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PREFACE

This report forms part of the Industry Commission's annual report suite of publications for 1996–97. It builds upon *Regulation and Its Review: 1995–96* which focussed on developments in government processes which are designed to achieve more effective, less intrusive regulations.

This report focuses on how these existing processes have been enhanced by new regulation review and reform requirements outlined in the Prime Minister's Statement *More Time for Business*. It also outlines the progress made in 1996–97 in implementing these new requirements.

The Office of Regulation Review (ORR) —within the Industry Commission — has a central role in advising on and administering these requirements. Accordingly, the report also discusses the role of the ORR in assisting agencies meet quality assurance requirements for the development of regulation, including primary legislation and subordinate legislation through the pending Legislative Instruments Act 1996.

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ABBREVIATIONS

ABA	Australian Broadcasting Authority
ABARE	Australian Bureau of Agricultural and Resource Economics
ABS	Australian Bureau of Statistics
AIDC	Australian Industry Development Corporation
AMSA	Australian Maritime Safety Authority
ANZFA	Australia New Zealand Food Authority
ASAs	International Air Services Agreements
ATO	Australian Taxation Office
BLIS	Business Licence Information Service
BRS	Bureau of Resource Sciences
CASA	Civil Aviation Safety Authority
COAG	Council of Australian Governments
COBR	Council on Business Regulation
CPA	Competition Principles Agreement
CRR	Committee on Regulatory Reform
DIR	Department of Industrial Relations
DIST	Department of Industry, Science and Tourism
DOCA	Department of Communications and the Arts
DPIE	Department of Primary Industries and Energy
IC	Industry Commission
LIP	Legislative Instruments Proposal
NCC	National Competition Council
NEPC	National Environment Protection Council
NRTC	National Road Transport Commission
OECD	Organisation for Economic Cooperation and Development
ORR	Office of Regulation Review
PC	Productivity Commission
PM&C	Department of the Prime Minister and Cabinet
RAS	Rural Adjustment Scheme
RIS	Regulation Impact Statement
ToR	Terms of Reference
VEA	Veterans' Entitlement Act 1986

OVERVIEW

The most significant developments in Commonwealth regulation review and reform in 1996–97 were triggered by the report of the Small Business Deregulation Task Force (the Task Force). The Task Force was required to report on revenue-neutral measures that could be taken to halve the paperwork and compliance burden on small business. The Government's responses to each of the 62 recommendations made by the Task Force were announced in the Prime Minister's Statement *More Time for Business,* in March 1997.

The Task Force made specific suggestions aimed at reducing the paperwork and regulatory compliance burden of small businesses. It also examined and made recommendations on a much broader range of issues, particularly on ways of improving regulatory processes so that they better meet the Government's objective of achieving effective and efficient legislation and regulation. Reflecting those themes, the Task Force's recommendations were grouped into the following categories:

- taxation issues;
- employment issues;
- statistical burdens;
- streamlining government processes and regulation;
- changing the regulatory culture;
- making it easier to deal with government requirements;
- making business easier;
- performance monitoring and accountability in regulation reform; and
- improving regulatory reform processes.

All but the first three of these areas provide a clear indication that, while the momentum of the Task Force's work came from concerns about *small businesses,* its recommendations were sufficiently wide-ranging to potentially enhance the regulatory environment for *all businesses*, and for the community in general. This is reflected in the Prime Minister's announcement of the Government's response:

> We must guard against the tendency for business regulation to increase over time as issues are considered in isolation or without systematic reference to their impact on business costs. We will improve the regulation of business by making the preparation of regulation impact statements mandatory for all Commonwealth legislation or regulation that has the potential to affect business. The costs and benefits of regulation will be weighed up carefully to ensure that the putative benefits are not outweighed by excessive economic and financial costs, including the compliance burden on business. (Prime Minister 1997, p. vi)

Apart from making mandatory the preparation of a Regulation Impact Statement (RIS) for regulatory change which has the potential to affect business, the Government decided that:

- RISs are to be tabled as part of the explanatory documents when proposals for legislative change are put before Parliament;
- the Assistant Treasurer is to be responsible for regulatory best practice;
- the Office of Regulation Review (ORR) is to report to Cabinet on compliance with RIS requirements for specific regulatory proposals; and
- the Industry Commission is to report annually on overall compliance with RIS requirements, starting in 1997–98.

Even though there has been a requirement for some years that a RIS should be prepared and attached to Cabinet submissions proposing regulatory change, compliance was poor (see Box 1), reflecting little commitment to the process and the lack of effective sanctions.

Box 1: Compliance with RIS requirements in 1996–97

- In 1996–97, 204 Government Bills were introduced in Parliament.
- Of these, 121 potentially affect business or restrict competition, so that a RIS should have been prepared.
- In practice, an adequate RIS process was adopted for only around a dozen of those 121 Bills.

The Government's new quality control processes are to apply to all regulatory proposals, including those which result from international treaties and from changed taxation arrangements.

Aside from such 'in-house' governmental processes, the Government announced it is keen for industry to take responsibility for developing effective and efficient self-regulatory mechanisms in appropriate circumstances. Officials are required, therefore, to treat self-regulation as an alternative to government regulation. Further, a range of quasi-regulatory options such as voluntary standards and codes of practice often may achieve necessary objectives without resort to government regulation. The ORR will provide some guidelines as to when such options may be appropriate, in its forthcoming publication *A Guide to Regulation.* A committee of Commonwealth officials is to examine these issues further and report to the Government by end-December 1997.

In addition to those initiatives in response to the report of the Task Force, there were other important regulatory developments in 1996–97.

- The Commonwealth commenced its four-year program of systematic review of legislation, an obligation of all Australian governments under the Competition Principles Agreement. Of the 26 Commonwealth reviews scheduled to commence in 1996–97, 17 had begun by 30 June 1997. Although 10 reviews were completed by this date, Government decisions had been made in response to only one review report. Around 60 more reviews are planned for the remaining three years of the program.
- In March 1997, the Treasurer announced the 'Corporate Law Economic Reform Program', a broad-ranging review into areas such as fundraising, takeovers, futures and securities markets, directors' duties, electronic commerce, accounting standards, and the role of the Australian Securities Commission.
- In April 1997, the report of the Wallis Inquiry — a comprehensive review of the regulatory framework of the financial system — was released. The Government announced its decisions in September 1997.

The Government intends to enhance regulatory processes further by proposals embodied in the Legislative Instruments Bill. The Bill sets out a new regime governing standards and procedures for the making, publication and scrutiny of delegated legislation. These arrangements complement the RIS and related requirements for primary legislation and other Commonwealth regulatory initiatives.

These developments are designed to improve the regulatory system so as to achieve more effective and efficient regulation. They will be a key

element in reducing the compliance burden upon business, including small business.

This report focuses on those regulatory reform developments in which the ORR played a central part, or for which it has particular responsibilities.

Chapter 1 is a progress report on Commonwealth reviews under way at the start of 1996–97, as well as those which were scheduled to commence in that year, as part of the Commonwealth's four-year legislative review program. For those reviews already under way at the start of 1996–97, there was no common theme or purpose in the approach taken and considerable variability in the quality of the review processes. For those reviews commenced during 1996–97, the terms of reference all reflected the thrust of the Competition Principles Agreement and the essential features of the RIS approach — this should contribute to greater consistency in the quality of the review process.

Chapter 2 is an outline of recent Government initiatives aimed at improving the regulatory system.

Chapter 3 provides indications of the extent of compliance with RIS requirements in 1996–97. Compliance generally was low, an issue which the Government's March 1997 initiatives should help to address. These indicators for 1996–97 will provide a useful base against which future annual reports to the Government on compliance with RIS requirements can be compared.

Chapter 4 comments on the impact of COAG principles and guidelines for regulation making which were agreed to in 1995. It notes that while some Ministerial Councils and National Standard Setting Bodies have made progress in integrating RISs into their processes, there remains significant room for improvement.

Finally, Chapter 5 describes how the proposals in the Legislative Instruments Bill 1996 are intended to impose quality control processes on the development of subordinate legislation, and the likely role of the ORR in those processes. It notes that the new consultation requirements would apply to a wide variety of legislative instruments which affect business, providing greater opportunity for business and community groups to participate in the review and reform of legislative instruments. This is likely to improve the quality and consistency of regulation.

CHAPTER 1

Progress in review and reform of existing legislation

This chapter outlines progress with reviews on the Commonwealth's legislation review schedule for commencement in 1996–97, as well as some reviews which were already under way as of 1 July 1996. The Office of Regulation Review has a role in ensuring that the terms of reference for reviews are consistent with the Competition Principles Agreement. Departments have been cooperating with the ORR in developing appropriate terms of reference for 1996–97 reviews.

While these reviews examine part of the Commonwealth's stock of existing legislation, other quality control measures have been put in place for the flow of new legislation. They are designed to ensure that new laws affecting business follow 'regulatory best practice' requirements, and are discussed in Chapter 2.

1.1 ORIGINS OF THE REVIEW PROGRAM

The comprehensive formal review of the stock of Commonwealth legislation stems from an agreement reached at the Council of Australian Governments (COAG) meeting of April 1995. The *Competition Principles Agreement* (CPA) was one of a number of inter-governmental agreements implementing national competition policy reforms — arising largely out of the report on National Competition Policy (Hilmer *et al*, 1993).

In particular, the obligations of the Commonwealth, state and territory governments under the CPA included developing, by June 1996, a program for the review and reform of all legislation restricting competition by the

year 2000. The guiding principle for reviews was specified in the agreement. Legislation (including Acts, Regulations or Ordinances) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition.

The CPA also provided guidance on what should be taken into account when balancing the costs and benefits. This guidance highlights that, while competitive and economic impacts are the prime triggers for review, non-economic and social objectives must also be taken into account when assessing whether, on balance, particular regulatory action is in the public interest.

The Commonwealth's legislation review program is broader than is required by the CPA. It adds legislation which imposes costs on, or benefits, business. That is, the Commonwealth list has been made more relevant to business interests by including legislation which, while it may not restrict competition, may have an effect on business. This reflects the Government's renewed focus on the impact of regulation on business.

Consistent with these criteria, Commonwealth departments prepared lists of legislation within their responsibilities. Advice on these lists was provided to the Government by the Council on Business Regulation (COBR), which had been formed principally for that purpose. COBR also provided advice on whether reviews of certain legislation would be cost effective or necessary, thus allowing minor or trivial matters, or legislation which had only recently been reviewed, to be excluded from the initial review process.

In addition, the appropriate type of body to undertake each review was identified. Choices were to be made from the following list:

(a) Independent committees appointed for a specific review;

(b) National Competition Council (NCC);

(c) Industry Commission;

(d) Taskforce of seconded officials, possibly with a reference group consisting of independent members;

(e) Private consultants;

(f) Commonwealth research bureaux (for example, the Australian Bureau of Agricultural and Resource Economics, and the Bureau of Transport and Communications Economics), with public submissions sought from interested parties;

(g) Committee of officials from key agencies (with public submissions sought from interested parties); and

(h) Intra-departmental reviews.

In choosing from this range, the view was taken that while it is generally preferable for regulators not to review their own regulation, this is not always cost effective or practicable. Selections therefore struck a balance — independent reviews for major and/or high priority legislation and in-house reviews for less significant or highly specialised legislation.

Revised departmental lists were consolidated by the Treasury (with the advice of the Office of Regulation Review (ORR)) and, together with the four-year timetable recommended by COBR, were submitted by the Treasurer for Government consideration.

At the end of June 1996, the Commonwealth's legislation review schedule, containing the consolidated list of legislation to be reviewed, and the year in which each review commences, was made public. It comprised 98 separate reviews, 13 of which were already under way, 26 were to commence in 1996–97, with the remainder (some 60) to be commenced over the rest of the four-year review period. The full schedule is in Appendix A, and includes the status of reviews under way at the start of 1996–97 and those listed for commencement in that year.

The legislation review program is a mechanism for ensuring thorough, timely assessment and reform of legislation which restricts competition, as well as of legislation which is costly to business. At the same time, it does not preclude early action to reform or repeal legislation in accordance with announced Government policies or as other opportunities arise.

1.2 TERMS OF REFERENCE

Of central importance to the success of the reviews of listed legislation are the terms of reference to be provided to the review bodies.

Some guidance concerning terms of reference was provided in the CPA. While not attempting to limit the terms of reference of a review, it specified that a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restrictions on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d) assess and balance the costs and benefits of the restriction, and assess whether the objectives of the legislation/regulation can only be achieved by restricting competition; and

(e) consider alternative means for achieving the same result including non-legislative approaches.

When the Government approved the legislation review schedule, it decided that draft terms of reference for reviews would be provided to the ORR for comment at least three months prior to the scheduled commencement date of the review and that the ORR would provide its comments on the draft terms of reference to the responsible Minister and to the Treasurer. [1]

In addition, the Prime Minister's statement *More Time for Business* (24 March 1997) outlined the Government's decision that all reviews that impact on business, including those under the CPA, must use a Regulation Impact Statement (RIS) framework.

To assist departments to meet the Government's requirements, the ORR has developed template terms of reference, which it provides to departments in the early development phases for their reviews. Departments have been encouraged to adapt the template to fit the specific requirements of a particular review. They have also been encouraged to consult further with the ORR as terms of reference are developed, and as consideration is given

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[1] The terms of reference for the reviews already under way as of late-June 1996 were not included in this requirement.

to the make-up of review bodies. In addition, the ORR has indicated that it may further modify this template, drawing on experience with some of the early reviews.

The template draws together the various relevant elements of the CPA and reflects the Government's broader review requirements (see Box 1.1).

Box 1.1 Template terms of reference

1. The [legislation], and associated regulations, are referred to the [Review Body] for evaluation and report by [date]. The [Review Body] is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The [Review Body] is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self-regulation.

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the [Review Body] is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the [Review Body] should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the [legislation] seeks to address.

b) clarify the objectives of the [legislation].

c) identify whether, and to what extent, the [legislation] restricts competition.

d) identify relevant alternatives to the [legislation], including non-legislative approaches.

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of [legislation] and alternatives identified in (d).

f) identify the different groups likely to be affected by the [legislation] and alternatives.

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate.

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

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the [legislation] and, where it differs, the preferred option.

4 In undertaking the review, the [Review Body] is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within [3/6] months of receiving the [Review Body's] report, [the Government] intends to announce what action is to be taken, after obtaining advice from [the Secretary/Minister], and where appropriate, after consideration by Cabinet.

Source: ORR 1997

These template terms of reference have been structured to provide an analytical framework for the reviews. They are based on the cost/benefit analysis underlying RISs, which is fundamental to the approach to regulatory review and reform.

The purpose of a RIS is to provide a consistent, systematic and transparent process for assessing alternative approaches to problems which may give rise to government action. The RIS provides policy analysts and decision makers with information on:

- the appropriateness or otherwise of government regulatory action in particular circumstances;

- the most effective form that government intervention might take to achieve a desired objective;
- the relative social costs and benefits of regulation; and
- who in the community will reap the benefits or incur the costs of regulation.

A brief summary of what a RIS should cover is in Box 1.2.

Box 1.2 Key elements of a Regulation Impact Statement

A Regulation Impact Statement should include:

- the problem or issues which give rise to the need for action;
- the desired objective(s);
- the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s);
- an assessment of the impact (costs and benefits) on consumers, business, government and the community of each option;
- a consultation statement;
- a recommended option; and
- a strategy to implement and review the preferred option.

Source: ORR 1997

The progress of reviews under way at the start of 1996–97, or which were scheduled to commence in that year, are outlined in Sections 1.3 to 1.6, together with comments on their compliance with CPA requirements, including the use of RIS analysis.

1.3 PROGRESS OF REVIEWS UNDER WAY AT THE START OF 1996–97

A number of relevant reviews of Commonwealth legislation already under way at the start of 1996–97 were included on the Commonwealth's review schedule for completeness. As their genesis was prior to June 1996, they did not have the benefit of the guidance provided by the CPA and the legislation review program.

The reasons for holding these reviews were various. While the CPA may have provided an impetus for some reviews, other pressures included the imminent sunsetting of legislation, specific election commitments or other ongoing reform programs. Accordingly, their aims and outcomes do not necessarily accord with those of the legislation review program.

Appendix B provides an overview of the outcome of each of the 13 reviews under way at the start of 1996–97. A brief summary is provided in Table 1.1 below.

Table 1.1: Reviews under way at the start of 1996–97 and which were included on the Legislation Review Schedule [a]

Legislation and Portfolio	*Summary of review*
Protection of Movable Cultural Heritage Act 1986 (Communications and the Arts)	The primary intention of the Act is to prevent the loss of objects of Australian cultural significance to overseas buyers. The review proposed amendments to Regulations made under the Act to streamline and improve its administration and reduce costs to some owners of potentially culturally significant objects.
Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (Employment, Education, Training and Youth Affairs)	The Act provides for a registration scheme for providers of higher education services to overseas students, to give the students some financial surety. As a result of the review, the Act was extended for a further two years to allow the development of greater industry self-regulation.
Patents Act 1990, ss. 198-202 (Patent Attorney registration) (Industry, Science and Tourism)	The major focus of the report was on the rights of professional practice for patent attorneys and lawyers in patents, trade marks and designs. The review recommendations included broadening the range of experience for qualification in patents, and the removal of restrictions to practice in trade marks and designs. The Government announced in February 1997 that changes to the Act would be made, substantially based on these recommendations.

Table 1.1 (continued)

Legislation and Portfolio	*Summary of review*
Industrial Relations Act 1988 (Industrial Relations)	This review was subsumed into a major restructuring of industrial relations legislation. Resulting changes to the legislation have led to a simpler and less restrictive framework for negotiation of wages and conditions between employers and employees. Most of the changes came into effect in December 1996, including the Act being re-named the *Workplace Relations Act 1996*.
Commerce (Imports) Regulations and Customs Prohibited Imports Regulations (Industry, Science and Tourism)	The review is scheduled for completion in late 1997. It is examining regulations which prohibit the import of certain products based on consumer protection and product safety issues, and regulations which prohibit the importation of a range of goods into Australia without a trade description. (A trade description provides information such as about the material or ingredients used in a product, the country of origin, or the size or weight of a product.)
Bounty (Machine Tools & Robots) Act 1985 (Industry, Science and Tourism)	This was an Industry Commission inquiry into the bounty provided to the domestic metal working machine tools industry. The IC's draft report found that competitiveness of the industry had increased as the bounty on machine tools and robots had reduced and that bounty arrangements had been ineffective in promoting the production of metal working machine tools. The bounty recommendations were considered in the budget context, and the bounty ceased on 30 June 1997. The Government released the final report of the Industry Commission on 6 August 1997.
Bounty (Books) Act 1986 (Industry, Science and Tourism)	This Industry Commission inquiry examined the effectiveness of the book bounty (to expire at the end of 1997). The IC's draft report found that at 4.5 per cent any possible efficiency benefits of the bounty would be significantly offset by administrative and compliance costs. It also found significant difficulties with alternative forms of assistance. The Government announced the termination of the bounty on book printing in the 1996 Budget, and the bounty is due to cease on 31 December 1997. The final report of the Industry Commission was released on 6 August 1997.

