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Commissioner
Regulation Reforms
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioner,



I write to you in relation to the Productivity Commission's Discussion Draft Research Report on *Identifying and Evaluating Regulation Reforms*.

Business SA is South Australia's leading business membership organisation, representing thousands of businesses through direct membership and affiliated industry associations. We represent businesses across all industry sectors, ranging in size from micro-business to multi-national companies.

Regulation is a major issue for the business community. Prior to the March 2010 State Election in South Australia, Business SA conducted a survey of its members which highlighted the following major concerns with regulations:

- cost of compliance with Government regulations (51% of respondents)
- level of unnecessary regulation (49%)
- penalties for failure to comply with Government regulations (41%)
- compliance with workers' compensation legislation (34%)
- compliance with health and safety requirements (31%).

Business SA has provided both State and Commonwealth Governments with recommendations to improve regulatory monitoring and reduce the regulatory burdens on business. In our State Budget Submission 2010-2011, the following actions were recommended:

- complete regulation impact statements thoroughly and with due consultation when new regulations are introduced or existing regulations are changed substantially
- review regulations on a regular basis and with due consultation to ensure that they remain applicable, relevant and effective and so that changes can be made to them if considered inadequate
- implement a "one-in, two-out" model which requires Government to remove two old pieces of regulation for each new one it proposes
- implement transparency and accountability mechanisms, such as annual reporting by Government agencies and create an independent agency to provide oversight regarding regulatory compliance and prioritising regulatory reform to ensure that regulation-making processes are properly implemented and adhered to

- where possible, achieve national consistency and harmonisation on regulations and regulatory processes and also work in cooperation with Commonwealth and/or Local Government regulations and guidelines, so that duplication, confusion and conflicts are minimised.

Business SA supports the Productivity Commission's observations that it would be desirable to conduct a comparative evaluation of regulators' consultation strategies and that arrangements are put in place to encourage lower cost approaches to oversight and enforcement.

It is concerning that a number of major pieces of legislation and regulations have not been subject to regulation impact statements in recent years, including those that affect all businesses, such as industrial relations legislation. Business SA thus supports the Productivity Commission's view that post implementation reviews of such legislation and regulations assess the costs and benefits of them and recommend any necessary modifications. Business SA also supports the view that these reviews be conducted at arms-length from the responsible policy department. Ideally, such reviews would be conducted independently of Government and have broad terms of reference which would take account of the concerns of all stakeholders.

Business SA considers stocktakes of regulatory burdens to be a useful process, particularly if conducted by an independent body. However, the policy(ies) that are aligned to the regulations would ideally be analysed at the same time, to assess whether they are appropriate and whether regulations are necessary. Thus in-depth reviews are also supported.

Principles-based reviews are strongly supported, particularly where they are aligned with significant reform processes that can yield substantial benefits.

Business SA also supports robust benchmarking and quantitative approaches, where possible, to assess the costs and benefits of regulations and of changes to those regulations, as well as to monitor the performance of jurisdictions in reducing regulatory burdens.

There are concerns regarding the prioritisation and sequencing of regulatory reforms. The Business Regulation and Competition Working Group initiative is supported and the key issues for consideration – the reach of the regulations, the costs of the regulations, both financially to businesses and to the broader economy and community and the impediments caused by the regulations – are appropriate. On the flipside, the benefits of removing or improving regulations should be assessed before determining the priority and sequence of regulatory reforms.

Regulatory reforms that would provide the greatest net benefits should be pursued first.

Another key issue when reforming regulations and legislation is consultation. Stakeholders need to be given adequate time to respond to discussion papers, draft legislation and regulations. A number of recent consultation processes have been inadequate. For example, the consultation period for the carbon pricing mechanism inquiry by the Department of Climate Change and Energy Efficiency was less than three weeks. For a reform that will impact on the entire economy, this was highly inappropriate. The current consultation process on the Work, Health and Safety regulations and codes of practice has been rushed, with little time given to stakeholders to consider literally hundreds of pages of sometimes very detailed information.

To achieve the best outcomes from regulatory and other reforms, consultation processes need to provide enough time for stakeholders to properly consider potential changes.

Business SA believes that the degree of regulation needs to be more seriously considered. In many cases, only light-handed regulation is required, with a minimal level of reporting and monitoring necessary. Indeed, voluntary codes of conduct or mechanisms may achieve better results than regulations in some instances. Regulations should also focus on outcomes, rather than prescribe actions that must be followed. Outcome-focused regulations are likely to enable innovative businesses to achieve what is required at a lower cost than if they are forced to do particular things. Heavy-handed regulation should only be used when absolutely necessary, such as to minimise what would otherwise be large costs to the community of particular activities.

Yours sincerely

Peter Vaughan

Chief Executive Officer