislative reform.
- *Building contractor reforms* — these have involved the streamlining of regulation and changes to enforcement.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

South Australia is integrating the CPA review of legislation with its existing Regulation Reform Program.

Legislation restricting competition was identified by the responsible agency with the support of the former Deregulation Office, which provided guidelines and briefing sessions.

The timetable for the review of identified legislation was determined after negotiations between the Department of Premier and Cabinet and individual Ministers and agencies. Factors taken into account in the timetabling included agency planning, developments in other jurisdictions, and the priority accorded to the issue by the State Government.

Areas identified as likely for national review were uniform schemes and activities where spillover effects were judged to make it 'impossible' or impractical for jurisdictions to proceed alone, such as agricultural marketing schemes.

WESTERN AUSTRALIA

REGULATORY REVIEW MECHANISMS

The regulatory review functions in Western Australia are primarily undertaken as part of the Government's public sector management program overseen by the Cabinet Sub-committee on Public Sector Management. This sub-committee is supported by the Public Sector Management Office within the Ministry of Premier and Cabinet.

Regulatory review is also supported by other arrangements. The most notable of these are outlined below.

- *The Regulation Review Panel* — set up by the Small Business Development Corporation (SBDC), this panel comprises industry and business representatives who meet monthly on a voluntary basis. The Panel acts as a point of contact for small business, and aims to act as a catalyst in simplifying legislation, removing duplication and obsolete regulations, and encouraging deregulation. In considering State regulatory concerns, it can recommend, via the Deputy Premier and Minister for Small Business, actions to remedy problems.
- *'Red Tape Breakfasts'* — these forums, conducted by the SBDC, focus on a particular industry each time they occur and allow small firms to raise concerns in the presence of Ministerial and departmental representatives.
- *Sunset clauses* — these are inserted into new and amended legislation where appropriate and, generally, require Acts to be reviewed at the end of five years.
- *Explanatory memoranda and business impact requirements* — all subordinate legislation going to the Parliament or Committee on Delegated Legislation requires an explanatory memoranda. This outlines the law's purpose, justification and consultations. Departments are also required to consider the impact on business of new and

amended legislative proposals put to Cabinet. The Ministry of Premier and Cabinet can provide specific advice on the need for cost-benefit analysis and the consideration of alternatives to legislation to accompany these proposals.

Western Australia has to date not introduced any formal requirements for regulation impact analysis for either subordinate or primary legislation.

However, Western Australia is considering introducing a Subordinate Legislation Act as well as small business impact statements for all new legislation.

REGULATORY DEVELOPMENTS

Regulatory initiatives over the last twelve months are listed below.

- *Utilities reform* — legislation was passed to establish separate water, gas, and electricity utilities operating in open competition with the private sector. Separate regulatory offices were established for the water and energy industries to avoid the potential conflict of interest when utilities are responsible for both service delivery and industry regulation.
- *Environmental reforms* — environmental requirements have shifted from pollution prevention licensing, fees based on production output, and specifications of pollution control in licence conditions, to a more flexible system which focuses on incentives for industry to be environmentally responsible. This system includes licence fees based on measured contaminant loads, 'best practice licensing' relying on industry self-management, and opportunities and incentives for business to adopt codes of 'good environmental practice' as an alternative to licensing.
- *Reform of Employment Agent's licence renewal requirements* — amendments were made to nine Acts for licensed occupations. Amendments included allowing three year licence terms, rather than one year.
- *Deregulation of the domestic grain market* — this followed a review of the Grain Pool and associated legislation.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

A Ministerial Working Group for Competition Policy, and a Competition Policy Unit in Treasury, were established to oversee and coordinate implementation of the NCP package in Western Australia.

All agencies conducted a preliminary analysis of the legislation they are responsible for, and indicated whether the legislation has a direct or indirect impact on competition.

The Competition Policy Unit consolidated this information into a review and reform timetable which was presented to the NCC on 30 June 1996. The Unit will monitor and assist in completing the review and reform program, and has developed review guidelines to ensure the principles of the NCP are complied with when the reviews of legislation are undertaken.

TASMANIA

REGULATORY REVIEW MECHANISMS

Tasmania has a Regulation Review Unit (RRU) as part of the Economic Policy Branch in the Department of Treasury and Finance.

Key review mechanisms are contained in the *Subordinate Legislation Act 1992*, including:

- the preparation of a RIS and the undertaking of public consultation in cases where proposed subordinate legislation imposes a significant burden, cost or disadvantage on any section of the public;
- guidelines for the making of subordinate legislation, including the consideration of its impact on competition; and
- the staged repeal of existing subordinate legislation over the period 1 January 1996 to 1 January 2005.

The RRU is required to provide certification that agencies have complied with the review requirements of the Act prior to proposed subordinate legislation being submitted to the Governor for making.

Recently, RIS have also been required for all Cabinet proposals involving legislation which restricts competition or has a significant negative impact on business.

Other review mechanisms were included in the *Systematic Review of Business Legislation* (SRBL) process. This process involved the review of existing legislation, and required agencies to follow certain guidelines (including the outlining of alternatives) when amending existing legislation or preparing new legislation. Agencies were also required to seek RRU endorsement regarding the impact of new legislation on business. The SRBL was replaced by the Legislative Review Program (LRP) from 17 June 1996. The LRP applies to both existing anti-competitive legislation and new legislative proposals that restrict competition or significantly impact on business (see page 118).

REGULATORY DEVELOPMENTS

Regulatory reform in Tasmania has been supported by the commencement of the *Subordinate Legislation Act 1992*. The Act has seen a significant drop in the amount of subordinate legislation. The amount of subordinate legislation made in 1995 was over 25 per cent below the average for the previous 10 years. The 194 pieces of subordinate legislation passed in 1995 was the lowest number passed since 1960.

Regulatory reforms are listed below.

- *Reforms under the SRBL* — several Acts were overhauled during 1995 under the SRBL, including legislation governing the electricity supply industry; marine farm planning and living marine resources; mineral resources development; and workers' compensation and workplace safety. The SRBL process also identified approximately 35 Acts and 10 associated regulations which were subsequently repealed under the *Legislation Repeal Act 1995*. Since then the RRU has identified over 20 pieces of legislation and associated regulations for repeal during 1996.
- *The Taxi Industry Reform Act 1995* — this Act involves the staged reform of the taxi industry in Tasmania. Key features of this reform include:
  - the capping of existing licence values;
  - the conversion of existing tri-annual licences to perpetual assets;

- opportunity for licence 'buy-outs' of a limited number of existing operators; and
- the issue of new perpetual taxi licences across the counter at the capped price.

