

# Auditor-General of Queensland

## Executive Summary

Report to Parliament No. 6 for 2009

Providing the information required to  
make good regulation

A Performance Management Systems Audit



# 1. Executive Summary

## 1.1 Audit overview

Parliament makes regulations by passing primary and subordinate legislation primarily to protect the community and the environment from adverse events. To make good regulations, the government and Parliament need information that the proposed regulation is the best way to solve the problem and that the appropriate analysis and consultation has occurred. This information is generated in the development process and is provided with the regulation as explanatory materials to allow the Parliament to assess the appropriateness of the proposed regulatory solution.

Business and the community are regularly raising concerns over what they perceive as excessive 'red tape' or unnecessary bureaucracy, which can prove to be a barrier to industry and business growth. In its 2007 report *A Scorecard of State Red Tape Reform*<sup>1</sup>, the Business Council of Australia (BCA) assessed that Queensland had an adequate approach to regulation but there was clear room for improvement.

My report presents the results of a performance management systems audit conducted under the authority of the *Auditor-General Act 2009* into the systems to provide the information required to make good regulations in Queensland.

It is pleasing to note that all audit recommendations have been accepted by all of the agencies audited.

## 1.2 Audit opinion

Each of the four line agencies and the two central agencies audited demonstrated particular strengths in their approach to providing information to make good regulation. The audit highlighted that while many of the staff involved in developing regulations are highly skilled and had gained significant expertise, opportunities for improvement of systems exist across all of the agencies audited. I found that:

- There is room for improvement in the completeness of the information in some Explanatory Notes (EN) and Regulatory Impact Statements (RIS) tabled when regulations are introduced to the Legislative Assembly. Information on the need for the regulation and its impacts could be more fully explained. This is occurring partly because the agencies' systems to assess options and the need for and impact of proposed regulatory solutions, are not always well documented nor being applied consistently. Critical information such as the costs of new and amended regulations and the full impact on business and the community are, in many cases, not included in sufficient detail.
- The guidance material available to support public sector agencies in the development of good regulations has been revised at different times but there has not been a systemic review to assess the effectiveness of the suite of materials. The *Regulatory Impact Statement Guidelines* which apply to a small proportion of subordinate legislation were revised in 2009 to reflect the principles of best practice. There is however, no overarching set of guidelines for all regulations that clearly outline the principles of best practice and how to apply them in implementing government policy. There is very little training available for agency officers on how to develop effective and efficient regulations, and none on how to implement best practice principles.
- Treasury Department have undertaken a leadership role in the national and State regulatory reform agenda across Queensland. There are a range of initiatives planned as part of the *Smart Regulation Reform Agenda* and plans are in place to continue to reform the regulatory development process.

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<sup>1</sup> Business Council of Australia, *A Scorecard of State Red Tape Reform*, 2007.

- A 'gatekeeper' responsible for coordinating the regulatory reform process for both primary and subordinate legislation in Queensland was not in place. A gatekeeper for the regulatory process would contribute significantly to ensuring that the checks and balances are working effectively and that good regulations (both primary and subordinate) are being developed that minimise any unnecessary burden on business and the community.

I recognise that governments frequently need to quickly implement policy in response to community and business concerns about safety, health and environmental issues. This often puts pressure on agencies to deliver regulatory solutions within short timeframes. At times this can lead to agencies having to adapt normal regulatory development processes to meet these timeframes. If staff developing regulations had access to enhanced tools and training to support them to provide the required information for the consideration of Parliament, they would be better able to meet the legislative requirements while still meeting the timeframes of government. When regulations are prepared in haste, the analysis and consultation used to prepare the information provided to Parliament is often lessened. The risk is that inefficient regulations will be created, adding to the burden on business and the community.

## 1.3 Key findings

While the decision to undertake this audit was informed by a number of assessments including but not limited to those undertaken by the Productivity Commission and the BCA, the audit opinion is based solely on the evidence collected and analysed during the desk audit and fieldwork. The detailed audit conclusions are outlined in the body of the report.

The audit conclusions are based on audit criteria that were developed from an analysis of the Queensland legislative requirements, the Council of Australian Governments' (COAG) Principles of Best Practice and were informed by expectations set by the Queensland Scrutiny of Legislation Committee. The audit has been conducted under the Auditor General of Queensland Auditing Standards.

### Developing regulation

The lack of detail in some of the information in the explanatory materials, together with the absence of well documented systems to assess options and the need for and impact of proposed regulation, means that information provided for Parliament's consideration is in some cases incomplete and lacking in adequate consultation and vital analysis.

The systems of the agencies audited are not resulting in explanatory materials that provide full and comprehensive information against the legislative requirements. The key areas for improvement are in the provision of information in the following areas:

- costing information
- analysis of consistency with fundamental legislative principles
- providing clear and useful objectives.

