



REGULATORY REFORM POLICY

PRINCIPLES OF REGULATORY REFORM POLICY

Effective regulatory reform can significantly improve government and economic performance. The failure to correctly identify the implications of regulatory activity can result in reduced economic efficiency, investment expenditure and opportunities for growth.

The rationale for the implementation of regulation can vary. The main justifications for business regulation are:

- revenue raising;
- public order, health and safety;
- economic development and efficiency;
- protection of environment and natural resources; and
- to redress unfairness and inequity.

However, even if regulation is the most appropriate way to achieve a goal of a government, the substantial impact on the business sector needs to be recognised when considering new regulations and should drive efforts to reduce the unnecessary impacts of current regulation.

With respect to both new and existing regulations the following principles are aimed at achieving a situation where regulations are minimal yet effective:

- Australia seeks to gain a competitive advantage and an internationally competitive economy by pursuing a rigorous, focused, substantial and ongoing program of regulatory reform at all levels of government;
- the program of reform should proceed on the assumption that regulation is the least appropriate way in which to address issues of concern to the Government. It should be the last resort after all other options (education, publicity, moral persuasion, industry self-regulation and other approaches) have been fully assessed and judged to be ineffective;
- no new business regulation should be contemplated without a thorough and independent cost benefit analysis (including the full cost of the proposed regulation to business) and no regulation should be introduced without full consultation with the business sector. The cost benefit analysis will be in the form of a Regulation Impact Statement (RIS) which assesses the total cost to business of compliance, fees and paperwork and compares this total cost to business with the estimated benefits of the proposed regulation. The process and the result should be public;
- automatic revocation (through 'sunset clauses') should apply to all subordinate legislation after a period not exceeding 10 years and earlier if triggered by an appeal process. RISs should apply to any attempt to renew 'sunset' regulation. Independent reviews of Acts of Parliament embodying business regulation (and associated programs) should be carried out at least every 10 years;

- reviews of all business regulation will be carried out according to these principles and the requirement that a substantial public benefit must be demonstrated for the law to continue. The concept of mutual recognition and deregulation of partly regulated activities should be extended to areas other than goods and occupations. Repeal of any business regulation by the Commonwealth or in any State or Territory should be the trigger for repeal of the corresponding regulation by the Commonwealth or in every other State or Territory as appropriate, without the need for a comprehensive review. Regulation review should incorporate a post-implementation review after two years to assess the effectiveness of each major reform;
- if new or amended regulation or forms of self or co-regulation are considered appropriate, they must be done with the minimal level of intervention consistent with being effective. This applies to the regulation itself, the taxes or charges imposed by regulation and the costs of administration and compliance with the regulation imposed upon the regulating agency and upon business. Where some form of regulation is considered necessary, it should be developed within a context where:
 - national standards and codes (including mirror and template regulation) are encouraged so that the regulation is ‘business neutral’ for all businesses regardless of location unless justified by differing conditions in different jurisdictions;
 - conflicts, inconsistent rulings and overlaps between regulation and regulatory systems of different levels of government are identified and addressed. Similarly, differing interpretations of national regulations by different State or Territory agencies must be addressed;
 - co-regulation and self regulation schemes do not proceed without a full analysis of the regulation. Simply transferring a regulatory scheme from the government to the business sector is not acceptable and the preferred approach is to conduct a regulation review prior to any total or partial devolution to an industry body;
 - world’s best practice for regulation and regulatory systems are identified and become the benchmark; and
 - regulation reviews are carried out in a strategic and focussed fashion with an emphasis on industry by industry reviews and priority given to industries of major economic importance to the States and Territories along with a review of regulation which is seen as an impediment to small business.

POLICY OBJECTIVES

ACCI’s overarching policy objectives are:

- a net benefit approach to new and existing regulation;
- an emphasis on the shift from a detailed and prescriptive “input-based” approach to a broader “output-oriented” approach. Businesses should be given flexibility in meeting the aims of regulations rather than simply having to meet set obligations;
- appropriate accountability in ensuring that essential objectives of regulation are achieved without unduly restricting or impacting on business;
- regulatory structure that involves adequate consultation, assessment of the alternatives to regulation, accurate cost benefit analysis and the monitoring of the performance of regulatory agencies;
- a comprehensive and continuous review approach across jurisdictions led by a Commission level body at the Commonwealth level with greatly increased resources compared to the Office of Regulation Review in the Productivity Commission;

- ensuring that the regulatory decision-making process is transparent, leads to fair outcomes and involves consultation processes that are accessible and responsive to business and the community;
- a new regulatory culture where there is an understanding of business processes and the burden created by regulatory compliance and a commitment to providing a “business-friendly” operating environment; and
- removal of overlap and duplication particularly resulting from separate Commonwealth and State regulation.

THE POLICY FRAMEWORK

The approach to regulation taken by government agencies is as critical as the regulatory framework itself. This is particularly the case for small and medium sized enterprises which bear a disproportionate burden of the costs of meeting regulatory obligations, primarily due to the differential impact of the costs involved with improvements and administrative requirements resulting from the fixed-cost nature of compliance.

A change in the regulatory culture is essential if the reform process is to promote efficiency and a business-friendly environment while allowing for social objectives to be met.

The administration of regulations needs to be conducted in a manner that recognises the impact on business that can result from the inflexible and procedural approach often taken by the bureaucracy. Accordingly, RISs need to be developed keeping in mind the overall approach to implementation that is likely to be taken by regulatory agencies.

This requires a combination of:

- sufficiently high priority accorded to the regulatory review agency particularly at the Commonwealth level; and
- adequate public exposure of RISs to enable feedback from interested parties and to signal to regulators the need to credibly assess and consider alternatives to regulatory proposals.

