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Benchmarking Business Regulation  
Productivity Commission  
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Business  
Council of  
Australia



Dear Sir/Madam

#### **BUSINESS COUNCIL OF AUSTRALIA SUBMISSION**

The Business Council of Australia (BCA) is pleased to contribute feedback to the Productivity Commission's consultations on the discussion draft *'Performance Benchmarking of Australian Business Regulation'* November 2006 (Discussion Draft).

The BCA is strongly supportive of a benchmarking process that would identify the regulatory burdens on business. Such a process should provide better information about the regulatory burdens on business and would also demonstrate the effectiveness of regulatory reform over time.

The BCA believes that benchmarking business regulation is essential for assessing regulatory impacts as well as identifying potential areas for reform. Without such data, there is the potential for crucial areas requiring reform to be missed or for "backsliding" of the implementation of regulatory reforms in the face of new political imperatives. Accordingly, business sees benchmarking as a tool not only for<sup>1</sup>:

- comparing regulatory compliance costs;
- measuring changes to the quantity of regulation over time; and
- examining the quality of regulation against best practice principles,

but also as a measurement over time for assessing performance and implementation of regulatory reform. The BCA therefore agrees with the Productivity Commission's assessment of benchmarking that<sup>2</sup>:

*'The rationale for benchmarking could therefore be expressed in terms of the management mantra – what is measured gets managed, and what is managed gets done. Reporting on performance encourages ongoing*

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<sup>1</sup> Productivity Commission 2006, *Performance Benchmarking of Australian Business Regulation*, Discussion Draft, Melbourne, p.XVII.

<sup>2</sup> Productivity Commission 2006, *Performance Benchmarking of Australian Business Regulation*, Discussion Draft, Melbourne, p.XX.

*improvement through 'yardstick' competition. The increased transparency afforded by benchmarking can also increase government accountability.'*

There is clear support for benchmarking as a tool for measuring the impact of regulation on business. In February 2006, COAG made an in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business. The Banks Taskforce<sup>3</sup> also recommended regulatory benchmarking across jurisdictions.

The BCA welcomes the conclusion of the study that benchmarking business regulation to identify potential unnecessary regulation burdens is feasible. This should therefore facilitate appropriate decisions by the Council of Australian Governments (COAG) towards agreeing a set of performance indicators and moving towards Stage 2 of the Productivity Commission's benchmarking terms of reference (under which appropriate performance indicators will be applied, reviewed and assessed).

The BCA welcomes the types of performance indicators outlined in the Discussion Draft, and strongly endorses the inclusion of such indicators as those contained in Chapters 6 and 7 of the Discussion Draft. In general, the BCA would like to emphasise the importance of benchmarking the quantity and quality of regulation as well as benchmarking across all jurisdictions.

### **Quantity and quality of regulation**

In May 2005, the BCA released the *Business Regulation Action Plan*<sup>4</sup> (Action Plan) outlining a series of recommendations on how to reduce the unnecessary costs of poor regulation. Those recommendations were aimed at not only fixing the current stock of poor regulation, but also at systemic improvements to the regulation making system to ensure that further poor regulation is not imposed on business.

Following the release of the Action Plan, the Government commissioned the Banks Taskforce to assess regulatory compliance costs to business. The BCA welcomed both the Banks Taskforce's and the Government's<sup>5</sup> recognition that it is the systemic regulation processes that are contributing to the unnecessary costs of red-tape for business. It was recognised that fixing the regulation making system can stem the tide of growing regulation, can reduce the complexity and overlap of regulation and reduce compliance costs for business.

The BCA highlighted in its previous submission in October 2006<sup>6</sup> that whilst benchmarking to assess the compliance burden and costs of particular existing regulations may be useful, it will not reduce the creation and development of inappropriate and inefficient regulations into the future. It is the growing tide of poor regulation that poses a significant cost burden to business and should be prevented if possible. The BCA therefore welcomes efforts to identify performance indicators

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<sup>3</sup>See Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and Treasurer, Commonwealth of Australia, Canberra, January 2006.

<sup>4</sup>Business Council of Australia, *Business Regulation Action Plan for Future Prosperity*, May 2005 (available [www.bca.com.au](http://www.bca.com.au)).

