

22 August 2006

Regulation Review
Independent Pricing and Regulatory Tribunal
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Business
Council of
Australia



Dear Sir/Madam

BUSINESS COUNCIL OF AUSTRALIA SUBMISSION

The Business Council of Australia (BCA) welcomes the opportunity to make a submission to the NSW Independent Pricing and Regulatory Tribunal (IPART) draft report *'Investigation into the burden of regulation and improving regulatory efficiency'* July 2006 (Report).

In March 2005, the BCA released the *Business Regulation Action Plan* (Action Plan) which outlined a series of recommendations on how to reduce the unnecessary costs of poor regulation. Those recommendations were aimed at not only fixing the current stock of poor regulation, but also at systemic improvements to the regulation making system to ensure that further poor regulation is not imposed on business.

In February 2006, the BCA provided IPART with its submission to the Federal Government's Taskforce on Reducing the Regulatory Burden on Business (Submission). Many of the proposals in the Submission relating to systemic changes to regulation making are equally applicable to regulation in NSW.

The BCA welcomes a review of the existing stock of NSW regulation, to eliminate costly and poor regulations. However, the BCA will comment only on Recommendations 1-16 in the Report that deal with proposed systemic changes to regulation making in NSW. The comments in relation to these Recommendations are in addition to, and not intended to detract from, our recommendations in the Action Plan and Submission. The comments are also general in nature, given the short amount of time provided for submissions.

Regulation Making Processes and System

In general, the Action Plan and the Submission outlined a number of recommendations on how to improve the regulation making processes at a Commonwealth level and fix the system of business regulation. These recommendations are equally applicable at a State level and include, amongst others¹:

¹ This is a summary of the BCA's recommendations. A more detailed discussion is to be found in Business Council of Australia, *Business Regulation Action Plan for Future Prosperity*, May 2005 and Business Council of Australia, *Submission to the Taskforce on Reducing the Regulatory Burden on Business*, December 2005, both available from www.bca.com.au

- creating a Ministerial Task Force, similar to those operating in the UK and the Netherlands, to act as a 'gatekeeper' to prevent proposals for new business regulation being considered by Government unless the benefits of the proposed regulation clearly outweigh the costs;
- establishing a Business Regulation Advisory Council to advise the Government on priorities for regulation reform, including Commonwealth, State and Local regulation that should be removed or substantially improved;
- creating a champion for better business regulation within Government through enhancing the role and powers of the Office of Regulation Review to challenge the need for new regulation affecting business and to oversee the cost-benefit analyses of regulatory proposals;
- introducing a two-stage impact assessment process, with all regulations likely to affect business subject to a preliminary assessment, and all regulations likely to have significant impacts on business subject to full assessment;
- enshrining in legislation the requirement that all regulatory proposals likely to have a significant impact on business must undergo a detailed regulatory impact assessment to ensure the benefits of the regulation clearly outweigh the costs;
- requiring the Minister proposing new business regulation to certify personally that the benefits of the regulation will outweigh the costs;
- requiring the release of draft regulatory impact statements for public comment and allowing sufficient time for consultation to make that consultation meaningful; and
- developing a standardised, sophisticated methodology for identifying and measuring the likely costs to business of proposed regulations.

The BCA does not consider that it is necessary for Governments to implement precisely each of these proposals to achieve the desired result of better regulation making. Any reforms, however, must meet the underlying intent of the proposals to ensure that the regulation making process becomes transparent, that there is adequate consultation with those likely to be affected before decisions to regulate are made and that officials developing regulation are accountable for their decisions and the quality of the regulations they develop. While noting that not all of the proposals suggested by the BCA have been recommended in the Report, the BCA is pleased that Recommendations 1-16 are broadly in line with many of the BCA proposals and their intent.

Following below are specific comments on Recommendations 1-16 in the Report.

Recommendation 1

The BCA supports efforts to strengthen the role of the Minister for Regulatory Reform, including among other things the requirement for the Minister to certify the adequacy of Regulatory Impact Statements (RISs) accompanying significant regulatory proposals.

Recommendation 2

The BCA supports an effort to establish a Better Regulation Office (BRO) to oversee and report on compliance with good regulatory process by all departments and agencies. This initiative appears consistent with the BCA's recommendation for governments to create a champion for better business regulation within Government, to challenge the

need for new regulation affecting business and to oversee the cost-benefit analyses of regulatory proposals.

The BCA notes, however, that the BRO will be located in the Premier's Department with an appropriate 'Chinese Wall' to achieve independence from the political process. The BCA believes that the BRO would have clear advantages of independence if it were an independent stand-alone statutory body such as the ORR (Commonwealth) or the Victorian Competition and Efficiency Commission. While IPART stated that '*an independent standalone gatekeeper will not of itself guarantee efficient, effective regulation*' the BCA believes that independence is an important factor contributing to the effectiveness of such a body. Accordingly, the BCA suggests that IPART could further consider the structure and operation of the BRO to ensure its effectiveness.

