Queensland Government

REVIEW OF LEGISLATIVE AND REGULATORY REFORM INITIATIVES IN THE QUEENSLAND GOVERNMENT PHASE 1

Service Delivery and Performance Commission

July 2006

A Smart State Initiative

Published by the Service Delivery and Performance Commission, Queensland Government, October 2006, 100 George Street, Brisbane, Queensland 4000.

ISBN 978-0-9804476-0-6

Queensland Government

Service Delivery and Performance Commission

The Honourable Peter Beattie MP
Premier of Queensland
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

In accordance with section 30 of the *Service Delivery and Performance Commission Act 2005*, I hereby provide you with the Commission's report on the Review of Legislative and Regulatory Reform Initiatives in the Queensland Government Phase 1.

This report is the culmination of extensive consultation across government, research on regulatory reform agendas from Australian and overseas jurisdictions and utilises the results of Queensland Government consultations with the business community and peak industry associations during the 2005/06 financial year.

I commend this report to you and provide it for subsequent tabling in the Legislative Assembly.

Yours sincerely

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Acknowledgements

The Service Delivery and Performance Commission would like to specifically acknowledge and thank the following stakeholders for their valuable contributions, support and assistance in the development of this report:

- Commissioners of the Service Delivery and Performance Commission
- the Business Community in Queensland
- industry and community groups, representatives and associated bodies
- Directors-General of Queensland Government Departments
- Various staff from Queensland Government Departments and agencies; and
- the Service Delivery and Performance Commission Review Team and Support Staff.

Contents

List of Abbreviations

ACCI	Australian Chamber of Commerce and Industry
BIA	Business Impact Assessment
BRTF	Better Regulation Task Force
COAG	Council of Australian Governments
CRRC	Cabinet Regulatory Reform Committee
DSDTI	Department of State Development, Trade and Innovation
GDP	Gross domestic product
IPART	Independent Pricing and Review Tribunal
NCP	National Competition Policy
NGO	Non-Government Organisation
OECD	Organisation for Economic Cooperation and Development
OQPC	Office of the Queensland Parliamentary Counsel
QBR	Queensland Business Review
RIA	Regulatory Impact Assessment
RIS	Regulatory Impact Statement
SCM	Standard Costing Methodology
SDPC	Service Delivery and Performance Commission
SME	Small to Medium Enterprises
UK	United Kingdom
VCEC	Victorian Competition and Efficiency Commission

1 Executive Summary and Recommendations

1.1 Executive Summary

This review aims to improve regulatory reform in Queensland.

The Service Delivery and Performance Commission (SDPC) has undertaken this review in response to concerns expressed by the business sector and some areas of the broader community that there is too much government regulation in Queensland.

There are areas where the government can reduce the level of regulation on business and the broader community. However, generalised concerns with the level of regulation need detailed analysis to identify areas for improvement, such as the reviews recently undertaken by the Department of State Development, Trade and Innovation (DSDTI).

Stakeholders also need to acknowledge that, in many areas of regulation, there are competing views in the community about the merits or otherwise of any particular regulation. It is government's role to balance these views in developing legislation.

While there exists a robust system of checks and balances within the Queensland Government for developing legislation, there is scope for it to be strengthened.

Good governance, sound policy development processes and regular review mechanisms will address many of the concerns about the level of regulation, and will provide better outcomes for business and the community.

The proposals outlined in this report aim to:

- strengthen whole-of-government governance arrangements for regulatory development and review, including strengthened compliance with existing requirements
- establish a strengthened consultation regime for legislative development, including clarifying Regulatory Impact Statement (RIS) requirements
- strengthen legislative policy development capabilities across government
- promote innovation and best practice models of regulation to government agencies; and
- improve the provision of information to business and the broader community on regulatory compliance issues.

These proposals will support the 10 February 2006 Council of Australian Governments (COAG) agreement on regulatory reform, which included strengthening gate-keeping requirements for new legislation, undertaking annual targeted reviews to reduce the level of existing regulation, and adopting a common framework for benchmarking, measuring and reporting on the regulatory burden across government. The proposals also provide the appropriate governance arrangements for the outcomes of the regulatory reviews recently undertaken by DSDTI.

1.2 Recommendations

Recommendation 1
It is recommended that Cabinet establish a Cabinet Regulatory Reform Committee (CRRC) by 30 September 2006, along lines similar to the UK Panel for Regulatory Accountability. Membership would consist of the following Ministers:

- Premier or Deputy Premier, Treasurer and Minister for State Development, Trade and Innovation (Chair)
- Minister for Small Business, Information Technology Policy and Multicultural Affairs
- Minister for Environment, Local Government, Planning and Women; and
- two other Cabinet Ministers on a rotational basis.

The key role of the CRRC is to direct and drive the national and State regulatory reform agenda at a whole-of-government level, including actions to improve regulatory development, implementation and review in the following areas:

Making of Regulation:

- Scrutinising major new regulatory proposals from agencies in accordance with the COAG gate-keeping reforms
- Identifying selected classes of primary legislation to be subject to the RIS process (see recommendation 3); and
- Improving systems for developing and implementing regulation across government.

Reviewing of Regulation:

- Developing and monitoring a prioritised, targeted regulatory reform agenda including COAG, State and agency regulatory reduction initiatives.

Improving Regulation:

- Initiate action to address systemic regulatory issues and opportunities to achieve measurable improvements in regulatory efficiencies in response to matters raised by business and other stakeholders.

Recommendation 2
It is recommended that DSDTI provide policy and administrative support for the CRRC.

Recommendation 3
It is recommended that the Director-General of DSDTI:

3.1 develops more explicit requirements for the RIS process for Cabinet approval by 31 March 2007

3.2 develops criteria to identify classes of primary legislation to be subject to the RIS process for Cabinet approval by 31 March 2007; and

3.3 communicates the information developed in recommendations 3.1 and 3.2 to agencies by 31 May 2007.

Recommendation 4
It is recommended that the Director-General of DSDTI identifies and evaluates regulatory best practice in the Queensland Government and elsewhere, and disseminates this information to all Queensland Government agencies on an ongoing basis with the initial information to be provided by 31 March 2007.

Recommendation 5
It is recommended that the Director-General of DSDTI develops a whole-of-government protocol for consultation on legislative development and review by 31 March 2007.

Recommendation 6
It is recommended that the Director-General of each agency assesses the functional arrangements for administering and reviewing legislation within their agency, and proposes organisational arrangements to ensure legislative policy development and review functions are separated from regulatory administration and compliance functions. Each agency Director-General will submit these proposals to the CRRC for its consideration by 31 December 2006.

Recommendation 7
It is recommended that the Director-General of each agency nominates one senior officer to be the contact on all agency legislative reforms to establish a network of legislative policy development officers across government by 31 December 2006.

Recommendation 8
It is recommended that the CRRC commission an audit of all Queensland Government agencies to ensure they are fulfilling their responsibility of publicly providing information on compliance requirements, and report their findings to the CRRC by 31 March 2007.

Recommendation 9
It is recommended that Cabinet note that the COAG agreement for annual targeted reviews of key legislation and enhanced gate-keeping arrangements is strongly supported by SDPC's review of regulatory reform initiatives.

Recommendation 10
It is recommended that Cabinet note that the COAG agreement to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden is strongly supported by SDPC's review of regulatory reform initiatives.

Recommendation 11
It is recommended that Phase 2 of SDPC's review of regulatory reform initiatives require the Chairman, SDPC to carry out an assessment of the estimated costs to business of targeted regulation, such as those identified in the DSDTI *Smart Regulation: Enhancing the Competitiveness of Queensland Business Report*, and identify the potential cost savings from regulatory reform, by 31 December 2007.

Recommendation 12
It is recommended that the Chairman, SDPC carry out a follow-up review of the implementation of the approved recommendations in this report by 31 December 2007.

2 Background

2.1 Purpose of Review

The purpose of this review is to examine and identify improvements in regulatory reform initiatives in Queensland. This will include an assessment of claims by business and the non-government sector that there is too much government regulation in Queensland. This work will be supported by an analysis of initiatives in Australian jurisdictions and internationally. The Terms of Reference for the review are contained in Appendix 1 of this report.

2.2 Introduction

The business sector has stated that there is too much government regulation in Queensland. It has been highlighted by the business sector that too much regulation stifles competition and adds unnecessarily to the cost of doing business, which in turn has a negative impact on the Queensland economy.

These perceptions of excessive regulation imply that:

- regulation is not required in many instances
- the benefits of the regulation identified are outweighed by the economic and social costs to business, the community and government; and
- if some form of control is needed, it should not always be in the form of legislation.

Similar concerns of excessive regulation have also been expressed by some areas of the non-government sector and the broader community.

Regulatory and legislative reform has been identified as a high priority in many developed countries, and significant reforms are being implemented globally, for example, in the United Kingdom (UK) and the Netherlands.

Most Australian States and Territories have implemented regulatory reform initiatives, including the establishment of regulatory reform units focusing on red tape reduction and alternatives to regulation.

Queensland's response included the establishment of a Business Regulation Review Unit (now part of Strategic Policy) and a Red Tape Reduction Taskforce in DSDTI. Key achievements also include the introduction of RISs (Part 5, *Statutory Instruments Act 1992*), and the requirement for subordinate legislation to automatically expire 10 years after its making (Part 7, *Statutory Instruments Act 1992*).

Reforms have also occurred at a national level, including the outcomes of the 10 February 2006 COAG meeting concerning reducing the regulatory burden and introducing the next round of National Competition Policy (NCP) reforms.

2.3 Defining Regulation

In its broadest sense, regulation is equated with governing. It is a principle, rule or condition that governs the behaviour of citizens or enterprises. In this way, regulation is used by governments, in combination with other instruments such as taxation, program delivery and services, to achieve public policy objectives.

For the purposes of this review, the term includes:

- primary Acts of Parliament
- subordinate legislation; and
- administrative processes that is, rules, policies and procedures required to implement regulation, for example, government manuals, codes of conduct, and compliance standards (often termed quasi-regulation).

This expanded definition is consistent with other papers on the topic, for example:

> … for the purposes of the review, the Taskforce defined 'regulation' to include any laws or other government rules that influence or control the way people and businesses behave. Under this definition, regulation is not limited to legislation and formal regulations, but also includes quasi-regulation, such as codes of conduct, advisory instruments and notes. The term regulation is also used in this report to encompass the way particular regulations are administered and enforced. (Regulation Taskforce 2006, p.3)

Regulation is one of the central tools used by governments to deliver the social, environmental and economic goals of the community (IPART 2006). As such, regulatory development and reform is an important issue in any community.

