

## Review of evidence - evaluation

- 3.1 This chapter examines the ways in which the Deregulation Agenda has been subject to evaluation and review.

### Reviews conducted to date

- 3.2 Evaluation and review of government policies and practices is a cornerstone of effective public governance, as the ANAO outlined in its Better Practice Guide to Public Sector Governance.<sup>1</sup>
- 3.3 For whole-of-government initiatives, such as the government's Deregulation Agenda, the ANAO noted that 'appropriate review, program evaluation and audit mechanisms are of particular importance'.<sup>2</sup>
- 3.4 As the ANAO audit noted, PM&C began but did not complete an internal review of the agenda's implementation in 2014. This was superseded by a 2015 internal review of the agenda undertaken at the initiative of the SES Reference Group, which focused on a range of administrative efficiency matters.<sup>3</sup>
- 3.5 In November 2015 the government released the report of the Independent Review of Whole-of-Government Internal Regulation (the Belcher Red Tape Review). This review, commissioned by the Secretaries' Board, had a broad scope and sought to identify the impact of regulations on

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1 Australian National Audit Office, *Public Sector Governance: Strengthening Performance Through Good Governance – Better Practice Guide*, June 2014, available at <https://www.anao.gov.au/work/better-practice-guide/public-sector-governance-strengthening-performance-through-good>.

2 Australian National Audit Office, *Public Sector Governance: Strengthening Performance Through Good Governance – Better Practice Guide*, June 2014, p. 35.

3 ANAO Audit Report No. 29 (2015–16), p. 40.

- Commonwealth entities 'to identify opportunities to reduce red tape in internal to government regulation and processes'.<sup>4</sup>
- 3.6 Following the 2015 internal review and the Belcher Red Tape Review, a range of changes were made to the implementation of the agenda, mostly around the level of reporting required from individual portfolios to PM&C.<sup>5</sup>
- 3.7 While the adoption of the recommendations of these reviews is in accordance with good governance practice, a broader review of the agenda's economic impacts – rather than its implementation – remains to be done.
- 3.8 In December 2013, Ministers agreed to review the economic impacts of the Deregulation Agenda within three years. PM&C advised the Committee that the implementation of this decision 'is under discussion with the Government'.<sup>6</sup>
- 3.9 PM&C further advised the Committee that two other review processes are relevant.<sup>7</sup>
- 3.10 In September 2016, the Productivity Commission began a twelve-month review of the Australia's productivity performance, which will identify reform priorities. This review is intended to be the first in a series, at five-year intervals. The scope of the inquiry is to:
- analyse Australia's productivity performance in both the market and non-market sectors including an assessment of the settings for productive investment in human and physical capital and how they can be improved to lift productivity
  - examine the factors that may have affected productivity growth, including an assessment of the impact of major policy changes, if relevant
  - prioritise potential policy changes to improve Australian economic performance and the wellbeing of Australians by supporting greater productivity growth.<sup>8</sup>
- 3.11 PM&C also drew the Committee's attention to the government's commitment to automatic post-implementation review (PIR) of 'significant regulatory changes'. The government's PIR process is administered by the
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4 Department of Finance, The Independent Review of Whole-of-Government Internal Regulation: Terms of reference and Media release, available at: <https://www.finance.gov.au/publications/reducingredtape/>.

5 ANAO Audit Report No. 29 (2015-16), p. 40.

6 Department of the Prime Minister and Cabinet, Submission 1, pp [1-2].

7 Department of the Prime Minister and Cabinet, Submission 1, pp [1-2].

8 Productivity Commission, Productivity Review: Terms of reference, <http://www.pc.gov.au/inquiries/current/productivity-review/terms-of-reference> (accessed 18 January 2017).

department's Office of Best Practice Regulation (OBPR). The OBPR's Guidance Note explains that agencies:

... need to undertake a post-implementation review (PIR) for all regulatory changes that have major impacts on the economy. PIRs also need to be prepared when regulation has been introduced, removed, or significantly changed without a regulation impact statement (RIS).<sup>9</sup>

3.12 The Guidance Note also provides specific criteria for which regulatory measures require a PIR:

- The OBPR has assessed the proposal as having a substantial or widespread economic impact.
  - ⇒ For regulations that have been subject to a Long Form RIS, where the policy was expected to have a substantial or widespread impact on the economy, a PIR is required to be completed within five years.
- A compliant RIS for the regulatory change was not prepared for the final decision and the change was neither minor nor machinery in nature.
- The Assistant Minister for Productivity, assisted by the advice of OBPR, together with the relevant Minister agree that the regulatory analysis presented to policy makers at the final decision point sufficiently diverges from best practice. This requirement applies to both Standard and Long Form RISs.<sup>10</sup>

3.13 In addition to outlining the problem and the government's objectives in making regulatory change (whether adding, amending or removing regulation), PIRs should include:

... information about the actual impacts of the regulation, including the regulatory costs. Stakeholder consultation is essential and is a key part of a PIR.<sup>11</sup>

3.14 Ministers agreed in December 2013 that:

... significant regulatory changes - potentially including some red tape reduction measures - would be automatically subject to a post-implementation review (PIR) process within five years of implementation.<sup>12</sup>

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9 Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, *Post-Implementation Reviews: Guidance Note*, available at <http://www.dpmc.gov.au/resource-centre/regulation/post-implementation-reviews-guidance-note>, p. 1.

10 Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, *Post-Implementation Reviews: Guidance Note*, available at <http://www.dpmc.gov.au/resource-centre/regulation/post-implementation-reviews-guidance-note>, p. 2.

11 Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, *Post-Implementation Reviews: Guidance Note*, available at <http://www.dpmc.gov.au/resource-centre/regulation/post-implementation-reviews-guidance-note>, p. 1.

12 Department of the Prime Minister and Cabinet, Submission 1, p. [2].

- 3.15 To date, nine measures have required a PIR, the earliest of which is due in January 2019.<sup>13</sup>
- 3.16 Noting that the government has established other mechanisms for the review of legislation and regulatory conditions, the Committee nonetheless recommends that a focused review of the economic benefits of the government's Deregulation Agenda be initiated in the first half of 2017. Such a review would provide a basis for greater confidence for the government to rely on advice as to the extent of economic benefits and support future deregulatory decisions by providing an evidence base for decisions and emphasising the economic and productivity benefits of the agenda.

### **Recommendation 1**

**That the Department of the Prime Minister and Cabinet report back to the Joint Committee of Public Accounts and Audit on progress implementing the Australian Government's December 2013 decision to review the economic impacts of the Deregulation Agenda.**

**Senator Dean Smith**  
**Chair**  
**15 February 2017**

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13 Department of the Prime Minister and Cabinet, Submission 1, p. [2].