

GOVERNMENT RESPONSE TO THE LAW REFORM COMMITTEE'S REPORT ON REGULATORY EFFICIENCY LEGISLATION

The Law Reform Committee's Report recommends the enactment of legislation to permit businesses to obtain approval for Alternative Compliance Mechanisms (ACM's) which would allow them to meet the objectives of regulatory regimes in a more efficient manner than provided for under prescriptive regulations. The Report also makes recommendations in regards to reform of the Regulatory Impact Statement (RIS) process and the introduction of Legislative Impact Statements.

1. Regulatory Efficiency Legislation ("REL") (Recommendation 1)

The Government notes the recommendation that REL be enacted to allow businesses to obtain approval for ACM's to operate in place of prescriptive regulations. This is consistent with the Government's small business policy released prior to the 1996 election. Some recommendations will require further consideration prior to implementation. These are described below.

2. Starting the ACM scheme and coverage (Recommendations 2-4)

The Government believes that the ACM scheme should apply to regulations which impose regulatory compliance obligations upon business enterprises. The Government notes there may be some regulations which are not suitable for ACM's or where an ACM would yield no benefit to a business. Further consideration will be given to the process of determining which regulations will be subject to ACM's and ensuring the publication of clear and appropriate regulatory objectives.

3. Obtaining an ACM (Recommendations 5-12)

The Government supports the recommendation that a business seeking to implement an ACM be able to apply to the responsible Minister for approval. Further consideration will be given to the approval process. The Government is concerned that the requirement to obtain the approval of two Ministers may be too burdensome. Industry bodies should be permitted (and encouraged) to develop ACM models on behalf of their members.

The responsible Minister should be required to obtain independent advice that a draft ACM satisfies the above criteria, although in some cases bodies other than the Office of Regulation Reform (ORR) will be better able to provide this advice. Draft ACM's should also be made available to the agency which administers the regulation and to other bodies involved in compliance (eg. Victoria Police).

The criteria set out in recommendation 10 are supported as the *minimum* criteria for assessing an ACM, with any additional criteria set by the responsible Minister. Further consideration will need to be given to the consequences of a rejection or failure to decide and to rights of appeal.

4. Publication of proposed ACM's (Recommendations 13-14)

The recommendation that public comment be sought on approval criteria and proposed ACM's is supported. The Government believes that electronic publication should be encouraged, but should be implemented by guidelines rather than legislation.

5. Tabling, disallowance and scrutiny (Recommendations 15-20)

The Government agrees that decisions on applications should be published and that ACM's be subject to review by the Scrutiny of Acts and Regulations Committee ("SARC"), which would have the same power to report and recommend disallowance as it has for regulations. ACM's should be tabled in Parliament and be subject to disallowance, as is currently the case with regulations.

6. Status of ACM's (Recommendations 21-22)

Public access to ACM's must be considered further. ACM's should, as a general rule, be public documents. The Government agrees that businesses may have to make a commercial decision as to whether they wish to disclose confidential information to the degree required.

7. Automatic revocation and review of ACM's (Recommendations 23-29)

While the Government agrees that ACM's should sunset with regulations, the renewal process will require further consideration to ensure that, at all times, ACM's satisfy the objectives of the revised regulation. The Government believes that ACM's should be taken into account when revising regulations which have sunsetted, however, as an ACM is, by definition, tailored to an individual business, it may be difficult to incorporate each ACM into the revised regulation. Accordingly the requirement to state reasons for failing to incorporate the ACM is not supported.

The proposal that regulations sunset after three ACM's are approved needs to be considered further to assess whether it is the most efficient and effective way of encouraging industry codes of conduct and regulating the number of ACM's. The Government agrees that ACM's be recorded in annual reports and be made available on a public register. A threshold review of the scheme is supported.

8. Penalties (Recommendations 30-32)

These recommendations are supported in principle, although penalties should vary depending on the nature of the breach. Further consideration will be given to recommendation 30 to ensure that clear, appropriate penalties exist in each case. Recommendation 32 will be considered further as it may be inappropriate for a court to cancel a regulatory regime approved by the executive under delegation from Parliament. Further consideration will also be given to the definition of "serious breach".

9. Revocation, termination, suspension and variation of ACM's (Recommendations 33 - 34)

These recommendations are supported. The Minister responsible for the regulation should have the power to revoke an ACM after giving notice to the business setting out reasons and giving the business the opportunity to make submissions. Where there is a substantial risk to the public, the Minister should be able to suspend the ACM for 14 days without notice.

10. Improving the extent and quality of consultation in the RIS process (Recommendations 35-39)

The Report recommends several changes to the RIS process. The Government believes that these recommendations should be referred to SARC as part of the review of the RIS process proposed in recommendation 42.

11. Resourcing of ORR (Recommendations 40-41)

The Government will give further consideration to the funding and operation of ORR.

12. Review of the RIS process (Recommendation 42)

A review of the RIS process by SARC is supported by the Government.

13. Legislative Impact Statements (Recommendation 43)

While this issue was not within the terms of reference of the Committee inquiry, the Government notes the Committee's recommendation and will consider the matter further.