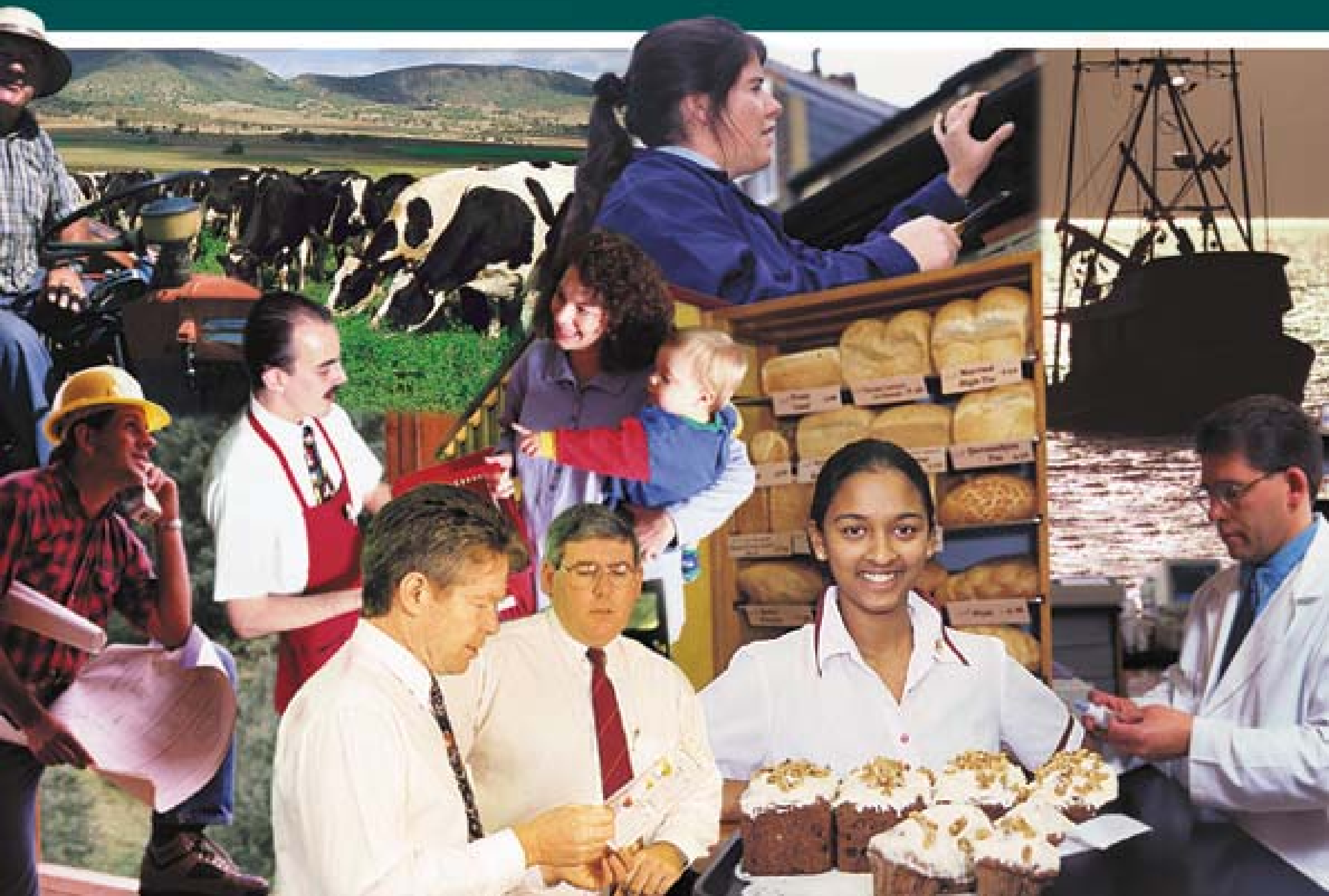
QUEENSLAND TREASURY

Public Benefit Test Guidelines

QUEENSLAND GOVERNMENT

Approach to undertaking Public Benefit Test Assessments for Legislation Reviews under National Competition Policy



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Foreword

In April 1995, all Australian Governments endorsed a package of legislative and administrative arrangements that underpin National Competition Policy (NCP). The key objective of NCP is to develop a more open and integrated Australian market that limits anti-competitive conduct and removes the special advantages previously enjoyed by government business activities, where it is in the public interest to do so.

While NCP is designed to result in better use of resources and substantial and ongoing benefits to the community, the introduction of increased levels of competition will not always deliver the best overall result for the community.

Accordingly, Governments have a responsibility to ensure that NCP reforms are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment, to the community. While the Queensland Government is well aware of the potential benefits that competition can bring to the community, this Government will continue to ensure that competition is not pursued for competition's sake and that a considered and pragmatic approach is taken to NCP.

A key element of NCP is, of course, the review of all legislation that restricts competition. A critical part of the Queensland Government's overall approach to NCP is our legislation review process. The Government is committed to a legislation review process based on a rigorous assessment of the costs and benefits of options for reform.

The Government also recognises the need to tailor review processes according to each particular review situation depending on the significance of the issues under consideration.

These Public Benefit Test Guidelines are designed to ensure that the Government's approach is put into action.

A specific requirement of the Guidelines is for the Government's Priority Outcomes for Queensland to be considered as an integral part of the review process.

Rather than placing the onus in the legislation review process on the need to defend restrictions on competition, these Guidelines aim to ensure that reviews focus on a thorough and meaningful analysis of the benefits and costs of alternative options, which takes full account of employment, regional development, social, consumer and environmental effects.

The revised review process will place greater emphasis on identifying potential employment and social impacts in regional and rural communities and also requires that in cases where reforms are proposed, consideration is given to whether a transitionary approach is needed to assist industries and communities to adjust.

The Guidelines also reinforce the need for consultation with affected groups to form an integral part of the review process.

The legislation review program is an important exercise which has the potential to have significant impacts both on those directly affected by the range of legislation under review and on the broader community.

It is therefore critical that reviews are conducted in a manner that reflects the importance of the task. Accordingly, those involved in the NCP legislation review process are encouraged to make use of these Guidelines.

Peter Beattie MLA	David Hamill MLA
Premier	Treasurer

October 1999

Executive Summary

Under National Competition Policy (NCP), Queensland and all other Australian jurisdictions are committed to implementing a series of competition reforms within specified timeframes.

As part of NCP, Queensland must review and where necessary reform, by the end of the year 2000, all legislation that contains measures that restrict competition.

The guiding principle for these reviews is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

A Public Benefit Test is the mechanism for conducting the legislation review process.

These Guidelines have been developed to assist Departments to assess the need for and undertake public benefit tests, as required under NCP, when reviewing legislation which contains restrictions on competition and where an exemption from the provisions of the Trade Practices Act and/or Queensland Competition Code is sought.

The review process adopted by the Queensland Government reflects the view that while competition is widely recognised as a key ingredient in Queensland's economic competitiveness, unrestricted competition can also have undesirable effects on the community as a whole.

The Public Benefit Test (PBT) process used in Queensland involves a rigorous assessment of the benefits and costs of reform options which takes full account of employment, regional development, social, consumer and environmental effects.

There are a number of key considerations in the legislation review process.

The key review principles are:

- objectivity and independence;
- transparency;
- timeliness; and
- the adoption of a whole of government approach.

One of the most critical aspects of the NCP review process is the need to carefully analyse the social impacts of all policy alternatives considered in the review process. Social impacts will be specifically considered in all reviews and, in the case of major reviews, a social impact assessment using designated methodology must be conducted as part of public benefit tests. An Employment Impact Statement must also be prepared for all major reviews.

Consultation with stakeholders and interested parties is also an integral part of the review process. While consultation will be undertaken in all cases, the level and nature of community participation in reviews will vary. In the case of major reviews, public hearings and formal written submissions are likely to be instrumental in the consultation process. For some minor reviews, where the issues under consideration are known to impact on only a small number of known stakeholder groups, consultation may be quite targeted.

Queensland's approach to the legislative review process is characterised by its flexibility.

There are two broad public benefit assessment processes available – major and minor assessments. In some cases a reduced review process may also be adopted.

The review process used in each review will be determined on a case-by-case basis taking into account the significance of the restriction/s on competition under consideration; the size of the likely impacts of retaining or removing the restriction/s; the complexity of the issues involved in the review and the level of community concern associated with the review.

In a major review, a full assessment of costs and benefits, including a detailed quantitative and qualitative analysis, is required. Impacts should be valued in dollar terms to the fullest extent possible.

A minor review will have a greater emphasis on qualitative data and less emphasis on valuing impacts in dollar terms. The focus will be on fully identifying and describing impacts on affected groups.

A reduced review may be conducted in certain cases such as where legislation may restrict competition but was developed for very clear social reasons rather than economic objectives (e.g. legislation governing health and safety standards).

There is also flexibility in the review process in terms of the review model which may be used.

In broad terms, major reviews may be conducted as a full public inquiry; a national or joint-jurisdictional review or a targeted public review. Minor reviews may be conducted as targeted public reviews; departmental reviews or as reduced reviews.

A further element of flexibility in Queensland's NCP review process involves the consideration of economic or social adjustment costs of moving from one regulatory situation to an alternative arrangement.

In some cases, reform that is clearly in the broad public interest may impose adjustment costs on a particular group. In such cases, consideration will be given to whether transitionary measures are required to assist such groups. Transitionary measures may, as an example, involve implementing reform over time or targeted assistance measures.

The PBT process involves a number of steps that are detailed in the Guidelines. These key steps are:

- initial notification and discussion with Treasury;
- development of the review's PBT Plan and Terms of Reference;
- public notification of the review;
- conducting the PBT;
- development of a PBT Report/Competition Impact Statement; and
- a Cabinet submission (where applicable).

Purpose of Guidelines

The Department of the Premier and Cabinet and Queensland Treasury are coordinating the implementation of NCP in Queensland.

Responsibility for day-to-day program management of NCP rests with Treasury. It is essential that agencies involved in the NCP legislation review exercise liaise closely with Treasury on all aspects of reviews.

These guidelines have been developed to assist Departments to assess the need for and undertake a PBT, as required under NCP, when reviewing legislation that restricts competition and where an exemption from the provisions of the Trade Practices Act and/or Competition Code of Queensland is sought.

The guidelines are designed to provide assistance in conducting legislative reviews involving all levels of analysis. It is however, imperative that Departments liaise closely with Treasury throughout the review process.

The guidelines are divided into two main sections. The first section outlines review procedures which will be of particular assistance to those involved in managing and coordinating reviews. The second section incorporates a series of attachments including technical information relating to review methodology that will be of assistance to those conducting reviews.

The guidelines will also assist those overseeing the work of consultants engaged to conduct NCP public benefit tests.

While the basic review process should be understood by all parties involved in legislation review, a reasonable understanding of economics and some experience in undertaking project appraisal using cost-benefit analysis would be required by those actually conducting major reviews.

The PBT aims to identify the nature and incidence of all relevant economic, social and cultural costs and benefits to the community of restricting competition when compared with other means which might meet Governments' objectives. Accordingly, these guidelines provide a framework for identifying the impacts of restrictions on competition on individuals and groups of individuals in the community.

Once the analysis has been completed, the Queensland Government will determine whether a particular restriction on competition is in the public interest, taking into account the magnitude and distribution of all impacts.

Introduction

National Competition Policy

All Australian Governments agreed to the National Competition Policy (NCP) in April 1995.

The purpose of NCP is to systematically explore opportunities to improve the efficiency of the private and public sectors and Australia's international competitiveness, thereby bringing about growth in the economy and better living standards for all Australians.

The aim of the NCP reform program is to deliver tangible benefits to all sectors of the community. This is to be achieved by limiting anti-competitive conduct and removing special advantages of government business activities where it is in the public interest to do so.

NCP is being implemented by three inter-governmental agreements signed by the Council of Australian Governments (COAG):

- Conduct Code Agreement, which commits all governments to apply uniform competition law;
- Competition Principles Agreement (CPA), which establishes principles governing pro-competitive reform of government business enterprises and government regulation; and
- Agreement to Implement National Competition Policy and Related Reforms, which sets the timetable for reform and includes a commitment by the Commonwealth to make additional general purpose payments to the States/Territories conditional upon their compliance with the agreed reform agenda and timetable.

Related reforms in the electricity, gas, water and road transport industries also form part of the NCP package.

The National Competition Council (NCC) advises the Commonwealth on progress on implementation of NCP. The NCC also critiques reviews and review processes.

National Competition Policy and Legislation Review

Under NCP, Queensland and all other Australian jurisdictions are committed to implementing a series of competition reforms within specified time frames.

One of these obligations is that each jurisdiction must review and where necessary reform, by the year 2000, all legislation that contains measures that restrict competition. Appendix 9 contains a set of guidelines for identifying measures that restrict competition.

Under the CPA, all governments agreed to the guiding principle that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

This means that NCP reviews must not only consider whether an existing/proposed restriction provides a public benefit, but also whether other options would achieve a greater public benefit.

To give effect to the guiding principle, governments have agreed to:

- review and, where appropriate, reform all existing legislative restrictions on competition against the legislation review principle; and
- ensure that all proposed legislation is assessed against the legislation review principle.

The Public Benefit Test is the mechanism for carrying out this review process.

The need to carry out the review of legislation recognises that government regulation can sometimes create unwarranted barriers to entry or other restrictions on business which limit consumer choice, stifle innovation and reduce incentives to achieving better efficiency. However, the review of legislation does not imply a need to introduce or ensure competition for its own sake nor imply that competition objectives should take precedence over other important public policy objectives.

NCP Legislation Review outcomes are based on thorough public interest justification.

To achieve this, the following matters must, where relevant, be considered in the assessment—

- Government legislation and policies relating to ecologically sustainable development.
- Social welfare and equity considerations, including community service obligations.
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity.
- Economic and regional development, including employment and investment growth.
- The interests of consumers generally or a class of consumers.
- The competitiveness of Australian businesses.
- The efficient allocation of resources.

Importantly, the CPA also envisages that each jurisdiction's decision to proceed with an NCP reform will depend on that Government's assessment that the benefits to the community from the reform outweigh the costs.

National Competition Policy Implementation in Queensland

The Department of the Premier and Cabinet and Queensland Treasury are coordinating the implementation of NCP in Queensland. Day-to-day program management for NCP rests with Treasury.

The Queensland Government is adopting a case-by-case approach to NCP reforms. This entails an individualistic approach recognising that each review will have its own characteristics. The review processes used will recognise and reflect this approach.

While competition is widely recognised as a key ingredient in Queensland's and Australia's economic competitiveness, it is also recognised that, in some cases, unrestricted competition may result in undesirable social effects on the community as a whole. Therefore, any consideration of proposed NCP reforms flowing from the legislation review process will involve a rigorous assessment of the benefits and costs of alternative options, and will take full account of employment, regional development, social, consumer and environmental effects.

Equally, while the review process will need to take account of relevant legislative developments, such as NCP reviews in other jurisdictions, it is critical that any unique characteristics of the Queensland market are identified and considered.

As the severity of restrictions and magnitude of impacts of the legislation to be reviewed will vary and as undertaking reviews can be a resource intensive exercise, several assessment processes are being used in Queensland in legislation review. In certain cases, for example, where there are clear social grounds for restrictions under consideration and these restrictions have minimal impact, a reduced NCP review may be undertaken, essentially as a desktop exercise. At the other end of the scale, where restrictions on competition have significant impacts on affected groups, a full assessment of the costs and benefits, including a detailed quantitative analysis will be required.

Importantly, irrespective of the review process undertaken, consultation with affected groups will be an integral part of the review process. The amount of consultation will vary with the scale of the review.

At the outset of the review process, it is essential to have a clear understanding of the policy objectives the Government is seeking to achieve in the current or proposed arrangements. Only those options that are consistent with, and support, the Government's Priority Outcomes should proceed for further consideration.

The Government's Priority Outcomes for Queensland are—

More jobs for Queenslanders.

Building Queensland's regions.

Skilling Queensland.

Safer and more supportive communities.

Better quality of life.

Valuing the environment.

Strong government leadership.

Further, the combined effects of the benefits and costs to the community as a whole must be assessed against the Government's Priority Outcomes.

Where it is decided that reforms (changes to legislation or regulation) are to be implemented, consideration will be given to whether a transitionary approach is needed to assist communities and/or industries to adjust at an appropriate pace. Any proposal for transition, particularly beyond 2000, must be incorporated in the PBT analysis.

It is also important to understand that while Queensland is committed to the review and where appropriate reform, by the year 2000, of all legislation that contains measures that restrict competition, the legislation review process does not end in the year 2000.

The CPA requires Queensland to subject proposals for new legislation to the same Public Benefit Test as that applying to existing legislation. Any anti-competitive legislation retained will need to be reviewed after 10 years. Legislation review will therefore be a continuing process for the Queensland Government in the interests of achieving better outcomes for the Queensland community.

Review Procedures

This section of the guidelines describes the overall process to be followed in undertaking a PBT for both legislative review and Trade Practices Act purposes. It includes guidance on:

- when a PBT is required;
- key considerations in undertaking legislation review; *and*
- major steps in the PBT process.

When is a Public Benefit Test required?

A PBT must be undertaken by a department or agency that seeks to:

- retain or introduce legislation which restricts competition; *and*
- have activities, which might otherwise be in breach either of Part IV of the Trade Practices Act or the State's Competition Code, exempted by legislation or authorised by the Australian Competition and Consumer Commission (ACCC).

