

5th October 2012

The Commissioners
Regulatory Impact Analysis: Benchmarking Study
Productivity Commission
GPO Box 1428
Canberra City
ACT 2601

Dear Commissioners,

DRAFT REPORT: REGULATORY IMPACT ANALYSIS: BENCHMARKING

The Association notes the release of the Commission's draft report on benchmarking of the efficiency and quality of Commonwealth, State and Territory and COAG regulatory impact analysis processes.

Since its inception the Association has recognised the Productivity Commission's key role in providing 'frank and fearless' advice to the Federal Government and, in turn, to other jurisdictional bodies. This independent advisory role is extremely important in ensuring efficient operations of the Australian economy. Regulatory reform has been on the economic efficiency agenda of all Governments in the country for decades because it is clear that for the community's prosperity and wealth generation the costs of production of goods and services must be competitive with the best in the world. It is also clear that without efficient gate keeping processes in place that the costs of regulatory compliance will increase with a resulting negative effect on trade.

In this context the Association looked forward to the Commission's work on the benchmarking study as a means to continue the necessary pressure on minimising regulatory costs. As recognised in the draft report the Association was one of a relatively small number of organisations that contributed to the study by way of making a written submission.

The draft report addresses the terms of reference. It provides some useful ways for jurisdictions to improve their approaches to using the RIA process. However, these would need to be adopted by the Government agencies and Ministers currently responsible for the existing, under-performing processes. Where is the incentive for these changes? It can only be hoped that through COAG a nationally agreed approach to adoption of the best-practice approach to RIA will be agreed and implemented.

The Association is disappointed in the tone and strength of the report – there is no sense of urgency for reform. It encourages reform but does not exhort Governmental action. This is inherent in the media release where the presiding Commissioner Fitzgerald is quoted as stating - *'Adoption of the leading practices would create stronger incentives for governments to demand and officials to deliver policies that are well considered and supported by rigorous analysis of different options and their impacts.'* The Association believes a much more assertive stance should be taken that recognises the urgent need for fundamental reform not merely a statement about the opportunity for change.

The following are the key points made by the Association in its submission in response to questions posed in the Commission's Issues Paper released in March 2012.

1. ***The CMPA has seen no evidence of the quality of regulation improving.***
2. ***The scope of RIA process should be directed to the development of policy at the broadest level rather than being confined to subordinate legislation.***
3. ***The costs of the RIS process should not be considered as separate from policy or regulation-making costs.***
4. ***Government agency heads should be held personally accountable for policy developments and required to publicly explain the rationale used when the RIA assessment process is not undertaken.***
5. ***The CMPA has seen no evidence that the RIA process has been effectively integrated into policy development.***
6. ***The argument for a lack of skills in Government agencies responsible for regulatory administration is difficult to accept especially when the same agencies obviously employ policy development staff.***
7. ***The most prevalent weakness in RIS' reviewed by the Association is a general lack of identification of the costs associated with options for regulatory intervention.***
8. ***The draft Model Work Health and Safety Regulations Mining and associated Draft Code of Practice for the Work Health and Safety Management Systems in Mining are a recent example where the national RIS process has failed.***
9. ***Clearly the current arrangements for independent scrutiny of compliance with RIA processes are inadequate.***
10. ***Consultation documents should be precise, targeted and not be issued unless they include some evidence of cost assessment.***

Only some of these points have been partially addressed in the draft report.

The Association is concerned that the valuable findings of the study, referred to as draft leading practices, will not be taken up by Governments because they are presented as options rather than as clear requirements for change and better outcomes. The Commission's 'softly-softly' strategy is high risk when the economy is so finely balanced and hard decisions are needed by Governments to provide the circumstances for increased investment by business in wealth-generation projects.

While the Commission may have addressed its terms of reference the draft report does not instil any need for the reader to make any change and therefore it fails in its task. The Association strongly suggests the final report be a much more assertive document that can be readily adopted by the Government and jurisdictions as a way forward in regulatory reform.

Yours sincerely

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