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Chris Sayers
Assistant Commissioner
Regulation Benchmarking Study
Productivity Commission
Locked Bag 2
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MELBOURNE VIC 8003

Dear Mr Sayers

**PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS
REGULATION**

The Chamber of Minerals and Energy of Western Australia Inc. (CME) values the opportunity to comment on the Issues Paper *Performance Benchmarking of Australian Business Regulation* and is keen to be involved in the process. CME strongly supports the use of benchmarking to improve regulatory effectiveness and efficiency across all Australian jurisdictions, and we welcome the work of the Productivity Commission in this area.

In this submission, we attempt to deal with the key issues for the resources sector in Western Australia in developing an effective system of benchmarking regulatory performance in Australia. We believe that this principally involves:

- Establishing a credible basis for assessing the relative performance of each jurisdiction's regulatory environment and identifying best practice areas for further study with a view to bringing all jurisdictions into a best-practice framework; and
- Minimising the administrative costs of the benchmarking process so that the process itself does not impose further burdens on business or expend scarce public sector resources.

In our view, determining the best approach to take involves considering potential uses of the data and the requirements of each user. The Issues Paper discusses aspects of a number of possible models, namely the International Standard Costing Model (ISCM) and the closely related Australian Business Cost Calculator (ABCC), the World Bank and the Minerals Council of Australia (MCA) Scorecard. If we accept that the ISCM and ABCC, World Bank and MCA models represent the range of types of approaches under consideration (and we are not aware of any other better alternatives), then the examination of how well each model fits user requirements and the relative costs of implementation provides a reasonable basis for recommending a preferred model.

CME believes that a qualitative approach similar to that of the MCA Scorecard would be the most effective benchmarking model. However, CME recognises that this model would need to be adapted to extend its scope to cover all key industry groups in all jurisdictions.

Enclosed is a detailed submission outlining CME's response on specific issues for your consideration.

CME would be pleased to assist the Productivity Commission in the further development of feasible performance indicators and framework options for benchmarking, measuring and reporting on the regulatory burden on business.

Yours sincerely

David Parker
Director

enc CME Submission on the Productivity Commission's Issues Paper on Performance Benchmarking
Australian Business Regulation

CME SUBMISSION ON PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

ABOUT THE CHAMBER OF MINERALS AND ENERGY OF WESTERN AUSTRALIA

The Chamber of Minerals and Energy of Western Australia Inc. (CME) is the peak resources industry representative body in Western Australia. The role of CME is to lead the way in having the resources sector recognised as a highly valued and strongly supported member of the Western Australian community.

POTENTIAL USES OF THE DATA

Essentially the task now before the Productivity Commission is to “develop a range of feasible quantitative and qualitative performance indicators and reporting framework options” which will subsequently be used to compare jurisdictions’ performance (Productivity Commission 2006:3,4). The Issues Paper suggests the following objectives of the benchmarking exercise (pp.8,9):

- identifying best practice for similar regulation across jurisdictions to assist in the design of improved regulatory arrangements; and
- monitoring the burden over time to assess whether it is increasing or decreasing, either generally or in specific areas

as well as the possibility for use in international benchmarking and conducting post-implementation reviews to assess the accuracy of estimated costs associated with particular regulatory initiatives.

We suggest that the data gathered from the survey will have the following primary uses:

- By **policymakers**, to identify best-practice approaches in particular jurisdictions for further study;
- By **investors**, to identify jurisdictions with the most attractive destination for investment;
- By **regulatees**, to identify areas for improvement in particular jurisdictions, as part of advocating better business regulation;
- By **individuals**, to assess the performance of elected representatives in implementing high-quality regulatory systems that deliver the intended policy benefits at the lowest cost to the community.

In the following we discuss the needs of each of these users.

POLICYMAKERS

In line with the terms of reference set for the Productivity Commission, policymakers will require a set of data that compares the cost of regulation and its benefits in each jurisdiction, over time, and in a way that allows for the possibility of international benchmarking. In order to provide a meaningful comparison for use in benchmarking, it is suggested that the data would need to have the following characteristics:

- Comparability of costs and benefits across jurisdictions;
- Relevance to identified regulations or clearly-identified groups of regulations;
- Capability of repeating the assessment with outcomes that can be validly compared against earlier and subsequent outcomes; and
- Ability to use the data to make valid comparisons with international benchmarks.