2.4 The Costs of Regulation

The objective of regulation is to ensure the proper functioning of aspects of society and the economy. However, the cost of complying with such regulation may outweigh any benefit that it brings. Such reasoning is often the basis for business and community claims that there is too much 'red tape'.

However, determining a clear picture of the burden or cost of regulation remains elusive, as few attempts have been made to capture the information in a consistent and systematic manner. The UK Better Regulation Task Force cited information from the United States and the Netherlands that suggested the total cost of regulation was equivalent to 10-12 per cent of gross domestic product, and fell disproportionately on small business (VCEC 2005).

Not all costs of regulation are immediately apparent. Some costs may be indirect and longer term. The Australian Chamber of Commerce and Industry estimates regulation costs the Australian economy approximately $86 billion a year or 10.2 per cent of GDP (QBR 2005).

The impact of regulation will also vary across the business sector and the community more generally.

For example, it is generally acknowledged that small businesses have less ability to deal with complex regulation than larger businesses as there is reduced scope to delegate these tasks from management.

Also, for example, a food vendor may complain about the red tape imposed by governments on the operation of his/her business. However, a consumer may not view requirements that aim to produce safe food in the same light.

Similarly, building industry developers may complain about the high compliance costs of red tape imposed on the building industry. However, such a view may not be shared by a purchaser, who wants assurance that the electrician has properly wired the house, and that the plumber, tiler and bricklayer have done their jobs correctly.

Governments have a mandate to govern and to give balance to a number of conflicting public interest considerations. Any rational debate on regulatory reform must balance the needs of all the community including that of the business sector.

> Society itself is changing and the response by government has changed with it. Growth in regulation is being driven by rising income levels which have brought increased expectations and demands, for example motor vehicle safety and pollution control. (Regulation Taskforce 2006 p.6)

Although some regulatory costs are examined through the RIS process, there is no evidence of a systematic process in Queensland to quantify the overall costs of regulation as is the case in other jurisdictions such as the UK, Netherlands and other Organisation for Economic Cooperation and Development (OECD) countries. Quantifying the cost of regulation in Queensland is an area where further research is warranted.

2.5 Indicators of Red Tape

The performance indicators identified by critics of regulation require some scrutiny to determine their value. Often the complaint is that there is too much regulation without reference to a standard for which comparison can be made. For example:

> …The latest version of the long-running taskforce, which aims to streamline processes for businesses dealing with the State Government, comes after a Business Council of Australia report last week showed Queensland *added 8700 pages of new laws and rules in 2003, more than any other state or territory*… (emphasis added) (The Courier Mail 2005).

> … Since 1990 the Australian Parliament has passed more pages of legislation than were passed during the first 90 years of federation. (Regulation Taskforce 2006 p.5)

The value of merely counting pages of enacted legislation as a performance measure without reference to such considerations as drafting style, an analysis of what has been passed, or whether the legislation passed was remedial to reduce regulation must be questioned. The regulatory impact of any legislation can only be determined by assessing its substantive content, not merely measuring its size.

A similar observation can be made with reference to merely counting the number of Bills presented to Parliament in a given period. For example, in 2003 the Queensland Parliament passed 97 Acts for which only 39 were new Acts. The remaining Acts amended existing legislation. However, such statistics do no assist in clarifying whether there was a negative or positive impact on the regulatory burden.

It should be noted that the Australian Government's Taskforce on Reducing Regulatory Burdens on Business did not focus primarily on the volume of regulation, but rather:

> …. whether a regulation and or its implementation imposes an unnecessary, and therefore avoidable, burden on business; that is, whether the legitimate policy goals underlying the regulation can be achieved in a way that does not impose as high a burden on business. (Regulation Taskforce 2006, p.2)

Other attempts at quantifying the extent of the regulatory burden include quantifying the financial and non-financial costs over the life of the proposed regulation. Such an approach was utilised in undertaking public benefit tests under National Competition Policy (NCP).

The debate about regulation should be less about the quantity, and more about its content and impacts on the community. Performance indicators about regulation are difficult to articulate, and at times lack a solid factual basis. The 10 February 2006 COAG acknowledged that more work needs to be done in this area and resolved … *to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government.* (COAG 2006 Attachment B, p.5)

3 Legislative/Regulatory Reforms Internationally

3.1 Introduction

Work has been proceeding in many developed countries in the area of legislative/regulatory reform. The USA has implemented a broad range of initiatives, particularly in micro-economic reforms over several decades. However, the most significant recent reforms have occurred in the UK and the Netherlands. The UK and Netherlands reforms have been comprehensively documented through a number of reports and publications. Therefore, the focus of this section will be on selected components of these reform agendas.

Further detailed information on the international jurisdictions is contained in Appendix 3 of this report.

3.2 United Kingdom Legislative/Regulatory Reforms

The UK work, through a focused policy agenda, has been supported by the Prime Minister and a number of high level taskforces, which have worked in partnership with business, the non-government sector and the community. Consultation has been extensive in the development of this work.

Of note is that the agenda includes the charitable (non-government) sector, and is moving towards specifically examining the impact on the community, as is occurring in the Netherlands.

Key governance mechanisms and other legislative/regulatory reforms are outlined below:

- Panel of Regulatory Accountability – a Cabinet Committee chaired by the Prime Minister that directs the regulatory reform process including the review of individual proposals for new regulation likely to impose a major new burden on business
- Better Regulation Executive – the executive arm of government responsible for driving the government's regulatory review and reform initiatives, located within the Cabinet Office
- Better Regulation Commission – an independent advisory group consisting of experts from the private, public and voluntary sectors that provides advice on actions to improve the effectiveness of government regulation
- Better Regulation Ministers – for key regulatory agencies, a specific Minister is given responsibility for driving regulatory reform within their agencies. Ministers and agencies report on their regulatory performance to Cabinet
- Agencies – each agency has a small regulatory impact unit that focuses on the review of regulatory proposals
- five principles of good regulation: proportionality, accountability, consistency, transparency, targeting

- the Regulatory Impact Assessment (RIA) process for major regulatory proposals requires consideration of compensatory simplification measures
- a mandatory Consultation Code
- simplification plans, which must be prepared by all agencies and major regulators to develop a rolling program to identify regulations that can be simplified, repealed, reformed or consolidated, in consultation with stakeholders
- reviews of regulations by agencies to ensure that they are having the intended effect; and
- the measurement and setting of targets to reduce the administrative costs of regulation on business and the voluntary sector.

3.3 Netherlands Legislative/Regulatory Reforms

The key reform mechanism in the Netherlands is Adviescollege toetsing administratieve lasten (Actal), an advisory board on administrative burdens, which was established as an independent advisory body in May 2000 to advise the Dutch Government on red tape reduction issues. Actal acts as a watchdog and facilitator, giving strong backing to the Dutch Government's objective to achieve a 25 per cent net reduction in the overall administrative burden on businesses and the community by 2007.

Actal advises on proposed laws and regulations. All proposals must be submitted to Actal for review if they have an impact on the administrative burden on businesses and/or the community. Actal requires ministries to quantify the administrative burden in new legislation and report on alternative policies that may result in a reduced burden on business and the community.

For almost all policy areas, ministries have standard assessment tools to quantify the administrative burden in legislation. Actal checks the calculations and considerations. It may propose improvements and may call for the withdrawal of proposed laws and regulations. However, Actal's advice is not binding.

4 Legislative/Regulatory Reforms in Australia

4.1 Introduction

At a national level, COAG and NCP have driven much of the reforms to resolve cross-jurisdictional issues, and to reduce anti-competitive impacts in legislation over the past decade.

The Australian Government Productivity Commission reports on business and productivity issues, and provides guidance on specific aspects of the reform agenda, including RIS and costing models. The Australian Government commissioned report *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (January 2006) will also provide some focus and structure for future reform agendas at national and State levels.

In the Australian States and Territories, a range of approaches to legislative/regulatory reforms, in addition to COAG and NCP reforms, is being undertaken.

For example, in Victoria, a key reform is the establishment in 2004 of the Victorian Competition and Efficiency Commission (VCEC), external to government, to analyse RISs and Business Impact Assessments (BIA). In New South Wales, the Independent Pricing and Review Tribunal (IPART) assesses all regulations regarding the impact on business and the community. In other States and Territories, consideration of the RIS is undertaken within government.

'Hot-Spot' reviews and business specific reviews have provided an additional focus at the State/Territory level. No Australian State or Territory has a highly structured and comprehensive agenda similar to the UK.

Further detailed information on Australian jurisdictions is contained in Appendix 3 of this report.

4.2 Queensland Context

The Red Tape Reduction Taskforce is a non-statutory advisory group established by the Queensland Government. The Taskforce provides business input into the regulatory reform activities of the Queensland Government, including advice and practical recommendations on regulatory issues of concern to business.

The Taskforce includes representatives from regional business and peak industry associations.

Co-chaired by the Minister for Small Business, Information Technology Policy and Multicultural Affairs, and Mr Craig Wallace MP, Member for Thuringowa, the Taskforce specifically directs its efforts to:

- Investigating possible improvements to the regulatory environment
- Minimising the regulatory compliance burden for business; and

- Promoting awareness of regulatory reform and red tape reduction initiatives to business and industry.

Recent activities undertaken under the banner of the Taskforce include:

- *Completion of the 2004-05 Red Tape Reduction Stocktake* – this stocktake, undertaken on an annual basis, identified 26 government initiatives for 2004-2005 resulting in significant savings to business of more than $14 million. Initiatives ranged from the continued expansion of online services to the abolition of unnecessarily burdensome regulatory requirements. Red tape reduction achievements for 2004-2005 mean that since 1999 the cumulative savings to business reported in the red tape reduction stocktakes now total more than $90 million.
- *Regulatory review projects* – DSDTI conducted reviews of the impacts of regulation on Queensland's manufacturing (including food processing and production); tourism and retail industries as proposed in the *2004 Small Business Policy* election commitment. DSDTI also conducted the *Public Review of Hot Spots for Regulatory Reform*, which was announced by the Premier in the *Special Fiscal and Economic Statement* in October 2005. Conducted under the banner of the Red Tape Reduction Taskforce, these reviews aimed to provide Queensland business with an opportunity to input into the development of a new regulatory environment that is more dynamic and conducive to doing business in Queensland.

