



Effort Needed to Hold Back The Red Tape Avalanche

In November, ACCI released a Position Paper which outlines a plan to reduce the impact of the escalating volume of anti-business regulation. ACCI estimates that regulation costs the Australian economy approximately \$86 billion per year and that while the current regulatory system need not be overhauled, government needs to be far more vigilant to enforce the checks and balances that currently exist.

Governments have provided various structures to attempt to achieve considered and careful regulation. However, these have not delivered a simple, standardised and manageable regulatory regime. Systemic processes to first streamline and then enforce these structures must be established.

Current institutional arrangements provide a solid basis for tempering the amount of new regulation. They also provide a basis for beginning the removal of existing regulation where it burdens or hampers business.

Process or systemic failures currently plaguing regulation creation can be addressed without increasing the size of the public sector. In fact, reducing the size of government through appropriate expenditure restraint is an important element in containing the impact of regulation. ACCI has specifically outlined such a proposal in the paper that we commissioned from the eminent Australian economist Mr Des Moore *Commonwealth Spending (And Taxes) Can Be Cut – And Should Be*.

ACCI estimates regulation costs the Australian economy approximately \$86.0 billion per year or 10.2 per cent of GDP. While the estimate is inclusive of most types of regulation it is not exhaustive. A report by the Small Business Administration in the US entitled *The Impact of Regulatory Costs on Small Firms (Update)*, estimated the total cost of regulation to the US economy in 2004 at US\$1.1 trillion or 9.5 per cent of GDP.

Overall the burden of regulation falls most heavily on small business.

ACCI believes that the aim of improving regulation can be achieved and has developed a Position Paper *Holding Back the Red Tape Avalanche* which addresses all regulation of economic significance affecting commerce and industry.

ACCI has developed four major pillars for improving the regulatory process.

PART A: REGULATORY TRANSPARENCY AND ACCOUNTABILITY

Improving regulatory efficiency requires a greater degree of transparency of regulations with which businesses are obligated to comply and greater accountability of those implementing regulation.

ACCI considers that regulation should be the last resort after all other options (education, publicity, moral suasion, competition, industry self-regulation and other approaches) have been assessed and determined to be ineffective. A regulator must consider all alternatives to intervening in the market and proceed from the point that regulation is not always the best option.

The problem is that traditionally, regulatory planning has been afforded minimal attention by Australian policy and regulation makers. ACCI considers that this has inhibited meaningful planning for regulation.

1. Regulatory Budgeting

Given that regulation acts as a tax on business and the community, just like taxation it is necessary to measure and disseminate this information. ACCI believes that each year, the Prime Minister should present a regulatory budget that is a compendium of the cost and benefit analyses of regulations enacted by government and departments in the previous year.

The regulatory budget would also contain reference to government and departmental regulation agendas for the year ahead.

Each Minister would be asked to certify their department's regulatory responsibilities and agenda, thereby contributing to the regulatory budget.

An annual regulatory budget would clearly demonstrate and quantify the impact of regulation on business by detailing:

Historic Regulation

- a list of all regulation impacting upon business passed in the preceding twelve month period, including the regulatory cost of each piece of legislation; and
- a list of all regulations that have been repealed.

Proposed Regulation

- a list of all proposed regulation impacting upon business for the forthcoming twelve-month period.

2. Tabling of Regulatory Budgets in Parliament

Regulatory budgets, once developed by departments and certified by the Minister, would be delivered to the Prime Minister prior to the first sitting of Parliament for the year. Then during the first sitting of Parliament, the Prime Minister would table them.

3. Posting of Regulatory Budgets on Centralised Website

In a process similar to that of the current Federal Budget, all regulatory budgets delivered by the Prime Minister should be placed on a centralised website. A centralised portal would help to inform the public of the amount of regulation being created and also help to inform business of the level of regulation with which it is required to comply.

PART B: ENFORCEMENT, STRINGENCY AND CONSISTENCY

The Regulatory Impact Statement (RIS) process must precede, rather than follow, the consultation process so that the analysis used in balancing the costs and benefits can be adequately assessed by stakeholders.

The effective use of RISs must be incorporated into a broader commitment of regulation that encompasses transparency, adequate consultation and responsiveness to the needs of the private sector as well as the community.

Inbuilt checks and balances are lacking in this process. Thus a rigorous systemic approach to regulation is not ensured and currently does not occur. However, the structure provided as outlined above, can be augmented to enshrine a systemic approach to regulation.

Currently, regulatory plans and the ensuing consultative and RIS processes are not consistent within or between regulation makers.

It is necessary at this stage to differentiate between Regulatory Impact Statements and the complete regulatory process. The RIS refers to specific steps in the regulatory process. It comprises a discussion of the policy issue that needs to be addressed, options for addressing it, cost benefit analysis, consultation and finally reporting.

1. Creation of the Prime Minister's Regulatory Review Unit (PMRRU)

ACCI believes that the Office of Regulation Review (ORR) should be moved from the Productivity Commission preferably to the Department of the Prime Minister and Cabinet.

