



Our Ref: D12/1719

Mr Robert Fitzgerald
Commissioner
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Fitzgerald

REGULATORY IMPACT ANALYSIS: BENCHMARKING STUDY

The Small Business Development Corporation (SBDC) welcomes the opportunity to provide this submission to the Productivity Commission's Benchmarking Study into Regulatory Impact Analysis (RIA) from a Western Australian perspective.

Background

The SBDC is an independent statutory authority of the Government of Western Australia established to facilitate the development and growth of small businesses in this State. One of the agency's key strategic roles is to identify and advocate for the removal or reduction of red tape impacting on the State's business community.

The State's small business sector is significant; according to the latest Australian Bureau of Statistics data there were an estimated 212,091 actively trading small businesses in Western Australia as at June 2011, accounting for 96 per cent of all businesses in the State¹.

Small businesses operate in an environment of regulations, covering many aspects of their daily operations, as set by all tiers of government. As is well understood, small businesses are typically disproportionately and detrimentally impacted by government regulations and compliance burdens, and any moves to reduce this impost would be greatly welcomed by the sector.

This submission will cover the RIA processes in Western Australia, the SBDC's role in this and our observations on how it is currently operating, and concludes with suggestions on how the processes could be enhanced to improve Government decision-making and policy formulation.

¹ ABS publication 8165.0 *Counts of Australian Businesses, including Entries and Exits, June 2007 to June 2011*, released 31 January 2012

RIA in Western Australia

Western Australia was one of the last jurisdictions in the country to implement a dedicated system of RIA. Prior to its introduction in December 2009, there were less formal and limited requirements in place that attempted to measure and address impacts (in a somewhat superficial way) on certain subsets of the State economy. The main obligations were for all submissions to Cabinet to include statements on the likely direct and indirect impacts on small businesses and the regions.

From the SBDC's experience, as there were no formalised checks and balances in place under this system most Small Business Impact Statements (SBIS) were prepared as an after-thought to the submission itself (and typically made after the policy decision had already been made), completed to varying degrees to meet this requirement of the Cabinet process. In reality, SBISs had very little practical usefulness as in most cases they included scant details on which small businesses would be affected and how, how those affected were consulted and whether their views on the proposed line of action were taken into consideration, and the measures that would be implemented to reduce these impacts.

The SBDC would often indicate in our comments on the Cabinet submission that the SBIS did not include meaningful details on impacts and mitigation measures, although whether Ministers took these comments into consideration was not known. In effect, the SBDC believes that SBISs for their part had very little real impact in terms of improving the decision-making process of Cabinet and reducing the regulatory burden on small businesses in Western Australia.

It was then with high hopes that the SBDC welcomed the introduction of formalised and institutionalised RIA processes in Western Australia. In designing the new system, the SBDC worked with the Department of Treasury to ensure that the RIA process would maintain consideration of the impacts of new and amending regulatory proposals on small businesses, in lieu of the ineffectual SBIS.

In establishing RIA processes and creating the new Regulatory Gatekeeping Unit (RGU) within the Department of Treasury, it is understood that the Government adopted a system based on leading practice from around Australia.

In Western Australia, RIA is a two-tiered process for assessing new and amended regulatory processes to determine their impacts on business (including Government businesses), consumers and/or the economy. For regulatory proposals, a Preliminary Impact Assessment (PIA) must first be undertaken to identify impacts on business, consumers or the economy. If a significant negative impact is identified in the PIA, a Regulatory Impact Statement (RIS) is required to be completed prior to consideration by the decision-maker. The RIS process consists of a Consultation RIS followed by a Decision RIS.

A RIS is not required for regulatory proposals where a PIA has been completed and shows no significant negative impact on business, consumers and/or the economy. Proposals that are non-regulatory fall outside the RIA process and further impact assessment is not required. Furthermore, a Treasurer's Exemption from the RIA process may be sought at any stage during policy or regulatory development.