INVESTORS

It is suggested that for the data to be useful to investors it will need to identify the relative performance of jurisdictions in particular industries (global data for each state would most likely be too broad to assist in guiding investment choices). Investors may not be as concerned with assessing the benefits of regulation as this may not impact investment performance. Accordingly, we suggest that the data requires the following characteristics:

- Comparability of costs across jurisdictions; and
- Ability to present the data broken down into industry groupings by jurisdiction.

REGULATEES

As participants in the process with an interest in public policy responses to reducing the regulatory burden, regulatees will require similar data to policymakers. Regulatees will be concerned with the benefits of regulation as well as the costs, as sensible advocacy recognises the benefits of much regulation while also arguing for greater administrative efficiency. Regulatees will also be interested in assessing world's best practice to identify whether there are areas for learning that could assist Australian jurisdictions. Accordingly, we suggest that the data would require the following characteristics:

- Comparability of costs and benefits across jurisdictions;
- Relevance to identified regulations or clearly-identified groups of regulations;
- Capability of repeating the assessment with outcomes that can be validly compared against earlier and subsequent outcomes; and
- Ability to use the data to make valid comparisons with international benchmarks.

INDIVIDUALS

The needs of individuals will vary greatly depending on their personal interest in public policy issues and the range of policy alternatives that are offered by elected representatives and/or aspirants. In many cases, it will be sufficient to provide some broad measure of performance, over time, that illustrates the broad costs and benefits or particular regulatory measures or areas of regulatory activity. We suggest that it is reasonable to assume in any case that the needs of individuals would, at the top end, be similar to those of policymakers.

SUMMARY

We suggest that in order for the data to be suitable for the purposes of all the key end users, it will need to incorporate the following characteristics:

- Comparability of costs and benefits across jurisdictions;
- Relevance to identified regulations or clearly-identified groups of regulations;
- Capability of repeating the assessment with outcomes that can be validly compared against earlier and subsequent outcomes; and
- Ability to use the data to make valid comparisons with international benchmarks.

COMPARISON OF EACH OF THE MODELS

THRESHOLD ISSUES

Each of the models differs in their approach. The ISCM and related ABCC models use a quantitative assessment that identifies and costs the transactions involved in compliance. The World Bank model uses a combination of sample surveys and expert judgement. The MCA Scorecard uses expert judgement alone.

While there is a superficial level of precision associated with quantitative data generated by the ISCM/ABCC models, the extraordinary difficulty in determining regulatory costs —

particularly incremental costs (see GAO 1996:45-55) — suggests that the degree of precision is illusory. Mr Ed Humpherson, the Director of the Regulation (Value For Money) Team in the UK National Audit Office, has suggested that the numbers generated by the ISCM are a “distraction and can be a risk”. He suggests that the real benefits of the ISCM are in driving behavioural change in the development of regulatory alternatives (Humpherson 2006).

For all the key users of the benchmarking data that we have identified, the most important considerations are relativity between industries, regulations, jurisdictions and over time — not necessarily absolute numbers. Such relativities can be captured through qualitative assessments so long as these are applied within a consistent framework. Given the limitations with the ISCM and the general lack of certainty with quantitative measures of regulatory costs, we believe that the expert assessments used in the World Bank and MCA Scorecard models are no less valid for the purposes of the benchmarking objectives of this exercise.

ASSESSMENT OF EACH MODEL

In the following pages we assess each of the models discussed in the Issues Paper in terms of their potential to meet the requirements of all key users of the data, and the relative costs of each.

Comparability of costs and benefits across jurisdictions		
Model	How well it meets the objective	Relative Cost
ISCM/ABCC	The ISCM provides a means of measurement that is comparable between jurisdictions and is used internationally. It does not measure the benefits of regulatory activity (SCMN 2005).	Highest cost – the ISCM provides a basis for costing individual regulatory measures and it would be an extensive (and expensive) process to carry this out over entire industry groups and jurisdictions.
World Bank	The World Bank model measures some policy benefits, but only in areas that benefit business. The model only measures costs in a limited range of areas and makes a number of assumptions that may mean the outcomes are not fully representative (World Bank 2006).	Medium cost – the World Bank methodology is relatively inexpensive, as it incorporates high-level judgements and representative surveys rather than directly measuring transactions.
MCA Scorecard	The MCA Scorecard uses a methodology which applies consistent measuring techniques across jurisdictions. It measures not only administrative costs but also how well policy objectives are met. The MCA Scorecard is qualitative in nature and applies only to approval processes in the mining sector (URS 2006).	Lowest cost – the MCA process is potentially the least expensive, as it involves high-level judgements only.
Summary: All of the models would need to be redesigned in some way to extend their scope to cover all key industry groups in all the jurisdictions. A qualitative approach similar to the MCA Scorecard appears to be capable of meeting the objective at least cost.		

