

29 July 2011

Regulation Reforms Study
Productivity Commission
GPO Box 1428
Canberra City
ACT 2601

Dear Sir/Madam

Submission on the Annual Review of Regulatory Burden on Business: Identifying and Evaluating Regulation Reforms

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide comment on the identifying and evaluating regulation reforms issues paper.

While well targeted and designed regulation can deliver beneficial economic, social and environmental outcomes, unnecessary or poorly formulated and implemented regulation can expose businesses to excessive compliance costs, stifle market competition and distort resource allocation in the economy. This generally arises when regulation is overly complex, redundant, and duplicates the regulation of other jurisdictions or other regulatory bodies. Thus to ensure that regulation delivers the greatest net benefit to the economy, it needs to be properly justified, and well designed to avoid imposing unnecessary red-tape burden on businesses.

Regulation is also rarely reviewed. Instead in many circumstances ineffective regulation continues to be applied, reducing business flexibility, decision-making ability, investment, innovation, competitiveness, and productivity. While ineffective and overly intrusive regulation is an obvious problem, initially good regulation, in a dynamic market economy, can also evolve into stifling regulation over time. Thus reforming existing regulation, which imposes excessive compliance cost burden, does not meet its initial objective or purpose and passes its "used by date", should be a priority in the reform agenda for all levels of government.

Regulation imposes significant compliance costs on Australian businesses by requiring them to undertake activities and provide information to government and third parties. Compliance costs incurred by business often exceed the level necessary to achieve the policy objectives. Excessive compliance costs can often arise due to:

- an unnecessarily high frequency of reporting or providing similar information to a number of government organisations or levels of government;
- overlaps and inconsistencies between jurisdictions;
- inconsistencies in definitions and criteria; and
- regulation that is redundant or not justified by policy intent.



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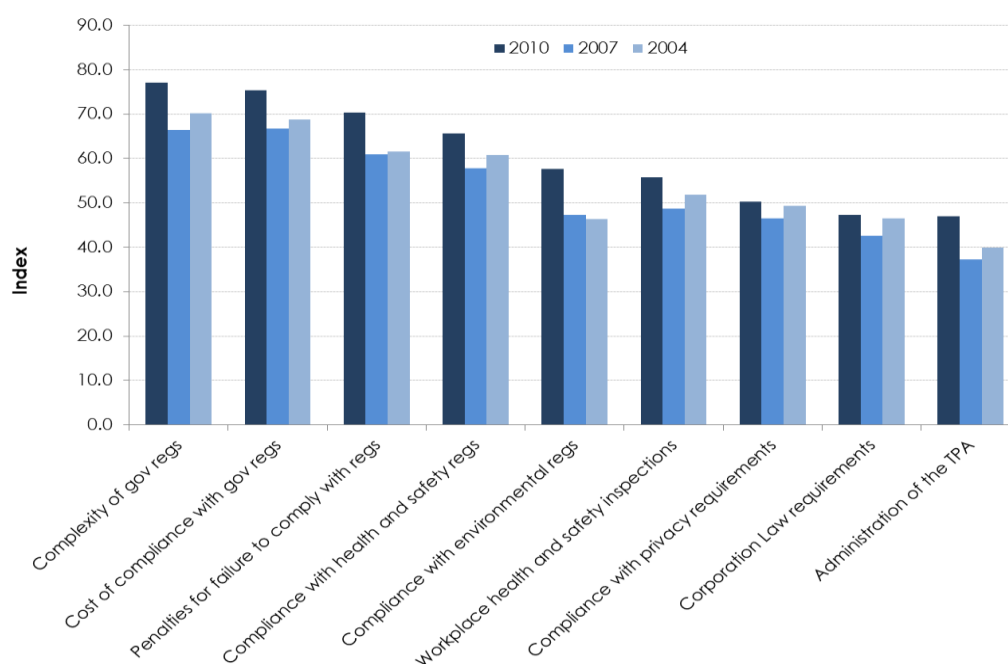


ACCI's triennial *Pre-Election Survey* provides a qualitative gauge of the effect that regulation has upon the business community. The complexity of government regulations and the cost of compliance with the regulatory burden head the list of concerns of Australian business in dealing with red-tape burden imposed by government.

Figure 1 shows that businesses have become increasingly concerned about the complexity and compliance with government regulations and requirements since the survey began in 2004. In 2010, 86 per cent of Australian businesses expressed major or moderate concern at the complexity of government regulations, with 82 per cent complaining about the costs of compliance with government regulations. Penalties for failure to comply with government regulations attracted criticism, where the combined major plus moderate concern was 74 per cent. 68 per cent of respondents were concerned about the burden of compliance with health and safety regulations.

