
D Government commissioned projects

A broad indicator of the quality and impact of the Commission's work is provided by the nature and breadth of the public inquiries and research studies which it is requested by governments to undertake. The acceptance rate of the Commission's findings and recommendations provides a further broad indicator of quality and impact.

This appendix updates information provided in previous annual reports on public inquiries and other projects specifically commissioned by the Government. It includes summaries of terms of reference for new inquiries and projects, and the principal findings and recommendations from reports which have been released, together with government responses to those reports.

The Productivity Commission is required to report annually on the matters referred to it. This appendix provides a summary of projects which the Government commissioned during the year and government responses to reports completed in 2012-13 and previous years. It also reports on commissioned projects received since 30 June 2013.

This appendix is structured as follows:

- terms of reference for new government-commissioned inquiries and studies
- reports released and, where available, government responses to them
- government responses to reports from previous years.

Table D.1 summarises activity since the Commission's 2011-12 annual report and indicates where relevant information can be found.

Table D.1 **Stage of completion of commissioned projects and government responses to Commission reports**

<i>Date received</i>	<i>Title</i>	<i>For terms of reference see</i>	<i>Stage of completion</i>	<i>Major findings/ recommendations</i>	<i>Government response</i>
Inquiries					
1-9-11	Australia's Export Credit Arrangements	AR 10-11	Report completed 31 May 2012	AR 11-12	page 144
20-9-11	Climate Change Adaptation	AR 10-11	Report completed 19 September 2012	page 131	page 132
9-1-12	Electricity Network Regulation	AR 11-12	Report completed 9 April 2013	page 133	page 136
6-2-12	Default Superannuation Funds in Modern Awards	AR 11-12	Report completed 5 October 2012	page 136	na
29-6-12	Compulsory Licensing of Patents	AR 11-12	Report completed 28 March 2013	page 138	page 139
27-9-12	Mineral and Energy Resource Exploration	page 125	in progress	na	na
25-10-12	National Access Regime	page 126	in progress	na	na
21-6-13	Access to Civil Justice	page 129	in progress	na	na
25-6-13	Import of Processed Tomato Products	page 130	in progress	na	na
25-6-13	Import of Processed Fruit Products	page 130	in progress	na	na
Other commissioned projects					
28-2-12	Regulation Impact Analysis: Benchmarking	AR 11-12	Report completed 28 November 2012	page 140	na
14-3-12	Strengthening Australia New Zealand Economic Relations	AR 11-12	Report completed 30 November 2012	page 141	na
11-5-12	COAG Regulatory and Competition Reforms	AR 11-12	Report completed 29 June 2012	na	na
7-12-12	Major Project Development Assessment Processes	page 126	in progress	na	na
7-12-12	Regulation Benchmarking: Regulator Engagement with Small Business	page 128	in progress	na	na
21-5-13	Geographic Labour Mobility	page 128	in progress	na	na

Note: References are to previous annual reports (AR) of the Productivity Commission.

Terms of reference for new projects

This section outlines the terms of reference for commissioned projects received since the Commission's annual report for 2011-12, which are in progress or for which the report has not yet been released. Full terms of reference are available on the Commission's website and in the relevant reports.

Mineral and Energy Resource Exploration

On 27 September 2012, the Assistant Treasurer and Minister Assisting for Deregulation, the Hon. David Bradbury, asked the Commission to undertake an inquiry into the non-financial barriers to mineral and energy resource exploration.

The Terms of Reference require the Commission to:

- determine if there is evidence of unnecessary regulatory burden and if there is, make recommendations on how to reduce or eliminate these burdens
- examine the complexity and time frames of government approvals processes for exploration, and potential for delay due to appeals both within and across jurisdictions
- examine areas of duplication between and within Local, State, Territory and Commonwealth regulation that can be triggered throughout an exploration project
- examine costs of non-financial barriers (including regulatory and related costs)
- consider options to improve the regulatory environment for exploration activities, having regard to regulatory objectives
- assess the impact of non-financial barriers on international competitiveness and economic performance of Australia's exploration sector.

The Terms of Reference identify certain exclusions in relation to:

- local, state, territory and Commonwealth taxation and fiscal policy
- the Government's response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999
- processes under the Commonwealth's *Native Title Act 1993*, the *Aboriginal Land Rights (Northern Territory) Act 1976* or state Indigenous land rights regimes.

The Commission is required to provide a final report to Government within twelve months of receipt of the reference.