5 Current Legislative/Regulatory Environment in Queensland

5.1 What is the Queensland Business Sector Saying About Regulation?

In 2004 the Queensland Government made an election commitment to review the impact of regulation on Queensland's manufacturing, retail and tourism industries. In addition, as part of the *Special Fiscal and Economic Statement* in October 2005, the Premier announced a review to identify 'hot spots' for regulatory reform. The reviews sought direct input from business to identify opportunities to shape a regulatory environment which promotes business competitiveness and growth in Queensland - specifically by reducing unnecessary red tape.

The reviews were conducted under the banner of the Red Tape Reduction Taskforce. The consultation strategy for the reviews involved targeted consultation with peak industry bodies, individual businesses, the Manufacturing Leaders Group, and the Queensland Small Business Advisory Council. The members of the Queensland Small Business Advisory Council are contained in Appendix 4. An invitation was also distributed to the broader business community to participate in the reviews by completing a survey or providing a written submission. A total of 1,277 responses were received across the four reviews.

The Minister for Small Business, Information Technology Policy and Multicultural Affairs, supported by regional members of the Red Tape Reduction Taskforce, consulted with the business community through regional business forums in Toowoomba, Beenleigh, Sunshine Coast, Gold Coast, Cairns, Townsville, Mackay, and Gladstone. These forums were attended by approximately 200 business people.

Other key research and consultation activities included:

- review of over 130 submissions to the Commonwealth's Regulation Taskforce
- review of position papers relating to calls for regulatory reform by major peak bodies across Australia
- review of major themes in the financial press over a one month period; and
- review of regulatory reform initiatives in other Australian and international jurisdictions.

Due to the recency and comprehensiveness of these consultations, the SDPC review utilised the above DSDTI data to inform its review report, rather than cause business further inconvenience by additional approaches by the SDPC.

From these extensive sources, DSDTI identified a series of business perceptions regarding the existing regulatory environment including:

- regulation includes principal Acts, administrative action, policies and processes
- there are benefits to regulation
- costs of complying with regulation can be significant and reduce competitiveness

- regulation is a risk averse and prescriptive solution resulting in high compliance costs, and can be a detriment to the growth of Small to Medium Enterprises (SMEs)
- there is resignation about red tape, that is, it has to be done, because there is no alternative
- there is significant scepticism about regulation review
- the regulatory environment is too complex and uncoordinated resulting in uncertainty for business
- the cumulative effect of regulation is a 'silent' death for business
- differences in the basics of regulation across jurisdictions inhibit competition on more strategic issues
- regulation is often a knee-jerk reaction by government to issues as they arise
- the lack of enforcement of regulation creates an inequitable playing field
- some regulations only support the big end of town
- regulatory inconsistencies and comparative costs deter major international companies from participating in Australian markets; and
- government information and services are not well coordinated which requires business to navigate different entry points to access a range of services to meet their needs (DSDTI 2006).

The Queensland business perceptions of the regulatory environment are consistent with similar national observations made by the Australian Government's Taskforce on Reducing Regulatory Burdens:

> Following wide-ranging consultations with business and government, the Taskforce is convinced that many of the concerns raised by business and other organisations are fully justified…there is too much regulation and, in many cases, it imposes excessive and unnecessary costs on business. (Regulation Taskforce 2006, p.i)
>
> More consultation between departments is required to ensure less fragmentation when regulation is being developed. Departments should first consider what information is already being collected by the government before increasing reporting requirements. CPA Australia, sub. 113, p.11 (Regulation Taskforce 2006, p.141)
>
> Many of the regulations in need of reform exist because of deficiencies in the processes and institutions responsible for them. Regulate first, ask questions later is how some business representatives characterised the approach. (Regulation Taskforce 2006, p.148)
>
> ... there was concern at the lack of attention given to compliance costs and that there was generally no attempt to quantify such costs. (Regulation Taskforce 2006, p.148); and
>
> … difficulties in finding and using information to help it comply with regulatory obligations, and the need to provide similar information to different agencies and governments for different purposes. Business strongly supported the idea of

harnessing the potential of information technology to help it meet regulatory and information requirements. (Regulation Taskforce, 2006 p.137)

5.2 What is the Queensland Non-Government Sector Saying About Regulation?

The non-government sector is, for the purpose of this review, defined as that sector external to government providing services for the community as a whole, for example, a crisis line such as Lifeline, or for a group such as children, or to address an issue such as homelessness. These services complement other activities being provided by government and sometimes by business.

Consultation undertaken by the SDPC staff with Non-Government Organisations (NGOs) reveal the following perspectives:

- legislation is perceived as becoming more onerous
- there are increased expectations regarding accountability on NGOs. NGOs accept they must be accountable, however, some committees are not sophisticated enough to cope with the added regulatory compliance burden
- NGOs need to be supported so they can meaningfully consult with government
- the consultation process is extremely important when deciding whether to regulate or not
- when seeking community views, government should use an open consultation process initially, that is, ask people what they think and give them enough time to respond. It is not useful to hand people a small number of draft options and narrow the consultation to these options in the first place. The policy options development process needs to occur further down the track
- like business, there are small, medium and large NGOs each with different needs; and
- a particular government agency's accountability requirements are often imposed in ignorance of what is also required by other government agencies, and without appreciation of existing data collection processes.

The themes of both business and the NGOs perceptions include:

- request for better consultation from government
- the need to address the cumulative effects of regulation; and
- the need for better coordination of all levels of government when regulating.

5.3 The Queensland Government: A Regulator's Perspective

Is there too much or inappropriate regulation and red tape in Queensland? If so, how was this situation created? What observations can be made of the processes and requirements of government before legislation is enacted? Are there sufficient

safeguards and gate-keeping arrangements to ensure legislation and other regulation is not unnecessarily implemented?

Based on the requirements of government agencies, Cabinet, Parliamentary Counsel, Parliament and others, it could not be said that it is an easy road to enact legislation in Queensland.

Two key documents which guide significant policy development in Queensland are the Queensland Cabinet Handbook and the Queensland Legislation Handbook. Collectively, these policy statements set up a regime of checks and balances for all major policy development by the Queensland Government.

Under these policy frameworks and other mechanisms, Queensland has a number of gate-keeping and related mechanisms to scrutinise the legislative development process. These entities and/or mechanisms include:

- Office of the Queensland Parliamentary Counsel (including the requirements of the *Legislative Standards Act 1992*)
- Department of the Premier and Cabinet (for example, scrutiny of Cabinet submissions)
- DSDTI (for example, providing advice on RIS requirements)
- Treasury Department (for example, overseeing NCP processes)
- Scrutiny of Legislation Committee (for example, application of fundamental legislative principles)
- the *Statutory Instruments Act 1992* (including RIS requirements and automatically expiring subordinate legislation); and
- the Queensland Competition Authority.

The cumulative purpose of these mechanisms is to provide a comprehensive regime to ensure key issues of consultation and regulatory impacts are factored into the development of legislation. A summary of the policies, guidelines and institutions which guide legislative development is provided at Appendix 5.

6 The Case for Action

6.1 Introduction

This review has considered a wealth of information available to it from the many consultations and research undertaken nationally and internationally. Based on this research, the SDPC does not see any merit in creating new layers of bureaucracy to improve regulation. Rather it proposes to build on the existing framework for regulatory oversight in Queensland.

The review has observed that:

- despite concerns expressed by business and the broader community about the regulatory burden, it is not always readily apparent which are the inappropriate regulations and compliance issues that are their key concerns
- although there would be scope for reducing regulatory burdens, the precise areas for regulatory reductions can only be addressed by a targeted analysis, such as that recently undertaken by DSDTI
- it is evident that in many areas of regulation there are competing views in the community about the merits of particular regulation
- a robust system of governance of legislation and regulation exists in Queensland, but in the spirit of continual improvement it should be strengthened
- good governance, sound policy development processes and regular review will address many of the concerns about the appropriateness of legislation, and will provide better outcomes for business and the community; and
- consideration should be given to:
  - strengthening whole-of-government governance arrangements for regulatory development and review, including strengthened compliance with legislative development policies
  - establishing a strengthened and consistent consultation regime, including clarifying RIS requirements
  - strengthening legislative policy development capabilities across government
  - undertaking regular reviews of key agency regulation/legislation
  - strengthening the processes and key roles in cross-jurisdictional activities
  - better measurement of regulatory impacts; and
  - promotion of innovation and policy education on regulation, enforcement and compliance to State government agencies.

6.2 Relationship with other Reforms

As indicated elsewhere in this report, the SDPC review is being undertaken at the same time as other reviews at a national level (especially the COAG reforms) and at a State level (especially the DSDTI reviews).

As such, the SDPC review has ensured that its conclusions and recommendations are consistent with, and support, reforms being proposed elsewhere. There are some matters that this review would have recommended that have been taken up by the COAG reforms, which are noted below. The SDPC proposals will also provide the overarching governance arrangements to support the reforms proposed by the DSDTI reviews.

6.3 Governance for Regulatory Development Process

As indicated in section 3.2, the UK has introduced a Panel of Regulatory Accountability – a Cabinet Committee chaired by the Prime Minister that directs the regulatory reform process including the review of individual proposals for new regulation likely to impose a major new burden on business. The Panel has been established to hold departments to account for their regulatory performance. It scrutinises all new regulatory proposals that impose a significant cost upon business.

The Panel facilitates a consistent application of regulatory principles across government.

The introduction of such an approach in Queensland would improve regulatory outcomes by:

- providing greater scrutiny of major regulatory reform proposals
- enhancing oversight of whole-of-government priorities
- promoting compliance with government legislative development policies; and
- improving coordination of the government's regulatory reform agenda.

To achieve this, it is proposed to establish a CRRC to oversee regulatory reform in Queensland. The key role of the CRRC would be to drive the national and State regulatory reform agenda at a whole-of-government level, including actions to improve regulatory development, implementation and review.

The CRRC would also play a lead role in progressing the COAG reforms in relation to gate-keeping arrangements (see section 6.9), annual targeted reviews (see section 6.9) and a common national framework for benchmarking, measuring and reporting on the regulatory burden (see section 6.10).

The CRRC can also play a key role in promoting regulatory efficiency. This includes overseeing actions by DSDTI to strengthen arrangements for business and the community to present their views within government on regulatory reform issues. These actions are based on business feedback that regulatory concerns are able to be better

brought to the attention of government and included, where appropriate, in future efforts to improve the regulatory environment.

DSDTI would provide the policy and administrative support to the CRRC, given its lead role in the regulatory reform agenda.

