



04 April 2018

Ms Elizabeth Alexander AM and Mr David Thodey AO
Independent Reviewers of the Public Governance, Performance and Accountability Act 2013
Department of Finance
c/o PGPA Act Review Secretariat
One Canberra Avenue
FORREST ACT 2603

Public Governance, Performance and Accountability Act 2013

Dear Ms Alexander and Mr Thodey

Thank you for providing the Business Council of Australia with the opportunity to comment on the Independent Review of the Public Governance Performance and Accountability Act 2013 and Public Governance Performance and Accountability Rules 2014 (the Review).

The Review provides an important opportunity to embed practices and processes that will greatly improve regulatory outcomes and the implementation of programs undertaken by the Australian Government. A government that plans, listens and learns will always achieve better outcomes than a government that simply acts, does not engage in genuine consultation and fails to learn from past mistakes.

As discussed during our teleconference on 22 March 2018, it is vital that the legislative framework continues to promote an accountable and transparent government sector that uses taxpayers' money efficiently and provides high quality and impartial advice to Parliament.

One area where the current legislative framework is not performing as intended can be seen in the lack of accountability, measurement and control of the increasing cumulative regulatory burden on business. There is a need for stronger mechanisms to measure and report on the impact that new and existing regulations are having on Australian businesses and on the wider community.

Deloitte conservatively estimates that businesses spend \$94 billion annually to comply with federal and state government regulations and one in every 11 employed Australians now works in the compliance sector.¹

While there have been improvements in the way the Australian Government operates, more work needs to be done. You may wish to consider changes to the Act and the Rules to require governments to adopt better practices in these areas.

1. Embed a culture of independent and transparent program evaluation

An evaluation culture is vitally important. Knowing what works and why is essential in designing successful policies for the future. In the business world, a program that doesn't work will provide valuable lessons for the business going forward. Learning from mistakes is a key attribute of any successful organisation.

¹ Deloitte, *Get out of your own way: Unleashing productivity*, 2014.

However, all too often we see government programs fail for the same reasons as they have in the past. Lessons are not being learnt due to the absence of an independent and transparent program evaluation framework.

An example of a poorly designed government program has been provided at **Attachment A** for the Review's consideration, along with a brief evaluation of how such problems could be avoided.

2. Clear responsibilities between government agencies

In mid-2016, the Commonwealth Government maintained an estimated 1181 entities, bodies and administrative relationships. While there has been some consolidation over the past two years and this number is now below 1000, it is difficult to see why a nation of Australia's size has so many Commonwealth agencies. This is in addition to state and territory and local governments.

To ensure further consolidation is undertaken, the government should continue to undertake functional and efficiency reviews of government departments and extend these reviews to the many smaller agencies that now exist. The need for independence alone does not justify the establishment of a new operational body and too often we see these new agencies create an additional level of new regulatory obligations that business must comply with.

At **Attachment B**, an example of the proliferation of government agencies in the energy sector has been provided to illustrate this point.

3. Genuine consultation is fundamental to best practice regulation and program design

The object of the Act requires the Commonwealth entities to meet high standards of governance, performance and accountability. A key aspect of accountability is a willingness to engage in genuine policy consultation before policy decisions have been made. This allows those affected by regulatory changes to provide feedback on how the policy will operate in practice and why changes to the proposed legislation may be needed.

Governments should consult with business early in the policy or program design process and give business adequate time to provide meaningful input.

In recent years, we have seen some Commonwealth departments engage in policy consultations that do not provide the business sector with the ability to effectively contribute to the policy debate. For example, consultation periods are often too short in timeframe, occasionally only providing a couple of weeks for feedback. Short timeframes are particularly problematic for industry associations and representative groups that need to engage in genuine and detailed consultation with their members.

The challenge for business is compounded when there are multiple policy reviews running in parallel, which stretches resources and limits the ability of business to properly respond.

Governments should also invite business to regularly provide feedback on the performance of established policies and programs and on the operations of government agencies, in the interest of identifying opportunities to improve efficiency and performance.

The Business Council strongly supports the Regulator Performance Framework (RPF) that applies to federal regulatory agencies like the Australian Competition and Consumer Commission and commends the government for its introduction. Now in its second year of operation, there is the potential for RPF to be adapted to apply to all Australian Government entities that have significant dealings with the public, so that the Australian Government can hear firsthand about ways they could improve the way they operate. We would also like to see the program rolled out in the states and territories.

4. The re-emerging importance of Competitive Neutrality

The object of the Act also requires Commonwealth Companies to meet high standards of governance, performance and accountability. The principles of competitive neutrality require that Commonwealth

Companies, such as NBN Co Limited and Western Sydney Airport Corporation, do not receive a competitive advantage due to their public ownership.