Compliance with environmental regulations was seen as a major or moderate problem by 59 per cent of businesses, followed by workplace occupational health and safety inspections (56 per cent), compliance with privacy requirements (47 per cent), corporation law requirement (44 per cent) and administration of the competition law – the *Trade Practices Act* (43 per cent).

Figure 1: Business views on government regulation, 2004-2010



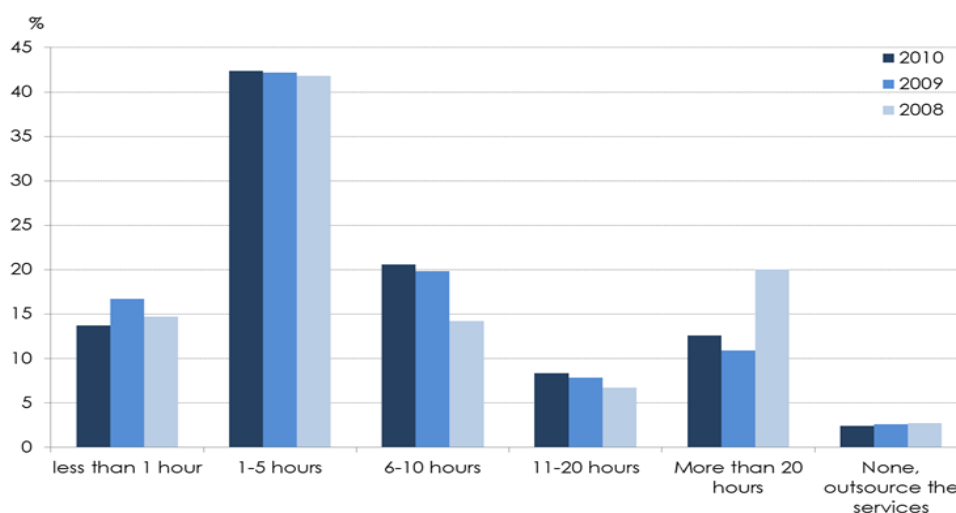
Source: ACCI Pre-Election Survey, 2010

The *Red Tape Survey 2010* undertaken by the New South Wales Business Chamber is designed to quantify the hidden costs of regulations and understand the regulatory burdens faced by businesses. Key findings of the survey include:

- In the last three years, over 70 per cent businesses surveyed have noticed an increase in the cost of compliance and the time it takes to comply with regulatory requirements;
- More than two thirds of respondents believe that complying with government regulatory requirement has a moderate to major impact on their business, a significant increase on the 52 per cent who reported this concern in the 2009 survey; and

- Key contributors to red tape are the complexity of regulations and the frequency or reporting requirements. 27 per cent of business identified that better consultation when developing regulations and 21 per cent of business reported that reducing the frequency of reporting requirements to a minimum would have the greatest impact on reducing the cost of compliance.

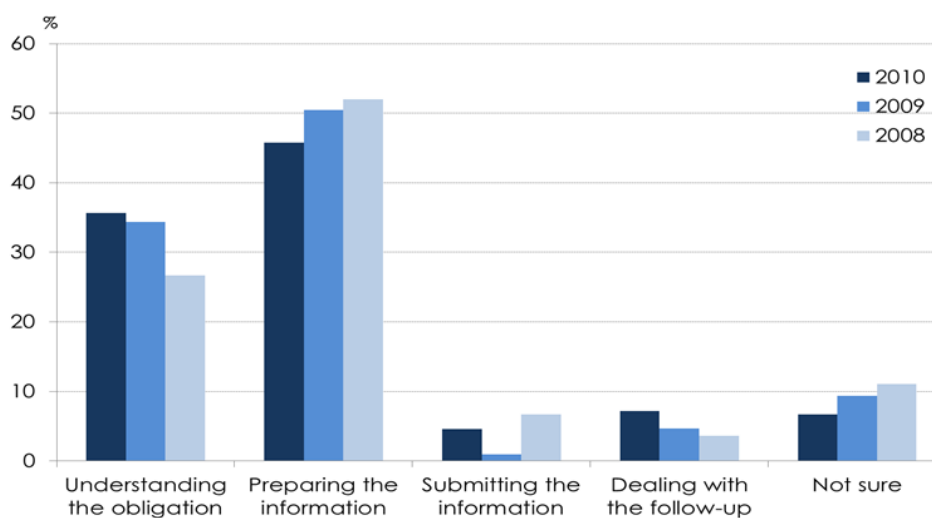
Figure 2: Time spent per week on compliance with regulatory requirements



