
The Parliament of the Commonwealth of Australia

Report 460

Public Sector Governance

Inquiry based on Auditor-General's report 29 (2015-16)

Joint Committee of Public Accounts and Audit

February 2017
Canberra

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Foreword

On 13 October 2016, the Joint Committee of Public Accounts and Audit (JCPAA) resolved to review Australian National Audit Office (ANAO) Report No. 29 (2015-16) *Implementing the Deregulation Agenda: Cutting Red Tape*, under the theme of public sector governance.


The Committee found that the government's Deregulation Agenda was implemented according to good public governance principles. Central coordination from the Department of the Prime Minister and Cabinet ensured that a consistent, whole-of-government approach was taken. Guidelines for reporting and information-sharing were established and reviews in 2015 shaped the ongoing implementation of the policy.

Within individual portfolios, identified Deregulation Units were established, with responsibility for implementing the agenda within that portfolio and coordinating reporting measures, along with Regulation Impacts Statements to accompany policy proposals. Portfolios also undertook stakeholder consultation in assessing areas for deregulatory action.

To support future deregulatory action and to emphasise the economic and productivity benefits of the Deregulation Agenda, the Committee supports the Australian Government's December 2013 decision that an economic impact assessment should be undertaken. The Committee has therefore recommended that the Department of the Prime Minister and Cabinet report back on progress implementing this decision.

I thank Committee members for their deliberation on these matters.

Senator Dean Smith
Chair



Membership of the Committee

Chair Senator Dean Smith

Deputy Chair Mr Julian Hill MP

Members Senator Cory Bernardi

Ms Nicole Flint MP

Mr Ross Hart MP

Mr Steven Irons MP

Ms Madeleine King MP

Senator Jenny McAllister

Dr John McVeigh MP

Ms Gai Brodtmann MP

Mr Andrew Gee MP

Mr Kevin Hogan MP

Senator Chris Ketter

Mr Andrew Laming MP

Senator Bridget McKenzie

Committee Secretariat

Secretary Mr David Brunoro

Inquiry Secretary Dr Joel Bateman

Administrative Officer Ms Tamara Palmer



Terms of reference

Any items, matters or circumstances connected with Auditor-General report No. 29 (2015-16) *Implementing the Deregulation Agenda: Cutting Red Tape*.

Background

Having considered Auditor-General Reports 11-37 (2015-16) and 1-19 (2016-17) on 13 October 2016, the Joint Committee of Public Accounts and Audit resolved to conduct an inquiry based on the above Auditor-General report.

Under section 8(1) of the legislation establishing the JCPAA, the *Public Accounts and Audit Committee Act 1951*, one of the duties of the Committee is to 'examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament' and 'report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those ... reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament'.



List of abbreviations

ANAO	Australian National Audit Office
MAC	Ministerial Advisory Council
OBPR	Office of Best Practice Regulation
PIR	Post-Implementation Review
PM&C	Department of the Prime Minister and Cabinet
RIS	Regulation Impact Statement



List of recommendations

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.

Executive Summary

- 1.1 The Joint Committee of Public Accounts and Audit's (JCPAA) inquiry into public service governance was based on the Auditor-General's report No. 29 (2015–16) *Implementing the Deregulation Agenda: Cutting Red Tape (Across Entities)*.
- 1.2 The Committee concurred with Australian National Audit Office's (ANAO) findings that the Deregulation Agenda has overall been implemented well by the Australian Public Service, with strong leadership by the Department of the Prime Minister and Cabinet (PM&C).
- 1.3 The focus of the Committee's inquiry into the government's Deregulation Agenda was on the governance of the agenda: how it was implemented and how it was reviewed. The Committee was pleased to see that the agenda was implemented according to good public governance principles.
- 1.4 These principles included consultation with external stakeholders, clear reporting requirements, the creation of identified units with responsibility, information sharing and responsiveness to reviews.
- 1.5 There is some evidence that there is likely to have been a significant net economic benefit from the Deregulation Agenda, however there has not yet been independent verification of the outcomes. Having the extent of this benefit independently quantified would support future regulatory decision-making, with likely positive public administration outcomes. A future, more comprehensive, post-implementation review process would further add to the evidence base for such programs.
- 1.6 While the government has established other review mechanisms for regulatory changes, the Committee notes that those processes will not necessarily include evaluations of the government's Deregulation Agenda.
- 1.7 The Committee therefore strongly supports the single ANAO recommendation: that PM&C take steps to implement the Australian

Government's December 2013 decision that the economic impacts of the Deregulation Agenda be assessed within three years.