· *Electricity industry reforms* — these reforms have been aimed at preparing Tasmania for possible future interconnection to the national electricity grid and to introduce competition into the Tasmanian market. The legislative reform package passed by Parliament provides, amongst other things, opportunities for access to the Hydro Electric Commission grid by alternative suppliers.

· *GBE Reform* — the Government has introduced the *Government Business Enterprises Act 1995*, aimed at improving the governance, performance and accountability of GBEs.

· *Shop trading hours reform* — legislation has been passed which enables large retailers (those employing over 250 staff) to trade on Saturday afternoons.

· *The Motor Trades Code of Conduct* — the Government has introduced a Code of Conduct which covers the conduct expected of new and used car dealers. The Code, while ultimately having the force of law, is less prescriptive than conventional regulation, instead stipulating guidelines for business conduct.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

To meet Tasmania's legislation review obligations under the CPA, the Tasmanian Government has developed a four and a half year Legislation Review Program (LRP). This program is designed to reduce 'red tape' and will involve the review of around 240 pieces of legislation that restrict competition.

The LRP contains:

- a timetable for the review of all existing legislation which restricts competition;
- procedures and guidelines for the conduct of such reviews; and

- 'gatekeeper' arrangements to apply to all *proposed* legislation which restricts competition or significantly impacts on business to ensure they are properly justified in the public benefit.

The LRP also replaces the previous Systematic Review of Business Legislation — which had focused on the broad impacts of legislation on business. In doing so, the LRP will pick up these broad impacts, including paperwork burden and compliance costs, as well as the requirements under the CPA to identify restrictions on competition.

In the case of subordinate legislation, the requirements of the *Subordinate Legislation Act 1992* adequately encompass the requirements of the CPA.

AUSTRALIAN CAPITAL TERRITORY

REGULATORY REVIEW MECHANISMS

The Australian Capital Territory (ACT) has a Business Regulation Review Unit (BRRU) which assists with the oversight and coordination of regulatory review in the Territory. The Unit provides policy advice to the Minister for Regulatory Reform. The ACT BRRU has a monitoring, advisory and educative role with regard to ACT Government agencies. It is located within the Business and Regional Development Bureau of the Department of Business, Arts, Sport and Tourism.

Before February 1996, regulation review in the ACT had been supported by three key arrangements:

- the Red Tape Task Force which inquired into red tape and legislation that impedes economic growth in the ACT;
- the systematic review of all Government regulation (in keeping with the ACT Government's and CPA legislation review agendas); and
- regulatory review guidelines, including a Business Impact Statement (BIS) for regulatory proposals which impact on the private sector (and also for use within the review mechanisms for existing regulation).

In February 1996, however, the Government agreed to enhance the regulatory reform framework through the adoption of a 10 point program recommended by the Red Tape Task Force. The program included:

- the appointment of a Minister responsible for regulatory reform;

- the establishment of a panel of business representatives to provide advice to the Minister on regulatory reform issues;
- further development of the ACT BRRU with a central focus on coordinating and furthering best practice in regulatory reform on a whole-of-government basis;
- a regulatory needs analysis process and a business impact assessment process — representing an extension and refinement of the BIS process previously agreed to;
- a staged review of existing regulations (in line with earlier Government commitments and the Government's obligations under the CPA);
- the publication of agency regulatory plans;
- enhancement of consultative mechanisms between the public and private sector;
- effective enforcement of regulations;
- development of a culture of service; and
- development of a culture of regulatory reform.

REGULATORY DEVELOPMENTS

Regulatory reform initiatives in the ACT are outlined below.

- *Pre 1980s Legislation Review* — all operative legislation made before 1980 was reviewed during 1995. As a result, in early 1996 the Government passed legislation abolishing 48 pieces of regulation that were no longer considered necessary, and agreed to a two year program to modernise, integrate or abolish most of the remainder.
- *Land and planning legislation* — following several major reports and inquiries into the ACT's planning and land management systems, significant revisions to existing legislation are under development. A parallel review of approval mechanisms led to the development of a streamlined approvals and review process.
- *Integrated environment protection legislation* — proposals for integrated environment protection legislation are under development, replacing existing air, water and land pollution and ozone emission legislation.

- *Municipal Services Legislation Review* — a review of various items of municipal legislation is currently being undertaken with a view to developing an integrated Act.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATION REVIEW

The ACT Government's commitment under the CPA is being implemented in the context of other regulatory and microeconomic reforms, both in the ACT and nationally. These include, at a local level:

- the Government's commitment to review all legislation to minimise any unnecessary impacts upon business;
- reviews already under way or planned, either by individual agencies or through the Attorney General Department's Law Reform Unit. Examples include reviews of the environment, land and planning process; trading hours; the Agents Act; municipal laws, dangerous goods, security protection; and innkeepers legislation;
- the review of pre–1980 legislation; and
- the Red Tape Task Force report — the report raises a number of issues about the content of regulation and some priority areas requiring review.

In order to comply with the Government's objectives, agencies are expected to develop a program under which *all* legislation and regulation which they administer will be systematically reviewed during 1996 and 1997 against regulatory review guidelines and, for legislation which restricts competition, against national competition principles. The program is subject to Cabinet approval.

The review of regulation is to be undertaken by each agency, utilising regulatory review guidelines developed by, and with the optional assistance of, the ACT BRRU.

NORTHERN TERRITORY

REGULATORY REVIEW MECHANISMS

The Department of Asian Relations, Trade and Industry (DARTI) provides the coordinating role in the regulatory review process in the Northern Territory (NT), performing a similar role to that of State regulation review units.

The key regulatory review mechanism in the NT is the scrutiny of regulation and its attached explanatory Memorandum by DARTI. DARTI provides advice to the sponsoring agency on whether the regulation appears reasonable. If not, or if the proposal involves complex issues or has wide ranging impacts on Government and non-government agencies, DARTI will advise the sponsoring agency that full Coordination Committee consideration of the proposal is required. The Coordination Committee is made up of the Chief Executive Officers of all departments and government agencies.

DARTI, working together with the Cabinet Office of the Department of the Chief Minister, also ensures that prospective regulations involve wide consultation with business and relevant industry bodies.