None of the four line agencies audited had comprehensive documentation of their policies and procedures in place to guide the making of regulation, the development of explanatory materials or to ensure compliance with the legislative requirements. The risk to these agencies is that there is no clear direction or process to guide officers to ensure a consistent and compliant approach is taken on each piece of regulation developed.

Instead of documented policies and procedures for developing regulation, audit found the *Queensland Cabinet Handbook* was used as the primary source of guidance for the development of regulation by most agencies. Although the Cabinet Handbook does not purport to be a policy handbook, audit found that most agencies use it as one. The handbook encompasses the entire Cabinet process through preparation, lodgement and consideration of Cabinet business, as well as ongoing administrative aspects of the maintenance of Cabinet records.

Policy officers who only refer to the Cabinet Handbook risk missing vital stages in the policy development cycle and not providing the required information for parliament's consideration.

The agencies audited generally have experienced officers who undertake the regulation making process. The reliance on officers' expertise is heightened without documented processes. The risk to agencies is that there may be a loss of expertise when officers leave the agency or move to other roles, resulting in process inefficiencies. The lack of formal systems and documented policies also leads to individual policy officers adopting inconsistent approaches to the development of regulations.

During this audit, I noted that the non-compliance issues were similar to those in my *Report No. 1 for 2008 Enhancing Accountability through Annual Reporting*. The information reported to parliament through agencies' annual reports did not fully comply with legislation, was incomplete and ambiguous in the portrayal of agencies' accountability and performance.

The similarity between my audits highlights the continuing risk of agencies relying on guidelines and handbooks that are not well designed for the purpose agencies ultimately use them. For Report No. 1 for 2008 I found that the 2007 *Annual Report Guidelines for Queensland Government Agencies*, prepared by the Department of the Premier and Cabinet, did not provide adequate guidance to ensure compliance with legislative requirements or transparency and accountability. For this audit I found that the guidance provided to develop regulations is not effective in ensuring that explanatory materials to be tabled in parliament are fully compliant and clearly explain why the regulations are needed and what will be the likely impacts. The risk identified in both audits, is that incomplete information has been provided to parliament, due to inadequate guidance.

Another area of concern is one that I have reported before – and that is a lack of systems in government to generate and report reliable costing data. In various reports to parliament since 2005, I have highlighted the absence of systems in place for agencies to provide costs relating to:

- departmental fees and charges<sup>2</sup>
- costing details to support key performance indicators.<sup>3</sup>

The lack of effective costing systems is highlighted again in this audit where none of the agencies audited could provide adequate evidence of how they identify costs to government, business and the community. As a consequence, agencies have problems reporting these costs to parliament.

## Supporting quality regulation

Guidance and support is available to policy officers developing regulations from a range of sources and experts. Audit found that although the guidance materials provided by central agencies have been updated and benchmarked, they do not reference the COAG's principles of best practice in regulation or provide specific guidance in how policy officers should incorporate the principles in the development of regulations. The lack of coordinated and cohesive guidance from central agencies has resulted in a siloed and ad hoc approach to regulation making. Agencies are relying on the expertise of their policy staff without providing on-going training or clearly documented appropriate policy frameworks in which to operate. Other States have already provided comprehensive guidance on how to apply the COAG principles of best practice regulation.

The absence of centrally coordinated or agency based training means that the skills necessary for the efficient drafting of regulations that align with best practice can not be assessed or systematically developed. Given the heavy reliance of agencies on the skills and expertise of their staff, greater support for policy officers would seem to be a prudent investment.

2 Queensland Audit Office, Report to Parliament No 8 for 2006, *Results of Performance Management Systems Audit of the Management of Departmental Fees and Charges*.

3 Queensland Audit Office, Report to Parliament No 5 for 2005, *Results of Performance Management Systems Audits of Output Performance Reporting – Phase 2*.

## 1.4 Summary of recommendations

It is recommended that:

### Line agencies

- agencies develop and implement policies and procedures to enable them to fully address the requirements of the *Legislative Standard Act 1992* and *Statutory Instruments Act 1992* (SIA) when developing EN and RIS for proposed regulation
- agencies incorporate into their policies and procedures, the 2007 COAG's Principles of Best Practice to fully inform parliament and aid in its decision making processes when considering regulatory solutions.

### Central agencies

- central agencies review their guidance materials to align them with the principles of best practice regulation
- Department of the Premier and Cabinet work with Treasury Department to facilitate the development of a training framework for policy officers developing regulations
- central agencies collaborate to identify and develop the role of a regulatory gatekeeper to ensure a smooth and consistent governmental approach to developing quality regulation (both primary and subordinate).

