



New South Wales Government

POLICY STATEMENT:

INITIAL GOVERNMENT RESPONSE TO IPART'S INVESTIGATION INTO THE BURDEN OF REGULATION AND IMPROVING REGULATORY EFFICIENCY

9 November 2006

Well designed and targeted regulation is one of the central tools used to deliver governments' social, environmental and economic goals on behalf of the broader community. At the same time, effective regulation is essential to supporting a business environment that generates jobs, investment and growth.

However, it is also clear that regulation should only be used where it is needed, and efforts should be made to avoid inefficient regulation and minimise that which may be unnecessarily costly, excessive, or overly complex. Regulations that impose unnecessary burdens can impede competition, productivity, investment and innovation.

The NSW Government is committed to reducing red-tape

The NSW Government is committed to the reduction of unnecessary red-tape and regulatory burden. As part of that commitment, in February 2006, the Government assigned Ministerial responsibility for business and economic regulatory reform to the Hon Joe Tripodi MP, to be a champion for efficient regulation and reducing red-tape.

As part of that role, Mr Tripodi has been overseeing two major reviews of regulatory burden in New South Wales: the Independent Pricing and Regulatory Tribunal's investigation into the burden of regulation on business and the community, and an internal review of unnecessary red-tape imposed on NSW Government agencies. The Government has also commenced a rolling program of reviews of the compliance burdens imposed on small business, being led by the Minister for Small Business, the Hon David Campbell MP.

The Government's program of staged repeal of Regulations and the ongoing review and reform of Legislation, has had a significant impact on the regulatory environment in NSW. While only a rough indicator of regulatory burden, from 2000 to 2005, there was:

- a 27% reduction in the number of Regulations;
- a 10% reduction in the number of actual pages of Regulations; and
- a 1% reduction in the number of Acts in force.

IPART's Report on Regulatory Burden

The NSW Government asked the Independent Pricing and Regulatory Tribunal (IPART) to identify areas of regulation imposing a significant unnecessary regulatory burden, indicate priority areas in which regulatory reforms could provide significant immediate gains, and develop recommendations to reduce unnecessary regulatory burden on business and the community.

On 5 October 2006, IPART provided its final report to the Government. The report has benefited from broad ranging consultation with a number of key industry, community and government stakeholders, and has received a large number of written submissions.

IPART's report cites a range of general concerns raised by business in relation to the increasing burden of regulation. Business and community stakeholders identified a number of specific areas they consider impose unnecessary burdens, and expressed some concern with the regulatory process; that is, the process through which regulation is designed, implemented, administered and reviewed.

In response to these concerns, and after detailed consultation with a range of stakeholders, IPART has made 74 recommendations for reforms. A summary list of IPART's recommendations is provided from page 9 of the final report.

Improving the regulatory process

In making its recommendations, IPART has given a central focus to the need to improve the processes by which regulation is made. While IPART recognises that the current NSW Government framework for regulation making already includes the core elements of accepted good regulatory practice, it has proposed a range of reforms to strengthen and reinvigorate those processes.

In particular, IPART has recommended:

- strengthening the role of the Minister with responsibility for business and economic regulatory reform as a champion for the quality of the regulation making process;
- establishing a 'Better Regulation Office' to oversee good regulatory practice and support the strengthened role of the Minister; and
- a number of other changes and refinements to regulation making processes, including improvements to consultation requirements, regulatory analysis, implementation and review.

The NSW Government agrees with IPART's assessment and supports in-principle its proposals in this area. A schedule of the Government's initial response to IPART's recommendations in this area is attached.

The NSW Government considers it essential that processes are in place to ensure that regulation is appropriate, efficient and effective and that it maximises the net benefit to the community. At the same time, those processes must provide for the detailed assessment of the broader impacts and costs of regulation. Those processes must be an integral part of regulation making and government decision making.

The NSW Government will immediately strengthen the role of the Minister Assisting the Treasurer for Business and Economic Regulatory Reform, consistent with IPART's recommendations. Starting now, the Minister will be tasked with ensuring that red-tape is minimised, and that an effective regulation making process has been followed in the development of all new regulatory proposals. The Minister will be a champion for better regulation making in Cabinet; at the heart of Government decision making.

The NSW Government will also establish a Better Regulation Office. The Office will support the Minister responsible for business and regulatory reform. The Office will provide technical and analytical support to the Minister in assessing new regulatory proposals, and will also be an advocate for and provide assistance in best practice regulation making across government. As an added discipline, the Office will report annually on the effectiveness of the Government's regulation making processes. The Office will be established administratively in January 2007 and will be fully operational by June 2007.