Table 1.1 (continued)

Legislation and Portfolio	*Summary of review*
Bounty (Fuel Ethanol) Act 1994 (Industry, Science and Tourism)	The Ethanol Bounty Scheme, which commenced in July 1994, was designed to assist in the development of a competitive, robust and ecologically sustainable fuel ethanol industry in Australia by the payment of a bounty on the production of fuel ethanol. An evaluation of the Scheme concluded that the environmental benefits were ambiguous, and that the production and use of fuel ethanol was not cost-effective in reducing greenhouse gas emissions. The Scheme was terminated one year early, in the August 1996 Budget.
Quarantine Act 1908 (Primary Industries and Energy)	The review focussed on increasing the internal efficiency and effectiveness of institutions administering plant and animal quarantine with a view to tightening up the exclusion of overseas pests and diseases. The Government responded to the Nairn report in August 1997, accepting most of the key recommendations. Accordingly, a $76 million upgrade of quarantine services over the next four years has been announced.
Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Prime Minister and Cabinet)	The Act enables a declaration to be sought to protect areas or objects of significance to Aboriginal and Torres Strait Islander people from injury or desecration. The review recommendations focus on the importance of early consideration of indigenous heritage issues in the planning and development process of projects to minimise costs for projects. The Government has examined the recommendations and is considering proposals for the reform of the Act.
Comprehensive review of the regulatory framework of the financial system (Treasury)	The Wallis report examined the Australian financial system, covering a stocktake of financial deregulation and an analysis of the forces driving change, and made recommendations on the future of regulatory reform. The report, released on 9 April 1997, was directed to the fundamental goals of the Government to remove restrictions on competition, to increase competition, and to improve efficiency while preserving the integrity, security, and fairness of the financial system. The report recommended the abolition of the 'six pillars' policy, which prohibited mergers amongst the four large banks and the two large insurance companies. The Government agreed with the report's recommendations, with the caveat that it will not permit mergers amongst the four largest banks at this stage. Furthermore, on 2 September 1997, the Government announced a comprehensive package of regulatory reforms for the financial system, including the establishment of a single licensing regime for all deposit taking institutions, and the establishment of a single market integrity and consumer protection regulator.

Table 1.1 (continued)

Legislation and Portfolio	*Summary of review*
Census & Statistics Act 1905 (Treasury)	The Act provides for the collection of statistics by the Australian Bureau of Statistics (ABS). While not a large burden on businesses in the aggregate, the paper and compliance burden can be high for small businesses. The Small Business Deregulation Task Force (the Task Force) examined the impact of the Act on business and recommended measures to reduce this burden. The Government — in its response to the report of the Task Force on 24 March 1997 — agreed with the relevant recommendations, and required the ABS to reduce the cost to small business of completing statistical returns by 20 per cent during 1996–97. The design, coordination and dissemination of statistical collections are also to be improved and a code of conduct is to be developed for statistical collections by private sector agencies.
Corporations Act 1989 (Treasury)	The review was subsumed into the Corporate Law Economic Reform Program, which was announced by the Government on 4 March 1997. The program aims to give the Corporations Law a stronger economic focus and reduce compliance costs. It involves a broad-ranging review into areas such as fundraising, takeovers, futures and securities markets, directors' duties, electronic commerce, and accounting standards. Some simplification of the legislation has already taken place.

a The Industry Commission reviews of the bounty arrangements for the machine tools and book industries were not strictly legislation reviews. However, as they were under way at the beginning of 1996–97, and examined the respective legislation, they were included on the schedule.

These reviews exhibit a range of different approaches and different focuses, reflecting the lack of a uniform review framework. For example, the Financial Systems Inquiry encompassed all the elements of a RIS, whereas the review of Australian quarantine did not. As future reviews will have regard to the template terms of reference, which embodies the RIS framework, there should be greater consistency in their approach and focus.

While legislation reviews are required to be conducted within this framework, proposed changes to regulation which arise from review recommendations will also come within the ambit of the regulatory best practice requirements announced by the Prime Minister in his statement *More Time for Business*. Accordingly, where such proposals impact on business or restrict competition, a RIS will be required (see Chapter 2). This should ensure a rigorous assessment of review recommendations before implementation.

1.4 REVIEWS INITIATED IN 1996–97

This section reports on progress with the reviews of legislation listed for commencement in 1996–97. Table 1.2 reproduces this part of the review schedule.

Table 1.2 Reviews to commence in 1996–97 [a]

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)

Table 1.2 (continued)

Portfolio	*Legislation*
Industry, Science and Tourism	Customs Tariff Act 1995 - Textiles, Clothing and Footwear Arrangements (with a view to determining the arrangements to apply post-2000)
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

a The review of the National Health Act 1953 (Part 6 and Schedule 1) and the Health Insurance Act 1973 (Part 3), scheduled for 1997–98, was brought forward and induded in the Industry Commission's inquiry into private health insurance.

Source: Treasurer 1996

As part of the arrangements put in place by the Government for the preparation of terms of reference, departments were invited to consult early with the ORR. Most departments took the initiative. However, in a number of cases, the ORR has had to advance the process, such as by providing relevant information and following up on initial contact.

Nevertheless, almost all areas responsible for reviews within departments consulted with the ORR over the course of the financial year. This has meant that any initial problems with their draft terms of reference were able to be resolved without the need to involve Ministers (see Box 1.3 below).

As a consequence, the ORR has been able to report to the Ministers responsible and to the Treasurer, advising that draft terms of reference have met the Commonwealth's obligations under the CPA and the requirements specified by the Government for the legislation review program.

Box 1.3 Problems encountered in reviews

Some examples of initial problems encountered were failure to:

- specify terms of reference which allowed for the examination of non-regulatory alternatives;
- adopt the type of review body decided by Cabinet;
- note the expectation that the review report would be published;
- designate a reporting date; and
- specify how the issues raised in the review report would be progressed.

For most of the reviews undertaken during 1996–97, terms of reference have been agreed by Ministers and finalised, and the bulk of reviews are under way, or have been completed. Others have not followed the original schedule for various reasons. The progress with reviews is outlined below. [2]

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[2] While listed separately on the Commonwealth's Legislation Review Schedule, the review of the Migration Agents Registration Scheme was combined with the review of the Migration Agents Registration (Application) Levy Act 1992 and the Migration Agents Registration (Renewal) Levy Act 1992.

1.4.1 Reviews completed

Reports on the following 10 reviews were completed by 30 June 1997:

- The review of the *Migration Agents Registration Scheme* , including a review of the *Migration Agents Registration (Application) Levy Act 1992* and the *Migration Agents Registration (Renewal) Levy Act 1992* — was completed in March 1997, but was not publicly released until after 30 June 1997. The Government's decision to move the migration advice industry to statutory self-regulation was informed by the findings of the review.
- The review of the *Migration Act 1958* — subclasses 120 and 121 (business visas) — was subsumed into an existing review and a report published in March 1997. The report recommended a number of changes to better meet the needs of business, while ensuring that the integrity of the migration program is maintained.
- Scheduled for 1997–98, the review of the *National Health Act 1953* (Part 6 and Schedule 1) and the *Health Insurance Act 1973* (Part 3) was included as part of the Industry Commission inquiry into private health insurance, the final report of which was published in February 1997.
- The report of the review of the *National Road Transport Commission Act 1991* and related Acts was prepared by representatives of industry, road users and public sector agencies from the Commonwealth, Victoria and Queensland. It was submitted in December 1996 to the Australian Transport Council — incorporating the Ministerial Council for Road Transport. As at 30 June 1997, the report remained confidential.
- The review of the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and Regulations* was undertaken by a committee of officials representing the Departments of Foreign Affairs and Trade, Finance and Primary Industries and Energy. The Minister for Foreign Affairs made the report publicly available on 23 June 1997, indicating that the Government expected to announce its response within three months.
- The legislative review of the *Customs Tariff Act 1995* – Automotive Industry Arrangements was undertaken by the Industry Commission and published in May 1997.

- The review of the *Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976* was undertaken by a Review Committee comprising officers from Treasury, the Department of Finance, the Department of Primary Industries and Energy and the Australian Taxation Office. While the report has been completed, it is awaiting consideration by Cabinet and as such is not publicly available.
- The review of the Rural Adjustment Scheme (RAS) under the *Rural Adjustment Act 1992* was undertaken by a review committee comprising Messrs Jim McColl (Chair), Ross Donald and Chris Shearer. The report, *Rural Adjustment: Managing Change*, was published in May 1997.
- The review of the *Australian Maritime Safety Authority (AMSA) Act 1990* was conducted by officials from the Department of Transport and Regional Development, AMSA, and the Bureau of Transport and Communications Economics. The report has been forwarded to the Minister for Transport and Regional Development for consideration, and release.

Box 1.4 contains further information on four of the above review outcomes.

Box 1.4 Reviews completed in 1996–97

The review of the Migration Act 1958 — subclasses 120 and 121 (business visas) — was subsumed into an existing review and its report was published in March 1997. The objective of the relevant parts of the Migration Act and related regulations is to meet the skill requirements of Australian employers by allowing the regulated entry of overseas business people into the Australian labour market.

Following consultation on a published discussion paper, the reviewers concluded that the business visa system was delivering skills which are needed in Australia and required mainly procedural reforms rather than legislative or policy changes.

The report recommended a simplification of the visa system, some refinement of policy criteria to recognise the realities of today's political climate, a more flexible labour testing regime, an upgrading of information strategies, and the rationalisation of administration. The Minister for Immigration and Multicultural Affairs formally accepted the Committee's recommendations on 29 July 1997.

* *

The Industry Commission report on the Automotive Industry (Customs Tariff Act 1995 — Automotive Industry Arrangements) examined the costs and benefits to the Australian community of providing special assistance to the manufacturing sector of the automotive industry.

The Commission looked at a wide range of issues including the structure and performance of the Australian automotive industry, the effects of microeconomic reform and taxation on the industry, international trade issues, environmental and safety issues and the potential for further development of the automotive industry in Australia. From looking at these issues the Commission reached a range of conclusions and recommendations.

The Government has responded to the Commission's report. It announced, among other things, that the tariff on passenger motor vehicles will continue to phase down until 2000 when it will be at 15 per cent. It will remain at that level until 2005 when it will drop to 5 per cent. Tariffs on four wheel drive and light commercial vehicles will remain at 5 per cent.

* *

The review of the RAS under the Rural Adjustment Act 1992 examined: the future adjustment challenges facing Australian agriculture; the role of risk management in farm business strategies; the efficiency, effectiveness and appropriateness of the current RAS; and private and government sector strategies that most effectively facilitate rural adjustment. The report made a number of recommendations for future government programs to address rural adjustment. It recommended, among other things, that RAS 92 be terminated and replaced at the Commonwealth level with a new program which would consist of: a Farm Business Improvement Scheme aimed at promoting and enhancing the capacity of farmers to acquire management skills and information needed to improve the performance of their farm businesses; a Farm Re-establishment Scheme for farmers wishing to leave farming; a development of improved instruments to promote farm savings for handling business risks; and more responsive welfare arrangements. The Government announced its responses in September 1997.

* *

Scheduled for 1997–98, the review of the National Health Act 1953 (Part 6 and Schedule 1) and the Health Insurance Act 1973 (Part 3) was included in the Industry Commission's inquiry into private health insurance. The Commission found neither community rating nor other regulations to be anti-competitive in the sense of favouring incumbents over potential new entrants. Rather, the regulations influence the nature of price and product competition among private health insurance funds, having a restrictive effect on choice in the market as well as imposing costs on business.

However, the Commission was constrained by its terms of reference from assessing the justification for these effects. The Commission made a number of proposals which were essentially incremental in nature and designed to alleviate the problems of the health insurance industry in the short term. It noted that a long-term solution will require more, and that there are grounds for looking at other aspects of the health system through a wider public review. The Government supported many of the Commission's proposals, its response in some cases being subject to further consultation.

1.4.2 Terms of reference not settled by 30 June 1997

Terms of reference for the following reviews had not been settled by 30 June 1997:

- International Air Services Agreements — The proposed review of International Air Services Agreements is being considered in the context of other priorities and the 1997–98 review of the *International Air Services Commission Act 1992* .
- *Aboriginal Land Rights (Northern Territory) Act 1976* — The Minister for Aboriginal and Torres Strait Islander Affairs has sought the agreement of the Prime Minister and the Treasurer to incorporate the review into a comprehensive review of all aspects of the Land Rights Act, to commence in the latter half of 1997.
- *Quarantine Act 1908* , in relation to human quarantine — There have been uncertainties associated with the scope of the Quarantine Act review in relation to plants and animals (see above), including with respect to any overlap, and the possibility that this review would be included in a broader national review in the area of public health. At 30 June 1997, draft terms of reference and the selection of the review body were well advanced.

1.4.3 Reviews postponed

Only one review has been postponed:

- *Migration Act 1958* — subclasses 676 and 686 (tourist visas) — The Treasurer and the Prime Minister have agreed to a request from the Minister for Immigration and Multicultural Affairs for its postponement until the second half of 1997–98. It was considered too early to gauge the impact of revised visitor arrangements as they are being implemented in stages, with their full impact unlikely to be felt until 1997–98.

1.4.4 Reviews excluded

One review has been deleted from the legislation review schedule:

- *Employment Services Act 1994* (case management issues) — The Treasurer agreed with the Minister for Employment, Education, Training and Youth Affairs that this Act could be excluded from the Legislation Review Schedule due to the reforms to the delivery of employment services announced in the 1996–97 Budget. The establishment of the employment services market will proceed without using new legislation and there will be no further appropriations for the provision of case management services under this Act in the future.

1.4.5 Other reviews

There was one review for which information is not readily available.

- *Foreign Investment Policy, including associated regulation* — In its annual report to the Treasurer, dated 22 November 1996, the Foreign Investment Review Board noted the Treasurer's announcement that such a review was scheduled to commence in 1996–97 (FIRB 1996, p. 3). The ORR has been informed by the Treasury that such a review did commence in 1996–97 and is continuing. As yet, little information is available on its progress.

1.5 INITIATION OF NATIONAL REVIEWS

The CPA provides for jurisdictions to agree to national reviews where the review issue has a national dimension or effect on competition (or both).

Any jurisdiction can propose a national review and national reviews can be carried out by one or more jurisdictions. The requirement to review a particular piece of legislation listed in a jurisdiction's legislation review schedule is taken to have been met if that legislation review becomes part of a national review. The ORR provides comment on the terms of reference for national reviews where the Commonwealth is involved, to ensure that they reflect the guidance provided in the CPA.

Agreement to two national reviews was well advanced by the end of the financial year. These involve the regulation of food and the regulation of agricultural and veterinary chemicals. All three tiers of government — the Commonwealth, states and territories, and local government — are involved in the regulation of food. In respect of agricultural and veterinary chemicals, there are a number of regulatory agencies from different levels of government involved in vetting and controlling their use.

The detailed terms of reference for these national reviews were still being finalised as at 30 June 1997. They incorporate the Commonwealth reviews of the *Australia New Zealand Food Authority Act 1991* and of the *Agricultural and Veterinary Chemicals Act 1994* , both scheduled for commencement in 1998–99. The Commonwealth's Legislation Review Schedule has been revised to reflect this (see Appendix A).

A national review of the mutual recognition legislative scheme by the Committee on Regulatory Reform — an officials group reporting directly to COAG — was also under consideration.[3] Briefly, mutual recognition involves Australian governments agreeing to recognise each others' regulations covering the registration of occupations and the sale of goods. The review body and its terms of reference for the scheme were being discussed at Commonwealth, state and territory senior officials' level at 30 June 1997. This review would incorporate the Commonwealth review of the *Mutual Recognition Act 1992* scheduled for 1997–98 and should meet the agreed requirement for the legislative scheme to be reviewed five years after its commencement.

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[3] The scheme is a cluster of Commonwealth and state/territory legislation resulting from the intergovernmental agreement: *The Australian Mutual Recognition Agreement.*

1.6 OTHER REVIEWS

There are a number of other reviews that have occurred since the CPA — such as the broad ranging Review of Business Programs (the Mortimer Review). While these reviews are not within the legislation review program, any proposals to Cabinet to implement review recommendations affecting business need to be accompanied by a RIS. This is in line with the approach taken in the CPA, and is intended to achieve a consistent analytical approach across reviews.

In addition, the Government has also set in train a review process which will complement the legislation review program. Existing Commonwealth legislation is being examined for repeal, where it is redundant, or repair. In the first instance, priority is being given to identifying Acts which can be repealed. This will include, for example, Acts which are no longer operational but have been retained because of the possibility that a person has accrued rights under them. (Acts can be repealed with any existing rights preserved.) The Office of Parliamentary Counsel is being advised by departments of redundant Acts and is to consider the most appropriate means to effect the repeals. The repair of Acts will then be considered. While not involving a full scale review, this will involve more than mere redrafting, as some policy input will be required in the repair process.

1.7 CONCLUDING COMMENTS

The impetus for reviews under way before 1 July 1996 came from a variety of sources. As they did not have the guidance provided by the CPA and the Government's broader regulatory reform requirements, some reviews were conducted in a manner consistent with the CPA, and the RIS framework, whereas others were not.

Most reviews under way before 1 July 1996 have been completed, but responses to the review recommendations have, in some cases, been slow. For example, the Government is still considering the review report of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* , which was completed in August 1996.

The ORR liaised with departments in preparing draft terms of reference for reviews which commenced during 1996–97, to ensure that they were consistent with the CPA, and the requirements of the Commonwealth's legislative review program. Though some departments were willing to

consult early with the ORR in developing terms of reference, other departments were not. As a result, the ORR had to take follow-up action, in order to advance the process of settling terms of reference.

Only 10 reviews were both commenced and completed in 1996–97. There is clearly scope for more timely completion of reviews in 1997–98.

While several departments had already commenced settling their terms of reference for reviews scheduled to commence in 1997–98 (and in some cases for later reviews) as at 30 June 1997, there needs to be a greater effort to consult earlier with the ORR on proposed legislation reviews. For some departments, this will require putting in place better forward planning arrangements to meet the Government's requirements for the legislation review program in 1997–98 and later years. The ORR's new training program outlining regulatory best practice requirements for regulations (see Section 2.5) may assist this process by helping departmental officials to become familiar with the RIS process.

Two Commonwealth reviews have been considered for folding into national reviews. These national reviews may be appropriate where the Commonwealth and other levels of government regulate a similar area of activity, or where state and territory governments have similar legislative schemes on their legislation review schedules. While there are administrative and political difficulties involved in undertaking national reviews, those that have been advanced between the various tiers of government demonstrate considerable goodwill and cooperation.