## 1.5 Responses to the report

### 1.5.1 Department of Premier and Cabinet

The Director-General stated in his response dated 28 July 2009:

*'Regulation influences almost every aspect of society, and has a crucial role to play in delivering benefits for the economic, social, environmental, and legal wellbeing of the community. However, it is important to find an appropriate balance between the benefits and costs of regulation to deliver the best possible outcomes for the community, business and government.*

*The Queensland Government has, and maintains, a longstanding commitment to improve Queensland's regulatory environment. Through the Queensland Smart Regulation Reform Agenda and the National Partnership Agreement to Deliver a Seamless National Economy, Queensland is implementing regulatory and competition reforms to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment.*

*While I support the thrust of the recommendations in your report, I consider that some of the supporting commentary in the report does not necessarily follow from the analysis undertaken.*

*I note that in the section on Regulatory Reform (Section 2.1), the draft report states:*

*Queensland's performance does not compare well to the progress achieved by other States.*

*Section 2 then provides evidence from the Business Council of Australia's (2007) A Scorecard of State Red Tape Reform (BCA scorecard) and the 2008 Productivity Commission Report, Performance Benchmarking of Australian Business Regulation: Quantity and Quality (PC Report) to support this conclusion.*

*I draw your attention to the results of the same BCA scorecard publication as it indicates that only two other states (South Australia and Victoria) received better overall assessments than Queensland. All other states and territories assessed received equal or lower overall assessments than Queensland.*

*In relation to the Volume of Regulation measure included in the PC Report, the essential point remains that pages of legislation is a poor proxy for*

regulatory burden, a point that the PC Report itself notes. In this context the prominence afforded to the pages of regulation measure of regulatory burden in the draft report is difficult to understand, as is drawing any conclusions on this measure.

I note that comparative assessments of regulatory burden are difficult to make. However, I do not support the conclusion that Queensland's performance does not compare well to the progress achieved by other states and territories based upon QAO's interpretation of the results of the BCA Scorecard and the PC Report.

I acknowledge that you consider as one of your key findings in Section 1.2 that there is 'room for improvement in the completeness of the information in some explanatory notes and regulatory impact statements'.

It is of course important to continue to improve the quality of explanatory notes and regulatory impact statements.

In Section 5.4, the draft report provides a summary of the assessment of the information provided to Parliament in the explanatory notes. I note that out of the nine areas of the Legislative Standards Act (LSA) assessed across the 14 explanatory notes audited by the QAO, 16 out of the 126 audited areas were found in the opinion of the QAO to require 'room for improvement in the completeness of information'. The assessment of whether or not more information should have been provided is necessarily subjective.

Nevertheless, I note the recommendations that you have raised within the draft report and agree that improvements could be implemented to ensure better guidance and support by central agencies in the development of regulation by line agencies.

#### **Recommendation 1:**

**Line agencies develop and implement policies and procedures to enable them to fully address the requirements of the Legislative Standard Act 1992 and Statutory Instruments Act 1992 when developing Explanatory Notes and Regulatory Impact Statements for proposed regulation.**

I note the above recommendation and acknowledge that more work can be done to improve the quality of Explanatory Notes and Regulatory Impact Statements. However, to ensure the consistency of compliance with legislative standards across the Queensland Government, it is more appropriate for central agencies to develop whole-of-Government policies and procedures, to be supported by each line agency implementing their own internal procedures to ensure compliance. My view is that adopting a whole-of-Government approach to policies and procedures is essential to ensuring that a standards and quality control measures are applied across government.

With respect to requirements of the Legislative Standards Act 1992, the Department of the Premier and Cabinet will develop guidelines and templates for explanatory notes for inclusion in the guidance material currently provided to ensure that the requirements of the Legislative Standards Act 1992 are met.

With respect to the Statutory Instruments Act 1992 (SIA), the Queensland Office for Regulatory Efficiency will update existing policies and procedures, including explicit incorporation of the 2007 COAG Principles of Best Practice Regulation, to support agencies in fully addressing the requirements of the SIA. Both the Department of the Premier and Cabinet and the Queensland Office for Regulatory Efficiency will establish systems which require agencies to demonstrate proper consideration of regulatory best practice principles in developing the proposed regulation and that the requirements of the LSA or SIA have been addressed.