The RIA process was introduced by way of a staged approach, as follows:

- from 1 December 2009, it initially applied to all regulatory proposals submitted to Cabinet;
- from 1 June 2010, it was extended to most forms of subordinate legislation (which may include regulations under an Act, orders, rules and notices) enacted by submission to the Governor in Executive Council; and
- from 1 June 2011, it was to be further broadened to the remaining forms of subordinate legislation and quasi-regulatory instruments. However, this last stage has not been implemented to date, and will be discussed in more detail later in the submission.

The RGU administers the RIA process in Western Australia. According to the Treasury website, the RGU “assists State government agencies in achieving best practice in accordance with RIA requirements, and in monitoring, assessing and reporting on compliance with those requirements”². The RGU can be contacted by agencies at any time for assistance in completing PIAs and RISs.

The system of RIA introduced in Western Australia “has been designed to encourage careful consideration, at an early stage, of the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community”³. Further to this:

The RIA process is designed to improve the quality of regulation by ensuring that the decision maker is fully informed when approving new and amending regulatory instruments. RIA is aimed at ensuring rigorous analysis of regulatory proposals, effective and appropriate consultation, and transparency of process. It also provides an early warning to the Government of unintended consequences of regulatory proposals.⁴

In the early stages of implementing the new RIA processes, the RGU sought the support of Public Sector Directors General and developed a comprehensive training and communications program to inform departmental staff of the new requirements.

Current situation

Since its commencement in late 2009, the SBDC has continued to play a role in the RIA process by way of:

- reviewing PIAs and RISs and providing comments back to the RGU on the regulatory proposals from a small business perspective; and
- providing direct assistance to agencies in assessing the significance of negative impacts on small businesses in Western Australia.

To date, the SBDC has reviewed 129 PIAs and provided assistance to numerous agencies to complete RIA documents. The SBDC has also prepared submissions to various Consultation RISs over the past few years.

² See <http://www.treasury.wa.gov.au/cms/content.aspx?id=2171>

³ Ibid

⁴ Ibid

Overall, in the SBDC's opinion, the implementation of the formalised RIA processes has enhanced policy development and the quality of decision-making in Western Australia. Clearly, with the broader assessment of impacts on not just small businesses, the current system of RIA is a marked improvement on the former small business and regional impact statement requirements of Cabinet proposals.

One of the main aspects of RIA that has contributed to enhanced policy development is the requirement to consult widely with relevant stakeholders. This consultation not only provides for a more transparent decision-making process, it also provides an avenue for key affected parties to get more involved in, and to influence, the development of regulation at the early stages of policy formulation.

An example of where the RIA process has positively influenced policy development was when the Department of Transport submitted a draft PIA to the RGU proposing legislative changes to improve driver standards within the taxi industry by way of a demerit point system. In the SBDC's view, the PIA was not of a high quality and was somewhat unclear about the breadth of the proposed changes.

In reviewing the PIA, the SBDC had some major concerns with the proposal, including: the additional costs for taxi drivers to sit a new registration test; the extra paperwork that would be required as part of the demerit point system; the fact that the proposal appeared to negatively discriminate against small taxi businesses in favour of larger, established taxi businesses; and the need for consultation to take place with all taxi drivers, not just larger businesses as nominated by the department.

Given the extent of these concerns, the SBDC met with Transport officials to discuss the impact of the proposed changes on small businesses involved in the taxi industry and to seek clarification on a number of key points which were unclear. The officials took the SBDC's concerns about the impacts to small businesses on board, and amended the proposal, in particular in relation to reducing the costs involved and basing these on a cost recovery model.

If this same level of RIA had been introduced earlier, some particularly egregious examples of overly burdensome regulation could have been avoided. This is most notable in relation to the system of occupational licensing of motor vehicle repairers in Western Australia, which was originally introduced as a means to limit the growth of backyard repairers and reduce risk to consumers. The system requires both the licensing of motor vehicle repair businesses as well as the certification of individual repairers. Feedback suggests that apart from being an administrative nightmare, the licensing regime has allegedly had the unintended consequence of driving more repairers underground.