Review of anti-competitive legislation

All legislation that restricts competition must comply with the guiding principle set out in the legislation review element of the Competition Principles Agreement. This principle requires that legislation (including both acts and subordinate legislation such as enactments, by-laws, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

If a piece of existing legislation containing anti-competitive provisions does not meet these criteria, it must be amended or repealed. In addition, proposals for new or amended legislation must be accompanied by a PBT indicating that the legislation is consistent with the above principle.

The kinds of legislation that restrict competition are listed in Appendix 9.

Exemptions from the operation of Part IV of the Trade Practices Act/State Competition Code and Authorisations by the ACCC

Part IV of the Trade Practices Act (TPA) and the State Competition Code house the rules governing anti-competitive conduct in the market place.

Section 51 of the TPA permits the Queensland Government to legislate exemptions from Part IV of the TPA or the State's Competition Code.

There is a requirement that the anti-competitive conduct being exempted must yield benefits to the community that outweigh the costs to the community of any restriction on competition. Accordingly, any request for a legislated exemption must be supported by a PBT carried out in accordance with these guidelines.

The Australian Competition and Consumer Commission (ACCC) must be notified of all legislated exemptions within 30 days of enactment. Treasury will handle this process of notification.

The second route for authorisation of anti-competitive conduct that breaches the TPA\Competition Code is authorisation by the ACCC.

Authorisations are to be viewed as the ‘last resort’. An application to the ACCC for an authorisation may preclude a subsequent legislated exemption if the ACCC authorisation is rejected. Therefore, any proposed approach to the ACCC for an authorisation of conduct must be referred to Treasury for consideration. Departments should under no circumstances approach the ACCC for authorisation without first consulting Treasury. Refer to page 40 of the Restrictive Trade Practices and Processes Manual (Queensland Government, 1995) for further information on authorisations.

Key considerations in undertaking legislation review

Key Review Principles

The following principles are essential to the review of anti-competitive legislation:

Objectivity and Independence

- Ensure management of the review process is independent and objective. In this regard, consideration should be given to whether it is appropriate for industry and interest groups to be directly represented on any committees established to conduct reviews, or whether their participation should occur through reference groups, consultation and written submissions.
- Departmental staff coordinating or undertaking the PBT should not be those responsible for administering the legislation under review.
- Conduct a thorough analysis of all relevant alternatives and views.

Transparency

- Ensure all interested parties have a clear understanding of review process.
- Ensure all interested parties have adequate opportunity to input to the review.
- Provide adequate notification of review.
- Establish and make available Terms of Reference and other explanatory material for the review.
- Make outcomes publicly available.

Timeliness

- Proceed with reviews and associated reforms in a timely manner having regard to Queensland’s commitments under the CPA and published legislation review timetable.

Whole of Government Approach

- The Government's Priority Outcomes (see Appendix 3) must be considered in analysis of options. Those options that are inconsistent with the Government's Priority Outcomes should not be considered.
- In some cases, it will be necessary to directly involve agencies other than the department responsible for conducting the review, in the review process.
- No commitment to stakeholders on review matters is to be given until discussions take place and positions are agreed within government.
- It is important to minimise duplication in review processes. If a broad review is planned and there is a requirement to undertake a review under NCP, these reviews should be undertaken as one exercise. Where a regulation is to be reviewed under both NCP and the Statutory Instruments Act 1992, an integrated framework has been developed to ensure proper coordination of review processes and is contained in Appendix 8.

Considering Social Impacts

The PBT process requires consideration of an array of public interest matters including the environment, employment, social welfare and community interests. Consideration of social impacts is an integral part of the NCP review process.

Social impacts are anything that will change a community's cultural traditions or alter the ways in which people live, work, play, relate to one another, organise to meet their needs, and generally cope as members of society. A social impact assessment will identify the nature and distribution of the human costs and benefits of the alternative.

Where costs are localised and benefits are widely disbursed, social impact assessment may need to examine the effect of other micro-economic reforms taking place in the community and the cumulative effect on the community. This is particularly an issue in rural and remote areas that may rely heavily on a small number of large industries.

It is expected that all PBTs will examine the social impacts of all alternatives considered in the review process. In major reviews a Social Impact Assessment using the attached methodology (Appendix 4) must be conducted as part of the PBT.

Considering Employment Impacts

Consideration of employment impacts is also an integral part of the NCP review process.

All PBTs will examine the employment impacts of all alternatives considered in the review process. In major reviews, an Employment Impact Statement will need to be developed in accordance with the framework detailed in Appendix 5. These statements must consider both regional and statewide employment effects.

Consultation

Sufficient time must be allowed for informed community participation in reviews. The level and nature of participation is determined on a case-by-case basis. For example, major reviews may involve public hearings and formal written submissions, while minor reviews may have targeted consultation where impacts of restrictions are confined to a few known stakeholder groups. In all cases, some form of consultation with the community is essential.

Consultation with stakeholders and interested parties, including consumers and affected communities, may occur throughout the review and is not restricted to a particular stage in the review process. These groups will build the foundation for the identification of impacts and determining alternate market outcomes. Feedback received from these groups flows through to the analysis of net benefit during the final stages of the review.

PBT Types

An important issue to determine is the depth of analysis and degree of rigour required for each assessment. The question here is: How comprehensive should the assessment be and, what level of resources should be devoted to the exercise? The answer to this question will clearly be linked to the level of anti-competitive impact and significance of the conduct or legislation in question.

There are two broad forms of assessment available – major assessments and minor assessments. In some cases it may also be appropriate to conduct a reduced review. The reduced review is a scaled-down form of a minor review.

Deciding on the form a PBT should take is a case-by-case issue considered during the development of the PBT plan. Determining the type of assessment appropriate for a particular review should be based on the following considerations:

Criteria	**Types of Assessment**	
	Major	**Minor (includes reduced reviews)**
Extent of restriction (Scope, number, effect)	Widespread: impacts on many stakeholders. Highly restrictive: Prevents entry or seriously restricts the conduct of business and may include restrictions on inputs or business structure. Creates a monopoly on a product or service and the activity is significant in the context of the Queensland State economy or nationally.	Impact on few stakeholders/ groups. Minor restriction on business.

Criteria	Types of Assessment	
	Major	Minor (includes reduced reviews)
Size of stakeholder impact as a result of retaining/ removing restriction	The number of stakeholders is high and/or the impact on the stakeholders is high. High financial, social and/or environmental impact on removing, altering or retaining the restriction	The number of stakeholders is low and/or the impact on the stakeholders is low.
Complexity of issues	The complexity of the issue is high with a high degree of uncertainty as to the impact changes will have on the stakeholders.	The complexity of the issues is low with a low degree of uncertainty as to the impact changes have on the stakeholders.
Community concern	The level of concern that the community as a group has is high. It may be perceived as a highly controversial review.	The level of concern that the community as a group has is low. It is perceived as a non-controversial review.

A minor review also distinguishes itself from a major review by its emphasis on qualitative data. While a lack of available quantitative data should not be the primary factor in determining whether a major or minor PBT is undertaken, the minor PBT methodology will tend to be more relevant in situations where the availability of quantitative data is low.

Major assessments require a full assessment of the costs and benefits, including a detailed quantitative analysis, based on economic cost-benefit modelling. This means that impacts should be valued in dollar terms to the fullest extent possible. This can sometimes be a difficult exercise requiring considerable technical expertise. Major assessments may therefore require the use of external expertise.

In the case of major and minor reviews, potential social impacts need to be fully articulated and described. For major reviews, a Social Impact Assessment, using the attached framework (Appendix 4) is required.

Generally, where the PBT is to be conducted in seeking an exemption from the TPA, a major assessment should be undertaken.

It is not possible to prescribe when a major assessment will be required. However, as an indication, a major assessment may be appropriate where any of the following occurs—

There is a legislated monopoly on the provision or marketing of a good or service and the activity is significant in the context of the Queensland economy.

- The likely financial impact on affected groups of removing or altering the restriction will be substantial.
- The likely environmental or social impact of removing, altering or retaining the restriction will be extensive.
- The likely geographical impact will be widespread.
- There are prescriptive restrictions on entry to a market including: licensing or registration requirements as in the case of occupational regulation which imposes defined standards on the right to provide a service or to operate a business which provides a service; allocation of quantitative entitlements, quotas or franchises.
- There are price control provisions, whether by way of setting (or prescribing a process for determining) the maximum/minimum prices or charges for a specified good or service or the maximum/minimum rates of commission, agency or fees for any good or service.

Minor assessments require a less comprehensive valuation of costs and benefits. In particular, there will be less emphasis on valuing impacts in monetary terms.

The focus will be on fully identifying and describing impacts on affected groups. In valuing impacts, reliance will be placed on using existing data and information. This is intended to be a simpler methodology that should not require external expertise but, rather, may be done "in-house".

In some instances, it may be appropriate to conduct a reduced NCP review. These reviews are considered to be short form, minor public benefit tests and are only available in certain circumstances. Anti-competitive restrictions are analysed using the same basic methodology as a minor review but more emphasis is placed on assessing risk. Reduced NCP reviews do not require a rigorous application of cost/benefit analysis and apply in the following circumstances –

- Legislation was developed for more social rather than economic objectives.
- Legislation has a clear social policy position. Restrictions clearly need to be maintained (eg. for health and safety reasons), but an assessment of the level of risk burden on the community should be identified.
- The level of restriction on competition is low.
- Issues surrounding the application of legislation are considered to be non-controversial.
- Reviewing legislation may have significant costs with an expectation of little or no reform.
- A change from existing legislation involves substantial financial costs for the government (eg. when restrictions relate to existing contracts/agreements).
- Issues associated with the review are considered not to be sensitive.
- Restrictions have minimal impact and there is likely to be little community interest.

The need for and nature of each reduced PBT will be determined on a case-by-case basis. If a reduced PBT is proposed, consultation with Treasury will occur on the appropriate process and scope for the review. Examples of a reduced NCP review include legislation governing health and safety standards or an individual's right to privacy.

Review models

Six possible review models are outlined on the following pages. In addressing review models information is also provided on appropriate review processes. The application of review models assists in:

- the development of transparent and objective legislative reviews;
- flexibility in conducting reviews;
- ensuring appropriate allocation of resources to reviews;
- consistent application of methodology to all reviews; *and*
- comparable information for similar reviews.

Choosing a review model is dependent upon the scale of the required review, the severity of restrictions and significance of the impacts. These review models are guides only and the model used by agencies when conducting a Public Benefit Test is determined on a case-by-case basis during consultation with Treasury on the Public Benefit Test Plan.

Type of Review and main features	Key characteristics of the review model
Full Public Enquiry ▪ major impact/restriction on competition ▪ major reform issue ▪ wide community interest ▪ complex/inter-related issues	**Full public process:** ▪ independent panel ▪ publicity about review ▪ publication of terms of reference (TOR) and supporting explanatory documentation ▪ wide consultation during the review, including a call for public submissions ▪ where diverse impacts have been identified, process may include a reference group representing key stakeholders to assist the review panel ▪ may commission specialist consultants for specific aspects of the review ▪ publication of issues paper and/or interim report ▪ publication of final report conducted by: ▪ a panel with independent members appointed for the review ▪ appointed reviewers supported by seconded officials
National review ▪ national issue to consider ▪ States & Territories have significant interest in an issue ▪ equivalent/complementary legislation in all/most jurisdictions	**Full public process:** ▪ as above conducted by: ▪ a panel with members appointed for the review from outside government; or ▪ a committee comprising officials from some or all jurisdictions; or ▪ a lead jurisdiction; or ▪ independent public body such as the Productivity Commission
Joint-jurisdictional reviews ▪ cross-border issues between two or more jurisdictions, but not at a national level	**Full public process:** ▪ as above conducted by: ▪ a panel with members appointed for the review from outside government; or ▪ a committee comprising officials from those jurisdictions with direct interest in the review

Type of Review and main features	Key characteristics of the review model
Targeted public review ▪ significant restriction on competition ▪ less general public interest ▪ impact mainly confined to identifiable and distinct groups	**Full public process:** ▪ as above, but after initial publicity about the review and opportunity for public participation, subsequent consultation focuses on identified stakeholders ▪ as above, but in terms of publishing results, outcomes advised to identified stakeholders and available to other members of the public upon request conducted by: ▪ as above, or ▪ seconded officials (members from outside area responsible for the legislation)
Departmental review ▪ less significant restriction on competition, perhaps technical in nature ▪ policy interest across two or more portfolios ▪ community interest likely to be confined to distinct groups	**Modified public process:** ▪ existence of review and TOR advertised publicly ▪ terms of reference (TOR) and supporting documentation provided to known interest groups and available on request to all others ▪ identify and consult with target groups after initial publicity about the review ▪ circulate issues paper/draft report to parties participating ▪ final report publicly available conducted by: ▪ committee of officials from relevant portfolios, including central agencies, or ▪ portfolio with primary responsibility to act as lead reviewer supported by an inter-departmental steering committee that includes members from outside the area responsible for the legislation
Reduced NCP review	**Partial review process:** ▪ determine nature of restrictions ▪ determine magnitude of impact ▪ if anti-competitive, put forward community benefit justification for not conducting a full NCP review process (ie demonstrate costs of full review exceed benefits; contracts may underpin legislation) ▪ consider full public review depending on assessment of costs and benefits ▪ if not (materially) anti-competitive or where there is a clear public interest, undertake short-form review ▪ advise outcome to affected parties conducted by: ▪ intra-departmental officials or ▪ central agency

Implementation Issues

It is critical that NCP reviews take account of any adjustment costs (economic and social) of moving from one regulatory situation to an alternative arrangement.

In some cases, while there may be large efficiency gains to be achieved from a particular proposal, the same proposal may result in very high adjustment costs, for example where people would be forced to leave an industry and possibly relocate. This issue is of particular significance to rural and regional areas.

If, after careful consideration, it is considered that a proposal with significant adjustment costs should proceed, thought must be given to transitional arrangements. Implementing reform over a period of time may minimise social and economic impacts and provide for the equitable treatment of industry participants who may be affected differently by changes.

It may also be necessary to take into account that adjustment costs may be greater if a transitional approach is adopted rather than implementing change immediately.

This is particularly important where the prevailing market conditions mean that industry reform is inevitable in the long run.

Transitional arrangements may, as an example, involve the extension of justifiable government intervention for a specified period; a reduction in regulation over time; structural adjustment assistance measures; or any combination of the above.

Major Steps in the Public Benefit Test Process

The key steps in conducting a PBT are:

- initial notification and discussion with Treasury;
- preparation of draft Public Benefit Test Plan/Terms of Reference and submission to Treasury/Cabinet for consideration and approval;
- public notification of review by department or committee responsible for the legislation being reviewed;
- conduct of Public Benefit Test;
- preparation and formal submission of Competition Impact Statement/ Public Benefit Test Report to Treasurer for endorsement; *and*
- preparation and submission of Cabinet documents (where applicable).

Initial notification

For reviews of existing legislation, departments should consult the legislation review timetable to determine when a review is to commence. Preliminary discussion should occur with Treasury.

For reviews of proposed new or amending legislation that restricts competition, agencies should consult with Treasury during the development of legislative proposals. Consideration of NCP issues associated with policy proposals should occur at the earliest possible point and should be considered an integral part of the policy development process.

In respect of legislated exemptions (or ACCC authorisations) from the TPA, departments should notify Treasury as soon as possible of the nature of the exemption sought.

Prepare Public Benefit Test Plan and Terms of Reference and submit to Treasury for approval

Following initial notification, departments must undertake a brief desktop exercise to prepare a Public Benefit Test Plan and Terms of Reference for the review.

Each legislative review must have Terms of Reference and these must be publicly available. This aspect of the review process is critical to transparency.

The objective of the Terms of Reference and supporting material is to provide guidance as to the scope and conduct of the review, without limiting consideration of additional matters where these arise during the review process.

The Terms of Reference for every review must meet the requirements of the CPA.

As a minimum, the Terms of Reference need to incorporate Clauses 1(3), 5(1) and 5(9) of the CPA, Extracts of the CPA are included as Appendix 7.

The Public Benefit Test Plan establishes the framework for conducting the review and must include the following elements –

Title of legislation.

Restrictive provisions of the legislation

- identify the anti-competitive restrictions
- briefly describe the restrictions.

Objectives of the legislation

- describe the overall objectives of the legislation
- are the objectives still relevant today (important if old legislation)
- how do restrictions help achieve the objectives.

Alternative options

- describe the major realistic alternative arrangements (including discussion on interstate arrangements) for achieving the objectives of the legislation
- alternatives may range from less restrictive (but still regulatory) provisions to complete deregulation
- this does not limit consideration of further alternatives as the review progresses.

Key affected groups

- identify the key groups that would be affected by a change in the regulatory environment

- this is not limited to the direct industry involved, may also include potential entrants, consumers, environment, regional communities etc
- develop an impact matrix that identifies the potential impacts on these affected groups of moving to an alternative state. This is not an assessment but simply identifies some of the likely positive and negative impacts on each group. Again, this does not preclude further identification of impacts as the review progresses.

Note: The above points provide the basis for making decisions on the following issues

Type of assessment

- the form of assessment to be used in the review, ie major, minor, short form
- summarise the reasons for choosing the assessment type.

Process to be used in assessment (Type of review model)

- the type of review model to be used, ie Full public inquiry, Departmental Review etc.
- summarise the reasons for choosing the review model
- identify the likely structure of the review committee (agencies/bodies involved rather than names)
- extent of external expertise required, eg: is a consultant to be employed to undertake PBT.

Consultation

- extent and process of consultation, eg issues paper, public hearings, stakeholder reference panel.

Timing

- timeframe for each major stage of the project.