CHAPTER 2

Enhanced Commonwealth processes for developing new and amended regulations

Regulation impact analysis is a key process in achieving effective and efficient legislation and regulations. It also assists the transparency of regulation making.

The Government now requires regulation impact analysis for all new or amended regulation, and proposed treaties involving regulation, that have an impact on business or restrict competition. Starting in 1997–98, the Industry Commission will report annually to the Government on conformance with the new requirements.

The Government has also taken a number of other steps to reduce the compliance costs of regulation, particularly for small businesses.

Despite considerable effort at regulatory reform over the past decade, business — especially small business — remains concerned about the regulatory environment in which it operates. The compliance costs of regulation are a particular concern.

In order to reduce compliance costs, and to achieve the government's objective of effective and efficient regulation, enhanced Regulation Impact Statement (RIS) requirements are now mandatory for all Commonwealth legislation or regulation that has the potential to affect business or restrict competition. These measures, in conjunction with other initiatives, are designed to reduce the regulatory burden upon business, thereby improving competitiveness.

2.1 POLICY REVIEW OF IMPACT OF REGULATION ON BUSINESS

2.1.1 Policy reviews

On gaining power in March 1996, the Government asked the Industry Commission to report on progress in microeconomic reform. In the regulation reform part of its report, the Commission recommended enhanced political commitment to regulatory reform; increased monitoring of the impact of mutual recognition; review and reform of specific regulations (making use of the RIS approach); systematic review and reform of existing regulations; and increased accountability of regulators (PC 1996, pp. 152-158).

The report also recommended quality controls on new or amended regulations to ensure that they were effective and efficient in achieving their outcome. Such quality controls, often referred to as 'gatekeeper' mechanisms, ensure that the responsible Minister and the relevant officials assess different options, consult those affected, and document the likely impacts of their regulatory proposals. The report recognised that the existing quality control mechanisms, such as the preparation of a RIS, were being ignored because there were no sanctions for not using them. New measures to improve compliance with RIS requirements are outlined in Sections 2.4 and 2.5.

In response to the particular concerns of the small business sector about the impact of regulation, the Government appointed, in May 1996, the Small Business Deregulation Task Force (the Task Force). The Task Force was given wide-ranging terms of reference to advise on revenue-neutral measures to reduce the compliance burden on small business by 50 per cent. It was also required to suggest ways of improving existing regulation reform processes so that regulations better meet the Government's reform objectives, taking particular note of the role played by the Office of Regulation Review (ORR). The Task Force reported in November 1996, and made a total of 62 recommendations (see Box 2.1). These recommendations are consistent with the broad directions for regulation reform contained in the Industry Commission's report on the progress of microeconomic reform.

Box 2.1: Types of recommendations made by the Small Business Deregulation Task Force

Reducing the regulatory compliance burden on small business	*Number of recommendations*
• TAXATION	11
• EMPLOYMENT ISSUES	7
• STATISTICAL BURDENS	7
Improving the regulatory environment	
• STREAMLINING GOVERNMENT PROCESSES AND REGULATION	11
• CHANGING THE REGULATORY CULTURE	4
• MAKING IT EASIER TO DEAL WITH GOVERNMENT REQUIREMENTS	4
• MAKING BUSINESS EASIER	4
• PERFORMANCE MONITORING AND ACCOUNTABILITY	1
• IMPROVING REGULATORY REFORM PROCESSES	13
• **TOTAL RECOMMENDATIONS**	**62**

Source: Prime Minister 1997

2.1.2 Outcomes

The Government has taken up most of the recommendations made by the Task Force. In a number of areas the recommendations give further impetus to specific reforms already in train, and focus these reforms on the concerns of small business.

This chapter details only those recommendations accepted by the Government that primarily derive from the work of the Task Force. They fall into two groups. Section 2.2 outlines the decisions of the Government concerning the reduction of the regulatory compliance burden on small business. Section 2.3 discusses the Government's decisions to improve the regulatory environment, including making it easier for business to comply with regulatory requirements. Section 2.4 sets out the new requirements for regulation impact analysis and how they will apply. Their implications for the ORR are examined in Section 2.5.

2.2 REDUCING THE REGULATORY COMPLIANCE BURDEN ON SMALL BUSINESS

2.2.1 Taxation

The Task Force found that of the estimated four hours a week on average that small business spends on government paperwork, about three of these hours are on tax compliance matters. The Government has therefore taken some initiatives to reduce the compliance costs of taxation. They include reduced requirements for record keeping related to fringe benefits taxes, increased flexibility of taxation payments and group certificate arrangements, and certain tax exemptions and rollover relief provisions. The Government has also supported an enhanced role for the Australian Taxation Office (ATO) in assisting small business taxpayers to meet their taxation obligations.

2.2.2 Employment issues

In the employment area, the Government has announced its intention to exclude from unfair dismissal arrangements new employees of small businesses with 15 or less employees until they have one year's continuous service. The Government has also agreed to work with the states and territories to develop occupational health and safety regulatory assistance for small business and a consistent approach to Occupational Health and Safety Standards.

2.2.3 Statistical burdens

The Task Force found that small business is concerned about the approach of the Australian Bureau of Statistics (ABS) in collecting information, the

duplication of information sought, the timing of surveys, and the lack of relevance of the results. The Government has agreed with recommendations to make statistical collections involving small business more efficient and to improve the relevance of surveys to the sector.

2.3 IMPROVING THE REGULATORY ENVIRONMENT

The majority of recommendations of the Task Force that have been accepted by the Government are concerned with improving processes for regulatory reform. Their adoption has the potential to enhance the regulatory environment for all businesses, and for the community in general.

2.3.1 Streamlining government processes

In relation to government regulatory processes, the Commonwealth, in agreement with other governments, will accelerate Council of Australian Governments (COAG) reforms in a number of areas including food standards and the regulation of industrial, agricultural and veterinary chemicals.

2.3.2 Changing the regulatory culture

As part of changing the regulatory culture, the Government has decided to establish a business regulation complaints free-call service that connects directly with the Business Licence Information Service Centre in each jurisdiction. The free-call service will allow small businesses to readily access information on specific regulatory requirements.

2.3.3 Making it easier to deal with government requirements

The Government will also make it easier for business to deal with government administrative requirements and regulations by establishing a single entry point for information collection, encompassing the ATO, the ABS, the Australian Securities Commission, and the Insurance and Superannuation Commission.

2.3.4 Making business easier

The Government will take further steps to make it easier for small business to operate. As part of the review of business assistance programs, guidelines will be developed for the administration of Government programs that minimise the compliance burden on small business, while maintaining appropriate accountability.

In accordance with the recommendations of the Task Force, these guidelines will be designed to assist prospective applicants by providing information on:

- the minimum standards firms must meet to be eligible for funding;
- the probability of success; and
- how many firms fail to qualify and the grounds for failure (Bell 1996, p. 109).

Also the Government will investigate further initiatives for the use of information technology to reduce compliance costs.

2.3.5 Performance monitoring and accountability

The Government has also made a set of decisions about performance monitoring and accountability for regulation reform. They include the following:

- Commonwealth Ministers will be required to advise the Minister for Workplace Relations and Small Business on progress towards implementation of suitable performance indicators for departments and agencies in implementing regulatory reform;
- the Minister for Workplace Relations and Small Business, in consultation with the Assistant Treasurer, will also monitor progress by Commonwealth departments and agencies on their implementation of the Task Force's recommendations;
- the Minister for Industry, Science and Tourism, the Minister for Workplace Relations and Small Business and business groups will provide the Government with a public report from business on priorities for change; and
- a further benchmarking survey in 1999 will measure the nature and size of (and the extent of the reduction in) the paperwork compliance burden on small business.

2.4 DECISIONS ON IMPROVING REGULATORY REFORM PROCESSES

This section sets out the new policy requirements for regulation impact analysis and how they will apply.

2.4.1 New requirements for regulation impact analysis

Chapter 1 outlined the requirements for Commonwealth legislation reviews to use a RIS framework. In addition, the government now requires a RIS for:

- proposed new or amended regulation; and
- proposed treaties involving regulation;

which will directly affect business, or which will have a significant indirect effect on business, or which will restrict competition.

Regulation covered by these requirements includes both primary legislation and legislative instruments. The new requirements build on the regulation-making framework set out in the *Legislative Instruments Bill 1996*.

For primary legislation and treaties requiring a RIS, the RIS must accompany the relevant Cabinet submission (as a separate attachment), or the letter to the Prime Minister seeking approval for the legislation or treaty.

The RIS must set out the relevant policy objective along with viable alternatives for achieving the objective. The purpose is to ensure that departments and agencies fully consider the costs and benefits of all viable alternatives, with a view to choosing the one with the maximum positive net impact on the community.

The elements of a RIS are outlined in Box 1.2. In addition, the following elements also have to be included, where relevant, in RIS analysis:

- consideration of quasi-regulation and self-regulation;
- a specific assessment of the impact on small business;
- ways to minimise the paperwork and compliance burden associated with regulation; and
- where particular regulatory alternatives restrict competition, an assessment of competition policy issues.

In preparing a RIS, consultation is required unless it is considered inappropriate, as discussed in the next section.

For regulatory proposals that require a RIS, that RIS will be tabled in Parliament along with or as part of the explanatory document for the regulation — the Explanatory Memorandum (for primary legislation) and the Explanatory Statement (for legislative instruments). A consultation statement will also accompany or be included in the explanatory document, explaining the consultation processes undertaken and the views of the main interested parties.

For legislative instruments, the RIS requirements will be formalised with the passage of the *Legislative Instruments Bill 1996* (as further described in Chapter 5).

Box 2.2: Cost-effectiveness of preparing a RIS

Some regulatory agencies have raised legitimate concerns about the cost-effectiveness of preparing a RIS, particularly where quantitative information is lacking and estimation techniques may be expensive. Despite such concerns, there are several important balancing features of the RIS process.

Firstly, while much is made of the costs of quantifying costs and benefits of a regulatory proposal and of alternative ways of dealing with the problem, this can overlook one of the key elements of the RIS process. This is its critical examination of the problem at hand and what role there is for government — if any — in addressing it. This element is an inexpensive part of the process. To the extent that the process stops poorly conceived regulatory proposals from proceeding:

- it is an important aspect in improving the regulatory environment within which business operates, and
- it may also represent a significant saving to public administration and in government outlays.

As noted by the Organisation for Economic Cooperation and Development (OECD 1995, p.11):

> ...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.

Secondly, the level of analysis that will be appropriate in assessing a proposal varies with the proposal's likely impact on business and the broader community.

Thirdly, the costs of preparing a RIS are likely to be small compared to the economic impact of inappropriate or poorly designed regulation. Even if the RIS process results in a change to the regulatory approach in only a proportion of cases, that may well be sufficient to make it a cost-effective process overall.

The preparation of a RIS is an important step in improving the quality of regulation making, and its public presentation will also enhance the transparency of the policy decision-making process.

In addition to the use of RIS requirements in the program of legislative review (see Chapter 1), there are a number of legislative reviews by Government that are not part of that program. These include the review of the *Income Tax Assessment Act 1936* under the Tax Law Improvement Project, and of the *Corporations Act 1989* under the Corporate Law Economic Reform Program[1] (see Table 1.1). The terms of reference for such reviews and their reports are now also required to use a RIS framework.

Finally, while the Commonwealth has made substantial progress in regulatory reform over 1996–97, other Australian governments have also been active in improving the regulatory system. Appendix C outlines key developments in the states and territories.

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[1] The *Corporations Act 1989* was initially listed as an item on the legislative review schedule as a review 'currently under way'. This was due to the work of the Corporations Law Simplification Task Force in looking at the complexity of the law and the high compliance costs. However, the remainder of this work has now been subsumed into the Corporate Law Economic Reform Program.

2.4.2 Exemptions to the RIS requirements and treatment of tax proposals

Preparation of a RIS will *not* be mandatory for regulation that:

- is not likely to have a direct, or a substantial indirect, effect on business and is not likely to restrict competition;
- is of a minor or machinery nature and which does not substantially alter existing arrangements;
- involves consideration of specific Government purchases;
- is necessary for national security (where public consultation may not be appropriate);
- is primary legislation or a legislative instrument which merely meets a specific obligation of the Commonwealth under an international agreement by adopting the terms of an instrument for which the agreement provides;
- is a legislative instrument exempt from the application of the consultation requirements of Part 3 of the *Legislative Instruments Bill 1996* (for details see Chapter 5); or
- is a regulation of a state or self-governing territory that applies in a non-self governing territory.

In addition:

> ...there will be some specific situations where the Government may be of the view that a regulation impact statement is unnecessary (eg where the legislation was an election commitment) or not possible due to the urgency of the matter...For example, in emergency public health or safety situations, a regulation impact statement would be required after the regulatory action has been taken. These situations are, however, likely to be rare. (Prime Minister 1997, p. 67)

The Government has decided that it would not be appropriate to subject taxation measures to the full RIS process. This is because tax measures often cannot be assessed in isolation from their implications for the taxation system overall, and because prior public consultation on taxation measures could release sensitive information which could be used by taxpayers to engage in tax avoidance or minimisation. Recognising such concerns, the RIS required for taxation measures will examine administrative options for ensuring compliance and the costs and benefits of each alternative. This will help ensure that compliance costs are fully taken into account.

2.5 THE ROLE OF THE ORR

2.5.1 Monitoring RIS compliance

Departments and agencies are now required to consult with the ORR at an early stage in the policy development process. 'Early warning' systems to advise the ORR of proposed regulation are currently being developed in several areas, such as for legislative bids and for treaties. The ORR is also responsible for examining RISs and advising Cabinet on compliance with the RIS requirements and whether the level of analysis is adequate.

2.5.2 The role of the Assistant Treasurer

The Assistant Treasurer is now responsible for regulatory best practice, including promoting compliance with the new requirements for regulation impact analysis. In cases where departments and agencies are not adequately meeting the Government's requirements as set out above, or where the ORR anticipates lodging a 'negative' coordination comment on a Cabinet submission proposing regulation, it will advise the Assistant Treasurer who will take appropriate action. In addition, the Commission is required to report publicly (on an annual basis) on compliance with the Government's RIS requirements (discussed further in Chapter 3).

2.5.3 *A Guide to Regulation*

The ORR has also produced a new publication, *A Guide to Regulation*, which explains the circumstances in which particular types of regulation are appropriate. The *Guide* also explains how departments and agencies should use the RIS as part of the policy development process. Details of the new RIS requirements for tax proposals and treaties are specified in the *Guide*. An overview of the *Guide* is in Appendix D.

2.5.4 Training in regulation impact analysis

Recognising that officials may require training in regulation impact analysis and review, the Government has asked the ORR to continue its training of officials, but on a more extensive and systematic basis. Training sessions available in 1997–98 will address the regulatory responsibilities of each department and agency, providing specific guidance on alternative approaches (such as quasi-regulation and self-regulation) to issues that may otherwise require regulation.

2.5.5 Considering the alternatives of quasi-regulation, self-regulation and voluntary standards

Small business also expressed concerns to the Task Force about the potential effect of quasi-regulation, namely 'rules or instruments for which there is a reasonable expectation of compliance but which do not have the full force of law' (Bell 1996, p. 123). In response, a Commonwealth interdepartmental committee chaired by the ORR is currently inquiring into several aspects of this type of regulation. The review will consider the extent of quasi-regulation; circumstances where it may be a viable alternative to formal government regulation; minimum standards for quasi-regulation; and processes for monitoring and reviewing quasi-regulation to ensure that it is relevant to current circumstances, and is effective and efficient. The Committee will also consider the circumstances in which self-regulation may be appropriate.

The committee is to report to the Government by 31 December 1997. Following the Government's response to that report, the ORR will revise *A Guide to Regulation* to indicate where use of quasi-regulation or self-regulation may be more appropriate than government regulation.

The Government has also decided that the use of voluntary standards in regulation, including those prepared by Standards Australia, should only be used where they are the most effective means for achieving the relevant policy objective. To this end, *A Guide to Regulation* will set out the circumstances in which voluntary standards may be appropriate for regulatory purposes, including cases where the voluntary standards were not specifically designed for the problem at hand.

2.5.6 A charter for the ORR

Reflecting its pivotal role in providing advice to departments and agencies on the development of effective and efficient regulation, the Government has directed that the ORR should have a charter outlining its role and functions. The ORR's charter is set out in Box 2.3. A summary of the activities of the ORR in 1996–97 is in Appendix E.

Box 2.3: Charter of the Office of Regulation Review

The role of the ORR is to promote the Commonwealth Government's objective of effective and efficient legislation and regulations, and to do so from an economy-wide perspective. Its functions are to:

- advise the Government, Commonwealth departments and regulatory agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations;
- examine RISs prepared by departments and agencies and advise on whether they meet the Government's requirements and whether they provide an adequate level of analysis;
- provide training and guidance to officials to assist them in meeting the requirements to justify regulatory proposals;
- report annually on compliance with the Government's guidelines, and on regulatory reform developments more generally;
- provide advice to Ministerial Councils and national standard setting bodies on COAG guidelines which apply when such bodies make regulations;
- lodge submissions and publish reports on regulatory issues having significant economic implications; and
- monitor regulatory reform developments in the states and territories, and in other countries, in order to assess their relevance to the Commonwealth.

These functions are ranked in order of the Government's priorities, and the ORR must concentrate its limited resources where they will have most effect.

Whilst maintaining an economy-wide perspective, the ORR is to focus its efforts on regulations which restrict competition or which affect (directly or indirectly) businesses. The ORR is to ensure that particular effects on small businesses of proposed new and amended legislation and regulations are made explicit, and that full consideration is given to the Government's objective of minimising the paperwork and regulatory burden on small business.

The ORR (together with the Treasury) is to advise the Assistant Treasurer in his role as the Minister responsible for regulatory best practice.

The ORR has also produced a booklet, *Office of Regulation Review: An Introduction*, to inform Commonwealth agencies of its role and to provide contact details for inquiries.

2.6 CONCLUDING COMMENTS

Enhanced Commonwealth processes for developing new and amended regulations have been designed by the Government to improve the quality of regulations.

Whether in practice such processes do lead to improved outcomes will depend, in part, on the extent to which they are adopted by departments creating or administering regulations. An assessment of compliance by government departments with regulatory best practice requirements in 1996–97 is provided in Chapter 3.

CHAPTER 3

Compliance with Regulation Impact Statement requirements in 1996–97

There was poor compliance in 1996–97 with longstanding Regulation Impact Statement (RIS) requirements. The Government's enhanced requirements announced in March 1997 are designed to improve compliance in the future. The Industry Commission is to report more fully on compliance, starting in 1997–98.

