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Office of Best Practice Regulation
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Dear Mr Hall

Transparency and Reducing the Burden of Regulation

The Office of the Information Commissioner (OIC) has a statutory role in promoting openness in government. In partnership with the Australian and New Zealand School of Government (ANZSOG) we have recently published a series of papers on the use of transparency as a public sector management tool. The papers are available for download at: <http://www.anzsog.edu.au/research/publications/other-publications>

The Honourable Deb Frecklington MP, Assistant Minister for Finance, Administration and Regulatory Reform invited the OIC (reference TOQ-01101) to make a submission in response to the Office of Best Practice Regulation Issues Paper on Measuring and Reducing the Burden of Regulation to highlight the ways in which transparency can assist in reducing red tape. The OIC is pleased to provide the following submissions in response to the issues paper.

Transparency of information as a policy tool

Dr Gruen highlights in the paper *Transparency and Policy Implementation*¹ a number of ways that specific measures to increase transparency can be used strategically to support targeted regulatory outcomes, or as a policy alternative to more traditional and directive policy approaches such as regulation to achieve desired outcomes. Targeted transparency policies generally mandate public disclosure by corporations or other private or public organisations, of standardised, comparable and disaggregated information regarding specific products or practices to promote a defined public purpose.²

For example, the Queensland Water Commission's 'target 140' campaign, included publication of water consumption data. The campaign resulted in a saving of approximately 20,680 million litres of water (worth \$19.2 million at market rates) over an eight month period and lasting behavioural change. This regulatory result was achieved without imposing significant additional regulatory burdens. Dr Gruen identified several key factors that indicated that regulation was unlikely to be acceptable, or effective in the circumstances and also supported the success of this initiative.

Dr Gruen also examined relatively simple targeted transparency such as the use of the ratings in different jurisdictions where businesses are required to publish government assessments of compliance against standards to enable consumers to more easily identify reputational information that is particularly influential, for example in relation to food safety.

¹ Nicholas Gruen (2012) *Transparency and Policy Implementation* available at: http://www.anzsog.edu.au/media/upload/publication/95_3-Gruen-Transparency-and-Policy-Implementation.pdf

² Gruen, Page 2 of Part 2.

Another good example of targeted transparency in Australia is energy efficiency labelling on household appliances. Within the first 13 years of the implementation of the regime, the annual energy use of the average new family refrigerator fell by 50 per cent. Subsequent versions of the program in Australia and other jurisdictions have also been highly effective. OIC suggests consideration of the use of information in targeted transparency campaigns be considered as part of the revised regulatory impact processes.

Access to information collected

A key principle of the right to information framework is that information held by government is a public resource that should be made available to the public as a matter of course.³ When information is collected by regulators the starting assumption should be that this information would be made publicly available unless there are clear reasons not to.

Businesses which have provided information to regulators should have access to this information. In principle, information provided by other businesses should also be able to be made available, subject to specific limitations to access in the *Right to Information Act 2009* (RTI Act). Access to data provided through regulatory frameworks is potentially valuable to the businesses regulated and the broader public. Access to information collected allows for reporting obligations to yield a benefit rather than simply being a burden.

OIC recommends that regulators consider a means for proactively disclosing information collected. OIC can assist to ensure that proactive disclosure occurs in a manner which protects the privacy of individual's personal information. Proactively disclosed information will be of greatest value if data from multiple regulators can be interrogated via a single interface and OIC suggests that this is best achieved through collaboration on data standards and the use of linked data formats such as RDF (resource description framework).

Requests for access to government held data

Businesses not only provide information to government but are also consumers of government held data. Better access to government data can assist businesses with compliance. Currently there are still many areas within government that provide access to government held data on the basis of individual requests and cost-recovery, including in accordance with legislative access schemes with prescribed fees and processes. There is considerable red tape associated with administering individual requests for data such as managing individual charges and licensing of data use.

