



AUSTRALIAN INDUSTRY
GROUP

Ai Group submission

New South Wales
Better Regulation Office
Review of NSW Regulatory Gatekeeping
and Impact Assessment Processes

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Introduction

The Australian Industry Group welcomes the opportunity to provide a submission to the New South Wales (NSW) Better Regulation Office in its review of NSW regulatory gatekeeping and impact assessment processes.

Regulatory impact assessment (RIA) processes are crucial in ensuring regulation (defined as both primary legislation and statutory rules) achieves its intended outcomes while at the same time is proportional to the problem being addressed and does not create an unnecessary regulatory burden on stakeholders. When working effectively, a RIA process provides for the proposed regulation to be scrutinised and for the most appropriate response to a problem to be identified.

The Australian Industry Group commends the NSW Government and Better Regulation Office for undertaking this important review. This submission provides the Australian Industry Group's response to the fifteen proposals outlined in the Better Regulation Office Issues Paper in the context of recent Australian Industry Group research into business regulation in Australia.

Context – the growing burden of business regulation

The Australian Industry Group has recently published the National CEO Report, *Business Regulation*. This report finds that despite the efforts of governments across Australia, including in New South Wales through the regulatory gatekeeping framework, the burden of regulation is rising. For example, the average Australian business spends close to 4 per cent of total annual expenditures on complying with regulation; close to 70 per cent of businesses have experienced a rise in compliance costs over the past three years; and around 75 per cent expect a rise in compliance costs in the next three years.¹

The report finds that business regulation in Victoria and South Australia appears to be more efficient than regulation in Queensland and New South Wales. In particular, businesses in New South Wales face more duplication in the information they provide to different regulatory authorities, a greater level of unnecessary regulation and greater financial costs in complying with regulation.

Occupation health & safety, workers compensation, and other employee-related regulations are seen by businesses to be the most time consuming areas of regulation across all States. Regulation related to the trade of goods and services across international borders is also reported by businesses in New South Wales to be particularly time consuming.

Businesses in New South Wales and Queensland report dealing with the largest number of regulators (9), followed by Victoria (8) and South Australia. Businesses from New South Wales and Queensland report that they face the largest amount of duplication in information provided to regulatory agencies.

¹ A copy of the Australian Industry Group report can be downloaded from: www.aigroup.com.au/policy/reports/

Reducing the frequency of reporting requirements to a minimum is seen by businesses to be the most important area of reform, particularly in New South Wales. Moreover, the report highlights the importance of the following actions to address the regulatory burden across all States:

- Review State government based initiatives and programs related to reducing the regulatory burden for effectiveness and robustness of claimed estimates of burden reductions achieved.
- The regulatory impact statement process needs to be applied consistently and transparently to reduce inefficient regulation.
- Improve regulatory agency interaction with the business community on regulatory changes and proposals. Consultation is crucial and governments should introduce less onerous consultation processes which attract business participation.
- Examine the quality and nature of regulation and how efficiently regulatory agencies administer these regulations.

Responses to the Better Regulation Office proposals

Apart from the ‘headline’ policy actions, as outlined above, the Australian Industry Group provides the following responses to the specific proposals outlined in the Better Regulation Office Issues Paper.

Proposal 1: NSW should have one consistent approach to RIA, with its primary purpose to inform decision makers about the impacts of regulatory proposals.

Supported in-part. The Australian Industry Group believes the *primary* objective of an RIA process is to improve the quality and efficiency of regulations so as to reduce compliance costs on stakeholders and avoid duplication and unnecessary regulations.

The objective of informing decision makers about the impact of regulatory proposals should be a *secondary* objective in support of the primary objective regarding the quality and efficiency of regulation.

There is also merit in the United Kingdom approach whereby the RIA must be revised to reflect the final scope of the regulation.

Proposal 2: RIA requirements should apply to all new and amending regulatory proposals and the principle of proportionality should determine the depth of analysis undertaken.

Supported. An RIA process should apply to all new and amending regulatory proposals in relation to both primary legislation and statutory rules and there needs to be a clear statement outlining the basis for a decision on regulatory options pursued and accountability for this decision.

In theory the principle of proportionality should determine the depth of analysis undertaken but in practice this is one area where interpretation and licence is taken so that inconsistencies arise in the (full) application of RIA processes.

The Better Regulation Office needs to play an enhanced role in monitoring and policing the determination of significance in a RIA process. For example, Portfolio Ministers or their departments could be required to submit a claim to the Better Regulation Office with respect to their assessed level of proportionality or significance of an issue and the subsequent depth of analysis they propose to undertake.

The Commonwealth Government approach requiring an independent assessment of significance is worth considering, as is the approach taken in Western Australia in helping define 'significance'.² This encompasses consideration of the size of the sector affected by the proposed measure; the effect of the proposed regulation on the price of a good or service; whether the proposal will impose any restrictions on operations within an industry or provide a barrier to entry or exit, and whether the proposal leads to changes the allocation of resources and/or changes to the regulatory burden on business.

Proposal 3: Exemptions should be rationalised so they apply consistently for all regulatory proposals. A single list of exemptions is proposed.