3.1 INTRODUCTION

Regular reporting of regulatory review and reform outcomes is essential to monitor and assess the effectiveness of the new requirements. Under the Government's response to Recommendation 54 of the Task Force, the Commission is to report annually on compliance with the Commonwealth Government's RIS guidelines, commencing for the 1997–98 financial year. In particular, this report must include:

> ...the number of Bills introduced into Parliament and the number of treaties and legislative instruments made during the relevant financial year for which a regulation impact statement was required. The report will also note how many Bills were accompanied by a regulation impact statement. In addition, the Industry Commission will continue to comment in its annual report on the Government's overall performance in regulation setting and review. (Prime Minister 1997, pp. 69-70)

The Government now requires a RIS for all proposed new regulations which directly affect business, or have a significant indirect effect on business, or restrict competition (see Section 2.4.1). Box 3.1 provides guidance on how the impact on business, and/or restriction on competition is determined.

Box 3.1 Determining whether a regulation has an impact on business or restricts competition

Regulations have a direct impact on business where they directly influence business activity, or have their primary legal incidence on business. A significant indirect impact on business is likely to occur where regulations indirectly influence business decision-making across a broad range of activities (wide scope), and/or to a large extent (high impact).

Where regulations have a direct impact on business *and* restrict competition, they are listed as restricting competition.

Regulations may restrict competition where they indirectly or directly:

- govern the entry or exit of firms and individuals into or out of markets;
- control prices or production levels;
- restrict the quality, level or location of goods and services available;
- restrict advertising and promotional activities;
- restrict price or type of inputs used in the production process; and/or
- are likely to confer significant costs on business, and may provide advantages to some firms over others by, for example, sheltering some activities from the pressures of competition.

For the purposes of the 1996–97 compliance report, Bills that imposed licence fees, or altered the basis upon which licence fees were calculated, were assumed to restrict competition.

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Example: Did the Superannuation Contributions Surcharge (Assessment and Collection) Bill 1997 have an impact on business?

The Bill provides for the assessment and collection of a surcharge that is payable by superannuation providers where members' assessable income and superannuation contributions exceeds $70 000. The surcharge will be at the rate of 1 per cent for each $1 000 of assessable income and superannuation contributions that exceed $70 000, to a maximum of 15 per cent at $85 000.

The Bill directly influences the activity of superannuation providers and hence has a direct impact on business.

Source: Office of Regulation Review

3.1.1 The need for a compliance report for 1996–97

Sections 3.2 and 3.3 provide indications of the extent of compliance in 1996–97. This period provides a useful baseline for future compliance reporting, because most Bills introduced in 1996–97 were drafted before the new RIS requirements formally came into effect. Hence, a comparison of the report for 1996–97 with reports in future years should give a useful indication of the effect on compliance of the new RIS requirements and associated sanctions.

This compliance report also indicates to the ORR what information it should be seeking in 1997–98. The Government requires departments and agencies to provide relevant information to the ORR in order to facilitate this reporting obligation.

3.2 BILLS INTRODUCED DURING 1996–97

During 1996–97, 204 Bills were introduced by the Commonwealth Government into Parliament.[1] For the purposes of compliance reporting, it is necessary firstly to exclude the Bills that do not require RISs because they do not impact on business, or are subject to the limited exemptions from the requirement to prepare a RIS, as described in Chapter 2. These amounted to 83 Bills, or 41 per cent of the total. The remaining 121 Bills — 59 per cent of the total — impacted on business, and were not subject to an exemption, and therefore required the preparation of a RIS.

Of these 121 Bills that required a RIS, 66 (or 55 per cent) had a *direct* impact on business, 32 (or 27 per cent) had a substantial *indirect* impact on business, and 23 (or 19 per cent) restricted competition. These figures are summarised in Table 3.1 below.

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[1] Private member's (non-Government) Bills have been excluded from this 1996–97 compliance report.

Table 3.1: Bills introduced into Parliament in 1996–97

Functional category		*Number of Government Bills introduced*	*Per cent of Government Bills introduced*	*Per cent of Government Bills that required a RIS*
Total Government Bills introduced during 1996–97		**204**		
Bills where a RIS was not required	**Total**	**83**	**41**	
	(i) No direct or substantial indirect effect on business; no restriction on competition.	81	40	
	(ii) Exceptions to RIS requirements	2	1	
Bills where a RIS was required	**Total**	**121**	**59**	**100**
	(i) Direct impact on business	66	32	55
	(ii) Significant indirect effect on business	32	16	27
	(iii) Restricts competition	23	11	19

3.3 1996–97 COMPLIANCE REPORT FOR BILLS

An initial set of performance measures for Government Bills has been developed by the ORR to measure compliance with the relevant Commonwealth RIS requirements. Performance measures developed for this report will serve as a basis for the development and use of more refined indicators over time.

The measures for each Bill are based on Government-mandated 'Best Practices for Regulation' (as set out in *A Guide to Regulation*) and are listed down the left-hand side of Table 3.2. In particular, they include the adequacy of the analysis — an aspect noted by the ORR in its coordination comment on the relevant Cabinet Submission, in its advice to the Assistant Treasurer, and in the Commission's annual reporting obligation. The criteria used to determine whether the analysis in the RIS is adequate include:

- have all the component elements of a RIS been included (such as identifying the problem, and the objective of the proposed regulation)?

- are all of the viable options for achieving the stated objectives provided?
- is the level of analysis commensurate with the likely impact of the proposed regulation?
- is the analysis missing any relevant information or economic linkages?
- has the analysis come to a reasonable conclusion given the available options and information?

Table 3.2 below summarises compliance with the new RIS requirements for Bills introduced into Parliament in 1996–97. Table 3.3 provides examples of those Bills with an impact on business or restriction on competition.

Table 3.2: Assessment of the processes used for 1996–97 Bills against performance measures

Compliance test/performance measures	*Number of Bills*	*As a percentage of Bills that require a RIS*
For how many Bills was the ORR consulted at an early stage in the policy development process?	14	12
For how many Bills was a draft RIS provided to the ORR for comment?	17	14
For how many Bills was a Cabinet Submission provided to the ORR for comment?	27	22
For how many Bills did the ORR receive a RIS prepared for Cabinet consideration?	13	11
For how many Bills did the RIS prepared for Cabinet consideration have an adequate level of analysis?	12	10
For how many Bills was a RIS attached to the Explanatory Memorandum?	13	11
How many of the Bills complied with all appropriate RIS processes? [2]	10	8

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[2] The requirement that a RIS be attached to the explanatory memorandum did not come into effect until March 1997. Therefore, this requirement was not taken into account when determining whether or not *all* appropriate processes had been met.

Table 3.3: Selected Commonwealth legislation having an effect on business, 1996–97

Legislation	*Features*	*Effect on business*
Customs Depot Licensing Charges Bill 1997	Imposes charges relating to a proposed customs depot licensing regime.	Restricts competition
Excise Tariff Amendment Bill (No. 1) 1997	States that excise is payable on alcoholic beverages regardless of their alcohol content, and calculates the duty according to the alcohol content of the beverages.	Direct
Health Insurance Amendment Bill (No. 2) 1996	Imposes a requirement for medical graduates to complete post-graduate education in order to gain access to a Medicare provider number.	Significant indirect
Health Legislation Amendment (Private Health Insurance Incentives) Bill 1997	Imposes conditions on the registration of health benefits organisation.	Restricts competition
Hindmarsh Island Bridge Bill 1996	Prevents a declaration being made under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* that would protect the Hindmarsh Island Bridge site from development.	Significant indirect
Industrial Chemicals (Notification and Assessment) Amendment Bill 1997 (1 in a package of 4 Bills)	Introduces full cost recovery of national industrial chemicals notification and assessment scheme	Direct
Medicare Levy Amendment Bill (No.1) 1997	Imposes an additional 1 per cent Medicare levy on individuals with incomes over $50 000 and families with combined incomes over $100 000 who are not covered by a private health insurance policy that provides hospital cover.	Significant indirect
Radiocommunications Amendment Bill 1997 (1 in a package of 3 Bills)	Provides for the sale of limited radiofrequency spectrum space amongst competitors; and the setting of radiocommunications standards for health and safety purposes.	Restricts competition

Table 3.3 (continued)

Legislation	*Features*	*Effect on business*
Retirement Savings Accounts Bill 1997 (1 in a package of 3 Bills)	Allows financial institutions to provide superannuation accounts that do not require a trustee structure, as is currently required for entities to receive concessional tax treatment.	Direct
Superannuation Contributions Surcharge (Assessment and Collection) Bill 1997 (1 in a package of 5 Bills)	Provides for the assessment and collection of a superannuation surcharge on high income earners that is payable by superannuation providers.	Direct
Taxation Laws Amendment Bill (No. 3) 1997	Makes exemptions to capital gains tax laws and amends the income tax law in relation to capital and revenue losses.	Direct
Taxation Laws Amendment Bill (No.1) 1997	Removes capital gains tax on the sale of assets when businesses then reinvest in new related assets; ends the concessional 20 per cent prime cost depreciation rate on trading ships.	Direct
Telecommunications Bill 1997 (1 in a package of 11 Bills)	Allows for entry into the telecommunications industry after 1 July 1997 and regulates service providers and carriers.	Direct
Telecommunications (Carrier Licence Charges) Bill 1997	Imposes a fee on applications for carrier licences and an annual charge on carrier licences	Restricts competition
Television Licence Fees Amendment Bill 1997	Provides for commercial television broadcasters granted licences to pay annual licence fees.	Restricts competition
Therapeutic Goods Amendment Bill 1997	Allows for the implementation of an Agreement on Mutual Recognition in Relation to Conformity Assessment Certificates and Markings between Australia and the European Community. Also allows for the recovery of registered therapeutic goods which do not conform to standards.	Significant indirect

Tables 3.1 and 3.2 reveal that out of 121 Bills that required the preparation of a RIS, departments provided the RIS prepared for Cabinet consideration to the Office of Regulation Review in only 13 cases.

The requirement with the greatest level of compliance by departments was that sponsoring departments provide the ORR with all Cabinet Submissions proposing or amending primary legislation. Of the 121 Bills that required a RIS, departments provided the ORR with a Cabinet Submission for comment in 27, or 22 per cent of cases.

These and other performance measures in Table 3.2 indicate low levels of compliance. In interpreting these measures, it is important to note that the Government's requirements changed markedly in March 1997. Prior to March 1997, there had been a requirement set down in the Cabinet Handbook that departments prepare a RIS and attach it to the submissions to Cabinet for proposals having regulatory implications. While that requirement had been in place for many years, there was little commitment to the process and a lack of any effective sanctions.

The Government initiatives announced in March 1997 (see Sections 2.2-2.5) substantially changed that environment, by making a clear commitment to better regulatory process and by introducing a range of sanctions and associated requirements. In particular, this included a new requirement that a RIS be included with the explanatory memorandum and tabled with the Bill in the Commonwealth Parliament.

Compliance with the new (and renewed) requirements improved in the final months of 1996–97. It is expected that when compliance measures are compiled at the close of 1997–98, significant progress will be evident compared to the picture given in Table 3.2. Support for this outlook is evident also in the fact that the level of analysis was adequate (see above for the criteria used to determine adequacy) in 92 per cent of the RISs for Cabinet consideration that were provided to the ORR.

3.4 CONCLUSION

It is clear that during 1996–97 Commonwealth departments did not make full use of regulation impact analysis. The level and quality of adherence by departments to Commonwealth RIS requirements differed considerably and was generally much below what it should have been. Importantly, where departments consulted with the ORR at an early stage in the policy

development process, the appropriate RIS requirements were generally fulfilled.

From 1997–98 agencies will be required to provide the ORR with relevant information to assist in compliance reporting, which will be wider in scope than just on Bills (as above). It is clear that some departments will have a larger role than others in this process — for example the Attorney-General's Department will provide information on legislative instruments, and the Department of Foreign Affairs and Trade will provide information on treaties. The ORR will be seeking pertinent information from departments in 1997–98.

The Government requires all departments to consult with the ORR as soon as regulation is raised as an option in policy development. The usefulness of this requirement is borne out by the 1996–97 experience. Such consultation is a necessary first step in a logical sequence of events that lead to a satisfactory compliance record. If departments consult early in the policy development process, they are likely to assemble better quality information and be well placed to fulfil the appropriate RIS requirements and, more importantly, adopt better regulations.

CHAPTER 4

Impact of COAG's Principles and Guidelines for Regulation Making

As noted in Chapter 2, the preparation of a Regulation Impact Statement is an important step in improving the quality of regulation. It is also a key component of the Council of Australian Government's Principles and Guidelines for regulation making. This chapter considers RIS requirements on Ministerial Councils and national standard setting bodies and provides some assessment of the overall quality of the RISs prepared and the level of adherence to COAG RIS requirements.

4.1 RIS REQUIREMENTS AND COMPLIANCE MONITORING

In April 1995, the Council of Australian Governments (COAG) agreed to the introduction of a framework of principles and guidelines to be used by Ministerial Councils and national standard setting bodies when developing proposals for national standards and/or regulation.[1] One of the key features

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[1] These cover agreements or decisions to be given effect through primary and subordinate legislation, administrative directions or other measures. Development of voluntary codes, where there is a reasonable expectation that they could be interpreted by industry as requiring compliance, should also take account of these guidelines.

of this agreement is the requirement for all regulatory proposals to undergo regulatory impact analysis.

Under the COAG principles and guidelines, the Office of Regulation Review (ORR) has a role in assisting Ministerial Councils and national standard setting bodies in the preparation of Regulation Impact Statements (RISs) and in advising whether they meet COAG requirements[2]. The Committee on Regulatory Reform (CRR), which is an intergovernmental group of senior officials reporting to COAG on regulation reform issues, has prepared a report outlining a protocol and procedure for monitoring compliance with these requirements (CRR 1997). This process is described below.

Ministerial Councils and national standard setting bodies are to provide a draft of their RIS to the ORR as soon as practicable and before the RIS is publicly available. The ORR is to assess the RIS within two weeks and determine whether the COAG requirements and the RIS guidelines have been followed, whether the type and level of analysis in the RIS are adequate and commensurate with the potential economic and social impact of the proposal, and whether adequate consideration has been given to alternatives to regulation.

The relevant Ministerial Council or national standard setting body will receive advice from the ORR, which it may or may not adopt. There is the opportunity for Ministerial Councils and national standard setting bodies to consult with the ORR throughout the RIS development process.

A final copy of the RIS should be sent to the ORR. The Ministerial Council or national standard setting body can then either wait for any final comments from the ORR or it can proceed with public consultation and publicly release the RIS.

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[2] Ministerial Councils are 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 (PM&C 1994, p. 1). While national standard setting bodies are inter-government regulatory agencies made up of officials, not Ministers, they play a similar role in assisting the coordination and harmonisation of various government action across Australia (IC 1996, p. 93).

Once the Ministerial Council or national standard setting body decides to proceed with a regulatory course of action, it may respond to any issues that have been dealt with in a way different to that recommended by the ORR. Both the ORR's comments and any responses made by Ministerial Councils and national standard setting bodies should be available to state, territory and Commonwealth governments.

Finally, the ORR is to report to the CRR if, in its opinion, decisions of Ministerial Councils or national standard setting bodies are inconsistent with COAG requirements. It also reports annually on the number and quality of completed RISs and related regulatory issues. The CRR will in turn advise COAG concerning major issues.

The ORR's role is an advisory one with regard to RISs prepared by Ministerial Councils or national standard setting bodies; it does not have a role in the decisions taken by them.

4.2 ADHERENCE TO RIS REQUIREMENTS

Some national standard setting bodies have been preparing RISs for some time. For example, the National Road Transport Commission has been using impact analysis since 1991 and currently uses a RIS framework agreed to by the Ministerial Council for Road Transport in 1992.

However, in general, Ministerial Councils and national standard setting bodies have been slow to implement the COAG requirements. A key reason is that many agencies have certain legislative requirements within their own jurisdictions to prepare impact statements or assessments. These differ slightly from a RIS in that they have less stringent requirements in some areas, such as assessing the costs and benefits of alternatives. In the past these impact statements and assessments have been considered to be of a higher priority than the preparation of a RIS. For instance, the Australia New Zealand Food Authority (ANZFA) has its own legislative requirements for an assessment process and the National Environment Protection Council (NEPC) also has a legislative requirement to prepare an impact statement on each draft National Environment Protection Measure.

Often these requirements are not dissimilar to a RIS process, but having to undertake both processes has been viewed by some agencies as time consuming and, to some extent, a duplication of their work. This has in many cases meant that the benefits of the RIS process have not been fully realised.

The ORR has been working with some agencies to address this issue. For example, ANZFA, in consultation with the ORR, has recently incorporated the regulation impact assessment process to commence at the beginning of its standard setting processes. ANZFA's full assessment report and the RIS have been merged into one document which meets both ANZFA's statutory obligations and COAG requirements. Similarly, the National Occupational Health and Safety Commission has commenced integrating COAG principles and guidelines into its standard setting process. There are other examples where this would be desirable and is being done less formally. For example, the NEPC Impact Statements are incorporating the RIS framework and thereby simultaneously meeting the requirements of COAG and those of the NEPC legislation.

With the exception of ANZFA, the ORR received very few RISs in 1996–97 from Ministerial Councils and national standard setting bodies. While this is similar to the experience in the previous financial year, an additional reason in 1996–97 may have been that jurisdictions were awaiting the report of the CRR, *'Monitoring Compliance with COAG Principles and Guidelines for National Standard Setting and Regulatory Action'*, which will clarify application of the COAG principles and guidelines and the role of the ORR.

Of those RISs which the ORR has received, most have been structured in a manner consistent with COAG's RIS requirements. In many cases, the ORR has received early drafts for comment and in most cases the ORR's suggestions have been incorporated. The most common suggestions made on draft RISs have drawn attention to the need to consider further possible alternatives or impacts or to clarify the nature and extent of the problem being addressed.

On the whole those RISs which the ORR has received have been satisfactory, but there is considerable room for improvement, particularly in the quantification of costs and benefits. While there are many instances where it is difficult to quantify costs and benefits, even where they could be quantified this is often not being done. This reflects to some extent the fact that many agencies are still familiarising themselves with cost/benefit analysis — as more RISs are prepared agencies should become more proficient in this area.

In many cases the RIS is undertaken very late in the decision-making process and serves more as a policy justification than a tool to aid

decision-making. However, as more agencies incorporate the RIS process into their policy development processes, both the quality of RISs and the proportion of relevant matters covered should increase.

CHAPTER 5

Improving Subordinate Legislation

This chapter outlines the key features of the *Legislative Instruments Bill 1996*[1], and how it might impact on the activities of regulatory agencies, and of the Office of Regulation Review.

Over the past three decades, the volume and complexity of legislation has grown (IC 1996, pp. 1-10). While there has been some increase in the stock of primary legislation, much of the increase has been from regulatory agencies making delegated legislation (primarily legislative instruments such as subordinate legislation made under enabling legislation).