**Recommendation 2:**

**Line agencies incorporate into their policies and procedures, the 2007 Council of Australian Government (COAG) Principles of Best Practice to fully inform Parliament and aid in its decision making processes when considering regulatory solutions.**

*The Department of the Premier and Cabinet supports this recommendation.*

*Existing Queensland Government guidance materials are substantially consistent with the COAG Principles of Best Practice.*

*In implementing the enhanced Queensland regulatory development system as part of the Smart Regulation Reform Agenda, the Department of the Premier and Cabinet and the Queensland Office for Regulatory Efficiency will update existing whole-of-Government policies and procedures to explicitly incorporate the COAG Principles of Best Practice and establish whole-of-Government systems which require agencies to demonstrate proper consideration of regulatory best practice principles when developing legislation or regulation.*

*The Department of the Premier and Cabinet agrees that each agency must put in place its own internal procedures to ensure compliance with the whole-of-Government policies.*

**Recommendation 3:**

**Central agencies review their guidance materials to align them with the principles of best practice regulation.**

*The Department of the Premier and Cabinet supports this recommendation and will review its guidance material and, where applicable, ensure alignment with the principles for best practice regulation.*

*In implementing an enhanced Queensland regulatory development system as part of the Smart Regulation Reform Agenda, the Department of the Premier and Cabinet and Queensland Office for Regulatory Efficiency will ensure that guidance materials fully align with the COAG Principles of Best Practice Regulation.*

**Recommendation 4:**

**The Department of the Premier and Cabinet work with Treasury Department to facilitate the development of a training framework for policy officers developing regulations.**

*The Department of the Premier and Cabinet supports this recommendation.*

*In implementing the enhanced Queensland regulatory development system, the Queensland Office for Regulatory Efficiency and the Department of the Premier and Cabinet will ensure that there is an appropriate training framework for policy officers. This training framework will build on the existing frameworks in place offered by Queensland Treasury and the Department of Premier and Cabinet.*

**Recommendation 5:**

**Central agencies collaborate to identify and develop the role of regulatory process gatekeeper to ensure a smooth and consistent Governmental approach to developing quality regulation.**

*The Department of the Premier and Cabinet supports this recommendation.*

*The Department of the Premier and Cabinet and the Queensland Office for Regulatory Efficiency will undertake to further promulgate regulatory best practice across the Queensland Government through appropriate guidance materials and advisory support. However, agencies will continue to be responsible for complying with whole-of-Government policies and procedures. Full implementation of the enhanced system will occur as early as possible in 2010.'*

## 1.5.2 Treasury Department

The Under Treasurer stated in his response dated 22 July 2009:

*'The Report is the outcome of your recent Performance Management Systems Audit of the systems and frameworks that support the development of regulations.*

*This letter responds to specific issues and the recommendations of your Report. These issues have been discussed between our respective officers and I would like to acknowledge the extent to which Queensland Treasury's comments and additional analysis have been taken on board in the development of the Report.*

*Before addressing the specific issues and recommendations of your Report, I would first like to outline the significant body of work that has been undertaken and will continue to be advanced by Queensland Treasury in relation to regulatory reform.*

*The Queensland Government has a long standing commitment to improve Queensland's regulatory environment. The Government is now strengthening this regulatory reform agenda by taking action on two main fronts to put in place a regulatory environment that delivers better economic, social and environmental outcomes.*

*In December 2008, the Queensland Government, along with other Australian jurisdictions, committed to a National Partnership Agreement to Deliver a Seamless National Economy. Under this agreement, Queensland is implementing regulatory and competition reforms in 36 key areas to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment. Harmonisation of these regulations across Australian jurisdictions will contribute to reducing costs incurred by business in complying with differing and inconsistent regulation across jurisdictions. These reforms are being progressively implemented over the period 2008-13.*

*This is arguably the largest suite of regulatory reforms undertaken since the national competition reforms of the early 1990s. The reform areas have been selected to drive maximum benefit for the national economy.*

*In addition to this national reform agenda, Queensland Treasury, through the Queensland Office for Regulatory Efficiency, is implementing the Government-endorsed Smart Regulation Reform Agenda, including an innovative five-point action plan. The plan aims to reduce and prevent unnecessary regulatory burden on business, community and government.*

*This plan builds on previous reform work by tackling the quantity of existing regulatory stock and the quality of future regulation simultaneously. Key to this is eliminating unnecessary and excessive regulatory requirements and streamlining remaining areas of legislation where possible, while preserving and strengthening community safeguards and protections with best practice regulation.*

*These key actions are being progressed through the following initiatives under the Smart Regulation Reform Agenda:*

- 1. Queensland Regulatory Simplification Plan 2009-13. This initiative is focused at reducing unnecessary regulatory burden through a phased program of reviews by all agencies of their stock of existing regulation. The plan targets an initial reduction of \$150 million per annum in the compliance burden to business and the administrative burden to government by the end of 2012-2013.*

- 2. An enhanced regulatory development system. This initiative is focused at preventing unnecessary regulatory burden through the introduction of a streamlined, more rigorous and harmonised regulatory development and review system that improves the quality of future legislation and regulation. This system is being progressively implemented through significant reform of existing arrangements, policies and processes, and will be fully implemented as early as possible in 2010.*

*These Queensland Government initiatives are based on regulatory best practice principles, address COAG regulatory reform commitments, and support the making of 'good' regulations.*

*Attachment 1 sets out comments with respect to specific issues raised in your Report.*