The introduction of the licensing scheme has now made the motor vehicle repairers industry in Western Australia one of the most regulated industries in all Australia. Over the past few years, the SBDC has received numerous complaints from small business operators about the licensing system, including in relation to:

- the high compliance costs and burdensome paper work requirements;
- duplication of existing safeguards; and
- the time consuming and onerous application process.

The situation has now become so burdensome and unworkable that the Motor Trade Association of Western Australia wants to remove the licensing system and introduce a self-regulatory regime.

Shortcomings of the current RIA system

Through its involvement in the RIA processes, the SBDC has identified a number of shortcomings of the current system. These relate to: the scope of RIA requirements; the quality of RIA documents; assessing small business impacts; non-compliance with RIA; and exemptions from RIA. These issues are addressed individually, as follows.

Scope of RIA requirements

In the SBDC's opinion, the most significant shortcoming of the existing RIA system in Western Australia is that it only applies to primary and secondary legislation, at the expense of other quasi-regulatory instruments, in particular local government laws and regulations.

As detailed in our submission to the Productivity Commission's "Business Regulation Benchmarking – Role of Local Government" review⁵, the SBDC remains most concerned – from a red tape perspective – about the impact of local laws on small business operations. While the RIA process was originally proposed to apply to all local laws from 1 June 2011 as part of the third tranche, the SBDC has been advised by the RGU that the commencement date for the catchment of all remaining forms of subordinate legislation and quasi-regulatory instruments has been indefinitely deferred and that over the immediate future they will not be subject to RIA.

From the SBDC's experience, small business operators generally have significantly more difficulty understanding and complying with local government regulations than those belonging to other tiers of government. This is a finding shared by the Red Tape Reduction Group (RTRG), which identified in its February 2010 report *Reducing the Burden – Report of the Red Tape Reduction Group*⁶ that local government regulations were a major concern for the small business community in the State and were responsible for five of the top ten red tape issues raised during consultations.

The RTRG found that the majority of the regulatory burden on business in Western Australia did not directly come from legislation or regulations passed by Parliament, but rather from quasi-regulations (such as policies, procedures and business rules) and their administration by government. According to the RTRG report, the most significant issue with quasi-regulation is the lack of transparency and accountability about how they are created, administered and reviewed⁷. This prompted the RTRG

⁵ Submission 29 – <http://www.pc.gov.au/projects/study/regulationbenchmarking/localgov/submissions#initial>

⁶ See <http://www.treasury.wa.gov.au/cms/content.aspx?id=4039>

⁷ RTRG report, *Reducing the Burden – Report of the Red Tape Reduction Group*, p.47-48

to recommend that “All new and amended quasi-regulations should be subject to a Regulatory Impact Assessment process and the results of this process should be made publically available”.⁸

Given that there are currently 140 local government authorities in Western Australia, the SBDC believes that subjecting new and amended local laws to the RIA process would improve overall accountability and transparency of local government decision-making not only from a small business perspective but also to the benefit of the broader community.

Quality of RIA documents

The SBDC has found that even though the RIA requirements have been in place for over two years now, the overall quality of PIAs (and indeed some RISs) has not necessarily improved to the level of that which would be expected of a system that has had time to become familiar across government authorities. Generally, there remains a lack of quality in relation to the level of detail and analysis included in PIAs, with impacts often superfluously identified or grossly underestimated. In one instance, a PIA proposing the further extension of retail trading hours in the Perth metropolitan area stated that the proposal would have no negative impacts on small business.

While the quality of Consultation RISs varies depending on the authoring agency, they generally sufficiently outline the issue/s involved and contain enough details of the proposed regulatory and non-regulatory options as well as the resultant stakeholder impacts. However, the SBDC has also come across a number of Consultation RISs that do not contain information that is detailed enough to enable fully developed stakeholder consideration.

Further to this point, the SBDC has found that in order to adequately comment on a number of regulatory proposals, additional research has been required in referring to previous Departmental or Parliamentary inquiries that took place before the drafting of the PIA. Although such inquiries have been referred to in the Consultation RIS, material information has sometimes not been included in the body of the document.