The Small Business Deregulation Task Force (the Task Force) recognised that, if regulations were poorly designed, they may impose significant burdens upon business. In responding to the Task Force's report, the Prime Minister in his statement, *More Time for Business*, indicated that:

> ...[b]uilding on the regulation making framework set out in the Legislative Instruments Bill 1996, the Government will require a regulation impact statement [RIS] for regulation (ie primary legislation and legislative instruments) and treaties involving regulation which directly affects business or which has a significant indirect effect on business or which restricts competition. (Prime Minister 1997, p. 66)

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[1] At the time this report was finalised in early September 1997, a range of amendments to the Bill were proposed during Parliamentary debate. While these amendments would not change the fundamental thrust of the Bill as outlined in this Chapter, if adopted they will change some of the mechanics, including the grounds for exemption from the consultation process and the number of legislative instruments likely to be subject to the new requirements.

As a result, the impact of legislative instruments is one of the key elements in the Government's regulation review and reform policy. Regulatory agencies are currently in the process of implementing procedures to ensure that the development of legislative instruments is consistent with this policy. The scope of this policy is guided by the provisions of the Legislative Instruments Bill. This Bill — which is currently before Parliament — is intended to formalise these RIS requirements by mandating comprehensive cost-benefit analysis and consultation requirements for the development of legislative instruments.

5.1 THE OPERATION OF THE LEGISLATIVE INSTRUMENTS BILL 1996

In 1995–96, 1900 pieces of delegated legislation were subject to Parliamentary scrutiny, compared to 2087 in 1994–95. These instruments regulate a wide variety of areas, but are generally narrow in application — such as the *Cattle Transaction Levy Regulations* and the *Weapons of Mass Destruction Regulations*.

5.1.1 What are legislative instruments?

At present, only statutory rules and instruments made disallowable by enabling legislation are subject to Parliamentary scrutiny. Further, the process of disallowance provides no formal methodology to ensure that the overall impact of proposed regulations are adequately assessed. Indeed, a 1992 report by the Administrative Review Council, *Rule Making by Commonwealth Agencies*, recognised that the quality and consistency of delegated legislation varied considerably. This can increase the compliance costs of business and other stakeholders.

The report led to the introduction into Parliament of the *Legislative Instruments Bill 1994* which was subsequently strengthened in the form of the *Legislative Instruments Bill 1996* (see Box 5.1).

Box 5.1: How the Legislative Instruments Bill 1996 differs from the Legislative Instruments Bill 1994

The current Bill strengthens the regulation reform processes which were embodied in the *Legislative Instruments Bill 1994*. In particular, the Bill introduces sunsetting for all legislative instruments, as well as a more comprehensive consultation process for the assessment of the likely impact of legislative instruments which affect business.

The number of Acts to be subject to the consultation requirements embodied in the Bill has also increased, through the inclusion of Acts such as the *Aircraft Noise Levy Act 1995*, *Circuits Layouts Act 1989*, and the *Prawn Boats Levy Act 1995*. Further, consistent with the Competition Principles Agreement, the Bill requires that when considering the impact of the proposed legislative instrument, an evaluation must be made of whether there will be a restriction on competition, and whether the restriction is necessary to achieve the objective of the regulation.

It is intended that all legislative instruments will be subject to the provisions of the Bill. These are defined to be instruments in writing:

- that are of a legislative character; and
- that are or were made in the exercise of a power delegated by the Parliament.

While the Bill does not explicitly define what is meant by 'of a legislative character', it notes that an instrument has such a characteristic if:

- it determines the law, or alters the content of the law, rather than applying the law in a particular case; and
- it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or a right.

As a result, legislative instruments do not include administrative decisions which may arise out of the discretionary application of a law. Rather legislative instruments include, but are not limited to, regulations, instruments of non self governing territories (eg. ordinances, regulations and by laws), disallowable instruments, and proclamations.

Under the Bill, all legislative instruments have to be entered on a 'Federal Register of Legislative Instruments', which is to be located in the Attorney-General's Department. This register will be available for public

access. Existing instruments are to be gradually entered on the Register through a process of phased 'back capturing'. All instruments made between 1 January 1990 and the day before the date of commencement of the Act must be lodged for registration with the Attorney-General's within 8 months from the commencing day. Instruments created between 1 January 1980 and 31 December 1989 are to be lodged within 14 months from the commencing day. Instruments made before January 1980 must be lodged within 26 months of the commencing day. Existing instruments may become unenforceable if they are not lodged for registration by the relevant date.

Both new and existing legislative instruments placed on the register will sunset after 5 years. Where an instrument impacting on business is sought to be remade at the expiry of this period, or where such an instrument is proposed for the first time, they may be subject to the consultation procedures covered in Part 3 of the Bill.

5.1.2 Legislative instruments affecting business require consultation

In *More Time for Business*, the Prime Minister stated that:

> ...[t]he ORR will be responsible for examining and advising on compliance with the regulation impact statement requirements and whether the level of analysis is adequate. (Prime Minister 1997, p. 67)

Accordingly, this section discusses the ORR's proposed role in certifying that rule-makers comply with the analysis and consultation provisions located in Part 3 of the Bill for those legislative instruments affecting business.

Specifically, Part 3 of the Bill requires the rule-maker to undertake comprehensive consultation processes for proposals to create instruments that are likely to have a direct or a substantial indirect effect on business.

- For the purposes of these consultation processes, 'business' should be regarded as an entity which has the purpose of making a profit or paying dividends, and will include both private sector entities and government business enterprises.
- Instruments have a direct impact on business where they directly influence business activity, or have their primary legal incidence on business. For example, the *Coarse Grains Levy Regulations 1996*,

which vary the levy for grain sorghum, directly impact upon producers of sorghum.

- A significant indirect impact on business is likely to occur where legislative instruments indirectly influence business decision-making across a broad range of activities (wide scope), and/or to a large extent. Examples of an indirect impact are some determinations under the *National Health Act 1953*, which vary the benefits payable to users of medical products and health services, thereby affecting the providers of such products and services.

Instruments made under Acts listed in Schedule 2 of the Bill are deemed to have this impact on business. Consequently, legislative instruments proposed to be made under enabling legislation (specified in Schedule 2) after the Act has been operating for six months, will be subject to the Part 3 consultation provisions. Some limited exemptions are provided for under clause 28 of the Bill (as described below). Clauses 30 and 31 of the Bill also provide for circumstances where compliance with the consultation provisions of the Bill may not be necessary.

Part 3 of the Bill provides for a two-tiered approach to consultation. Consultation with stakeholders is required in the process leading up to the decision to make a legislative instrument. Following this, if it is still decided that the promulgation of a legislative instrument is necessary, further consultation needs to occur in developing the detail of the legislative instrument.

Tier 1 Consultation: The process leading up to the decision to make a legislative instrument

The first aspect of consultation requires that the stakeholders (or their representative groups) likely to be affected by the proposed legislative instrument created under enabling legislation in Schedule 2 be notified of the intention to make a legislative instrument, and be given an opportunity to make written submissions on the issue.

Having considered the submissions, if the rule-maker still decides that the proposed legislative instrument is necessary, a legislative instruments proposal (LIP) must be prepared. A LIP is analogous to a RIS, and the Bill requires it to contain the following elements:

- a full statement of the issues giving rise to the need for the proposed legislative instrument and of the objective of the instrument;

- a statement of the various options that may constitute viable means for achieving the objective;
- a statement of the direct and indirect social and economic costs and benefits of each option, including an evaluation of the impact on particular groups, the costs and benefits of competition, resource allocation, administration and compliance; and
- an assessment of whether the option restricts competition, whether the restriction is necessary to achieve the objective, and whether the option should be pursued despite this; and
- an evaluation of the options with a recommendation.[2]

The LIP must then be certified by the regulation review body— proposed to be the ORR — as representing an adequate level of consultation and analysis.

Tier 2: *Post-LIP* consultation in creating a legislative instrument

If the analysis contained in the LIP leads to the conclusion that the regulatory option is the most appropriate way of achieving the desired objective, the rule-maker must engage in further consultation with stakeholders — as outlined in ss. 22-25 — regarding the intention to make the legislative instrument. Such consultation can occur either through an invitation to make written submissions, or by participating in a public hearing. The invitation must also describe how interested parties can obtain copies of the LIP.

Post LIP consultation can be waived if the ORR certifies that the LIP meets the Part 3 requirements and that consultation required under enabling legislation or agreement is comparable to that required under ss. 22-25 of the Bill.

Alternatively, a waiver from post-LIP consultation can also be granted where the ORR certifies that the enabling Act or agreement under which the legislative instrument is made provides for adequate consultation (but not necessarily comparable to that required under ss. 22-25), and also that the cost of undertaking consultation in accordance with ss. 22-25 is likely

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[2] For assistance as to the methodology and analysis required in a LIP, refer to the Commonwealth's RIS requirements, as outlined in *A Guide to Regulation*.

to outweigh the benefit. In this case, while it is not cost-effective to undertake further consultation under Part 3 of the Bill, some consultation will nevertheless be required under the enabling legislation or agreement.

The legislative instrument is then made, registered and tabled in Parliament as a disallowable instrument. A copy of the LIP, and a consultation statement detailing who was consulted, must accompany the Explanatory Statement.

Exemptions to consultation

Under s. 28 of the Bill, certain legislative instruments are exempt from the consultation provisions in Part 3, regardless of whether the enabling legislation is located in Schedule 2. Exemptions would apply where:

- the instrument is not likely to have a direct or a substantial indirect effect on business;
- the instrument is of a minor or machinery nature and does not substantially alter existing arrangements;
- the instrument merely meets an obligation of the Commonwealth under an international agreement by adopting the terms of an instrument for which the agreement provides;
- the instrument gives effect to a specific budget decision;
- the instrument is required because of national security;
- the instrument is an airworthiness directive, which incorporates an airworthiness directive issued by the aviation authority of the country of manufacture or design in relation to an aircraft or aircraft component;
- the instrument is an application order proposed to be made under s. 111A of the *Corporations Law* of the Capital Territory; or
- the instrument is a proclamation that provides solely for the commencement of enabling legislation.

It is proposed that the ORR would have a role in certifying that an instrument is exempt from the consultation provisions if it falls within the first two exemptions — it is not regarded as having the requisite impact on business, or it is of a minor or machinery nature.

A legislative instrument impacting on business which is not prepared in accordance with Part 3 can still be valid. However, it will sunset after one year, in contrast to other instruments which sunset after 5 years. But as all

legislative instruments are still subject to disallowance by the Parliament, the lack of adequate consultation in the preparation of a legislative instrument may increase the possibility of disallowance. Consultation decisions may also be subject to review in the Federal Court.

5.2 SIZE, SCOPE AND NATURE OF LEGISLATIVE INSTRUMENTS WHICH AFFECT BUSINESS

Once passed, the Act will be formally reviewed after 3 years to assess its effectiveness and impact. However, in order to gain an appreciation of the type and nature of the work which the Bill may entail for regulatory agencies and the ORR (as the proposed regulatory review body) in the interim, the ORR has conducted an analysis of delegated legislation tabled in the Senate in 1995. The findings in this section are based on that work.

In calendar year 1995, 2239 legislative instruments were tabled in the Senate. Of these, 413 (18 per cent) would have required the preparation of a LIP under the Bill as described in Section 5.1 (and see footnote 1 of this chapter for an important qualification to these estimates). A further 164 instruments (7 per cent) would have been certified by the ORR as being exempt from requiring the preparation of a LIP, despite the inclusion of their enabling legislation in Schedule 2. Figure 5.1 provides an indication of the likely impact that the Bill would have on the activities of the ORR (based on activity in 1995). The six main departments which would have generated LIPs in 1995 are shown in Figure 5.2[3]

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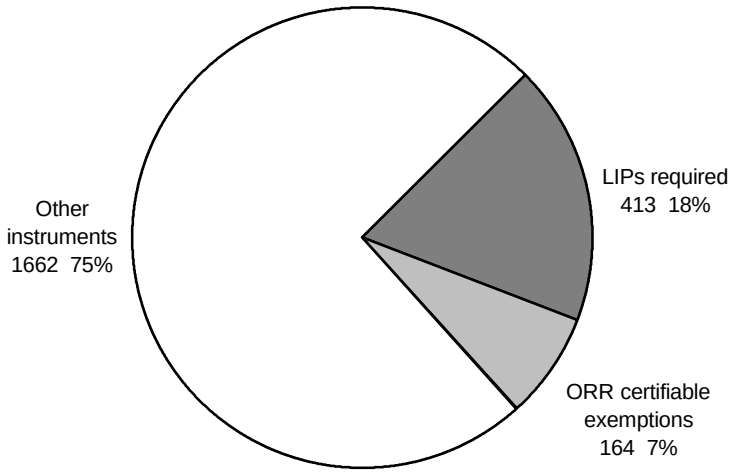
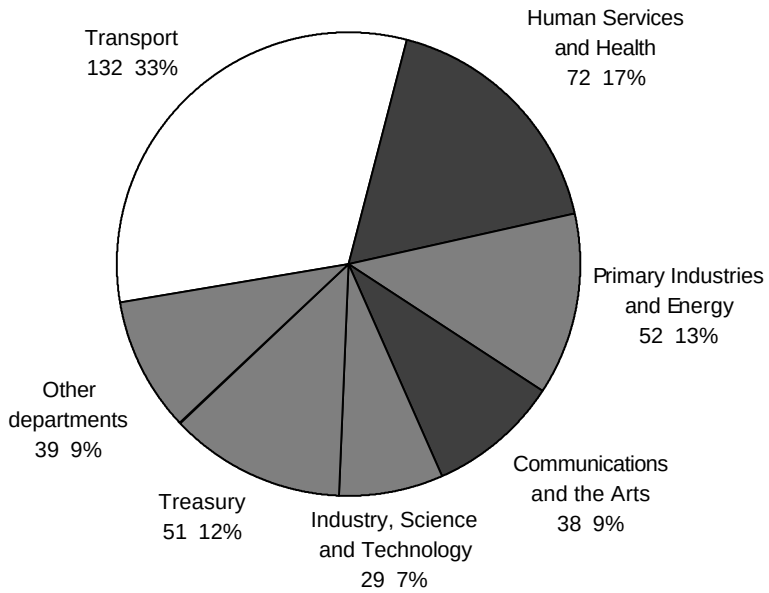
[3] While there has been some change in the composition and names of departments since 1995, this information provides useful indicators of the extent to which various departments would be involved in the preparation of a RIS.

Figure 5.1: Summary of ORR certifications under the Bill, estimate for 1995



Source: Office of Regulation Review research and Senate Standing Committee on Regulations and Ordinances (1995)

Figure 5.2: Major departments which would have generated LIPs, estimate for 1995



Source: Office of Regulation Review research and Senate Standing Committee on Regulations and Ordinances (1995)

The Department of Transport would have generated the most LIPs of any department, with a large majority of these being based on aviation instruments created by the Civil Aviation Safety Authority (CASA). The Department of Human Services and Health would have generated the second most LIPs of any department, the vast majority being based on health instruments. Estimated LIPs which would have been generated by the Department of Communications and the Arts were based almost exclusively on telecommunications and radio instruments. Many LIPs by the Department of Primary Industries and Energy are likely to have been for levies and charges on industry. The potential LIPs generated by the Departments of Treasury and Industry, Science and Technology would have been based on a broad range of instruments. The remaining 14 departments would have accounted for only 9% of total LIPs that would have been necessary in 1995.

Legislative instruments which would have required a LIP in 1995 — in accordance with Part 3 requirements — have also been classified according to the nature of their impact on business in Table 5.1.

Table 5.1: The nature of legislative instruments which would have come under Part 3 of the Bill

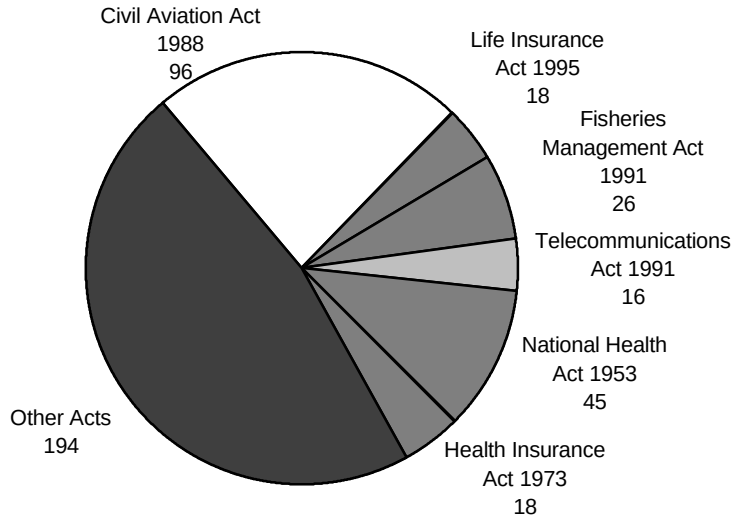
Category	*Direct impact*	*Indirect impact*	*Total LIPs*
Aviation	109	0	109
Health	28	43	71
Telecommunications and radio	28	8	36
Tax	20	3	23
Non-tax charges	40	0	40
Other business instruments	103	16	119
Environment	0	5	5
Subsidies and entitlements	3	0	3
Other social	0	1	1
Instruments not classified	0	6	6
Total number of LIPs required	**331**	**82**	**413**

Source: Office of Regulation Review research and Senate Standing Committee on Regulations and Ordinances (1995)

Of the legislative instruments which would have been subject to Part 3 of the Bill in 1995, 331 were regarded as having a direct impact on business. Such instruments were far more numerous than those which had an indirect impact on business (82 instruments). Aviation instruments were the most common type of legislative instrument to directly impact on business. A large number of instruments which would have required LIPs also came under the general heading of Other business instruments. Health, non-tax charges, and telecommunications and radio instruments that would have required the preparation of a LIP also featured prominently.

While there are 314 Acts in Schedule 2 (which are subject to the consultation requirements of the Bill), some Acts would have had far more legislative instruments made under them than others. Figure 5.3 illustrates the number of LIPs required for each of the Schedule 2 Acts under which 10 or more LIPs would have been prepared in 1995, had the Bill been in operation.

Figure 5.3: Schedule 2 Acts which would have generated more than 10 LIPs, estimate for 1995



Source: Office of Regulation Review research and the Senate Standing Committee on Regulations and Ordinances (1995)

Most LIPs likely to be generated by the *Civil Aviation Act 1988* may come from CASA *Airworthiness Directives*, other *Civil Aviation Orders* and *Directions*. These relate almost exclusively to aircraft safety. The majority

of LIPs potentially generated by the *National Health Act 1953* and the *Health Insurance Act 1973* were estimated to come from health instruments relating to Commonwealth financial assistance for health care.

Most LIPs that would arise under the *Fisheries Management Act 1991* would relate to restrictions and levies on commercial fishing activities. The majority of those estimated under the *Life Insurance Act 1995* were based on instruments relating to investment and the distribution of profits imposed on life insurance companies. LIPs likely to be generated by the *Telecommunications Act 1991* have been estimated to come almost exclusively from telecommunications and radio instruments, relating to licensing and technical requirements imposed on carriers.