*I support your recommendations and agree that improvements can be made to the regulatory development and review arrangements, policies and processes across the Queensland Government to improve the quality of future legislation and regulation. Attachment 2 details Queensland Treasury's response to each of the recommendations in your draft Report.*

*Queensland Treasury commitments in response to your recommendations will be incorporated into the Queensland Office for Regulatory Efficiency's significant work program to be delivered in collaboration with the Department of the Premier and Cabinet.*

*This work to strengthen the current regulatory environment in Queensland through the progressive implementation of the enhanced regulatory development system will address the need for: (i) line agencies to put in place policies and procedures to ensure compliance with whole-of-government policies and procedures relating to development of regulations; and (ii) central agencies to better support line agencies in their compliance with best practice regulation.*

*The progressive implementation of this system including commitments to your recommendations will be fully operational across the Queensland Government as early as possible in 2010.*

## **Attachment 1**

### **QUEENSLAND TREASURY COMMENTS ON REPORT OBSERVATIONS**

#### **Volume of regulation (section 2.1, page 7)**

*The use of a page count of regulation is not an accurate indicator of regulatory burden. The Productivity Commission Report itself notes that "this information only provide a general indication of the volume of regulation in each jurisdiction. It does not indicate the regulatory burden on business from that regulation".*

*Queensland's comparative performance in the Productivity Commission benchmarking study reflects the range and size of sectors and activities undertaken in the Queensland economy. It is also attributable to Queensland's preferred inclusions (eg. tables of provisions, end notes, annotations, transitional provisions and covers) and distinctive plain English style (eg. generous use of white space, footnotes and separation of provisions) to support improved interpretation, understanding, transparency and readability. Having adopted this approach since 1991, most of Queensland's statute book is in plain English. These practices promote greater transparency and easy reference by users.*

#### **Regulatory making process (section 2.3, page 11)**

*Queensland Treasury acknowledges the importance of the benchmarks against which the Business Council of Australia (BCA) has rated state performance. However, Queensland Treasury considers that the BCA assessment against these benchmarks is limited in scope and does not necessarily provide a full account of the regulatory processes adopted in*

Queensland.

For example, against the principles for good regulation making, the BCA did not report on Queensland's Public Benefit Test process which applies to both primary and subordinate legislation for restrictions on competition and requires consideration of alternative options and a cost-benefit analysis. Consideration of Queensland's Public Benefit Test process would have been necessary to assess consistency with the COAG principles used in the BCA assessment.

#### **"Ad hoc" processes (chapter 3, pages 15, 21, 22)**

Queensland Treasury believes the audit conclusion that agencies have a series of ad hoc and inconsistent processes for the development of regulation may not recognise the need for flexibility in the process to accommodate the diverse range of legislation and regulation agencies deal with. Queensland Treasury believes its use of highly experienced officers to prepare primary legislation, and its compliance with the Government processes set down in the Queensland Cabinet Handbook and Queensland Legislation Handbook more than adequately addresses this concern. In addition, greater consideration needs to be taken of the relatively extensive templates and other material provided by the Queensland Treasury website, and particularly, the guidance provided by the Cabinet Legislation and Liaison Office and by one-on-one consultation and advice.

#### **Compliance of Explanatory Notes with the Legislative Standards Act 1992 (section 3.2 and appendix 5.4, pages 18 and 37)**

Comments in the Report reflect the view of the Auditor-General that there is not full compliance with the Legislative Standards Act 1992 of the Explanatory Notes relating to the Revenue and Other Legislation Amendment Bill 2008, the Future Growth Fund Bill 2006 and the Queensland Competition Authority Amendment Bill 2008.

While it is valid to indicate areas of improvement in the level of detail provided in fulfilling the requirements of section 23 of the Legislative Standards Act 1992 (as indicated in the notes to Appendix 5.4), Queensland Treasury believes this should not be taken as an indication of a lack of full compliance with that legislation.

In particular, the Report indicates further detail could be provided about the extent the sampled Explanatory Notes meet the requirement of an assessment of consistency with fundamental legislative principles. Queensland Treasury's view is that, of the Explanatory Notes sampled, the Explanatory Note for the Future Growth Fund Bill 2006 was fully compliant with the requirements of the Legislative Standards Act 1992.

This is supported by the Scrutiny of Legislation Committee which has stated that "Explanatory Notes should not simply assert that a bill is consistent with fundamental legislative principles in all but the clearest cases" (Report to Parliament on the Committee's Monitoring of the Operation of the Explanatory Notes System, page 11, paragraph 1, Scrutiny of Legislation Committee (2001)). Queensland Treasury's view is that the Future Growth Fund Bill 2006 falls squarely within the category of being a "clear case" and thus a simple assertion as to consistency with the principles is sufficient. This was also confirmed by the fact that the Scrutiny of Legislation Committee indicated in Alert Digest No 6 of 2006 in respect of the Bill that "the committee considers that this bill raises no issues within the committee's terms of reference".