National Access Regime

The Australian Government asked the Commission on 25 October 2012 to undertake a 12 month inquiry into the National Access Regime. The Regime is intended to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

As part of the National Reform Agenda, the Council of Australian Governments signed the Competition and Infrastructure Reform Agreement (CIRA) to provide for a simpler and more consistent national system of economic regulation for nationally significant infrastructure, including for ports, railways and other key infrastructure. Clause 8.1 of the CIRA provides that once it has operated for five years, the Parties will review its operation and terms.

In reporting on the Regime and the CIRA, the Commission is to:

- examine the rationale, role and objectives of the Regime, and Australia's overall framework of access regulation
- assess the performance of the Regime in meeting its rationale and objectives
- report on whether the implementation of the Regime adequately ensures that its economic efficiency objectives are met
- provide advice on ways to improve processes and decisions for facilitating third party access to essential infrastructure
- review the effectiveness of the reforms outlined in the CIRA, and the actions and reforms undertaken by governments in giving effect to the CIRA
- comment on other relevant policy measures, including any non-legislative approaches, which would help ensure effective and responsive delivery of infrastructure services over both the short and long term.

As part of its inquiry, the Commission is to undertake an appropriate public consultation process including holding hearings, inviting public submissions and releasing a draft report.

Major Project Development Assessment Processes

On 7 December 2012, the Australian Government asked that the Commission undertake a study to benchmark Australia's major project development assessment processes against international best practice.

The study is to consider the extent to which major project development assessment processes across all levels of government affect the costs incurred by business, deliver good regulatory outcomes for the public and provide transparency and certainty to promote business investment.

As part of its study, the Commission has been asked to:

- examine the regulatory objectives and key features of Australia's major project development assessment processes at all levels of government, including the interactions between levels of government, the role of facilitation, the capacities and resources of the institutions involved and significant variations between jurisdictions
- examine the regulatory objectives and key features of comparable international systems with respect to major project development assessment processes
- identify critical elements of development assessment processes and compare these to assess the extent to which different decision-making approaches in Australian jurisdictions and alternative investment destinations overseas have a material impact on costs, timeliness, transparency, certainty and regulatory outcomes
- examine the strategic planning context for major project approvals in Australia and in comparable international systems
- identify best practice and against this benchmark evaluate jurisdictional approaches, such as one-stop shops and statutory timeframes, to make recommendations to improve Australia's processes, both within and between jurisdictions, by reducing duplication, removing unnecessary complexity and regulation, and eliminating unnecessary costs or unnecessarily lengthy timeframes for approvals processes
- assess mechanisms for 'scaling' regulatory requirements relative to project size and the expected benefits against the potential environmental, social, economic and other impacts
- compare the efficiency and effectiveness with which Australian approvals processes achieve the protection of social, economic, heritage, cultural and environmental assets compared with comparable international systems.

The Commission is required to provide its final report within twelve months.

Regulation Benchmarking: Regulator Engagement with Small Business

The Australian Government, with the agreement of COAG's Business Regulation and Competition Working Group, requested on 7 December 2012 that the Commission undertake a nine month benchmarking study into regulator engagement with small business.

The purpose of the study is to identify leading practices in regulator engagement and determine whether there are opportunities for adoption of these practices to reduce the compliance burden on small business, while sustaining good regulatory outcomes. Specifically, the Commission has been asked to:

- provide evidence on the variety of approaches used by regulators to engage with small business
- assess the effectiveness of different approaches and identify leading practices, including in overseas jurisdictions, considering:
 - the balance of facilitative, educative and compliance based approaches, including the use of risk-based compliance and enforcement strategies
 - whether approaches appropriately consider the characteristics of small business
 - the extent to which regulatory engagement approaches vary with the nature and objectives of regulations and with the way the regulatory regime is defined by policy makers
 - how the use of particular engagement approaches might shape regulatory culture.
- identify the levels of assistance and education provided to small businesses and assess whether such assistance could be better targeted to lower compliance costs for small business and improve the administrative efficiency of meeting regulatory objectives.

The Commission has also been directed to determine a definition of what constitutes a small business, since inconsistent criteria are currently adopted across different regulators and jurisdictions.

Geographic Labour Mobility

On 21 May 2013, the Australian Government asked the Commission to undertake a research study assessing geographic labour mobility within Australia and its role in a well-functioning labour market.

The principal objective of the study is to examine patterns of mobility, impediments and enablers, and their effect on the ability to meet Australia's continually changing workforce and employment needs.

