

SUBMISSION TO THE REGULATION TASKFORCE

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1. Recommendations

Recommendation 1

Every Act of Parliament should be subject to a sunset provision.

In particular, assistance schemes and tax deductions should be limited in effect to five years.

Recommendation 2

Every enactment effecting business contain clear benchmarks so it can be subsequently determined whether the regulation is working.

Recommendation 3

The administration of Departments and agencies identify a level of ASL (staffing), to provide the resources to conduct full and reviews of all legislative schemes administered by the Department/Agency on a regular, scheduled basis.

Recommendation 4

When designing legislation, it be compulsory for the designer to:

- document the precise reason why it is necessary to seek each piece of information being sought; and**

➤ **whether they have considered**

➤ **the cost; and**

➤ **the practicability**

of obtaining the information

Recommendation 5

That agencies compare the information they ask business for – where there is significant overlap, that information be identified as being core government information, that can be drawn on centrally by agencies.

2. About K.M. Corke and Associates

- 2.1 Kerry Corke has 20 years experience in the development of policy and legislation.
- 2.2 He developed over 55 pieces of legislation (both Acts of Parliament and regulations), for a number of different Australian Government Departments.
- 2.3 He also acted as an advocate in the Federal Administrative Appeals Tribunal in over 120 cases.
- 2.4 He established K.M. Corke and Associates in 1999 to provide industry associations, government agencies, parliamentary parties and corporations with many of the legal policy services of an Attorney-General's department.
- 2.5 More information on the business can be obtained at www.kmcorke.com.au
- 2.6 This experience is reflected in the contents of this submission.

3. Why red tape?

3.1 “Red tape” flows from the need of public servants with a statutory obligation to make decisions to:

- pay a grant;
- allow a taxation deduction; or
- decide whether standards are set

have the evidence to make the payment or to allow the deduction (&c.).

3.2 When designing legislative schemes, public servants have a tendency to require significant volumes of information so as to ensure that they and their government don't have the embarrassment of having to defend accusations that claimants are "rorting" the relevant privilege or that specific statutory obligations aren't being followed.

3.3 Typically, after there is an embarrassment (or budget blow-out), the government goes “ooh, we can't have that happen again!”

3.4 To ensure that, *inter alia*:

- financial management legislation is adhered to; or
- the Auditor-General is satisfied

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- further information is sought from regulated parties, so the government has comfort that that particular problem is covered off.
- 3.5 And so the red tape grows.
- 3.6 The silo mentality of government is also a problem. Government agencies have a tendency to merrily design legislation, and impose obligations, in glorious isolation – without reference to any other agency with similar public policy interests.
- 3.7 This is particularly so between different agencies in different tiers of government.
- 3.8 Moreover, few laws are repealed.
- 3.9 As a result, like compound interest on savings, legislation grows incrementally on an annual basis.
- 3.10 When measured over a decade, the increase appears exponential.

4. General Discussion

- 4.1 This review¹ and the intention for the Productivity Commission to introduce an annual review process to examine the cumulative stock of Australian Government regulation and identify an annual red tape reduction agenda is all well and good, but it's been done before.
- 4.2 The previous Labor government had the Business Regulation Review Unit, which had the aim of reducing the level of red tape and regulation.
- 4.3 When the Howard Government came to power, it promised a 50% reduction in red tape. And in 1996, it commissioned a small business deregulation task force.
- 4.4 But not much has happened.
- 4.5 The Productivity Commission's February 2005 *Review of National Competition Policy Reforms* and the Victorian Premier's Department's *A Third Wave of National Reform* argued for the Council of Australian Government (and other high level ministerial bodies) to restate national regulatory objectives, with a small body to be established, to review whether COAG guidelines are being met.
- 4.6 However, as the *Age* reported on 4 November, in its commentary on the Bracks paper the Victorian ALP left noted that calls to remove cost shifting and duplication has been made since the 1980s. Making another call isn't wrong but added little in the absence of concrete suggestions as to how these measures are to be implemented.

