



Five-yearly Reviews of Regulation

November 2012

Introduction

The Office of Best Practice Regulation (OBPR) has undertaken a screening process to identify regulation due to be reviewed in 2012 as a result of Recommendation 7.28 of *Rethinking Regulation - Report of the Taskforce on Reducing Regulatory Burdens on Business* (the Banks Review). The screening process found that of the 71 regulations made in 2007 which required a Regulation Impact Statement (RIS), four would require a five-yearly review beginning in 2012. This represents under six per cent of all regulation introduced in 2007 (details at [Appendix A](#)). To test these results, a similar study was conducted for regulation due for review in 2013 (details at [Appendix B](#)).

The screening process revealed that most regulation was subject to the sunseting under the Legislative Instruments Act 2003 (LIA). The majority of the remaining regulation either contained an internal review mechanism or had already been reviewed by some other mechanism, such as broad ranging reviews, statutory reviews or inquiries. This left only a handful of regulations introduced in 2007 that would be subject to a five-yearly review and none of these could be considered priority areas for review by the administering agencies.

The screening process was conducted by the OBPR in consultation with relevant government agencies and the Office of Legislation Drafting and Publishing (OLDP) from the Attorney-General's Department.


Process

Recommendation 7.28 of the Banks Review states:

At least every 5 years, all regulation (not subject to sunset provisions) should, following a screening process, be reviewed, with the scope of the review tailored to the nature of the regulation and its perceived performance.

This recommendation was agreed by the Australian Government in August 2006. The first five-yearly reviews are therefore to be conducted in 2012 for regulations created in 2007. With this in mind the OBPR has conducted a screening process to identify regulations that would be due for a five-yearly review in 2012 and 2013.

Any legislative amendment that has a significant regulatory impact is subject to a Regulation Impact Statement (RIS) when the decision to regulate is made. These regulations are listed in



OBPR's Best Practice Regulation Report for each financial year. Using data from the 2006-07 and 2007-08 reports, it was determined that 71 regulations were created in 2007 which required a RIS. Of these 44 were excluded from the five year review process due to sunseting under the LIA (this number was confirmed by OLDP), nine were exempt from sunseting (eight of which were safety related, including six which involved vehicle standards and two which involved civil aviation), 13 had already been subject to review and one was repealed. This left only four regulations falling within scope for review in 2012 (details at [Appendix A](#)). Contact with the agencies responsible for these regulations revealed that one had been reviewed in 2010, one was currently under review, one was to be reviewed in 2015 and the final regulation had implemented a range of minor and machinery changes that were not a priority for further review.

To confirm that the result for regulation introduced in 2007 was not an aberration, the screening process was undertaken again for regulation introduced in 2008 which would be subject to a five-yearly review in 2013. A similar outcome was achieved and of the 78 regulations created 29 were excluded from the five-year review process due to sunseting, 15 were exempt from sunseting, 20 had already been subject to review and ten had been repealed or no longer operated (details at [Appendix B](#)). This left only four regulations falling within scope for review in 2013, one each of which involved vehicle standards and regulation of the automatic teller machine access regime and two which involved regulation of civil aviation.

Other Reviews

The analysis conducted by OBPR found that a large number of regulations had already been subjected to various review processes, including:

- broad reaching reviews (such as the Henry Tax Review or the Cooper Superannuation Review);
- statutory reviews (such as the Statutory Review of the Gene Technology Act 2000);
- inquiries; and
- other ad-hoc reviews.


Such reviews and inquiries are regularly conducted by government or independent bodies and cover significant bodies of regulation, particularly regulation that relates to rapidly changing or developing areas of the economy. A current example is the convergence review into the policy and regulatory frameworks that apply to the converged media and communications landscape in Australia.

Sunsetting

The Australian Government has introduced a sunseting regime under the LIA. This act provides that all legislative instruments cease automatically after ten years of operation unless the instruments are exempt or specific steps are taken to preserve them. The purpose of sunseting is to encourage regular review of legislative instruments and to reduce unnecessary and redundant regulation, making it easier to understand and comply with the law. A significant amount of work is being undertaken by Australian Government agencies to facilitate the phased introduction of sunseting from 2015.