In the paper *Transparency and Productivity*⁴ Professor Houghton and Dr Gruen demonstrate this issue through economic modelling the benefits of moving to automated data access systems. For example, in the first six months of operation the Victorian Water Resources Data Warehouse achieved a decrease in implied costs per download from \$750.00 to \$1.45 within six months of automating data request processing. At the same time the rate of data downloads increased from 400 requests per annum to over 60,000.⁵

Similarly, the Australian Bureau of Statistics estimated savings of \$1 million per annum in handling, enquiry and transaction costs circa 2005-06 as a result of making publications and data free online and adopting creative commons licensing. Data users were estimated to have saved around \$300,000 per annum in transaction costs in addition to the \$4.7 million saved from not paying access and licensing costs. OIC recommends that regulatory systems that require individual requests or cost-recovery for access to data be reviewed to identify opportunities to reduce red-tape and improve productivity.

³See the preamble of the *Right to Information Act 2009* (RTI Act) and *Information Standard 33: Information Access and Use* (IS33) available at:
<http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/informationstandards/current/Pages/InformationAccessandUse.aspx>

⁴John Houghton and Nicholas Gruen (2012) *Transparency and Productivity: the effects of open and transparent Public Sector Information management practices on costs and productivity* available at:
http://www.anzsog.edu.au/media/upload/publication/94_2-Houghton-and-Gruen-Transparency-and-Productivity.pdf

⁵Houghton and Gruen at page 29.

Transparent performance measures

OIC supports the inclusion of regulatory targets in performance frameworks for chief executives discussed at 1.3.3 and 8.4. The issues paper notes that performance benchmarking would be published in agency annual reports and aggregated in the OBPR annual report. In the paper *Transparency and Public Sector Performance*⁶ Professor Mulgan suggests that annual reports are not in themselves a highly accessible means of providing performance data. OIC supports publication of performance against these targets in an open and accessible manner which permits easy comparison across agencies. Performance benchmarking data could also be included to support online engagement strategies discussed below.

Engagement

The Shaping Smart Regulation pages on the Queensland Government 'Get Involved' site offer a good basis for engagement. Data recorded through the provision of regulatory impact statement and regulatory reviews could be provided frequently and potentially in real-time. Inclusion of such information would enhance the richness of the engagement environment.

The use of portals and web 2.0 technologies to engage community, industry and public sector employees in red-tape reduction has also been implemented in other jurisdictions. The red-tape challenge conducted by the United Kingdom Cabinet Office⁷ is an example of an engagement strategy that appears to have generated considerable public participation.

The UK experience in implementing open government measures and engaging the public in identifying waste is discussed in more detail by Andrew Stott in the paper *Transparency in Practice: The UK Experience*.⁸ Both Stott and Mulgan highlight that even where public engagement is lower than anticipated the act of publishing the data in itself can achieve improvements in efficiency and performance.

Right to Information Act 2009 and Information Privacy Act 2009

OIC notes that the Issues Paper considers the RTI Act and *Information Privacy Act 2009* (IP Act) as low priority for review to reduce regulatory burden. OIC also notes that the RTI and IP legislation is subject to a specific review required under the legislation, during which OIC intends to make submissions regarding proposals to simplify legislative processes and reduce red tape for applicants seeking access to information.

However, as this legislative access process is intended to be used as a last resort under the RTI Act, the regulatory burden on business and the broader community is more likely to be reduced by greater proactive disclosure and use of administrative access schemes by agencies to facilitate access to information by reducing procedural requirements, delay and cost. OIC continues to promote awareness of this approach and support and monitor agencies in their implementation of these requirements.

If you would like to discuss any aspect of this submission please contact Justin Toohey on 07 3405 1111 or info@oic.qld.gov.au.

Yours sincerely

Jenny Mead
Acting Information Commissioner

⁶Richard Mulgan (2012) *Transparency and Public Sector Performance* available at: http://www.anzsog.edu.au/media/upload/publication/93_1-Mulgan-Transparency-and-Public-Sector-Performance.pdf

⁷Available at: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

⁸Andrew Stott (2012) *Transparency in Practice: The UK Experience* available at: http://www.anzsog.edu.au/media/upload/publication/100_4-Stott-Transparency-in-Practice.pdf