These announcements represent a significant enhancement of regulation making processes in New South Wales. In support of these changes, and in line with IPART's recommendations, the NSW Government will reform the broader processes around regulatory impact assessment, regulation making, and enhance the effectiveness of the requirements for post-implementation review.

The NSW Government will update and replace the current best practice regulation guidelines. The new guidelines will promote the use of a more effective regulatory process in the development of all proposals. The guide will assist policy makers and regulators to work through an effective process, including requirements for improved options analysis, effective consultation, cost-benefit analysis, risk analysis, compliance cost assessment, and implementation and review.

These reforms will be progressed as an integrated package with a view to encouraging the development of a culture of, and enhanced commitment to, best practice regulation making in New South Wales. A more detailed package of reforms, including the specific arrangements for the operation of the Better Regulation Office, will be developed over the coming months.

Specific areas of regulatory burden

While a reformed and reinvigorated regulatory process is essential to an efficient regulatory system, the NSW Government recognises that any undue burdens imposed by the stock of existing regulation must be identified and removed.

To that end, IPART has made specific proposals for reforms in a large number of areas based on the issues raised by business and the community during its review. Few of the areas identified through the submissions process are new, and reforms in some areas are already underway.

The NSW Government welcomes these proposals, and Ministers have been asked to report back on precisely how they intend to respond to IPART's specific recommendations in their portfolio areas. The NSW Government will provide a considered and detailed response to each of IPART's specific reform proposals shortly.

IPART Recommendation	Initial Response
<p>RECOMMENDATION 1</p> <p>That the Government strengthen the role of the Minister for Regulatory Reform as a strong, accountable champion for the quality of the regulatory process. The Minister would be allocated responsibility for the <i>Subordinate Legislation Act 1989</i> and the Better Regulation Office (see Recommendation 2). The Minister would certify the adequacy of Regulatory Impact Statements (RISs) accompanying significant regulatory proposals, as assessed by the Better Regulation Office, before regulatory proposals could proceed to Cabinet (for Bills) or to gazettal and tabling in Parliament (for Regulations and other regulatory instruments). Exemptions to this certification requirement would be granted in exceptional circumstances (eg, regulation that is urgently required to respond to unforeseeable circumstances).</p>	<p>The NSW Government supports this recommendation, and will strengthen the role of the Minister Assisting the Treasurer for Business and Economic Regulatory Reform. The Minister will be tasked with ensuring that red-tape is minimised, and that an effective regulation making process has been followed, in the development of all new regulatory proposals.</p> <p>The Minister will have joint administration of the <i>Subordinate Legislation Act 1989</i> (with the Premier) and be allocated responsibility for the Better Regulation Office. The Minister will bring the Office's assessments of the adequacy of Regulatory Impact Statements to Cabinet.</p> <p>The Minister will also be able to direct the Better Regulation Office to conduct reviews into specific regulatory matters where reduction of the regulatory burden will have benefits across the State's economy or multiple industries within the State's economy.</p>
<p>RECOMMENDATION 2</p> <p>That the Government establish a 'Better Regulation Office' located in a central government agency (such as the Premier's Department or The Cabinet Office) to educate, assist, oversee and report on compliance with good regulatory process by all departments and agencies. The Better Regulation Office would assess the adequacy of RISs accompanying significant regulatory proposals and report to the Minister for Regulatory Reform (see Recommendation 1). The Better Regulation Office should:</p> <ol style="list-style-type: none"> a) provide rigorous, transparent and consistent oversight of regulatory impact statements (RIS) for significant regulatory proposals b) encourage all departments and agencies to clearly identify and quantify the risks that 	<p>The NSW Government supports this recommendation, and will establish a Better Regulation Office to provide technical and analytical support to the Minister in assessing new regulatory proposals, and be an advocate for best practice regulation across government.</p> <p>The Better Regulation Office will be established administratively in January 2007 and will be fully operational by June 2007.</p> <p>Specific tasks of the Office will include:</p> <ul style="list-style-type: none"> • assessment of the adequacy of Regulatory Impact Statements; • provision of ongoing assistance and advice to agencies on the application of best practice processes; and • reporting annually on the effectiveness of the

