

# ***A Roadmap to Smarter Regulation***

Australia needs a competitive economy.

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

## **The Problems**

Here are the problems we currently face:

- 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 are off the mark.

## **The Council of Australian Governments (COAG)**

The Property Council endorses the establishment of the Business Regulation and Competition Working Group by COAG.

This entity needs to:

- **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.

The Property Council will continue to assist all governments identify reform priorities and develop regulatory reform frameworks.

**The Voice of Leadership**

### **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**.<sup>1</sup>

CRA International recommends the following approach to regulatory impact assessment:

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;

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<sup>1</sup> *Making Regulatory Impact Statements More Effective*, CRA International (May, 2006)

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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.

**A Road Map to Smarter Regulation – Recommendation:**

**First:** The Business Regulation and Competition Working Group should meet formally with private sector stakeholders to determine targets for deregulation.

**Second:** Adopt the RIS methodology developed by CRA International to all new regulation.

**Sources:**

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