The Terms of Reference ask that as part of the study the Commission:

- examine patterns and trends in geographic mobility, their relative contribution to regional labour supply, and the implications of structural, demographic and technological developments
- identify the key determinants and drivers of mobility, including the costs and benefits from the perspectives of businesses, individuals, their families and governments, any differences in the determinants and drivers of mobility between groups, and an assessment of the effectiveness of market signals, such as wages
- identify the major impediments to geographic mobility to support economic adjustment, employment and productivity outcomes
- assess the current strategies used by employers and governments that affect geographic mobility, and discuss possible options to enable further mobility
- estimate the prospective economy-wide impacts of reducing impediments to geographic mobility.

The Commission is required to provide its final report within twelve months.

Access to Civil Justice

On 21 June 2013 the Australian Government asked the Commission to undertake an inquiry into Australia's system of civil dispute resolution, with a focus on constraining costs and promoting access to justice and equality before the law.

The Terms of Reference for the inquiry require the Commission to have regard to:

- the real costs of legal representation and trends over time
- the level of demand for legal services
- factors that contribute to the cost of legal representation in Australia
- whether the costs charged for accessing justice services and for legal representation are generally proportionate to the issues in dispute
- the impact of the costs of accessing justice services, and securing legal representation, on the effectiveness of these services

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- the economic and social impact of the costs of accessing justice services and securing legal representation
 - the impact of the structures and processes of legal institutions on the costs of accessing and utilising these institutions, including analysis of discovery and case management processes
 - alternative mechanisms to improve equity and access to justice and achieve lower cost civil dispute resolution, in both metropolitan areas and regional and remote communities, and the costs and benefits of these
 - reforms in Australian jurisdictions and overseas which have been effective at lowering the costs of accessing justice services, securing legal representation and promoting equality in the justice system
 - data collection across the justice system that would enable better measurement and evaluation of cost drivers and the effectiveness of measures to contain these.

The Commission will report within fifteen months of receipt of the Terms of Reference.

Safeguards Inquiries into the Import of Processed Tomato and Processed Fruit Products

The Commission was requested on 21 June 2013 to undertake two inquiries into whether safeguard action is warranted against imports of processed tomato products and processed fruit products.

The inquiries are to be undertaken in accordance with the World Trade Organization (WTO) safeguard investigation procedures published in the Gazette of S297 of 25 June 1998, as amended by GN39 of 5 October 2005.

The Commission is to report on:

- whether conditions are such that safeguard measures would be justified under the WTO Agreement;
- if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment;
- and whether, having regard to the Government's requirements for assessing the impact of regulation which affects business, those measures should be implemented.

In undertaking the inquiries, the Commission is to consider and provide accelerated reports on whether critical circumstances exist where delay in applying measures

would cause damage which it would be difficult to repair. If such circumstances exist, and pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, the Commission is to recommend what provisional safeguard measures (to apply for no more than 200 days) would be appropriate.

The Commission is to provide the accelerated reports to the Government as soon as possible but not later than 3 months and final reports within 6 months of receipt of the references.

Reports released by the Government

This section summarises the main findings and recommendations of inquiry and research reports which have been released by the Government in the period to X September 2013. It includes terms of reference for those projects commenced and completed in that period and, where available, government responses.

Barriers to Effective Climate Change Adaptation

Inquiry Report No. 59 signed 18 September 2012, report released 14 March 2013.

The Commission's main findings and recommendations were:

- Australia's climate is changing and will continue to do so for the foreseeable future.
- Changes in the frequency, intensity, location and timing of extreme weather events are likely to be how most Australians experience climate change.
- Adaptation to these changes, and the effects of more gradual climate change, will occur over time as households, businesses, governments and communities respond to incentives to manage the climate (and other) risks they face.
- However, a number of policy and regulatory barriers may inhibit adaptation responses, suggesting the potential for government action to improve outcomes for the community.
- Governments at all levels should:
 - embed consideration of climate change in their risk management practices
 - ensure there is sufficient flexibility in regulatory and policy settings to allow households, businesses and communities to manage the risks of climate change.

