

ABN 14 725 309 228  
Enterprise House  
136 Greenhill Road  
Unley South Australia 5061  
Telephone 08 8300 0000  
Facsimile 08 8300 0001  
Email customerservice@business-sa.com  
www.business-sa.com

11 May 2012

RIA Benchmarking Study  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

Dear Sir/Madam,



I write to you in relation to the Productivity Commission's Issues Paper:  
*Regulatory Impact Analysis: Benchmarking.*

Business SA is South Australia's leading business membership organisation, representing thousands of businesses through direct membership and affiliated industry associations. We represent businesses across all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Regulation is a major issue for the business community. Prior to the March 2010 State Election in South Australia, Business SA conducted a survey of its members which highlighted the following major concerns with regulations:

- cost of compliance with Government regulations (51% of respondents)
- level of unnecessary regulation (49%)
- penalties for failure to comply with Government regulations (41%)
- compliance with workers' compensation legislation (34%)
- compliance with health and safety requirements (31%).

Regulation is necessary in some instances for defining market parameters, rules and processes, as well as penalties if those regulations are breached. It is when regulation becomes an unnecessary burden that it becomes so-called red tape. Such burdens can take a number of forms:

- regulation in areas where it is unnecessary and the same or better outcomes can be achieved with a less cumbersome industry-agreed voluntary code of conduct or similar mechanism
- regulation that is costly to administer and/or comply with, in terms of money and/or time
- regulation that duplicates other regulation, both within and across States and levels of Government
- regulation that is administered for the benefit of the bureaucracy, rather than to achieve a desired outcome
- regulation that is ill-conceived or that is focused on a pre-conceived outcome, rather than a quality outcome

- regulation that is overly complex and legalistic.

A recent example of regulation that was focussed on a pre-conceived outcome is the national Work Health Safety legislation.

In 2008 the Federal Government (in agreement with the States and Territories) decided that the national harmonised legislation was to be implemented on 1 January 2012.

In attempting to achieve this deadline the process has been rushed with stakeholders 'overwhelmed' by the volume of paperwork and totally unreasonable timeframes in which to respond to discussion papers and other documents.

As a result currently, we do not have harmonisation as only two States and two Territories have implemented the legislation. Furthermore, we may never have harmonisation as Victoria has publically stated that they will not implement the harmonising legislation.

Recent examples of overly complex and legalistic regulation have been the Fair Work Act 2009 and the national harmonised Work Health and Safety legislation.

In contrast, examples of much simpler but nevertheless effective legislation are the current South Australian Fair Work Act 1994 and the Occupational Health Welfare and Safety Act 1986.

A recent example of ill conceived and rushed legislation that has unintended consequences is the Fair Work Act Amendment (Textile Clothing and Footwear Industry) Bill 2011. Not only is there no evidence-based policy rationale for the legislation but it also has unintended consequences.

For a full explanation of these issues please refer to the Australian Chamber of Commerce and Industry's (ACCI) submission which we have already provided to the Commission as a result of our recent consultative meeting.

It is vital that Regulatory Impact Analysis (RIA) is designed and implemented in such a way that will minimise red tape.

Indeed, as discussed in the Productivity Commission's Issues Paper, an initial consideration within the RIA should be whether regulations are required at all and whether there is a better policy or program alternative that will deliver the desired results.

As such, Business SA believes that the degree of regulation needs to be more seriously considered in RIA. In many cases, only light-handed regulation is required, with a minimal level of reporting and monitoring necessary. Indeed, voluntary codes of conduct or mechanisms may achieve better results than regulations in some instances. Regulations should also focus on outcomes, rather than prescribe actions that must be followed. Outcome-focused regulations are likely to enable innovative businesses to achieve what is required at a lower cost than if they are forced to do particular things. Heavy-handed regulation should only be used when absolutely necessary, such as to minimise what would otherwise be large costs to the community of particular activities.

Another initial consideration of a RIA should be whether the likely impacts of new or changed regulations warrant conducting a full RIA.

Nevertheless, it is concerning that a number of major pieces of legislation and regulations have not been subject to regulation impact statements in recent years, including those that affect all businesses, such as industrial relations legislation. Business SA thus supports the Productivity Commission's view that post implementation reviews of such legislation and regulations assess the costs and benefits of them and recommend any necessary modifications. Business SA also supports the view that these reviews be conducted at arms-length from the responsible policy department. Ideally, such reviews would be conducted independently of Government and have broad terms of reference which would take account of the concerns of all stakeholders.

There are a range of potential impacts that RIA should assess, including but not limited to:

- compliance and other costs on businesses, particularly small business
- distortionary impacts on investment, employment and other decisions
- impacts on competition and market dynamics
- impacts on interstate and international competitiveness
- impacts on households spending decisions
- other social and environmental impacts.

In general, RIA should assist in deciding the best regulatory or other approach to a policy problem that will result in the greatest net benefits.

Business SA is concerned that many Government agencies do not have the resources, both in terms of quantity and quality, available to conduct RIA at an appropriate level.

This problem could be overcome by creating an independent regulatory agency

that would provide training and guidance material on RIA, as well as provide direct professional support. Such an agency could also provide oversight and analysis to ensure that regulation making processes are properly implemented and adhered to, as well as prioritise regulatory reform.

An independent agency could take the form of the Productivity Commission or the Victorian Competition and Efficiency Commission and undertake reviews of regulation and associated burdens, as well as inquiring into and prioritising regulatory reform and publishing guidance materials on best practice regulation approaches for agencies to adhere to.

Yours sincerely

Peter Vaughan

**Chief Executive Officer**