Conclusion: The legislative development process requires high level observance and compliance to ensure full consideration of the effects on business and the community. There is a need for whole-of-government regulatory procedures to be complied with. This can be achieved by strengthening the whole-of-government governance arrangements.

Recommendation 1
It is recommended that Cabinet establish a CRRC by 30 September 2006, along lines similar to the UK Panel for Regulatory Accountability. Membership would consist of the following Ministers:

- Premier or Deputy Premier, Treasurer and Minister for State Development, Trade and Innovation (Chair)
- Minister for Small Business, Information Technology Policy and Multicultural Affairs
- Minister for Environment, Local Government, Planning and Women; and
- two other Cabinet Ministers on a rotational basis.

The key role of the CRRC is to direct and drive the national and State regulatory reform agenda at a whole-of-government level, including actions to improve regulatory development, implementation and review in the following areas:

Making of Regulation:

- Scrutinising major new regulatory proposals from agencies in accordance with the COAG gate-keeping reforms
- Identifying selected classes of primary legislation to be subject to the Regulatory Impact Statement (RIS) process (see recommendation 3); and
- Improving systems for developing and implementing regulation across government.

Reviewing of Regulation:

- Developing and monitoring a prioritised, targeted regulatory reform agenda including COAG, State and agency regulatory reduction initiatives.

Improving Regulation:

- Initiate action to address systemic regulatory issues and opportunities to achieve measurable improvements in regulatory efficiencies in response to matters raised by business and other stakeholders.

Recommendation 2
It is recommended that DSDTI provide policy and administrative support for the CRRC.

6.4 Uncertainty When and How to Complete an RIS

Section 43 of the *Statutory Instruments Act 1992* provides *…. if proposed subordinate legislation is likely to impose appreciable costs on the community or a part of the community, then, before the legislation is made, a regulatory impact statement must be prepared about the legislation*. Section 46 provides a number of exemptions to this requirement. From discussions with government policy makers and agencies, it is apparent that:

- the circumstances in which a RIS is required is not always clear
- agencies consider the RIS process is at times onerous in terms of time and resources; and
- the benefits of undertaking a RIS are questionable in circumstances where better consultation processes could be used (for example, targeted consultation with key stakeholders).

Additionally, questions were raised with policy makers as to why RISs were not extended to primary legislation.

It is acknowledged that primary legislation is debated in the Parliament and is subjected to the scrutiny such a process provides. However, stakeholders may view it as artificial to differentiate between primary and subordinate legislation if either is likely to impose appreciable costs on the community.

In Victoria, government scrutiny of regulatory proposals extends to the making or amending of primary legislation where there is potential for regulatory impacts. In cases where a legislative proposal has potentially significant effects for business and/or competition, a BIA must be prepared. BIAs are based on the same methodology as the RIS process, although the content and processes are not specified in legislation (Victorian Treasury 2005, p. 4.1).

To progress this proposal, criteria would need to be identified as to the classes of primary legislation that would require a RIS.

Conclusion: More detailed guidance on, and compliance with, the RIS process is required. The policy regarding when and how a RIS should be completed should be more explicit to give better guidance to agencies, and provide greater consistency and certainty.

Recommendation 3
It is recommended that the Director-General of DSDTI:

3.1 develops more explicit requirements for the RIS process for Cabinet approval by 31 March 2007

3.2 develops criteria to identify classes of primary legislation to be subject to the RIS process for Cabinet approval by 31 March 2007; and

3.3 communicates the information developed in recommendations 3.1 and 3.2 to agencies by 31 May 2007.

6.5 Innovation in Regulation

The use of legislation can be seen to be more decisive and effective than non-legislative options. Therefore, an expectation is created that any problem can be answered by creating legislation to rectify it.

The review found examples in agencies of sophisticated approaches to regulation, which would minimise burdens placed on the community. However, this is not consistently in place across government. Those responsible for policy and regulatory development in agencies would obviously benefit from sharing good practice with colleagues.

A risk-based approach to regulation would appear to be a significant step towards reducing the regulatory burden and should be further explored.

> The level of risk involved in any activity should determine the level of protection necessary. However, the appropriate level of protection can be provided by direct state regulation or an alternative approach… No solution will eradicate all risk, and we have found no evidence that indicates that state regulation is necessarily more effective than alternative arrangements at reducing risk. (BRTF 2000, p.26)

Conclusion: Where possible, government agencies must consistently ensure non-legislative options are considered. Best practice in legislative development needs to be identified and promulgated to all agencies.

Recommendation 4
It is recommended that the Director-General of DSDTI identifies and evaluates regulatory best practice in the Queensland Government and elsewhere, and disseminates this information to all Queensland Government agencies on an ongoing basis, with the initial information to be provided by 31 March 2007.

6.6 Quality of Consultation Processes

A quality consultation process is essential for real and perceived engagement and participation in legislative policy development. Poor policy and inadequate identification of impacts on business and the community can arise when consultation takes place in name only. Similarly, if those who are consulted merely see it as an opportunity to make unreasonable demands and use the process as a political sounding-board, progress will not be made.

Discussions with some NGOs identified a need for engagement as early as possible in the consultation process to facilitate consideration of a broad range of options.

In addition, the positive effect of well-meaning involvement will wane in the face of too many requests for consultation. Consultation fatigue can occur. Some smaller peak body organisations in the NGO sector advised the review they did not have the capacity to deal with a large number of requests from government agencies to take part in

informed debate. They called for a more ordered and systematic approach to consultation requests.

In summary, the quality and perhaps consistency of the consultation process is an important issue. Improvements in the quality of consultation processes also relate to the proposal for greater clarity in the RIS process (see section 6.4).

Conclusion: Agencies should ensure that consultation processes are of the highest standard and consistent throughout government.

Recommendation 5
It is recommended that the Director-General of DSDTI develops a whole-of-government protocol for legislative development/review consultation processes by 31 March 2007.

6.7 Separation of policy development and regulatory implementation/ compliance functions

Good legislation/regulation must be based on good policy. The policy development cycle includes the legislative/regulatory review function. It is common practice in many areas of public administration for policy development functions to be separated from service delivery functions.

Problems arising when functions are not separated include:

- policy development units have the requisite skills to undertake legislative/regulatory reviews, for example, consultation, analytical, project management and report writing. Staff engaged in service delivery areas may not have this skill set.
- a functional area that administers the relevant legislation/regulation is likely to have difficulty in considering issues from an independent perspective given its day-to-day role in legislative/regulatory administration. Comprehensiveness may also be compromised; and
- areas responsible for administering legislation/regulation, that also review legislation/regulation, are likely to be placed in difficult situations in dealing with stakeholder groups with whom they have long-term relations. Real and/or perceived conflicts of interest may arise.

A separate policy development area in an agency responsible for reviewing legislation/regulation will:

- greatly facilitate whole-of-government coordination of legislative/regulatory reforms, including the reforms proposed in this paper, the COAG reforms, on-going NCP obligations and those proposed by DSDTI
- promote better coordination of the legislative/regulatory program within a department and potentially provide a better service to the relevant Minister, Cabinet and Parliament; and
- lead to better management of legislative/regulatory review projects given the demands of service delivery.

To ensure that all relevant perspectives are considered, functional areas responsible for administering legislation/regulation would be key stakeholders in reviews, and staff could be seconded to reviews as required.

If agencies had a single 'whole-of-agency' legislative policy work unit, a network of legislative policy development officers from across government could be established to better coordinate regulatory reforms, similar to the Cabinet and Legislation Liaison Officer network in relation to Cabinet and parliamentary matters. This does not mean that an additional position needs to be created in agencies, but rather that an existing senior position would be designated with this important coordination role.

Conclusion: Ensuring legislative/regulatory development and review functions are separate from regulatory administration and compliance functions will facilitate an independent perspective, and result in better regulatory outcomes for business and the community. Establishing a network of senior legislative policy development officers across government will support the regulatory reform process.

Recommendation 6
It is recommended that the Director-General of each agency assesses the functional arrangements for administering and reviewing legislation within their agency, and proposes organisational arrangements to ensure legislative policy development and review functions are separated from regulatory administration and compliance functions. Each agency Director-General will submit these proposals to the CRRC for its consideration by 31 December 2006.

Recommendation 7
It is recommended that the Director-General of each agency nominates one senior officer to be the contact on all agency legislative reforms to establish a network of legislative policy development officers across government by 31 December 2006.

6.8 Provision of Information by Agencies to Business and the Community

Uncertainty about regulation and the requirements of agencies presents a burden to business and the community. Once written, legislation and policy is subject to interpretation in order to determine what is required. The requirements of agencies should be clearly marketed to business and the community.

> … regulators should be required to provide advice and support to employers and other parties with an interest in ensuring compliance … The ACCI describes this in terms of regulatory bodies having a dual role as both information providers and enforcers. (Regulation Taskforce 2006, p.39)

Conclusion: Agency websites and other communication means should be used to convey information to the public about regulatory requirements. These mechanisms should be of the highest standard to assist in the interpretation of regulatory requirements.

Recommendation 8
It is recommended that the CRRC commission an audit of all Queensland Government agencies to ensure they are fulfilling their responsibility of publicly providing information on compliance requirements, and report their findings to the CRRC by 31 March 2007.

6.9 Review of Legislation and Administrative Instruments

Once implemented, legislation, regulation and administrative procedures should be regularly reviewed to see if they are still relevant, and appropriately addressing the policy issue. This poses a significant burden on government to maintain a regular review of a large volume of regulation.

For example, according to the Administrative Arrangements Order, the Minister and the Director-General of the Department of Tourism, Fair Trading and Wine Industry Development have 67 primary Acts of Parliament within their legislation portfolio.

The task of reviewing such an extensive volume of primary legislation, together with subordinate legislation, would require substantial ministerial and agency commitment and resources.

In addition, primary Acts and subordinate legislation make up only part of the regulatory regime. On being passed, legislation needs to be implemented. It is possible that the policies and procedures used to implement the legislation have not passed the same critical regime of checks and reviews to which the legislation itself was subjected.

To effectively address the ongoing reform of legislation, agencies need to target areas of most concern to stakeholders. This may be specific parts of Acts or subordinate legislation (noting that subordinate legislation expires, and is therefore reviewed, on a 10-yearly cycle) or administrative requirements associated with legislation. The areas of concern need to be identified in consultation with stakeholders, such as occurred with the recent Hot Spots review undertaken by DSDTI.

The SDPC review did not find evidence of a consistent approach by agencies in conducting a systematic review of legislation of this type.