Source: NSW Business Chamber Red Tape Survey, 2008, 2009, 2010

Figure 2 shows that more than 60 per cent of businesses spent between 1 and 10 hours in regulatory compliance in 2009 and 2010. More businesses spent more than 20 hours complying with regulatory requirement in 2010 compared with 2009 (12.6 per cent vs. 10.9 per cent). It is evident from Figure 2 that over the last two years businesses in general are spending more time in complying with regulations.

Figure 3: Most costly stage of compliance



Source: NSW Business Chamber Red Tape Survey, 2008, 2009, 2010

Figure 3 clearly indicates that the most costly stage of compliance is in preparing the information required (more than 45 per cent of respondents). The second most costly stage is understands the obligations of compliance. It is concerning to see that the percentage of respondents rating *Understanding the Compliance Obligation* as the most costly stage of compliance has increased from 26.7 per cent in 2008 to 35.7 per cent in 2010.

It is also important to note that the 2010 *Red Tape Survey* also found that 21.7 per cent of businesses have been reporting the same information to different government agencies. Comments from businesses indicated that agencies currently requesting duplicate data include AQIS, ABS, ATO, the NSW Office of State Revenue and WorkCover. Payroll tax information and export data were two areas where respondents identified duplicated reporting requirements.

It is also important for policymakers to recognise that, while regulations usually apply throughout the economy, small businesses suffer disproportionate regulatory costs. The reasons include:

- regulatory cost makes up a large proportion of overhead costs and net margin. At the firm level it often implies a direct reduction in profitability and retained earnings. This may affect investments and the return to shareholders;
- the nature of the compliance cost. Administrative costs tend to be fixed, so that changes in sales have no effect on the costs in the short-run. In other words, if sales go down but the costs remain unchanged this causes the break-even point to be raised; and
- diversion of entrepreneurial attention. In small companies the owner, senior manager or director has to deal with the paperwork while they instead could focus their attention on business management.

The above discussion clearly indicates the importance of regulatory reforms to assess and streamline existing stock of regulations in order to maximise the economic return of regulation at the least cost. In determining the priority of regulatory reform, ACCI calls on the governments to:

- adopt a standard costing model across all levels of governments to measure the benefits and costs of streamlining, rationalising or harmonising regulation;
- maintain an updated list of reform agenda, which is ranked according to the depth, breadth, cost, saleability of the reform as well as the expected times needed to reach the implementation stage; and
- restrict net growth of new regulations by implementing a “one in, one out” approach to regulating. The efforts of regulatory reform will be put in jeopardy if the numbers and compliance cost of new regulations introduced far outgrow the numbers and compliance cost of existing regulations repealed, streamlined or harmonised.

ACCI notes that in spite of ongoing support for regulatory reform, including an agreed COAG reform program under the ‘seamless national economy’ agenda, some reform processes, e.g. in the chemicals and plastics industry, has become bogged down and agreed targets for improvements are not being met. The attached [appendix](#) provides a case study of problems encountered in the plastics and chemical industry regulatory reform process authored by ACCI member organisation Accord Australasia (hygiene, cosmetic and speciality products industry).

In the process of identifying the areas for regulatory reform, the stock of regulatory bodies will also need to be considered. The large number of regulators can lead to greater overlapping, inconsistent regulation and higher business compliance costs. Highly fragmented regulatory regimes can lead to conflicting advice for businesses while the duplication of government frameworks increases the

administrative costs to taxpayers. Multiple regulators can increase the amount of paperwork having to be filed and lodged by businesses as the availability of business information already stored by other agencies is often unknown.

Rationalising regulatory agencies in Australia may provide for a more centralised decision-making process and alleviate the possibility of institutions creating regulations in a vacuum. The advantages of consolidating the number of regulators include:

- fewer business-regulator and regulator-regulator interfaces;
- More complete risk assessment;
- Consolidation of forms and data;
- Fewer inspecting agencies and hence fewer multiple inspections;
- Internalising conflicting and inconsistent regulations; and
- More strategic and flexible regulations.

Thus, it is important to strike a balance between the number of regulators and the effective introduction, implementation, review and accountability of regulation.