Budget

- an estimate of the likely cost of conducting the review
- this is important if departments are applying to Treasury to fund the review out of competition payment funding.

Departments must submit the PBT Plan and Terms of Reference to Treasury for approval. Treasury will consult with relevant agencies including the Business Regulation Reform Unit (BRRU) and the Department of the Premier and Cabinet. The Department of Families, Youth and Community Care will be consulted in respect of Social Impact Assessment issues.

Once agreement has been reached at officer level, the PBT Plan and Terms of Reference should be submitted by the Department’s Director-General to the Under Treasurer for formal approval.

In some cases, particularly where a major review is proposed, the plan may need to be submitted to Cabinet for consideration.

Public notification of review by department or committee responsible for the legislation being reviewed.

Public notification is the process of informing the public that a specific legislative review is to be conducted in accordance with competition policy.

Public notification assists in ensuring that reviews are carried out in an open and transparent manner.

With the exception of reduced NCP reviews, public notification of a review is mandatory.

Importantly, public notification should not be mistaken for the consultation process. In some instances, public notification and consultation can occur simultaneously.

Public notification informs the whole community about the review while consultation involves collection of data and views from interested parties and may be targeted at specific sections of the community. Review models discussed earlier in these guidelines, provide guidance as to the level and extent of consultation applicable to the different types of reviews.

Public notification should include, at minimum, details of the legislation to be reviewed, the specific matters to be addressed, and the availability of the Terms of Reference, any other explanatory material and review contact details.

Conduct Public Benefit Test

The PBT Test focuses on the assessment of each of the alternatives listed in the PBT Plan. Irrespective of whether the review involves a minor or major assessment, the basic steps to be followed in conducting PBT assessments are the same.

The major steps are –

1. Identification and description of current restrictive state
   - provide a brief description of the nature of the existing restriction on competition
   - define the problem being addressed and the policy objective
   - determine the relevance of existing restriction
   - describe the market structure under the existing restriction.
2. Identification and description of viable alternative state(s)
   - describe the proposed change
   - discuss proposed change and consistency with policy objective
   - describe the market structure under the alternative state(s).
3. Identification of major impacts of moving from current state to alternative state(s)
   - compare current state and alternative states to identify stakeholders who will be impacted and briefly describe the type and direction of those impacts for each alternative

- in the case of major reviews it is necessary to conduct a Social Impact Assessment using the attached methodology (Appendix 4) and develop an Employment Impact Statement as part of this stage of the analysis.

4. Valuation/Assessment of Impacts
   - express impacts on affected stakeholders under current state and alternative state(s) in monetary terms. (This is a requirement of major assessments, where practical, and should be attempted in minor assessments where data is readily available)
   - express all significant non-valued impacts on affected stakeholders under current state and alternative state(s) by describing in detail the nature and direction of each impact and providing some measure(s) of the magnitude or scale of impact (focus of minor assessments).
5. Impact Analysis
   - identify the time period over which the change will take place
   - presentation, discussion and comparison of impacts on all groups.
6. Present Results

   The detailed methodologies for conducting PBTs are attached (Appendix 1 and 2).

NCP Review Report

The Review Report is the finalisation of the review and is the Review Committee's presentation to the relevant Minister for subsequent forwarding to Cabinet. The report must contain sufficient information to allow departments to develop recommendations and any consequent legislative proposals for Cabinet consideration.

There is a formal requirement for a Review Report to be prepared that summarises the whole review process including a discussion of the background, key issues and options to be considered. The Review Report provides a summary of the PBT analysis and provides sufficient detail for readers to achieve an understanding of the PBT results and the justification for any recommendations made.

The Review Report will contain recommendations and will be a public document upon completion of the review and consideration by Cabinet.

Whilst there is no requirement for the Review Report to be of a specific format, a number of specific elements need to be included.

Executive Summary

- provide a summary of the review considerations and outcomes
- include a list of recommendations
- should incorporate all elements of a Competition Impact Statement (CIS).

Background

- reasons for review
- process of review/format used
- industry background
- restrictions and objectives.

Issues

- discussion of key issues identified during review process
- include discussion of results of public consultation.

Options

- description of realistic alternatives
- include discussion on arrangements in other States.

Summary of PBT analysis

- impacts on affected groups for each alternative
- summary of Social Impact Assessment and Employment Impact Statement (major reviews)
- net benefit assessment.

Conclusion and recommendations

- recommendations arising from review (can also be included as they arise during the review Report) and linkage to any legislative changes
- discussion of implementation issues
- timing, adjustment problems, need for transition arrangements.

Competition Impact Statement (CIS)

The CIS is the framework for reporting on the outcome of the PBT. It is a summary of the results of the assessment of the costs and benefits. The aim of the CIS is to provide decision makers (in particular, Cabinet and Ministers) with a quick and easy report on the outcome of the review.

Consultation should occur with Queensland Treasury on the requirement for and development of the CIS. A CIS may not be required in cases where the executive summary of the NCP Review Report covers the elements of a CIS.

The full details of assessments and the PBT should be attached to the CIS for reference purposes.

The CIS must include the following elements –

1. Title
   - title of the legislation.
2. Background
   - a brief description of the restrictive provisions
   - a description of the nature of the restriction on competition – including a brief description of the structure and operation of the market and who is affected.

3. Policy Objectives
   - statement of the problem being addressed and the objectives
   - consider the following questions:

     Why the legislation is being reviewed?

     What is the problem being addressed?

     For example, this should state the market failure that the legislation seeks to remedy.
4. Alternative Options
   - a statement of the alternative options for achieving the desired objective
   - alternatives may range from less restrictive regulatory alternatives to complete deregulation.
5. Costs and Benefits
   - provide a summary of the costs and benefits, including qualitative and quantitative, of the restrictions (existing situation) with the alternative options. Included is information on social, regional and environmental impacts
   - provide a comparison of the net impacts for the restrictive and alternative options.
6. Consultation
   - outline the affected groups which have been consulted as part of the PBT and the outcomes of consultation.

7 Sunset/Review
   - include a date for the review or sunsetting of the restrictive provisions/legislation
   - if it is recommended that the restrictive provisions/legislation be retained, then a review must be carried out 10 years from the completion of the assessment, in the absence of a specific review date being set.

Note – When a Regulatory Impact Statement (RIS) and a CIS are both required, one document can be produced by combining the above format for a CIS with the additional statutory elements required for a RIS. Consultation should occur with BRRU on developing the combined RIS/CIS.

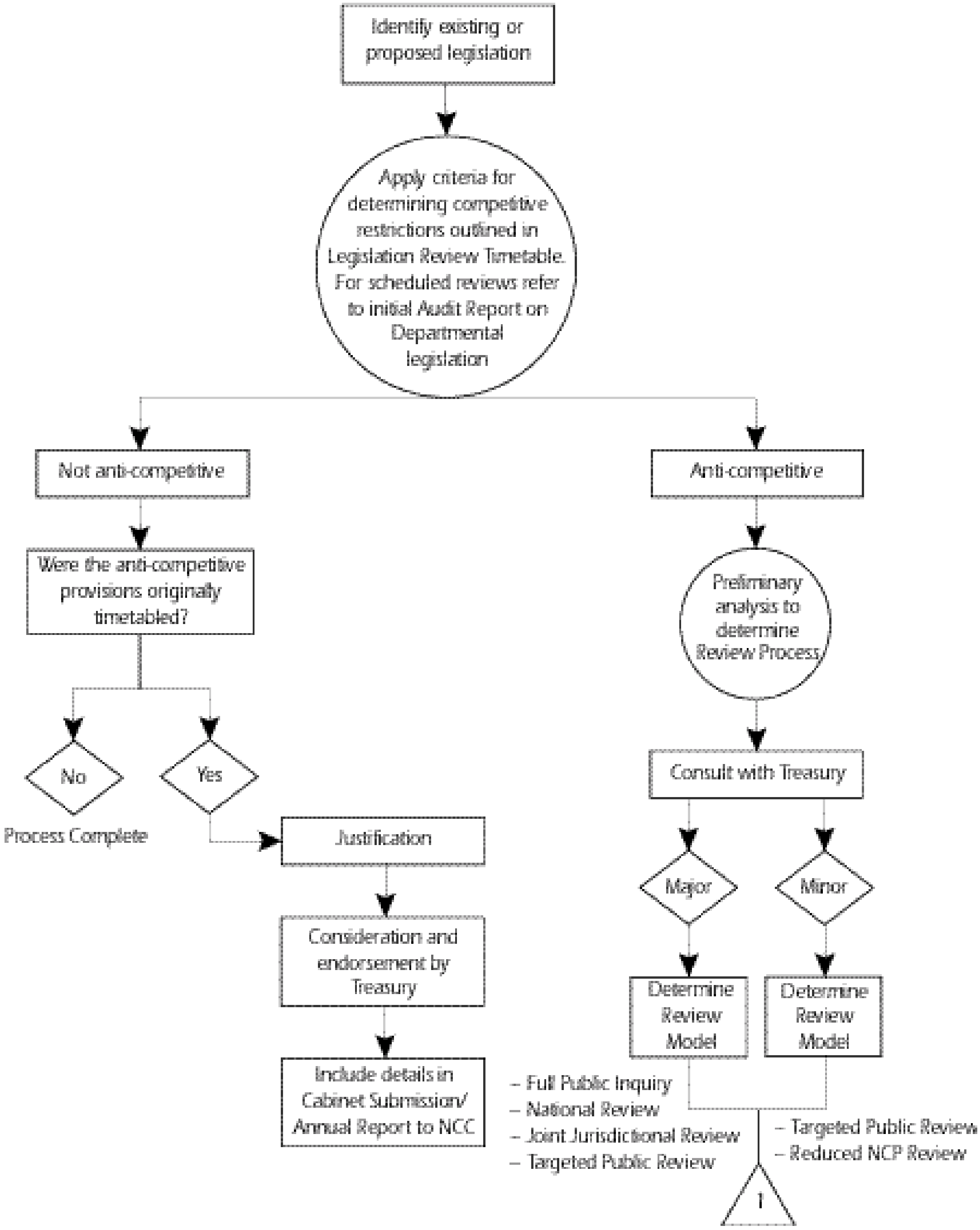
Upon completion of a CIS, it must be forwarded to the Treasurer for approval.

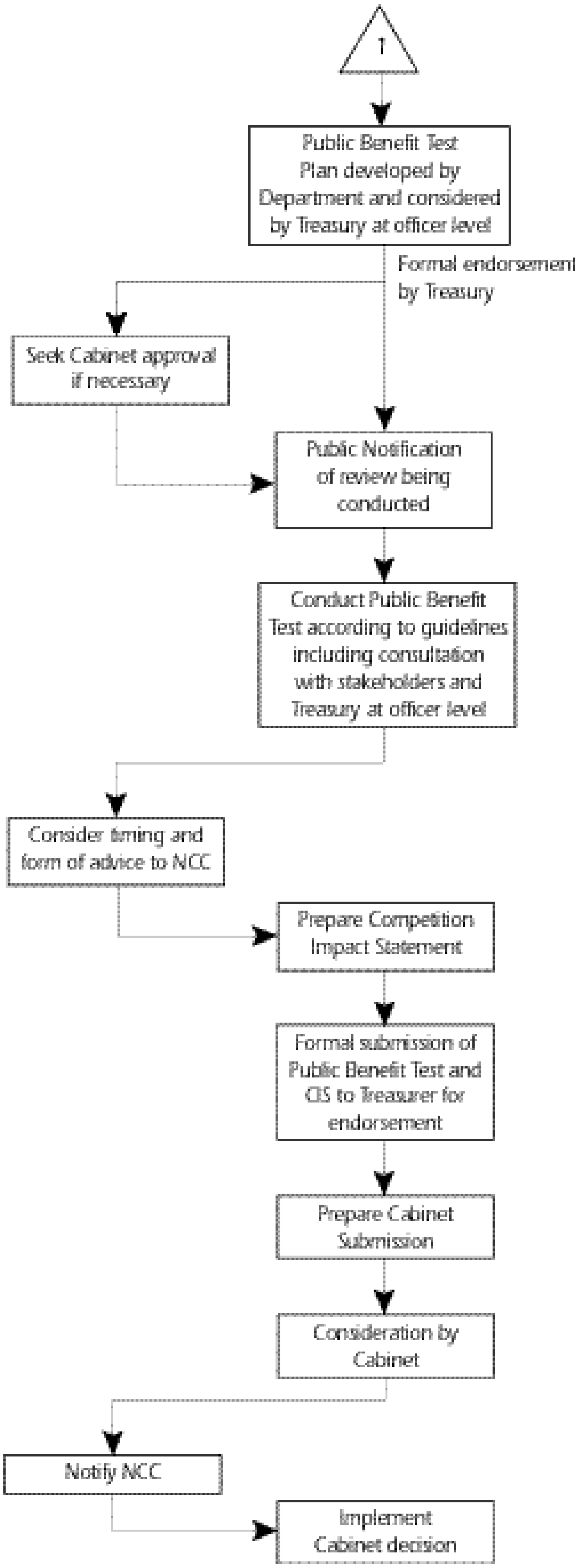
The CIS must be attached to any Cabinet Submission put forward in respect of the legislation.

Once the Treasurer has endorsed the CIS, departments should prepare a submission for Cabinet with appropriate recommendations. Depending on the outcome of the PBT, the recommendations could, for example, seek Cabinet approval to either:

- amend legislation to remove or reduce restrictions on competition; *or*
- retain legislation in its existing form; *or*
- introduce or amend legislation that restricts competition (eg. to legislate an exemption from the Trade Practices Act).

Legislation Review Process




1
Public Benefit Test Plan developed by Department and considered by Treasury at officer level
Formal endorsement by Treasury
Seek Cabinet approval if necessary
Public Notification of review being conducted
Conduct Public Benefit Test according to guidelines including consultation with stakeholders and Treasury at officer level
Consider timing and form of advice to NCC
Prepare Competition Impact Statement
Formal submission of Public Benefit Test and CIS to Treasurer for endorsement
Prepare Cabinet Submission
Consideration by Cabinet
Notify NCC
Implement Cabinet decision

Check List

Identify Need for NCP Assessment

Initial discussions with Treasury

Preparation of PBT Plan and Terms of Reference

Public Notification

Conduct PBT

- Consultation
- Examine all feasible options
- Examine social and economic impacts of options

NCP Report

CIS (if necessary)

Submission to the Treasurer

Submission to Cabinet

Appendix 1
Methodology for Minor Public Benefit Tests

As with a major review, the following process is used for cost/benefit analysis under a minor Public Benefit Test:

1.1 Analysis of other issues which significantly affect the review

1.2 Full analysis of current restrictive state

1.3 Full analysis of alternative less-restrictive arrangements (changed state)

1.4 Identification of all impacts on stakeholders of moving from the restrictive to less-restrictive state

1.5 Net impact assessment

1.6 Determining Net Public Benefit.

Each of these will be discussed in more detail.

1.1 Analysis of other issues which significantly affect the review

In some instances, other issues associated with legislation being examined may have been included as part of the Terms of Reference. Before beginning the Public Benefit Test these issues, or the way in which these issues will be addressed, need to be examined. Issues may include a partially regulated market (eg. current legislation does not cover all participants), legislation does not achieve policy objectives or the NCP review will form part of a more general review of legislation.

1.2 Analysis of current full restrictive state

It is difficult to identify the impact a change to restrictive arrangements will have if there is no reasonably detailed description of the current restricted state. A qualitative assessment does not negate the need for market information (quantitative or otherwise).

Determining the current or future environments will entail the study of market structures that is, developing snapshots of without change and with change markets. From these two scenarios the likely impacts on stakeholders can be inferred.

The most important activity during this process is to ensure that the boundaries of the Public Benefit Test have been correctly identified. Identify from the outset what are the relevant products in the market and whether there are any secondary markets operating in each state (current or alternate). For example, in the market for travel, taxis and buses are not independent but substitutable products within an overall public transport market. Incorrectly identifying products (including substitutable products) can significantly limit identification of the full stakeholder impacts later on.

During this process, you may need to examine social goods or services (eg. national parks are a social good) that cannot be easily translated into economic terms. An easy way to tackle this task is to view the market from a buyer's perspective. The nature of reviewing legislation requires that social as well as economic considerations are identified and it is reasonable to assume that the market and its product will have both social and economic aspects. This is covered in more detail below.

Before continuing it will be useful to read the material in these guidelines on general economic principles. (Appendix 10)

Describing market participants and product/s

The markets for most, if not all, goods are comprised of buyers (consumers) and sellers (producers). For non-priced goods, the description of buyers and certainly sellers is somewhat more difficult, but not impossible. The more complete the description of the structure of these groups the more meaningful will be later assessments of the possible magnitude of the impacts on them of changes in legislative restrictions.

The following questions should provide a general idea of the information that should be included on participants and product. It is not expected that all this information will be available and there may be other pertinent characteristics. What is important is that a complete description is provided of the market participants (ie. who are the main stakeholders of the review) and the product. The description may include the following items –

Costs, returns and profitability of sellers. Is this a profitable activity? Are there significant costs involved in producing the product? Are all costs included in the price (such as costs to the environment)? Is the return on investment the same for all producers? Are there significant start-up costs?

What factors determine the supply of products (and therefore price)? Are there seasonal variations? Are the inputs from secondary markets freely available? Do sellers fix the level of supply to buyers or have the ability to fix prices? Is the price for the product subject to constant change? Is there high turnover of production technology? What are the substitute products, if any?