The BCA therefore supports Recommendation 14(c) of the report that, after three years, the efficacy and independence of the BRO will be assessed with the potential costs and benefits of the location, role and structure of the BRO considered.

The BCA believes that other initiatives such as the establishment of a body to advise the Government on priorities for regulation reform (such as a Regulatory Advisory Council) would also benefit the regulation making processes in NSW.

More detail on strengthening institutional frameworks can be found at pages 41–43 of the Action Plan.

Recommendation 3

The BCA agrees with the recommendation to create performance indicators and public reporting of regulatory performance, but notes that more detail is required to adequately assess this proposal.

Recommendation 4

The BCA agrees with the recommendation that the Government develop a policy on consultation.

The BCA highlights that the policy on consultation should include, among other things, the need for consultation to occur early in the process and welcomes IPART's acknowledgement of the importance of this issue at pages 56–57 of the Report.

The BCA believes that there are other important elements of effective consultation, including that consultation should be pro-active and transparent. More detail on the requirements of effective consultation can be found at pages 41–55 of the Action Plan.

The BCA has also recommended introducing a two-stage impact assessment process, with all regulations likely to affect business subject to a preliminary assessment, and all regulations likely to have significant impacts on business subject to full assessment. This process will enhance the effectiveness of consultation including enabling business and those affected by the regulations to come up with innovative solutions to policy issues. More detail on a staged RIS process can be found at pages 41–46 of the Action Plan.

Recommendation 5

Broadly, the BCA believes that consultation periods should be long enough to allow adequate time to comment on regulatory proposals. The BCA agrees that the consultation period in NSW should be extended above 21 days.

The Victorian Government has recommended a minimum consultation period of 60 days for RISs covering significant or complex issues, compared with a consultation period of 30 days in some other jurisdictions. However, the BCA advocated that a minimum 12 week period for consultation be introduced at a Commonwealth level, and would recommend a similar consultation period be introduced in NSW (compared to the 42 day consultation period recommended in the Report). Accordingly, the NSW regime should attempt to be a 'leader' in this area and introduce an adequate and appropriate period of consultation.

The BCA considers that the NSW Government should consider consistency in consultation periods and processes across jurisdictions (provided that the consistent consultation periods and processes are adequate).

Recommendation 6

In general, the BCA agrees with this recommendation, but notes the comments with respect to a two-stage RIS process and consultation above.

Recommendation 7

The BCA agrees with the recommendation to ensure that the NSW guidelines are consistent with national developments in regulatory reform. The BCA notes that the Banks Task Force made recommendations on the principles of good regulatory process in Recommendation 7.1 of the Banks Task Force Report.

The Commonwealth Government has endorsed a Business Cost Calculator as a mandatory tool for public servants to work out the cost of business compliance. In ensuring that the NSW guidelines are consistent with national developments in regulatory reform, a consistent and transparent cost-benefit analysis should also be considered.

Recommendation 8

In general the BCA agrees with the recommendation to establish standard national RIS guidelines and notes the comments regarding the Business Cost Calculator above.

Recommendation 9

In general the BCA agrees with the recommendation that government departments and agencies adopt stronger risk analysis and assessment in the development of the administration and enforcement framework. The BCA notes the comments with respect to the Business Cost Calculator, consultation and RIS processes above.

Recommendations 10, 11, 12, 13

In general the BCA agrees with initiatives to provide appropriate review and harmonisation of regulation, although the BCA has not considered the detail and applicability for NSW circumstances in order to fully assess those proposals.

Recommendation 14

The BCA agrees approaches to enshrine in legislation an adequate RIS process and other appropriate systemic changes to the regulation making system. We have already commented on Recommendation 14(c) in relation to Recommendation 2 above.

Recommendation 15

The BCA supports the proposals in Recommendation 15.

Recommendation 16

The BCA agrees with this recommendation (subject to detail on how it would operate in practice), but considers that such a taskforce could have a wider role to play in assessing regulation across jurisdictions.

Conclusion

The BCA welcomes the opportunity to comment in relation to the Report, and in general is pleased with the recommendations that have been proposed.

There are some additional systemic changes to the regulation making processes that the BCA recommended in its Action Plan as well as its Submission, which the BCA believes could also be used to strengthen the regulation making processes in NSW.

More generally the BCA notes that State Governments must follow the Federal Government's lead and seek to significantly reduce the burden of business regulation in a consistent and complimentary manner.

The BCA looks forward to the final Report and the NSW Government's response to the Report.

Yours sincerely



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