¹ Which gives effect to the primary recommendation of the Business Council of Australia's *Action Plan for Future Prosperity*

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- 4.7 It is a sad fact that the only way to achieve small government and reduce red tape and duplication is to have government do less.
- 4.8 The most effective way to do this is:
- where a State Government (or COAG or a Ministerial Council) identifies that a subject matter is better dealt with in a national way on grounds of the need for national uniformity or economic efficiency, the matter should be referred to the Commonwealth under 51 (xxxvii) of the *Constitution*. There are ample illustrations where this has happened. This is best illustrated by the Victorian Government's reference of its industrial relations powers, and the States' reference of powers to ensure the constitutional validity of Australia's corporations law; and
 - for executive government to curb its wish to create schemes designed to alter behaviour to achieve a particular public policy outcome. As an example, many tax breaks are contained in Australia's 9000 page plus of tax laws. All require paperwork to be generated, so claims on the taxpayer's purse can be justified. If red tape reduction is a priority, then **it is up to government to restrain from creating new rights and privileges – and for business to restrain from asking for them. If neither party can restrain themselves, they cannot be surprised that red tape has continued to grow.**
- 4.9 If these macro changes don't occur, query how effective any red tape reduction campaign will be.

4.10 There are more specific recommendations contained in this paper that can be taken to government that can flow from this narrow review.

4.11 They follow.

5. Serious sunseting, serious benchmarking

- 5.1 At the federal level, some (but not all) legislative instruments made under the *Legislative Instruments Act 2003* are subject of sunseting.
- 5.2 However, few pieces of primary legislation are subject to sunseting.
- 5.3 The requirement of having to review legislation has the advantage of requiring the bureaucracy to seriously analyse:
- how successful a particular scheme has been; and
 - whether the scheme should be improved or ended.
- 5.4 This requires appropriate performance benchmarks **established at the time the legislative scheme is being designed**, to determine whether the regulation has done the job for which it was designed.
- 5.5 In particular, to ensure currency and to reduce legislative burden, **assistance schemes and tax deductions should be limited to a 5 year life**. They can of course be extended – but only if they remain effective.
- 5.6 **This will require significant staffing resources**. It takes a fair bit of time and money to review regulations. And it is our experience that bureaucracies place a low priority on legislative reviews. It is more:

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- interesting; and
 - politically pressing

to deal with the issues of today, rather than revisit the issues of yesterday.

5.7 The net result is the incremental increase of regulation, discussed earlier.

5.8 **Serious reviews of legislation are therefore required regularly.** This should be regarded as a capital investment to ensure the currency and efficiency of the Australian statute book.

Recommendation 1

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In particular, assistance schemes and tax deductions should be limited in effect to five years.

Recommendation 2

Every enactment effecting business contain clear benchmarks so it can be subsequently determined whether the regulation is working.

Recommendation 3

The administration of Departments and agencies identify a level of ASL (staffing), to provide the resources to conduct full reviews of all legislative schemes administered by the Department/Agency on a regular, scheduled basis.

6. Why are we asking for this?

- 6.1 Each new government initiative tends to give birth to a new set of information provision requirements that must be complied with by those affected by the regulations.
- 6.2 Before imposing an information provision obligation, it should be compulsory for the administrator to ask “why are we asking for this information”?
- 6.3 One would be surprised how little thought is given to imposing information provision obligations on businesses.
- 6.4 It is our experience that when designing legislation, what is in effect a “brainstorming session” is held, where the information *thought* necessary to be provided is determined, without much thought as to:
- the cost to business of providing the information; or
 - whether the information is really needed to ensure the efficient operation of the particular administrative scheme.
- 6.5 “Better to be safe than to be sorry” is a standard operating presumption.

Recommendation 4

When designing legislation, it be compulsory for the designer to:

- **document the precise reason why it is necessary to seek each piece of information being sought; and**
- **whether they have considered**
 - **the cost; and**
 - **the practicability**

of obtaining the information

7. If we must tell them, can't we tell them once?

- 7.1 In our experience, one of the greatest bugbears of business is having to provide identical or similar information to different areas of government. Ignorant of the silo structure of government, once small business has told an element of government a piece of information, they think have told *the* government.

Recommendation 5

That agencies compare the information they ask business for – where there is significant overlap, that information be identified as being core government information, that can be drawn on centrally by agencies.

- 7.2 This recommendation may require an analysis of Australia's privacy laws, and her various international commitments to privacy.²
- 7.3 If privacy concerns mean that business information cannot be handled in this centralised manner, and that information must be provided to each government silo individually – **let the community know – and be less bullish in suggesting the red tape can be reduced.**

² Such as the APEC Privacy Framework, and the commitment to comply with various European Union directives relating to the handling of information

8. Conclusion

- 8.1 In these various ways, regulatory burdens can actually be reduced, and not just talked about.
- 8.2 However, if Government is not prepared to make this sort of investment in its statute book, then all the noise about wanting to reduce levels of red tape and duplication should be dismissed as the cant that it would be.

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