What factors determine the consumption of products? How would buyers react to a change in price? What is the availability of substitutable products? Is the price a significant component of a consumer's income/budget? Are there other costs borne by the consumer to obtain the product? If so, are these purchased from a secondary market? Is the product freely available to buyers? Is it subject to seasonal availability? Do buyers compete/collude with each other to procure the product? Is it a general buying pattern with no direct relationship with sellers or is it a product requiring special client/supplier relationships? Does the product induce loyalty in buyers?

Special characteristics of the products. Is this a specialty product? Does it have a short/long life (such as fruit and cars have different lives)? What part of the production line is it from? Is the product differentiated? Is it a luxury good or staple item? Is it industry specific?

Any other regulatory requirements on sellers or buyers. Does Local, State or Commonwealth Government impose additional regulations? Does regulation in other markets impact on this market? What sort of taxes or levies are imposed on participants?

Information disparity and quality of goods and services. Are the information disparities in relation to the good or service? If so, what are they and how do they impact on market outcomes? Is there a range of quality available in the good or service? Are there consumer redress mechanisms in place specifically relating to the good or service? Are consumers able to judge the quality of the good or service before purchase? How will buyers react to a change in quality?

Describe the boundaries of the market

Other important characteristics to be identified are the boundaries of the market. Markets can be defined in terms of the environment in which buyers and sellers communicate to facilitate trade. Elements that should be considered include –

Geographical boundaries of the market. Is the market restricted to trade in Queensland or Australia or even regionally or locally? Is the nature of the product (eg. perishable) such that it has limited market access?

The distribution of market power. Is there an equal distribution of market power? What is the level of concentration for both producers and consumers?

Describe how consumers access producers. How do consumers view, order and consume the product? What lines of communication between the producer and seller are available?

Stability and level of change in the market. Is there a high permanence rate for participants? Are there high entry/exist costs that promote stability or permanence?

Price and quantity

In situations where anti-competitive restrictions are present, observed market prices and output levels may not reflect those determined by free market forces. It is therefore necessary to fully describe how those observed values are determined and eventually how they are influenced by identified restrictions. That is, what market forces are operating when price is determined? Is the price set on the basis of cost plus return, market leader or, price the buyer is willing to pay?

Social characteristics

In addition to considering the economic characteristics of the market, it is as important to identify social characteristics. In some instances, government intervention is necessary because of unacceptable outcomes from a social perspective. These outcomes may be based on welfare, environment, equity, health, industrial relations, employment or regional development considerations and in doing so, intervention may restrict competition. Therefore, it is necessary to fully identify and examine social characteristics to assess the impact of a move to a less restricted market.

When addressing social issues it is important to provide detailed information. It is not enough to provide broad policy reasons for regulating a market.

1.3 Full analysis of alternate less-restrictive arrangements

Before alternative arrangements are analysed, the ability of the alterative to achieve the policy objectives of legislation and the level of risk associated with the implementation, maintenance and enforcement of the alternative must be assessed. Unless alternatives can be realistically applied in practice they are not considered viable alternatives on which to conduct a Public Benefit Test. Generally, a brief description of why particular alternatives initially under consideration are not viable would suffice. Preferably the assessment should result in a short list of viable alternatives to be considered.

Having described the current restricted state in sufficient detail, what would the various market structures look like under less-restrictive alternative arrangements? The same market structure analysis used when describing the current restricted state should be applied. Points to remember when describing the new state are –

- Look for international or interstate comparisons that may provide evidence of alternative market structures being proposed or in place.
- Market changes can invariably have an effect on price or quantity. What determines the price or output in this market? If regulations were changed, what would the impact be on these factors?
- Consultation with market participants or representative groups will give a far better understanding of the expected change impacts. The disadvantage with this type of consultation is the subjective nature of feedback from participants. This can be reduced by ensuring a balanced approach to consultation and by being quite specific about the type of feedback required (eg. detailed and focused questions in discussion paper).
- Be transparent and objective in the analysis. Irrespective of the method used, judgement will be required when describing an alternative state.
- Show all assumptions made throughout the analysis.

Clearly, the extent and nature of the expected changes in the structure of markets will determine the nature and magnitude of the impacts of relaxing a restriction.

1.4 Identification of impacts on stakeholders of a move from a restrictive to a less-restrictive state

In previous steps, market structures expected from change in regulatory arrangements were identified. This step involves describing the impacts on stakeholders by a move to the new market structure[1]. As stated before, a minor review will rely on a qualitative analysis and should give a description of:

- the impact on each stakeholder/group;
- the type of impact on stakeholder group;

[1] Stakeholder groups were identified previously in the Public Benefit Test Plan. At this stage, details on the stakeholder groups should be comprehensive.

the direction of each impact identified, ie. a negative (cost) or positive (benefit) impact on stakeholders;

the magnitude of the impact on each stakeholder/group; and

where the impact is significant, the length of any adjustment period expected on the stakeholder.

Stakeholder impacts

Impacts are changes, either positive or negative in the economic and social welfare of an individual or group of individuals. In the previous steps, the market structure of the current state and anticipated market structure under an alternative arrangement was identified. The aim of these steps is to provide two states that can be compared to determine the impacts of any change to the legislation governing the market. For example, if in the current market structure, firms or service providers are earning above normal profits (economic rents) and under the alternate market structure they would earn only normal profits, then an impact would be a decrease in profit of these providers.

The identification should be as all-inclusive as possible. All realistic impacts of a change should be included irrespective of their expected magnitude. The easiest way to document impacts is developing an impact matrix.

When describing impacts it is important that the following are considered:

Describe the impact on stakeholders as opposed to describing the new market outcomes.

Outcomes represent the characteristics of the market. Impacts represent changes on stakeholders by a move between outcomes.

Impacts should not be generalised statements of the nature of the impact (eg. an increase in competition), but fully describe the detail of the impact (eg. increase in market concentration of firms will lead to an expected decrease of firms business by 10% which, based on economies of scale, will result in a 8% decrease in profits for firms in the short term. In the longer term the impact of market concentration will not be as adverse). Please note it may not be possible to be sufficiently precise to cite percentages.

Some impacts identified will be social in nature and cannot be described in economic terms.

It is important to recognise the difference between outcomes and impacts. Essentially, outcomes represent the changes that have occurred in the market after the change in legislative arrangements has occurred. Impacts represent things experienced by the stakeholders from and during the change in the market as a result of a change in the legislative framework.

Type of impact

The aim of the Public Benefit Test is to assess the overall net benefit/cost of change to the community. This is achieved by analysing the impacts on stakeholders that range from increases/decreases in efficiency to monetary transfers between stakeholder groups.

Describing impacts as either efficiency changes or income transfers provides useful information during analysis.

Some impacts identified, such as income transfers, may appear to have a neutral impact overall on the community. For example, lost income by one group (eg. sellers) is transferred as an income gain to one or more other groups (eg. buyers) through a fall in the price of a good or service due to increased competition.

However, income transfers require careful analysis as there may be highly undesirable community impacts resulting from the transfer of income from one group to another. For example, in some cases, a transfer of income from a relatively small number of sellers in a particular region to a large number of buyers in urban centres may be undesirable. In such cases, the negative impact on the region in question may be very significant but the actual gain to individual consumers may be negligible.

It is, therefore, essential that Cabinet is advised of the 'winners' and 'losers' of any recommended reforms or reform review options.

The effects of this type of impact must be highlighted when considering the social aspects of options. In the case of a major review, a Social Impact Assessment using the methodology outlined in Appendix 4 is required as part of the PBT. In minor reviews, social impacts must also be addressed in the PBT. In essence, this should, as a minimum, involve:

- identifying social issues and potential social impacts relevant to particular policies for particular communities and circumstances; and
- assessing those impacts in terms of their magnitude, duration and probability of occurrence.

Impacts on employment must also be clearly identified in the PBT process. Again, in the case of major reviews an Employment Impact Statement must be developed as part of the PBT. A framework has been developed for this purpose (Appendix 5). Employment impacts must also be addressed in a minor review. As a minimum, this should involve:

- identification of industry sectors/occupations affected;
- a statement of positive or negative employment impact;

quantification of the direct impact if possible; *and*

regional and state-wide impacts.

Magnitude and direction of impacts

The assessment of impacts includes describing both the magnitude and the direction of the impact on the stakeholder. The nature of a qualitative assessment makes this process difficult to perform because of the lack of substantive information. The easiest way to determine the magnitude and direction of impacts is to view the current and alternative market structure. The following (though simplistic in design) provides an example of how best to determine magnitude –

Current market structure: There are 50 Sellers in the market.

Alternative market structure: There are 40 Sellers in the market.

Impact: A reduction in the number of Sellers in the market by 10 Sellers, the result of a decrease in demand by Buyers of the product because of the rise in the price of goods.

Magnitude: The reduction represents a reduction of 20% of total Sellers in the market. This could be a significant impact.

The main issues to be considered are –

Express impacts and market structures in a comparable form. Measuring impacts becomes easier when like indicators are comparable.

If measurement of an impact proves difficult, express the magnitude in terms of high, medium or low. This is particularly important when considering intangible social factors such as ‘increase in lifestyle’.

If possible, determine the length of time the stakeholders need to adjust to the new change. Some impacts, such as income volatility for producers, are only short term and are considered adjustment costs.

Use the same basis of measurement. For example, all impacts on a particular group (consumers) should refer to the number of consumers affected, total sales of the good or service, etc.

The size of the impact should not relate to the impact per person, consumer, producer, etc but to the total impact on stakeholder/group.

Direction of the impact determines if it is a cost (negative impact) or a benefit (positive impact) on the stakeholder. Distinguishing between costs and benefits enables the net impact to be ascertained.

1.5 Presentation of impacts

Having fully identified the stakeholder impacts, it is now important to present those impacts in a manner that assists in the determination of the net impact of the change. In this step, the most notable difference is the removal of the segregation of impacts between stakeholders. At this stage, impacts are presented by impact type. In a predominantly qualitative assessment the following process can be used:

In tabular form, pair off those impacts which have been identified as income transfers and group all efficiency gains and losses separately as shown below –

Impact Classification	Size of Impact	Direction of Impact	Description of Stakeholders affected
Income Transfers			
Loss of producer income through reduction in economic rents. Producers would only receive normal profits and will no longer receive special tax-free payments by the government	Large	Negative	Concentrated in 150 producers
Reduced taxation burden by the general public. Government would no longer subsidise the industry	Large	Positive	Spread across all taxpayers
Efficiency Gains			
Increased consumer utility because of the reduction in price allowing for increased consumption of goods	Large	Positive	Approx. 20,000 consumers affected
Increased producer profit margins. Producers will attempt to produce more with fewer raw materials because of the loss in government subsidy and increased competition	Medium	Positive	150 producers in total but not all will achieve increased profitability
Efficiency Losses			
Reduced consumer utility due to higher health costs. The product originally controlled by stringent health and safety standards (reimbursed by government) will now be maintained under general health legislation	Small	Negative	Low probability of health impact across all 20,000 consumers

Making an assessment of the relative size of impacts and presenting the impacts in the above manner can provide a useful **guide** as to the net impact of the change in regulatory arrangements.

However, it is critical to note that an assessment of whether a change is in the public interest cannot be based on the net impact outcome alone. A thorough examination of all impacts on individuals and groups giving due consideration to both quantifiable and non-quantifiable impacts is required.

1.6 Determining net public benefit

As mentioned previously, determining the impacts requires the identification of economic and social considerations. The aim of the Public Benefit Test is to genuinely consider the best way of achieving the legislation objectives, and ascertain whether a particular restriction on competition in legislation is necessary and justified in terms of the net benefits to the community of the restriction. In determining the net public benefit, a decision will be made based on subjective information and will require some level of professional judgement. This requires the careful weighing of both economic and social considerations. To ensure that determining the net public benefit of a change is as objective as possible the following should be met:

- independence of the assessors during the review;
- appropriate level of, and approach to, consultation with all stakeholders/groups;
- identification of without and with change market structure states is as comprehensive as possible; *and*
- all impacts for each stakeholder/group are identified with equal emphasis placed on quantitative information and qualitative information.

Reduced Public Benefit Test

In some instances, it may be appropriate to conduct a reduced NCP review. These reviews are considered to be short form public benefit tests. Anti-competitive restrictions are analysed using the same methodology described above but more emphasis is placed on assessing risk. Reduced NCP reviews do not require a vigorous application of cost/benefit analysis where the following apply:

- legislation was developed for more social rather than economic objectives;
- legislation has a clear social policy position. Restrictions clearly need to be maintained (eg. for health and safety reasons), but an assessment of the level of risk burden on the community should be identified;
- the level of restriction on competition is low;
- issues surrounding the application of legislation are considered to be non-controversial;
- reviewing legislation may have significant costs with an expectation of little or no reform;
- a change from existing legislation involves substantial financial costs for the government (eg. when restrictions relate to existing contracts/agreements);
- issues identified from legislation change are considered not to be a sensitive issue; *and*
- restrictions have minimal impact and there is likely to be little community interest.

The need for and nature of each reduced Public Benefit Test will be determined on a case-by-case basis. If a reduced Public Benefit Test is proposed, consultation with Treasury will occur on the appropriate process and scope for the review. Examples of a reduced NCP review include legislation governing health and safety standards or an individual's right to privacy.

Risk assessment process

Without reducing the obligations to review based on cost/benefit guidelines, a reduced Public Benefit Test process involves appraisal of:

- current level of risk borne by the community under the current market structure;
- risk borne by the community and extent it has been reduced by enforcement of current/new regulation;
- whether regulation is the most effective tool to deal with the risk or could alternative less restrictive arrangements be as effective; *and*
- whether there is an alternative use of available resources that provides greater benefit (can efficiency gains be made).

Appendix 2
Methodology for Major Public Benefit Tests

Introduction

The following guidelines outline the approach to be followed when undertaking a major Public Benefit Test (PBT) assessment. Specifically, these guidelines describe the method of analysis to be applied in assessing whether any of the realistic alternative options, as identified in the PBT Plan, are better than the existing regulatory structure from a public interest perspective. Hence, they pertain to only part, albeit an important part, of the overall legislative review and TPA compliance process.

The guidelines complement the approach contained in a computer program specifically designed to assist in performing the more mechanical aspects of the assessments.

In general, the guidelines are intended to be used by persons with a reasonable understanding of economics and with some experience in undertaking project appraisal using benefit-cost analysis (BCA). While the recommended approach is not strictly in accordance with traditional BCA, there are sufficient similarities to ensure that an understanding of the general principles of BCA is required to fully comprehend the material covered in the guidelines.

Structure of the methodological guidelines

The guidelines provide a brief outline of the general methodology to be applied in assessments, including a description of the recommended approach to identifying and valuing impacts. The recommended approach is then broken down into six main steps and these are described in some detail. Finally, an outline of the computer program developed in conjunction with the guidelines is provided.

Every legislative review, ACCC authorisation or TPA compliance assessment will have unique aspects and specific impacts that will require examination on a case-by-case basis. The most demanding aspect of PBT assessments will usually be the definition of the possible economic systems and market structures that may prevail following any change to existing regulatory arrangements. This important step requires a detailed understanding of existing structures, including forces that shape those structures, and the nature of the changes likely to result from the proposed regulatory change. As mentioned above, it is assumed that the analyst has sufficient expertise in these crucial areas of an assessment. Also, it would be impossible to provide, in these guidelines, the level of guidance required by non-experts to adequately undertake the range of possible assessments required under the legislative review or TPA compliance process.

These guidelines recognise that not all assessments will require a detailed assessment and valuation of all the impacts identified as a result of a possible change in regulatory arrangements. Whether an assessment should be a minor or a major one will be determined prior to undertaking the following steps.

As a general rule, the same approach should be adopted in both minor and major assessments. The only variation should be in the depth of the analysis and the extent to which impacts are valued in monetary terms. Specifically, parts of Step 6 of the PBT assessment process will not be required for minor assessments. Also, the use of existing data or available estimates of the value of impacts will be all that is required for impact valuation in minor assessments.

In addition to skills in economic analysis, the preparation of a PBT assessment requires a good understanding of the proposal to be analysed. The Department responsible for proposing/implementing the relevant legislation, regulation or activity will be best placed to provide detailed information concerning the various affected parties and possibly an initial assessment of the extent and general direction of the major impacts. However, for most major assessments, the consolidation of this information into a robust assessment may require some additional economic analytical skills and experience.

Departments that do not possess such skills are encouraged to undertake as much of the assessment as possible before seeking external assistance. While this may be the case for major assessments where there is likely to be a significant number of impacts that require identification and valuation, the majority of minor assessments should be able to be performed by Departments using available internal resources. Irrespective of the category of assessment being undertaken, all responsible Departments should be actively involved, to the greatest extent possible, in the preparation of PBT assessments.

Methodology

Public Benefit Test and benefit-cost analysis

Benefit-cost analysis has traditionally been employed to identify that course of action which will maximise the quantity or quality of the bundle of goods and services available to all of society. The manner in which that bundle of goods and services is distributed among members of society has not usually been the concern of BCA.

In contrast, PBT assessments in Queensland will not be restricted to issues of economic efficiency. Assessments will also outline the likely distribution of impacts among individuals and groups of individuals within society. This approach requires the identification and measurement of the impacts of a change (positive or negative) on any affected individual or group, in addition to the determination of the net change in society’s economic welfare, defined as the **Net Impact** of the change.

Once all identified options have been assessed, in terms of their public benefit implications, the results for all options should be presented in summary form in the Competition Impact Statement (CIS). The CIS can then form the basis of submissions to Cabinet which would also contain discussion on other policy issues considered relevant by the Department, the incidence and distribution of impacts, and recommendations on the most appropriate course of action. Finally, Cabinet will determine whether a particular option is in the public interest. Therefore, a PBT assessment of an option, as outlined in the following guidelines, is restricted to the measurement and reporting of the incidence of impacts and will not put explicit distribution weights on impacts as part of the analysis.