<p>they seek to address; genuinely explore non-regulatory alternatives and alternative forms of regulation (eg, market-based or outcomes-based regulation) for achieving public policy outcomes; and ensure that where risks justify a regulated solution, the ‘best’ solution is found</p> <p>c) assist departments and agencies with regulatory process and implementation requirements, including preparation of RISs</p> <p>d) provide education and training to departmental/agency officers and ministers on good regulatory process</p> <p>e) provide a central portal with links to all relevant data on RIS processes, including Legislation Review Committee information and reports</p> <p>f) update existing best practice regulation guidelines, including developing a consultation policy (see Recommendations 4 and 7)</p> <p>g) review and advise the Minister for Regulatory Reform on the implementation of good regulatory processes by departments and agencies</p> <p>h) collate and publish statistics on the adequacy of RISs.</p>	<p>Government’s regulation making processes.</p> <p>The Better Regulation Office will be hosted by a central agency, however the provision of assessments and advice by the Better Regulation Office be ring-fenced from the broader processes of its host agency.</p> <p>The specific arrangements for the operation of the Better Regulation Office will be developed over the coming months.</p>
<p>RECOMMENDATION 3</p> <p>That Government departments and agencies publicly report against performance indicators for best practice regulatory processes (for example, through their annual reports). These indicators might include the disallowance of regulations by Parliament, the adequacy of RISs, and the timeliness of delivering regulatory reforms. Guidance on suitable performance indicators could be developed by the Better Regulation Office.</p>	<p>The NSW Government supports this recommendation in-principle, and will require the Better Regulation Office to report on the NSW Government’s performance against best practice regulation requirements.</p> <p>The performance indicators will be developed to take into account the need to create incentives to achieve best practice while ensuring that undue internal government red-tape is minimised.</p> <p>It is envisaged that the reports will provide an annual overview of significant proposals that required the preparation of Regulatory Impacts Statements (RIS), the adequacy of required RISs, and an overview of the operation of regulatory processes in New South Wales.</p>

RECOMMENDATION 4

That the Government develop a policy on consultation during the development and review of regulation, for adoption by all government departments and agencies, including the use of exposure drafts. This policy should establish general consultation requirements, setting out best practice principles that need to be followed by all departments and agencies when developing and reviewing regulation. This task should be undertaken by the Better Regulation Office.

The NSW Government supports this recommendation, and will develop a whole-of-government consultation policy, as part of a new guide to Best Practice Regulation.

RECOMMENDATION 5

That the Government extend the minimum consultation period for RISs accompanying Regulations and other statutory instruments (as set out in the Subordinate Legislation Act 1989) from 21 to 42 days.

The NSW Government supports the need for adequate consultation with stakeholders on all regulatory proposals, proportionate to their significance and degree of stakeholder interest. It is important, however, that such red tape does not unnecessarily delay proposals proceeding in the public interest.

As an immediate measure, the NSW Government will extend the minimum consultation period for new regulatory proposals to 28 days. This does not prevent employing longer consultation periods on more significant or complex proposals.

A whole-of-government consultation policy will be developed as part of the new guide to Best Practice Regulation. This will include guidance on when consultation periods longer than 28 days would be appropriate.

RECOMMENDATION 6

That the Government undertake regulatory impact assessment for all regulatory proposals and prepare a RIS for regulatory proposals that meet the following 'materiality' thresholds:

- a) Bills that are likely to have a significant impact on business and/or on competition.
- b) Regulations (principal and amending) that are likely to impose an appreciable burden on any sector of the public.
- c) Other regulatory instruments (such as mandatory Codes of Practice, mandatory guidelines, Orders, Operating Licences etc) that are likely to impose an appreciable burden on any sector of the public.

The RIS should be reviewed for adequacy by the Better Regulation Office.

The RIS should also be made publicly available with a copy of the draft Regulation or other regulatory instruments.

In the case of Bills, the RIS should be made publicly available with any exposure draft and when the Bill is introduced in Parliament. Consideration should also be given to the Legislation Review Committee's proposal to extend the adjournment period for the second reading debate.

The NSW Government supports this recommendation and will introduce a new requirement for a best practice regulatory impact assessment process to be used in the development of all regulatory proposals. That process will be developed as part of the new guide to Best Practice Regulation.

The NSW Government will also require that a formal Regulatory Impact Statement (RIS), reporting on the regulation making process, be prepared for new and amending Bills with significant impacts and Regulations with significant impacts.

The Better Regulation Office will assess the adequacy of the RIS before proposals are considered by decision makers, and the RIS will be made publicly available.

RECOMMENDATION 7

That the Government update (or replace) the NSW best practice regulation guidelines (Government Regulation: A guide to Best Practice Regulation) to ensure these guidelines are consistent with national developments in regulatory reform. This task should be undertaken by the Better Regulation Office. The new guidelines should provide guidance on when a RIS should be prepared (ie, the 'materiality' threshold) and how a RIS should be prepared. The new guidelines should require:

- a) An identification of the problem and an assessment of the desired objectives or outcomes, including the associated risks,

The NSW Government supports this recommendation, and will develop a new guide to Best Practice Regulation.