5.3 CONSEQUENCES OF THE BILL FOR THE LEVEL AND QUALITY OF REGULATION

From 1983–84 to 1995–96, the number of pieces of subordinate legislation subject to Parliamentary scrutiny increased by 140 per cent (IC 1996, p. 10). The Bill is likely to reduce the flow of new instruments being made in the future. This has been the experience in Tasmania following the *Subordinate Legislation Act 1992* (described in Box 5.2). The consultation process to be complied with prior to the creation of an instrument impacting on business will result in rule-makers having to consider carefully the need for such an instrument, in light of other regulatory and non-regulatory alternatives.

While there may be a decline in the number of new legislative instruments made in the first five or six years following the commencement of the Act, there may be a need to remake some existing legislative instruments which sunset after 5 years. Where such instruments impact on business, a LIP will have to be prepared. In addition to new legislative instruments which will sunset in 5 years, there is a large body of pre-existing instruments which will be gradually backcaptured according to the process described in Section 5.1. They will sunset like any other legislative instrument after 5 years.

Box 5.2: The regulatory impact of the *Subordinate Legislation Act 1992* in Tasmania

The *Subordinate Legislation Act* commenced operation on 13 March 1995 and requires that where the expected impact of the proposed subordinate legislation is significant, the proposal must:

- be supported by an economically sound cost-benefit analysis (in other words, a regulatory impact statement); and
- be subject to an appropriate public consultation process.

The Act also provides for the staged repeal of all existing subordinate legislation over a ten year period and the subsequent sunsetting of each individual piece of subordinate legislation every ten years thereafter.

A statutory rule is defined as a regulation, rule, by-law, proclamation, order, or notice that applies to the whole of Tasmania (ie. it excludes local government by-laws). Subordinate legislation, as defined by the Act, is a subset of statutory rules, and includes only regulations, rules and by-laws that are made by the Governor. However, the Tasmanian Department of Treasury and Finance data records do not yet contain information on whether or not a statutory rule was made by the Governor. Consequently only an estimate of the number of pieces of subordinate legislation has been made. This estimate is simply the sum of regulations and by-laws as it has been found that the majority of rules were made by the Courts rather than the Governor.

In the 10 years prior to the introduction of the Act (from 1985 to 1994) it is estimated that, on average, 125 pieces of subordinate legislation were passed each year. In 1995, an estimated 70 pieces of subordinate legislation were passed, 44 per cent lower than the average over the previous 10 years. In 1996, the estimated amount of subordinate legislation passed increased to 92, but this was still 23 per cent lower than the previous ten years (from 1986 to 1995).

Source: Tasmanian Department of Treasury and Finance 1997, internal document

The requirement continually to remake many of these instruments — where a need for them exists — may result in an increase in the creation of instruments and LIPs from 5 years after the commencement of the Act onwards. While such a process of scrutiny and review may impose a burden on regulatory agencies, it will assist in the development of high quality regulations. This will also bring the Commonwealth's scrutiny of

legislative instruments into line with that of the states. State equivalents of the Bill are the Queensland *Statutory Instruments Act 1992*, the Victorian *Subordinate Legislation Act 1994*, the South Australian *Subordinate Legislation Act 1978*, the Tasmanian *Subordinate Legislation Act 1992*, and the New South Wales *Subordinate Legislation Act 1989*.

The Bill is also designed to improve consistency in the Commonwealth's approach to enhancing regulatory quality within its own jurisdiction. While agencies are currently in the transitional process of adopting RIS processes in the development of legislative instruments, the Bill provides a formal framework within which the impact of legislative instruments will be assessed.[4]

This will be consistent with new Commonwealth regulation review and reform requirements for primary legislation which build upon the regulation-making framework in the Bill (see Chapter 2). These requirements specify that RIS analysis be undertaken for Cabinet submissions and correspondence with the Prime Minister which propose regulations that have a direct or a significant indirect impact on business, or restrict competition.

Further, the Bill will align the exemptions from impact analysis for both primary legislation and legislative instruments, ensuring consistent treatment for each type of regulation.

Consequently, the provisions of the Bill will result in a common approach being applied to the development of both primary and subordinate legislation. These processes will help ensure that the promulgation of all regulation is of a consistent and high quality.

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[4] For example, the Insurance and Superannuation Commission has already agreed to prepare LIPs for proposed regulations, and table them as part of the Explanatory Statement for the proposed instrument.

APPENDICES

APPENDIX A

Commonwealth Legislation Review Schedule — Status of reviews as at 30 June 1997[1]

Reviews under way when the Commonwealth's program was announced in June 1996

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Communications and the Arts	Protection of Movable Cultural Heritage Act 1986	Can restrict competition and affect some businesses by preventing export of items having cultural significance.	Review completed.
Employment, Education, Training and Youth Affairs	Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991	Regulates provision of educational services, restricting competition and possibly adding to costs.	Review completed.

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[1] This Schedule may be revised when the Treasurer reports to the National Competition Council on progress with the Commonwealth's Legislation Review Program.

Reviews under way when the Commonwealth's program was announced in June 1996

Portfolio	***Legislation***	***Impact on business or restriction on competition***	***Status of Reviews as at 30 June 1997***
Industrial Relations	Industrial Relations Act 1988	Impact on business of inflexible framework for negotiating wages and conditions.	Legislation replaced by the *Workplace Relations Act 1996*.
Industry, Science and Tourism	Patents Act 1990, ss. 198-202 (Patent Attorney registration)	Gives patent attorneys exclusive rights.	Review completed.
Industry, Science and Tourism	Commerce (Imports) Regulations and Customs Prohibited Imports Regulations	Ongoing rationalisation of customs regulations.	Review under way
Industry, Science and Tourism	Bounty (Books) Act 1986	Assists Australian production via payment of bounty.	Review completed but not publicly released.
Industry, Science and Tourism	Bounty (Machine Tools & Robots) Act 1985	Assists Australian production via payment of bounty.	Review completed but not publicly released.
Industry, Science and Tourism	Bounty (Fuel Ethanol) Act 1994	Assists Australian production via payment of bounty.	Review completed.
Primary Industries and Energy	Quarantine Act 1908	Quarantine restrictions have potential to reduce competition from imports.	Review completed.

Reviews under way when the Commonwealth's program was announced in June 1996

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Prime Minister and Cabinet	Aboriginal and Torres Strait Islander Heritage Protection Act 1984	May prevent a sacred object or significant area from being sold, exploited or developed.	Review completed.
Treasury	Comprehensive review of the regulatory framework of the financial system	Competition and costs affected by a regulatory framework which does not reflect rapid changes in the industry.	Review completed.
Treasury	Census & Statistics Act 1905	Imposes administrative costs on businesses, particularly small businesses.	Review completed. (Review was subsumed into the work of Small Business Deregulation Task Force).
Treasury	Corporations Act 1989	Complexity of the law and high compliance costs are the focus of the Corporations Law Simplification Task Force.	Review subsumed into Corporate Law Economic Reform Program.

Reviews to commence in 1996–97

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Attorney-General's	International Arbitration Act 1974	Assists businesses in settling international contractual disputes.	Review under way.
Communications and the Arts	Australian Postal Corporation Act 1989	Competition is restricted in delivery of standard letters.	Review under way.
Communications and the Arts	Radiocommunications Act 1992 and related Acts	Has the potential to slow introduction of new technologies and restrict competitive supply of services.	Terms of Reference (ToR) finalised.
Employment, Education, Training and Youth Affairs	Employment Services Act 1994 (case management issues)	Imposes requirements on businesses undertaking case management.	Review de-listed, and provisions to be replaced by Reform of Employment Services Bill 1996.[2]
Foreign Affairs and Trade	Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 & regulations	Imposes charges on uranium producers.	Review completed.

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[2] The Treasurer agreed with the Minister for Employment, Education, Training and Youth Affairs that the Act could be excluded from the Legislation Review Schedule. As at 4 September 1997, Prime Minister's response was not known by the Department of Employment, Education, Training and Youth Affairs.

Reviews to commence in 1996–97

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Health and Family Services	Quarantine Act 1908, in relation to human quarantine	Restricts import of biological materials that pose risk of disease.	ToR being drafted.
Health and Family Services[3]	National Health Act 1953 (Part 6 & Schedule 1) & Health Insurance Act 1973 (Part 3)	Restrict the market in private health insurance.	Review completed.
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 560, 562, 563 student visas	Can affect the institutions and businesses which service foreign students studying in Australia.	Review under way.
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 120 and 121 (business visas)	Affects the ability of Australian businesses to obtain suitably qualified staff from abroad.	Review completed.
Immigration and Multicultural Affairs	Migration Act 1958 — sub-classes 676 & 686 tourist visas	Can deter potential tourists, thereby putting the Australian tourism industry at a disadvantage.	Review postponed until latter half of 1998.

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[3] This review was scheduled to commence in 1997–98, but was brought forward and included in the Industry Commission's inquiry into private health insurance.

Reviews to commence in 1996–97

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Immigration and Multicultural Affairs	Migration Act 1958, Pt 3 (Migration Agents and Immigration Assistance) & related regulations	Regulates those providing migration advisory services; can restrict provision of these services.	Review combined with that for Migration Agents Registration (Application) Levy Act 1992 and Migration Agents Registration (Renewal) Levy Act 1992.
Immigration and Multicultural Affairs	Migration Agents Registration (Application) Levy Act 1992 & Migration Agents Registration (Renewal) Levy Act 1992	Regulates those providing migration advisory services; can restrict provision of these services.	Review completed, but not publicly released.
Industrial Relations	Tradesmen's Rights Regulation Act 1946	Assesses individuals' foreign trade qualifications, and determines whether they may practice that trade in Australia.	ToR finalised.
Industry, Science and Tourism	Customs Tariff Act 1995 - Automotive Industry Arrangements (with a view to determining the arrangements to apply post-2000)	Restricts competition via tariff on imports.	Review completed.
Industry, Science and Tourism	Customs Tariff Act 1995 - Textiles Clothing and Footwear Arrangements (with a view to determining the arrangements to apply post-2000)	Restricts competition via tariff on imports.	Review under way. Review subsumed into Industry Commission inquiry.

Reviews to commence in 1996–97

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
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	Provide reimbursement or exemption from duty for goods imported but subsequently re-exported.	Review under way.
Industry, Science and Tourism	Pooled Development Funds Act 1992	Gives concessional tax treatment to those who make patient equity capital available to small and medium enterprises.	Review under way. .
Industry, Science and Tourism	Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations	Imposes minor costs on businesses which must provide consumer information.	Review under way.
Primary Industries and Energy	Rural Adjustment Act 1992 and States and Northern Territory Grants (Rural Adjustment) Acts	Makes available benefits to eligible farmers for a range of purposes.	Review completed.
Primary Industries and Energy	Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976	Provide risk management options for farm businesses.	Review completed, but not publicly released.
Prime Minister and Cabinet	Aboriginal Land Rights (Northern Territory) Act 1976	Regulates and restricts mining and other commercial use.	ToR being drafted.
Transport and Regional Development	International Air Service Agreements	Bilateral agreements which restrict the market in international airline routes/capacities.	ToR being drafted.

Reviews to commence in 1996–97

Portfolio	*Legislation*	*Impact on business or restriction on competition*	*Status of Reviews as at 30 June 1997*
Transport and Regional Development	Shipping Registration Act 1981	Imposes a "one-off" registration fee. Provides benefits such as proof of ownership.	ToR finalised. Review to commence once Australian Maritime Safety Authority (AMSA) review completed.
Transport and Regional Development	National Road Transport Commission Act 1991 and related Acts	Establishes a national regulatory scheme for heavy (freight) road vehicles, with an associated charging regime.	Review completed, but final report confidential.
Transport and Regional Development	Australian Maritime Safety Authority (AMSA) Act 1990	Licensing and safety functions both cost and benefit shipping.	Report is completed, and is awaiting public release.
Treasury	Bills of Exchange Act 1909	May prevent adoption of electronic transactions and record keeping.	Under way.
Treasury	Review of Foreign Investment Policy, including associated regulation	May restrict foreign investment.	No information.

Reviews to commence in 1997–98

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Attorney-General's	The trustee registration provisions of the Bankruptcy Act 1966 and Bankruptcy Rules	Impose compliance costs on businesses.
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	Substantially affect the structure of, and conduct within, the broadcasting industry.
Communications and the Arts	Review of market based reforms and activities currently undertaken by the Spectrum Management Agency.	Review to examine and evaluate the method and effectiveness of market based reforms in the allocation of spectrum.
Defence	Defence Housing Authority Act 1987	Provides a monopoly in provision of housing to Defence personnel.
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	Restrict private sector entry and competition in higher education.
Employment, Education, Training and Youth Affairs and Industry, Science and Tourism	Mutual Recognition Act 1992	Review to focus on any impediments to mobility of occupations and sale of goods throughout Australia.

Reviews to commence in 1997–98

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Health and Family Services	Environmental Protection (Nuclear Codes) Act 1978	Controls nuclear activities for environmental and health/safety reasons.
Industrial Relations	Affirmative Action (Equal Employment Opportunity for Women) Act 1986	Non-compliant businesses may be ineligible for government contracts or for some forms of industry assistance.
Industry, Science and Tourism	Anti-dumping Authority Act 1988 & Customs Act 1901 Pt XVB & Customs Tariff (Anti-dumping) Act 1975	Restricts certain imports.
Industry, Science and Tourism	Customs Act 1901 Sections 154-161L	Cover valuation of imported goods which affects amount of duty to be paid.
Industry, Science and Tourism	Trade Practices (Consumer Product Information Standards)(Cosmetics) Regulations	Impose minor costs on businesses which must provide consumer information.
Industry, Science and Tourism	Petroleum Retail Marketing Sites Act 1980	Restricts the number of retail sites a major oil company may directly control.
Industry, Science and Tourism	Petroleum Retail Marketing Franchise Act 1980	Sets minimum contractual terms and conditions between franchised service station operators and the major oil companies.
Primary Industries and Energy	Primary Industries Levies Acts and related Collection Acts	Impose costs via levies and their collection. Yield benefits from, for example, research and development.
Primary Industries and Energy	Wool International Act 1993	Imposes a levy on production to fund disposal and marketing of wool.

Reviews to commence in 1997–98

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Primary Industries and Energy	Imported Food Control Act 1992 & regulations	Imposes conditions and restrictions on importers of food.
Primary Industries and Energy	National Residue Survey Administration Act 1992 & related Acts	Imposes a charge to fund collection of data which are used to address residue problems in food.
Health and Family Services[4]	Australia New Zealand Food Authority Act 1991	Extensive regulation, not limited to health and safety objectives, add to industry costs.
Primary Industries and Energy	Pig Industry Act 1986 & related Acts	Levy funding used to promote pork consumption.
Primary Industries and Energy	Torres Strait Fisheries Act 1984 & related Acts	Fisheries management has the potential to restrict competition.
Primary Industries and Energy[5]	Agricultural & Veterinary Chemicals Act 1994	Recovers costs from chemical industry of regulating sale of agricultural and veterinary chemicals.
Primary Industries and Energy	Export Control (Unprocessed Wood) Regulations under the Export Control Act 1982	Restricts woodchip exports whilst achieving environmental objectives.

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[4] A national review of food regulation is to be conducted in 1997–98, incorporating the Commonwealth review of the Australia New Zealand Food Authority Act 1991, which was initially scheduled for 1998–99. The Food Standards Code is still scheduled for review in 1998–99.

[5] A national review of agricultural and veterinary chemicals will incorporate the Commonwealth review of the Agricultural and Veterinary Chemicals Act 1991, which was initially scheduled for 1998–99.

Reviews to commence in 1997–98

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Transport and Regional Development	International Air Services Commission Act 1992	Allocation of air rights between Australian carriers has potential to favour incumbent airlines.
Transport and Regional Development	Motor Vehicle Standards Act 1989	Adds to motor vehicle costs whilst maintaining safety standards.
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	Impose substantial compliance costs on the superannuation industry and restrict competition.
Treasury	s 51 (2) & s 51 (3) exemption provisions of the Trade Practices Act 1974	Exempt specific activities from generally applied competition laws.
Treasury	General Insurance Supervisory Levy Act 1989	Imposes a levy to recover administrative costs of regulating the industry.
Treasury	Insurance (Agents & Brokers) Act 1984	Adds to industry costs, but protects consumers.
Treasury	Life Insurance Supervisory Levy Act 1989	Imposes a levy to recover administrative costs of regulating the industry.

Reviews to commence in 1998–99

Portfolio	*Legislation*	*Impact on business or restriction on competition*
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	Have the potential to affect business via uncertainty associated with the Government having power to resume land for certain public requirements.
Attorney-General's	Financial Transactions Reports Act 1988 and regulations	Impose substantial costs on financial institutions.
Attorney-General's	Proceeds of Crime Act 1987 and regulations	May have indirect consequences for businesses.
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)	Uncertainties and other costs result from anomalies and overlap in this legislation. Rapid development of information industries requires review of the regulatory framework.
Defence	Defence Force (Home Loans Assistance) Act 1990	Provides a bank with a 15-year exclusive franchise to offer home loans to military personnel.
Environment, Sport and Territories	World Heritage Properties Conservation Act 1983	Limits activities permitted in or of properties subject to World Heritage listing or nomination. Has potential to restrict trade.

Reviews to commence in 1998–99

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Environment, Sport and Territories	Hazardous Waste (Regulation of Imports & Exports) Act 1989, Hazardous Waste (Regulation of Imports & Exports) Amendment Bill 1995 & also related regulations	Has potential to restrict trade.
Health and Family Services	Food Standards Code	Extensive regulation, not limited to health and safety objectives, add to industry costs.
Industry, Science and Tourism	Export Finance & Insurance Corporation Act 1991 & Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991	Provides financial and insurance support to exporters, particularly where market provision of such support is inadequate.
Primary Industries and Energy	Dairy Industry Legislation	Intervenes in the fresh and manufactured milk markets.
Primary Industries and Energy	Fisheries Legislation	May restrict fishing activities.
Primary Industries and Energy	Dried Vine Fruits Legislation	Assists the industry by intervening in export markets.
Primary Industries and Energy	Prawn Boat Levy Act 1995	Imposes a levy and requires record keeping and data provision.
Primary Industries and Energy	Export Control Act 1982 (fish, grains, dairy, processed foods etc)	Imposes conditions and restrictions on exporters.