For example, the Department of Commerce’s recent Consultation RIS into the proposed regulation of prepaid funerals in Western Australia did not include important information regarding the number of complaints received about the prepaid funeral industry or explained why other jurisdictions had introduced regulation in this area. When reviewing a previous departmental report into the prepaid funeral industry, the SBDC noted that only a negligible number of complaints had been received by the Department over the past five years. This differed from the experience in other States and Territories where the number and serious nature of complaints warranted the introduction of regulation covering the prepaid funeral industry.

From the SBDC’s perspective, a significant factor that would improve the quality of PIAs and Consultation RISs is to ensure relevant staff are adequately trained. Along

⁸ Ibid, Recommendation 4.6, p.49

with specific training on drafting RIA documents – which should be a process that is a requirement for all new and existing policy/legal staff and that is ongoing – agency staff are also likely to benefit from additional training around effective stakeholder engagement and consultation.

Generally speaking, the SBDC believes that some areas of the Western Australian Public Sector do not consult with the community adequately or effectively as a matter of course. The varying quality of depth and breadth of stakeholder engagement contained within PIAs and RISs suggests that staff in some agencies do not understand how to work with groups in an engagement context and evaluate whether desired outcomes are achieved or are achievable.

While community and stakeholder engagement is based on the premise that people (i.e. small business operators in the context of this submission) who will be affected by a decision have a role in the decision-making process, it appears that many agencies do not have an effective planned approach to engagement nor, especially, have a good appreciation of how to achieve outcomes that are desirable, realistic and meaningful. As demonstrated in the above example regarding the licensing of motor vehicle repairers, some policy-makers struggle to undertake practical risk assessments and understand the likelihood and nature of unintended consequences of their regulatory actions.

Though it is acknowledged that there is no one size fits all approach to effective stakeholder engagement, agency staff should more often be leaning on the relevant specialists – the SBDC in the context of engaging with the State's small business sector – to help them better plan and execute more targeted consultations and meaningful evaluation of stakeholder feedback. This would improve the 'buy-in' of affected stakeholders, which in turn would likely lead to better regulatory outcomes and reduced negative unintended consequences.

This situation is further compounded by the fact that there is currently no centralised place (such as a consolidated website) for members of the public to go to view and comment on new regulatory proposals. Without greater openness and transparency, many interested parties are potentially missing out on the opportunity to comment on the Government's regulatory reform agenda, which could lead to detrimental impacts on parts of the economy.

In addition, the lack of any public reporting of agencies' compliance with the RIA requirements further clouds the Government's process of making decisions and engendering trust in the community. This is discussed further under the heading '*Non-compliance with RIA*' below.

Assessing small business impacts

Further to improving stakeholder consultations in general, the SBDC is critical of the way small business impacts are identified and assessed by regulatory authorities as part of the RIA process. It should be noted that while the RIA Guidelines for Western Australia and the PIA template itself "refers agencies to the SBDC for assistance

with assessing the significance of any negative small business impacts”⁹, we are very rarely contacted by agencies during the drafting of PIAs. This is a lamentable situation, particularly given the disproportionate and deleterious impacts on small businesses of poorly designed and/or implemented regulation and onerous compliance burdens.

Although agencies are encouraged to complete PIAs in the early stages of policy development, experience demonstrates that RIA is often considered after a decision to regulate has already been made. In relation to PIAs, this is most notable in the context of assessing impacts on small business, which is typically underestimated and superficially regarded, and is often subject to poor engagement with the sector or cohorts of the sector.

In other words, some regulatory authorities believe – in the SBDC’s opinion – that they are genuinely well endowed to undertake effective consultation with small businesses in this State and understand their needs and the resulting impacts of the proposed regulatory options. The elevated level of small business discontent about the unerring proliferation of red tape and compliance burdens, however, suggests that these agency beliefs are somewhat misplaced.