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- A range of policy reforms would help households, businesses and governments deal with current climate variability and extreme weather events. These reforms would also build adaptive capacity to respond to future climate impacts. Examples include:
 - reducing perverse incentives in tax, transfer and regulatory arrangements that impede the mobility of labour and capital
 - increasing the quality and availability of natural hazard mapping
 - clarifying the roles, responsibilities and legal liability of local governments, and improving their capacity to manage climate risks
 - reviewing emergency management arrangements in a public and consultative manner, to better prepare for natural disasters and limit resultant losses
 - reducing tax and regulatory distortions in insurance markets.
 - Further actions are required to reduce barriers to adaptation to future climate trends and to strengthen the climate change adaptation policy framework. These include:
 - designing more flexible land use planning regulation
 - aligning land use planning with building regulation
 - developing a work program to consider climate change in the building code
 - conducting a public review, sponsored by the Council of Australian Governments, to develop appropriate adaptive responses for existing settlements that face significant climate change risks.
 - Some measures should not be implemented, as the costs would exceed the benefits.
 - Household insurance subsidies, or insurance regulations that impose net costs.
 - Systematically reviewing all regulation to identify impediments to adaptation.
 - Mandatory reporting of adaptation actions.
 - Some individuals and communities are likely to face greater challenges in adapting than others, implying a role for the tax and transfer system.

Government decision

In March 2013, the Australian Government released its response to the report (Australian Government 2013b). Of the twelve recommendations made by the

Commission, the Government agreed with three, provided in-principle agreement with seven, and noted a further two.

The Government agreed on the Commission's recommendations regarding information provision, not requiring insurers to offer mandatory flood cover, and not subsidising insurance.

- On insurance, the Government stated that it would not proceed with an earlier proposal to require all household insurers to offer flood cover, and drew attention to recently committed funding for flood mitigation. It also stated that it would not adopt a proposal for government-backed flood reinsurance and premium discounts from the 2011 Natural Disaster Insurance Review.
- On information, the Government highlighted previously announced initiatives to establish a National Flood Risk Information Project and a National Insurance Affordability Council (to coordinate flood risk management).

The Government agreed in principle to recommendations on assessing reform options, improving the flexibility of the economy, listing local governments' regulatory roles, clarifying local government legal liability, adopting flexible land-use planning, considering climate change in the building code and phasing out state insurance taxes.

Recommendations to review ways to manage risks to existing settlements, and on disaster mitigation and recovery, were noted.

While the Government provided broad agreement with the report, it did raise concerns regarding the Commission's treatment of 'cognitive barriers' to adaptation, stating:

The Productivity Commission's insight into the potential barriers in the uptake of climate change adaptation measures — in particular cognitive barriers beyond information provision and use — may need further development. (Australian Government 2013b, p. 1)

Electricity Network Regulation

Inquiry Report No. 62 signed 9 April 2013, report released 26 June 2013.

The Commission's main findings and recommendations were:

- Average electricity prices have risen by 70 per cent in real terms from June 2007 to December 2012. Spiralling network costs in most states are the main contributor to these increases, partly driven by inefficiencies in the industry and flaws in the regulatory environment.

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- These flaws require a fundamental nationally and consumer-focused package of reforms that removes the interlinked regulatory barriers to the efficiency of electricity networks. Reforms made in late 2012, including improvements to the regulatory rules, better resourcing of the regulator and greater representation of consumers, have only partly addressed these flaws.
 - Resolving benchmarking and interconnector problems will be a worthwhile addition to these recent reforms. But there remains a need for further significant policy changes to make a substantive difference to future electricity network prices, and to produce better outcomes for consumers — the latter being the primary objective of the regulatory arrangements. The changes needed include:
 - modified reliability requirements to promote efficiency
 - improved demand management
 - more efficient planning of large transmission investments
 - changes to state regulatory arrangements and network business ownership
 - adding some urgency to the existing tardy reform process. The Standing Council on Energy and Resources needs to accelerate reforms — particularly for reliability and planning — which have been bogged down by successive reviews. Delays to reform cost consumers across the National Electricity Market (NEM) hundreds of millions of dollars.
 - The gains from a package of reforms are significant. Indicative estimates suggest:
 - in New South Wales alone, \$1.1 billion in distribution network capital expenditure could be deferred until the next five year regulatory period by adopting a reliability framework that takes into account consumers' preferences for reliability. The actual savings are likely to be larger
 - adopting a different reliability framework for the transmission network could generate large efficiency gains in the order of \$2.2 billion to \$3.8 billion over 30 years
 - if carefully implemented, critical peak pricing and the rollout of smart meters could produce average savings of around \$100–\$200 per household each year in regions with impending capacity constraints (after accounting for the costs of smart meters).
 - Reliability is critical to electricity networks, but some consumers are forced to pay for higher reliability than they value.
 - Reliability decisions should be based on trading off the costs of achieving them against what customers are willing to pay, rather than by prescriptive (sometimes politically influenced) standards.