- 1.8 In its response to the ANAO report, PM&C advised that 'implementation of this decision is currently being discussed with the Government'.¹
- 1.9 PM&C reiterated the information in its submission to this inquiry and said 'We hope to be able to provide the Committee with an update on these discussions in the first half of 2017'.²
- 1.10 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.**

1 ANAO Audit Report No. 29 (2015-16), p. 11.

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

Review of evidence - implementation

- 2.1 This chapter discusses the agenda's implementation; the following chapter examines the review mechanisms by which the agenda's outcomes can be assessed.
- 2.2 The chapter comprises:
- Overview of the Deregulation Agenda;
 - The role of PM&C; and
 - The departments selected for audit.

Overview of the Deregulation Agenda

Background

- 2.3 The stated goal of the government's Deregulation Agenda is to 'make life easier for Australians - and to make it easier for businesses to decide to invest and create more jobs'.¹
- 2.4 The Deregulation Agenda consists of a number of commitments, including:
- centralising responsibility for deregulatory functions to PM&C;
 - a measurable commitment to reducing the cost of complying with Commonwealth regulations (of \$1 billion annually);
 - the introduction of twice-annual parliamentary repeal days;
 - undertaking a stocktake of all Commonwealth regulations;
 - establishing Ministerial Advisory Councils to advise on deregulation;

¹ The Hon Tony Abbott MP and Christian Porter, 'Foreword', *The Australian Government Annual Deregulation Report 2014*, p. ii.

- introducing incentives for the Australian Public Service to cut red tape, including through links between Senior Executive Service remuneration to quantified regulatory reductions;
 - introducing a requirement that all Cabinet submissions must include a Regulation Impact Statement (RIS);
 - establishing deregulation as a standing item on Council of Australian Governments meeting agendas; and
 - establishing a Regulator Performance Framework to assess and audit the performance of individual regulators.²
- 2.5 The government also developed a Regulatory Burden Management Framework to estimate the likely change in the cost of complying with regulations. This formed the basis of the estimated savings as a consequence of the deregulatory approach.³
- 2.6 Ministerial Advisory Councils (MACs) were established within each portfolio, comprised of representatives of business, not-for-profit and other industry stakeholders. Their role, as it relates to the Deregulation Agenda, is to ‘provide advice... on opportunities to reduce red and green tape within their respective portfolios’.⁴

Governance of the agenda

- 2.7 Broadly, the ANAO audit found that the Deregulation Agenda had been well implemented, both via the central coordination of the PM&C and by the individual portfolios selected for this audit.

Department of the Prime Minister and Cabinet

- 2.8 PM&C has a central, coordinating role in the implementing the government’s Deregulation Agenda. As such, the Office of Deregulation was established within the department in late 2013 and the Office of Best Practice Regulation (OBPR) was transferred to PM&C from the Department of Finance. The OBPR is responsible for administering the RIS system and working with departments related to deregulatory processes and estimating regulatory costs and savings.⁵

2 *The Australian Government Annual Deregulation Report 2014*, pp 7–8.

3 *The Australian Government Annual Deregulation Report 2014*, pp 10–11.

4 Department of the Prime Minister and Cabinet, *Establishment of Ministerial Advisory Councils or Equivalent Consultation Mechanisms*, 13 December 2013, available at <https://www.cuttingredtape.gov.au/resources/guidance/ministerial-advisory-councils>.

5 ANAO Audit Report No. 29 (2015–16), p. 18.

- 2.9 PM&C established both a Secretaries' Committee on Deregulation and a Senior Executive Service Reference Group (comprised of the heads of each portfolio's Deregulation Unit).⁶
- 2.10 PM&C, following guidelines of best practice for effective governance, worked to ensure that consistent lines of communication were maintained, including by nominating portfolio liaison officers for Deregulation Units and by hosting information sharing events.⁷
- 2.11 PM&C also published examples of different portfolios' deregulatory initiatives for other departments to draw on.⁸ A website, cuttingredtape.gov.au, was created to further share information and raise awareness (both across the government and for members of the public) and maintain a central location for relevant publications and resources. The website also includes a form which allows members of the public to identify areas where regulation could be reformed.
- 2.12 Reporting from individual portfolios to PM&C provided the basis of the Australian Government Annual Deregulation Report; each portfolio was also initially required to publish its own deregulation report to provide more detailed information on that portfolio's deregulatory action taken.⁹
- 2.13 The reports from portfolios to PM&C took two forms: quarterly and annual reports. The quarterly reports listed progress for the period against deregulation targets, while the annual report forecasted future actions.¹⁰
- 2.14 Following the 2015 independent review, the guidelines for portfolios were reduced and amended as recommended, including the discontinuation of individual portfolio annual deregulation reports.¹¹

Selected departments

- 2.15 The ANAO audit concluded that the selected departments – Communications and the Arts; Health; and Industry, Innovation and

6 ANAO Audit Report No. 29 (2015–16), p. 19.

7 ANAO Audit Report No. 29 (2015–16), p. 9.

8 Department of the Prime Minister and Cabinet, Deregulation Units: Key Approaches 2015, available at:

https://www.cuttingredtape.gov.au/sites/default/files/files/du_essentials_final.pdf, accessed 23 January 2017, p. iii.