While *ex post* evaluation of reforms to existing regulation can inform policymakers about the effectiveness of regulations, the benefits of these regulatory outcomes and the costs imposed by the regulation, it does not usually seek to identify whether there are better alternatives. Thus at the outset of the regulatory process, *ex ante* evaluation of a proposed regulation should be undertaken to choose the best option as part of the Regulatory Impact Statement (RIS) process.

Ideally governments should use the RIS as a formalised process to define objectives, identify possible consequences of introducing regulation, and review the likely costs, benefits and uncertainties of regulations. The expectation of the RIS process is to discover if the benefits of a proposed regulation justify the costs or to ascertain which of the alternatives would be the most cost-effective.

However it is clear that the use of the RIS process has not been as widespread or as robust as intended. A RIS must clearly indicate the costs to business of not only complying with the proposed regulation, but also the cost in terms of industry funding the regulation, lost opportunities, reduced incentives and loss of competitiveness. It is a common practice that once a proposed policy or regulatory response has been established, the RIS is used as a justification for the policy rather than a process to carefully examine the proposed regulatory actions and its alternatives. Politically sensitive regulations that have a significant impact on business community are more likely not to have their RIS adequately completed.

Notwithstanding recent commitment by the Australian Government and COAG to enhance and strengthen their respective RIS processes, Australian businesses continue to express concern and disappointment with RIS processes. They are often less than adequate and comprehensive, even for major policy proposals, do not allow adequate consultation with stakeholders, and RIS documents are neither readily available nor easily accessible.

The vast majority of Commonwealth regulations recently tabled by the Australian Government underwent no more than a preliminary self-assessment by the departments and agencies

responsible for the regulation. In 2007-08, only around 2 per cent of regulatory proposals tabled required a regulatory impact analysis¹.

For regulatory proposals tabled by the Australian Government in 2008-09, of the 59 RISs required at the decision making stage, 6 cases were granted 'exceptional circumstances' by the Prime Minister, i.e. a RIS was not required but a post-implementation review will be required within one to two years of the regulation being implemented. Consequently, for the 53 decisions requiring a RIS, 45 RISs were prepared and assessed as adequate, giving a compliance rate of 85 per cent.

It is concerning that RIS compliance at the decision making stage fell from 94 per cent in 2006-07 to 85 per cent in 2008-09, while the publication of RISs (i.e. transparency stage) fell from 94 per cent in 2006-07 to 84 per cent in 2008-09 (Table 1).

Businesses are concerned that most of the proposed regulations that proceeded without undergoing the RIS processes often imposed the greatest cost and compliance burden on their businesses. In 2008-09, eight proposals proceeded to the decision makers without the support of an adequate RIS, including the proposal that requires unit pricing by grocery retailers, and the proposal that expands the Renewable Energy Target from 9500 GWh to 45000 GWh by 2020.

Table 1: Regulatory impact analysis compliance, 2006-07 to 2008-09

Stage	Type of RIA	2006-07 ratio ^a	Per cent	2007-08 ratio ^a	Per cent	2008-09 ratio ^a	Per cent
Decision making stage	RISs	15/16	94	43/48	90	45/53	85
	BCC reports	2/2	100	7/7	100	4/4	100
Transparency stage^b	RISs	15/16	94	41/45	91	41/49	84
	BCC reports	2/2	100	6/7	86	4/4	100
Exceptional circumstances		2		3		6	

Note: ^a Ratio of adequate RISs and Business Cost Calculator (BCC) reports to the total number of RISs and BCC reports required. ^b The number of RISs required at the transparency stage is lower than at decision making stage because some regulations were subject to multiple decision-making processes. Source: OPBR 2009, *Best Practice Regulation Report 2008-09*, p.15.

More generally, the carbon pricing regime announced by the Government including the associated regulation, the creation of major new bureaucracies and regulators and the large scale budget spending on mitigation measures have by-passed any robust cost benefit analysis or structured RIS process.

Therefore, ACCI considers that the focus on regulation reform should include reforming and strengthening the RIS process as well as the robust and independent *ex post* evaluation of reforms to existing regulation. Effective regulatory reform can significantly improve government performance and deliver desired social and economic outcomes. Reducing unnecessary red-tape burden is an important element to encourage entrepreneurship, innovation, productivity growth and to ensure that Australian businesses are able to remain internationally competitive.

Yours sincerely,

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¹ Office of Best Practice Regulation (OPBR) 2008, *Best Practice Regulation Report 2007-08*, p.15.