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**SUBMISSION**

# Submission to the Senate Red Tape Committee on Policy and Process to Limit and Reduce Red Tape

October 2018

This is the Business Council of Australia submission to the Senate Red Tape Committee on 'Policy and Process to Limit and reduce Red Tape'.

## KEY RECOMMENDATIONS

1. The Australian Government should develop a clear and transparent regulatory reform agenda, with progress overseen by a dedicated federal minister with accountability for reducing the regulatory burden faced by business.
2. The Australian Government should issue an updated 'Stocktake of Regulation' report on a three-yearly basis. The report should assess the cost of commonwealth regulation and help identify priority areas for reform. (The first stocktake report assessed the cost of regulation as at 3 October 2013, and was released in March 2015).
3. The Productivity Commission should be tasked with undertaking regular reviews of the cumulative burden of regulation by sector and propose specific regulation reforms to improve sector competitiveness.
4. The Council of Australian Governments should establish an intergovernmental regulatory reform process, with consideration given to providing incentive payments for productivity-enhancing reforms.
5. The terms of reference for public inquiries should include a requirement that any recommendations for new or expanded regulations are accompanied by a consideration of the additional costs on business and the economy.
6. The Australian Government should re-invigorate its commitment to 'best practice regulation' processes through the following actions:
  - implement a minimum guaranteed period of stakeholder consultation for new regulations
  - seek opportunities to co-design regulation with industry and support self-regulation where it can be effective in achieving desired outcomes (such as the Business Council's Australian Supplier Payment Code, which obliges signatories to pay small business suppliers within 30 days).
  - all regulatory impact statements should be required to achieve a 'best practice' assessment, fully consider the problem to be solved, justify why regulation is needed and examine the net benefits of alternative options before making a decision.
  - provide adequate resources and training so that agencies can accurately measure the costs of new regulation and undertake genuine cost-benefit analysis of all options. In doing so, agencies should assess how the cost of the proposed regulation will interact with existing regulation to affect the cumulative burden on business
  - use sunset periods and review periods for new regulatory initiatives
  - as a general rule, the government should not introduce regulation to apply to business, where it is not prepared to comply with the regulation itself. Regulatory neutrality is

particularly important now that the government is re-emerging as an owner of new infrastructure businesses and will increasingly be competing against private sector businesses.

- commit to timely reporting on the government's adherence to best practice reporting by releasing Best Practice Regulation Reports for 2016-17 and 2017-18 (the most recent published report on the website of the Department of Prime Minister and Cabinet website covers the period of 2015-16, a reporting gap of more than two years).
7. The Business Council strongly supports the Regulator Performance Framework (RPF) and commends the Australian Government for its introduction. The Business Council considers that the RPF could be further enhanced in the following ways:
- regulators should be encouraged to obtain performance feedback from regulated entities on a continuous basis
  - add an explicit focus on reducing compliance costs into the key performance indicators
  - regulators should implement fast track authorisation processes and reduce the time to make decisions, particularly for low risk conduct
  - adopt the regulator performance framework within the states and territories.

## DISCUSSION

Regulations, like taxes, are needed to deliver social goals. But regulations, like taxes, also impose costs. Reducing the costs of regulation that is poorly designed or unnecessary, without reducing the benefits, is unambiguously good for the economy.

The cumulative burden of regulation on business in Australia from all three tiers of government continues to grow apace. The burden directly adds to production costs and deters innovation and entrepreneurship, discouraging business growth and investment. The costs of poorly designed regulation are ultimately borne by the community through lower wage growth, higher consumer prices and less economic activity.

Policies and processes to improve regulation in Australia are important for reversing the decline in our competitiveness rankings:

- In 2018 Australia ranked 14th on the World Bank's Ease of Doing Business index. Australia's best ranking was 6th in 2006.
- The World Economic Forum survey of Australian business executives asked the respondents how burdensome is it for companies to comply with public administration's requirements. This includes permits, regulations and regulatory reporting obligations. In this category, Australia was ranked 77th out of 137 countries.

### 1. Develop a clear and transparent regulatory reform agenda

A commitment to a properly constituted deregulation process provides an important signal to all areas of government about the important need to continually review and reduce the cost of regulation.

The federal government should establish and prioritise clear and transparent regulatory reform agenda, with progress overseen by a minister with accountability for reducing Australia's regulatory burden.

The federal government should also work with the states and territories to establish a substantive intergovernmental reform agenda, overseen by COAG, to implement productivity-enhancing reforms to regulations across jurisdictions. The process should be underpinned by payments to the states and territories to share the productivity gains from reform.

Reform priorities should be based on the advice of the Productivity Commission and draw on the recommendations of other independent policy reviews.