The Pre-2008 Review of Subordinate Regulation

In 2009 the Australian Government undertook a review of all pre-2008 subordinate regulation (the Pre-2008 Review), which reviewed over 11,000 pieces of legislation. The Pre-2008 Review



was coordinated by the Department of Finance and Deregulation, which worked closely with all Commonwealth portfolios to undertake a comprehensive assessment of legislative instruments that had not been reviewed elsewhere since the beginning of 2008. The Pre-2008 Review found that the stock of Commonwealth subordinate regulation is reviewed regularly for continued policy relevance by agencies, though reviews are not systematically conducted.

Productivity Commission Review

Consistent with the OBPR's findings, the Productivity Commission report *Identifying and Evaluating Regulatory Reforms*, published in December 2011, has recommended that the five-yearly default review requirement be dispensed with, provided the Australian Government's best practice regulation guidelines were modified to:

- require a formal review and performance measurement plan in cases where the expected impact of a proposed regulation is rated as 'major' by the OBPR;
- encourage the use of embedded statutory reviews for regulation with significant uncertainty regarding its effectiveness or impact;
- ensure that all reviews foreshadowed in RISs take place within five years; and
- ensure that any proposed review is proportionate to the potential impact of the regulation.

Conclusion

The OBPR's review of regulation introduced in 2007 and 2008 has met the Australian Government's commitment to the five-yearly review of regulation and demonstrated that the process is of little value in identifying regulatory reform targets. The widespread use of internal review provisions in existing regulation, the commencement of sunseting arrangements under the LIA from 2015 and the range of other reviews that the government regularly undertakes mean that five-yearly default reviews are unnecessary, are an ineffective mechanism to identify inefficient regulation and will therefore be discontinued.

Appendix A

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Tax Laws Amendment (2007 Measures No. 5) Act 2007	Treasury	C2007A00164	Henry Tax Review		
Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2007	Treasury	C2007B00211	Henry Tax Review		
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007	FaHCSIA	C2007A00128	Northern Territory Emergency Response Evaluation Report		
Northern Territory National Emergency Response Act 2007	FaHCSIA	C2007A00129	Northern Territory Emergency Response Evaluation Report		
Northern Territory National Emergency Response Amendment (Alcohol) Act 2007	FaHCSIA	C2007A00141	Northern Territory Emergency Response Evaluation Report		
Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007	FaHCSIA	C2007A00130			Sunsets
Banking (Prudential Standard) Determination No.s 3–18 of 2007	Treasury				Sunsets
Financial Sector (Collection of Data) Reporting Standard Determination No.s 1–55	Treasury				Sunsets
Customs Amendment Regulations 2007 (No. 1)	AG	F2007L03533	To be reviewed in January 2015		In scope for review
ASIC Class Order 07/422 On-market buy-backs by ASX-listed schemes	Treasury	F2007L04727			Sunsets
Aviation Transport Security Amendment Regulations 2007 (No. 4)	DIT	F2007L03847			Exempt
Broadcasting Services (Hours of Local Content) Declaration No. 1 of 2007	DBCDE	F2007C00690			Sunsets
Consumer Protection Notice No. 8 of 2007 – Consumer Product Safety Standard: Prams and Strollers	Treasury	F2007L01895			Sunsets
Corporations Amendment Regulations 2007 (No. 6)	Treasury	F2007L01889			Sunsets
Corporations Amendment Regulations 2007 (No. 10)	Treasury	F2007L02637			Sunsets
Financial Sector (Collection of Data) Reporting Standard Determination No.s 18–31	Treasury				Sunsets
Life Insurance (Prudential Rules) Determination No. 2 of 2007	Treasury	F2007L04671			Sunsets
Life Insurance (Prudential Standards) Determination No. 16 of 2007	Treasury	F2007L04672			Sunsets
Health Insurance (Eligible Collection Centres) Approved Principles 2007	DHA	F2007C00467		Repealed	
Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 6)	DAFF	F2007L02466			Sunsets
Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 8)	DAFF	F2007L02465			Sunsets
Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 7)	DAFF	F2007L02474			Sunsets
Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 10) and related instruments	DAFF	F2007L03753			Sunsets
Trade Practices (Industry Codes – Franchising) Amendment Regulations 2007 (No. 1)	DIISR	F2007L02475			Sunsets

