

# Identifying and evaluating regulation reforms

## A submission by WSP

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### 21<sup>st</sup> CENTURY REGULATION PHILOSOPHY

WSP believes that most regulatory systems around the world are still rooted in serving the problems of the 20<sup>th</sup> Century. We believe that regulatory systems need to be radically overhauled to service the policy problems of the 21<sup>st</sup> Century and suit the needs of the new global economy.

In short, WSP believes that a 21st Century regulator should:

- Make life easier, cheaper and quicker for businesses that do comply (the majority of businesses),
- Make life 'painful' and expensive for businesses that don't comply (the minority of businesses), and
- Support business innovation.

### SOCIETY FACES ENORMOUS CHALLENGES

The combined pressures of resource scarcity, climate change, the rise of new economic powers, the diffusion of information and technology, and population and demographic changes will lead to an unprecedented level of change in the world in the 21st Century. These trends describe a future state where pressures on government far exceed those experienced today. The collective influence of these trends means there is enormous pressure on many organisations to transform the way they operate and deliver value. Organisations, including governments and regulators, which fail to recalibrate in response will quickly find themselves left behind. As a result, the importance of regulatory reform will continue to grow.

### APPROACHES TO REGULATORY REFORM

A range of approaches to regulatory reform have been adopted around the world recently. These include the Whitehouse's January 18 and July 11 Executive Order's on streamlining regulation and the Canadian government's new Red Tape Reduction Commission. In the section below we have highlighted some approaches that we are aware of that were not mentioned in the Productivity Commission's briefing paper.

#### **British Columbia's Annual Red Tape Reporting Initiative**

British Columbia's (BC) regulatory reform program commenced in 2001 with a commitment to reduce red tape by one-third within three years. BC achieved the target and has since reduced red tape by a total of 42 per cent. To further instil the culture of minimising red tape, BC is introducing legislation requiring an annual report on regulation. This approach reduces the risk of the focus on red tape ebbing and flowing over time. BC will need to carefully manage the risk of the reporting itself becoming a red tape burden. WSP believes such legislation should be targeted. For example, it may be the case that 20% of government agencies account for 80% of regulatory burden. If this is so, the remaining agencies could be exempted from the reporting framework, or subjected to a highly simplified version.

## Continuously Monitoring Regulatory Burden

BC also utilise a regulatory burden tracking tool that measures progress made against baseline years. The tool is updated quarterly and published on their website. The March update is reproduced here.

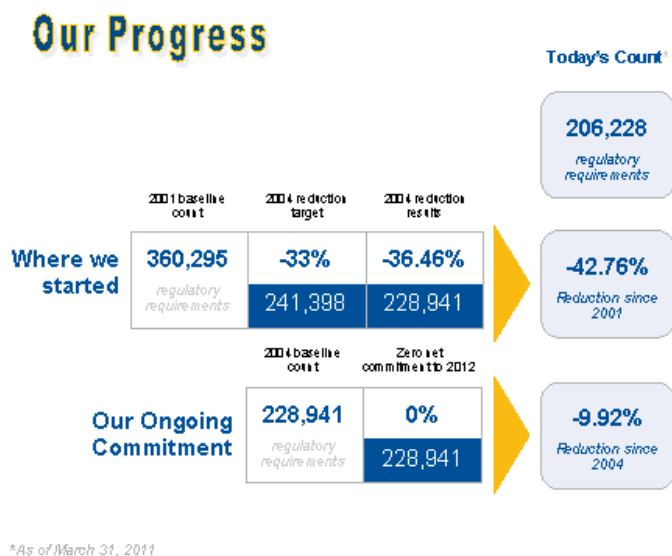


Figure 1. British Columbia's regulatory burden tracking tool (source: <http://www.tted.gov.bc.ca/sfbc/Progress/Pages/default.aspx>)

## The UK's Red Tape Challenge

The UK coalition government launched the Red Tape Challenge website to seek feedback on which laws and regulations should be abolished. The 'crowdsourcing' initiative will see 21,000 regulations posted on the website and arranged by theme between April 2011-April 2013. The site received 6,000 ideas and suggestions in the first week. The key question posed to participants is "Which regulations do you think should be removed or changed to make running your business or organisation as simple as possible?". At the end of the three-month review for each sector, the comments received are collated by government officials. Ministers then have three months to decide which regulations they will repeal and by when. Built into the process is the presumption that all burdensome regulations will go unless government departments can justify why they are needed. Decisions are challenged by an independent reviewer. The retail sector consultation recently concluded with an announcement of over 160 regulations set to be scrapped or simplified. For details see: <http://www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape> [Accessed: 29/07/2011].