From our experience in reviewing PIAs prepared by agencies that have not sought initial guidance from the SBDC, it is our belief that regulatory outcomes for small businesses could be significantly enhanced through our earlier involvement in the policy development and stakeholder engagement processes.

Non-compliance with RIA

In the SBDC’s opinion, an effective RIA system should be underpinned by a robust, formalised process to monitor compliance with reporting requirements, with the twin goals of achieving continuous improvement and full compliance by regulating authorities.

To this end, the RIA Guidelines require agencies responsible for making regulatory changes (including to primary and subordinate legislation) to produce a Biannual Agency Regulatory Report in January and July each year¹⁰. All regulatory proposals, for those both completed and planned, should be reviewed by agencies and included in the Biannual Agency Regulatory Report, where appropriate.

The RIA Guidelines stipulate that the Biannual Agency Regulatory Report should contain the following two sections:

- *Compliance Returns* – agencies should list new or amended regulations made in each six month reporting period and their compliance with RIA requirements. The compliance information should include details of PIAs, Consultation RISs, Decision RISs, Treasurer’s Exemptions granted and Post-Implementation Reviews undertaken; and

⁹ Department of Treasury, *Regulatory Impact Assessment Guidelines for Western Australia*, p.11 (see: http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic_reform/Regulatory_Gatekeeping/ria_guidelines_july_2010.pdf)

¹⁰ Ibid, p.17

- *Regulatory Plans* – agencies should ensure their Regulatory Plans are updated if there are regulatory changes planned for the coming reporting period. Proposals should be included even if there is no certainty that it will either go ahead or that a significant negative impact will exist.

While these guidelines have been in place since the commencement of the RIA system in Western Australia in December 2009, the SBDC has yet to see any agencies conform to this requirement. Under the RIA Guidelines, agencies are 'encouraged' to publish their Regulatory Plans in order to "provide an additional level of transparency and ensure 'best practice' regulation is achieved"¹¹. In cases where the release of information about a regulatory proposal would not be appropriate, the RGU recommends that an amended 'public' version of the plan be released.

The SBDC notes that these reporting requirements aim to provide the Government, and where appropriate relevant stakeholders, with access to information about past and planned changes to State regulation. Together with the concept of a centralised repository or community consultation website suggested earlier, the Biannual Agency Regulatory Reports would vastly improve the transparency and direction of the Government's regulatory reform agenda. To the best of the SBDC's knowledge, there has been no take-up by agencies or enforcement by the RGU of this RIA requirement.

Further, it should also be noted that it was originally conceived that non-compliant agencies in Western Australia would be publicly reported in the RGU's annual publication¹². Such 'naming and shaming', as used effectively by other jurisdictions in relation to their own RIA regimes, provides a further disincentive for agencies to 'cut corners' or undertake inadequate impact analysis and stakeholder engagement.

It is disappointing then that the SBDC has been advised that while an annual report has been prepared by the RGU for the Treasurer, it will not be released publicly. Further indications are that there are now no plans for these annual reports to be produced by the RGU or Treasurer in the future.

With these points in mind, the Government's overall commitment to its regulatory reform agenda is unconvincing. Without an effective and openly transparent process of reviewing (and ultimately improving) agencies' adequacy of RIA, it is doubtful that better regulatory outcomes and more meaningfully engaged stakeholders will occur. The SBDC believes that these developments do little to improve RIA at the agency level and further shrouds the Government's decision-making processes.

Exemptions from RIA

Western Australia's system of RIA allows for a Treasurer's Exemption from RIA requirements to be sought by Ministers and granted in exceptional circumstances¹³. Exemptions are typically granted where an emergency response is required from government or the proposal relates to an election commitment. According to the RIA

¹¹ Ibid, p.17

¹² Ibid, p.9

¹³ Ibid, p.6

Guidelines, an application for a Treasurer's Exemption must be made in writing by the responsible Minister, and should outline the likely impacts of the proposal.

