

DEPARTMENT OF TREASURY AND FINANCE WESTERN AUSTRALIA
COMMENTS ON ISSUES PAPER: PERFORMANCE BENCHMARKING OF
AUSTRALIAN BUSINESS REGULATIONS

The Department of Treasury and Finance of Western Australia (DTF) welcomes opportunities to lessen the burdens on business of unnecessary regulation.

The purposes that benchmarking can most usefully serve

It is the DTF's view that the value of developing a common framework for benchmarking, measuring and reporting on the burden that regulatory regimes impose on business across jurisdictions, with the aim of measuring the performance of jurisdictions' regulatory regimes and reducing the regulatory burden on business, should not be overstated.

Benchmarking based only on cost burden is inappropriate and meaningless. If measuring the regulatory burden on business is to proceed, the public interest question for decision making is the extent to which the costs imposed by a regulation exceeds the benefits (or vice versa).

There are various practical constraints associated with developing a common benchmarking framework that diminishes the usefulness of benchmarking and complicates the interpretation of results, particularly the inherent difficulties (addressed further on in this paper) associated with directly comparing the regulatory burden imposed on businesses across jurisdictions. As the process of benchmarking could prove to be a complicated and not necessarily beneficial task, it is recommended in the first instance that these limitations should be further considered.

Consideration of cost-benefit analysis

If the benchmarking process results in the identification of significant regulatory burdens on business, this does not necessarily imply that regulation is inappropriate, and that the regulation requires amendment or removal.

Reducing the regulatory burden on business is warranted only where cost-benefit analysis (CBA) shows that the costs of regulation (being the burden of that regulation to business) outweigh the benefits of that regulation to the wider community. Further, it should be noted that in some cases, it is likely that the 'burden' is passed on to consumers in the form of higher prices, so in fact the burden may be shared.

Whilst it is agreed that the principle aim of developing a common benchmarking framework may be to reduce the regulatory burden on business, the benefits to the wider community of the regulation should also be taken into account. Regulatory efficiency is driven not by reducing the number of regulations, but by improving the process and quality of regulation. Thus, the process of benchmarking should not become a system where jurisdictions' performance is judged based on the number of regulations removed.

CBA should be rigorously undertaken and benefits and costs carefully weighed. The analysis should be transparent with all assumptions explicitly presented. Conclusions on whether regulations/restrictions should be removed should follow logically from the analysis.

Since CBA itself has a cost, it could be given thresholds for analysis. For example, where there is prima facie evidence of a substantial burden on business, a rigorous CBA should be conducted, but not where the burden is minor.

Using regulatory performance indicators (RPIs) for the jurisdiction with the lowest burden as benchmarks for 'best practice' is not recommended. Reasons for this are that firstly it is inadequate to decide on the basis of cost burden alone, as best practice should also take into account the benefits of regulation. Secondly, there are differences between jurisdictions which can mean that best practice in one jurisdiction is not best practice in another. There are different objectives, outcomes or approaches to regulation which are specific to the business, market conditions and the environmental and social concerns in each jurisdiction.

Further, regulation has social, economic or environmental impacts, which may be direct or indirect, tangible or intangible. CBA should take into account the wide variety of impacts that regulation has, in order to establish whether regulation results in net benefits to the wider community.

Criteria to be used in selecting RPIs

It is important that the Productivity Commission should take the costs to business and government of data collection and analysis into account in developing options for benchmarking, to minimise the regulatory burden of performance benchmarking.

The framework for the type, quantity and frequency of data that business will be required to collate and provide should be designed so it can be easily and quickly understood and undertaken, to avoid business resources being diverted to understanding the data collection process.

The development of an effective set of RPIs should also have regard for avoiding duplication of information collection requirements for business.

Development of RPIs should seek to address comparability limitations, as RPIs will provide a basis for meaningful comparison only when businesses are benchmarked across jurisdictions provided that it is possible to define some common criteria, and these differences are taken into account.

Further it is noted that where it is not possible to compare the regulatory burden across jurisdictions, where a form of regulation is undertaken by only one jurisdiction, potential exists to develop international RPIs to undertake international benchmarking to identify 'world best practice'. However it is likely that this approach would require a great deal of work to develop international benchmarks different to those used within Australia, and further investigation would be required in this area.