Given an RIA process should apply to all new and amending regulatory proposals (proposal 2 above) there is no need for the granting of exemptions in these cases.

For existing regulatory provisions that do not involve an amendment, such as automatic annual fee indexation through principal legislation, or for regulatory proposals subject to detailed assessment through COAG or Ministerial Councils, there should be transparency and accountability for decisions to grant an exemption. There needs to be clear transparency and oversight of this area across government through Cabinet approval of exemptions to RIA processes as well as the publication of reasons for the granting of exemptions from an RIA process.

Moreover, the Australian Industry Group does not support the full list of exemptions outlined on page 20 of the Issues Paper. For example, it includes a category "Regulatory proposals which are related to the management of the public sector" which, while applied in other jurisdictions such as Western Australia, is somewhat broad, needing clarification and being open to interpretation.

All RIAs should be assessed by either the Better Regulation Office or IPART, as occurs in Victoria through the Victorian Competition and Efficiency Commission (VCEC).

Proposal 4: Election commitments should be subject to limited RIA, where the assessment does not need to consider the initial regulatory decision or alternative options to the regulatory proposal but must consider implementing the commitment in the most effective manner possible.

Not supported. This proposal is unclear and needs refining. Often election commitments require the most scrutiny and need for a full RIA.

² *Regulatory impact Assessment Guidelines for Western Australia*, Updated July 2010, Regulatory Gatekeeping Unit.

Proposal 5: RIA guidance should provide detailed information on identifying and assessing national market implications.

Supported. This proposal will help facilitate the identification of national impacts and possibly help promote the Council of Australian Governments (COAG) agenda for a seamless national economy.

Proposal 6: RIA should generally include consultation, but RIA requirements should not specify the form of consultation to be undertaken.

Supported in-part. The Australian Industry Group National CEO Report, Business Regulation, highlights that involvement in consultation regarding the development of new or changes to existing regulatory arrangements are also highly costly for a high number of businesses. Governments across Australia need to consider how they interact with the business community on regulatory changes and proposals.

Consultation is crucial and should continue but governments need to invest in less onerous consultation processes which do not impose an additional burden on businesses. The importance of efficient consultation processes has been recently highlighted by the Productivity Commission in its recent Annual Review of Regulatory Burdens on Business. Incorporating a 'consultation' regulation impact statement in the regulation making process as well as monitoring and reporting on the quality of consultation are worth considering at all levels of government.

Proposal 7: All consultation processes should be advertised at a central location such as the NSW Government portal (www.nsw.gov.au).

Supported. Advertising on the NSW Government portal should be a complement rather than a substitute to the Portfolio Minister and their departments writing directly to affected stakeholders to inform them of consultation processes.

Proposal 8: The existing minimum consultation requirement period for new regulatory proposals of 28 days should be maintained.

Supported.

Proposal 9: Existing staged repeal provisions for subordinate legislation should be retained, with greater flexibility for postponement of repeal where legislation has been substantially amended or for the purposes of coordinating with a review of the broader regulatory framework.

Supported. The event of legislation being substantially amended should be grounds for a RIA process at the time of the amendment and/or at the time of sunset or repeal. Moreover, broader reviews of principal and subordinate legislation should be coordinated as much as possible.

Proposal 10: A review clause should be required in all Bills, including amending Bills. In most cases, the review period should be two to 10 years from commencement of the key regulatory provisions.

Supported. Moreover, the Better Regulation Office should play a role in monitoring and reporting to Cabinet on the progress of statutory reviews against legislative timeframes.

Proposal 11: The Better Regulation Office should be required to approve statutory review reports.

Supported.

Proposal 12: Statutory review reports should be released publicly on agency websites/portal.

Supported.

Proposal 13: RIA requirements should allow for consideration of non-compliant regulatory proposal in exceptional circumstances, if approved by the Premier. In such cases, a post-implementation review should be completed within two years. The review should be approved by Cabinet or the Better Regulation Office prior to public release.

Supported.

Proposal 14: Agencies should be required to comply with revised principles to demonstrate compliance with RIA requirements. A revised list is proposed.

Supported. The eight principles outlined in the Better Regulation Office Issues Paper on page 31 are comprehensive and transparent. The proposed compliance framework will need to be monitored and enforced. There is a role for the Better Regulation Office to undertake the compliance and enforcement role and publish annually the results of compliance with RIA requirements for each regulatory proposal.

Proposal 15: The Better Regulation Office should be the only body responsible for ensuring compliance with RIA requirements in NSW.

Not supported. The Issues Paper has not made a strong enough case to reduce the role of the Legislation Review Committee of the NSW Parliament.

Conclusion

Australian Industry Group research has shown that the business regulatory burden is rising across Australia and New South Wales particularly needs to renew its effort to improve its regulatory system. This submission has outlined a need to renew State government based initiatives and programs related to reducing the regulatory burden for effectiveness and robustness but also to apply the regulatory impact statement processes in a consistent and transparent manner to reduce inefficient regulation. This additionally involves improving regulatory agency interaction with the business community on regulatory changes and proposals. Consultation is crucial and governments should introduce less onerous consultation processes which attract business participation.