Reviews to commence in 1998–99

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Primary Industries and Energy	Export controls under reg 11 of the Customs Act (Prohibited exports - nuclear materials)	Increase exporter costs.
Transport and Regional Development	Part X of Trade Practices Act 1974 (shipping lines)	Sanctions cooperative pricing arrangements in international shipping which could increase costs to users.
Transport and Regional Development	Coasting Trade Provisions of the Navigation Act 1912 (Part VI)	Restricts ability of foreign ships to operate between Australian ports.
Treasury	Financial Corporations Act 1974	Imposes costs by requiring provision of information.
Treasury	Prices Surveillance Act 1983	Affects ability to increase prices for specified goods and services.
Veterans' Affairs	Treatment Principles (under section 90 of the Veterans' Entitlement Act 1986 (VEA)) & Repatriation Private Patient Principles (under section 90A of the VEA)	Impose additional administrative costs on providers of services. Preference is given to use of public facilities, thereby restricting ability of private providers to compete.

Reviews to commence in 1999–2000

Portfolio	*Legislation*	*Impact on business or restriction on competition*
Defence	Defence Act 1903 (Army and Air Force Canteen Services Regulations)	Restricts commercial businesses from offering bar facilities, for example at Army and Air Force bases.
Environment, Sport and Territories	Ozone Protection Act 1989 & Ozone Protection (Amendment) Act 1995	There may be scope for reducing costs to Australian industry and consumers of meeting these environmental objectives.
Health and Family Services	Home & Community Care Act 1985	Excludes businesses from providing certain care services.
Primary Industries and Energy	Petroleum (Submerged Lands) Act 1967	Controls access to petroleum resources; imposes fees.
Primary Industries and Energy	Wheat Marketing Act 1989	Gives a monopoly to the Australian Wheat Board over sale of wheat on the export market.
Prime Minister and Cabinet	Native Title Act 1993 & regulations	Creates uncertainty as to security of title. Adds to costs of access to land.
Treasury	Part IIIA (access regime) of the Trade Practices Act (including exemptions)	Enables access to services, thereby enhancing competition.
Treasury	Part 6 (access provisions) of the Moomba-Sydney Pipeline System Sale Act 1994	Enables access to services, thereby enhancing competition.
Treasury	2D exemptions (local government activities) of the Trade Practices Act	Exempts specific activities from generally applied competition law.
Treasury	Fees charged under the Trade Practices Act	Imposes costs on business.

APPENDIX B

Outcomes of reviews under way at June 1996

This appendix provides a brief summary of the outcomes of the reviews in the Legislation Review Schedule which had already commenced at the start of 1996–97.

Because these reviews were included in the Commonwealth's legislative review program, the summaries include some observations on whether or not Competition Principles Agreement or Regulation Impact Statement (RIS) guidelines were used. These comments can not be taken as criticisms of the various reviews because all were already under way as at June 1996, when the Commonwealth's program was announced.

PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986

The primary intention of the Act is to prevent the loss of objects of Australian cultural significance to overseas buyers. The Act implements a scheme of export permits for objects falling within specific criteria described by the Control List. Consultants reviewed the Act and Regulations created under it with the aim of updating 'significance' criteria and simplifying administration.

Following the consultants' report, further submissions were sought from a range of interest groups, leading to amendments being proposed to the Regulations. These amendments were designed to streamline and improve the administration of the Act while ensuring adequate protection to heritage in the light of current needs. While a legislative instruments proposal (see Chapter 5) was prepared on a voluntary basis for the proposed amendments, and approved by the ORR, no amendments to the Regulations have yet been made.

EDUCATION SERVICES FOR OVERSEAS STUDENTS (REGISTRATION OF PROVIDERS AND FINANCIAL REGULATION) ACT 1991

The impetus for the Act was the financial collapse of several private service providers in the context of a large and expanding export education sector. There had also been a problem with breaches of student visas.

The review used a RIS framework as the basis for its analysis. While a 'no intervention' option was not included, industry feedback on the least regulatory option — mandatory self-regulation — made it evident that industry considers that, in the short term at least, a continued role for government in regulating these activities is necessary.

Consultation occurred with a broad range of stakeholders, including both service providers and users, and those with an interest in Australia's international reputation as an exporter of education services. The recommendations included measures to simplify the provisions of the Act, to lower compliance costs and to institute a number of cost recovery measures.

The Act had been due to sunset on 1 January 1997, but was extended for a further two years to allow for the development of greater industry self-regulation.

INDUSTRIAL RELATIONS ACT 1988

This review was subsumed into a major review of industrial relations legislation which resulted in the enactment of the *Workplace Relations and Other Legislation Amendment Act 1996* in November 1996. This Act made significant amendments to the *Industrial Relations Act 1988*, as well as changing its title to the *Workplace Relations Act 1996*.

The thrust of the amendments is to move towards a less restrictive, simpler, framework for the negotiation of wages and conditions between employers and employees. Most parts of the Workplace Relations Act commenced on 31 December 1996. Those relating to Australian Workplace Agreements and the Employment Advocate commenced on 1 March 1997.

PATENTS ACT 1990, ss. 198-202 (PATENT ATTORNEY REGISTRATION)

The major focus of the report was on the rights of professional practice for patent attorneys and lawyers in patents, trade marks and designs and whether there was a net benefit for Australia from removing restrictive trade practices to allow greater competition in the provision of relevant professional services.

It looked at three options: the present regime; a de-regulatory regime — allowing any person the right, in this area, of practice for gain on behalf of another person; and modifications to the existing regime which would remove the exclusive rights of practice in respect of trade marks and designs. It did not attempt to quantify costs and benefits and because of the small size of the profession, the impact on the economy was not seen as significant.

The review committee recommended retaining exclusive rights of practice in those areas judged to require special expertise. Recommendations included broadening the range of experience for qualifications in patents, removing restrictions to practice in trade marks and designs and increasing flexibility for patent attorney-client relationships and business structures. On 20 February 1997, the Government announced that it would introduce changes substantially based on the report's recommendations.

COMMERCE (IMPORTS) REGULATIONS AND CUSTOMS PROHIBITED IMPORTS REGULATIONS

The review is currently under way and is being undertaken by a Working Group comprising the Business Environment Branch and the Consumer Affairs Division within the Department of Industry, Science and Tourism, and the Australian Customs Service. It is examining regulations which prohibit the import of certain products based on consumer protection and product safety issues and regulations which prohibit the importation of a range of goods into Australia without a trade description. (A trade description provides information such as on the material or ingredients used in a product, the country of origin, or the size or weight of a product.)

The review is considering, among other things, the restriction on competition which these regulations impose on importers as many of the consumer protection, information and product safety regulations on imports are not necessarily imposed on domestic products. It is also

examining whether there is duplication of these regulations by state and territory legislation, and whether the regulations are obsolete, difficult or impossible to enforce. The review is scheduled for completion in late 1997.

BOUNTY (BOOKS) ACT 1986

The Industry Commission's recent inquiry into Book Printing examined the effectiveness of the book bounty (under the *Bounty (Books) Act 1986*), and considered whether bounty or some alternative form of assistance should be provided after the bounty scheme expires at the end of 1997. The bounty rate has been phasing down, and bounty is estimated to have cost $14.1 million in 1996–97.

The Commission proposed that bounty not be extended after the end of 1997, and that bounty not be replaced by any other form of assistance. The Commission considered that there was no certainty that continuity of bounty would enhance uniformity of assistance. Further, at the rate of 4.5 per cent which would apply, any possible efficiency benefits from uniformity would be significantly offset by administrative and compliance costs. The Commission found significant difficulties with alternative forms of assistance. The bounty recommendations were considered in the Budget context, and the bounty is due to cease on 31 December 1997. The Government released the Commission's report on 6 August 1997.

BOUNTY (MACHINE TOOLS & ROBOTS) ACT 1985

This was also an Industry Commission inquiry examining a somewhat similar legislative scheme to that for books. The key objectives of the scheme were to encourage the development of a modern competitive machine tools industry, facilitate the development of an Australian robotics industry and assist in the modernisation of user industries. The scheme attempted to increase the competitiveness of local producers relative to overseas producers through bounty payments and duty free entry of machine tools, robots and certain parts that would be bountiable if produced domestically.

The Commission's draft report found that the international competitiveness of the industry had actually increased as the bounty payments were reduced. Bounty payments totalled just over $8 million in 1994–95. Administration and compliance costs were estimated to be about

$1.25 million. The effect of the bounty scheme on resource use was found to be insignificant. Alternative assistance arrangements considered were capitalisation of the bounty, replacement of the bounty with tariffs, and the use of existing forms of government assistance (for example, export facilitation and research and development assistance). Overall, the draft report considered the current bounty scheme had not been effective in promoting the production of metal working machine tools and robots.

On 20 August 1996, the Government announced that the bounty would be terminated. However, since then production of eligible machine tools and robots continued to attract the bounty until the scheme lapsed on 30 June 1997. The Government released the Industry Commission's report on 6 August 1997.

BOUNTY (FUEL ETHANOL) ACT 1994

The evaluation sought to assess the Ethanol Bounty Scheme, which commenced in July 1994 to assist the development of a competitive, robust and ecologically sustainable fuel ethanol industry in Australia by the payment of a bounty on the production of fuel ethanol. An officer from the Bureau of Resource Sciences (BRS) undertook the evaluation. Major input was provided by the Australian Bureau of Agricultural and Resource Economics and the BRS. The terms of reference for the review focussed on the appropriateness, effectiveness and efficiency of the scheme. To ensure that stakeholder interests were considered fully in the evaluation process, discussions were held with current and potential ethanol producers, ethanol research interests, Commonwealth and state environment protection agencies, oil refiners/marketers, petroleum distributors, and the motor vehicle industry.

The evaluation concluded that evidence concerning the greenhouse gas and pollution impacts of fuel ethanol was ambiguous, and the appropriateness of encouraging its production and use through the Scheme was questionable. It also concluded that current production and use of fuel ethanol is not cost effective in reducing emissions of greenhouse gas and environmental air pollutants. The Scheme was terminated one year early, in the August 1996 Budget.

The fuel ethanol industry retains a petroleum product excise exemption.

QUARANTINE ACT 1908

This review (known as the Nairn Report, after the chair of the review body) examined plant and animal quarantine legislation and related administrative arrangements. The Report suggested that quarantine activity has 'public good' characteristics in that it would be under-supplied if left to the private sector. The focus of the report was on increasing the internal efficiency and effectiveness of the institutions administering quarantine with a view to improving the exclusion of overseas pests and disease. Some greater participation by the private sector in certain areas of quarantine control was also recommended.

The Government responded to the Nairn Report in August 1997, accepting the key recommendations, with the exception of the creation of the statutory authority. Although the creation of a statutory authority was favoured in the report, the Government has decided to retain the quarantine function within the ministerial portfolio to ensure that quarantine decision-making and operational responses are consistent with the Government's policy and that the administration of quarantine is carried out according to the Government's direction.

Accordingly, a $76 million upgrade of quarantine services over the next four years has been announced. The Government has also announced that it will implement the recommendations with due regard to Australia's international responsibilities and obligations in relation to the World Trade Organisation and related bodies. It is expected that a number of amendments to existing quarantine legislation will be put before Parliament in 1997–98 to take up Nairn recommendations and otherwise improve the legislative framework for quarantine operations.

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984

This review, chaired by the Hon. Elizabeth Evatt AC, examined legislation aimed at addressing the threat to areas and objects of significance to Aboriginal and Torres Strait Islander people.

Under the legislation, a declaration can be sought to protect certain areas or objects from injury or desecration. Of the 101 area declarations sought since 1984, only one remains in force. Of 13 object declarations sought,

three have been granted. Declarations can only be sought if a significant area or object is under threat of injury or desecration, and are usually made only where a state or territory is unable (due to lack of appropriate heritage legislation) or unwilling (for political or other reasons) to provide protection. While the need to assess the potential impact of a project on indigenous heritage may result in some additional costs being incurred by a project developer, the consideration of indigenous heritage issues early in the planning and development process will help to minimise costs that might otherwise be incurred. The Review recommendations focus on the importance of such early consideration.

While the Government has not responded to the Evatt review recommendations, the review is one information source for the Government when considering proposals for the reform of the Act. Concurrently, the need to amend the Act is under review and inquiry by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

COMPREHENSIVE REVIEW OF THE REGULATORY FRAMEWORK OF THE FINANCIAL SYSTEM

The Financial System Inquiry, chaired by Mr. Stan Wallis, was a major review of the Australian financial system, covering a stocktake of financial deregulation, an analysis of the forces driving change, particularly technology, and an examination of key issues in regulatory reform. The Wallis Report was released on 9 April 1997, and made 115 recommendations for regulatory reform in the Australian financial system.

Regulation of the financial system is designed to assist: the provision of payments services (including clearance and settlement), the pooling and allocation of financial resources, and the allocation and management of risk.

Much of the regulation of the financial system occurs through the regulation of information disclosure, and prudential supervision. The regulatory framework has restricted competition by discouraging new (in particular, foreign) entrants but also has encouraged competition by restricting bank and insurer mergers under the so-called ‘six pillars’ policy.

Following extensive consultations, the Wallis Report recommended the abolition of the restrictive ‘six pillars’ policy. The Government concurred

with the Inquiry's recommendation and announced its initial response to this effect on 9 April 1997, although with the caveat that it will not permit mergers among the four largest banks at this stage. This will be reviewed when the Government is satisfied that competition from new and established participants in the industry, particularly with respect to small business lending, has increased sufficiently to allow such mergers to be considered.

Consistent with the Inquiry's recommendation, the Government also announced the removal of the policy prohibition on a foreign takeover of any of the major banks. Foreign takeover or acquisition proposals will be assessed under the *Foreign Acquisitions and Takeovers Act 1975* like any other sector (although the Government has accepted the Inquiry's conclusion that any large scale transfer of Australian financial assets to foreign hands would be contrary to the national interest).

On 2 September 1997 the Government announced, in its response to the Wallis Report, a comprehensive package of reforms to the financial system. The main features of this package are a new organisational framework for the regulation of the financial system and a variety of measures to improve efficiency and contestability in financial markets and the payments system. Some of the main elements include:

- the establishment of a single licensing and prudential regulator, the Australian Prudential Regulation Authority, for all deposit-taking institutions. This will enable building societies and credit unions to operate on a national scale and compete more effectively with banks;
- providing the Reserve Bank with the power to ensure that third parties have equal access to the facilities for cheque clearance and settlement. This will enable greater competition in payments services from new types of players such as retailers and utilities; and
- the establishment of a single market integrity and consumer protection regulator, the Australian Corporations and Financial Services Commission, to improve regulation by eliminating the current inconsistent or overlapping requirements applying to similar products. This will lower costs of regulation, the benefits of which will accrue to consumers.

CENSUS & STATISTICS ACT 1905

The Act provides for the collection by the Australian Bureau of Statistics (ABS) of a range of reliable and timely official statistics on Australian economic and business conditions.

The collection of information by the ABS benefits governments and businesses by providing information for better policy making and commercial decisions. At the same time, the collection of statistics can impose burdens, particularly on small business, such as from duplication and frequency of information requests, confusion between voluntary and mandatory requests, delays in publishing results and the lack of relevance of survey information. While there are costs to business, disadvantaging the traded goods and services sector, these are relatively minor — representing, on average, around one per cent of the total regulatory paper work and compliance burden on business.

The Small Business Deregulation Task Force (the Task Force) examined the impact of the legislation on business, with particular emphasis on small business, and recommended measures to reduce this burden. The Government's response on 24 March 1997 agreed with the bulk of the relevant recommendations made by the Task Force. It required the ABS to reduce the cost to small business of completing statistical returns by 20per cent during 1996–97, through achieving process efficiencies and reducing the frequency and content of some collections (the latter done in consultation with small business). The ABS will also be required to further improve other aspects of statistical collections such as design, coordination, and dissemination. In addition, a code of conduct is to be developed for statistical collections by the private sector.

CORPORATIONS LAW

The *Corporations Law Simplification Program* commenced in December 1993. Its objectives were to improve the efficiency of corporate regulation and reduce the regulatory burden on business and other users by removing unnecessary regulation, reducing complexity and simplifying the language of the law.

Current corporate law is seen as giving too little attention to the costs and benefits and overall impact of rules to regulate corporate behaviour. While corporate law increases confidence, predictability and certainty in corporate governance, compliance costs can increase the cost of goods and

services and make businesses less competitive. The intention is to reduce these costs. Consultation has been extensive. The *First Corporate Law Simplification Act 1995* was passed by Parliament and the second is under consideration. A third set of proposed amendments has been overtaken by the work of the *Corporate Law Economic Reform Program*, which was announced by the Government on 4 March 1997. The Program aims to give the law a stronger economic focus, and involves a broad-ranging review into areas such as fundraising, takeovers, futures and securities markets, directors' duties, electronic commerce and accounting standards.

APPENDIX C

Regulatory reform developments in the states and territories during 1996–97

This appendix outlines the key regulatory reform developments in the states and territories over 1996–97.

Several regulatory review and reform processes are being co-ordinated across the states and territories.

Firstly, all states and territories are currently committed to a program of legislative review under the Competition Principles Agreement under which they have prepared a four-year timetable for the review of existing legislation which restricts competition. All states and territories have submitted their 1996–97 annual reports against this timetable to the National Competition Council (the Council) for consideration in its assessment of whether each state and territory has met its commitments under National Competition Policy. Based on this assessment, the Council has made recommendations on whether each jurisdiction should receive its share of the first round of competition payments. The Council's recommendations were submitted to the Commonwealth Treasurer by the end of June. The Council recommended that all states and territories should receive their payments in 1997–98, which reflects some agreements the Council has reached with individual jurisdictions in relation to particular reforms where the Council was not satisfied with progress that the jurisdictions had made. The Treasurer announced in early July 1997 that he had accepted the Council's recommendations on the payments and had informed the states and territories accordingly.

Secondly, all states and territories are also involved in further developing their Business Licence Information Systems (BLIS). BLIS is a one stop shop facility providing businesses with information on Commonwealth, state and territory licences required for any business activity. These

services are being expanded to simplify, streamline and remove duplication across the three tiers of government. This should:

- significantly reduce the costs that businesses incur in identifying and complying with licences;
- provide an electronic record of the type and content of inquiries being made by business throughout Australia, and as such can indicate areas for future reform; and
- identify legislative overlap and rationalise the roles of agencies and bureaucratic inspections.

In addition to these co-ordinated processes across all states and territories, several jurisdictions are further progressing their mechanisms for the review and reform of new and existing regulations.

NEW SOUTH WALES

New South Wales (NSW) completed its Licence Reduction Program in February 1997 under which 273 licences were reviewed, 85 of which were identified for abolition. The program culminated in the making of a *Regulatory Reduction Act 1996*, which has repealed 16 licences to date, with 18 scheduled for future repeal. The remaining 51 licences identified under the Licence Reduction Program have either been repealed or amalgamated through other methods.

NSW has also been involved over the last year in investigating the streamlining of development approval processes without compromising environmental standards or public participation in the assessment system. The NSW Government has released a Draft Bill along these lines titled 'Environmental Planning and Assessment Amendment Bill 1997'.

