



AUSTRALIAN BANKERS' ASSOCIATION INC.

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Mr Stephen Rimmer
Assistant Commissioner
Regulation Benchmarking Study, Productivity Commission
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Dear Mr Rimmer,

Business Regulation Benchmarking – Stage 2

The Australian Bankers' Association (ABA) welcomes the opportunity to provide comments on the Productivity Commission's Information Paper *Business Regulation Benchmarking – Stage 2*.

The ABA previously provided comments on *Performance Benchmarking of Australian Business Regulation – Stage 1*. The ABA is pleased that the final report concluded that benchmarking was feasible and beneficial for measuring and reporting on regulatory burden on business. In our submissions to the Regulation Taskforce and Stage 1 of this benchmarking study, we highlighted the need for more comprehensive and consistent assessment of business regulation and regular monitoring, measuring and reporting of compliance costs. Representatives from business, including financial services businesses, should be involved in this independent regulatory monitoring process.

1. General observations – benchmarking

The ABA supports the development of a range of performance indicators for benchmarking the compliance costs of business regulation as part of a wider regulatory reform program aimed at reducing unnecessary regulatory burden and compliance costs on business.

The ABA believes that a benchmarking framework would be useful in identifying best practices that monitor and measure performance of business regulation over time, including regulation across jurisdictions.

Benchmarking regulatory performance has a number of benefits:

- Improving efficiency and effectiveness of regulation;
- Ensuring consistency of regulation across jurisdictions (Commonwealth, State/Territory laws and international obligations applicable to Australian businesses);
- Improving transparency of regulatory decision making and accountability of regulators; and
- Ensuring regulation delivers 'net benefits'.

2. Specific comments – scope, coverage and methodology

2.1 Scope of benchmarking program

The ABA supports the proposed scope and the staged approach to the benchmarking program. The first year of the three year Stage 2 benchmarking program will cover quantity and quality of regulation and compliance costs associated with business registration (i.e. the costs of becoming and being a business). This approach will enable businesses to engage throughout the benchmarking program.

The ABA believes that it is practical for the benchmarking program to examine the quantity and quality of business regulation – each measure in isolation may not provide an accurate overall measure of regulatory performance – especially in the absence of actual data on compliance costs. It is our experience that the cumulative effect of regulations, coupled with regulations not necessarily well-crafted or with wide merit, have had an adverse impact on the efficiency and competitiveness of the banking and finance sector without necessarily delivering the promised benefits for consumers and the community (for example, certain aspects of privacy being dealt with through other legislation, such as financial services laws, which has sometimes resulted in confusing and inconsistent overlaps as well as adding to existing regulatory burden).

The ABA notes that the proposed indicators include:

- Quantity — number of regulations in force on 30 June 2006; number of regulators and regulatory requirements being administered; extent of use of requirements for sunseting and periodic review of regulations; flow of new regulations in 2006-07; indicators of the flow of regulation and number of new regulatory requirements applying to business.
- Quality — design of regulations in 2006-07; measures of the use of regulatory plans, regulation impact statements and cost-benefit analysis; measures of the use of single entry points, plain language policies and online access; regulatory resources (i.e. budgets and staffing); timeliness and transparency of decisions; and availability and use of appeal mechanisms against regulatory decisions.

The ABA considers that “timeliness and transparency of decisions” are extremely important indicators of regulatory performance. It is our experience that consultation on new regulatory requirements or proposals to amend existing regulatory requirements have not always allowed sufficient time to give due consideration to the impact of such changes on the banking and finance sector or provided sufficient information from government or regulatory authorities on proposals (including the reasons for the proposals) to enable informed comments from industry to assist regulatory decision making processes (for example, recent consultation on proposed changes to the uniform consumer credit code).

The ABA also suggests that in addition to the proposed indicators that the following indicators should be included as a measure of regulatory performance:

- “Consistency”: It is our experience that differences across jurisdictions have contributed to inefficient and complex business regulation as well as unnecessary compliance costs (for example, occupational health and safety laws). Differences across jurisdictions should only exist where harmonising regulation is not possible to achieve the same regulatory outcome.

- "Timing": It is our experience that the speed of changes as well as inadequate implementation periods have contributed to unnecessary compliance costs (for example, various financial services regulations). The length of implementation should reflect reasonable commercial considerations, including when changes take effect (for example, 1 January is difficult due to the holiday period, especially where changes involve changes to internal policies and procedures, external documentation and IT systems).

The ABA believes that it is important to understand areas of overlap, duplication and inconsistencies with administrative costs across the State and Territory jurisdictions. Streamlining these administrative processes will reduce complexity, improve regulatory efficiency and reduce unnecessary compliance costs for businesses and governments.

2.2 Coverage of benchmarking program

The ABA believes that the benchmarking program should be applied at a number of levels:

- Regulation that affects all businesses, such as corporations law, taxation law, occupational health and safety law, environmental law and other administrative costs, including business registration; and
- Regulation that affects a specific regulatory area or industry sector, such as banking regulation and financial services regulation.

The ABA supports initially examining the compliance costs applicable to all businesses and across all jurisdictions. We believe that it is important for the benchmarking program to examine regulation via legislation and subordinate or delegated legislation as well as regulation imposed by all levels of government (Commonwealth, State/Territory and Local). However, we also suggest that regulation imposed via regulatory policy, regulatory standards, administrative orders or similar should be assessed where legislation or subordinate legislation does not impose regulatory burden and compliance costs on business, but the administration of those laws and regulations does. It is our experience that significant compliance costs can be imposed due to the administration of laws and regulations that may not contain costs on businesses, but the administration does impose costs.

The ABA supports benchmarking specific regulatory areas or industry sectors as part of the ongoing benchmarking program. More comprehensive information about business regulation and compliance costs on specific regulatory areas and industry sectors should be gathered on a case-by-case basis. It is important to recognise that some industry sectors, such as the banking and finance sector, has a greater impact on, and contribution to, the Australian economy. However, any further assessment should also ensure that other reviews or inquiries are taken into account to minimise the impact on the industry sector (i.e. benchmarking regulatory performance can impose compliance costs in and of itself).

2.3 Methodology of benchmarking program

The ABA supports the proposed methodology of the benchmarking program. It is practical for information to be gathered from each jurisdiction about business registration and that information should firstly be obtained from governments. However, it is also important for information gathered to include estimates of costs and times (where actual data is unavailable) and feedback from user experiences via focus groups and/or direct interviews.

The ABA believes that it is essential not just to measure the quantitative cost of regulation, but also the qualitative cost of regulation. Measuring the efficacy of regulation is vital to ensuring an appropriate balance between consumer protection, market efficiency and regulatory burden.

The ABA looks forward to Stage 2 of the Productivity Commission's study. If you have any queries regarding the issues raised in this letter, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Diane Tate". The signature is written in a cursive, flowing style.

Diane Tate