



Friday, 31 July, 2009

Regulatory Burdens: Social and Economic Infrastructure Services
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Email: regulatoryburdens@pc.gov.au

Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services – Draft Research Report

Thank you for the opportunity to make a submission on the Productivity Commission's draft research report.

As the major organisation representing property owners and managers, with members who control over \$320 billion worth of assets, the Property Council is well positioned to reflect upon the regulatory burdens borne by our industry.

The Need to Reform the Process

The Property Council considers the key issue underlying this review is the ongoing failure of governments properly to assess the risks, costs, and benefits of regulation across all sectors of industry.

As the report notes, despite the development of principles for good regulation by the Office of Best Practice Regulation:

"Many of the concerns raised can be attributed to failing to adequately follow these best practice regulation requirements by all parties involved, including the OBPR [Office of Best Practice Regulation]."

"Notwithstanding COAG commitments and support for these principles, new measures are being introduced or existing measures expanded that do not appear to be consistent with the agreed framework."

The Property Council believes this research should examine the process by which regulation is developed and reviewed, rather than merely examining specific regulations.

To achieve a competitive economy, greater emphasis needs to be placed on both the collaborative processes of COAG and a more effective approach to regulatory impact assessment.

The Productivity Commission's Own Key Messages

In the April 2009 *PC Update*¹, the Productivity Commission identified some key messages for promoting better environmental outcomes, which are relevant to regulation generally:

¹ *PC Update*, April 2009, p. 3

The Voice of Leadership

LEVEL 1, 11 BARRACK STREET, SYDNEY NSW 2000
PH 02 9033-1900 - FAX 02 9033-1966
Email info@nat.propertyoz.com.au - www.propertyoz.com.au



- *Government intervention ... can be justified in cases of significant market failure, but the form of the intervention is important to ensure that the objectives are achieved and the benefits outweigh the costs.*
- *Policies should have a strong evidence base, and clearly stated objectives.*
- *In general, market-based policy approaches are preferable to prescriptive regulation, which can be costly, inflexible and subject to industry capture.*
- *Market-based instruments are more likely to provide appropriate incentives for responding to ... problems, but unless they are well designed, can also be costly and have significant redistributive effects.*
- *Policies should be subject to regular scrutiny to ensure that their stated objectives are met, and that the costs do not outweigh the benefits.*
- *Equity concerns are best addressed through adjustment support policies, rather than through constraints on market-based policy instruments.*

The Problems

Here are some of the problems industry currently faces:

- a lack of national consistency in policy and regulation;
- sub-optimal accountability and transparency;
- limited resources committed to ongoing reform and regulatory review;
- existing regulation is often treated as a starting point for further regulation, rather than a definitive obligation;
- too much duplication;
- enormous compliance costs; and,
- regulatory impact statements (RIS) that fail to assess appropriately the effects of new regulatory proposals.

The Council of Australian Governments (COAG)

The Property Council recognises that COAG has made some moves towards regulatory reform, such as the establishment of the Business Regulation and Competition Working Group.

We believe more should be done through this group to ensure greater reform and reduction of regulation, such as:

- identify opportunities for national uniformity;
- propose ways of reducing business red tape;
- suggest incentives that might be given to governments and the private sector for deregulation or better performance; and
- engage directly with the private sector to ensure that governments are helping, rather than hindering business.

Proposed Regulatory Reforms

The Property Council endorses the Australian Government and COAG resolutions in relation to regulatory reform, particularly plans to:

- harmonise all key regulations imposed on businesses that operate across state and territory jurisdictions within five years;
- give the Productivity Commission responsibility for estimating the costs and benefits of regulation reforms;
- adopt a “one in, one out” principle for all new Commonwealth regulation; and,
- set a common commencement date for all new regulation.

Why Isn’t Regulatory Assessment Working?

The current RIS regime has fallen short, due to:

- a lack of integration of RISs into the decision-making process;
- limited sanctions for non-compliance with RIS requirements – the more significant the proposal is, the lower the compliance rate will be;
- uncritical assessment of the quality and appropriateness of RISs by governments;
- an overall lack of transparency and accountability in the development of RISs;
- an apparent lack of understanding by many regulators, or their consultants, of the industry they are regulating, and the potential effects of their proposals;
- the poor average quality of the RISs prepared by regulators;
- a lack of standardisation and consistency in the format and content of RISs between governments and between departments;
- insufficient consideration, and limited quantification, of the costs created by regulation;
- over-estimations of the benefits of regulation;
- poor public consultation processes and limited consideration of feedback received; and,
- limited review of existing regulatory proposals to ensure they remain appropriate.

The CRA International Methodology

The Property Council commissioned CRA International to develop a **leading practice model for developing regulatory impact statements** (please refer to Appendix A). ²

CRA International recommends the following approach to regulatory impact assessment:

² *Making Regulatory Impact Statements More Effective*, CRA International (May, 2006)

1. mandatory consultation with a minimum consultation period for all proposed regulations:
 - a. above a minimum materiality threshold;
 - b. differentiated according to the significance of the regulation in terms of its likely (direct and indirect) cost consequences; and,
 - c. requiring the publication of a draft RIS at the start of the consultation period;
2. a requirement for the relevant Minister to certify that the RIS process has been followed, and that the RIS adequately assesses the impact of the proposed rule;
3. the regular secondment of Office of Best Practice Regulation (OBPR) staff to government departments to enable an improved 'culture of compliance';
4. the right of the OBPR to veto significant regulations judged to have been inadequately assessed under an RIS;
5. the removal of local government and planning legislation exemptions from RIS requirements, at least above a certain materiality threshold;
6. a greater degree of standardisation and consistency of RIS formats to highlight the conclusions that can be drawn from them, in particular a clear statement of the net costs and benefits of a proposed measure;
7. the full and transparent inclusion of assumptions, data, and analysis undertaken in any quantification performed;
8. the collation of improved databases to assess industry-specific administrative burdens;
9. the requirement for departments to adopt a rigorous analytical and quantitative technique and to justify the choice of analysis;
10. the introduction of a two-stage approach to RIS requirements and consideration of a range of alternatives;
11. legislating to require all government departments to make all their RISs available on their websites; and,
12. 'scoring' the RIS quality of government departments and consequently directing OBPR training towards the lagging departments with the aim of improving their future RISs.

Conclusions

The Property Council believes that the Productivity Commission's Research Report could be an effective mechanism for revealing current shortfalls in the regulatory process, rather than trying to identify 'winners' and 'losers'.

The Commission should promote existing processes such as the Business Regulation and Competition Working Group to examine and reform regulatory duplication and cut red tape.

It should also seek to recommend new ways of developing and assessing regulation, to ensure that jurisdictions do not merely use the RIS process to rubber stamp new laws.

The Property Council of Australia is willing to work with the Productivity Commission to develop these new approaches.

If there is anything about this submission or the attachment you wish to discuss, please do not hesitate to contact me on (02) 9033-1956.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Waterhouse', is written over a horizontal line.

Paul Waterhouse
Executive Director, National Policy

Appendix A:

Making Regulatory Impact Statements More Effective, CRA International (May, 2006)