Regulatory review has been supported by a systematic review of pre-1987 NT regulation undertaken between 1987 and 1989. Also, a comprehensive report, *Regulatory Reform and the Systematic Review of Business Regulation in the Northern Territory*, which was completed in late 1995, is being updated to reflect recent changes.

REGULATORY DEVELOPMENTS

Recent regulatory reform measures are listed below.

- *Work Health (Occupational Health & Safety) Regulation amendments* — these amendments were aimed at achieving greater national uniformity in health and safety requirements by incorporating recent standards dealing with plant and machineries, hazardous substances and confined spaces.
- *Retirement villages regulations* — new regulations were introduced in late 1995 following the enactment of the new Retirement Villages Act. The regulations were based on existing interstate regulations, and

reflect the entry of private providers into the NT market and address aspects of public interest.

- *Gaming machine regulations* — these regulations followed the passing of the Gaming Machine Act in October 1995 which allowed for the introduction of gaming machines into community venues.

COMPETITION PRINCIPLES AGREEMENT — LEGISLATIVE REVIEW

The policy unit of the Department of the Chief Minister (DCM) is responsible for the coordination and implementation of the NCP in the NT.

All NT Government agencies have identified legislation which has the potential to restrict competition using guidelines provided by the responsible unit. From these responses the DCM developed a program of review which Cabinet has endorsed.

APPENDIX D

Commonwealth's legislative review program

As described in Chapter 2, in accordance with the requirements of the National Competition Policy as agreed by the Council of Australian Governments, the Commonwealth Government has prepared a comprehensive schedule of legislative reviews to commence over the four years from 1996–97. This appendix contains the Treasurer's Press Release announcing the Commonwealth's legislative review program and the list of reviews already under way or to be undertaken over the next four years.

TREASURER

PRESS RELEASE

NO. 40

COMMONWEALTH LEGISLATION REVIEW SCHEDULE

The Treasurer today released a comprehensive schedule of legislation reviews to commence over the next four years.

The legislation review schedule has been prepared in accordance with the requirements of the national competition policy, agreed between the Commonwealth and all State and Territory Governments. The review schedule includes legislation which may be costly to business as well as legislation that restricts competition. 98 separate reviews are identified in the schedule.

The legislation review schedule highlights many areas of Commonwealth administration which are ripe for reform. The reviews will assist the Government to develop reforms aimed at boosting productivity and enhancing Australia's competitiveness.

The review schedule will complement other initiatives to reduce business compliance costs, and to reform or repeal unnecessary or poorly drafted legislation. Each review will include an assessment of the impact of the legislation being examined on small business and report on ways to reduce the compliance and paperwork burden associated with the legislation. In this way, the legislation review schedule will form a central part of the Government's overall Regulation Efficiency program.

The review schedule provides a benchmark against which the Government's microeconomic reform credentials will be judged. The schedule indicates the identified timing of the review. The purpose of the review schedule is to promote reform initiatives on a systematic basis, not to retard or delay consideration of issues. Where circumstances permit, it will be possible to bring forward reform measures ahead of schedule.

The review processes will provide an opportunity to establish the case for retaining, modifying or reforming current regulatory arrangements. Each review is required to identify the costs and benefits of the legislation and the likely consequences of reform measures proposed. The guiding principle of legislation review is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

The Government is conscious that review processes are not costless. In developing the review schedule the Government has been guided by the views and priorities of business and community representatives. Reviews have been structured so as to avoid duplicating recently completed reviews or ongoing reviews. Legislation

considered not cost effective to review (eg where competition effects are not significant or where costs are only small) has not been included.

The Competition Principles Agreement requires that all legislation which restricts competition be systematically reviewed every 10 years. Relevant legislation, not included on this schedule, will not escape future scrutiny.

Clearly other reviews of policy matters will be undertaken over the course of the review period. Of note, taxation compliance cost issues associated with a number of business taxes will be considered by the Small Business Deregulation Task Force. In addition, the Tax Law Improvement Project is continuing with its work to improve the clarity of taxation legislation.

Some of the legislation included on the review schedule has matching or complementary State or Territory legislation. Where this is the case, the Commonwealth will consult with other jurisdictions to establish appropriate review mechanisms, and where appropriate, coordinated responses.

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. The review processes, however, require public consultation with those affected by the legislation.

On behalf of the Government I will publish an annual report noting the progress of scheduled reviews and reporting on reform measures flowing from the review processes. I will also report on any adjustments to the review schedule.

The Commonwealth's Legislation Review Schedule is available on the internet at http.//www.treasury.gov.au and will be available from Commonwealth Government Bookshops in each capital city from late next week.

28 June 1996
CANBERRA

Contact: Mike Buckley (06) 263 3872

Table D1: Reviews currently under way

Portfolio	*Legislation*
Communications and the Arts	Protection of Movable Cultural Heritage Act 1986
Employment, Education, Training and Youth Affairs	Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991
Industrial Relations	Industrial Relations Act 1988
Industry, Science and Tourism	Patents Act 1990, S198-202 (Patent Attorney registration)
Industry, Science and Tourism	Commerce (Imports) Regulations and Customs Prohibited Imports Regulations
Industry, Science and Tourism	Bounty (Books) 1986
Industry, Science and Tourism	Bounty (Machine Tools & Robots) Act 1985
Industry, Science and Tourism	Bounty (Fuel Ethanol) Act 1994
Primary Industries and Energy	Quarantine Act 1908
Prime Minister and Cabinet	Aboriginal and Torres Strait Islander Heritage Protection Act 1984
Treasury	Comprehensive review of the regulatory framework of the financial system
Treasury	Census & Statistics Act 1905
Treasury	Corporations Act 1989

Table D2: Reviews to commence in 1996–97

Portfolio	*Legislation*
Attorney-General's	International Arbitration Act 1974
Communications and the Arts	Australian Postal Corporation Act 1989
Communications and the Arts	Radiocommunications Act 1992 and related Acts
Employment, Education, Training and Youth Affairs	Employment Services Act 1994 (case management issues)
Foreign Affairs and Trade	Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 & regulations
Health and Family Services	Quarantine Act 1908, in relation to human quarantine
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 560, 562, 563 student visas
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 120 and 121 (business visas)
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 676 & 686 tourist visas
Immigration and Multicultural Affairs	Migration Act 1958, Pt 3 (Migration Agents and Immigration Assistance) & related regulations
Immigration and Multicultural Affairs	Migration Agents Registration (Application) Levy Act 1992 & Migration Agents Registration (Renewal) Levy Act 1992
Industrial Relations	Tradesmen's Rights Regulation Act 1946
Industry, Science and Tourism	Customs Tariff Act 1995 - Automotive Industry Arrangements (with a view to determining the arrangements to apply post-2000)
Industry, Science and Tourism	Customs Tariff Act 1995 - Textiles Clothing and Footwear Arrangements (with a view to determining the arrangements to apply post-2000)