Regulatory reforms should be prioritised that will deliver the largest economic and social benefits. The Business Council identifies the following specific regulatory reform priorities for consideration:

- **Major project approval reform:** All states should adopt a best practice model for major project approval (see the Business Council of Australia's report, *Competitive Project Approvals, 2016*) to speed up approvals and provide greater certainty for investors and the community. This includes:
  - greater use of strategic planning to direct land use and conditions of approval
  - establish a lead agency
  - single project application with standardised terms of reference and EIS
  - single project assessment, coordinated by the lead agency, no 'stop-the-clock'
  - single project approval, incorporating all secondary approvals. Judicial review only
  - streamlined compliance with performance-based project reporting
  - planning system performance monitoring.

The model supports decision making within 12 months under a single application, single assessment and single approval approach.

Most of the state and territory planning systems contain elements of the best practice model, but further improvements can be made.

More efficient planning approvals can help to bring forward Australia's pipeline of almost of almost \$400 billion in prospective major public and private investments.<sup>1</sup> Approval delays and uncertainty are extremely costly — the net economic cost of a one-year delay in approving a major project of average size (capex ~\$500m) is \$26 million to \$59 million, and for a larger project like an offshore liquefied natural gas project, the cost can be between \$0.5 and \$2 billion.<sup>2</sup>

- **Remove appeal rights for third parties.** Bring forward legislation to repeal section 487 of the *Environment Protection and Biodiversity Conservation Act 1999*. The Bill will prevent vexatious challenges to project approvals by ensuring persons wishing to seek judicial review of a decision will need to demonstrate that they are an aggrieved person under the *Administrative Decisions (Judicial Review) Act 1977 Act*.

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<sup>1</sup> Deloitte Access Economics Investment Monitor, December 2017, p. 9

<sup>2</sup> Productivity Commission, *Major Project Development Assessment Processes*, 2013.

- **Simplify zoning restrictions and set housing supply targets.** To address housing affordability pressures that are also having wider economic impacts, all governments should:
  - set housing supply targets
  - reform zoning regulations to allow greater density in key residential and transport corridors
  - implement faster land release for new housing
  - increase the use of complying developments to speed up approvals.

Zoning regulations prevent housing supply from keeping pace with demand, especially within our major capital cities, and contribute to high house prices. A research paper by the Reserve Bank of Australia estimates that zoning restrictions can increase the average house price by \$489,000 in Sydney, \$324,000 in Melbourne, \$159,000 in Brisbane and \$206,000 in Perth.<sup>3</sup>

- **Retailing restrictions should be removed:** States such as Western Australia, South Australia and Queensland impose restrictions on retail trading hours that are harmful to consumers. Such restrictions are out of date in the modern, digital economy and should be removed. The Productivity Commission has estimated the costs imposed by retailing restrictions in the three states at approximately \$600 million per year.<sup>4</sup>
- **Skilled migration:** Regulatory restrictions that are preventing businesses from quickly accessing highly skilled migrants to fill genuine skill shortages should be removed. More occupations should qualify for a four-year temporary skill shortage visa and costly labour market testing requirements should be reduced or removed.
- **Heavy vehicle reform:** Increasing inter-jurisdictional consistency of heavy vehicle specifications, curfews, load limitations and travel time restrictions, as well as the establishment of a national heavy vehicle user charge system has been estimated to deliver benefits of between \$8 billion and \$22 billion (depending on the reform model chosen and time frame for reform implementation).<sup>5</sup>
- **Sydney Airport efficiency:** The Australian Government should increase flexibility for aircraft movements and slot cap arrangements in the *Sydney Airport Demand Management Act 1997*. A 2018 study by Deloitte<sup>6</sup> found that an additional daily A380 service from China would on an annual basis contribute an estimated \$470 million to Australian GDP and create an additional 5,200 jobs.
- **Remove unwarranted competition restrictions identified in the Harper Review:** Progressing unfinished competition reforms from the Harper Review would provide significant productivity improvements in industries such as taxis, pharmacies and legal services. For example, reforming pharmacy location and ownership rules are estimated to provide a net economic gain of \$75 million. Finalising energy reform and recommitting to water reform are also priority areas for competition policy, as

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<sup>3</sup> RBA Discussion Paper (Research Discussion Paper 2018-03): *The Effect of Zoning on House Prices*, p. 10

<sup>4</sup> Productivity Commission, *Shifting the Dial: 5 year productivity review (Appendix B)*, 2017, p. 227

<sup>5</sup> Transport and Infrastructure Council, *Heavy Vehicle Road Reform - What we are doing and why we are doing it*, 2017, p. 3

<sup>6</sup> Deloitte Access Economics, *Economic contribution of Sydney Airport*, April 2018, p. ii

productivity improvements in these crucial sectors would provide significant economy-wide benefits.<sup>7</sup>