Performance Monitoring

The conditions of engagement of personnel in regulatory agencies should be connected to Key Performance Indicators (KPIs). In order to assess the performance of regulatory agencies against the policy objectives, the following indicators can be used:

- the proportion of regulations for which the Regulation Impact Statement adequately addressed net benefit to the community;
- the proportion of regulations for which the Regulation Impact Statement adequately justified the compliance burden placed on business;
- the proportion of regulations which allow for businesses and stakeholders to have flexibility in determining the most cost-effective method of complying with regulatory obligations;
- the proportion of cases in which external review of decisions led to a decision being reversed or overturned;
- the number of agencies whose mechanisms for internal review of decisions meets accepted standards for complaints handling;
- the number of agencies having communications strategies for regulation, or formal consultative channels for communicating information about regulatory processes;

- the number of regulators publishing an adequate forward plan for introduction and review of regulation; and
- the proportion of regulations for which the Regulation Impact Statement included an adequate statement of consultation.

These KPIs could in turn be tied to the remuneration packages of senior officers in the regulatory agencies.

Regulatory Impact Statements (RISs)

The optimal use of RISs can contribute immensely to an effective and efficient regulatory system framework. However, it is clear that the use of RISs has not been as widespread or thorough as intended. A RIS must clearly indicate the costs to business of not only complying with the regulation (which is often higher than necessary due to the inflexibility of administration), but the costs to business in terms of industry funding the regulation, lost opportunities, reduced incentives and loss of competitiveness.

The RIS process should precede, rather than follow, the consultation process so that the analysis used in balancing costs and benefits can be adequately assessed by stakeholders. The effective use of RISs must be incorporated into a broader commitment to regulation that encompasses transparency, adequate consultation and responsiveness to the needs of the private sector as well as the community.

In addition there should be a minimum exposure period for RISs and an agreed set of ways that they are communicated to the interested parties including a RIS section in the electronic Business Entry Point (BEP) of the Commonwealth and State/Territory governments.

Risk Management

There needs to be a greater use of risk management as opposed to hard-line policing in all but a few critical areas of Government such as quarantine, safety and the like. This means less checking and auditing where there is negligible risk or where there is reasonable commercial checking or auditing. There also needs to be more importance placed on the implementation within Departments of quality control at least equal to that adopted by business.

Need for Coordination

There is a need for greater coordination not just at the Commonwealth level but spread across all levels of government - Commonwealth, State, Territory, regional and local. Frequently the lack of coordination has led to duplication of policies, delivery systems, controls and the like, or just as divisive differences and clashes which have led to even worse outcomes. This whole area has been made more complicated by the delicate issue of what is perceived as States' rights.

In recognising this issue, it is fundamental that there be a united approach between all levels of government. Several States and more recently the Commonwealth have set down criteria and guides for designing, assessing, applying and reviewing regulation. At the Commonwealth level those requirements that have been established in relation to new regulatory proposals have generally not been observed.

Cost Recovery

The move towards cost recovery by regulatory agencies should take into account the degree to which particular regulations provide public benefits. Industry should not be required to pay for regulation that delivers benefits that are solely a public good. Cost recovery activity has led to increases in costs to business without providing improvements in areas such as regulatory delays and complexities. While it is difficult to define the extent of public good elements arising out of regulations, we consider this is very prevalent and in such instances it is inappropriate for the costs involved to be recovered from the private sector.

CONCLUSION

An effective and productive regulatory environment involves an outcome-oriented approach integrated with other policy areas to avoid unnecessary hindrances to business. ACCI believes this approach is consistent with the 10 question OECD checklist to be applied to regulatory decision making, set out below. A regulatory framework with objectives as set out in this document requires implementation aimed at meeting economic as well as social objectives. The use of assessment criteria as outlined can ensure that regulatory agencies perform with the same objectives as those of policy makers and stakeholders.

OECD Reference Checklist for Regulatory Decision-making

Is the problem correctly defined?

Nature, magnitude and why it has arisen.

Is government action justified?

Benefits and costs of action (based on realistic assessment of government effectiveness), alternative mechanisms, whether due to previous regulation and establishment of periodic review.

Is regulation the best form of government action?

Can and should choose from variety of regulatory (including performance regulation) and non-regulatory instruments (such as taxes and charges, voluntary agreements, information disclosure and persuasion).

Is there a legal basis for regulation?

Valid legal authority, compatible with existing legislation, including international norms or agreements and compliant with obligatory legal principles such as certainty, proportionality and equity before the law (and country specific obligations).

What is the appropriate level (or levels) of government to take action?

Does the problem cross jurisdictional boundaries (i.e. are there any positive or negative externalities), are there economies of scale, are there sufficient institutional capabilities at various levels of administration, will harmonisation remove regulatory barriers to trade and should harmonisation override local characteristics? The role of cooperation.

Do the benefits of regulation justify the costs?

Total costs and benefits, including to business, citizens and administrations, of regulations and feasible alternatives, including sub-element analysis for major regulations, all subject to quality review and improved centralised review (regard given to resources involved in this process with regulations with potentially large impacts justifying considerable analysis - qualitative assessments may otherwise suffice).

Is the distribution of effects across society transparent?

Awareness of distribution of costs and benefits.

Is the regulation clear, consistent, comprehensive and accessible to users?

Clear, precise, consistent language and format, adequate definitions and logical sequence, plus strategies for distributing information.

Have all interested parties had the opportunity to present their views?

Open and transparent development with public consultation.

How will compliance be achieved?

Strategies, often multi-faceted, such as education, assistance, persuasion, promotion, economic incentives, monitoring (possibly empowering third parties), enforcement and sanctions, responsive to various and changing conditions and new information and continually evaluated and improved.

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