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- A large share (in New South Wales, some 25 per cent) of retail electricity bills is required to meet a few (around 40) hours of very high (‘critical peak’) demand each year. Avoiding this requires a phased and coordinated suite of reforms, including consumer consultation, the removal of retail price regulation, and the staged introduction of smart meters, accompanied by time based pricing for critical peak periods.
 - This would defer costly investment, ease price pressures on customers, and reduce the large hidden cross subsidies effectively paid by (often lower income) people who do not heavily use power in peak times, to those who do.
 - Rolling out smart meters would also produce major savings in network operating costs — such as through remote meter reading and fault detection.
 - The Commission is proposing a process that learns from the experience of the Victorian smart meter rollout, and that will genuinely benefit consumers.
 - State-owned network businesses have conflicting objectives, which reduce their efficiency and undermine the effectiveness of incentive regulation. Their privately-owned counterparts are better at efficiently meeting the long term interests of their customers.
 - State-owned network businesses should be privatised.
 - The efficiency and effectiveness of recently announced reforms could be enhanced.
 - Given their overlapping roles, the three fully-funded consumer advocacy bodies in the NEM should be ultimately amalgamated into a single statutory body that would act on behalf of all consumers. It should be fully funded through an industry levy, and have the required expertise to play a leading, but not exclusive, role in representing customers in all regulatory processes. Partial funding — on a contestable basis — should continue for individual advocacy groups.
 - A review of the Australian Energy Regulator is proposed for 2014. The Australian Energy Market Commission, the Australian Energy Market Operator and the new consumer representative body should also be reviewed by 2018 so that the scope for improvement in all of the main NEM institutions will have been assessed.
 - At this stage, benchmarking — which compares the relative performance of businesses — is too unreliable to set regulated revenue allowances. Nevertheless, greater and more effective use of benchmarking could better inform the regulator’s decisions.

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- There is no evidence of insufficient capacity in the interconnectors carrying power between jurisdictions, as is sometimes alleged. In fact, they are sometimes underutilised because of perverse incentives and design flaws created by the regulatory regime. Changes to the National Electricity Rules should address these problems.
 - In considering the benefits for consumers, it is important not to blame network businesses for the current inefficiencies. Mostly, they are responding to regulatory incentives and structures that impede their efficiency.

Government decision

On 26 June 2013 the Australian Government released its response to the report (Australian Government 2013d). The response supported 13 of the Commission's recommendations, provided in principle support for a further 21 recommendations, and supported in part 12 recommendations. A further 15 recommendations were noted and 2 recommendations were not supported.

The response covered recommendations on a broad range of topics, including benchmarking, interconnectors, network ownership, demand management, reliability standards, governance of National Electricity Market institutions, consumer involvement and timeliness in decision making and rule changes.

While generally supportive of the Commission's approach, the response also emphasised the reform work currently underway across jurisdictions, and stated that:

The Commission's report is a contribution to a long running and broad energy market reform program, which has been substantially redefined during the course and conclusion of this inquiry... This reform agenda addresses many of the issues raised in the Commission's Final Report. However, the success of this package is contingent on all jurisdictions delivering on the reform milestones agreed by to ensure the benefits of reform flow through to consumers as quickly as possible. (Australian Government 2013d, p. i).

Default Superannuation Funds in Modern Awards

Inquiry Report No. 60 signed 5 October 2012, report released 12 October 2012.

The Commission's main findings and recommendations were:

- Default superannuation arrangements for those employees who derive their default superannuation product in accordance with modern awards have provided market stability, and net returns of default funds have generally

exceeded those of non default funds. However, the arrangements could be improved.

