Productivity Commission Discussion Draft
Performance Benchmarking of Australian Business Regulation
Victorian Department of Treasury and Finance Submission
January 2007

BACKGROUND

Further to Victoria's submission sent on 13 October 2006, this submission responds to the Productivity Commission's (PC) Discussion Draft, *Performance Benchmarking of Australian Business Regulation* and subsequent roundtable discussions held on 12 December 2006.

This submission has been prepared by the Victorian Department of Treasury and Finance, in consultation with the Victorian Department of Premier and Cabinet. It does not necessarily represent the Victorian Government's view, but is based on views already put by the Victorian Government in its original submission.

The comments below address key issues that the Department of Treasury and Finance considers critical to a successful benchmarking regime.

KEY ISSUES

What is the purpose of benchmarking?

Agreement between jurisdictions on the objectives of benchmarking is critical to determining how and what regulations are benchmarked. It will also allow evaluation of this benchmarking exercise at an appropriate time.

As stated in its original submission, the Victorian Government supports a benchmarking regime that will drive government commitment to reduce unnecessary or inefficient regulatory burdens on business. Benchmarking can aid this if performance indicators reflect real differences in regulatory burdens (i.e. highlighting that some jurisdictions have more efficient regulatory systems). Within a federal system where States compete to attract business by offering sound and competitive regulatory systems, benchmarking should aid transparency to help drive down the overall regulatory burden. This view is consistent with the Federal Treasurer's press release (PC website, 11 August 2006).

Periodic benchmarking of regulatory performance will increase transparency and incentives for governments to reduce unnecessary regulation…Benchmarking across jurisdictions will provide useful information for businesses in making decisions about where in Australia to invest and do business. Business will be able to compare states and determine which state is the most competitive state in which to do business.

Similarly, for Commonwealth government regulations, benchmarking against other national jurisdictions can put competitive pressure on the Commonwealth to lighten regulatory burdens in areas where Australia compares unfavourably with its key competitors.

The proposal to use benchmarking to address regulatory burdens associated with doing business in multiple jurisdictions (Chapter 6 of the PC Discussion Draft) is problematic. It is possible to reduce burdens associated with doing business in multiple jurisdictions.

However, the appropriate strategy to address this is through a process such as the current series of Hotspot reviews adopted by the Council of Australian Governments (COAG). By contrast, benchmarking is more appropriate for comparing the regulatory cost of doing business in one jurisdiction with another, where the same or similar policy objectives are being pursued. If we were to benchmark the regulatory burden associated with doing business in multiple jurisdictions within a federation, the relevant comparator would be other federations.

What regulations should be benchmarked?

Victoria supports benchmarking regulatory areas that pose the greatest burdens on business. These include regulations affecting business establishment, ongoing business operations, growth (including investment) and employment.

The PC recommends initially benchmarking COAG Hotspots. As stated in Victoria's original submission, Victoria does not support confining coverage to COAG Hotspots.

Some Hotspots are areas where COAG has agreed that there should be national harmonisation. Under circumstances where harmonisation is expected to be implemented in the short to medium term, inter-jurisdictional benchmarking would be superfluous, and a more appropriate comparator would be other nations.

Also, some of these Hotspots (e.g. rail) do not impose burdens on a significant number of businesses. Victoria suggests that it would be more valuable to benchmark administrative burdens in areas such as payroll tax, stamp duties or environmental regulations.

We would, on the other hand, be supportive of including in the benchmarking exercise indicators of best practice regulatory processes, broadly along the lines described in Chapter 7 of the Discussion Draft.

What indicators should be used?

The Discussion Draft indicated that a broad range of indicators are required to comprehensively determine performance gaps. "A suite of indicators would be necessary to provide a picture of regulatory burdens and where the performance gaps exist across jurisdictions."

Victoria supports a limited number of robust indicators in areas where regulatory burdens are greatest for business. The costs to business and government of undertaking thorough measurement of a broad range of indicators should be weighed against the benefits.

At the roundtable discussions, it was suggested that indicators would be modelled on performance indicators used in the PC's annual *Report on Government Services.* However, a difficulty with this model is that each jurisdiction puts significant effort into questioning or explaining indicators pertaining to it, which suggests that there is not a high degree of confidence in the comparability of the indicators. To be effective, regulatory benchmarking will need a high degree of credibility. The indicators chosen for this benchmarking exercise need to be accepted and agreed by jurisdictions as being appropriate benchmarks.

How should regulatory burdens be measured?

It is suggested that a pilot could be a good starting point to this benchmarking exercise, to test the chosen measurement methodology.

In the Discussion Draft, the PC states that the Commonwealth's Business Cost Calculator (BCC) is the "Australian elaboration" of the international Standard Cost Model (SCM), extended to cover "all compliance costs associated with a particular regulation or policy, of which administrative compliance costs are but a subset."

This statement is potentially misleading. The BCC is a systematic approach to estimating all the costs of proposed regulation. However, there is no requirement that the estimates of the administrative burden in the BCC must be derived from the SCM methodology. A key element of the SCM is a requirement that cost estimates are based on information obtained from businesses.

It is also important to recognise that the SCM is designed to measure administrative burdens rather than overall compliance costs. Such costs are measured by the BCC using general cost-benefit analysis, not the SCM methodology.

We would also take argument with the PC's conclusion that the SCM definition of the administrative compliance costs is narrower than the definition used by the PC in this study. The two definitions are interchangeable.

The PC notes that indirect measures of regulatory burdens would have to be used, as "it is difficult to measure direct indicators of incremental compliance costs." We acknowledge that capturing the incremental cost may not be as important for a benchmarking study, and that it would increase the complexity of the measurement exercise. However, measurement of the incremental cost is essential in order to avoid overestimation of the burden and to focus attention on the unnecessary burden of regulation. Such an approach is also consistent with international developments in the SCM methodology and with the model adopted by Victoria.