Benefits and costs

One way of measuring the overall economic impact of a proposed regulatory change is to determine how the change will impact on each of the likely affected groups. Some groups will receive net benefits from the change, others may incur net costs.

All impacts should be identified and, if possible, measured at the individual level. The individuals or groups of individuals should be precisely identified. That is, use of such terms as 'society', 'the public', 'the community', etc., in describing impacted groups should be avoided. To measure the overall economic impact of a change, all material impacts on individuals affected by it are aggregated, bearing in mind the need to avoid double counting of impacts, as discussed below.

A benefit is a positive change in economic welfare (utility or profits) accruing to an affected party, while a cost is a negative change in economic welfare (utility or profits) accruing to an affected party. *Both are calculated from the base or reference point.* If the benefits exceed the costs then the change is said to increase society's net economic well being. However 'costs' and 'benefits' are relative terms and are determined by comparing two separate and distinct states. So in classifying (and quantifying) benefits and costs, the base or reference point must first be specified.

In undertaking PBT assessments the base case is to be the state under existing regulatory arrangements and will be referred to as the **'without change'** state. This provides a more concrete basis for modelling changes from one state to another. The alternative state will be referred to as the **'with change'** state.

Each state will be characterised by different resource uses and revenue flows and it is the **changes** in these revenue flows and resource uses that constitute the costs incurred and benefits obtained in moving from one state to another. Impacts are changes, both positive (benefits) and negative (costs), in the economic welfare of an individual or group of individuals, as measured by utility or profits, brought about by a move from the 'without change' to the 'with change' state.

For example, consider the situation of removal of legislated monopoly power from a particular firm. The entry of new firms is likely to result in a fall in the price charged to consumers and an increase in the quantity of the good or service provided. However the profits of the existing monopolist are likely to fall following the entry of new firms. Thus the benefits to consumers (through a price fall) equal the change in consumer expenditure on the original output plus any consumer benefits on the additional output[2]. Producers of the increased output will be better off to the extent of any profits (over and above 'normal'

[2] The calculation of the consumer benefits on the additional output requires an estimate of the responsiveness of demand for the good or service to changes in the price of the good or service i.e. the price elasticity of demand. Once the change (fall) in price and change (increase) in output have been estimated, the consumer benefit on the additional output is calculated as follows: Increase in Output (number of units) = Change in price ($/unit) ÷ 2

profits) they can earn on the production of that output, while the existing monopolist will incur a reduction in profits due to the fall in price of the good. Summing these positive (benefits) and negative (costs) impacts will give the net change in economic welfare.

Industry economists suggest that there are likely to be greater net economic gains than those described above because of a reduction in the per unit amount of resources needed to provide the product. These so called 'X-efficiency' gains or productivity improvements result from the competitive pressure applied by new entrants that must be met by the existing monopolist if it is to remain in business. Cheaper ways of providing the product result give greater net gains than those estimated above. Hence, it will be necessary to take into account any possible productivity improvements brought about by the entry of more efficient firms in the estimation of the deregulated price, and the calculation of producer and consumer impacts. Some of these productivity improvements may occur over time as competitive pressures provide incentives for firms to introduce innovative work practices, products, and cheaper production processes.

Valuation of impacts

Initial importance is placed on the valuation, in dollar terms, of as many impacts as is practicable. Expressing impacts in dollar terms enables the aggregation of the various benefits and costs to calculate the **Net Impact**, or 'Net Present Value' in conventional BCA and discounted cash flow (DCF) analysis terminology.

The extent to which impacts are valued will depend on the size of the expected overall impact of a change and the resources required for the valuation process. It will be necessary to balance the overall importance of an impact against the costs of undertaking the valuation and the likelihood of obtaining reasonable estimates of the value of the impact. Even in minor assessments, some impacts may be relatively easy to value.

While the valuation, in monetary terms, of significant impacts is of primary importance, particularly in major PBT assessments, the identification, detailed description and quantification, in non-monetary terms, of other impacts, is a major requirement of PBT assessments. This is more so the case in respect of competition policy issues than in more traditional project evaluations using BCA. This additional emphasis is in recognition of the complex nature of many of the impacts associated with regulatory change, the resulting difficulty encountered in their valuation, and the previously mentioned interest by Government in the distribution consequences of a change.

Methods used to value impacts

(i) Valuation when market prices for goods and services are available

In a competitive economy, the price of a good measures the total value of resources (which can be employed in other activities) used in its production and its value or worth to a consumer. For a particular level of output, producers pay for resources used and receive a price to cover the cost of those resources. Production and consumption levels throughout the economy will adjust so that prices equal the value of resources used in production. Thus, in measuring the net economic impact of a move from a regulated to a non-regulated state, it is convenient to measure the impacts through changes in market prices and physical quantities. The price of inputs provides a measure of the social worth of resources used in production. Similarly, output prices provide a measure of the social worth of a unit of output.

If the price of a good or service falls (and output increases) because of (say) increased competition following deregulation, then it is legitimate to use the output prices, before and after deregulation, as the basis for determining consumer benefits from the change. Similarly, it is legitimate to use the market price of inputs and outputs, before and after deregulation, as the basis for calculating the change in producer profits.

(ii) Accounting for relative price changes

In measuring the economic impact of regulatory change, it is necessary to identify and measure the relevant economic variables for both the 'without change' state and the 'with change' state and to project the values of these variables **for both states** over the period of analysis. One question that arises is, 'For a particular state, how should future relative price changes be handled?' The question has two aspects. First, changes in the general price level are eventually reflected in money interest rates. The practice of using a real interest rate, which corrects for general inflation, and valuing all future goods and services at constant (deflated) prices is both simple and logically consistent. Second, while the relative prices of various outputs and inputs, within a state, will surely change during the period of analysis, there is often little basis for predicting these relative price changes. Accordingly, unless the analyst has strong evidence to the contrary, it is best to use input and output prices based on current dollar values and assume no changes in future relative prices.

(iii) Determination of market prices in the 'with change' or 'alternative' state

It will usually be necessary to estimate, for the 'with change' state, output prices and other economic variables for the industry under study. This follows from the absence of such data in a 'real-world' situation. Choosing the levels of these variables depends on the modelling and conceptual skills of the analyst. For example, if the removal of monopoly power is likely to result in the entry of new producers then the expected unit cost of supply for the increased output is one basis for selecting the new output price. Another basis could be the price of the same product in interstate or overseas (unregulated) markets or changes in prices in these markets following deregulation. Determining the new output level provides a similar problem. Again unless there are empirical studies of the relationship between a change in price and a change in output (price elasticity of demand), the analyst must, in the end, resort to judgement.

In all instances, the values of particular economic variables (for example, market prices, output levels, and unit costs) used in the definition of either state need to be adequately justified and documented. Even in the case where judgement is used to arrive at a particular value, the basis on which that judgement is made needs to be clearly enunciated.

(iv) Valuation when market prices for goods and services are not available

Throughout the economy there are many examples of goods and services which are provided, intentionally or unintentionally, but for technological or social reasons are not traded in markets. Some of these 'goods' result in a diminution in society welfare (for example, air or water pollution). Others such as police services, education or defence, while increasing society welfare, are also unpriced or the prices are administratively set without regard to the cost of providing the good or service. Subsequently, in measuring the effect of regulatory changes that may impact on the supply or value of these goods, some non-market valuation is usually necessary.

For some of these goods and services, markets may provide considerable indirect information. The analyst's task is to extract and interpret this information, a task often requiring considerable insight and ingenuity. For example, markets in travel services may reveal information about the value placed on recreation sites (travel cost method). Similarly, housing markets may reveal information about the value placed on local and regional variations in air, water and scenic quality (hedonic price method). The labour market may reveal information about the value of amenities and on-the-job health and safety conditions. Sometimes it is possible to determine how much firms would be prepared to pay for a change in the amount of unpriced goods or services by examining the likely impact on their profitability (imputation method).

Unfortunately there are situations where markets generate relatively little information, even of the most indirect kinds. Little can be learned from markets about the value of environmental goods such as the existence of certain wildlife species or the benefits of nature study. In other cases, the conditions necessary for indirectly extracting value information from related markets are not present. In these circumstances, the analyst attempts to elicit from citizens the value they place on these unpriced goods and services (the contingent valuation method).

The need to employ these techniques will depend on the task at hand and the resources available to the analyst. The application of these valuation methods usually requires considerable expertise that may not be available within Departments. Where a significant impact of a regulatory change is a change in (say) the value of some unpriced goods or services, then for a complete analysis it will be necessary to measure the economic impact of this change. While ignoring the impact may result in a biased analysis, or at best an incomplete one, the cost and reliability of the valuation exercise needs to be carefully considered before embarking on valuations of this type.

Pitfalls in Public Benefit Test valuation

In undertaking impact valuation and in calculating the net impact of maintaining or introducing a particular anti-competitive restriction, there are a number of pitfalls that have the potential to substantially downgrade the reliability of an assessment. In particular, double counting of impacts and the inclusion of multiplier effects should be avoided.

(i) Double counting

Double counting occurs when benefits and costs are counted more than once in the analysis. This usually results from either faulty economic logic or the incorrect classification of benefits and costs. One common error is summing benefits and costs, calculated on an annual basis and a capitalised basis for the same benefit or cost item. For example, one likely impact of a regulatory change may be a fall in the annual profits of firms in the industry. At the same time the capital values of these firms are also likely to fall as a result of this fall in annual profits. However it would be double counting to add together both cost measures as they are merely different expressions of the same cost of deregulation to a particular group. Similarly, businesses buying products from the now deregulated industry may experience an increase in their annual profits and an increase in their businesses' capital value. Again, it would be double counting to sum both benefit measures.

Similarly, care is needed to ensure that the measurement of impacts is restricted to affected parties. For example, the increase in the profitability of firms purchasing from other firms in a now deregulated industry or industry sector may, in the long term, be minimal. That is, the increase in profits of the purchasing firms may eventually be wholly or partly eaten away by competitive pressures in the market for the output of those firms. In the case of a competitive final goods market, the only impacts to be included in the assessment are the fall in profits of the firms in the now deregulated industry (cost) and the increase in welfare of consumers of the final output of the industry (benefit). The inclusion of the transient impacts on firms producing intermediate goods as well as consumer benefits would constitute double counting the benefits of the deregulation.

Double counting can also occur when:

a) interest charges are included in a DCF analysis in addition to the capital outlay for the item; *and when*
b) depreciation is included as an expense in addition to the purchase price and salvage value of a capital item in the DCF analysis.

In both cases, the ownership costs associated with a capital item (ie. depreciation and opportunity cost of capital) are accounted for in the DCF analysis by simply including the initial cost of the item and any salvage value in the cash flows in the periods in which they are expected to occur.

(ii) Multiplier effects

Multiplier effects are changes in total regional income, employment and output generated by a change in economic activity, both directly in the industry concerned and indirectly in supplying industries. For instance, the removal of an anti-competitive restriction in a particular industry may generate employment and investment activity in a region as well as increase expenditure on inputs, output of goods and services and regional income. Regional income, employment and output multipliers, obtained from regional Input-Output (I-O) analysis, are normally used to estimate such changes.

Should multiplier effects be included in the calculation of the total net impact of a change in regulatory arrangements? To answer this question it is useful to refer to the definition of an impact stated earlier ie. impacts are changes in the economic welfare of individuals, as measured by utility or profits, brought about by a move from the 'without change' to the 'with change' state.

In a region where resources are fully employed, an increase in economic activity in one area can only be achieved by attracting resources from another area either within or outside the region. Therefore, firms in the 'soon to be deregulated' industry will have to pay the opportunity cost for all resources used to achieve the expected increase in economic activity. Hence, resource owners eg. workers, land owners, etc., in total, will not experience a change in economic welfare as a result of the deregulation. Therefore, multiplier effects should not be added to the sum of other impact values in the calculation of the total net impact of the deregulation. To do so would constitute a severe case of double counting, particularly if the negative effects in the regions that supplied the resources were not also included.

However, an increase in regional income and employment may result from the deregulation. While this increase in income will only reflect the returns that the resources could have earned elsewhere in the economy (and hence will not represent an increase in total economic welfare), changes in regional income and employment are real distribution impacts of the change in affected regions. As a result, they may be included as non-valued or quantified impacts in the PBT assessment. As mentioned above, if positive multiplier effects for certain regions are included, then any adverse multiplier effects in other regions should also be included.

It is sometimes suggested that in cases where resources are less than fully employed, multiplier effects should be included as positive impacts and included in the net impact calculation. This assertion requires the rather heroic assumptions that those idle resources would remain idle for the whole of the assessment period and all resources attracted to the industry as a result of the deregulation would be sourced from the stock of unemployed resources.

Even when the assumption of fully employed resources is relaxed, the approach outlined above would still hold. That is, in cases where resources could realistically be expected to remain idle for some time in the absence of deregulation, it is not correct to include income multiplier effects as positive welfare changes. As long as correct methods are applied to the valuation of otherwise idle resources used in the activity following the change, ie. the shadow price or opportunity cost of the resource, then sufficient recognition is given to the employment of those resources.

Steps in conducting Public Benefit Test assessments

These methodological guidelines refer to the assessment of each of the realistic alternatives listed in the PBT Plan. The steps to be followed in undertaking a separate PBT assessment of each of these alternatives are:

STEP 1 Identification and description of a realistic 'WITHOUT CHANGE' or 'BASE' state[3]

STEP 2 Identification and description of a realistic 'WITH CHANGE' or 'ALTERNATIVE' state

STEP 3 Identification of all the major impacts of moving from the 'without change' to the 'with change' state

STEP 4 Valuation of impacts

STEP 5 Detailed assessment of non-valued impacts

STEP 6 Timing, aggregation and presentation of results.

Step 1: Identification and description of a realistic 'without change' or 'base' state

The identification and description of the 'without change' state involves an examination of the existing situation under the current regulatory arrangements and a projection of the current situation into the future on the assumption that regulatory arrangements remain unchanged. The existing situation is not necessarily equivalent to the 'without change' state. While regulatory arrangements will not change, other independent factors may well have a significant impact on market participants and these changes need to be taken into account in determining the 'without change' state.

The following issues should be considered in the examination of existing regulatory arrangements and in the assessment of future market conditions resulting from the continuation of those arrangements:

What is the nature of the current legislative or regulatory arrangements?

What goods and services are currently affected by the present regulatory arrangements?

What are the market structures for those goods and services under existing regulatory arrangements?

[3]When economists talk about the 'state' of a system, they mean the actual economic and financial condition that the system is in at some point in time. To fully describe a 'state', you have to give the values of all the parameters and data that characterise that system. It is unlikely that a full description of a 'state' will ever be possible and a simplified model of the system containing the key parameters and data items will usually suffice. The 'state' is not something fixed; it will generally change with time.

What are the likely future changes in market structures for those goods and services which may result from factors other than changes in the existing regulatory arrangements?

How will the current regulatory arrangements impact on market structures for other goods and services in the future?

Step 2: Identification of a realistic 'with change' or 'alternative' state

Having identified the 'without change' state, it is necessary to identify as clearly as possible the situation which would prevail under a different, less anti-competitive, regulatory structure. Whereas the identification of the 'without change' state is helped by the existing situation being a useful reference point, the existing situation may be of lesser use in the identification of the 'with change' state. The following activities should be undertaken during this stage of the assessment:

Describe the proposed change to the existing legislative or regulatory arrangements. This description should include an outline of any new legislation or legislative amendments required to implement the change and a detailed account of any anti-competitive aspects of the proposed legislation.

Describe the future situation and market structures for all the goods and services, both currently affected and newly affected, following the change in regulatory arrangements.

Step 3: Identification of all major impacts

The 'without change' and 'with change' states are then compared to enable the identification of individuals and groups who will be impacted by the change and the general nature of those impacts. A convenient method of presenting this comparison is the use of an impact matrix naming the various affected groups and giving a brief description of the impacts identified for each group as well as a preliminary assessment of the direction (positive or negative) of each impact.

This step is crucial to achieving a realistic and complete assessment of any regulatory change. Whether an assessment is a minor or major one, significant resources should be devoted to ensuring that all relevant and material impacts are identified. The following series of questions, if applied to the comparison of the alternative states, should assist in the identification and valuation of the impacts of a change in the regulatory environment.

A **Social Impact Assessment** using the attached methodology (Appendix 4) and an **Employment Impact Statement** (using Appendix 5) must also be prepared at this point in a major review.