The new guide will assist policy makers and regulators to work through the regulatory impact assessment process, including clarification of objective, consultation, and analysis of costs and benefits of options.

The guide will be consistent with relevant Council of Australian Governments (COAG) commitments, including the new best practice regulation commitments made as part of the

<p>that regulation aims to address.</p> <p>b) Consideration of the options (regulatory and non-regulatory) for achieving the desired outcomes, deciding among the alternatives on the basis of transparent criteria and an assessment as to which option involves the greatest net benefit or least net cost to the community.</p> <p>c) An assessment of the impacts (costs and benefits) of each option for consumers, business, government and the community.</p> <p>d) Consideration of cumulative and distributional impacts of regulation.</p> <p>e) Consideration of mutual recognition, unilateral recognition or harmonisation opportunities (see Recommendation 15).</p> <p>f) Routine consideration of options to simplify, repeal, reform or consolidate existing regulation.</p> <p>g) Identification of relevant regulations in other jurisdictions, and justification for any proposed divergence in NSW.</p> <p>h) A consultation program for consulting with those potentially affected in accordance with the Government's new consultation policy (see Recommendation 4).</p> <p>i) A minimum 42-day period of consultation for a RIS (see Recommendation 5).</p> <p>j) Arrangements for a post implementation review of all, or targeted sections of, new or amended regulation commensurate with the significance and contentiousness of the subject matter (see Recommendation 11).</p> <p>k) A clear implementation, enforcement and review strategy for regulations.</p>	<p>National Reform Agenda.</p>
<p>RECOMMENDATION 8</p> <p>That the Government promote through COAG standard national RIS guidelines, incorporating:</p> <p>a) materiality thresholds</p> <p>b) agreed best practice components and assessment tools</p> <p>c) simplified checklists/guides.</p>	<p>The NSW Government supports this recommendation in-principle, and is currently working with other jurisdictions, through the Council of Australian Governments (COAG), to identify consistent national approaches to better regulation, including through enhanced regulatory impact assessment .</p>

RECOMMENDATION 9

That Government departments and agencies adopt stronger risk analysis and assessment (identification and quantification) in the development and administration of the enforcement framework.

The NSW Government supports this recommendation, and will include in the new guide to Best Practice Regulation requirements that implementation be considered in the development of options and that planning for implementation and enforcement form part of regulatory proposals.

Administration and enforcement strategies will be required to be set out in RIS and Cabinet Minutes, as relevant.

Further, the NSW Government will request the Better Regulation Office to develop an information resource on risk-based enforcement, to complement the best practice regulation guide.

RECOMMENDATION 10

That the Government require all departments and agencies to develop more robust performance monitoring and public reporting against the policy objectives of regulations administered by them, including monitoring and reporting on administrative or compliance cost burdens and the timeliness of decision-making and approval processes (for example, in annual reports). In developing these monitoring and reporting measures consideration should be given to the work being carried out by the Productivity Commission and the Office of Regulation Review on regulation performance indicators.

The NSW Government supports this recommendation.

Appropriate reporting requirements will be developed in consultation with the Better Regulation Office.

This work will take account of work commissioned by COAG, and being undertaken by the Productivity Commission, on possible performance indicators and reporting frameworks across all levels of government to implement COAG's in-principle decision to adopt a common framework for benchmarking, measuring and reporting on regulatory burden.

RECOMMENDATION 11

That the Government institute post implementation reviews for significant new or amended regulation, and establish a process and accountability for collecting information on problems and impacts of new or amended regulation. Arrangements for the review should be set out in the initial RIS, and may be targeted at areas considered contentious or likely to have a significant impact on business, competition or the community.

The NSW Government supports this recommendation. The new guide to Best Practice Regulation will require that regulatory proposals include processes for post implementation monitoring and review.

RECOMMENDATION 12

That the Government amend relevant administrative requirements (ie, Premier's Memorandum) to vary the grounds for postponing the automatic repeal (or sunset) of statutory rules to enable recognition of a post-implementation review already undertaken, but to retain the existing absolute limit of five postponements (so all statutory rules are repealed, and therefore subject to review, within 10 years of commencing).

The NSW Government supports this recommendation, and will review and revise the existing staged repeal arrangements as part of its comprehensive review of current regulatory processes.