## The U.S. Open Government Initiative

The US Department of Agriculture employed its Open Government website to create an on-going forum to facilitate input and discussion into the analysis of regulations. They also invited the public to participate through a Request for Information (RFI) in the Federal Register. As of May 2011, the Department had received over 2,100 responses to the RFI from a broad range of stakeholders including individuals, regulated organisations, industry associations, and Departmental employees. The ideas received will be analysed and used to finalise the USDA's Regulatory Reform Plan: <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/DepartmentofAgriculturePreliminaryRegulatoryReformPlan.pdf> [Accessed: 27/07/2011]. Two years prior, in 2009, the Department's Rural Development function engaged its 6,000 employees in over 500 nationwide offices on how to improve their regulations, forms, and processes.

## APPROACHES TO REGULATORY REFORM

WSP has been researching a number of regulatory reform tools that can be applied to key areas of the economy that have been identified as requiring regulatory reform. Two of these tools are presented below.

### **Consolidated Regulatory Tools**

Many businesses are subject to more than one set of regulations administered by a single regulator. In most cases, each of these sets of regulations will have their own individual compliance regime.

This means that a regulated business will have to work out how to comply with multiple compliance regimes administered by a single government department or regulator. Often, the business will be issued with multiple 'compliance control instruments' such as licences, registration notices, etc.

A recent report by the United States Government Accountability Office titled 'Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue' highlighted the risk of duplication and overlap in government regulators. The study found that "the fragmented federal oversight of food safety has caused inconsistent oversight, ineffective coordination, and inefficient use of resources. Fifteen federal agencies collectively administer at least 30 food related laws." The US Department of Agriculture is responsible for the safety of meat, poultry, processed egg products, and catfish while the Food and Drug Administration is responsible for virtually all other food, including seafood.

WSP believe there is an opportunity to create a single compliance control instrument to cover all the compliance requirements that a business is responsible to a regulator or set of regulators for. Regulators should be collaborating with other government entities to streamline or consolidate the way different sectors (e.g. food) are regulated.

The risk to manage with the consolidation of tools is the potential blurring of the lines and responsibilities between regulators. This could cause challenges for both the regulators and regulated organisations. To address this risk, governments need to evolve the quality of its client management and internal collaboration.

The potential benefits of this idea include:

- reducing the cost of compliance for the regulated business,
- providing the regulated business with greater clarity about its full set of regulatory requirements,
- reducing the cost to government of administering multiple regulatory regimes,
- providing all parties, including the public, with greater clarity on a businesses' regulatory obligations, and
- providing a consolidated basis for priority-setting between various regulators and the regulated business.

### **Omnibus offsets legislation**

An offset is traditionally understood to be an action to address an impact at another location and in an indirect way to deliver a net benefit. Using environmental offsets as an example, a company may choose to re-vegetate and stabilise the banks of a river to prevent erosion and nutrient influx in preference to reducing their discharge of suspended solids to the water body. This option may be chosen because it is either deemed to deliver the same environmental outcome at a reduced cost, or to deliver a superior environmental outcome at the same cost. The use of offsets has the potential to deliver the desired result at an overall lower cost to society and unlock innovation and new ideas previously not considered under traditional command and control regulatory systems.

Taking offsets a step further, 'omnibus offsets legislation' could cover all relevant regulation and allow a regulated entity to suggest an alternative offsetting compliance action to that specified by an individual regulatory requirement. Whereas traditional offsets relate to like-for-like only (e.g. investing in one nitrogen reducing activity in preference to another), omnibus offsets legislation opens up the possibility of a regulated company negotiating a wide range of compliance requirements and offsets with their regulator/s.

Australian jurisdictions could introduce omnibus 'offsets' legislation covering all forms of regulation. Any regulated entity could then suggest an alternative offsetting compliance action to that specified by an individual regulatory requirement. This would be much more extensive than other existing offset regimes around the world and would have three major benefits:

- Opening up much wider scope for regulated entities to suggest lower-cost alternative compliance approaches,
- Generating reductions in compliance costs across a variety of regulations without the need to reform each, individual regulatory regime, and
- The offset proposals put forward by regulated entities can provide ways of testing the efficiency and effectiveness of individual regulatory regimes and, in turn, identify opportunities to overhaul particular regulations.

## WHO IS WSP?

WSP is an international design, engineering, sustainability and management consultancy with 9,000 staff operating out of 200 offices in 35 countries. WSP recently built on this experience by establishing a new Global Regulatory Innovation service based in London and headed up by Terry A'Hearn, a former executive of the Victorian Environment Protection Authority. Terry led the development and passage of five major reform bills, several revised and new regulations, a program of red tape reduction and the development of quality standards and assurance mechanisms for all EPA's regulatory and partnership services. Please see attached for further information about WSP and our work as Chair of the Best Value Regulation working group for the Aldersgate Group.

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