Table D2 (continued)

Portfolio	*Legislation*
Industry, Science and Tourism	Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) - Customs Tariff Act 1995, Schedule 4 Item 21 Treatment Code 421
Industry, Science and Tourism	Pooled Development Funds Act 1992
Industry, Science and Tourism	Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations
Primary Industries and Energy	Rural Adjustment Act 1992 and States and Northern Territory Grants (Rural Adjustment) Acts
Primary Industries and Energy	Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976
Prime Minister and Cabinet	Aboriginal Land Rights (Northern Territory) Act 1976
Transport and Regional Development	International Air Service Agreements (ASAs)
Transport and Regional Development	Shipping Registration Act 1981
Transport and Regional Development	National Road Transport Commission Act 1991 and related Acts
Transport and Regional Development	Australian Maritime Safety Authority Act 1990
Treasury	Bills of Exchange Act 1909
Treasury	Review of Foreign Investment Policy, including associated regulation

Table D3: Reviews to commence in 1997–98

Portfolio	*Legislation*
Attorney-General's	The trustee registration provisions of the Bankruptcy Act 1966 and Bankruptcy Rules
Communications and the Arts	Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964
Communications and the Arts	Review of Market based reforms and activities currently undertaken by the Spectrum Management Agency (SMA).
Defence	Defence Housing Authority Act 1987
Employment, Education, Training and Youth Affairs	Higher Education Funding Act 1988 plus include: Vocational Education & Training Funding Act 1992 and any other regulation with similar effects to the Higher Education Funding Act 1988
Employment, Education, Training and Youth Affairs and Industry, Science and Tourism	Mutual Recognition Act 1992
Health and Family Services	National Health Act 1953 (Part 6 & Schedule 1) & Health Insurance Act 1973 (Part 3)
Health and Family Services	Environmental Protection (Nuclear Codes) Act 1978
Industrial Relations	Affirmative Action (Equal Employment Opportunity for Women) Act 1986
Industry, Science and Tourism	Anti-dumping Authority Act 1988 & Customs Act 1901 Pt XVB & Customs Tariff (Anti-dumping) Act 1975
Industry, Science and Tourism	Customs Act 1901 Sections 154-161L
Industry, Science and Tourism	Trade Practices (Consumer Product Information Standards)(Cosmetics) Regulations
Industry, Science and Tourism	Petroleum Retail Marketing Sites Act 1980
Industry, Science and Tourism	Petroleum Retail Marketing Franchise Act 1980

Table D3 (continued)

Portfolio	*Legislation*
Primary Industries and Energy	Primary Industries Levies Acts and related Collection Acts
Primary Industries and Energy	Wool International Act 1993
Primary Industries and Energy	Imported Food Control Act 1992 & regulations
Primary Industries and Energy	National Residue Survey Administration Act 1992 & related Acts
Primary Industries and Energy	Pig Industry Act 1986 & related Acts
Primary Industries and Energy	Torres Strait Fisheries Act 1984 & related Acts
Primary Industries and Energy	Export Control (Unprocessed Wood) Regulations under the Export Control Act 1982
Transport and Regional Development	International Air Services Commission Act 1992
Transport and Regional Development	Motor Vehicle Standards Act 1989
Treasury	Superannuation acts including: Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Entities (Taxation) Act 1987, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of Complaints) Act 1993 and Superannuation Supervisory Levy Act 1991
Treasury	s 51 (2) & s 51 (3) exemption provisions of the Trade Practices Act 1974
Treasury	General Insurance Supervisory Levy Act 1989
Treasury	Insurance (Agents & Brokers) Act 1984
Treasury	Life Insurance Supervisory Levy Act 1989

Table D4: Reviews to commence in 1998–99

Portfolio	*Legislation*
Administrative Services	Land Acquisition Acts - a) Land Acquisition Act 1989 & regulations b) Land Acquisitions (Defence) Act 1968 c) Land Acquisition (Northern Territory Pastoral Leases) Act 1981
Attorney-General's	Financial Transactions Reports Act 1988 and regulations
Attorney-General's	Proceeds of Crime Act 1987 and regulations
Attorney-General's and Industry, Science and Tourism	Intellectual property protection legislation (Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968, and possibly include the Circuit Layouts Act 1989)
Defence	Defence Force (Home Loans Assistance) Act 1990
Environment, Sport and Territories	World Heritage Properties Conservation Act 1983
Environment, Sport and Territories	Hazardous Waste (Regulation of Imports & Exports) Act 1989, Hazardous Waste (Regulation of Imports & Exports) Amendment Bill 1995 & also related regulations
Health and Family Services	National Food Authority Act 1991 Food Standards Code
Industry, Science and Tourism	Export Finance & Insurance Corporation Act 1991 & Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991
Primary Industries and Energy	Agricultural & Veterinary Chemicals Act 1994
Primary Industries and Energy	Dairy Industry Legislation
Primary Industries and Energy	Fisheries Legislation

Table D4 (continued)

Portfolio	*Legislation*
Primary Industries and Energy	Dried Vine Fruits Legislation
Primary Industries and Energy	Prawn Boat Levy Act 1995
Primary Industries and Energy	Export Control Act 1982 (fish, grains, dairy, processed foods etc)
Primary Industries and Energy	Export controls under reg 11 of the Customs Act (Prohibited exports - nuclear materials)
Transport and Regional Development	Part X of Trade Practices Act 1974 (shipping lines)
Transport and Regional Development	Coasting Trade Provisions of the Navigation Act 1912 (Part VI)
Treasury	Financial Corporations Act 1974
Treasury	Prices Surveillance Act 1983
Veterans' Affairs	Treatment Principles (under section 90 of the Veterans' Entitlement Act 1986 (VEA) & Repatriation Private Patient Principles (under section 90A of the VEA)

Table D5: Reviews to commence in 1999–2000

Portfolio	*Legislation*
Defence	Defence Act 1903 (Army and Airforce Canteen Services Regulations)
Environment, Sport and Territories	Ozone Protection Act 1989 & Ozone Protection (Amendment) Act 1995
Health and Family Services	Home & Community Care Act 1985
Primary Industries and Energy	Petroleum (Submerged Lands) Act 1967
Primary Industries and Energy	Wheat Marketing Act 1989
Prime Minister and Cabinet	Native Title Act 1993 & regulations
Treasury	Part IIIA (access regime) of the Trade Practices Act (including exemptions)
Treasury	Part 6 (access provisions) of the Moomba-Sydney Pipeline System Sale Act 1994
Treasury	2D exemptions (local government activities) of the Trade Practices Act
Treasury	Fees charged under the Trade Practices Act

APPENDIX E

Small Business Deregulation Task Force: terms of reference

1. The Small Business Deregulation Task Force will review the compliance and paper work burden imposed on small business.