Will the move from the 'without change' to the 'with change' state cause:

1. An increase or decrease in the cost of producing, distributing or marketing goods and services for existing and potential producers. Such cost changes could result from -
   - changes in the prices of direct inputs to the production process;
   - changes in the productivity of existing resource usage;
   - changes in business practices due to changes in incentives and competitive pressures;
   - changes in ownership or business structures;
   - the loss or achievement of economies of scale or scope?
2. An increase or decrease in the price paid by intermediate or final consumers of a good or service as a result of (1) above, or a change in market structure, particularly with regard to market concentration and the exercise of market power?
3. An increase or decrease in the level of output of a good or service as a result of (1) above, or a change in market structure, particularly with regard to market concentration and the exercise of market power?
4. An increase or decrease in the quality of goods and services as a result of a change in market structure, particularly with regard to market power and the availability of alternative supplies, or a change in regulatory requirements?
5. An increase or decrease in incentives to invest in lower cost production, distribution or marketing processes resulting in (1) to (4) above?
6. A change in the incidence of breakdowns in public health and safety or the level of general consumer dissatisfaction due to the sale of inferior goods and services? The impact could be reflected in changes in insurance premiums paid by suppliers of goods and services due to changes in the incidence and amount of personal liability claims, changes in legal and policing costs, or a change in the wellbeing of a particularly vulnerable section of the community, eg. the elderly, low income earners etc, who are unable to obtain redress for damages incurred.
7. An increase or decrease in the cost of obtaining and disseminating information relating to the price, quality and availability of goods and services?
8. An increase or decrease in transaction costs, including legal, regulatory and surveillance costs for existing and potential producers, consumers and regulatory bodies?
   (a) An increase or decrease in business regulation compliance costs for existing and potential producers?
   (b) An increase or decrease in income variability?
   (c) The loss or restoration, an increase or reduction in access to, or an improvement or deterioration in the condition of some environmental good or amenity?
   (d) An increase or decrease in the level of an environmental 'bad'?

Step 4: *Valuation of impacts*

As stated previously, the valuation of significant impacts is a requirement of major assessments, where practicable, and should also be attempted in minor assessments where data is available. The treatment of non-valued impacts is discussed later in Step 5.

Valuation requires that an impact on an individual or group be ultimately expressed in monetary terms. **Hence, impact valuation requires that the 'without change' and 'with change' situations of individuals or groups must be able to be expressed in monetary terms.** This entails the use of monetary measures such as profit, consumption, expenditure or value of output. The valuation process involves a number of stages that necessarily involve the construction of economic models of market structures and market participants. The process is described in more detail below.

Stage I – Specify in detailed quantitative terms the market structures and economic/ financial status of impacted groups in the 'without change' and 'with change' states.

The **'market structure'** for a particular good or service can be defined in terms of

- the distribution of the productive resources among individuals and organisations involved in the production, distribution and marketing of the good or service and the resulting cost of producing it;
- the characteristics of the demand for the good or service;
- the price setting process; *and*
- the existing regulatory environment.

For example, the market structure relevant to the provision of a particular good or service could comprise such features as:

- number, size and distribution of firms supplying the good;
- total output and demand during a given time period;
- fee structure and degree of price regulation/competition;
- responsiveness of demand to price changes; *and*
- barriers to entry or exit for existing and potential firms, etc.

For a particular market structure, economic and other factors will determine the economic status of market participants, including producers, distributors, consumers, etc. The economic or financial status of market participants is usually expressed in terms of profits, consumption expenditure or economic surpluses.

For example, the economic or financial status of a firm supplying a particular good or service could be defined by reference to such details as total revenue, fixed and variable expenses, non-cash expenses, capital structure, total output per annum, and other relevant information which would be required to measure the impact of moving from the 'without change' to the 'with change' state. In this example, the impact on the firm producing the good could be valued by measuring the change in the firm's profitability.

In most instances it will be necessary to construct representative models of impacted groups in order to value the impact of a movement from one state to another. The necessary detail and complexity of the models of these groups will vary considerably from case to case depending on the scope of the assessment, the nature and complexity of the impact(s) being valued, data availability and the degree of homogeneity of the individuals or firms within the groups being modelled.

Stage II – Compare the 'without change' and 'with change' levels of the economic status of each impacted group and report the size and direction of the change for each group separately.

Having assessed in monetary terms the level of economic well-being of a particular group in both 'without change' and 'with change' states it is simply a case of deducting the value of the welfare measure used in the 'without change' state from the corresponding value in the 'with change' state to calculate the value of the impact. A positive result in this case would indicate that the change would have a beneficial impact on the welfare of the group in question. Of course, groups may be affected by more than one impact and, where those impacts are valued, they should be summed to arrive at the total impact on each group.

Throughout the valuation process it is important to clearly document all the parameter estimates and underlying logic and rationale used in the calculation of welfare measures. The valuation process must be as transparent as possible and be able to be replicated if required in the audit process.

Step 5: Assessment and quantification of non-valued impacts

In Step 3, all significant impacts were identified and, where possible, some indication of the general direction of the impacts was required. Step 5 involves a more detailed assessment and quantification of impacts that were not subjected to valuation, in monetary terms, in Steps 3 and 4. These impacts will be referred to as non-valued or quantified impacts. While valuation of these impacts may not be possible, quantification in non-monetary terms should be undertaken. The following activities should be undertaken for each non-valued impact –

- Describe in detail the nature and direction of each impact.
- Provide some measure(s) of the magnitude or scale of the impact and the size of the impacted group.
- Specify the parameters that describe the impact's time profile – length of adjustment period and the initial year of impact.

Step 6: Timing, aggregation and presentation of results

Stage I – Define the time profile of each impact

The valuations undertaken in Step 4 will most likely be based on steady state economic systems. That is, the market structures and economic systems will each represent a state where no adjustment process is occurring. In particular, the situation described in the 'with change' state will be that prevailing after all the impacts have been fully absorbed by the impacted groups. To take account of this, it is necessary to specify the year in which the change will begin to impact on a particular group and the time period over which the change will take place ie. the transition period. This information is used to define a time profile for each impact.

The PBT software that accompanies these guidelines requires this information for each impact, whether valued or quantified. A feature of the software program is that, in the case of valued impacts, the impact level increases linearly during the transition period until the maximum impact value is attained. That maximum impact level is then maintained for the remainder of the assessment period. The assessment period is a period sufficient to capture all the impacts of the change for a reasonable time period. In setting the assessment period, recognition also needs to be given to the fact that future projections of both 'without change' and 'with change' states will become less reliable the further we attempt to project into the future. A minimum period of 10 years is required in these assessments. A maximum period of 50 years is allowed for in the PBT software.

(Note: Stages II, III and IV are required for major assessments only)

Stage II – Calculate the Present Value of each impact stream and sum to calculate the total impact on each group

Having specified the maximum level of an impact in Step 4 and having defined the time profile over which that impact will be felt, sufficient information will be available to specify the impact level in each year of the assessment period, that is, the impact stream. Using discounting[4] procedures it is then a straightforward matter to calculate the present value of each impact stream. The present values of all valued impacts on a particular group (assuming more than one impact) can then be summed to calculate the total impact on that group.

[4] The discount rate to be used in these assessments is 8%. This is a real, pre-tax discount rate so all cash flows should be expressed in constant purchasing power. Sensitivity analysis could be undertaken using 6% and 10%. The default discount rate in the PBT assessment computer system is 8%.

Stage III – Calculate the Net Impact (or Net Present Value) of the change by aggregating the changes in economic welfare of the affected groups or individuals, as determined in Stage II.

Taking into account the change in the economic welfare of each affected group, as expressed in present value terms in Stage II, the Net Impact is then calculated. That is, the sum of the adverse or negative valued impacts of the change is deducted from the sum of the beneficial or positive valued impacts.

The resulting Net Impact should then be interpreted. For example, where the 'without change' state involves a continuation of an existing anti-competitive restriction, a positive Net Impact indicates that a change to the 'with change' state specified in the assessment is desirable and the current restriction on competition is inefficient. On the other hand, should the 'with change' state involve the introduction of anti-competitive arrangements, a positive Net Impact would indicate that such a change is economically worthwhile. *However, an assessment of whether a change is in the public interest or not would require an examination of the net impacts on individuals and groups and of the incidence of non-valued impacts.*

Stage IV – Present results and undertake sensitivity analysis.

Results should be presented on an aggregated and desegregated basis. Desegregated results should include the sum of the present value of impacts for each impacted group while the aggregated result should include only the Net Impact or NPV.

An analysis should then be undertaken of the sensitivity of the aggregated and desegregated results to changes in values of the key parameters used in the economic systems or market structures. For example, suppose that as a result of some relaxation of anti-competitive restrictions market prices are expected to fall by an estimated 10 per cent. Given the level of uncertainty associated with the value of this parameter, sensitivity analysis could be conducted using price reductions of five per cent and 15 per cent to assess how the price reduction impacts on the outcome of the assessment. The calculation of a break-even level (that is, where the present value of the Net Impact equals zero) could also be undertaken along with an assessment of the likelihood of that break-even level occurring.

Quantification and presentation of non-valued impacts

Whether a major or minor PBT assessment is required will largely determine the extent to which impacts are valued and the level of rigour and resources to be applied to those valuations. While the complete valuation of impacts for a minor assessment is not required, some attempt at valuing the more significant impacts should be made. In reality, a number of impacts will not be able to be valued, in monetary terms, in both minor or major assessments.

Generally speaking, the main reason why some impacts may be difficult to value in monetary terms is that there is insufficient data on which to base the quantitative specification of economic systems and market structures that define the 'without change' and/or 'with change' states. A limited understanding of physical and financial relationships required to assess the change in the economic well-being of impacted individuals or groups may seriously hamper the valuation of certain impacts. Given the substantial costs associated with the valuation of a particular impact, the type of assessment being undertaken, and the perceived magnitude of the impact, valuation may not be worthwhile.

For example, the valuation of non-market goods and services such as the environmental impacts of the production and/or consumption of some goods and services may involve substantial effort. While these impacts may be important in the overall assessment, lack of understanding of the physical and financial relationships involved may make valuation extremely costly. Also, a lack of understanding of the long term effects of a particular change may hamper the valuation process. **Where impacts identified in Step 3 cannot be valued in monetary terms they should, where considered material, be quantified.**

Not being able to express impacts in monetary terms does not mean that they should not be **quantified** in other non-monetary units of value. The provision of relevant information on the possible magnitude of an impact will assist the decision making process by providing some indication of the trade-offs between impacted groups. For example, it may be possible to indicate the overall number of producers, consumers, wholesalers, patients, clients, etc., who are affected by an impact. It may also be possible to classify the impacted group by region, firm size, income level, etc. A time profile of the impact, as described in Stage I of Step 5 for valued impacts, should also be provided. Finally, while it may be difficult to indicate the relative magnitude of the effects on the welfare of individuals of different impacts, where sub-groups have been identified for a particular impact, some indication of the relative magnitude of the impact on each sub-group should be possible.

Outline of computer software

A computer program entitled **Public B**enefit **T**est **A**ssessment **S**ystem (PUBTAS) has been written to assist departments to undertake PBT assessments as outlined in these guidelines. PUBTAS is a standalone Microsoft Windows application with the only software requirement being that users can run Windows 3.1 or Windows 95.

The main component of PUBTAS is the Impact module that incorporates the impact identification, valuation and quantification aspects described in these guidelines. In addition to requiring the specification of the key parameters needed to define impacts, the impact module requires the provision of a detailed description of the nature of each impact and the basis used to value or quantify them.

PUBTAS comprises the following modules:

Module 1 Assessment selection

Module 2 General administrative details

Module 3 Background information about the option being assessed

Module 4 Description of the ‘without change’ and ‘with change’ states

Module 5 Financial impacts on the government sector

Module 6 Impact identification, valuation and quantification

Module 7 Sensitivity analysis

Module 8 Assessment reporting.

In line with the process described in these guidelines PUBTAS provides the user with the capacity to undertake either a major or minor assessment as determined in consultation with the NCP Unit in Treasury. Operationally, there is little difference between undertaking a major or minor assessment using PUBTAS. The main differences are in the government outlays area and the requirement to specify assessment time period details and the discount rate in the case of major assessments. While more effort will be devoted to impact valuation in major assessments, the overall design and operation of the impact module is the same for both levels of assessment.

PUBTAS provides three output reports for each assessment, including:

Impact Summary Table

Results of Major or Minor Assessment

Full Assessment Report.

These reports would form attachments to the CIS. The results of all assessments (assuming that more than one option has been identified) would be further summarised and discussed in the concluding sections of the CIS.

PUBTAS contains a fully integrated HELP system and comes with an easy to follow user’s guide.

Reference material

Department of Finance (1991), *Handbook of Cost-Benefit Analysis*, Australian Government Publishing Service, Canberra.

Sugden R and Alan Williams (1985), *The Principles of Practical Cost-Benefit Analysis*, Oxford University Press.

Department of Science and Technology (1995), *Techniques to Value Environmental Resources*, AGPS, Canberra.

Queensland Treasury (1992), *Draft Project Evaluation Guidelines*, Brisbane. Albon, R. and Lindsay, G., 1984, Occupational Regulation and the Public Interest.

Australian Competition and Consumer Commission (1995), *Guide to Authorisations and Notifications.*

Hilmer, F., 1994, 'Foreword: The Bases of Competition Policy', *University of New South Wales Law Journal*, Vol 17, No.1.

Hilmer, F., Refer also to entries under Independent Committee of Inquiry into a National Competition Policy (the 'Hilmer Report').

Independent Committee of Inquiry into a National Competition Policy, 1993, *National Competition Policy: Report by the Independent Committee of Inquiry* (the 'Hilmer Report').

Just, R. E., D. L. Hueth, and A. Schmitz, 1982, *Applied Welfare Economics and Public Policy*, Prentice Hall, New Jersey.

Knetsch J., 1993, *Some Practical Problems of Wrong Questions and Misleading Answers*, RAC Occasional Paper, No. 5, AGPS, Canberra.

Moore, A.P. and Tarr, A.A., General Principles and Issues of Occupational Regulation, 1989 1 Bond LR 119.

Perkins, F., 1994, *Practical Cost-Benefit Analysis*, Macmillan.

Queensland Government, 1995, *Restrictive Trade Practices Processes and Procedures Manual*, Queensland Treasury, Brisbane.

Queensland Government, 1996, *Timetable for Review of Legislation Containing Measures That Restrict Competition*.

Resource Assessment Commission, 1990, *A Survey of the Hedonic Price Technique*, RAC Research Paper No.1, AGPS, Canberra.

Wilks, L., 1990, *A Survey of the Contingent Valuation Method*, RAC Research Paper No. 2, AGPS, Canberra

Williamson, O. E., 1968, 'Economics as an Anti-trust Defence: the Welfare Trade-offs', *American Economic Review*, Vol. 53.

World Bank, 1991, *The Economics of Project Analysis: A Practitioner's Guide*, Washington D.C.

Appendix 3
Government Priority Outcomes

Government Priority Outcomes

The State Government has established seven Government Priority Outcomes for Queensland. They are:

1. *More jobs for Queenslanders*

   Target a rate of five percent unemployment in five years

   Assist business and industry to create secure and sustainable jobs

   Develop a fair and efficient Industrial Relations system.

2. *Building Regions*

   Increase Statewide development so that Queensland's regions prosper

   Raise general education infrastructure to support Statewide development

   Expand export markets and encourage value adding industries.

3. *Skilling Queensland*

   Improve workforce skills for current and future needs

   Raise general education levels, focusing on whole of life skills

   Encourage innovation and flexibility by industry and government to strengthen Queensland's position in the information age.

4. *Safer/supportive communities*

   Address the social and economic causes of crime through targeted, coordination and consultative initiatives

   Promote individual, family and community vitality that respects diversity

   Work with Aboriginal and Torres Strait Islander people to find practical ways to progress reconciliation and improve well being and quality of life.

5. *Better quality of life*

   Deliver education, health and family services that improve people's quality of life

   Develop community facilities and provide community services that promote full and equitable participation by all Queenslanders.

6. *Valuing the environment*

   Ensure the richness of our environment can be enjoyed by current and future generations

   Promote responsible and sustainable development of the State's natural and primary resources.

7. *Strong leadership*

   Lead by example through high standards of accountability, consultation and ethics

   Manage Queensland's finances to maintain a State budget surplus, low debt status and AAA credit rating

   Encourage active and informed citizenship

   Deliver improved and integrated Government services.

Appendix 4
Social Impact Assessment Framework

Definition of Social Impact Assessment

(SIA) is seen as encompassing the three broad functions of:

identifying social issues and potential social impacts relevant to particular policies for particular communities and circumstances;

assessing those impacts, in terms of their magnitude, duration, and the probability of their occurrence; *and*

achieving better outcomes for clients by influencing decision making and management strategies which reduce negative impacts and enhance positive impacts of policies.

Review Procedures

There are several outlines of the basic methodology or overall process of SIA in common use. The following stages should be used as a guide only as the preferred methodology will depend on a wide range of variables. However the basic process involves, in sequence, seven steps:

1. Scoping.

Identify potentially impacted groups and individuals and their issues of concern and the nature of the likely impact of what might happen to whom? This ideally involves consultation with those potentially impacted groups and individuals.

2. Profiling.

Identify the nature of the groups and individuals likely to be impacted. Do they have the capacity to cope with the likely impact? Are they particularly vulnerable to the policy?

3. Prediction.

Given the groups or individuals likely to be impacted and with knowledge of their capacity to cope and their issues of concern, what magnitude and effect might the potential impacts have?

4. Assessment.

Are these impacts significant given the priorities, policies and programs of Government?

5. Evaluation.

Are there alternative ways to meet the objectives of the policy without causing the identified potential impacts?

6. Management, mitigation, monitoring and review.

How can we best manage the potential impacts of this policy which we have identified? What strategies might help to get the best out of the policy and manage the negative impacts?

7. Recommendations.

What recommended strategies and actions will produce the best outcomes for the groups or individuals potentially impacted by the policy?

Social Impact Assessment and Public Participation Standard Terms of Reference for PBT Reviews

Consultation and social impact assessment

Consultation is an important part of social impact assessment. However consultation cannot substitute for social impact assessment. The rule of thumb is: "You can do consultation without doing social impact assessment, but you cannot do social impact assessment without doing consultation".

Social impact assessment or social planning aspects of major review assessment and decision making require that the outcomes of consultation and other specific research techniques are effectively incorporated into the review and in management, mitigation and monitoring of impacts.