- **Coastal shipping reform:** Federal Parliament should pass the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017. Ultimately, cabotage (contestability) restrictions should be removed altogether, as recommended by the Competition Policy Review. An efficient coastal shipping sector is important for lifting the competitiveness of Australian businesses that use coastal shipping in their supply chains.
- **Enterprise Bargaining.** The Fair Work Act 2009 should be reformulated to better reflect the overall aspect of the Better Off Overall Test. Agreements should be approved if, on an overall basis, employees covered by the agreement on the whole are better off under the agreement compared to the award.
  - The construction and current interpretation of the Better Off Overall Test now makes agreements cumbersome, challenging and risky for enterprises with large workforces.
  - Labour is by far the biggest single input in the production process. How effectively workers are deployed and how productive they are within enterprises are critical for productivity growth.
  - The number of private sector agreements fell from 18,247 in March 2015 to 12,236 in March 2018. Award reliance increased from 18.8 per cent (2014) to 24.5 per cent in 2016. Fixing the EBA process can support productivity and higher incomes. Wages under EBAs are estimated to be around 29 per cent higher than Awards (Fair Work Commission data).
- **Single Window for Trade:** The “Single Window” policy reform would enable traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single-entry point to the participating authorities or agencies. This is a central element in the modernisation of Australia’s complex and antiquated customs regime, and should be progressed as a matter of priority. The World Bank’s 2018 ease of ‘Doing Business’ index ranked Australia 95 out of 190 countries on the ease of ‘trading across borders’.

## 2. Improve regulation-making processes.

Government regulations should be efficient, proportionate and clear. New business regulations continue to be introduced that impact on business efficiency and productivity.

Well-designed and rigorously observed best practice regulation processes can prevent poor regulatory settings and reduce regulatory costs on business and the impact on the wider community. The following are key areas where the Business Council has advocated for better regulatory and rule-making processes:

- All regulatory impact statements should be required to achieve a ‘best practice’ assessment. This will require policy makers to fully consider the problem to be solved; justify why regulation is needed; engage in genuine consultation and examine the net benefits of alternative options before making a decision.

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<sup>7</sup> Productivity Commission, *Shifting the Dial: 5-year productivity review (Appendix B)*, 2017, p. 224

- Government should implement a minimum guaranteed period of stakeholder consultation for all new regulations.
- Government should provide adequate resources and training so that agencies can accurately measure the costs of new regulation and undertake genuine cost–benefit analysis of all options (not only the preferred regulatory option). Agencies should assess how the cost of the proposed regulation will interact with existing regulation to affect the cumulative burden on business.
- Government should endorse self-regulation where it can be effective in achieving outcomes but without the associated costs. An example is the Business Council’s Australian Supplier Payment Code, where signatories willingly commit to pay small business suppliers within 30 days. The Code is a workable alternative to regulation and it avoids unnecessary compliance costs for business and unnecessary administration and enforcement costs for government.
- Government should consult with industry, ensure legislation is drafted to provide certainty to business and issue guidance materials that can be used by technical experts. ‘Catch-all’ approaches to regulating business behaviour that leave interpretation to the regulator and the courts should be avoided. For example, recent amendments to the misuse of market power provision create a new legal uncertainty that risks stifling business innovation. Similarly, there remains some uncertainty around the definition of an ‘unfair contract term’ and a ‘concerted practice’ following recent changes to the law.

### 3. Improving regulator performance

Improved regulator performance will ensure that laws are operating as intended and reduce costs on business and costs to government. The behaviour of regulators is estimated to account for up to 50 per cent of unnecessary regulatory compliance costs.<sup>8</sup>

The Business Council supports the Regulator Performance Framework (RPF) and commends the government for its introduction. The Business Council believes that there are some areas where the operation of the RPF could be further enhanced:

- **Real time regulator performance feedback:** regulators should ask stakeholders for feedback on their performance immediately after an engagement has occurred, rather than ask stakeholders for feedback in a survey at the end of the year, where the time lag risks lessening the quality and currency of the feedback provided.
- **A greater focus on reducing compliance costs:** The RPF should require regulators to assess and report on the compliance costs associated with their activities. None of the six existing KPIs under the RPF specifically target cost-reduction. Stakeholders should be asked if they believe the regulator’s conduct unnecessarily created compliance costs and how those costs could have been avoided or reduced.
- **Wider adoption of a regulator performance framework:** There are many regulators in the states and territories that are adding to the cumulative compliance cost on business. Using the COAG process, the federal government should encourage the establishment of a regulator performance framework in all state and territory jurisdictions.

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<sup>8</sup> Productivity Commission, *Shifting the Dial: 5-year productivity review (Appendix B)*, 2017, p. 241

### *Timely decision making*

The Business Council is also concerned about the delays some businesses face while waiting for key regulatory decisions. Providing private businesses with certainty as to when regulatory assessments will be resolved is crucial to ensuring investors are not deterred by regulatory uncertainty. Fast-track authorisation processes should be considered for low risk or non-controversial activities.

For example, the Business Council has suggested that the ACCC should introduce be a fast-track authorisation process for low risk conduct under the new misuse of market power provision. Decision-making under the ACCC's current non-merger authorisation process can take up to six months.

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BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 [www.bca.com.au](http://www.bca.com.au)

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