2. The Task Force will have 6 months to report to the Government on revenue neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent.

3. Matters to be taken into consideration by the Task Force's investigations shall include, but not be limited to:

(a) statistical collections

(b) taxation compliance with particular reference to the administration of:

Fringe Benefit Tax

Capital Gains Tax

Superannuation Guarantee Charge

Business taxes

(c) federal regulatory requirements

(d) an assessment of the interaction with State/Local government business regulation and compliance requirements and, in cooperation with the States, look more broadly at the overall regulatory environment; and

(e) the potential contribution of existing Commonwealth and cross-Government regulation reform mechanisms to the Government's regulation reform objectives.

4. The Task Force will advise on implementation strategies which contribute to the development of a Regulation Efficiency Program. In doing this the Task Force will be mindful of the need to ensure that the momentum of the Government's overall deregulation program is maintained.

5. In undertaking this Review, it is expected that the Task Force will have regard to existing studies and relevant overseas developments in reducing compliance costs in the areas identified, and consult with business and community groups as appropriate.

6. In relation to 3(e) the aim is not to formally review the existing mechanisms, but to examine the contribution they make to reducing the paperwork and compliance burden on business. In doing this, the Task Force is invited to suggest ways of improving the existing regulation reform processes so that they better meet the Government's reform objectives, taking particular note of the role played by the Office of Regulation Review. The Task Force is also invited to identify business priorities for regulation reform.

APPENDIX F
International regulation reform strategies

The Organisation for Economic Co-operation and Development has reported on developments in regulation reform in its member countries. The trend has been for a growing acceptance of the value of regulation reform and the use of regulation impact analysis.

The Organisation for Economic Co-operation and Development (OECD) has taken an active interest in the developments in reform of regulations in member countries for a number of years. These countries have high per capital incomes and democratic governments, and are thus a useful source of comparisons for Australia. Recently, the OECD (1995a) surveyed most member countries to compare how each reviews and reforms regulations. This appendix draws heavily on that survey.

According to the OECD:

> In the past 15 years, few modern reforms of the public sector have received more attention, and stimulated more controversy, than has regulatory reform. And in these years, regulatory reform was transformed from a series of ad hoc actions that seemed almost revolutionary in tone to a core element of modern, effective government. Today, almost all of the 25 OECD countries have regulatory reform programs, up from perhaps three or four in 1980, and more and more the debate focuses on how to reform rather why reform is needed (1995a p. 3).

MAJOR REFORM STRATEGIES

The OECD has analysed the reform strategies of 14 of its member countries. Many different strategies have been used to pursue common goals.

Table F1 (at the end of this appendix) presents an overview of the 14 most common regulation reform strategies used from 1980 to 1995.

Most countries have established an explicit regulatory reform policy and most are pursuing harmonisation and mutual recognition.

To varying degrees, most of the countries reviewed have also:

- dismantled some anti-competitive regulation in selected economic sectors;
- established explicit quality standards for regulations;
- established a regulatory impact analysis program; and
- introduced public consultation programs.

Australia, Canada, the United Kingdom (UK) and the United States of America (USA) stand out as the countries with the greatest commitment to improving the quality of their regulations. Although, even among these countries, there is considerable variation in how some review programs are conducted and in the criteria used for assessment. For example, while the UK focuses on the impact on business when assessing a new regulation, Australia and Canada look at the impact on all identified groups. Only Canada and the USA have strict cost-benefit tests for new regulations.

The OECD observes that countries have changed the broad nature of their regulation reform strategies in light of experience and changing circumstances. Over the past 15 years, the focus has progressively moved from 'deregulation' to 'reform' of regulation and now there is a development towards 'management' of regulation. Each of these is discussed below.

DEREGULATION

In the OECD survey, all countries except Iceland have pursued the deregulation of anti-competitive regulations in selected economic sectors. The countries which have used this reform strategy to the greatest extent are Australia, Canada, New Zealand, the UK and the USA.

The OECD has made the following comments about deregulation:

> In most OECD countries, reform began internally in the early 1980s in response to complaints about regulatory and administrative burdens, often from small businesses. At the same time, reform was imported from other countries in a wave of competitive deregulation in the financial, telecommunications, and transport sectors in the 1980s that continues today. In Europe, the building of the Internal Market required the dismantling of national barriers to movement of goods, services and labour. All these movements led to one simple policy: deregulation (1995a, p. 11).

Studies have confirmed significant gains from deregulation, including reduction in consumer prices, expansion in choice and increases in innovation (OECD 1992, Lipschitz 1989, van Bergeijk 1993). One study estimated that deregulation in the USA increased national welfare by $36 to $46 billion annually and the benefits were shared by consumers, workers and producers (Winston 1993).

However, deregulation has not always been done appropriately:

> ... deregulation, while held successful in limited sectors, failed as a general policy of government. In part, it failed because it was reactive to problems made in the past, and did not look to the future. In part, it failed because it focused exclusively on regulatory outputs (instruments), and not on inputs or broader system problems. And it failed in part because political resistance was very strong (OECD 1995a, p. 11).

IMPROVING THE QUALITY OF INDIVIDUAL REGULATIONS

As a result, former deregulators, perhaps frustrated at the difficulty of reducing the *quantity* of regulations, increasingly focused on the *quality* of regulations. Canada called this 'regulating smarter' and, in 1995, the President of the European Commission promised 'less action, but better action' (OECD 1995a, p. 13).

Unfortunately, there is no measurement system for many kinds of quality improvements. Many important benefits cannot be measured because they consist of mistakes avoided due to new disciplines and controls on regulation. However, it is possible to note some broad trends (towards more cost-effective regulation and towards performance oriented regulations) and to indicate the extent to which countries have adopted regulation assessment and reform procedures.