- The primary principle governing default superannuation arrangements for modern awards should be the promotion of the best interests of employees.
 - The selection of default products for awards should be merit rather than precedent based, and should encourage improved performance through competition.
- The criteria that the Australian Prudential Regulation Authority will use for MySuper product authorisation provide a first filter for the selection of products.
- The Commission recommends a set of non-prescriptive factors to be considered as a second stage ‘quality filter’ when selecting default products for modern awards.
 - The factors relate to: investment objectives and performance (as primary factors); fees and costs; governance practices (particularly mechanisms in place to deal with conflicts of interest); insurance; intra-fund advice; and administrative efficiency.
- The process for the selection and ongoing assessment of default products in modern awards should be reformed. Decisions on the listing of default products should be made by a new Default Superannuation Panel within Fair Work Australia (FWA).
 - The panel should consist of the FWA President (or delegate) and an equal number of full-time members of the tribunal and part-time independent members appointed for their expertise in finance, investment management or superannuation advisory services.
 - The part-time members should not be representatives of organisations or parties to awards, but should be appointed as independent members based on expertise.
- Superannuation funds should be given standing to apply to, and be directly heard by, the panel, in order to have their products assessed for listing in modern awards. The panel should transparently assess cases on their merits, using the factors identified by the Commission, and any other factors deemed relevant by the panel.
- The panel should list all MySuper products for each modern award that meet the factors for consideration (which may prove to be a long list). No express limit should be placed on the number of products that may be listed in any given modern award.

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- The panel should identify in each modern award, wherever possible, a small subset of those listed products judged as best meeting the interests of the relevant employees.
 - The panel should conduct ongoing assessments and undertake a periodic wholesale reassessment of the products listed in modern awards.
 - The process should apply at least for the medium term, given the uncertainty regarding the number, mix and quality of MySuper products to be offered from 2013.
 - The process should be reviewed in 2023 and this review should include consideration of the appropriateness of allowing employers to select any MySuper product as a default superannuation product.

Compulsory Licensing of Patents

Inquiry Report No. 61 signed 28 March 2013, report released 27 May 2013.

The Commission's main findings and recommendations were:

- Like most countries, Australia has legislated a system of compulsory licensing so that patent owners can be compelled to license their inventions to others in a limited range of circumstances.
- Survey data and participants' comments confirm that this is a safeguard which only needs to be invoked in exceptional cases. In response to surveys, patent owners indicate that often they would prefer to license more than they do.
- There have been few applications for a compulsory licence in Australia, and none have been successful. While this is consistent with its status as a rarely needed safeguard, another factor may be the costly and time-consuming process involved in obtaining a compulsory licence order from the Federal Court.
- There are no clear alternatives to the Federal Court that would make compulsory licence applications significantly less costly and time consuming, without also raising concerns about the quality of outcomes and scope for appeals.
- There is, however, a clear case to reform the criteria for a compulsory licence.
 - There are currently provisions in both the *Competition and Consumer Act 2010* (Cwlth) and *Patents Act 1990* (Cwlth) to address anticompetitive behaviour. To remove overlap and inconsistency, when a patent is used to engage in unlawful anticompetitive conduct, a compulsory licence should only be available under the Competition and Consumer Act.

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- A public interest test should replace existing criteria based on the ‘reasonable requirements of the public’ in the Patents Act. This would provide an access regime when greater use of a patented invention would deliver a substantial net benefit to the community.
 - To reduce uncertainty about international treaty obligations on compulsory licensing, the existing general requirement in the Patents Act to satisfy such obligations should be deleted, and the obligations should be incorporated directly into the Patents Act or its subordinate legislation.
 - To improve awareness of compulsory licensing, IP Australia and the ACCC should jointly develop a plain English guide and make it available on their websites.
 - The Patents Act contains a less costly and time-consuming alternative to compulsory licensing — termed ‘Crown use’ — that can be invoked when an invention is used for the services of a government. Two key reforms are proposed in this regard.
 - To reduce uncertainty about the scope of Crown use, the Patents Act should be amended to make it clear that Crown use can be invoked for the provision of a service that the Australian, State and/or Territory Governments have primary responsibility for providing or funding.
 - To improve transparency and accountability, governments should be required to first seek a negotiated outcome, and publicly state the reasons for invoking Crown use in advance, except in emergencies. Governments should in all cases be required to obtain Ministerial approval to invoke Crown use, and be subject to the same pricing principles as for compulsory licensing.

Government decision

On 30 May 2013, the Parliamentary Secretary for Climate Change, Industry and Innovation, the Hon. Yvette D’Ath MP, introduced the Intellectual Property Laws Amendment Bill 2013 into Parliament. The aim of the Bill was to clarify the operation of Crown use provisions in the *Patents Act 1990*, in line with recommendations made in the Commission’s report.

In announcing the introduction of the Bill, the Parliamentary Secretary stated:

The announcement follows the release of the Productivity Commission’s Report on Compulsory Licensing of Patents which found there was uncertainty around the scope of current Crown use provisions, particularly in the context of healthcare. (D’Ath 2013)

Regulation Benchmarking: Regulatory Impact Analysis

Research Report completed 28 November 2012, report released 13 December 2012.