With respect to the other bills audited, Queensland Treasury notes that the Scrutiny of Legislation Committee was satisfied with the further information provided by the Treasurer in response to their requests.

#### **Support and advice by the Queensland Office for Regulatory Efficiency (section 3.3, pages 23 and 30)**

The Queensland Office for Regulatory Efficiency actively supports agencies through the regulatory development process including determination of appreciable costs by providing prompt and comprehensive advice, guidelines on the preparation of regulatory impact statements, training on the regulatory impact statement process where sought, and information seminars on the regulatory reform agenda.

The role and activities of the Queensland Office for Regulatory Efficiency is aligned with its delegated responsibility for administering Section 5 of Statutory Instruments Act 1992 as noted later in the Report.

### **COAG Best Practice Principles (sections 4.2 and 4.6, pages 24, 27 and 29)**

Collectively, Queensland's legislative requirements and regulatory guidance materials (including the Public Benefit Test Guidelines and Regulatory Impact Statement Guidelines) are substantially consistent with the COAG Best Practice Principles and reflect the intent of these principles.

All guidance material will explicitly refer to the COAG principles when updated for the full implementation of the enhanced Queensland regulatory development system.

### **COAG Regulatory Reform Plan commitments (section 4.5, page 32)**

These commitments are now included in the National Partnership Agreement to Deliver a Seamless National Economy and are required to be implemented by 30 June 2009.

Queensland has made significant progress with meeting its commitments under the COAG Regulatory Reform Plan including the Treasurer's role in leading and directing the national and State reform agendas across the Queensland Government, improvements to the Regulatory Impact Statement processes, and the current development of the enhanced Queensland regulatory development system.

### **Central 'gatekeeper' (section 4.6 and 4.7, pages 27, 33 and 34)**

Whilst the Queensland Office for Regulatory Efficiency is not a central 'gatekeeper', it plays an active role in supporting the Treasurer in his role in leading and directing the development and implementation of the Queensland regulatory reform agenda at a whole-of-government level. It is also supported by the Senior Officers Network for Regulatory Reform, who champion regulatory best practice within each State Government department and assists with driving a culture change across the Queensland Government.

## **Attachment 2**

### **QUEENSLAND TREASURY RESPONSE TO RECOMMENDATIONS**

Recommendation 1: Agencies develop and implement policies and procedures to enable them to fully address the requirements of the Legislative Standards Act 1992 and the Statutory Instruments Act 1992 when developing Explanatory Notes and Regulatory Impact Statements for proposed regulation.

Queensland Treasury supports this recommendation.

However, a whole-of-Government approach to the development of the appropriate policies and procedures is necessary to ensure a consistent and efficient standard of legislative and regulatory development practices across government. Within this whole-of-Government approach, each agency must continue to take ownership and responsibility for ensuring that it has satisfactorily complied with whole-of-government policies and procedures.

Queensland Treasury notes that the Department of the Premier and Cabinet has primary administrative responsibility for the Legislative Standards Act 1992 (LSA) and the Statutory Instruments Act 1992 (SIA). The Queensland

*Office for Regulatory Efficiency within Queensland Treasury has delegated responsibility for Part 5 of the SIA.*

*The Queensland Office for Regulatory Efficiency with the Department of the Premier and Cabinet will, as part of implementing the enhanced Queensland regulatory development system:*

- 1. update existing policies and procedures, including explicit incorporation of the 2007 COAG Principles of Best Practice Regulation, to support agencies in fully addressing the requirements of the LSA and the SIA when developing Explanatory Notes and Regulatory Impact Statements for proposed regulation; and*
- 2. establish whole-of-government systems which require agencies to demonstrate proper consideration of regulatory best practice principles in developing a proposed legislation or regulation, and that the requirements of the LSA or SIA have been addressed.*

*Queensland Treasury agrees that each agency must put in place its own internal policies and procedures to ensure compliance with the whole-of-government policies and procedures.*

*Recommendation 2: Agencies incorporate into their policies and procedures, the 2007 Council of Australian Government (COAG) Principles of Best Practice to fully inform Parliament and aid in its decision making processes when considering regulatory solutions.*

*Queensland Treasury supports this recommendation.*

*Existing Queensland Government guidance materials are substantially consistent with the COAG Principles of Best Practice.*

*In implementing the enhanced Queensland regulatory development system, the Queensland Office for Regulatory Efficiency and the Department of the Premier and Cabinet will update existing whole-of-government policies and procedures to explicitly incorporate the COAG Principles of Best Practice and establish whole-of-government systems which require agencies to demonstrate proper consideration of regulatory best practice principles when developing legislation or regulation.*