Regulation impact analysis

Most reform efforts are now directed not at reducing regulation per se but at creating more efficient, flexible and effective regulations and at developing better non-regulatory instruments. This emphasis led in March 1995 to the adoption by the Council of the OECD of the *Recommendation on Improving the Quality of Government Regulation.* This is the first international standard on regulatory quality.

A crucial part of the Recommendation is the reference checklist for regulatory decision making, which contains ten questions which should be

addressed when developing regulations (see Box F1). (These criteria have much in common with the agreed elements of regulation impact analysis in Australia.)

Box F1: The OECD regulation checklist

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government to take action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensive, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Source: OECD 1995b, p. 7

Improving the empirical basis for decisions through impact analysis of regulatory proposals is one of the most widespread reform strategies. While there is considerable variation in methodologies, of the 14 countries shown in Table F1, 13 adopted regulatory impact analysis between 1974 and 1990, most between 1985 and 1990.

Methodologies vary considerably. In six countries there is a general requirement to assess all important impacts, while two focus only on fiscal costs and two on compliance costs to businesses. The other three countries explicitly require benefit-cost analysis, but only Canada and the USA have established strict benefit-cost tests for new regulations.

There have been mixed results from the use of regulation impact analysis:

> On the one hand, there is nearly universal agreement among regulatory reform offices that RIA [regulatory impact analysis], when it is done well, improves the cost-effectiveness of regulatory decisions. In 1987, for example, the US Environmental Protection Agency evaluated 15 RIAs, and found that they cost $10 million to conduct but resulted in revisions to regulations with

> estimated net benefits of about $10 billion, or a benefit-cost ratio of about 1 000 to 1. RIA contributes to a "cultural shift" whereby regulators become more aware of the costs of action, and more ready to adapt decisions to reduce costs. RIA also improves the transparency of decisions and enhances consultation and participation of affected groups.
>
> Yet the positive views are balanced by evidence of massive non-compliance and quality problems in RIA. Even in countries with explicit programs, many regulations continue to be made without even rudimentary cost analysis ... . there are several explanations for these compliance and quality problems: (1) bureaucratic resistance is high and some regulators continue to oppose RIA as contrary to their ethos; (2) requirements that regulators carry out analysis are not supported by adequate incentives for compliance (3) many regulators do not have the capacity to comply, either because of lack of skills or resources; (4) data are often costly or non-existent; and (5) RIAs are often prepared too late in the process, after decisions are made (OECD 1995a, p. 10).

Comparisons between countries indicate that the following seven preconditions are necessary for a successful RIA program:

- high level political support;
- clear quality standards that can be measured by analysis;
- a methodology that is flexible and administratively feasible;
- development of an institutional structure for a RIA program where regulators are made primarily responsible for the analyses and an independent body is charged with quality control;
- proposals and/or assumptions are tested via public consultation;
- integration of analysis into administrative and political decision processes, including communication of information in a coherent and systematic manner; and
- a program to build expertise and skills among regulators, such as training in best-practice seminars for personnel doing RIAs (OECD 1996, p. 9).

Of the seven, the survey indicates that the two elements where Australia could most strengthen its RIA, is by building regulation reform and assessment skills in personnel employed in regulatory bodies and by improving accountability at the ministerial or parliamentary level for regulatory reform.

The OECD points out that, unfortunately, RIA is often seen as a simplistic accounting-type tool with a narrow 'financial' focus and for this reason it is

resisted by some. However, in fact it attempts to widen and clarify the relevant factors for decision making. Far from being a technocratic tool:

> **Experience makes clear that the most important contributor to the quality of decisions is not the precision of calculations, but the action of analysing — questioning, understanding real-world impacts, exploring assumptions.** Most failures of RIA stem directly from the mistaken view that impact analysis is a way of producing the right numbers, and a failure to understand the deeper institutional and cultural changes required to make analysis genuinely a part of increasingly complex decision-making environments (emphasis in original) (OECD 1995a, p. 11).

The OECD considers that RIAs allow information to be gathered and presented in a systematic framework and this aids the public debate about the use of regulation and presents clearly to political leaders the basis on which their decisions rest, including those 'value judgements' vital to the role of government.

See Chapter 4 and Appendix G for a full discussion of RIA in Australia.

IMPROVING THE MANAGEMENT OF THE REGULATORY SYSTEM

While regulatory reform achieved by improving the quality of individual regulations is forward looking, unless it is used in some comprehensive review program, it may not address problems which arise from the functioning and growth of the regulatory system as a whole rather than from individual rules considered in isolation. Improving the management of the regulatory system as a whole addresses some of the most pressing problems, including:

- the combined costs of many regulations;
- inconsistency between regulations;
- lack of accountability and openness; and
- intrusion on private life.

Governments have noted the burdensome nature of the growing number of regulations. In 1986, the UK warned that: 'Many regulations seem relatively minor. But it is the cumulative effect of many regulations which weighs business down (Secretary of State for Employment 1986, p.4).'

In Germany, the state secretary for legal simplification has written, 'Our concept of a free, democratic society is not compatible with too many

regulations, excessively complex stipulations or bureaucratic obstacles and hurdles.'; and the French Conseil d'Etat has warned that over-regulation might divide citizens into classes: 'the few who can afford expert advice on how to exploit to the full the subtleties of the law, and every one else, hopelessly lost in the legislative maze, with no recourse to law' (OECD 1995a, p. 13).

Regulatory management goes beyond regulation to look at the best ways available to government to solve problems more effectively. Regulatory institutions are replaced by 'problem-solving' institutions and regulation is seen as one tool among many.