Appendix A

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 Amendment 1	DIT	F2007L04080			Exempt
Vehicle Standard (Australian Design Rule 23/02 – Passenger Car Tyres) 2007	DIT	F2007L02383			Exempt
Vehicle Standard (Australian Design Rule 33/00 – Brake Systems for Motorcycles and Mopeds) 2007	DIT	F2007L02707			Exempt
Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005 Amendment 3	DIT	F2007L03748			Exempt
Vehicle Standard (Australian Design Rule 59/00) 2007	DIT	F2007L04077			Exempt
Vehicle Standard (Australian Design 43/04 – Vehicle Configuration and Dimensions) 2006 Amendment 1	DIT	F2007L04081			Exempt
Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007	DIT	C2007B00141			Exempt
Bankruptcy (Estate Charges) Amendment Bill 2007	AG	C2007C00353			Sunsets
Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007	AG				Sunsets
Broadcasting Legislation Amendment (Digital Radio) Bill 2007	DBCDE	C2008C00330	Internal review		
Radio Licence Fees Amendment Bill 2007	DBCDE	C2007C00334	Internal review		
Communications Legislation Amendment (Content Services) Bill 2007	DBCDE				Exempt
Corporations Amendment (Insolvency) Bill 2007	Treasury	C2007A00132	2010 Insolvency Reform package Review		In scope for review
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007	Treasury	C2010C00544	Machinery changes - not a priority for review		In scope for review
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007	DoHA	C2007B00055			Sunsets
Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007	DoHA				Sunsets
Liquid Fuel Emergency Amendment Bill 2007	DRET	C2011C00016			Sunsets
Migration Amendment (Maritime Crew) Bill 2007	DIAC	C2007A00073			Sunsets
Tax Laws Amendment (2007 Measures No. 2) Bill 2007	Treasury		Henry Tax Review		
Tax Laws Amendment (2007 Measures No. 3) Bill 2007	Treasury		Henry Tax Review		
Tax Laws Amendment (2007 Measures No. 4) Bill 2007	Treasury	C2010C00184	Henry Tax Review		
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007	Treasury	C2007A00144	Henry Tax Review		
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007	Treasury	C2007A00145	Henry Tax Review		

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Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Trade Practices Legislation Amendment Bill (No. 1) 2007	Treasury				Sunsets
Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007	DIT	F2007C0013 2*	Non-compliant - post-implementation review has commenced		In scope for review
Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007	Treasury	C2008C00460			Sunsets
Corporations (Fees) Amendment Bill 2007	Treasury				Sunsets
Corporations (Review Fees) Amendment Bill 2007	Treasury				Sunsets
Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007	FaHCSIA	C2010C00341			Sunsets
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007	Treasury	C2008C00236			Sunsets
Food Standards Australia New Zealand Amendment Bill 2007	DoHA	C2007A00098			Sunsets
Industrial Chemicals (Notification and Assessment) Amendment (Cosmetics) Bill 2007	DoHA	F2007L03680			Sunsets
Migration Amendment (Sponsorship Obligations) Bill 2007	DIAC	C2007A00110			Sunsets
Farm Household Support Amendment Bill 2007	DAFF	F2007C00395*			Sunsets
Wheat Marketing Amendment Bill 2007	DAFF				Sunsets
Workplace Relations Amendment (A Stronger Safety Net) Bill 2007	DEEWR	C2007A00107			Sunsets
Corporations Amendment Regulations 2007 (No. 6)	Treasury	F2007C00736*			Sunsets
National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code 2007) – Education services for Overseas Students Act 2000	DEEWR	F2010C00313	Australian Government Review		
Environment Protection and Biodiversity Conservation Act 1999 - Proclamation - Cod Grounds Commonwealth Marine Reserve (10/05/2007)	SEWPaC	F2007L01333			Sunsets
Life insurance (prudential standards) determination No.2 of 2007 - Prudential standard LPS 220 Risk Management	Treasury	F2007L00852			Sunsets
Life Insurance (prudential standards) determination No. 4 of 2007 - Prudential Standard LPS 232 Business Continuity Management	Treasury	F2007L00854			Sunsets
Terrorism Insurance Amendment Regulations 2007 (No. 1)	Treasury	F2007C00392			Sunsets
Trade Practices (Consumer Product Safety Standards) (Children’s Nightwear and Paper Patterns for Children’s Nightwear) Regulations 2007	Treasury	F2007L00215			Sunsets
AASB 8 Operating Segments	Treasury	F2010C00249			Sunsets

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Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Radiocommunications (Electromagnetic Radiation — Human Exposure) Amendment Standard 2007 (No. 1)	DBCDE	F2007C00199			Sunsets
Telecommunications Numbering Plan Variation 2007 (No. 3)	DBCDE	F2007C00326*			Sunsets
Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007	DBCDE	F2010C00684			Sunsets
2007 Summary - 71 regulations			13 - Other review	1 - Repealed	44 - Sunset 4 - In scope for 5 year review 9 - Exempt from sunseting