In May 2017, the Business Council made a submission the Treasury's Review of Competitive Neutrality Policy (this submission has already been provided directly to the Department of Finance).

With the government re-emerging as an owner of significant new infrastructure businesses, there is a need for government to reaffirm its commitment to the competitive neutrality policy and make changes that will strengthen its operation, such as timelier reporting by relevant agencies and more transparent identification of non-commercial objectives of government businesses and how those activities will be transparently funded.

Once again, thank you for the opportunity to provide this input. I trust that this information has been of assistance. Please contact me if you require anything further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jennifer A. Westacott', with a stylized flourish at the end.

Jennifer A. Westacott
Chief Executive

Attachment A

Case study: Youth Jobs PaTH Program

In the 2016-17 budget, the government announced a commitment of \$751.7 million over four years for a new youth employment program, PaTH. Job seekers are eligible to participate in the program if they are:

- 17 to 24 years of age
- receiving an income support payment
- registered in either jobactive, Transition to Work or Disability Employment Services, and
- have been receiving employment services for 6 months or more.

The program started in April 2017 and has three components – Prepare, Trial and Hire. The program was designed to maximise the chances of young job seekers getting a job. Participants in the program were paid a new \$200 fortnightly supplement in addition to their income support payment.

Following the 2016-17 budget, senior staff from the Department of Employment contacted the Business Council to ask for support in driving business involvement in the program. The Business Council worked with the Department – providing feedback on the program model and publicly advocating for the program – with the aim of ensuring the program could offer as many opportunities to young people as possible.

The program aimed to deliver 120,000 internships over four years. However, figures provided by the Department of Employment showed that in its first six months of operation, the scheme gave only 2211 internships, of which only 1541 had been concluded. Only 609, about 40% of concluded internships, resulted in a job. Another 795, or 51%, of interns did not get a job after their internship ended.

Program design failure

The Business Council believes that shortcomings in the program's design contributed to low participation:

- The skills profile of people eligible to participate in the program indicated that many internships would need to be in low skilled and unskilled occupations. However, the Department did not secure enough low skilled positions, which meant that not enough suitable internships were made available for eligible participants. The Department therefore needed a better understanding of the kind of positions that were needed for the program if they wanted to avoid such a mismatch occurring.
- Critics of the program raised concerns that the interns were not being paid a fair wage for taking part in the program and that there was a substantial risk of exploitation. The reputational risk that this created deterred businesses from taking part in the program. The government should have anticipated such criticisms being made and structured the payment framework under the program in a way that sought to avoid participating businesses receiving negative publicity from participating in the program.
- The program design was not flexible enough to accommodate the needs of large businesses. The Business Council recommended it would be beneficial to use a broker to manage the relationship between the jobactive providers and companies to ensure companies have a single point of contact for the program. While the department was initially supportive of this proposal, the implementation of the program did not allow for the proposal to be embedded in the program.

It is likely these issues could have been identified if the Australian Government had consulted with the business sector at an earlier stage of the program's development. It is likely the negative media coverage resulting from the program's design further deterred businesses from supporting the program.

That is why the development of this program requires independent and transparent evaluation. The government must look at what it could have done differently in designing and implementing this program, and then take steps to ensure that these problems do not reoccur in the future.

Attachment B

Case study: The Australian Government in the energy sector

Australia's energy sector had historically been regulated at a state level. However, in 1998, the National Electricity Market (NEM) began operating as a wholesale market for the supply of electricity to retailers and end-users in Queensland, New South Wales, the Australian Capital Territory, Victoria and South Australia.

While the NEM has brought about many operational efficiencies, the promised administrative efficiencies have not been forthcoming.

The energy sector is one of the most highly regulated sectors in the country. There is no doubt that this sector requires regulation to ensure safe and reliable supply of energy and to address pricing in 'bottleneck' elements of the supply chain (principally the network elements).

However, in recent years the sector has become saturated with regulators and regulations. Energy businesses need to deal with many regulatory authorities, with overlapping functions and powers:

- The Australian Energy Regulator
- The Australian Energy Market Operator
- The Australian Energy Market Commission
- The Energy Security Board, which has recently been established by the COAG Energy Council
- The Australian Competition and Consumer Commission (which is currently conducting reviews in relation to retail electricity supply and pricing, and gas supply on the east coast)
- The Productivity Commission (where it has been called upon to conduct an energy-sector inquiry)
- Clean Energy Finance Corporation is an Australian Government-owned Green Bank that was established to facilitate increased flows of finance into the clean energy sector.

Despite the proliferation of regulators and regulations (or perhaps because of it), Australia's National Energy Market has been plagued with uncertainty that has curtailed private investment, resulting in statewide blackouts and price increases for households and the business sector.

We cannot regulate our way to economic prosperity and the energy sector should serve as an example of why the Australian Government must be far more business-like in the way it plans for its growth.