In the case of a Treasurer's Exemption being granted, the proposal may proceed to the decision maker (such as Cabinet) without being subject to further RIA, though the resulting regulatory instrument **must** be subject to a Post-Implementation Review within two years of its introduction. The authoring agency is also expected to include the details of the exemption in its Biannual Agency Regulatory Report.

The RIA Guidelines indicate that the RGU will monitor, assess and report on the granting of Treasurer's Exemptions and agency compliance with the Post-Implementation Review requirements. According to the RIA Guidelines:

The Post-Implementation Review aims to provide evidence that the benefits of the regulation (implemented as a result of the proposal) outweigh the costs, and that the objectives can only be achieved by this regulation. The Post-Implementation Review should identify that the regulation remains an appropriate, effective and efficient method of achieving the policy objective.¹⁴

As the SBDC has already suggested, it is doubtful that there is a stringent monitoring and enforcement regime in place by the RGU to ensure that all RIA requirements are being effectively followed by regulating authorities. Anecdotally, the SBDC believes there has been a substantial, and disproportionate (which is contrary to its intent), number of Treasurer's Exemptions granted to agencies. Of course without Biannual Agency Regulatory Reports or the annual report from the RGU being made available to the public there is no way of knowing how many Treasurer's Exemptions have been granted since the introduction of the RIA regime.

Further to this, the SBDC is also unaware of any Post-Implementation Reviews of new or amended regulatory instruments that have so far been undertaken. As stated earlier, this is a particularly detrimental outcome for small business as they typically are the ones that have to disproportionately deal with poorly designed and implemented regulations.

Suggested improvements

Scope of RIA requirements

The SBDC believes that the Government should – as a matter of priority – commit to the third stage roll-out of the RIA process to local government laws and regulations. The types of regulations that this would apply to include rules for home based and mobile businesses, the number and type of vehicles permitted to park in residential driveways, signage specifications, hours of operation, etc.

The SBDC would also see benefit in requiring the post-implementation review of all new and amending regulatory proposals to be made mandatory under the RIA process, not just those subject to a Treasurer's Exemption (as required under the RIA Guidelines). By introducing a rigorous ex-post review mechanism, Ministers and

¹⁴ Ibid, p.6

agencies will be compelled to undertake comprehensive scrutiny of the 'realised' impacts of their regulatory action and then justify why the regulation should continue.

Other options to strengthen RIA processes and ensure better regulatory outcomes in Western Australia could include:

- requiring the post-implementation review of regulations to be undertaken by an independent body, such as a beefed-up RGU or a Review Committee of Parliament; and
- embedding sunset clauses in laws and regulations, which would trigger a review before the law or regulation can be renewed.

Quality of RIA documents

Essential to the success of any system of RIA is an ongoing commitment to quality training and the facilitation of continuous improvement in the human element of the process. In order to improve the quality of RIA documents, the RGU should place high priority on ensuring that policy/legal officers across regulating authorities are comprehensively inducted into the RIA process and systematically trained. This training should include a focus on providing tools for effective community and stakeholder engagement planning and evaluation, to ensure that expectations (of both stakeholders and decision-makers) and risks are kept in check and the outcomes to be achieved are realistic and meaningful.

Underpinning this training could be the appointment of senior level 'RIA champions' within relevant agencies to help guide new and existing staff members in the process of drafting RIA documents and effectively consulting with stakeholders. It may also be beneficial to re-establish the inter-agency working group of officials that was created when the RIA process was first introduced in Western Australia to provide a regular, ongoing forum for policy/legal staff to share their RIA experiences and learn leading practice.

The quality of RIA documents could be further enhanced by making Directors General more accountable for what is submitted by their agency. This could involve proposals for **major** new or amended legislation requiring sign-off by the Director General before it can be considered by the RGU.

Additionally, the SBDC believes that a centralised community consultation website could facilitate greater stakeholder engagement and increase the transparency of Government decision-making. Such a website could provide a list of regulatory proposals that the Government was considering and enable interested parties to input their views. The website could also act as a repository for all Consultation and Decision RISs across government, as well as publish stakeholder submissions. This would not only increase the scrutiny of policy makers and their decisions, but also potentially lead to a more engaged community.