RECOMMENDATION 13

That after each five-year review of a new Act, the Government consider whether a further review within a specific period of time should be specified in any resulting amending Bill. Where a post-implementation review has been undertaken of a new Act prior to the five-year review and results in an amending Bill, consideration should be given to whether the five year review clause should be amended so that the review can be conducted within five years of the commencement of the amending Bill.

The NSW Government supports this recommendation, and will require all Legislation to be subject to a program of rolling review. An automatic review clause will continue to be included in all principal Legislation, subject to exemptions including where legislation does not have significant impacts. A new review clause will be required to be inserted following completion of a review.

The timing of reviews will be decided with regard to a range of matters including the significance and complexity of the Legislation, the likely impact of a review on affected parties, and the need to ensure reviews are rigorous and timely.

RECOMMENDATION 14

That the Government consider adopting an adaptive management approach to the reforms recommended above, by:

- a) Implementing changes by administrative action first.
- b) Within 12-18 months of the Better Regulation Office coming into operation, considering amending Schedules 1 and 2 of the Subordinate Legislation Act 1989 to:
 - Apply the Act to a wider range of regulatory instruments, based on materiality of impacts (see Recommendation 6)
 - Increase the minimum RIS consultation period from 21 to 42 days for Regulations and other regulatory instruments (see Recommendation 5)
 - Require the Minister for Regulatory Reform to certify whether or not a RIS is adequate (Recommendation 1)
 - Support the specific improvements identified for regulatory impact analysis and the updated best practice regulation guidelines (eg, cumulative impacts and cross-jurisdictional issues) (see Recommendation 7).
- c) After three years, reviewing the efficacy of the Better Regulation Office, and considering the potential costs and benefits of the role and structure of the unit.

The NSW Government supports this recommendation in-principle, and will introduce administrative requirements and amend legislation as appropriate to ensure effective implementation and transition to new arrangements.

The Office will be established administratively in January 2007. This will allow work to commence on overhauling current regulatory processes and developing the detail of new regulatory frameworks, guidance and requirements. (Specific responses to recommendations 1, 5, 6, and 7 are detailed above).

The Office will be fully operational by June 2007. The NSW Government will review the efficacy of the Better Regulation Office within three years of its commencement of operations.

RECOMMENDATION 15

That the Government:

- a) Support the establishment of the COAG Reform Council (CRC) to report on progress with the implementation of the National Reform Agenda and proposed use of payments to jurisdictions linked to the achievement of implementation goals. The Tribunal believes this will provide a necessary incentive to reduce the burdens associated with cross-jurisdictional regulatory overlaps and inconsistencies.
- b) Support the development of mechanisms by cross-jurisdictional forums (eg, Ministerial Councils) to ensure jurisdictional variations from national regulations are either legitimated by all parties or annulled.
- c) Require consideration of mutual recognition, unilateral recognition (see Recommendation 15 d) below) or harmonisation opportunities at the regulatory development stage (see Recommendation 7).
- d) Encourage greater use of regulatory approaches that eliminate, overcome or minimise cross-jurisdictional inconsistencies, such as mutual recognition, uniform regulations and 'vacating the field'. In particular, encourage greater use of recognising other jurisdictions requirements through provisions in NSW regulations (ie, unilateral recognition).
- e) Support regular review of the current exceptions and exclusions to the Australian mutual recognition scheme, and consideration of expansion of the scheme.

The NSW Government supports this recommendation, and notes that these matters are reflected in New South Wales' existing and ongoing participation in inter-jurisdictional processes and agreements.

While the NSW Government does not believe that a 'one size fits all' approach is always the best solution, consideration of the approaches to regulation in other jurisdictions will be an essential component of the new guide to Best Practice Regulation.

The Australian and Trans-Tasman mutual recognition schemes are reviewed every five years. The most recent review of the schemes was conducted by the Productivity Commission in 2003 which, among other things, considered the scope for expansion of the schemes and the management of exemptions and exclusions from the schemes.

RECOMMENDATION 16

That the Government initiate the establishment of a multi-jurisdictional taskforce to develop national standard drafting protocols and terminology for adoption in all jurisdictions.

The NSW Government recognises the importance of consistency in the drafting of legislation that has a national impact or affects businesses operating on a national basis.

To that end, the NSW Parliamentary Counsel is the Secretary of the Australasian Parliamentary Counsels' Committee which comprises the legislative drafting offices of all Australian jurisdictions and New Zealand. The Committee drafts national uniform legislation and provides a forum for the promotion of consistent styles of legislation and the exchange of ideas.