The Commission's main findings and recommendations were:

- Regulatory impact analysis (RIA) requirements in all Australian jurisdictions are reasonably consistent with OECD and COAG guiding principles. However, shortcomings in system design and a considerable gap between agreed RIA principles and what happens in practice are reducing the efficacy of RIA processes.
 - The number of proposals with highly significant impacts that are either exempted from RIA processes or are not rigorously analysed is a major concern.
 - Public consultation on policy development is often perfunctory or occurs only after development of draft legislation.
 - Public transparency — through advising stakeholders of revisions to policy proposals and information used in decision making, or provision of reasons for not subjecting proposals to impact analysis — is a glaring weakness in most Australian RIA processes.
- While RIA processes have brought some isolated but significant improvements from more thorough consideration of policy options and their impacts, the primary benefits of RIA have been forfeited through a lack of ministerial and agency commitment.
 - One of the main challenges in implementing RIA requirements is the announcement of policy decisions and an associated closing off of policy options by ministers or ministerial councils prior to commencement of the RIA process.
 - Where ministers or ministerial councils do not adhere to RIA principles, agencies see RIA as an administrative burden that adds no value and as a 'retrofit' justification of the policy decision.
- In all jurisdictions, greater attention to leading practices for monitoring, reporting and accountability would go a long way toward improving the efficacy and rigour of RIA processes. In particular:
 - transparency measures such as a draft regulation impact statement (RIS) for early consultation, and publishing all RISs and RIS adequacy assessments, would better inform stakeholders of regulatory impacts and motivate rigour in analysis

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- requiring ministers to provide reasons to parliament for non-compliance with the RIA process and for the granting of exemptions, could encourage greater commitment to the RIA process and facilitate further discussion on the impacts of proposals
 - accountability measures such as: the auditing of agency decisions on the need for a RIS; the auditing of regulatory oversight body adequacy assessments; and post implementation reviews undertaken through an independent process, would, in time, invoke more effective scrutiny of regulatory proposals.
 - The efficiency of RIA processes would also be improved by more effective targeting of RIA resources through: streamlined assessment of the need for a RIS; devolving responsibility for determining the need for a RIS to agencies (subject to appropriate oversight); and review of subordinate legislation in conjunction with its overarching primary legislation.

Strengthening Australia New Zealand Economic Relations

Research Report conducted jointly with the New Zealand Productivity Commission. Report completed 30 November 2012, report released 13 December 2012.

The key points in the Commission's report were:

- The Australian and New Zealand economies have become closely integrated, beyond what could be expected with any third country. This has been facilitated by institutional, legal and cultural similarities, as well as geographic proximity.
- Closer Economic Relations (CER) initiatives have contributed significantly to trans-Tasman integration over the past 30 years. Tariffs and quantitative restrictions have been eliminated on virtually all goods traded between the two countries; people move freely across the Tasman; and the CER agenda has expanded into new areas, such as services trade and behind-the-border regulatory barriers.
- The Commissions' assessment is that CER has produced benefits overall for Australia and New Zealand, even though evidence is limited in some areas.
- Barriers to further integration remain and new issues will emerge. Addressing them is becoming more challenging, as the focus shifts to more complex areas, including the regulation of services.
- To ensure that integration policies make the biggest contribution to both economies, future CER initiatives should continue to: be outward looking; take account of linkages with other agreements; and complement domestic policy improvement.

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- A ‘direction of travel’ towards a single economic market has been characterised by Prime Ministers in terms of a seamless market in which people and businesses can have a ‘domestic-like’ experience in either country. How far Australia and New Zealand go in this direction should emerge from good public policy processes focused on the achievement of net benefits.
 - This scoping study identifies more than 30 initiatives to promote beneficial integration. Most address regulatory barriers to services trade and commercial presence, and some remaining impediments to integration in goods, capital and labour markets.
 - Some of these initiatives will require more detailed consideration.
 - There is further potential for each government to cooperate with and learn from the other in policy development, service delivery and regulatory approaches.
 - Current governance approaches for CER are informal and flexible, and appear reasonably effective. This scoping study identifies some opportunities for improvement.

Government responses to reports from previous years

Annual Review of Regulatory Burdens on Business: Identifying and Evaluating Regulation Reforms

Research Report completed 2 December 2011, report released 15 December 2011.