NSW has also started to reform consumer protection in the home building industry. The reforms in this area include:

- the abolition of the Building Services Corporation; and
- the introduction of a requirement for compulsory insurance of all building work valued in excess of $5000 by licensed private insurance providers.

VICTORIA

In December 1996 the Victorian Government announced a major new direction for regulatory reform which focuses on reviewing regulatory regimes by industry sector. The first of these reviews — covering the tourism industry — is well under way and a discussion paper has been released for comment.

The Victorian Government has also released an annual publication that lists and summarises the regulatory proposals of all Victorian agencies for the following twelve to eighteen months, as well as all sunsetting regulation. The aim of this initiative is to improve business awareness of upcoming regulatory proposals and facilitate consultation on new regulation early in its development.

The Law Reform Committee of the Victorian Parliament has released a discussion paper on the best approach to drafting Regulatory Efficiency Legislation as a means of reducing the burden of regulatory compliance on business by allowing for the development of alternative compliance mechanisms.

In addition, as a result of the Licence Simplification Program initiated in 1993, by the end of 1997 a total of 130 or 27 per cent of the 482 licences existing in Victoria before 1992 will have been repealed.

QUEENSLAND

In Queensland, a Red Tape Reduction Task Force was formed in late 1996 to address unnecessary red tape burdens on business. The membership is business based allowing the Task Force to provide advice directly to Government. Twenty recommendations for action were approved by the Queensland Government which are estimated to net savings of $40 million in total to both business and government. Initiatives under this first round of reforms include:

- introducing more flexible licensing payment terms; and
- investigating improvements to the regulatory impact statement requirements under the *Statutory Instruments Act 1992* to ensure greater business input into significant subordinate legislation and regulations.

A Cost of Compliance Study was completed in August 1996, assessing the cost of compliance of regulation across a range of small business sectors. The study found that the average on-going compliance cost for a small business in Queensland was $14 026 per year, representing between 1.9 per cent and 3.5 per cent of turnover and around 35.5 per cent of net profit. These findings have proved a valuable input into the work of the Red Tape Reduction Task Force.

SOUTH AUSTRALIA

South Australian regulation reform processes for new rules are to be further improved in 1997 with the proposed institution of a formal Regulation Impact Statement requirement for legislative proposals which come before Cabinet.

The South Australian Government's regulatory policy includes the promotion of self or co-regulation to be pursued where possible as an alternative to government regulation. To take this regulatory policy forward, an issues paper on industry regulation was released by the Office of Consumer and Business Affairs in August 1996.

The BLIS in South Australia is being expanded to include local government licences and codes of practice. Work is also operating on the standardisation of licence forms and the examination of a single entry point for all regulatory requirements.

WESTERN AUSTRALIA

Regulatory reform initiatives in Western Australia include the incorporation of local government data onto the BLIS, and the launch of a new *Local Government Act 1996* which provides a framework for that level of government to substantially simplify the complexity and level of regulation of business by local governments.

Several industry specific reforms include:

- the holding of a Red Tape Forum on the food industry and regional issues which identified in excess of fifty regulatory items which have been forwarded to the appropriate agency for attention;
- the ongoing negotiation of the repeal of the *Hire Purchase Act 1959*;

- the introduction of tiered offences and a review of penalties under the *Environmental Protection Act 1986*; and
- the deregulation of real estate agent fees.

TASMANIA

Regulatory reforms in Tasmania include:

- a business licence rationalisation project which has delivered a final report with recommendations and is currently being considered by Government;
- the *Legislation Repeal Act 1996* which repealed 30 Acts and rescinded 19 sets of statutory rules;
- health sector regulatory reforms involving a major review of the functions and services provided by the Department of Health and Community Services, as well as a continuing program of updating legislation regarding the various health professions. The program is focussing on implementing reforms to the legislation governing the practices of heath occupations to remove the restrictions on competitive conduct. Examples of reforms already approved include the deregulation of optical dispensing and substantial removal of advertising controls for some occupations;
- release of a policy in regard to the use of competitive tendering and contracting as a means for delivering better value for money for taxpayers and consumers in the delivery of government services; and
- an amendment to the *Traffic Act 1925* to provide for the establishment of a state wide network of private sector authorised stations to replace the current inspection monopoly held by the Department of Transport.

AUSTRALIAN CAPITAL TERRITORY

The Australian Capital Territory (ACT) Government recently made a renewed commitment to regulatory reform when the Minister for Regulatory Reform made a Ministerial Statement on Regulatory Reform in the Legislative Assembly in May 1997. The major features of the new initiatives include:

- the development of a Manual for Regulatory Reform for government agencies which prescribes best practice for regulatory reform. It will become part of the ACT Public Sector Management Standards and the standard against which agency performance is assessed;
- the requirement that regulatory checklists be completed during the preparation of regulatory measures and forwarded to the Regulatory Reform Unit. They will provide data to assess regulatory performance; and
- the requirement that agencies compile annual regulatory plans to be tabled in the ACT Legislative Assembly and reported against in agency annual reports.

NORTHERN TERRITORY

Regulatory reform initiatives in the Northern Territory include work under way to link BLIS to the Land Information System. This initiative is significant as it will provide business with fully integrated information on the approvals necessary to undertake an activity, as well as the approvals to undertake that activity in a given location. The system will allow clients to better evaluate locations by providing a report on whether their business activity is permitted, prohibited or conditional for their proposed location.

APPENDIX D

A Guide to Regulation — An Overview

In September 1997, *A Guide to Regulation* was endorsed by the Government. This Guide, which was prepared by the Office of Regulation Review, contains the Commonwealth's new requirements for regulation makers as well as detailed information to assist them in complying with these requirements. Its main goal is to assist policy and regulatory personnel in Commonwealth Government departments and regulatory agencies.

In March 1997, the Government announced its responses[1] to the recommendations made by the Small Business Deregulation Task Force. Several of those responses indicated that the Office of Regulation Review (ORR) would produce a new publication to be named *A Guide to Regulation*. Those responses set down some specific matters to be addressed in this document. This Guide was endorsed by the Government in September 1997; copies are available from the ORR.

A Guide to Regulation is designed to assist officials working on the review and reform of regulation. The *Guide* details the best practice processes for regulation makers to follow when regulations are proposed as a policy option. It outlines when a Regulation Impact Statement (RIS) is required as well as describes the consequences of non-compliance with these Government mandated processes. The sanctions triggered by non-compliance are detailed for each form of regulation.

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[1] *More Time for Business*, Statement by the Prime Minister, the Hon. John Howard MP, 24 March 1997.

The *Guide* reproduces the revised Commonwealth guidelines for RISs. It also presents the new RIS guidelines for taxation measures and treaties. For taxation proposals, the guidelines are intended to explore implementation options and to lower compliance costs. For treaties, the guidelines detail the RIS requirements in the various stages of negotiating, signing and ratifying international treaties.

The *Guide* contains a user-friendly RIS checklist to prompt the consideration of key issues by regulation makers when preparing a RIS. Additional information is provided on each item in the RIS checklist. Furthermore, it provides information on the main conceptual and analytical techniques used in a RIS, to give regulation makers further explanatory material on any problem areas they may encounter when preparing a RIS.

It builds upon a previous ORR publication, *A Guide to Regulation Impact Statements*, and consists of five separate parts, each part providing progressively more detail. The *Guide* is designed so that those requiring a broad overview of the Commonwealth's regulatory review requirements need read only the first one or two parts. Those who must prepare RISs may need to draw on the detail of the later parts.

Part A describes in broad terms best practice processes and requirements for developing and amending legislation and regulation.

Part B sets down the seven major elements of a RIS, which is designed to formalise and record the steps that should be taken in the formulation of policy. Modified RIS guidelines designed specifically for the assessment of taxation measures also are included.

Part C consists of a simple and brief checklist for use by officials in preparing a RIS.

Part D provides more detailed guidance for use in preparing a RIS.

Part E sets out some explanatory material about issues addressed in a RIS.

No examples of specific RISs have been included in the *Guide*, in part because such examples cannot satisfactorily cover the wide range of regulatory matters covered by Commonwealth agencies. However, examples can be found in the explanatory memoranda for those legislative changes which have an impact on business, starting from June 1997.

The Government's response to the Task Force's report required the *Guide* to address some specific concerns and issues. In complying with these requirements, the *Guide*:

- explains how departments and agencies should use RISs as part of the policy development process;
- outlines the circumstances where particular types of regulations — in particular quasi-regulation, self-regulation, voluntary standards, and other regulatory standards — may be appropriate;
- advises policy makers that voluntary standards incorporated by reference into regulations should be used only where they are the most effective means for achieving a policy objective;
- identifies self-regulation as an alternative regulatory mechanism, and as one of the first regulatory options to be considered in a RIS;
- ensures that the impact on small business of proposed regulations is explicitly defined; and
- ensures that RISs identify the compliance costs of proposed regulations.

The Government has established a committee of officials to examine and report on issues in the area of quasi-regulation (such as codes of conduct and standards). Government decisions in response to that report may lead to publication of further editions of the *Guide*.

APPENDIX E

Activities of the Office of Regulation Review in 1996–97

This appendix details the range of activities undertaken by the Office of Regulation Review in 1996–97.

The role of the Office of Regulation Review (ORR) is to promote the Commonwealth Government's objective of effective and efficient legislation and regulations, and to do so from an economy-wide perspective.

In line with the trend of recent years, the emphasis of the ORR's activities in 1996–97 shifted more strongly towards liaison and advisory work with government agencies, and away from research and publication. The ORR also participated in the policy review of the impact of regulation on business, which was initiated through the Small Business Deregulation Task Force (the Task Force), and which resulted in the ORR being given new responsibilities arising from the Government's decisions on this review.

The functions of the ORR are to:

- advise the Government and Commonwealth officials on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations;
- examine Regulation Impact Statements (RISs) prepared by departments and agencies and advise on whether they meet the Government's requirements and whether they provide an adequate level of analysis;
- provide training and guidance to officials to assist them in meeting the requirements to justify regulatory proposals;
- report annually to Government on compliance with formal requirements, and on regulatory reform developments more generally;

- provide advice to Ministerial Councils and national standard setting bodies on Council of Australian Government (COAG) guidelines which apply when such bodies make regulations;
- monitor regulatory reform developments in the states and territories, and in other countries, in order to assess their relevance to the Commonwealth; and
- prepare reports and submissions on regulatory issues having significant economic implications.

Activities in 1996–97 that related to each of these functions are as follows.

ADVISE ON QUALITY CONTROL FOR REGULATION MAKING AND REVIEW

The primary activity to support this function has been providing advice to departments and regulatory agencies requesting guidance on how to meet the requirements for the development of high quality regulation. Related to this has been intervention at an early stage to ensure that major regulatory proposals are correctly developed. Complementing these activities, the ORR has provided advice to the Cabinet on the quality of regulatory proposals put before them.

This function has expanded following the Government's response to the recommendations of the Task Force. New activities have included the development of early warning systems to notify the ORR of regulatory proposals in the 'pipeline', assisting with the revision to the Cabinet Handbook to alert departments of the ORR's new role and responsibilities, and the development of a specific charter for the ORR (see Chapter 2).

More broadly the ORR has further assisted the integration of quality processes for regulation reform by seconding an officer to the Task Force Secretariat, by participating in the interdepartmental committee to develop the Government's response to the Task Force's report, and by seconding another officer to the team which drafted the Government's formal response.

ADVISE ON REGULATORY IMPACT ANALYSIS

A key function of the ORR is liaising with departments and agencies on the Government's specific requirements for regulatory impact analysis,

and on how to comply with these requirements. The ORR also provides detailed comments on draft impact assessments by agencies.

For much of the year the extent of these activities depended on the commitment of departments and agencies to regulatory reform. However, after February 1997 when the Government made regulation impact assessment mandatory for regulations which affect business, the ORR's activities in this area increased substantially.

PROVIDE TRAINING AND GUIDANCE TO OFFICIALS

Providing advice to officials is important in building their capacity to institute quality processes for the development and review of regulatory proposals, but more is required. Therefore, over 1996–97 the ORR has provided informal briefings to agencies, tailored to their specific needs and regulatory issues. More broadly, the ORR has maintained regular contact with regulators, including through periodic visits. This has assisted departments and regulatory agencies understand both their obligations, and the role of the ORR, under the Commonwealth's new regulation review and reform requirements.

Consistent with the Government's direction, the ORR has prepared *A Guide to Regulation* (based on the former 'A Guide to Regulation Impact Statements') which incorporates the new policy requirements and more detailed guidelines for regulation makers. The ORR has also further developed its training sessions to provide more detailed guidance on specific regulatory issues facing individual agencies. This training will be available on a more extensive and systematic basis than that provided in 1996–97.

REPORT ON COMPLIANCE AND REGULATORY REFORM DEVELOPMENTS

There are several strands to the requirement to report on compliance. Firstly, the ORR outlines overall adherence to the use of regulation impact analysis in the development of regulatory proposals by Ministerial Councils and national standard setting bodies. Secondly, it has a role in preparing the report to the Treasurer on the progress and outcomes of the Commonwealth's Legislative Review Program. Finally, in response to the Task Force's recommendations, the Government has directed the Industry

Commission to report annually, commencing in 1997–98, in quite specific terms on compliance with the Commonwealth's new mandatory RIS requirements for new and amended regulation. In preparation for this reporting requirement, in 1996–97 the ORR developed a draft set of performance indicators for compliance and made a benchmark assessment of compliance for that year. Details are set out in Chapter 3.

As part of its 1995–96 annual report, the ORR also reported on regulatory reform developments in Australia and overseas. Reporting on developments around the country helps maintain the momentum for regulatory reform, and builds accountability on adherence to the Competition Principles Agreement. And reporting on international developments demonstrates the growing world-wide acceptance of regulatory reform and the use of regulation impact analysis.

ADVISE MINISTERIAL COUNCILS AND NATIONAL STANDARD SETTING BODIES ON GOOD REGULATION MAKING

Over 1996–97 the ORR has maintained contact with certain Ministerial Councils and national standard setting bodies which are engaged in regulation making, and has provided advice on the application of COAG's RIS guidelines to their regulation development processes. Details are provided in Chapter 4.

MONITOR REGULATORY REFORM DEVELOPMENTS AROUND AUSTRALIA AND INTERNATIONALLY

Developments in regulatory reform are ongoing, both in Australia and overseas. The ORR maintains contact with regulatory reform agencies in all states and territories, and actively participates in COAG's Committee on Regulatory Reform. Monitoring regulatory reform developments in this way allows the ORR to assess their relevance to the Commonwealth.

The ORR also maintains regular contact with the OECD's work of monitoring and promoting regulatory reform in its member countries. That work included development of seven guiding principles which Ministers of the OECD member countries endorsed at their May 1997 meeting.

PREPARE REPORTS AND SUBMISSIONS ON REGULATORY ISSUES

While this is now a relatively minor function for the ORR, activities continued in 1996–97. They included the following publications and submissions:

Compliance Costs of Taxation in Australia—a staff information paper released in July 1996.

The principal findings reported in this paper were that while it is very difficult to accurately measure the sources or magnitude of the compliance costs of taxation, it is evident that tax regulations impose large compliance costs on taxpayers. Further, these costs are regressive, affecting small taxpayers and businesses to a much greater extent (in relative terms) than large firms.

It was noted that the problem remains partly outside the scope of the Australian Taxation Office (ATO), as most of the sources of tax compliance costs are a consequence of the growing complexity of economic transactions, together with the structure of the tax system. While the range of government initiatives and processes that address taxation compliance costs was recognised, it was concluded that governments could do more to measure and reduce tax compliance costs.

Since the paper was published, and in response to the recommendations of the Task Force, the Commonwealth Government has addressed tax compliance costs further by a detailed set of changes. These include a requirement for changes to tax regulations to be subject to analysis in the form of modified RISs, which are to include assessment of administrative options for ensuring compliance and the costs and benefits of each option.

Impact of Mutual Recognition on Regulations in Australia: A Preliminary Assessment— an information paper released in January 1997.

Based in part on the results of a survey, the findings reported in this paper were that mutual recognition is enhancing the movement of people in registered occupations. In some occupations and sectors it has led to the development of national standards. As to the sale of goods, mutual recognition has enhanced interstate trade, particularly in food products, by removing regulatory impediments to such trade. No evidence was found

that mutual recognition has resulted in an unacceptable lowering of standards for either occupations or goods.

'The Regulatory Impact of the Australian Accounting Standards Board' — a submission to the Corporate Law Economic Reform Program, May 1997.

Accounting standards and associated guidelines of the Australian Accounting Standards Board have a wide impact — on companies, shareholders, potential shareholders, creditors and government.

This submission concludes, based on a qualitative assessment, that the overall benefits of accounting standards can be expected to exceed their costs. They improve information flows, facilitating the movement of capital within the economy. While market forces will result in some disclosure anyway, the quality and quantity of such information is likely to be less in the absence of a system of centrally created accounting requirements.

But for individual accounting standards there are no formal legislative or policy mechanisms to demonstrate that the benefits outweigh the costs. Nor do existing mechanisms show whether the proposed standard is the most effective way to improve information flows. Passage of the *Legislative Instruments Bill 1996*, the coverage of which includes accounting standards, will help redress these shortcomings.

Box E.1 provides a summary of other submissions prepared by the ORR in 1996–97.

Box E.1: Other submissions prepared by the ORR in 1996–97

ATO's Internet and Electronic Cash Project: The project was designed to examine the potential impact of the Internet and related technologies such as electronic cash on compliance with existing tax laws. The ORR considered that the regulation of electronic commerce is at an early stage and the ATO should take into account the wide range of economic and social impacts that electronic commerce may have on the community. The likely effect of any new regulations on the development of this sector and on the effectiveness of regulations made by other agencies was also considered an important issue.

Department of Communications and the Arts' Issues Paper on the Review of Cross Media Rules: The submission noted that in reviewing cross media ownership rules, there should be a clear statement of the problems being addressed by the rules. These include having a competitive industry, as well as ensuring that there is sufficient diversity of opinion in the media. Accordingly the submission concluded that, while barriers to entry into the media may be removed because of competition policy, this may not result in the optimum level of diversity in opinion and culture as judged by the Government.

Attorney General's Discussion Paper on 'Privacy Protection in the Private Sector': The discussion paper proposed, amongst other things, legislative change to extend the existing scope of privacy protection to the private sector. In response, the submission considered that as the proposal may impose considerable compliance costs on businesses (such as direct marketers), a RIS should be prepared. The ORR also highlighted the potential for regulatory duplication if consideration was not given to the draft Distance Selling Code of Practice also being developed in this area (see below).

Australian Competition and Consumer Commission's draft Distance Selling Code of Practice: The draft code sought to improve the quality of distance selling practices in Australia by establishing a voluntary code of conduct for distance sellers. The submission noted that the proposal should be developed within a RIS framework, in accordance with Council of Australian Government guidelines, and provided comments in this regard.

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