Appendix B

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Fuel Standard (Petrol) Amendment Determination 2008 (No. 1)	DSWEPaC	F2008C00344			Sunsets
Vehicle Standards (Australian Design Rule 10/02 – Steering Column) 2008	DIT	F2008L02387			In scope for review
Independent Contractors Amendment Regulations 2008 (No. 1)	DIISRTE	F2008C00406			Sunsets
Trade Practices Act 1974 - Consumer Protection Notice No. 12 of 2008 - Consumer Product Safety Standard: Vehicle Support Stands	ACCC	F2008L03230	Internal review mechanism		
Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008	ACCC	F2008L03475	Subject to review after five years		
ASIC Class Orders 08/751	ASIC	F2008L03520		Repealed	
ASIC Class Orders 08/752	ASIC	F2008L03525		Repealed	
ASIC Class Orders 08/753	ASIC	F2008L03526		Repealed	
ASIC Class Orders 08/763	ASIC	F2008L03532		Repealed	
ASIC Class Orders 08/764	ASIC	F2008L03534			Sunsets
Civil Aviation Safety Amendment Regulations 2008 (No. 1)	CASA	F2008C00513			In scope for review
Civil Aviation Amendment Regulations 2008 (No. 1)	CASA	F2008L03484			In scope for review
ASIC Class Order 08/1 Group Purchasing Bodies and Regulatory Guide 195 Group Purchasing Bodies for Insurance and Risk Products	ASIC	F2008L03595			Sunsets
Aviation Transport Security Amendment Regulations 2008 (No. 2)	DIT	F2008C00521			Sunsets
Aged Care Amendment (2008 Measure No. 2) Bill 2008	DHA	C2008B00249			Sunsets
08/801		F2008L04171		Repealed	
Banking Amendment Regulations 2008 (No. 1)	Treasury	F2008L04298			Sunsets
Banking Act 1959 - Declaration of Covered Financial Products	Treasury	F2008L04286			Sunsets
08/824 Covered Short Sales		F2008L04330			Sunsets
National Health Security (SSBA) Standards Determination 2008	DHA	F2008L04331		Repealed	
Resale Royalty Right for Visual Artists Bill 2008b	DEWHA	C2008B00267			Sunsets
Uranium Royalty (Northern Territory) Bill 2008	DRET	C2008B00276			Sunsets
Australian Meat and Live-stock Industry (Export of Live-stock to Egypt) Order 2008	DAFF	F2008L04542	Farmer Review		
National Health Security Amendment Regulations 2008 (No. 1)	DHA	F2008L04266			Sunsets
Insurance (Prudential Standard) Determinations No 14 of 2008	APRA	F2009L00009	Internal review mechanism		

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Insurance (Prudential Standard) Determinations No 15 of 2008	APRA	F2009L00010	Internal review mechanism		
Insurance (Prudential Standard) Determinations No 16 of 2008	APRA	F2009L00011	Internal review mechanism		
Insurance (Prudential Standard) Determinations No 17 of 2008	APRA	F2009L00012	Internal review mechanism		
Torres Strait Prawn Fishery Management Plan 2008	AFMA	F2009L00505			Sunsets
ATM Access Regime	RBA	F2009L00710			In scope for review
Trade Practices (Consumer Product Safety Standard) (Treadmills) Regulations 2008	ACCC	F2009L02165			Exempt
Corporations Amendment (Short Selling) Bill 2008	Treasury	C2008B00261			Sunsets
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008	Treasury	C2008B00244			Sunsets
Financial Claims Scheme (ADIs) Levy Bill 2008	Treasury	C2008A00103			Sunsets
Financial Claims Scheme (General Insurers) Levy Bill 2008	Treasury	C2008A00104			Sunsets
Fair Work Bill 2008	DEEWR		Review within two years of implementation		
Tax Agent Service Bill 2008	ATO	C2008B00244			Sunsets
Temporary Residents' Superannuation Legislation Amendment Bill 2008	Treasury	C2008A00151			Exempt
Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008	Treasury	C2008A00152	Cooper Review		
<i>Trade Practices Act 1974</i> - Consumer Protection Notice No. 10 of 2008 - Consumer Product Safety Standard: Trolley Jacks	ACCC				Exempt
Access to Telstra Exchange Facilities, Record Keeping and Reporting Rules, Section 151BU, <i>Trade Practices Act 1974</i>	ACCC				Exempt
Financial Stability Standards (Disclosure of Securities Lending Transactions)	RBA				Exempt
Regulatory Guide 45 (Mortgage Schemes) and Regulatory Guide 46 (Unlisted Property Schemes)	ASIC				Exempt
Aviation Legislation Amendment (International Airline Licences and Carriers' Liability and Insurance) Act 2008	DIT	C2008A00087			Exempt
Defence Home Ownership Assistance Scheme Act 2008	Defence	C2008A00027			Exempt
First Home Saver Accounts Act 2008	Treasury	C2008A00044	Henry Tax Review		
Income Tax (First Home Saver Accounts Misuse Tax) Act 2008	Treasury	C2008A00046	Henry Tax Review		
First Home Saver Accounts (Consequential Amendments) Act 2008	Treasury	C2008A00045	Henry Tax Review		