Relevance to identified regulations or clearly-identified groups of regulations		
Model	How well it meets the objective	Relative Cost
ISCM/ABCC	As the ISCM model assesses individual regulations, the data generated would be able to meet this objective through a simple process of aggregation or applying the analysis to a whole group of regulations.	Highest cost
World Bank	The areas scored in the World Bank model do not reflect the priorities identified by COAG (Productivity Commission 2006:10,11).	Medium cost
MCA Scorecard	The MCA Scorecard in its current form applies only to approval processes in the mining sector.	Lowest cost
Summary: The ISCM/ABCC model is most easily adapted to deal with specific regulations or groups of regulations. Both the World Bank and MCA Scorecard models would need to be redesigned to achieve this – although this exercise may be simpler for the MCA model given its less complex methodology. A qualitative approach similar to the MCA Scorecard appears to be capable of meeting the objective at least cost.		

Capability of repeating the assessment with outcomes that can be validly compared against earlier and subsequent outcomes		
Model	How well it meets the objective	Relative Cost
ISCM/ABCC	All of the models provide a consistent basis for assessment that can be re-applied in subsequent assessments.	Highest cost
World Bank		Medium cost
MCA Scorecard		Lowest cost
Summary: All of the models can meet this objective, but a qualitative approach similar to the MCA Scorecard model appears able to do so at least cost.		

Ability to use the data to make valid comparisons with international benchmarks		
Model	How well it meets the objective	Relative Cost
ISCM/ABCC	The ISCM is an internationally accepted costing model, although reservations about the accuracy of the numbers that are generated may affect its validity in international benchmarking.	Highest cost
World Bank	For the areas that it covers, the World Bank model is a convenient basis for benchmarking — 155 nations are currently ranked using this model (World Bank 2006:95).	Medium cost
MCA Scorecard	There are no direct international equivalents of the MCA Scorecard. On this basis, its use for international benchmarking may require that separate assessments of overseas jurisdictions are carried out using the MCA model.	Lowest cost
Summary: Of all the models, the World Bank model appears superficially best suited to international benchmarking — but only in those areas covered in the model, which do not reflect Australian governments' priorities. None of the models is replicated overseas in a form that could be directly transposed to meet Australian requirements and therefore in order to obtain international benchmarks in respect of the priority areas, it would be necessary to do an assessment using the preferred model for each of the international jurisdictions to be surveyed. It appears that a qualitative approach similar to the MCA Scorecard model would be the least expensive option for achieving this.		

CONCLUSIONS

Based on our analysis of end-user requirements and the costs and features of each of the models, we believe that the most effective benchmarking model would be one that is based on the MCA Scorecard approach. Essentially this involves qualitative assessment, utilising expert judgments to assess the costs and benefits of groups of priority regulatory measures.

We believe that the criteria used in the MCA Scorecard assessment represent a suitable series of indicators that can be applied in any area of regulatory activity, although not all criteria will apply to every type of regulation. These criteria are as follows:

1. Indicators that show how well the policy and regulations are designed in each jurisdiction, with individual assessments for institutional framework, clarity of policy objectives, stakeholder input & appeals, opportunity and efficiency of chosen regulatory measures in achieving policy outcomes.
2. Indicators that show how well these policies and arrangements are administered in each jurisdiction, with individual assessments for clarity of process; timeliness; compliance cost; government agency capacity; predictability and certainty; and effectiveness in achieving policy outcomes (URS Australia 2006).

It will be important to emphasise to end-users that the data produced is designed to measure relativities between industries, jurisdictions and over time, rather than as a reliable indicator of absolute costs.

OTHER CONSIDERATIONS

While it is not directly within the scope of this particular issue, CME has advocated the use of the Standard Cost Model and the Australian Business Cost Calculator as a tool for regulatory impact assessment.

In the context of the broad benchmarking exercise currently proposed we believe that the costs of using these more detailed models may outweigh the benefits of the additional information that is obtained. However, we continue to advocate their use for individual regulatory assessment.

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