21 October 2011

BRCWG Secretariat
Deregulation Group
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
Parkes ACT 2600

Dear Sir/Madam,

I write to you in relation to the Business Regulation and Competition Working Group’s Stakeholder Consultation Paper on the Future COAG Regulatory Reform Agenda.

Business SA is South Australia’s leading business membership organisation, representing thousands of businesses through direct membership and affiliated industry associations. We represent businesses across all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Regulations and particularly red tape associated with unnecessary regulations or timely and costly paperwork are significant issues for the business community.

There are concerns regarding the prioritisation and sequencing of regulatory reforms. The Business Regulation and Competition Working Group initiative is supported and the key issues for consideration – the reach of the regulations, the costs of the regulations, both financially to businesses and to the broader economy and community and the impediments caused by the regulations – are appropriate. The benefits of removing or improving regulations should be assessed before determining the priority and sequence of regulatory reforms.

Regulatory reforms that would provide the greatest net benefits should be pursued first.

Business SA supports the four themes of reform identified in the Consultation Paper.

Regarding environmental regulation reform, Business SA supports streamlining environmental and approval processes, the development of national standards for environmental offsets and biodiversity banking and the establishment of a national threatened species list.
Other important areas of environmental regulations that require reforms are the consistency of environmental protection authority/agency licences across the country, including the duration and types of licences. There also needs to be consistency in waste management, particularly the definitions of waste and how it is to be treated – whether it can be sent to landfill, whether it is hazardous waste or whether it should be recycled and reprocessed.

Regarding reforms to enhance workforce mobility and participation, Business SA supports streamlining licencing requirements and ensuring that licences are consistent across the country, particularly the types of licences and the costs of acquiring them. This is very important in the trades. Training requirements that underpin trade licences should also be consistent across the country.

Harmonising conduct requirements is also supported and there should be consistency in the definition of a contractor across Government agencies and all tiers of Government.

Reform of the Vocational Education and Training (VET) system is required and efforts to streamline regulatory approaches currently underway are supported. South Australia is progressing VET reform and consideration should be given to implementing many of the changes happening in the State at the national level.

Regulatory reforms to improve the competitiveness of businesses, irrespective of the sector that they are in, are supported. Such reforms may include:
- fully deregulating shop trading hours
- ensuring that there is adequate competition along the entire food supply chain, so that food is affordable for consumers and excessive market power does not result in any efficient parts of the food supply chain closing down
- improving tendering processes, particularly the provision of information requirements and limiting the costs of tendering, thereby encouraging greater participation of small and medium sized businesses.

It is vital that the potential benefits of regulatory reform are, in the first instance, realised and then maintained over time. Current processes undertaken by the Productivity Commission, particularly the regulation benchmarking studies, are supported.

Post-implementation assessments and mechanisms associated with best practice and ensuring consistency are also important in guaranteeing the benefits from reforms are sustained.
Equally as important, processes need to be put in place while reforms are being debated and implemented to ensure they are successful. A telling case recently is the new Work, Health and Safety (WHS) legislation, regulations and codes of practice. These are intended to harmonise WHS requirements across Australia, but there are different clauses in legislation that is being passed by different States, reducing the extent to which harmonisation will be achieved and also reducing the benefits to business of such harmonisation. Consultation has also been rushed, which may reduce the benefits of reform.

Another factor that could help to maximise the benefits of reform is simply to write legislation and regulations using common English. This will make it easier for businesses and other affected stakeholders to understand and reduce complexity and confusion.

Business SA also provided a submission to the Productivity Commission’s Discussion Draft Research Report on Identifying and Evaluating Regulation Reforms. Some of the key points from that submission are relevant and are repeated here.

Business SA considers stocktakes of regulatory burdens to be a useful process, particularly if conducted by an independent body. However, the policy(ies) that are aligned to the regulations would ideally be analysed at the same time, to assess whether they are appropriate and whether regulations are necessary. Thus in-depth reviews are also supported. Principles-based reviews are strongly supported, particularly where they are aligned with significant reform processes that can yield substantial benefits.

Business SA supports robust benchmarking and quantitative approaches, where possible, to assess the costs and benefits of regulations and of changes to those regulations, as well as to monitor the performance of jurisdictions in reducing regulatory burdens.

It is concerning that a number of major pieces of legislation and regulations have not been subject to regulation impact statements in recent years, including those that affect all businesses, such as industrial relations legislation. Business SA thus supports the Productivity Commission’s view that post implementation reviews of such legislation and regulations assess the costs and benefits of them and recommend any necessary modifications. Business SA also supports the view that these reviews be conducted at arms-length from the responsible policy department. Ideally, such reviews would be conducted independently of Government and have broad terms of reference which would take account of the concerns of all stakeholders.
Only in cases where regulations need to be rushed through as a matter of urgency should regulatory impact statements not be mandatory.

Another key issue when reforming regulations and legislation is consultation. Stakeholders need to be given adequate time to respond to discussion papers, draft legislation and regulations. A number of recent consultation processes have been inadequate. For example, the consultation period for the carbon pricing mechanism inquiry by the Department of Climate Change and Energy Efficiency was less than three weeks. For a reform that will impact on the entire economy, this was highly inappropriate. The current consultation process on the Work, Health and Safety regulations and codes of practice has been rushed, with little time given to stakeholders to consider literally hundreds of pages of sometimes very detailed information.

To achieve the best outcomes from regulatory and other reforms, consultation processes need to provide enough time for stakeholders to properly consider potential changes.

Business SA believes that the degree of regulation needs to be more seriously considered. In many cases, only light-handed regulation is required, with a minimal level of reporting and monitoring necessary. Indeed, voluntary codes of conduct or mechanisms may achieve better results than regulations in some instances. Regulations should also focus on outcomes, rather than prescribe actions that must be followed. Outcome-focused regulations are likely to enable innovative businesses to achieve what is required at a lower cost than if they are forced to do particular things. Heavy-handed regulation should only be used when absolutely necessary, such as to minimise what would otherwise be large costs to the community of particular activities.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or rickc@business-sa.com.

Yours sincerely

Peter Vaughan

Chief Executive Officer