Table F1: Selected regulatory reform strategies, by country, initiated 1980 to 1995

Reform strategies	*Aust-ralia*	*Austria*	*Canada*	*Fin-land*	*Germany*	*Ice-land*	*Japan*	*Nether-lands*	*NZ*	*Nor-way*	*Port-ugal*	*Sweden*	*UK*	*USA*
Establishing explicit regulatory reform policy	✓✓		✓✓	✓✓	✓		✓✓	✓✓	✓✓			✓✓	✓✓	✓✓
Deregulating anti-competitive regulation in selected economic sectors	✓✓	✓	✓✓	✓	✓		✓	✓	✓✓	✓	✓	✓	✓✓	✓✓
Establishing explicit quality standards for regulations	✓✓	a	✓✓	✓	✓✓		✓	✓✓	✓	✓		✓	✓	✓✓
Developing comprehensive registry or codification of regulations		✓								✓		✓✓	✓	
Establishing specialised unit(s) to oversee regulatory reform:														
• permanent unit(s) in administration	✓✓		✓✓					✓✓	✓			✓	✓✓	✓✓
• ad hoc commissions or task forces				✓✓	✓✓		✓✓			✓✓	✓✓			
Development of administrative or regulatory procedure law			✓✓	✓✓			✓✓	✓✓			✓✓		✓✓	✓
Regulatory impact analysis programme	✓✓	✓	✓✓	✓				✓	✓✓	✓		✓✓	✓✓	✓✓

Reviews of existing regulations:																
• ad hoc or one-time reviews	✓✓		✓	✓✓	✓		✓		✓✓	✓		✓	✓	✓	✓	
• systematic and continuous	✓✓							✓								
Reviews of proposals for new regulations	✓		✓				✓	✓	✓				✓	✓	✓✓	
Harmonisation and mutual recognition	✓✓	✓✓	✓	✓✓	✓✓		✓	✓✓	✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓	
Regular or increasing use of alternatives to regulation	✓✓		✓✓		✓			✓✓		✓					✓✓	
Regulatory planning processes			✓✓											✓	✓✓	
Public consultation programmes	✓✓		✓✓				✓		✓			✓	✓	✓✓	✓	
Improving accountability at ministerial or parliamentary level for regulatory reform	✓		✓✓					✓	✓				✓	✓✓	✓	
Building reform skills in regulatory bodies			✓	✓	✓									✓		

a Drafting quality.

✓ To some extent.

✓✓ Yes or to a large extent.

Source: OECD 1995a

APPENDIX G

Commonwealth Government RIS guidelines

The following guidelines — approved by Cabinet in August 1995 — set out the information requirements for a Commonwealth Regulation Impact Statement (RIS).

The RIS process is part of the Commonwealth Government's regulation review procedures — administered by the Office of Regulation Review (ORR). It aims to ensure that new or amended regulatory proposals are subject to proper analysis and scrutiny as to their necessity, design, and net impact on business and community welfare. The process emphasises the importance of identifying the effects on groups who will be affected by changes in the regulatory environment, and consideration of alternatives to the proposed regulation.

The Commonwealth Government requires a RIS to be prepared where a proposal requires Cabinet approval and involves new or amended regulation which would affect business. The RIS is required in the form of an Attachment to the Cabinet Submission. Regulation impact analysis, similar to that used in the preparation of a RIS, are now required for various regulation making processes. See Chapter Four for a full discussion.

Regulation affecting business is taken to be all Government actions which directly confer benefits or costs on business (with the exception of specific purchases by the Government).

RISs should be developed in consultation with the ORR. For proposals going before Cabinet, the ORR may grant a waiver to all or part of a RIS under certain circumstances, particularly where the Cabinet Submission itself addresses the issues in sufficient detail, where particular RIS requirements are not relevant to the proposal in question, or where the regulation will have a trivial impact. Departments should consult the ORR early to determine which aspects of the requirements are necessary for inclusion in a particular RIS.

In addition to these guidelines, a more comprehensive *Guide to Regulation Impact Statements* is available on request from the ORR.

PROBLEM IDENTIFICATION AND SPECIFICATION OF REGULATORY OBJECTIVES

This section should specify the social, environmental, financial, distributional or other economic problem the initiative is intended to address. Information should be provided on the nature and magnitude of the problem. Where one exists, an underlying market failure (such as imperfect competition, lack of consumer information or non-market 'external' costs) causing the problem should also be identified.

Next, the objective of the regulatory initiative should be specified. The objective should not be specified so as to align with (and thus pre-justify) the particular effects of the proposed regulation. Rather, it should be specified in relation to the underlying problem.

This section should also identify the pre-existing policy authority (if any) for the regulatory initiative: for example, a relevant Cabinet Decision or governmental policy announcement.

IDENTIFICATION OF ALTERNATIVES

This section should set out the alternative mechanisms (including the proposed mechanism) which could wholly or partly achieve the specified objective(s).

Alternative regulatory mechanisms (only some of which will be relevant for a particular type of regulatory initiative) include:

- no specific action (that is, rely on the market in conjunction with existing law);
- general liability laws (strict, negligence or no fault);
- information strategies (including product labelling or media campaigns);
- market-based instruments (including taxes, subsidies, tradeable permits, performance bonds);
- standards (which may be principles standards, performance based or prescriptive);
- pre-market assessment schemes (such as listing, certification and licensing);

- post-market exclusion measures (such as bans, recalls, licence revocation provisions, and 'negative' licensing); and
- other mechanisms (such as: community right to know requirements, mandatory audits, quality assurance schemes, self-regulation and co-regulation).

In identifying relevant alternatives, it may also be necessary to examine regulation at different levels of stringency. For example, if considering a tax on a polluting substance, it may be appropriate to consider a high, an intermediate and a low tax rate.

As well as regulatory alternatives, in some cases alternative enforcement strategies should be identified. Relevant options/issues may include:

- administrative versus civil versus criminal sanctions;
- corporate versus director liability;
- the desirability of risk-based enforcement strategies; and
- the desirability of enforcement pyramids (that is, warnings for initial or low level breaches, fines for subsequent and/or high level breaches, leading to licence suspension or revocation as ultimate sanctions).

IMPACT ANALYSIS

This section of the RIS should analyse the benefits and costs of the options identified, both for different groups within the community and for the community as a whole. Benefits and costs should not be restricted to tangible or monetary items — possible changes in environmental amenity, health and safety outcomes, and other non-monetary outcomes should also be included. The implications for government revenue should also be identified.

IMPACT GROUP IDENTIFICATION

The groups likely to be significantly affected by the regulatory initiative should be separately identified. These groups should be broken down into sub-groups where the initiative will have different effects on those sub-groups. Group and sub-group distinctions *may* include:

- government, business and consumers;

- within the government category, Commonwealth, State, Territory and local governments;
- within the business category, big and small businesses; and importers, exporters and/or firms supplying the local market;
- within the consumer category, groups with different levels of information and/or abilities to process information;
- groups in different geographical areas (for example urban/rural) or different States; and
- groups with different age, language, physical, cultural, gender, family or income/wealth characteristics.

ASSESSMENT OF COSTS AND BENEFITS

Estimates of the cost to government of introducing the new regulatory process or amendment, and the other alternatives, should be given, including where relevant:

- numbers and levels of staffing;
- salary costs;
- costs of other relevant items such as any special advertising, accommodation, travel; and
- enforcement costs.