Terms of reference for public participation

Consultation with stakeholders should be "up front", in the early stages of the review rather than after the event; and the consultation process should be actively taken to interested parties (in particular, to disadvantaged groups or communities) rather than rely on passive forms of communication.

Community consultation is needed as part of the approach taken to identify and respond to social impacts that may arise from the review.

Best practice in consultation processes

Best practice principles suggest that consultation processes should:

- be treated as integral to the conduct of impact assessment studies;
- be undertaken as early as possible in the impact assessment process, underpinning each phase;
- provide feedback to participants about outcomes;
- be individually adapted to each review and the receiving environment;
- develop trust and cooperation between participants through openness and honesty about the objectives of the policy, how it will be conducted, and how it will influence decision making; *and*
- facilitate equitable participation by allocating resources or developing specific strategies (e.g., to address literacy or access issues) to enable the involvement of particular groups or individuals.

A review plan should be presented in a summary form so that stakeholders will know when comment can be usefully accepted and how it will be evaluated. Readers should be able to see how their submissions will be addressed and taken into account in the decision making process, and what mechanisms will be used to deal with new issues that arise, or with information gaps that become obvious.

Guidelines for consultation planning, the choice of consultation techniques and for consulting with particular groups are available from a variety of sources. These guidelines should be consulted where relevant. See attached list of Government references.

Stakeholder identification

'Stakeholders' can be defined as those people and organisations who identify themselves as having an interest in a review, whether they will be impacted 'directly' or 'indirectly' by the review activities or outcomes. Even if stakeholders' involvement in a review seems peripheral or minor, knowledge of their concerns will be useful.

For further information and guidance on how to conduct a social impact assessment, contact:

The Manager
Social Impact Assessment Unit
Ph: 3224 4538
Fax: 3224 6220
social@families.qld.gov.au

Consultation: A Short Bibliography

DFYCC can assist in locating copies of these items if you have any difficulty. Departments and agencies are Queensland unless otherwise indicated.

Bowey, Rose, and others (1994) Human Services Planning Kit. 2nd ed. South Australian Urban Land Trust, Department of Housing and Urban Development, Adelaide.

Bureau of Ethnic Affairs (n.d.) Resource Kit for the Inclusion of People from Non-English Speaking Backgrounds in Government Programs and Services. BEA, Department of Family Services and Aboriginal and Islander Affairs, Brisbane.

Bureau of Ethnic Affairs (1995) Working with Government: A Guide for Community Groups. BEA, Department of Family Services and Aboriginal and Islander Affairs, Brisbane.

Carman, K. and Keith, K. (1994) Community Consultation Techniques: Purposes, Processes and Pitfalls: A Guide for Planners and Facilitators. Department of Primary Industries, Brisbane.

Community Disability Alliance (1995) A Way with Words: Guidelines for the Portrayal of People with a Disability. Community Disability Alliance Inc. and Office of Disability, Department of Family and Community Services, Brisbane.

Connor, D.M. (1997) Public Participation: A Manual. How to Prevent and Resolve Public Controversy. Connor Development Services Ltd., Victoria BC.

Council for Aboriginal Reconciliation (1993) Exploring for Common Ground: Aboriginal Reconciliation and the Australian Mining Industry. Australian Government Publishing Service, Canberra.

Department of Commerce and Trade [WA] (1993) Working with Communities: A Guide for Proponents. 3rd ed. DCAT, Perth.

Department of Main Roads and Queensland Transport (1997) Public Consultation Project. Final Public Report: The Way to Better Decisions in Main Roads and Queensland Transport. Corporate Communication, Department of Main Roads, and Organisational Development, Queensland Transport, Brisbane.

Department of Main Roads and Queensland Transport (1997) Public Consultation: The Way to Better Decisions. Policy, Standards and Guidelines. Corporate Communication, Department of Main Roads, and Organisational Development, Queensland Transport, Brisbane.

Department of Main Roads and Queensland Transport (1997) Public Consultation: The Way to Better Decisions. Consultation Planner. Corporate Communication, Department of Main Roads, and Organisational Development, Queensland Transport, Brisbane.

Department of Main Roads and Queensland Transport (1997) Public Consultation: The Way to Better Decisions. How to Gain Broader Participation in Consultation. Corporate

Communication, Department of Main Roads, and Organisational Development, Queensland Transport, Brisbane.

Department of Mines and Energy (1995) 'Community Consultation', Technical Guidelines for the Environmental Management of Exploration and Mining in Queensland. DME, Brisbane.

Disability Program (1997) Guidelines for the Provision of Information to and Communication with People with a Sensory Disability. Disability Program, Department of Families, Youth and Community Care, Brisbane.

Hayward, K., and Young, M. (n.d.) Working with Aboriginal Communities: A Practical Approach. WA Department of Resources Development, Perth.

Kennedy, R., and others (1993) Resourcing Consultation: A Manual to Assist Consultation by Government Agencies. Best Practice Paper 2, Office on Social Policy, NSW Government Social Policy Directorate, Sydney.

Office of Aboriginal and Torres Strait Islander Affairs (1997) Mina Mir Lo Ailan Mun: Proper Communication with Island People. OATSIA, Department of Families, Youth and Community Care, Brisbane.

Office of Aboriginal and Torres Strait Islander Affairs (1997) Protocols for Consultation and Negotiation with Aboriginal People. OATSIA, Department of Families, Youth and Community Care, Brisbane.

Office of Ageing (1994) Consulting With Older People: A 'How To' Kit. Office of Ageing, Department of Family Services and Aboriginal and Islander Affairs, Brisbane.

Office of Rural Communities (n.d.) Consulting With Rural Communities: An Issues Paper. Office of Rural Communities, Department of Housing, Local Government and Planning, Brisbane.

The Public Practice Pty Ltd. (1996) Getting Started: A Consultation Guide for Queensland Local Government. Local Government Association of Queensland, Brisbane.

Social Policy Unit (1993) Consultation: A Resource Document for the Queensland Public Sector. Social Policy Unit, Office of the Cabinet, Brisbane.

Appendix 5
Employment Impact Statement (EIS) Guidelines

1. Each major NCP legislation review must incorporate an EIS. The purpose of the EIS is to provide relevant data for forecasts to assist decision making.
2. The Workforce Strategy Unit within the Department of Employment Training and Industrial Relations (DETIR) assists Departments to determine the employment implications of projects and proposals to be considered by Government. Consultation with DETIR can occur through:

    phone discussions

    review of work in progress

    face-to-face meetings

    It would be most effective for both parties if consultation occurred during the review process.
3. EIS Criteria to consider are

    3.1 In what ways could this initiative encourage employment growth?

    – detail

    3.2 Are there direct or potential positive or negative influences on employment from this initiative?

    – detail

    – steps being taken to minimise negative influences

    3.3 Are there regional implications from this initiative which may directly or indirectly impinge on the economy or future economic development of a region or regional Queensland generally?

    – consider the economic (and employment) effects that this initiative may have, particularly outside of South East Queensland.

    – consider the local effects: Is any plant, equipment, expertise being imported to the region or is it possible to provide these locally.

    – have there been other significant employment impacts in the region recently (either negative or positive).

    3.4 In rethinking 3.1, could any reform proposal be redesigned to support or provide for employment growth?
4. Procedure

    consultation (see 2 above)

    copy of draft Employment Impact Statement and summary of any associated report or submission to Workforce Strategy Unit prior to finalisation

    The Unit will review any relevant final Cabinet Submissions and brief the Minister on DETIR’s involvement and level of support.

5. These guidelines are based on and are consistent with those outlining EIS procedures for Cabinet Submissions.
6. Please make contact with the Workforce Strategy Unit to organise consultation.

   Phone: 3006 4160
   3247 5305

   Facsimile: 3225 2011

   E-mail: Michelle.Dumazel@detir.qld.gov.au

DR DAVID WARNER
Director, Workforce Strategy Unit

Appendix 6
Regulatory Alternatives

Regulatory Alternatives	Advantages	Disadvantages
Performance Based Regulation ▪ Performance or outcomes based. ▪ Industry develops its own approaches to achieving outcomes. ▪ Efficient design of processes to meet outcomes.	▪ Greater flexibility. ▪ Encourage innovation. ▪ Able to use industry approaches to achieve outcomes. ▪ Greater flexibility results in cost reductions. ▪ Outcomes and targets are easier to communicate to industry.	▪ Can add additional costs to small business (limited resources to address flexible approaches). ▪ Must be maintained and updated regularly. ▪ Monitoring costs may be greater.
Codes of Conduct ▪ Set of agreed principles or guidelines outlining responsibilities and expectations. ▪ May be voluntary or mandatory.	▪ Effective in encouraging or discouraging behaviours. ▪ Industry participation in development. ▪ More informed, less costly. ▪ Addresses consumer requirements – quality, price, choice, environment, health, safety. ▪ More efficient than black letter regulation. ▪ Improves industry standards and promotes best practice. ▪ Improves the public image of industry and promotes public confidence. ▪ Prescribes minimum standards of performance. ▪ Easy to update and revise.	▪ Poor design causes additional cost and frustration. ▪ Poor design can cause negative publicity. ▪ Poor design may not achieve outcomes. ▪ Codes can be anti-competitive. ▪ If not transparent, will not achieve support. ▪ Not effective if the Code does not address the risk or market failure problem.
Standards ▪ Use existing or new measures to document outcomes. ▪ Controls on processes or performance.	▪ Ability to quantify performance outcomes. ▪ Industry understands standards and process controls. ▪ Convenient measures which can be monitored.	▪ Australian Standards are optimal versus minimum standards required. ▪ Constant monitoring required. ▪ Requires strong industry involvement and understanding.
Regulatory Tiering ▪ Different industry segments treated differently. ▪ Aims to provide equity across different sectors.	▪ Able to recognise different sector experiences/ imbalances. ▪ Cater for small business issues. ▪ Preserve flexibility and outcomes without disadvantaging some sectors.	▪ Unforeseen impacts. ▪ Risk of being misunderstood if complex. ▪ Can create a threshold effect (deter business activity, employment, etc.).

Regulatory Alternatives	Advantages	Disadvantages
Tradeable Permits ▪ Tradeable rights and permits manage access to a resource or a market (to conserve or preserve the resource; attach values and performance standards to permits or rights).	▪ Tradeable licences and permits allow effective use of resources. ▪ Able to embed performance expectations in permits. ▪ May reduce administrative costs to government by relying on market place to make decisions.	▪ Can restrict market entry. ▪ Market failures can prevent the system from operating successfully and may lead to constant monitoring by government.
Negative Licensing ▪ Excludes unsuitable individuals or organisations from participating in a market or industry function.	▪ Excludes unsuitable individuals or companies. ▪ Fewer costs to industry. ▪ Avoids the need for positive licensing.	▪ May not be proactive in encouraging high standards of performance. ▪ Difficult to detect breaches without ongoing screening. ▪ Applies to past experience rather than current capabilities.
Third Party Certification ▪ A third party body (industry or industry/government) to monitor performance and compliance.	▪ Independence of certification process. ▪ Can link education, information and support to certification. ▪ Efficient and cost effective enforcement. ▪ More market responsive, industry involved. ▪ Supports industry – government partnerships.	▪ Can add additional costs. ▪ The organisation selected can be inappropriate.
Education Programs / Information Disclosure ▪ Dissemination of information about a specific issue or problem to targeted groups. ▪ Publicity and information relating to poor or unacceptable performance by industry. ▪ Information on health, safety and other risks associated with products or services.	▪ Increases compliance by raising awareness about specific issues. ▪ May reduce resources spent on implementing and enforcing regulations. ▪ Can be an effective sanction. ▪ Informs users/consumers of products/services.	▪ May be less effective than other regulatory methods as it can rely on voluntary compliance. ▪ May have little impact on business and market prospects. ▪ May not impact on consumer behaviour.

Regulatory Alternatives	Advantages	Disadvantages
Risk-Based Insurance ▪ Government-based insurance cover against risks associated with particular activities to lower costs involved. ▪ Government encouragement to take out insurance cover.	▪ Provides adequate compensation for affected individuals and businesses. ▪ May reduce need for other forms of regulation. ▪ May reduce monitoring and enforcement by government.	▪ May encourage more insurance cover than necessary. ▪ May restrict market freedom.
Rewarding Good Behaviour ▪ Financial incentives and disincentives to influence behaviour.	▪ Efficient and respond to industry values. ▪ Financial incentives encourage appropriate behaviour. ▪ Market acceptance of rewards for outcomes.	▪ Requires monitoring and enforcement. ▪ Financial incentives/ disincentives may be inappropriate. ▪ Poor outcomes if industry is not involved.

(Source – Business Regulation Reform Unit)

Appendix 7

Competition Principles Agreement Extracts

Clause 1 of the Competition Principles Agreement as it relates to Legislation Review

Clause 1(3) of the CPA is reproduced below.

Without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; *or*

(b) for the merits or appropriateness of a particular policy or course of action to be determined; *or*

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; *and*

(j) the efficient allocation of resources.

Legislation Review – Clause 5 of the Competition Principles Agreement

Clause 5 of the CPA is reproduced below.

(1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

  (a) the benefits of the restriction to the community as a whole outweigh the costs; *and*

  (b) the objectives of the legislation can only be achieved by restricting competition.

(2) Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.

(3) Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.

(4) Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.

(5) Each Party will require proposals for new legislation that requires competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).

(6) Once a party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.

(7) Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.

(8) Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.

(9) Without limiting the terms of reference of a review, a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d) assess and balance the costs and benefits of the restriction; *and*

(e) consider alternative means for achieving the same result including non-legislative approaches.

(10) Each Party will publish an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

Appendix 8

An Integrated Decision Framework for Proper Coordination of Legislation Review Process in Queensland

Background

Legislation review is undertaken to satisfy the requirements of the National Competition Policy (NCP) and the *Statutory Instruments Act 1992.*

The Competition Principles Agreement requires that primary and subordinate legislation containing restrictions on competition should be reviewed and where necessary reformed. Such restrictions must be removed unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs (i.e. Public Benefit Test or PBT).

The *Statutory Instruments Act 1992* requires the completion of a Regulatory Impact Statement (RIS) whenever proposed subordinate legislation is likely to impose appreciable costs on the community or part of the community. The Business Regulation Reform Unit (BRRU) of the Department of State Development oversees this process. Furthermore, the Queensland Government has established a Red Tape Reduction Task Force with the Business Regulation Reform Unit as the secretariat.

Proposed Arrangements

An integrated decision framework described below will satisfy the requirements of regulatory review under the Statutory Instruments Act 1992 and legislation review under NCP, ensure proper coordination and avoid unnecessary duplication of effort by departments in undertaking the State's legislation review activities. The decision framework is based on:

- a basic principle that each piece of legislation to be reviewed should be subjected to only one review exercise;
- clear guidelines and common assessment approaches for determining the form of review method applicable (be it the PBT or the BRRU methodology) and the preliminary impacts on stakeholders;
- differences in methodology to satisfy the particular requirements of the legislation review being performed (i.e. anti-competitive provisions and/or an appreciable cost to the community); *and*
- standard reporting with allowance for the particular requirements of the review being undertaken.

Both NCP and regulatory reviews should be subjected to a common preliminary analysis which should indicate what specific form of further assessment, if any, is required.

When an NCP review is required (i.e. to examine anti-competitive provisions):

- if it is a major NCP review, a full Benefit-Cost Analysis (BCA) as described in the PBT Guidelines should be undertaken:
- if it is a minor NCP review, a BCA is preferred, but in some circumstances (such as a notable lack of data that can be expressed in dollar terms) it may be appropriate to consider firstly presenting the impacts as text rather than as a BCA model, or secondly applying the BRRU methodology; *and*

if the review also includes subordinate legislation that is deemed to have an appreciable cost to the community, the NCP review should also satisfy the requirements of the Statutory Instruments Act 1992 for an RIS. In this respect, the present public consultation arrangements pertaining to the RIS process will continue to apply. In certain circumstances, the Impact Statement may have to be summarised and otherwise modified into a form more suited for public consultation under the RIS process.

Where a review is limited to subordinate legislation to satisfy the requirements of the Statutory Instruments Act 1992:

the assessment should be based on the BRRU methodology, acknowledging that in some instances the Preliminary Impact Assessment will suffice (i.e. where it has been established after initial examination that there is no appreciable cost to the community).

The role of the Red Tape Reduction Task Force is to identify key strategic issues impacting on the progress of regulatory reform in Queensland and to undertake projects to develop strategies to address these issues from a whole-of-government perspective. Should the Task Force decide to examine specific legislation, the Treasury and Department of State Development officers associated with the Task Force in an advisory or secretariat role would propose to the Task Force an integrated examination of the legislation should the following also apply:

the legislation is to be subjected to review under NCP; *or*

the legislation is subordinate legislation that is deemed to have cost implications for the community as defined in the *Statutory Instruments Act.*

Queensland Treasury and the Business Regulation Reform Unit of the Department of State Development will consult to ensure that the requirements of NCP, the *Statutory Instruments Act 1992* and the activities of the Red Tape Reduction Task Force are fully addressed in Queensland's legislation review activities. Consultation will also occur with the Department of the Premier and Cabinet, and the Office of the Parliamentary Counsel, as appropriate.