On 10 February 2006, COAG agreed that each jurisdiction will initiate *… at least annual targeted reviews to reduce the burden of existing regulation in its own jurisdiction through a public inquiry and reporting process.* (COAG 2006, Attachment B, p.5)

This provides a clear mechanism for the government to identify and review legislation in a targeted way to reduce the regulatory burden on business and the broader community.

It is also important that the government has in place gate-keeping arrangements to ensure that new legislation does not unnecessarily impact on the business sector and the broader community. This role is performed in part by the RIS process (see section 6.4).

This matter has also been recently addressed by COAG where they reached agreement in relation to …. *establishing and maintaining "gate keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible.* (COAG 2006, Attachment B, p.4)

Given these decisions, SDPC will not be making further recommendation on these issues, although as noted in section 6.3, the CRRC would play a key role in overseeing the annual review program and the gate-keeping arrangements.

Conclusion: There is a need for legislation and the administrative policy and procedures associated with regulation to be regularly reviewed to ensure they do not impose unnecessary burdens. A rationale for targeting and prioritisation is needed. A useful starting-point is the current national and State regulatory reform initiatives, including the DSDTI *Smart Regulation: Enhancing the Competitiveness of Queensland Business Report*.

Recommendation 9
It is recommended that Cabinet note that the COAG agreement for annual targeted reviews of key legislation and enhanced gate-keeping arrangements is strongly supported by SDPC's review of regulatory reform initiatives.

6.10 Costing the Impact of Regulation

The UK Government has identified an opportunity for government to help increase the innovation, productivity and growth of business by reducing legislative and regulatory burdens. The UK estimated that a £16 billion increase in GDP could be delivered for an investment of £35 million in the reduction of the regulatory burden (BRTF 2005).

In the Netherlands, it has been calculated that the administrative burden on businesses is 16.4 billion euros (or 3.6 per cent of GDP). The Netherlands has established a target of a 25 per cent reduction of this burden, which would mean that 4.1 billion euros in administrative burdens be cut. The Netherlands Bureau for Economic Policy Analysis has calculated that a 25 per cent reduction of the overall administrative burden on companies would lead to a 1.5 per cent increase in real GDP for the Netherlands and a 1.7 per cent increase in labour productivity (Actal 2006). Similar results in Queensland would equate to a possible increase in Gross State Product of up to $2.4 billion.

Costing the impact of regulation has gained momentum in the Australian Government with the introduction of a computer-based costing model**.** This model provides an automated and standardised process for policy development. The costing model is designed to generate information which can be used in policy processes such as developing RISs and Cabinet Submissions.

On 10 February 2006, COAG agreed that governments would … *adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government.* (COAG 2006, Attachment B, p.5) This provides a mechanism for a national approach on measuring the impact of regulation.

It would be beneficial to undertake follow-up work on the potential reduction in regulatory costs from the types of reforms outlined in this report and from other initiatives, such as

the Hot Spots review. To achieve this, it is proposed that SDPC undertake a further review in 2007 to identify the estimated compliance costs for specific forms of regulation, and the potential savings from regulatory reform initiatives. For example, some of the legislation identified in the Hot Spots review could be assessed for potential savings.

Conclusion: Costing the impact of regulation is a current trend around the world and nationally, and should be progressed in Queensland to better understand the impacts of regulatory activity.

Recommendation 10
It is recommended that Cabinet note that the COAG agreement to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden is strongly supported by SDPC's review of regulatory reform initiatives.

Recommendation 11
It is recommended that Phase 2 of SDPC's review of regulatory reform initiatives require the Chairman, SDPC to carry out an assessment of the estimated costs to business of targeted regulation, such as those identified in the DSDTI *Smart Regulation: Enhancing the Competitiveness of Queensland Business Report*, and identify the potential cost savings from regulatory reform, by 31 December 2007.

6.11 Overview of Progress with Reform

Due to the significance of the legislative/regulatory reform agenda, and concerns raised by business in particular, an overarching evaluation of progress with these recommendations should be undertaken. Progress on the approved recommendations contained in this report should be reviewed and reported on to the CRRC.

Recommendation 12
It is recommended that the Chairman, SDPC carry out a follow-up review of the implementation of the approved recommendations in this report by 31 December 2007.

Appendix 1

TERMS OF REFERENCE

Review Objectives

- examine and evaluate recent work undertaken on legislative and regulatory reform (including administrative processes in place to support implementation)
  - internationally
  - nationally
  - by other Australian States and Territories; and
  - local governments

  to provide an understanding of key current issues, directions and priorities of reform
- review and evaluate the work on legislative and regulatory reform (including administrative processes in place to support implementation) undertaken within Queensland to prepare a stocktake of current and planned initiatives
- identify and evaluate the most immediate regulatory reform issues for the Queensland Government and business
- identify and evaluate methodologies to ensure greater scrutiny of non-regulatory options prior to the commencement of the legislation development process
- identify and evaluate methodologies to ensure regular ongoing analysis of the effectiveness and efficiency of regulatory initiatives
- identify relevant potential research topics for future Service Delivery and Performance Commission (SDPC) work programs; and
- identify outdated legislation, regulation, policy and administrative processes and requirements of the Queensland Government, which adversely impact on business and government.

In addressing the above objectives, the SDPC will produce the following outcomes:

- a summary of regulatory reform initiatives from an international, national and State and Territory perspective
- a stocktake of regulatory reform initiatives within the Queensland Government
- an evaluation of identified initiatives and approaches for regulatory reform and mechanisms to streamline administrative processes for more responsive service delivery in Queensland; and
- initiatives for inclusion in future work programs for the SDPC.

Review Scope and Methodology

The review will focus at a strategic level with a mandate to address generic high level reform themes, rather than specific business or agency issues.

The SDPC is cognisant of the regulatory reform responsibilities of the DSDTI, including the current review of the hot spots for regulatory reform initiative. Additionally, any work tasked from the current COAG agenda relating to regulatory reform will be factored into the SDPC's review where appropriate. The SDPC refrained from any duplication of effort with these endeavours.

The following six stage methodology was used:

- Stage 1 Initial Information Gathering
  - Undertake written information searches to further contextualise the issue using the Internet and other relevant information.
- Stage 2 Detailed Information Gathering
  - Focused written information searches
  - Prepare summaries on current key areas, issues, directions and priorities from written information searches
  - Identify key stakeholders in the government and private sector
  - Develop a consultation schedule including Queensland Government agencies, key relevant business peak bodies and key Australian agencies
  - Chairman, SDPC corresponds with identified stakeholders informing them of the review and a request for participation in the process; and
  - Consultation with key stakeholders.
- Stage 3 Detailed Analysis
  - Analyse summaries of written information and consultations for key issues in the Queensland context; and
  - Prepare conclusions.
- Stage 4 Development of Advice
  - Prepare advice/recommendations.
- Stage 5 Report Development
  - Write draft final report, for consideration by the Chairman, SDPC.
- Stage 6 Report Consideration
  - After endorsement by the Chairman, SDPC, submit to the SDPC Commissioners for consideration.

The list of persons consulted during the review by SDPC is contained in Appendix 2.

The members of the review team were:

- Tony Hayes, Executive Director, Service Delivery and Performance Commission
- Scott Trappett, A/Director, Service Delivery and Performance Commission
- Christian McClelland, A/Principal Review Officer, Service Delivery and Performance Commission; and
- Paul Sheehy, Director, Service Delivery and Performance Commission (from 29 May 2006).

Appendix 2

SDPC CONSULTATION LIST

CONSULTATIONS UNDERTAKEN: IN PERSON AND BY TELEPHONE

Note: In addition to this consultation list, SDPC had access to the submissions to the DSDTI reviews, as well as feedback from peak industry bodies and the Queensland Small Business Advisory Council. A total of 1,277 responses were received across the DSDTI reviews.

QUEENSLAND: Directors-General	
Department of Justice and Attorney-General	Rachel Hunter
Department of Industrial Relations	Peter Henneken
Department of Primary Industries and Fisheries	Jim Varghese
Department of Transport	Bruce Wilson
Department of Local Government, Sport, Planning and Recreation	Michael Kinnane
Department of Communities and Disability Services Queensland	Linda Apelt
Department of Tourism, Fair Trading and Wine Industry Development	Helen Ringrose
Queensland Police Service	Commissioner Bob Atkinson
QUEENSLAND: Departments, agencies and committees	
Department of the Premier and Cabinet	Susan Horton, Executive Director, Policy Systems Anna Moynihan, Executive Director, Social Policy Mark Lynch, Director, Social Policy Dennis Molloy, Executive Director, Economic Policy
Treasury Department	Katrina Martin, Team Leader Trevor Dann, Principal Economist, Resources Branch
DSDTI	Rick Andrew, Executive Director, Strategic Policy Peter McKenna, Director, Strategic Policy Eleanor Mak, Team Leader, Strategic Policy
Office of Queensland Parliamentary Counsel	Peter Drew, Parliamentary Counsel Steve Berg, Deputy Parliamentary Counsel

Department of Industrial Relations	Adam Stevenson, Director, Policy Coordination and Strategic Planning
Department of Tourism, Fair Trading and Wine Industry Development	Ivan Caitlin, A/Executive Director, Policy and Coordination Unit Sara Garvey, Principal Policy Advisor
Environmental Protection Agency	Clare O'Connor, Executive Director, Policy Directorate Elissa Nichols, Team Leader
Department of Communities	Dianne Jeans, Executive Director, Policy Development and Coordination Branch Julieann Cork, Director, Strengthening NGO Project Barbara Shaw, Director, Legislative Review and Development Sarah Colquhoun, Director, Community Funding and Sector Development, Program Management Directorate
Disability Services Queensland	Ray Sutherland, Assistant Director-General, Office of Corporate and Executive Services and Accommodation Support and Respite Services Helen Ferguson, Executive Director, Policy Directorate Katie Holm, Director, Strategic Policy
Queensland Health	Paul Sheehy, Manager, Queensland Health Scientific Services Reform Team Michael Skinner, Principal Advisor, Foods, Environmental Health Unit Helen Little, A/Senior Director, Statewide Health Services Purchasing and Logistics Branch Di Brown, A/Director, HACC Unit, Statewide Health Services Purchasing and Logistics Branch Kim Woolgar, A/Director, Community Services Unit, Statewide Health Services Purchasing and Logistics Branch Craig Carey, Project Officer, Strengthening NGOs, Statewide Health Services, Purchasing and Logistics Branch
Department of Housing	Julianne McCullock, Director, Community Renewal Program
Scrutiny of Legislation Committee	Christopher Garvey, Research Director