*Queensland Treasury agrees that each agency must put in place its own internal policies and procedures to ensure compliance with the whole-of-government policies and procedures.*

*Recommendation 3: Central agencies review their guidance materials to align them with the principles of best practice regulation.*

*Queensland Treasury supports this recommendation.*

*The Queensland Office for Regulatory Efficiency released in June 2009 a revised version of the Regulatory Impact Statement Procedures and Requirements Guide. The revised guide provides more comprehensive information on the processes and procedures policy officers need to follow to ensure regulatory proposals meets statutory requirements and regulatory best practice.*

*In implementing the enhanced Queensland regulatory development system, the Queensland Office for Regulatory Efficiency and the Department of the Premier and Cabinet will ensure that guidance materials fully align with the COAG Principles of Best Practice Regulation.*

*Recommendation 4: Department of the Premier and Cabinet work with Queensland Treasury Department to facilitate the development of a training framework for policy officers developing regulations.*

*Queensland Treasury supports this recommendation.*

*In implementing the enhanced Queensland regulatory development system, the Queensland Office for Regulatory Efficiency and the Department of*

the Premier and Cabinet will ensure that there is an appropriate training framework for policy officers. This training framework will build on the existing frameworks in place offered by Queensland Treasury and the Department of the Premier and Cabinet.

**Recommendation 5:** Central agencies collaborate to identify and develop the role of regulatory process gatekeeper to ensure a smooth and consistent Governmental approach to developing quality regulation.

Queensland Treasury supports this recommendation.

Queensland Treasury is currently responsible for providing advice to agencies on policies and procedures to support Public Benefit Tests and Regulatory Impact Statements.

The Queensland Office for Regulatory Efficiency was transferred to Queensland Treasury from the former Department of State Development in early 2008 to support the Treasurer in his role of leading and directing the national and State regulatory reform agenda across the Queensland Government and ensure regulatory reform is centrally driven.

□ In implementing an enhanced Queensland regulatory development system, the Queensland Office for Regulatory Efficiency and the Department of the Premier and Cabinet will undertake to further promulgate regulatory best practice across the Queensland Government through appropriate guidance materials and advisory support. However, agencies will continue to be responsible for complying with whole-of-government policies and procedures. Full implementation of the enhanced system will occur as early as possible in 2010.'

### 1.5.3 Department of Justice and Attorney-General

The Director-General stated in his response dated 22 July 2009:

#### **'Recommendation 1**

Line agencies develop and implement policies and procedures to enable them to fully address the requirements of the Legislative Standard Act 1992 and Statutory Instruments Act 1992 when developing Explanatory Notes and Regulatory Impact Statements for proposed regulation.

I note the above recommendation and acknowledge that more work can be done to improve the quality of Explanatory Notes and Regulatory Impact Statements. However, to ensure the consistency of compliance with legislative standards across the Queensland Government, it is more appropriate for central agencies to develop whole-of-Government policies and procedures, to be supported by each line agency implementing their own internal procedures to ensure compliance.

My view is that adopting a whole-of-Government approach to policies and procedures is essential to ensuring that a standards and quality control measures are applied across government. My Department will ensure that procedures are implemented to comply with the whole-of-Government standards.

With respect to requirements of the Legislative Standards Act 1992 the Department of the Premier and Cabinet will develop guidelines for explanatory notes for inclusion in the guidance material to ensure that the requirements of the Legislative Standards Act 1992 are met.

With respect to the Statutory Instruments Act 1992 (SIA), the Queensland Office of Regulatory Efficiency will update existing policies and procedures, including explicit incorporation of the 2007 COAG Principles of Best Practice Regulation, to support agencies in fully addressing the requirements of the SIA.

Both the Department of the Premier and Cabinet and the Queensland Office of Regulatory Efficiency will establish systems which require agencies to demonstrate proper consideration of regulatory best practice principles in

developing the proposed regulation and that the requirements of the LSA or SIA have been addressed.

## **Recommendation 2**

*Line agencies incorporate into their policies and procedures, the 2007 Council of Australian Government (COAG) Principles of Best Practice to fully inform Parliament and aid in its decision making processes when considering regulatory solutions.*

*While the existing Queensland Government Regulatory Impact Statement Procedures and Requirements are broadly consistent with the COAG Principles of Best Practice Regulation, the proposed actions for the previous recommendation will also address this recommendation by ensuring full alignment of Queensland Government guidance materials with these COAG principles.'*

### **1.5.4 Department of Environment and Resource Management**

The Acting Director-General stated in his response dated 22 July 2009:

*'I note the issues raised in your draft Report regarding explanatory notes and Regulatory Impact Statements (RIS) and I acknowledge that it is important to continue to improve the quality of explanatory notes and RIS.*