Assessing small business impacts

Improving the overall quality of RIA documents would also enhance the assessment of small business impacts of regulatory proposals. The RGU could abet this

outcome by requiring all draft PIAs indicating a negative impact on the business community to be referred mandatorily to the SBDC (which doesn't always happen presently). This would allow us to work with the authoring agency to help facilitate consultation with affected small business stakeholders and identify regulatory (or, ideally, non-regulatory) options that limit impacts on the sector.

As stated earlier, there is often a disconnect by regulating authorities in terms of how effectively they engage with the small business sector. Based on our experience, the SBDC is best placed to provide important insights into how small businesses operate and the potential flow-on impacts on the sector of regulatory proposals. In the SBDC's opinion, the earlier we become involved in the policy development process the better the regulatory outcomes for small businesses. In an ideal world, this would be matched by a commensurate increase in agency resourcing to enable us to provide more comprehensive small business impact assessment assistance to agencies.

Non-compliance with RIA

The SBDC does not consider that the current mechanisms to monitor and enforce RIA requirements are effective. The SBDC is disappointed that the RGU has backed away from its original plan to require authoring agencies to complete and publish Biannual Agency Regulatory Reports as these would provide not only a snapshot of new and amended regulations but also offer insight into the Government's planned regulatory reform agenda. This would provide interested parties with more transparent information about both past and proposed changes to State regulation.

In order to further improve agency compliance with the RIA requirements, the SBDC would advocate for the Treasurer to publicly release the RGU's annual report on non-compliance. This report should also include details of those agencies that did not consult widely enough or not take stakeholder views into consideration. The power of this 'naming and shaming' could be further strengthened by having the RGU annual report tabled in the Parliament, to facilitate greater scrutiny of Government decision-making. It is also important to publicly acknowledge those agencies that undertake thorough RIAs and effective stakeholder engagement, and to promote these as leading practice for other agencies to learn from.

The SBDC would also support the introduction of an independent audit process to assess how well agencies across government are meeting their RIA requirements. This role could possibly be undertaken by the Western Australian Auditor General or the Small Business Commissioner, but would need to be appropriately resourced.

Exemptions from RIA

The SBDC concedes that ideally the RIA process would apply to **all** new and amending regulatory proposals. Understandably, however, a range of issues need to be addressed as a matter of urgency, whether it's due to a government's election commitment, the occurrence of some natural or other disaster, or a community issue that has become critical. In these instances, it is unreasonable to expect that resolution of the issue should be delayed just so that a full and comprehensive RIA

can take place; as such, the RIA process should be able to be bypassed in certain circumstances.

What concerns the SBDC is when the Treasurer's Exemption is relied upon, or poorly applied, by regulating authorities to circumvent due process when the situation does not warrant it. The RGU should adopt a very strict application of the Treasurer's Exemption and only grant them in the most exceptional circumstances. And where a Treasurer's Exemption has been granted, the RGU should more stringently enforce the RIA requirement for a Post-Implementation Review of the regulatory instrument to be conducted within two years (ideally even sooner) of its adoption. The results of this ex-post review should then be tabled in the Parliament by the relevant Minister and scrutinised accordingly, as well as included in the agency's Biannual Agency Regulatory Reports.

To help facilitate better outcomes in this regard, the RGU should develop detailed guidance material to assist agencies to conduct effective Post-Implementation Reviews, particularly in assessing direct and indirect impacts on stakeholders. This information should be embedded in the RIA Guidelines, with training available to relevant officers.

Concluding statement

The SBDC appreciates being able to submit these comments on Western Australia's RIA process from a small business perspective and we look forward to the Productivity Commission's findings on this benchmarking study. As this submission demonstrates, there are a number of shortcomings of the State's system of RIA and the adoption of leading practices from other jurisdictions could greatly enhance Western Australia's current processes and improve the regulatory outcomes on the small business sector.

Yours sincerely,

David Eaton

Small Business Commissioner

7 June 2012