QUEENSLAND: **Non-Government Organisations**	
Queensland Council of Social Service (QCOSS)	Jill Lang, CEO
Micah	Karen Walsh, QCOSS President and Coordinator
National Industry Association for Disability Services (ACCROD)	Valmae Rose, A/Executive Officer
QUEENSLAND: Universities	
Queensland University of Technology, School of Management	Professor Neal Ryan
Griffith University, School of Management	Professor Patrick Weller
QUEENSLAND: Local Government	
Brisbane City Council	Jude Munro, CEO
NEW SOUTH WALES: Departments	
New South Wales Treasury	Matthew Roberts, Policy Advisor
The Cabinet Office	John Tansey, Policy Manager, Inter-governmental and Regulatory Reform Branch
AUSTRALIAN CAPITAL TERRITORY: Departments	
Department of Economic Development	Ian Cox, Business and Economic Policy Unit Dr Michael Schaper, Small Business Commissioner
VICTORIA:	
Victorian Competition and Efficiency Commission (VCEC)	Simon Corden, Assistant Director, with Heather Ridley, Victorian Department of Treasury and Finance
NORTHERN TERRITORY:	
Department of the Chief Minister	Jean Rodericks, Policy Officer, Policy and Coordination Unit
WESTERN AUSTRALIA:	
WA Small Business Development Corporation	Juliet Gisbourne, Director Policy and Business Liaison
SOUTH AUSTRALIA:	
Department of Trade and Economic Development	Murray Arthur-Worsop, Manager, Policy Development, Economic Analysis and Policy Serena Yang, Project Officer, Economic Analysis and Policy

COMMONWEALTH:	
Australian Productivity Commission	Sabesh Shivasabesan, Director, Office of Regulation Review
OTHER UNIVERSITIES:	
Australian National University	John Braithwaite, Federation Fellow, Regulation Institutions Network, Research School of Social Sciences
NEW ZEALAND:	
Ministry of Economic Development	Robyn Henderson, Regulatory Policy Martin Garcia, Acting Manager, Regulatory Policy Elizabeth McDonald, Team Leader, Regulatory Impact Analysis Unit

Appendix 3

REGULATORY REFORM AGENDAS IN INTERNATIONAL AND AUSTRALIAN JURISDICTIONS

1 Overview

Brief comments will be made on the focus of literature in this area followed by a short description of key selected reforms in international and Australian jurisdictions. The UK and the Netherlands reforms will be described in additional detail as these countries have undertaken a ground-breaking and comprehensive set of reforms.

Much of the following information for the international section has been derived from websites, as noted in the report bibliography.

2 Focus of the literature

The literature on legislative/regulatory regulatory reform focuses largely on micro-economic reforms and regulatory and pricing regimes for specific industries, particularly the utilities. A key focus area is the reduction of regulatory costs for business. The impact of regulation on the government and the non-government sector has received comparatively little attention, although this is changing.

There is also a significant body of literature which addresses ways of improving government responses to regulation and reducing costs to business. There is increasing acknowledgment in the literature that regulation should not be the first choice of response to a policy question. However, when chosen, regulation and its associated processes including compliance time and other costs must be minimised. This approach has driven much of the contemporary legislative/regulatory reform work.

3 Description of key selected reforms in international jurisdictions

United Kingdom

The impetus for this work included claims from business and the community that there is too much regulation.

The UK regulation reforms have been informed by substantial consultation within government, business and the community and a highly focused policy development agenda utilising a high level task force, the Better Regulation Taskforce (BRTF), now the Better Regulation Commission and assessments of contemporary approaches in other countries.

The UK Regulatory Reform agenda has been comprehensively documented in recent years, particularly in 2005. The reform agenda has had ongoing support from the Prime Minister.

Overview of key components of the regulatory reform structure:

- Panel of Regulatory Accountability – a Cabinet Committee chaired by the Prime Minister that directs the regulatory reform process including the review of individual proposals for new regulation likely to impose a major new burden on business
- Better Regulation Executive – the executive arm of government responsible for driving the government's regulatory review and reform initiatives, located within the Cabinet Office
- Better Regulation Commission – an independent advisory group consisting of experts from the private, public and voluntary sectors that provides advice on actions to improve the effectiveness of government regulation
- Better Regulation Ministers – for key regulatory agencies, a specific Minister is given responsibility for driving regulatory reform within their agencies. Ministers and agencies report on their regulatory performance to Cabinet
- agencies – each agency should have a small regulatory impact unit that focuses on the review of regulatory proposals
- five principles of good regulation: proportionality, accountability, consistency, transparency, targeting
- introduction of a one in, one out approach to new regulations: if new regulation is considered, existing regulation should be repealed or a proposed piece of legislation may not be progressed
- introduction of a requirement for the Regulatory Impact Assessment (RIA) process for major regulatory proposals to consider compensatory simplification measures. Where it is not possible to include these measures, an explanation should be prepared. Clearance by the Panel for Regulatory Accountability should include consideration of offsetting simplification process
- development of a mandatory Consultation Code
- development of systems and processes for more comprehensive consideration of alternatives
- development of simplification plans must be prepared by all agencies including a rolling program to identify regulations that can be simplified, repealed, reformed or consolidated, in consultation with stakeholders
- development of a requirement for agencies to conduct reviews of regulations to ensure that they are having the intended effect
- the BRTF, now the Better Regulation Commission recommended that the UK measure and set targets to reduce the administrative costs of regulation on business and the voluntary sector as follows:
  - adopt the Dutch approach of measuring the administrative cost of regulation (using the Standard Cost Model) and setting targets to reduce it
  - measure the administrative burden in the UK by May 2006. This will also facilitate international benchmarking
- development of a methodology for assessing the total cumulative costs of regulatory proposals. Research will be conducted and consideration given to the benefits and

feasibility of establishing regulatory budgets. Set a target for reducing the administrative burden, by May 2006

- implementation of an organisational structure and resources to facilitate measurement and target achievement, by July 2005
- progression of the review of the operation of the Regulatory Reform Act
- introduction of a requirement for agencies to conduct post-implementation reviews of existing regulations
- introduction of a requirement to bring in new regulations wherever possible on common commencement dates, 5 April and 1 October each year; and
- development of a mechanism by the Regulatory Impact Unit in the Cabinet Office for submission of proposals for simplification by business and other stakeholders, by the end of 2005.

Netherlands

The key reform mechanism in the Netherlands is Actal, which was established as an independent advisory body in May 2000 to advise the Dutch Government on red tape reduction issues. Actal acts as a watchdog and facilitator, for the Dutch Government's objective to achieve a 25 per cent reduction in the overall administrative burden on businesses and the community by 2007.

A key method to cost the administrative burden and its reduction is the trialling of the Netherlands developed Standard Costing Methodology (SCM) by a collaboration of OECD countries. It is envisaged that the SCM will also be utilised for international benchmarking purposes.

Actal advises on proposed laws and regulations. All proposals must be submitted to Actal for review if they have an impact on the administrative burden on businesses and/or the community. Actal requires ministries to quantify the administrative burden in new legislation and report on alternative policies that may result in a reduced burden on businesses and the community.

For almost all policy areas, ministries have standard assessment tools to quantify the administrative burden in legislation. Actal checks the calculations and considerations. It may propose improvements and even call for the withdrawal of proposed laws and regulations. However, Actal's advice is not binding.

Actal also advises on existing laws and regulations. It does in two ways: indirectly and directly. Indirectly, Actal evaluates the ministerial action programs on administrative burden reduction that ministers are obligated to present annually to Parliament. In its advice, Actal highlights areas of concern and proposes improvements, focusing on the government policy as a whole as well as on the activities carried out by the individual ministries.

Directly, Actal carries out its own research regarding administrative burdens in existing laws and regulations to help the Dutch Government identify the potential to reduce administrative burdens.

On its own initiative, Actal supports the Dutch Government in its efforts to reduce the overall administrative burden on businesses and the community. The topic of reducing the administrative burden on businesses has been placed on the agenda of the European Institutions.

Canada

The External Advisory Committee (EAC) was established in May 2003 to provide an external perspective and expert advice on how the Federal Government needed to redesign its regulatory approach for Canada in the 21st century. *Smart Regulation: A Regulatory Strategy for Canada: Report to the Government of Canada (2004)* was the key output from the EAC.

Key recommendations include:

- development of a strategic policy framework for international regulatory cooperation that identifies priorities for coordinated federal and national action
- adoption of international approaches where appropriate. The number of specific Canadian regulatory requirements should be limited
- where specific Canadian regulatory requirements are adopted, the government should reduce or minimise the cumulative impact of regulatory differences on trade and investment by assessing alternative instruments for meeting policy objectives (for example, voluntary measures, information strategies) and promoting use of performance-based measures where possible
- creation of a more seamless regulatory environment
- development of a common, consistent regulatory approach to environmental assessments
- development of a cooperative approach to regulating in the areas of biotechnology and emergent industries
- development of overarching regulatory policy frameworks that spell out the government's objectives in a sector or area of regulation
- provision of single-window access for stakeholders and the public
- designation of coordinators with appropriate decision-making authority to oversee the regulatory involvement of various agencies in the case of significant investment projects
- development of a framework for the design and use of a mix of instruments, including compliance and enforcement strategies; and
- development and publication of guidelines for risk communication.

The first major challenge identified was that agencies operate in silos, resulting in regulation that advances only a narrow departmental mandate, rather than government-wide, social, environmental and economic priorities as well.

A second major challenge was the lack of coordination among agencies. There was no locus within government to facilitate interagency coordination on regulatory issues.

Development of a risk management framework for regulation to serve as a guide for agencies when they prepare specific risk management approaches was identified as important. More consistency with regard to departmental risk management was also considered necessary, recognising that different risks will require different management strategies.

For each regulatory program, risk should be classified in terms of severity and anticipated response, for example, through the use of different instruments; including thresholds of risk below which government will not intervene through regulation.

Singapore

Singapore's *Public Service for the 21st Century (PS21)* strategy includes requirements to use alternatives to direct regulations wherever applicable and to simplify regulations wherever possible.

A key strategy component is the Smart Regulation Movement. Features include the motivation of public officers to cut red tape through foundation courses and national education.

The Cut Red Tape Movement which aims to cut the bureaucratic rules and regulations in public agencies comprises the:

- Pro-Enterprise Panel: Keeps government regulations pro-business
- Zero-In-Process: Resolves cross-agency red tape and grey areas for the public
- Rules Review Process
- tasking of all public sector agencies to review their rules continuously; and
- Public Officers Working to Eliminate Red-tape (POWER): Looks at amending internal guidelines to provide greater operational flexibility.