<sup>5</sup>See Australian Government, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business – Australian Government's Response*, August 2006.

<sup>6</sup> See the BCA Submission 6 October 2006 to the Productivity Commission's Issues Paper, *Performance Benchmarking of Australian Business Regulation*, September 2006.

that will appropriately assess the regulation making processes, as outlined in Chapter 7 of the Discussion Draft.

Accordingly, the BCA agrees with statements in Chapter 7 such as the following:

*‘...the growing quantity of regulation in aggregate can be a significant source of burden for many businesses. As can be turnover, complexity and reach of regulation. Hence, benchmarking the quantity of regulation over time and by form could identify the potential for unnecessary burdens caused by changes in the stock of regulation....’<sup>7</sup>*

*‘Assessing regulations against understood and accepted principles of good regulatory practice could, therefore, be a useful indirect measure of unnecessary burdens.’<sup>8</sup>*

A number of jurisdictions have already begun to implement reforms of their systemic regulation making processes. For example, the NSW Government has agreed to many of the regulatory reform proposals put by the Independent Pricing and Regulatory Tribunal’s regulation review and the Commonwealth Government have agreed to implement many of the Banks Taskforce’s proposals.

Accordingly, reporting on the quality and quantity of regulation provides ‘a baseline from which to measure the progress and success of reform initiatives.’<sup>9</sup>

### **Cross-jurisdictional indicators**

The Productivity Commission highlights that the ‘burden of having to satisfy duplicate and inconsistent regulatory requirements across jurisdictions can be significant for businesses operating or trading interstate.’<sup>10</sup> The BCA welcomes efforts to identify performance indicators to measure the costs of doing business interstate, such as those highlighted in Chapter 6 of the Discussion Draft. A benchmarking study must include performance indicators across jurisdictions, as a large part of the costs to business of unnecessary and inefficient regulation arises from doing business across jurisdictions.

In October 2006 the BCA released *Reshaping Australia’s Federation: A New Contract for Federal-State Relations* (Report). The Report acknowledged that ‘Federal nations can benefit from competition between their different governments’<sup>11</sup> and that different levels of government enable ‘governments to be more efficient, responsible and accountable to particular community needs.’<sup>12</sup> However, the Report also showed that there can be disadvantages of a federal system where there is unnecessary duplication and overlap or unnecessary cost burdens imposed on businesses.

As part of the research commissioned by the BCA, Access Economics conservatively estimated that inefficiencies in our federal system are costing Australian taxpayers \$9 billion each year, or over \$1,100 per household.<sup>13</sup> That

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<sup>7</sup> Discussion Draft, p. 101.

<sup>8</sup> Discussion Draft, p. 107.

<sup>9</sup> Discussion Draft, p.101.

<sup>10</sup> Discussion Draft, p.83.

<sup>11</sup> Report, p.5.

<sup>12</sup> Report, p.4.

<sup>13</sup> Report, p.7.

estimate did not include costs to business or the economy as a whole. The costs to business of multiple jurisdictions includes the unnecessary costs of different regulations in multiple jurisdictions – examples of these inefficiencies are highlighted in the Report<sup>14</sup> and include:

- A survey by the Building Products Innovation Council and the Housing Industry Association of building product manufacturing companies, has estimated the cost impact of complying with different State and Territory building laws to be between 1 and 5 per cent of company turnover. Even at a conservative 2 per cent cost impact, this equates to some \$600 million annually on building product manufactures alone.
- An operator of an interstate train in Australia may have to deal with six access regulators, seven rail safety regulators with nine different pieces of legislation, three transport accident investigators, 15 pieces of legislation covering occupational health and safety rail operations, and 75 pieces of legislation with powers over environmental management. Australia has seven rail safety regulators for a population of around 20 million people. In contrast, the United States, with a population of 285 million people, has one rail safety regulator.
- One BCA Member described the problems with multiple jurisdictions as follows:
  - We have a direct cost of employment, legal costs, consultancy and senior management time generated by inconsistent laws and regulations around occupational health and safety, payroll tax, workers' compensation, environmental regulation, property transfer laws, tax laws, company law (particularly its inconsistency with globally accepted regulations) and consumer protection laws. We estimated that, if each of these areas was consistent across Australia and, where appropriate, consistent with our international obligations, we could reduce our costs in this area by 20 per cent. This would equate to approximately 0.75 per cent of our revenue and increase our company tax contribution to the economy by \$1–2 million per annum and provide an additional \$2–4 million per annum for investment.