Appendix B

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
National Fuelwatch (Empowering Consumers) Bill 2008	Treasury	C2008B00149		Bill did not pass	
National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008	Treasury	C2008B00150		Bill did not pass	
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	DRET	C2008A00117			Exempt
Private Health Insurance Legislation Amendment Act 2008	DHA	C2008A00054			Exempt
Tax Laws Amendment (Election Commitments No. 1) Act 2008	Treasury	C2008A00032	Henry Tax Review		
Income Tax (Managed Investment Trust Withholding Tax) Act 2008	Treasury	C2008A00031	Henry Tax Review		
Income Tax (Managed Investment Trust Transitional) Act 2008	Treasury	C2008A00030	Henry Tax Review		
Tax Laws Amendment (Medicare Levy Surcharge Thresholds) Bill 2008	Treasury	C2008B00159	Henry Tax Review		
Telecommunications Legislation Amendment (National Broadband Network) Act 2008	DBCDE	C2008A00022			Exempt
Trade Practices Legislation Amendment Act 2008	Treasury	C2008A00116			Exempt
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	DEEWR	C2008A00008	Government Review		
Wheat Export Marketing Bill 2008	DAFF	C2008A00065	Productivity Commission Review 2010		
Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008	DAFF	C2008B00162	Productivity Commission Review 2010		
ASIC Class Order 08/10 Share and interest sale facilities	Treasury	F2008L00757			Sunsets
RG 161 Share and interest sale facilities	Treasury				Sunsets
RG 101 On-market buy-backs of ASX-listed schemes	Treasury				Sunsets
Aviation Transport Security Amendment Regulations 2008 (No. 1)	DIT	F2008L01057			Exempt
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997	DBCDE	F2004B00422			Sunsets
Customs (Prohibited Imports) Amendment Regulations 2008 (No. 3)	AG	F2008L01400			Exempt
Health Insurance (Diagnostic Imaging Accreditation) Determination 2008	DHA	F2008L01571		Ceased Jun 2010	
Health Insurance (Diagnostic Imaging Accreditation - Approved Accreditors) Determination 2008	DHA	F2008L01572		Ceased Jul 2009	
Insurance (Prudential Standard) Determination No.s 1 – 13 2008	Treasury		Reviewed		
Primary Industries (Excise) Levies Amendment Regulations 2008 (No. 2)	DAFF	F2008L01662			Sunsets

Appendix B

Name of Regulation	Portfolio	CommLaw ID	Review	Superseded	Sunset
Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 1)	DAFF	F2008L01663			Sunsets
Restricted Access Systems Declaration 2007	DBCDE	F2008L00048			Sunsets
Trade Practices Act 1974 – Consumer Protection Notice No. 4 of 2008 – Consumer Product	Treasury	F2008L00550			Sunsets
Safety Standard: Children’s Portable Folding Cots					
Trade Practices (Consumer Product Information Standards) (Cosmetics) Amendment Regulations 2008 (No. 1)	Treasury	F2008L01521			Sunsets
Trade Practices (Consumer Product Safety Standard) (Hot Water Bottles) Regulations 2008	Treasury	F2008L00651			Sunsets
Vehicle Standard (Australian Design Rule 21/00 – Instrument Panel) 2006 Amendment 1	DIT	F2008L01056			Exempt
Water Regulations 2008	DSWEPaC	F2011C00452			Sunsets

2008 Summary - 78 Regulations

Reviewed - 20

**Superseded
- 10**

**Exempt - 15
Sunsets - 29**

**In scope for review -
4**