*However, to ensure the consistency of compliance with legislative standards across the Queensland Government, it is more appropriate for central agencies to develop whole-of Government policies and procedures, to be supported by each line agency implementing their own internal procedures to ensure compliance. My view is that adopting a whole-of-Government approach to policies and procedures is essential to ensuring that standards and quality control measures are applied across government.*

*With respect to requirements of the Legislative Standards Act 1992, the Department of the Premier and Cabinet will develop guidelines and templates for explanatory notes for inclusion in the guidance material currently provided to ensure that the requirements of the Legislative Standards Act 1992 are met.*

*With respect to the Statutory Instruments Act 1992 (SIA), the Queensland Office for Regulatory Efficiency will update existing policies and procedures, including explicit incorporation of the 2007 COAG Principles of Best Practice Regulation, to support agencies in fully addressing the requirements of the SIA. Both the Department of the Premier and Cabinet and the Queensland Office for Regulatory Efficiency will establish systems which require agencies to demonstrate proper consideration of regulatory best practice principles in developing the proposed regulation and that the requirements of the LSA or SIA have been addressed.*

*I will ensure that this department will implement policies and procedures to ensure compliance with the whole-of-Government frameworks.*

*I support your recommendations that central agencies review their guidance materials and develop a training framework. Officers from the department will work closely with central agencies to ensure that the whole-of-Government frameworks are implemented in a way that will result in enhancements to the processes of the department.*

*The department is also in the process of establishing a Policy and Legislation Strategy Group which will, amongst other things, perform the role of the former Department of Natural Resources and Water's Legislative Oversight Committee referred to on page 17 of your draft report. That Group will be tasked with developing the 'more complete set of policy documents' that your report suggests will ensure that clear and documented processes are in place to meet the agencies' legislative responsibilities.'*

## 1.5.5 Department of Employment, Economic Development and Innovation

The Director-General stated in his response dated 20 July 2009:

*'Responses to the report findings and recommendations on behalf of the OLGR are being coordinated by the Queensland Office for Regulatory Efficiency (QORE) within the Queensland Treasury Department and will be submitted through the Under-Treasurer as the OLGR was previously part of the Treasury Department, prior to the Machinery of Government changes.*

*I will provide some brief comments in relation to the OFT which is now within the DEEDI portfolio. The OFT takes seriously the obligations imposed by the principles of best practice regulation and the obligations imposed under the Legislative Standards Act 1992 and the Statutory Instruments Act 1992. It is pleasing to see that the four pieces of legislation (two bills and two regulations) administered by the OFT and examined during the audit were found to be fully compliant with the explanatory note requirements imposed by the Legislative Standards Act 1992 and the regulatory impact statement (RIS) requirements imposed by the Statutory Instruments Act 1992.*

*The commentary in your draft report notes the importance of appropriate training of policy officers responsible for developing regulation. I agree that such training is an important way to supplement experience and expertise (gained both within and outside the public service) and mentoring processes used to develop staff. The OFT regularly utilises training programs designed to develop appropriate skills required of policy officers. Examples include Institute of Public Administration Australia courses such as 'Practical Skills for Policy Officers' and 'Turning Policy into Legislation' which contains guidance on compliance with obligations imposed by the Legislative Standards Act 1992 – including fundamental legislative principles - and requirements imposed by the Statutory Instruments Act 1992.*

*The OFT recognised the importance of the Council of Australian Government's guidelines on best practice regulation some time ago when the Office arranged for two regulatory impact assessment experts from the Commonwealth Office of Regulatory Review to travel to Queensland to present a workshop on compliance with regulatory impact assessment processes. In addition to that, most fair trading policy officers have completed the RIS training offered by the QORE. Other training arranged by the Office has included a presentation at the Queensland Parliament by the Scrutiny of Legislation Committee's research officer on the work of the Committee.*

*I understand the Director-General of the Department of the Premier and Cabinet is also responding to you with detailed comments on all the recommendations in your draft report. This department will comply with the strategies put in place by central agencies to address the concerns raised in your draft report.*

*I would like to take this opportunity to confirm DEEDI's continued commitment to establishing integrated and high quality internal performance management systems in line with the whole-of-government and national initiatives outlined above. To this end, I have tasked the newly formed Strategic Policy Coordination Unit to develop and lead a strategy to establish integrated planning, performance management and reporting systems across DEEDI. My expectation is to drive an increased level of maturity in DEEDI's performance management systems over the next two to three years.*

*In addition, the recent Machinery of Government changes and the bringing together of sub-organisational units with related regulatory responsibilities from a number of previous departments, has led to the establishment of a new Office of Regulatory Policy within DEEDI. This unit will consolidate staff with like functions, responsibilities and competencies to provide the most optimal approach for business and marketplace regulation. The establishment of this unit will maximise the opportunities for coordination and harmonisation of regulatory processes.'*

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