

Engagement of Independent Reviewer - Terms of Reference

Context

The Australian Public Service needs to be more agile and responsive to the needs of government and the public, by developing a culture of risk management rather than regulation. The current state of regulation imposed on Commonwealth entities is an obstacle to the public service making this transformation.

As part of addressing the problem, an Independent Reviewer will be engaged to assess the need for, and impact of regulations imposed on Commonwealth entities, in particular, non-corporate Commonwealth entities that engage staff under the *Public Service Act 1999* (entities).

Regulation can be set in many ways – by Parliament, through legislation; by central agencies; and by agencies practices themselves. Each source of potentially inefficient regulation is in scope for Review.

The *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* implemented a significant shift in public sector governance, incorporating a requirement for accountable authorities to manage risk, and giving them more power to set their own operational requirements, based on a risk managed approach, for example in relation to the commitment of relevant money and drawing rights of appropriations.

Objective

To:

- identify regulations that can be ceased or modified;
- assess the need for, and impact of, regulations against a set of common principles;
- recommend minimum levels of regulation required for entities to meet the needs of government and the public; and
- assess the culture of Departments and selected entities with regards to the creation and removal of self imposed requirements; make recommendations if cultural changes need to take place proportional to the risk tolerance of an agency; and identify characteristics and examples of good culture and practice.

Scope

The review will be able to draw upon the following:

- 2015 Deloitte Stocktake which is currently underway;
- the Library of Obligations developed by the Australian Tax Office;
- reviews undertaken by the Efficiency Working Group;
- Contestability Reviews;
- Capability Reviews;
- internal reviews that Departments are conducting on their own internal requirements; and

- interviews with senior officers.

Regulations are requirements that are mandatory for all or most entities, or guidance, practice or procedure that is treated as such.

Methodology

The over-arching principle for the Review is that regulators prove that regulation is needed.

The objectives of the Review will be achieved through interviews with nominated entities, in particular key staff (such as Chief Operating Officers) and senior people in each Department responsible for regulatory processes and reporting, and input from the Deloitte stocktake. The Review may also wish to seek submissions, and the work being undertaken by departments to examine the red tape they impose on themselves.

The Review may also draw on feedback from and conversations with the Deputy Secretary Working Group on Internal Red Tape, the Secretaries Sub-Committee on Transformation and the Secretaries Board.

The Review will provide a progress report to the Secretaries Sub-Committee in June 2015.

If required, the Reviewer will be supported by a team within the Department of Finance, along with support from AGD, PM&C and APSC.

Deliverables

The Reviewer will report to the Secretaries Board between July and August 2015.

The Review will:

- critically assess current regulatory arrangements;
- recommend the cessation, modification or retention of large blocks of regulation;
- identify opportunities to make structural and cultural improvements in relation to risk management with reference to good practice observed during the review; and
- set out factors /principles that influence the creation and removal of regulations into the future.

The progress and final report will be for official use only.

Engagement Strategy

In carrying out its work the Reviewer will consult key stakeholders, and may invite submissions.

Draft Principles – Internal Regulation

Internal public sector regulation should be:

- The minimum needed to achieve the public sector the Government wants
 - Proportional to the risks to be managed
 - Coherent at the system level – the same risks should not be regulated differently from different perspectives
 - Designed with best practice regulation principles in mind, including simplicity in application
 - Reviewed periodically to test their relevance and impact
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- Benefits and costs of regulatory and accountability arrangements for government are to be assessed at the Whole of Government level, not just at the level of individual agencies.
 - The Australian Government operates in a devolved environment – Ministers and Secretaries need to have flexibility and discretion, consistent with the achievement of Whole of Government goals.
 - Centralisation of specific activities needs to be judged against a business case which weighs up Whole of Government benefits and costs.
 - A presumption of the regulatory framework is to prove that regulation is needed.

The above principles form the basis for testing the suitability of current internal regulations at the Whole of Government level, and a basis for assessing agency self imposed regulation.