9 Barbara Belcher, *Independent Review of Whole-of-Government Internal Regulation: Report to Secretaries Committee on Transformation – Volume 2 Assessment of key regulatory areas*, August 2015, p. 100.

10 Barbara Belcher, *Independent Review of Whole-of-Government Internal Regulation: Report to Secretaries Committee on Transformation – Volume 2 Assessment of key regulatory areas*, August 2015, p. 100.

11 Barbara Belcher, *Independent Review of Whole-of-Government Internal Regulation: Report to Secretaries Committee on Transformation – Volume 2 Assessment of key regulatory areas*, August 2015, p. 102; ANAO Audit Report No. 29 (2015–16), p. 40.

- Science – followed several principles of governance best practice, including by adopting consistent costing measures in assessing the impacts of deregulation initiatives, utilising existing and new stakeholder consultation forums in considering deregulatory approaches and having regard to risk-based and proportionate approaches to assessing the benefits of regulatory arrangements.¹²
- 2.16 Each portfolio established a Deregulation Unit based on the guidelines provided by PM&C. The units were funded out of existing resources – with each portfolio self-assessing the requirements of their Deregulation Unit – and therefore did not themselves impose any additional costs.¹³
- 2.17 By establishing these units, clear responsibility for meeting portfolio requirements in implementing the agenda was assigned.
- 2.18 These units had five key activities, as outlined in the *Deregulation Units: Key Approaches* guide published by PM&C:
- Building capacity and changing culture: driving cultural change through clear expectations and building capacity;
 - Consulting and collaborating: undertaking stakeholder engagement to capitalise on reform opportunities;
 - Supporting regulators: engaging regulators in improving the design and administration of regulation;
 - Reducing regulatory duplication: identifying and removing regulatory duplication; and
 - Coordinating, monitoring and reporting: centrally coordinating the deregulation agenda in their portfolios.¹⁴
- 2.19 A further role of the decentralised Deregulation Units was to support their respective portfolios' work on RIS for cabinet submissions.¹⁵
- 2.20 Units were expected to contribute to the whole-of-government processes established by PM&C, including contributions to the annual Deregulation Reports.¹⁶

12 ANAO Audit Report No. 29 (2015–16), pp 8–9.

13 Answer to Question on Notice, Department of the Prime Minister and Cabinet, Question 48, Additional Estimates, February 2014.

14 Department of the Prime Minister and Cabinet, Deregulation Units: Key Approaches 2015, available at:
https://www.cuttingredtape.gov.au/sites/default/files/files/du_essentials_final.pdf, accessed 23 January 2017, p. iii.

15 Department of the Prime Minister and Cabinet, Deregulation Units: Key Approaches 2015, available at:
https://www.cuttingredtape.gov.au/sites/default/files/files/du_essentials_final.pdf, accessed 23 January 2017, p. iii.

16 Department of the Prime Minister and Cabinet, Office of Deregulation – Guidance Note: Establishment of Portfolio Deregulation Units, 17 December 2013. Provided in Answer to

- 2.21 Within each portfolio, the units had responsibility for information sharing and engagement, both with the portfolio as a whole and with the relevant external stakeholders. The audit notes that units employed strategies such as internal workshops and seminars and distributing written materials to explain both the broad approach to deregulation and issues specific to that portfolio.¹⁷

Question on Notice, Department of the Prime Minister and Cabinet, Question 48, Additional Estimates, February 2014.mini

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

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.¹
- 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'.²
- 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.³
- 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

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'.⁴
- 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.⁵
- 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'.⁶
- 3.9 PM&C further advised the Committee that two other review processes are relevant.⁷
- 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.⁸
- 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).⁹

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.¹⁰

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.¹¹

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.¹²

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].

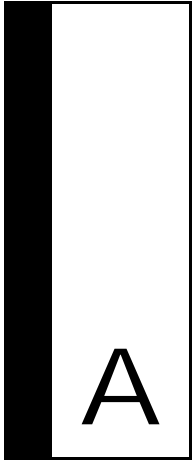
- 3.15 To date, nine measures have required a PIR, the earliest of which is due in January 2019.¹³
- 3.16 Noting that the government has established other mechanisms for the review of legislation and regulatory conditions, the Committee nonetheless recommends that a focused review of the economic benefits 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

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



Appendix A - Submissions

1. Department of Prime Minister and Cabinet