Appendix 9
Measures That Restrict Legislation

Kinds of legislation which restrict competition

Restriction	Examples
▪ any **anti-competitive conduct** that is likely to constitute a breach of either Part IV of the TPA of the Competition Code	▪ compulsory acquisition of a commodity by a marketing board
▪ a **legislated monopoly** or **exclusive arrangement** for the provision or marketing of a good or service	▪ designation of a particular body as the sole or preferred supplier of a particular good or service
▪ **restrictions on entry** to a market, such as licensing or registration requirements	▪ occupational regulations which impose defined standards on the right to provide a service or to operate a business which provides a service ▪ allocation quantitative entitlements, quotas or franchises
▪ **price controls**	▪ setting (or prescribing a process for determining) maximum/minimum prices or charges (or rates of commission, agency or fees)
▪ requirements for prescribed **quality or technical standards** to be observed, or specified equipment to be used	▪ required defined standards to be met prior to the issue of a licence or authority to engage in a particular activity, and making lawful continuation of that activity dependent on compliance with those standards
▪ **restrictions on the conduct of a business**	▪ restrictions on such things as: hours of operation, size of premises, provision of specified facilities, geographic area of operation, advertising/promotion, sector-specific operation (e.g. retail versus wholesale), type of good or service allowed to be offered for sale
▪ **allocation of licences or similar** which either: (a) allow the holder access to natural resources; or (b) create rights, or permit specified activities, denied to non-holders	▪ licences, etc. relating to access to water, minerals, state forests or fisheries ▪ licences, etc. which relate to, for instance, disposal of waste material
▪ restrictions that have the effect of **limiting or preventing participation in a particular business activity by interstate or overseas participants**	▪ preferred purchasing arrangements for Queensland based suppliers ▪ statutory restrictions on supply or purchase arrangements outside the Queensland market ▪ product standards that differ significantly from interstate/international standards

Appendix 10
Economic Principles

Demand, supply and markets

The foundation for any study of markets is the concept of demand and supply. The market for every good or service has a demand side and supply side.

Demand is the quantity of a good or service that buyers want to buy at a particular period of time. The level of demand is determined by a number of factors including the price of the good, the price and availability of related goods, consumer incomes and budget constraints, consumer tastes and preferences, expectations of future price changes and the number of buyers in the market. The demand curve shows the quantity of the good that would be demanded at differing prices when other factors are held constant.

Supply is the quantity of a good or service that sellers are willing to supply at a particular period of time. The level of supply is determined by the price of the good, the price of goods that sellers can alternatively provide, the price of inputs required to produce the good, the available production technology and expectations of future price changes. The supply curve shows the quantity of the good that would be supplied at differing prices when other factors are held constant.

A **market** exists when there is a demand for a good by a buyer that can be supplied by a seller. That is, the interaction of buyers and sellers to engage in an exchange results in the creation of a market. A change in the market will affect the level of demand or supply of the good and is measured through the impact of the change on the price and/or quantity of the good. In response to a change in the market, buyers may substitute between one good and another and sellers may substitute between one source of supply and another. Therefore a market involves both actual and potential transactions between buyers and sellers.

For example, if one seller increases their price of a good, buyers may instead substitute their source of supply and purchase that good from another seller or another geographic area where the price of the good is lower. Sellers may adjust their production plans to substitute one product for another in their output mix, or to substitute their geographic source of supply for another. Whether such substitution is feasible ultimately depends on customer attitudes, technology, distance, cost and price incentives.

The extent to which such substitution occurs depends on the **elasticity of demand and supply**. For example, when a good has close substitutes demand for the good is elastic, such that an increase in price is likely to result in a relatively large demand response with buyers substituting that good from another seller. Alternatively, when a good has few close substitutes demand for the good is inelastic, such that an increase in price is not likely to result in a large demand response. It is this ability to substitute or the elasticity of a good that is used to determine the outer boundaries of a market.

Markets and competition

Competition is the rivalry between sellers to attract the business of a buyer. The extent to which markets are competitive depends on a number of factors:

The number and size of sellers in the market

The control of the seller over the price of the product

The number and size of buyers in the market

Product differentiation

The level of non-price competition.

The most distinguishing characteristic of a market is the **number and size of sellers**. This depends on –

The type of product: products that are perishable such as fruit and vegetables can limit the number of sellers competing in a geographical market.

Production and cost characteristics to produce the good: products which require significant capital investment (sunk costs) may restrict the number of sellers, e.g electricity.

The conditions of entry and exit: regulatory barriers to entry such a licensing can reduce the number of sellers.

Related to this is the price control of the seller over the price of the product. In a market where there are many sellers, each produces such a small fraction of total output that increasing or decreasing its output will have no perceptible influence upon total supply or market price (price "seller") such that the market remains competitive. In a market where there is only one or few sellers each firm is responsible for a such a significant proportion of the quantity supplied in the market that it can therefore cause product price to change by manipulating the quantity of the product supplied and therefore influence the level of competition in the market (price "maker").

The **number and size** of buyers in the market can also affect the level of competition. If there are only a few buyers or a collection of buyers acting as one, the level of competition in the market is reduced. For example, the purchase of wool by a statutory authority (one consumer) which, because of its size, significantly influences the price paid to the seller for their wool.

Product differentiation or the extent to which the seller's product is similar or differentiated also has an impact on the level of competition. A market, in which the products of sellers are considered to be standardised or homogenous among sellers (e.g butter and margarine), is generally more competitive since, at a given price, buyers are indifferent about the seller from which the product is purchased. Alternatively, in a market where there are no good, or close, substitutes and products are highly differentiated or unique in terms of price and quality characteristics, competition is likely to be reduced, since from the buyer's point of view, there are no reasonable alternatives available from other sellers. That is, a seller does not have to compete with as much vigour and will instead rely on the preferences of buyers.

Related to the type of product is the level of **non-price competition**. For example, sellers that produce standardised products may attempt to reduce the level of competitive pressure they face to increase product differentiation by using promotional and advertising strategies to vary the product perceived by the buyer.

Market Models

The types of markets that exist fall along a continuum from highly competitive markets to markets with no competition depending on market characteristics. There are four basic market models:

Market structure	No. of sellers	Price control	Product differentiation	Barriers to entry/exit	Examples
Perfect competition	Very large	None	Standardised	None	Primary production, Share broking
Monopolistic competition	Many	Some, but limited	Differentiated	Minimal	Restaurants, Retailing
Oligopoly	Few	Mutual inter-dependence	Standardised or differentiated	Significant	Manufacturing
Monopoly	One	Considerable	Unique product, no close substitutes	Major	Public utilities

Perfect competition describes the ideal type of market, that is characterised by significant competitive rivalry amongst the sellers. A market operates under perfect competition when there are –

A very large number of sellers: each seller acts independently and produces such a small part of the industry's output that the share of market power and control is distributed evenly and no one seller can significantly affect the market price. The individual competitive sellers in the market are therefore price takers.

Homogenous products: the product of any one seller is the same as the product of any other seller. Due to the lack of product differentiation or non-price competition, consumers are indifferent about that seller from which they purchase the product.

No barriers to entry: there are no special conditions or impediments, such as legal, technical or financial obstacles, which prevent sellers from entering or exiting the market as they choose. In the event that a seller becomes unprofitable, the seller does not face any penalties when exiting the market.

Perfect information: each market participant (both buyers and sellers) has equal access to information regarding the availability, quality and price of products.

While some markets are highly competitive and may be considered perfectly competitive markets, such as share broking and primary production, markets that are *purely* *competitive* are rare and many markets depict some form of “imperfect” competition. Perfect competition however, represents the ideal free market and consequently is used as the benchmark to measure market conditions.

The **pure monopoly** is at the other end of the market continuum. High transaction, travel and information costs can often lead to or sustain a monopoly market structure. As the product in this market is supplied by only one seller, the seller is able to determine the price and supply of the product. A market operates under a monopoly when there is –

One seller: a single firm is the only producer of the product and has no immediate competition. The pure monopolist is therefore a price maker.

High market entry/exit costs: barriers to entry in the form of economic, technological, legal or other barriers exist to keep new competitors from coming into the industry. Therefore entry into the market is blocked.

No close substitutes: the monopolist’s product is unique such that from the buyer’s point of view there are no reasonable alternatives and thus there is no competitive pressure on the monopolist.

Economies of scale: though not a characteristic unique to monopolists, larger production can lead to lower average costs of production to achieve economies of scale. This is often a characteristic of a natural monopoly, such as public utilities, where due to the high infrastructure costs and low marginal costs, it is most economically efficient for the industry to be served by only one seller.

Between these two extreme market structures are the market models of monopolistic competition and oligopoly. **Monopolistic competition** combines the features of both perfect competition and pure monopoly, although it does stand closer to a perfectly competitive market structure. Monopolistically competitive markets involve many competitive, independently acting sellers each of which has a limited amount of control over product price, depending on the extent of product differentiation and the number and proximity of buyers. However in contrast to perfectly competitive markets where the product is standardised, product differentiation and vigorous non-price competition are major characteristics of monopolistically competitive markets. For example, restaurants offering food products compete equally for the same patrons (buyers) but differentiate their product offerings such as Chinese or Italian food.

Oligopoly, the remaining market model, is less precisely defined than the other three market structures. An oligopoly is characterised by few mutually interdependent sellers who dominate the market for a product. Since each firm supplies a large portion of total industry output, action taken by any one firm to improve its share of the market, such as lowering the price of its product, will directly affect its competitors. The potentially adverse effects of such behaviour can often lead to the establishment of collusive agreements or strategic interaction between the sellers. In contrast to pure monopolies, entry is not blocked completely in oligopolistic industries, although often substantial infrastructure costs and strategic interaction between the sellers can make competitor entry to the industry difficult.

Oligopolists may produce standardised or differentiated products depending on whether the products are raw materials or semifinished goods which are generally standardised, or finished products which are generally differentiated. Related to this is the characteristic of oligopolists to frequently engage in advertising and other promotional activities where products are differentiated in order to create competitive advantages over other sellers by increasing the value of the product from the buyer's point of view.

Identifying a market structure

The assessment of the level of competition that is present in a market also depends on the definition of the market in which buyers and sellers operate. Defining a market requires the identification of the market structure and its elements. The market may be defined on four dimensions –

Product dimension: refers to the identification of the goods and/or services supplied by the seller and the products that are close substitutes for those goods and/or services and the sources of supply that are available to meet the demand for those products (e.g local, national or overseas producers, or producers of other products who may be able to supply the product). It also includes the identification of participants.

Geographic dimension: involves the identification of the area over which the sellers currently supply, or could supply, the product, and where consumers could obtain the product if a particular seller increased the price of its product.

Functional dimension: refers to the identification of the functional levels at which the sellers operate, e.g. price and output decisions.

Time dimension: refers to the period over which product substitution possibilities could be feasible e.g consumers may delay their purchase until a new and improved product becomes available.

Other characteristics that affect the level of competition include the level of regulation (from all intervening parties such as all government and industry groups) and interaction with other markets. In essence, these characteristics determine the level of demand for a product by a consumer and the level of supply of a product available from a seller.

A more detailed discussion on defining a market is provided in the guidelines.

Market failure and government intervention

As a general rule, markets are the best means of allocating resources across the economy. However, markets are not perfect and market failure can occur, resulting in lower incomes and welfare in society. Market failure can be defined as a combination of factors preventing the allocation of resources to uses which reflect all the benefits and costs associated with the production and consumption of certain goods and services.

information or the presence of a natural monopoly. These are detailed in the table below. Market failure can also arise because markets are so incomplete, it is impossible to trade some goods for others, or where markets are so thin, there is little trading activity to provide information for future exchanges of goods or services.

Market Failure	Description	Examples
Externalities	Costs or benefits imposed or conferred on third parties without their consent and which do not accrue to the original parties (ie. the buyer and seller).	Pollution (cost) or neighbouring parks and gardens (benefit)
Natural Monopoly	An industry where due to the high infrastructure costs, low marginal costs and economies of scale, its is most economically efficient to be served by only one seller.	Public Utilities
Public Good	Goods that are non-rival, such that use of the good by an additional consumer does not increase the costs of, or the resources needed to, produce the good. Goods which are non-excludable, such that consumption of the good by one consumer does not exclude the consumption of the good by anyone else or reduce the quantity available for consumption by others.	Lighthouse, waterway maintenance or national park
Information Asymmetry	Information in the market is not equally available to both buyers and sellers. The costs of obtaining information may be high, particularly where consumers are unable to evaluate information.	Product Ingredients, Availability and location of products

It is the existence of these types of market failure that forms the primary reason for government intervention. Government intervention is based on the public interest model. This assumes that regulation is designed to address market impediments and encourage economic efficiency and competitiveness in order to improve resource allocation and therefore improve economic growth and social welfare.

However, in attempting to address perceived market failure there is the added prospect of "government failure". Government failure may be the unintended costs of government intervention such as mistaken policies or spillover effects (externalities) of other policies. Manipulating the market environment through regulation may impact on the level of competition. Restrictions on competition can result in increased costs from the creation of –

Artificial barriers to entry: licensing requirements can contribute to high initial costs and impose artificial barriers to the market entry of new competitors.

Restrictions on business type, structure or ownership: government restrictions on the type of business, e.g medical practices, or on the form and structure of the business – primarily occupational businesses, eg. restricting medical practices to partnerships.

Conduct restrictions: limiting specific behaviour by businesses that may be detrimental to consumers e.g. restrictions on advertising which may be uncomfortable or offensive to viewers.

Quality restrictions: regulating the product or service standards, by prescribing particular production processes or specific input requirements, e.g. construction of swimming pools, maintenance (and water quality) of swimming pools.

Distributional effects: regulating the distribution of the product or service, e.g. cross subsidisation for rural water consumers.

Trade restrictions: lack of productive or allocative efficiency or adaptability to changes in the economic environment due to regulatory advantages over other competitors in the market eg. the imposition of tariffs on an industry provides less incentive for the industry to be competitive and impedes the growth of unprotected activities.

Agency costs: the costs of administration and compliance of businesses with the regulation can result in increased costs associated with transactions that are not included in the price of the product, e.g. car roadworthy, community consultation.

Government intervention should be limited only to circumstances of social needs or market failure. Intervention based on market failure should occur only in instances when this failure is exploited or has the potential to be exploited to the detriment of market participants and the community at large.

Intervention by government needs to achieve a balance between the advantages of cost, price and innovation associated with competition and the disadvantages of a decrease in public good.

Appendix 11
Glossary and Abbreviations

ACCC	stands for Australian Competition and Consumers Commission.
anti-competitive	means that the proposed legislation, conduct or agreement either: • conflicts with Part IV of the Trade Practices Act or the State's Competition Code; *or* • is generally restrictive of competition. For example, it provides a barrier to entry into a market or constitutes a market-sharing arrangement (for example, occupational and professional regulatory regimes or other licensing regimes); or restricts the ability of one or more market participants to compete with **other participants** on the basis of price, quality, quantity, hours, geographic area, technical innovation, etc.
CBA	stands for cost-benefit assessment.
CIS	stands for Competition Impact Statement.
Competition Code	means the Code enacted by the *Competition Policy Reform (Queensland) Act.* This Code is modelled on Part IV of the *Trade Practices Act* and applies to those entities which otherwise are not covered by the *Trade Practices Act* (due to Constitutional limitations to the Commonwealth's legislative power). These entities include: unincorporated associations (including professional firms) and State Government businesses.
NCC	stands for National Competition Council.
NCP	stands for National Competition Policy.
TPA	stands for Trade Practices Act. Part IV of this Act sets out the rules of competitive conduct.
RIS	stands for Regulatory Impact Statement. These Statements are similar to CIS's but pertain to significant subordinate legislation rather than primary legislation.

Glossary of economic terms

Constant (real) prices	The prices of goods and services expressed in units of constant purchasing power ie. any change in purchasing power (inflation) has been removed from the price data.
Discounted cash flow analysis (DCF)	A technique used in project appraisal that uses 'discounting' to enable costs and benefits of a proposal, which occur over time, to be expressed in comparable units of value at a particular point in time.
Economic surplus	Economic surplus is the summation of consumer surplus and producer rents (or economic profit) resulting from a market transaction. Consumer surplus is the additional benefit (satisfaction) a consumer receives from the consumption of the good or service over and above the price he or she actually pays for it. Producer rent is the excess profit a producer receives over and above that required to ensure he or she continues to produce the good or service.
Input-Output analysis (I-O)	Input-Output analysis involves the measurement of the economy wide employment, income and output effects of a change in economic activity in a particular industry or sector of the economy.
Net preset value (NPV)	The summation of positive and negative impacts of a change all expressed in present value (discounted) terms. (See also DCF analysis above)
Normal Profit	Normal profits represent the return on the resources used in the production of a good or service equal to the return those resources could have earned in their next most profitable use ie. their opportunity cost.
Opportunity cost	The amount of utility (satisfaction) or profit that has to be given up in order to obtain or produce a good or service ie. the value of the best alternative which has to be foregone to undertake the proposed activity.
Price elasticity of demand	Price elasticity of demand is a measure of the responsiveness of consumer demand for a good or service to changes in the price of the good or service. For example, a demand elasticity of less than 1.0 represents inelastic demand for the good ie. a 1% reduction in price results in less than a 1% increase in demand for the good.

Real interest (discount) rate	Real interest or discount rates are nominal or market quoted rates adjusted for inflation. Real rate = Nominal rate - Inflation rate + Inflation rate
Shadow price	The shadow price of a good is equal to the total resource costs used in its production and is closely related to the concept of opportunity cost. For example, the shadow price of some environmental goods, such as rainforests protection, would include the lost income from native timber production that is being foregone. Market prices will not always equate to shadow prices due to market distortions caused by indirect taxes and user subsidies and other effects external to the actual transaction.
Utility	Utility is a term synonymous with consumer satisfaction, happiness or wellbeing associated with the consumption of a particular bundle of goods and services.