The new PMRRU would act as the 'gatekeeper' of good regulatory process and be provided with the power to prevent regulation from proceeding if the correct procedures have not been followed in the regulatory process.

2. Modeling Unit – Improving Regulatory Response Planning

Rigorous cost-benefit analysis of regulation is a fundamental component of the RIS process.

A specialised modeling unit located in the Productivity Commission should be created to develop a standardised costing tool to be applied to all new regulatory proposals. Line departments would be required to apply this costing tool to objectively measure the compliance costs of their regulatory bids.

3. PMRRU ‘Proper Process’ Test

Any regulation, as determined by the PMRRU, that does not pass the RIS process should not be allowed to proceed.

This would give the PMRRU a stronger oversight or ‘gatekeeper’ role than the current ORR. However, the current ORR’s primary function would remain - to ensure that the processes of good regulation are followed while not commenting on the validity of the regulation.

4. PMRRU Website

As part of the process to increase the transparency and comprehensiveness of information, business requires a centralised website where all levels of government regulation are provided and which informs of the rights and responsibilities to which business is subject.

The website should also act as a point of dialogue for businesses to provide feedback and suggestions on better and less onerous methods of regulation.

PART C: DEALING WITH EXISTING REGULATION

Every year Australia introduces far more regulation than it removes.

This situation cannot continue indefinitely.

If Australia is to reduce the growing stock of regulation, consultation with business groups can facilitate a process prioritisation. For example, removing redundant legislation may be appealing, however in an economic sense this does little to address the actual problems.

As markets become more competitive it is necessary that regulations become less intrusive. The dynamics of Australia’s market must be reflected in a dynamic regulatory system. Australia currently suffers from a regulatory ‘hangover’ as regulations become antiquated or increasingly complex.

A new approach to the stock of regulation is necessary if Australia wants to maintain the successes of the recent past.

1. Productivity Commission Review into Legislation

For more complex regulation, a degree of prioritisation is required.

The Productivity Commission should undertake the process of grading the significance to economic activity of various reform programs. The areas regarded as economically significant would then provide the ‘beachhead’ with which to begin the larger reform process.

2. Simplification and Harmonisation of State Regulation

Needless complexity has been added to regulation due to each state developing legislation in isolation from other jurisdictions, while businesses readily operate across such boundaries.

The Australian Government should consider offering grant money to the States, similar to its Regulation Reduction Incentive Fund for local government, where improvements in the regulatory and compliance environment can be clearly demonstrated. This may facilitate simplification of ad hoc state regulations.

PART D: SIMPLIFYING THE SYSTEM

1. The Stock of Regulators

Conflicting and overlapping regulation can to some extent evolve when there are a large number of disjointed and quarantined regulatory bodies. A large number of regulators also increases the compliance cost to business by increasing the number of compliance activities required each year. To facilitate the simplification of regulations it is necessary to investigate the options for reducing not just the stock of regulations but also the stock of regulators.

As the stock of regulations in Australia creates compliance and policy costs for businesses and the community, a large number of regulators can also lead to greater overlapping, inconsistent regulation and higher business compliance costs.

Highly fragmented regimes can lead to conflicting advice for business while the duplication of government frameworks increases the administrative costs to taxpayers. Multiple regulators can increase the amount of paperwork having to be filed by business, as knowledge of business information already stored by other agencies is often unknown. Furthermore, this leads to the duplication of information requests by agencies and reduces the use of pre-populating forms.

2. One-In-One-Out

ACCI believes that before the consideration of new regulation, policy makers must subject proposals to a process of rigid cost-benefit analysis and prioritisation.

This would involve significant cultural change in the public sector and among legislators. Specifically, policymakers need to ensure that redundant or superseded regulation is removed prior to the introduction of new regulation.

One purpose of introducing a ‘one-in-one-out’ program for regulation is to make regulators accountable for adding to the existing stock of regulation. ‘One-in-one-out’ brings prioritisation into the regulatory process and helps to develop the culture of ownership and balance in regulation.

Another objective of introducing ‘one-in-one-out’ is to reduce the overall compliance burden for business. The foundation for removing a piece of legislation is that it provides the most economically desirable result – the most desirable outcome is if the compliance and/or economic burden are lower when the two regulations have been substituted.

CONCLUSION

Australia’s well-developed institutional framework provides a sound basis for improving the current regulatory structure.

ACCI’s Position Paper is designed to change the process and remove redundant regulation in Australia. It is not designed to remove regulation which is deemed necessary to the efficient operation of the market.

Institutional design plays a pivotal role in how well regulations are developed, implemented and progressed. Designing world leading regulatory institutions and processes in a manner that provides for efficient outcomes is paramount if Australia is to remain an attractive destination for investing by both domestic and international businesses.

A full copy of this paper is available on the ACCI website - www.acci.asn.au.