New Zealand

The Ministry of Economic Development (MED) takes a leading role in improving capability in producing quality regulation in all government agencies. The Regulatory Impact Analysis Unit (RIAU) is responsible for advising Ministers on the adequacy of disclosure and analysis within agencies' RIS/Business Compliance Cost Statements that accompany new proposals for regulation.

The Unit also provides training and advice to agencies on how to undertake regulatory impact analysis. The RIAU has a focus on the impacts on business, partly due to its location within the Ministry of Economic Development. The Ministry is now in the process of evaluating this model, or a variation of it, for potential use in the New Zealand context.

4 Description of key selected reforms in Australia

The Review examined key drivers of reform in Australia: the COAG and NCP agenda, and the Queensland agenda. In addition, the Australian Productivity Commission is

playing an increasingly important role in both national and state agendas. The recent report (*Rethinking Regulation*) will significantly shape the focus and direction of reform agendas.

New South Wales

There are two key areas managing regulation in NSW:

- the IPART: the independent economic regulator for New South Wales. IPART oversees regulation in the electricity, gas, water and transport industries and undertakes other tasks referred to it by the New South Wales Government, including reviews
- Inter-governmental Relations and Regulatory Reform Branch, the Cabinet Office, New South Wales.

Three reviews are being undertaken concurrently in New South Wales at the time of writing: IPART, specific regulations impacting on Small Business, and regulations and processes government agencies impose on other government agencies.

Australian Capital Territory

As the majority of business in the Australian Capital Territory is small business, the focus is on the impact of regulation in this sector. The Australian Capital Territory Treasury now has a requirement for a Small Business Impact Statement to be undertaken.

Victoria

The Victorian Competition and Efficiency Commission (VCEC) is the Victorian Government's principal body advising on business regulation reform and identifying opportunities for improving Victoria's competitive position. It is an independent body and began operating on 1 July 2004.

VCEC has three key functions:

- reviewing RISs and advising on the economic impact of significant new legislation
- undertaking inquiries into matters referred to it by the Victorian Government; and
- improving the awareness of, and compliance with, competitive neutrality.

The VCEC 2004/05 Annual Report notes that during the year 17 business impact assessments, 33 RISs and three competitive neutrality complaints were addressed.

South Australia

In South Australia, the regulatory reform function is located in the Department of Premier and the Cabinet where the NCP and the RISs are managed.

The Economic Analysis and Policy Unit, Department of Trade and Economic Development has a focus on business, particularly on small business. The Unit acts as an advocate for business. RISs are done and reported in a Cabinet Circular.

Compliance Cost Statements similar to the ones used in New Zealand are being explored for use in the South Australia context. A website for sharing information and for consultation between government and business similar to the one in New Zealand is also being explored. South Australia has sunset clauses on regulations.

Tasmania

Treasury's Regulation Reform Unit (RRU) is responsible for administering the Legislative Review Program and the Subordinate Legislation Act processes. Members of the RRU have specific responsibilities in relation to broader NCP areas, including water reform, local government reform and transport reform. The Tasmanian RRU sits within the Economic Policy Branch of Treasury.

Western Australia

In Western Australia the reform agenda has addressed areas including professional licensing, local government businesses, aviation policy, taxis policy, agricultural marketing arrangements, energy pricing, water policy and policy on government business activities.

Northern Territory

The Northern Territory is progressing along similar lines as the other Australian States and Territories. In its work it recognised that the burden of existing regulations should be costed as well as the internal government-borne costs of reporting, reforming and measuring regulatory reform.

A Competition Impact Analysis (CIA) which is similar to a RIS is undertaken by a committee chaired by the Department of the Chief Minister. The proposal will not become legislation if not approved by the CIA Committee. The CIA Chair can grant a CIA exemption.

Australian Productivity Commission (the Commission)

The Commission, established in April 1998, is the Australian Government's principal advisory body on all aspects of micro-economic reform. The Commission's work covers all sectors of the economy. It extends to the public and private sectors and focuses on areas of Commonwealth as well as State and Territory responsibility.

Broad policy guidelines covering all of the Commission's work are contained in its legislation, including to:

- improve the productivity and economic performance of the economy
- reduce unnecessary regulation
- encourage the development of efficient and internationally competitive Australian industries
- facilitate adjustment to structural change

- recognise the interests of the community generally and all those likely to be affected by its proposals
- promote regional employment and development
- have regard to Australia's international commitments and the trade policies of other countries; and
- ensure Australian industry develops in ecologically sustainable ways.

The Office of Regulatory Reform (ORR) is an autonomous unit within the Commission whose major function is to advise the Australian Government, its agencies, and regulatory agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations.

The ORR also encourages the appropriate use of regulation and reduction of unnecessary regulation. It also examines and advises the government on RISs prepared by regulatory agencies.

Recent Australian Reports

The most recent significant work in the area of regulatory reform in Australia was the Australian Government commissioned *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (January 2006).

Key observations outlined in the report are outlined below:

- …issues commonly identified (by business groups about regulators) include heavy-handedness and undue legalism; failure to use risk assessment when determining how stringently or widely to endorse a regulation; poor and ineffective communication; and a lack of certainty and guidance to business about compliance requirements. (Regulation Taskforce 2006, p.7)
- …regulators should be required to provide advice and support to employers and other parties with an interest in ensuring compliance…The ACCI describes this in terms of regulatory bodies having a dual role as both information providers and enforcers. (Regulation Taskforce 2006, p.39)
- …difficulties in finding and using information to help it comply with regulatory obligations, and the need to provide similar information to different agencies and governments for different purposes. Business strongly supported the idea of harnessing the potential of information technology to help it meet regulatory and information requirements. (Regulation Taskforce 2006, p.137)
- …departments should start rationalising definitions. Also, care should be taken to verify that any new definitions are consistent with other legislation. (Regulation Taskforce 2006, p.138)
- …more consultation between departments is required to ensure less fragmentation when regulation is being developed. Departments should first consider what information is already being collected by the government before increasing reporting requirements. CPA Australia, sub. 113, p.11 (Regulation Taskforce 2006, p.141)
- …coordinated business registration process that would enable a number of registration processes to be undertaken at the same time, and for business

registration details to be shared across all levels of government. (Regulation Taskforce 2006, p.142)

- Many of the regulations in need of reform exist because of deficiencies in the processes and institutions responsible for them. Regulate first, ask questions later is how some business representatives characterised the approach. (Regulation Taskforce 2006, p.148)
- …there was concern at the lack of attention given to compliance costs and that there was generally no attempt to quantify such costs. (Regulation Taskforce 2006, p.148)
- Many participants agreed that a key failing in regulation-making is that the costs of regulation are not adequately considered. In particular, there was concern at the lack of attention given to compliance costs and that there was generally no attempt to quantify such costs. Unlike government spending programs, most of the costs of regulation are off-budget and lacking in transparency, making them convenient to ignore. (Regulation Taskforce 2006, p.148)
- The first step to improving the compliance burden is to understand and quantify it. CPA Australia, sub. 113, p.8 (Regulation Taskforce 2006, p.148); and
- …lack of opportunity to comment at an early stage, before a preferred option is locked in; little opportunity to provide feedback on the details when regulation is closer to finalisation (devil in the detail); a reluctance to consult again when regulations need to be reviewed; lack of time to provide feedback when asked for it; the perfunctory nature of much actual consultation (little real listening) which in any case is often based on a fait accompli; and as a result, little evidence that consultation had led to better regulation in many cases. (Regulation Taskforce 2006, p.150)

Appendix 4

QUEENSLAND SMALL BUSINESS ADVISORY COUNCIL MEMBERS

MEMBER	TITLE
Mr Michael Choi	Member for Capalaba
Mr John Russell	Managing Director for Russell Mineral Equip P/L
Mr John Lazarou	Marketing and Public Relations Director – Coffee Club
Mr Graeme Humphrey	Cairns Stationery Supplies
Mr Stephen Pronk	Managing Director of AI Scientific
Mr Russell Greaves	CEO of Synforce Lubricants
Ms Nancy Bamaga	Creative Economy
Ms Lorraine Pyefinch	Company Director – Best Practice Software
Mr Ken Murphy	CEO – Queensland Newsagents Federation
Mr Trevor Beckingham	Chairman – SME Committee CPA Australia
Mr Tony Selmes	Executive Director – Motor Trades Association
Mr Jim Vaughan	Australian Industry Group
Mr Ian Baldock	Executive Director, Queensland Retail Traders and Shopkeepers Association

Appendix 5

POLICY, GUIDELINES AND INSTITUTIONS WHICH GUIDE LEGISLATIVE DEVELOPMENT IN QUEENSLAND

The Queensland Cabinet Handbook

The Handbook outlines procedures and conventions for the operation of the Queensland Cabinet and its support processes. The procedures and conventions contained in the Handbook are designed to bind Cabinet and its associated processes to fundamental principles which include:

- Cabinet is responsible for the development and coordination of government policies
- consultation is an essential element of the Cabinet process
- submissions to be considered by Cabinet are to be of the highest standard reflecting the information needs of Ministers, to ensure informed decision-making can occur in accordance with the public interest; and
- Cabinet proposals reflect a rigorous examination of issues, whole of government coordination and accord with government policy (Queensland Cabinet Handbook 1.1).

Uniformity of approach to Cabinet and Cabinet Committee business is an important tool for injecting the necessary rigour into the process so that Ministers can be confident that their decisions are based upon sound information which has been gathered and presented in accordance with their collective needs. (Queensland Cabinet Handbook 5.0)

In order to ensure requirements of RISs and consultation have taken place the format of an Authority to Prepare a Bill Cabinet submission includes the following mandatory topics:

- Issues:
  - is Parliamentary Counsel to draft legislation?
  - are other Acts affected?
  - are there any fundamental legislative principle issues?
  - are there any other possible problems?
  - is there a sunset clause?
  - simplifying or adding to the legislative burden?
- Consultation:
  - community
  - Business Regulation Reform Unit
  - Integrated Development Assessment System
  - Ministerial Policy Committee
  - NCP–Treasury Department; and

– Office of the Queensland Parliamentary Counsel.

One of the best tools to ensure a policy is balanced and takes into account the likely impacts is the process of consultation. The Cabinet Handbook endorses this approach observing consultation as a fundamental and mandatory part of the development of all Cabinet submissions. It enables Ministers to receive sound, comprehensive and coordinated policy advice. Agencies initiating a Cabinet submission must ensure that they consider the interests of other agencies and relevant external stakeholders.