Measuring the direct and indirect regulatory burden on business

Ideally all RPIs should take into account the direct and indirect costs of regulation.

Direct regulatory burden

Formulating direct RPIs to measure the regulatory burden that government regulation imposes on business 'directly' (being the incremental cost that each additional regulation imposes) is complicated by the difficulties that businesses face in obtaining relevant data, both qualitative and quantitative.

This is due to the direct costs of regulation being very difficult to estimate. Direct costs include the fees and administrative and compliance costs over and above normal commercial practices, and as a consequence the opportunity costs and disincentive effects that businesses face.

There are several difficulties and assumptions involved in identifying and measuring the incremental cost imposed on a business by regulation. These may include limited resources, or an overlap between the administrative activities a business would normally perform as a part of its operations and regulatory requirements.

It has been suggested that a possible approach to measuring the direct regulatory burden on business involves adoption of the Australian Office of Small Business' (BCC), which is designed to estimate the financial compliance cost of policy options on business. This method does have a place in measuring the direct financial costs to business of regulation, but does not assist in calculating the varied benefits of regulation to the business itself or to the wider community, or the indirect costs of regulation. As such, the BCC is of limited assistance in assessing the overall value of proposed policy options.

CBA should be quantitative as far as possible, however developing quantitative RPIs is not straightforward as it is difficult to measure the intangible costs of the regulatory burden on business (e.g. frustration and stress). The impacts of regulation that cannot be quantified (and therefore cannot be included in CBA calculations) should not be ignored in the overall analysis of the regulatory burden on business, but where possible should be taken into account in final decision making.

Indirect regulatory burden

The costs that regulation imposes on business 'indirectly' are often significant, but in some instances can be more difficult to measure than direct costs. Examples of indirect costs of regulation are limitations to choice and innovation or delayed product development.

Emphasis should be placed on formulating qualitative and quantitative indirect RPIs only if meaningful estimates can be provided, with manageable effort which is proportionate to the benefit of the analysis.

For example, indirect RPIs could include the proportion of regulations that provide business with some appropriate flexibility to determine the most cost effective means of achieving regulatory objectives, or the proportion of regulatory agencies having formal consultative channels for communicating information about regulation to business.

How wide in coverage should the benchmarking be?

Comprehensive versus narrowly focussed coverage

It is the DTF's view that a comprehensive approach to benchmarking is not very practical, as it would require business to estimate, every year, the costs of all existing regulations.

This approach would significantly increase the workload burden on business to collate and provide the relevant data, and on the relevant Government agencies/independent analysts responsible for collecting and analysing the data. It is more than likely that this approach would create a substantial and unjustified paperwork requirement for business and relevant agencies. Additional staff would be required to cope with these requirements, thereby imposing further financial costs on business and relevant agencies, without necessarily improving the quality of regulation. For the quality of regulation to be improved, regulations would require removal or amendment in line with the results of comprehensive CBAs.

A narrower approach to benchmarking, for example benchmarking only major regulations or targeting a sample or specific types of regulations each year, could prove more feasible and affordable.

Further, all existing regulations and legislation were comprehensively assessed between 1997 and 2005 as part of the National Competition Policy (NCP) reform agenda, to ensure that the benefits of retained regulations outweighed the costs.

Whilst many unwarranted regulatory restrictions on competition were removed as a result of the NCP reform agenda, many may remain and the process of developing and implementing new regulation continues. Thus benchmarking the regulatory burden on business has some value, however the current proposal discussed in the Issues Paper to measure only the cost impost of

regulation on business is inadequate for decision making, as benefits need to be considered as well as costs.

Reporting options

When considering how wide in coverage benchmarking should be, key consideration should be given to the timing of reporting, being annual or on a less frequent basis.

If annual reporting of performance against the RPIs is required for regular comparative assessment across jurisdictions, the information to be submitted by business should be narrowly focussed on regulations which have a material impact on costs, or specific types of regulations.

If a comprehensive approach to benchmarking is adopted, annual reporting will prove very costly and administratively troublesome to businesses and governments, and reporting on a less regular basis would prove more practical.

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