The BCA believes that benchmarking must include performance indicators such as those in Chapter 6 that assess the costs of doing business interstate. Such performance indicators could *'serve to highlight unnecessary burden due to duplication and inconsistency, in areas of regulation where governments have agreed that there is a case for national consistency or mutual recognition.'*<sup>15</sup>

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<sup>14</sup> Report, p.10-11.

<sup>15</sup> Discussion Draft, p.83.

## Data collection

The Productivity Commission has suggested that a “notional business” be used to collect data relating to Chapter 6 performance indicators. Efforts to reduce the degree to which data collection will impose additional cost burdens on business are to be encouraged. However, data collection for Chapter 6 performance indicators should not ignore the indirect costs associated with doing business across jurisdictions. Whilst the direct effect of regulations might be able to be assessed using the “notional business”, interviews with actual businesses might reveal information about the indirect costs (such as lost opportunities or lost investment).

One BCA Member has highlighted for example:

*‘We have opportunity costs of many times that amount. The distraction to our organisation by this regulatory complexity should not be underestimated. If our regulatory framework were rationalised and simplified, our competitiveness would dramatically increase, particularly into export markets. Too many of our managers are spending time distracted by regulatory complexities. Our company has expanded at a rate of 15 per cent per annum for the last four years. Given simple, consistent and sensible regulation we would have been able to increase that growth rate by at least 50 per cent. Apart from the benefits to employment and our balance of trade, it would also have put an additional \$8–10 million into the Treasurer’s coffers over that period of time and produced an additional \$24–30 million for further investment.’<sup>16</sup>*

Costs could be potentially incurred by those collecting data as well as those providing it. Accordingly, any benchmarking process that is developed should ensure that it does not impose another significant layer of complexity or compliance burden onto business. The BCA welcomes the recognition by the Productivity Commission that “Data for many of the indicators required for benchmarking can be obtained without imposing on business...Further, participating businesses could be compensated if necessary.”<sup>17</sup>

## Conclusion

The BCA welcomes the opportunity to make written and oral contributions in relation to the Discussion Draft. In general, the BCA welcomes the concept of benchmarking government performance and costs to business of the Australian regulatory system.

There are some important systemic requirements of the regulatory system that must be efficient and adequate if the cost burden to business of regulation is to be reduced. Benchmarking will assist in monitoring the performance of the regulation making system over time.

Further, all levels of Government are contributing to the regulatory burden and therefore all levels of government must be considered. Duplication, inconsistency and overlap of regulation imposes large costs on business. Benchmarking cross-jurisdictional issues will enable the identification of areas where such a burden may be reduced.

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<sup>16</sup> Report, p.11.

<sup>17</sup> Discussion Draft, p.XXVI.

The BCA has emphasised these requirements in its Action Plan and in the consultations on this issue, and believes much could be gained from benchmarking those requirements and providing continued scrutiny of government performance against those indicators. The BCA would be disappointed if there were insufficient outcomes from this benchmarking process. Prior to COAG agreeing to this study, the BCA released *A Scorecard to Measure Australia's Progress*, June 2006 which assessed the progress of the Commonwealth Government in implementing regulatory reform. In early 2007, the BCA intends to produce a scorecard of the State and Territory progress of regulatory reform. However, the BCA is looking forward to COAG agreeing to a broader set of performance indicators which will appropriately benchmark the regulatory burden on business over time.

The BCA looks forward to continuing to provide input into the benchmarking process and looks forward to the next stage of the Productivity Commission's review.

If you have any further questions or require any additional information, please contact me on (03) 8664 2614.

Yours sincerely

A handwritten signature in black ink, appearing to read 'LE', with a long horizontal flourish extending to the right.

**Leanne Edwards**  
Assistant Director – Regulatory Affairs