The report presented 12 recommendations, divided into two broad categories. The first category addresses potential opportunities to better manage the existing stock of regulation, while the second group of recommendations identified potential opportunities to strengthen the regulatory framework.

On 23 May 2012, the Attorney General, the Hon. Nicola Roxon, introduced the *Legislative Instruments Amendment (Sunsetting Measures) Bill 2012* into Parliament (Roxon 2012). The Bill is consistent with a recommendation in the Commission’s report that more flexibility be introduced into the Legislative Instruments Act to enable thematic reviews of related instruments. It also provides for greater smoothing of dates when older instruments must sunset, which is also consistent with the Commission’s report.

In introducing the Bill into Parliament, the Attorney General stated:

The Productivity Commission, in its 2011 report *Identifying and Evaluating Regulation Reforms*, expressed concern about the mass expiry of instruments from 2015. They

identified an increased risk that instruments will be remade without adequate review and without proper consultation with business and other stakeholders. The Commission noted that the sheer quantity of instruments required to be remade by government increases the risk that business and other stakeholders will not have sufficient time to make a meaningful contribution to any review.

Consistent with the recommendations of the Productivity Commission, the purpose of this bill is to smooth these sunset peaks and to encourage high-quality consultation before regulations and legislative instruments are remade. It is also intended to ensure the information on the Federal Register of Legislative Instruments is current.

Subsequently, on 5 December 2012, the Australian Government released a more comprehensive response to the Commission's report (Australian Government 2012b). The Government accepted or accepted in principle nine of the report's recommendations and noted a further three recommendations.

The response provided agreement to recommendations in the following areas:

- Amending the *Legislative Instruments Act 2003* to allow more effective smoothing of the number of pre-2005 instruments due to sunset over the 2015-18 period; and to provide flexibility and incentives to package related regulations for review.
- Giving consideration to extending principle-based reviews to:
 - reviewing regulations that avoided review during the National Competition Policy Legislative Review Program, or that were reviewed but retained
 - applying the principle of accepting recognised international standards unless a case can be made that Australian standards deliver a net benefit to the community
 - applying the principle of removing restraints on factor mobility unless they can be shown to involve a net benefit to the community.
- Applying a number of principles when considering current and future regulatory reform activities, including that:
 - incremental improvements to regulatory arrangements should be undertaken as a matter of course
 - reforms identified or underway should be completed before embarking on new reform agendas
 - in prioritising and sequencing reforms, in addition to the depth and breadth of the potential benefits, the human resource and other costs of achieving the reforms need to be explicitly taken into account
 - precedence in in-depth reviews and benchmarking, should be given to developing the most cost-effective options for achieving current reform

commitments. In planning future reforms, such reviews should be prioritised based on an assessment of potential gains, including by drawing on information provided by public stocktakes and other stock management approaches.

- The provision of annual reports by the Department of Finance and Deregulation or the Office of Best Practice Regulation on reviews of regulation that have been undertaken, government responses to any recommendations and their implementation status.
- The commissioning by the Australian Government of a study into regulator practices and means of managing regulator performance.
- A commitment by the Australian Government to building skills in evaluating and reviewing regulation, and to examine options to achieve this.

Australia's Export Credit Arrangements

Inquiry Report completed 31 May 2012, report released 26 June 2012.

On 29 January 2013, the then Minister for Trade and Competitiveness, the Hon. Craig Emerson, released the Government response to the report (Australian Government 2013c). The response provided agreement to four of the Commission's recommendations, agreed in part to twelve recommendations, and noted a further six.

The Government agreed with a Commission recommendation to remove the 'market gap' mandate from its Statement of Expectations with the Export Finance and Investment Corporation (EFIC). It also agreed with a recommendation to amend the EFIC Act to allow the Minister to direct the Board of EFIC to return capital to the Australian Government when the Minister determines that EFIC has surplus capital, after seeking the views of the Treasurer and the Minister for Finance. The Government agreed to amend the EFIC Act to exclude Australian Public Service personnel from the EFIC Board. Agreement was also provided that the Minister should table EFIC's corporate plan in Parliament (and, in due course, the Act should be amended to require this), and that EFIC should provide quarterly progress reports to the Minister against its corporate plan.

The Government did not agree with a recommendation that the Minister should direct EFIC to cease providing financial services for transactions that are not based on an export contract. It also did not agree with several recommendations involving legislative amendments in respect of the Commercial Account.