The Handbook also endorses that consultation with persons or organisations external to government (including employers, unions, community groups, and special interest groups) should be a routine part of policy development. Additionally, to ensure a whole of government approach is applied to matters to be considered by Cabinet, it is essential that full consultation takes place between the originating agency and other relevant, interested or affected agencies, prior to the matter becoming the subject of a formal submission.

Queensland Legislation Handbook

Additionally, the Queensland Legislation Handbook sets specific restrictive criteria for determining which policy should be incorporated into legislation. This document aims to provide a gate-keeper function to ensure only significant policy is enacted into primary or subordinate legislation.

The Handbook provides that policy may be implemented in many ways, and that legislation may not necessarily be the best way to achieve a particular policy goal. For example, it may be preferable to make agreements or business codes of practice to implement a policy. There must be significant reasons for choosing to implement a policy through an Act of Parliament. These reasons may include:

- existing rights and obligations must be modified and this may only be done effectively by unilateral intervention of the Parliament
- ensuring permanency for the policy to be implemented and this may only be achievable by an Act of Parliament; and
- the high level of importance given to the policy by the government may indicate that an Act of Parliament is the appropriate way to present the policy to the community.

The following matters suggest that an Act is not the best method to implement policy:

- the policy does not involve modification of existing rights and obligations
- the policy is purely administrative in character; and
- the policy is not of sufficient significance to justify it being given permanency in an Act of Parliament (Queensland Legislation Handbook 2.2).

Office of the Queensland Parliamentary Counsel

The *Legislative Standards Act 1992* established the Office of the Queensland Parliamentary Counsel (OQPC). Key functions of the OQPC include the drafting of Bills and amendments for Ministers, public sector agencies and Private members of the House.

In carrying out its drafting role, the OQPC provides advice to Ministers, units of the public sector and Members of Parliament on:

- alternative ways of achieving policy objectives
- the application of fundamental legislative principles and the lawfulness of proposed legislation
- ensuring the Queensland Statute Book is of the highest standard
- making arrangements for the printing and publication of Queensland legislation including Bills and information relating to that legislation; and
- arranging electronic access to Bills presented to the Legislative Assembly, other Queensland legislation and information relating to that legislation.

It should be noted that the OQPC's duty in relation to government legislation is to the government as a whole and not simply to individual Ministers, Members or agencies. The OQPC will report to the Premier if a Bill or subordinate legislation is not in accordance with Cabinet authority, if it infringes fundamental legislative principles, or otherwise contains matters of which Cabinet should be made aware.

Treasury Department

The Regulatory Reform and Competition Policy Unit is part of the Economic and Inter-Governmental Relations section of Treasury Department. This Unit has an oversight role in relation to NCP.

In April 1995 all Australian Governments endorsed a package of legislative and administrative arrangements to underpin NCP. Under NCP each participating jurisdiction is committed to implement a series of competition reforms. Pursuant to these agreements each jurisdiction is obliged to review and reform where necessary all legislation that contains measures restricting competition. NCP incorporates a legislation review process, which provides a rigorous assessment of the costs and benefits of reform options. This is done through the Public Benefit Test Guidelines. (Queensland Treasury 1999, p.1)

All Queensland legislation was comprehensively scrutinised and reformed under the guidelines in a process which commenced in 1996. All subsequent legislation passed after this time has been subjected to the same guidelines.

The guiding principle for these reviews is that legislation should not restrict competition unless it can be demonstrated that:

- The objectives of the legislation can only be achieved by restricting competition; and

- The benefits of the restriction to the community as a whole outweigh the costs. (Queensland Treasury 1999, p.3)

According to the Public Benefit Test, the guidelines aim to ensure that reviews focus on a thorough and meaningful analysis of the benefits and costs of alternative options, which takes full account of employment, regional development, social, consumer and environmental effects. (*ibid,* p.1)

The Public Benefit Test aims to identify the nature and incidence of all relevant economic, social and cultural costs and benefits to the community of restricting competition when compared with other means which might meet the government's objectives. Accordingly, these guidelines provide a framework for identifying both the effectiveness of legislation, and the impacts of restrictions on competition on individuals and groups of individuals in the community. (*ibid,* p.5)

Restrictions on competition include:

- any anti-competitive conduct likely to be a breach of Part IV, Trade Practices Act
- a legislated monopoly or exclusive arrangement for the provision of goods and services
- restrictions on entry to a market
- price controls
- requirements for a prescribed quality or technical standard; restrictions on the conduct of a business (for example, hours of operation, size); and
- limitations or prevention of participation in a particular business activity.

The systematic abolition of the above restrictions on competition is designed to reduce the regulatory burden on business and the community.

Scrutiny of Legislation Committee

The Scrutiny of Legislation Committee's (the Committee) area of responsibility is set out in s103 of the *Parliament of Queensland Act 2001:*

103. (1) The Scrutiny of Legislation Committee's area of responsibility is to consider
(a) the application of fundamental legislative principles to particular Bills and particular subordinate legislation; and
(b) the lawfulness of particular subordinate legislation;
by examining all Bills and subordinate legislation.

(2) The committee's area of responsibility includes monitoring generally the operation of-
(a) the following provisions of the *Legislative Standards Act 1992*
– section 4 (Meaning of "fundamental legislative principles")
– part 4 (Explanatory notes); and
(b) the following provisions of the *Statutory Instruments Act 1992* (Qld)
– section 9 (Meaning of "subordinate legislation")

- part 5 (Guidelines for Regulatory Impact Statements)
- part 6 (Procedures after making of subordinate legislation)
- part 7 (Staged automatic expiry of subordinate legislation)
- part 8 (Forms)
- part 10 (Transitional).

The Committee also has a general monitoring role in relation to various matters, including:

- RISs
- explanatory notes; and
- tabling and disallowance of subordinate legislation.

The Committee is an all-party committee comprising seven Queensland Members of Parliament and is responsible for scrutinising both primary and subordinate legislation.

In respect of the scrutiny of Bills, the Committee tables a report to Parliament, the "Alert Digest", at the beginning of every sitting week. These digests canvass any concerns that the Committee has about the compliance of Bills (introduced into the House in the previous sitting week) with the fundamental legislative principles.

The digests also report ministerial responses to issues raised in earlier digests. The main aim of the Alert Digests is to provide information to the House in an effort to enhance debate on compliance of legislation with fundamental legislative principles.

The Committee also examines subordinate legislation after it is made to assess its compliance with the fundamental legislative principles. (Queensland Scrutiny of Legislation Committee 2005).

Regulatory Impact Statements

RISs are only completed for subordinate legislation when required.

The Queensland Government enacted the *Statutory Instruments Act 1992* and *Legislative Standards Amendment Act 1994*, with the general goal of ensuring that it was statutorily established that proposed regulations would be effective and efficient in both form and content.

As a consequence, the *Statutory Instruments Act 1992* and the *Legislative Standards Act 1992* now contain provision for:

- RISs to be prepared for subordinate legislation likely to impose appreciable costs on the community or part of the community
- explanatory notes to be prepared for all new Bills and new significant subordinate legislation for which a RIS is required; and
- a continuing statutory requirement for sunsetting subordinate legislation.

RIS requirements are designed to counter potential over-reliance on government regulations to solve problems. Government must choose among competing policy options in a way which will optimise the benefits delivered in return for the associated costs.

The RIS is the crucial element in this process. Its purpose is to explain to the community the need for the subordinate legislation and to set out the benefits and costs which would flow from its adoption. It also explains the alternative measures considered and why they have been rejected. The RIS should be intelligible to the general public to allow those with an interest in regulatory proposals to make informed comments. (Queensland Government 2005)

The RIS process provides a structured process for consultation and assessment of impacts in relation to the development of regulations. One of the main aims of the RIS process is to improve the regulatory environment by ensuring the best solution is implemented after consideration and analysis of the issues and options available.

DSDTI provides advice and assistance to Queensland Government agencies on the RIS process. To assist in the RIS role, DSDTI has developed RIS Guidelines and a RIS Software Package for Queensland Government regulatory agencies to use. Both the Guidelines and the Software Package provide guidance in undertaking and meeting the requirements of the RIS process.

Training is also delivered to those officers in Queensland Government agencies who are involved in regulatory development to ensure that they are familiar with the RIS processes; and to promote awareness of alternative approaches to achieving Queensland Government policy objectives other than simply relying on highly prescriptive regulation.

Department of State Development, Trade and Innovation

In addition to the assistance provided in the RIS process as discussed earlier, DSDTI has produced two significant guidelines to assist agencies:

- *Guidelines on alternatives to prescriptive regulation*

  The guidelines have been developed to provide overview information on alternatives to prescriptive regulation as a means of simplifying the regulatory environment and reducing costs to business; and

- *Regulatory Development Guidelines: Approaches to enhance the quality of local laws*

  This document is to assist local law makers to develop flexible regulatory systems to encourage more innovative and efficient business practices required to fulfil compliance requirements and achieve intended regulatory outcomes.

The guidelines provide processes to improve regulatory development, incorporate appropriate avenues for the engagement of the community on regulatory proposals that may have some appreciable impact and provide information on alternative regulatory and non-regulatory approaches.

The outcome of such processes is to minimise the impact of new or amended regulatory regimes on the community, provide a method of engagement of the community and improve awareness and understanding of the objectives of any regulatory actions.

The Queensland Competition Authority

The Queensland Competition Authority is an independent statutory authority, which was created as a result of a series of COAG agreements, which aimed to forge a national approach to the implementation of competition policy. The Authority was established by the *Queensland Competition Authority Act 1997*.

The Authority consists of members appointed by the Governor in Council. While the Authority is subject to the written directions of the Premier and Treasurer in performing its functions, it is not subject to government direction in relation to the conduct of investigations, reports or access to services.

The Authority's main responsibilities are to ensure that:

- significant government business activities which compete with the private sector do so fairly
- government-owned monopolies and privately owned water monopolies do not abuse their market power; and
- essential infrastructure is accessible to all potential users.

The Authority currently works within the following industries:

- electricity
- gas
- ports
- rail
- Local Government; and
- water.

The government has also assigned the Authority a variety of other responsibilities related to the implementation of competition reform. Under section 10(e) of the *Queensland Competition Authority Act 1997*, the Authority can be directed by the Premier and Treasurer to examine and report to them on any matter relevant to the implementation of competition policy.

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Service Delivery and Performance Commission Act 2005
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