The sources of revenue against which the costs will be charged should be included, for example, general appropriation or fees. Estimates of revenue from any licences, fees or related charges in the regulation process should be given. Where possible, a net cost to government should be indicated.

Estimates of costs to businesses affected by the regulatory initiative should also be given. These costs might derive from:

- 'paper burden' or administrative costs to businesses associated with complying with and/or reporting on particular regulatory requirements;
- licence fees or other charges levied by government;
- changes likely to be required in production, transportation and marketing procedures;
- shifts to alternative sources of supply; and

- delays in the introduction of goods to the marketplace and/or restrictions in product availability.

Estimates of costs to consumers are also required. These may derive from:

- higher prices for goods and services;
- reduced utility of goods and services; and
- delays in the introduction of goods to the marketplace and/or restrictions in product availability.

Where possible, a cost estimate for the community as a whole should be provided. When assessing aggregate costs, it is important to avoid double counting. For example, if a regulation is likely to increase business costs and it is expected that businesses will pass these costs on to consumers in the form of higher prices, this cost item should be counted only once in an assessment of aggregate costs.

Information on the benefits of the alternatives to affected groups and/or to the community at large should be identified. Such benefits, some of which may not be quantifiable, could derive from:

- firms being able to take greater advantage of economies of scale;
- reductions in excess costs or prices emanating from monopoly power;
- reductions in workplace accidents and improvements in public health (and Medicare cost savings consequent upon them);
- improvements in environmental amenity; and
- improvements in the information available to business, the workforce, consumers or the government.

OTHER REQUIREMENTS

This section outlines other requirements which need to be addressed if not covered elsewhere in the RIS.

CONSULTATION

This section should contain a statement of the consultation processes undertaken and the views elicited from the main interested parties. Relevant individuals and groups may include:

- Commonwealth Ministers, departments and agencies;
- State, Territory and local governments, particularly where the regulatory process arises from negotiations between different levels of government and/or involves overlapping responsibilities;
- business, consumers, unions, environmental groups and other interest groups which will be affected by the regulatory process; and
- other groups or sub-groups identified.

Where consultation of relevant groups is not undertaken, this should be indicated and reasons (if any) specified.

ADMINISTRATIVE SIMPLICITY, ECONOMY AND FLEXIBILITY

This section should discuss the administrative simplicity of the proposal, including:

- whether any administrative burdens on business can be reduced;
- the feasibility of 'one-stop' facilities for the regulation. This may in some cases involve consideration of the practicability of joint facilities or offices with another Commonwealth agency, with an appropriate State or local government agency, or even with a private agency related to the field or operation;
- the feasibility of the administrative procedure being carried out by existing teams of staff in other departments or agencies; and
- whether it is appropriate to have an inbuilt authority to waive or modify the regulation in certain circumstances, and provide for an adequate appeal process.

EXPLANATORY MATERIAL

This section discusses whether, and to whom, explanatory material will be provided.

REVIEW

This section of the RIS should state how the regulatory process will be monitored for amendment or removal when, or if, the circumstances which

led to its introduction change. The information should include the result of considerations as to the feasibility of:

- a ‘sunset’ clause:
- ongoing arrangements for consulting with the interest groups affected;
- provision for regular review; and
- provision for regular reporting to the public such as in an agency’s annual report.

REFERENCES

Bergeijk, P. A. G. van, Haffner, R. C. G. & Waasdorp, P. M. 1993, 'Measuring the speed of the invisible hand: macro-economic costs of price rigidity', *Kyklos*, vol. 46, no. 4, pp. 529-544.

COAG (Council of Australian Governments) 1995, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies*, April.

Department of the House of Representatives, Chamber Research Office 1996, unpublished material.

Goss 1995, cited in Queensland Business Regulation Review Unit, unpublished material.

Hilmer, F., Raynor, M. and Taperell, G. (The Independent Committee of Inquiry) 1993, *National Competition Policy*, AGPS, Canberra.

IC (Industry Commission) 1995, *Regulation and its Review 1994–95*, AGPS, Canberra.

Institute of Public Affairs Regulation Review Unit 1996, unpublished material.

Lipschitz, L., Kremers, J., Mayer, T. and McDonald, D. 1989, *The Federal Republic of Germany: Adjustment in a Surplus economy,* IMF Occasional Paper, no. 64, Washington D.C.

OECD (Organisation for Economic Cooperation and Development) 1992, *Regulatory Reform, Privatisation and Competition Policy*, Paris.

____1995a, PUMA (95)9 *Control and Management of Government Regulation*, 12th Session of the Committee, Château de la Muette, Paris, October.

____1995b**,** *Recommendation on Improving the Quality of Government Regulation*, adopted by the Council of the OECD, Paris, 9 March.

____1996, PUMA/REG(96)7 *An Overview of Regulatory Impact Analysis in OECD Countries*, Meeting on Regulatory Impact Analysis: Best Practices in OECD Countries, Château de la Muette, Paris, May.

ORR (Office of Regulation Review) 1995, *A Guide to Regulation Impact Statements*, September.

ORR 1993, *Recent developments in regulation and its review*, Information Paper, Paragon Printer, Canberra, November.

Prime Minister 1996, *Small Business Deregulation Task Force*, Media Release, 2 May.

PM&C (Department of the Prime Minister and Cabinet), Cabinet Office 1994a, *Cabinet Handbook*, Fourth edition, AGPS, Canberra, February.

——, Commonwealth-State Relations Secretariat 1994b, *Commonwealth-State Ministerial Councils — A Compendium*, May.

Secretary of State for Employment 1986, *Building Businesses — Not Barriers*, White Paper presented to Parliament, Her Majesty's Stationery Office, London.

Senate Standing Committee on Regulations and Ordinances 1995, *One Hundred and Second Report Annual Report 1994–95*, Parliament of the Commonwealth of Australia, November.

Treasurer 1996, *Commonwealth Legislation Review Schedule*, Press Release, no. 40, 28 June.

UNICE (Union of Industrial and Employers' Confederations of Europe) 1995, *Releasing Europe's Potential through targeted Regulatory Reform*, The UNICE Regulatory Study, An Interim Report, June.

Victorian ORR (Victorian Office of Regulation Reform) 1996, unpublished material.

Winston, C. 1993, 'Economic Deregulation: Days of Reckoning for Microeconomists', *Journal of Economic Literature*, vol. XXXI, pp. 1263–89.