

17/08/12

Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Research Director,

Re: Current inquiry related to methods of regulation and their potential effects on agriculture, resources and the environment

I refer to the public announcement inviting submissions to the Agriculture, Resource and Environment Committee before 17 August 2012 that are relevant to the inquiry into regulatory issues affecting agriculture and resource industries.

I am currently the Queensland Chairman of the Land Surveying Commission Executive (LSCE - website at <http://www.sssi.org.au/details/region/4/cat/268/sub/400.html>). LSCE is the peak professional body for land surveyors in Queensland and consults routinely with the Queensland Government on changes to legislation, regulation and policy.

The Surveying and Spatial Sciences Institute (SSSI) is an industry association with a membership of professional practitioners, equipment and software suppliers, technicians and other persons having employment or interest in government and private enterprise wherever knowledge of place and time makes a difference to socioeconomic, environmental and cultural outcomes. SSSI operates from a central office in Canberra (website at <http://www.sssi.org.au/details/region/4/cat/268/sub/270.html>) and is represented in this State by a Queensland Regional Committee (website at <http://www.sssi.org.au/details/region/4/cat/268/sub/270.html>)

SSSI has a kindred organisation called the Spatial Industries Business Association (SIBA) with many persons as members of both organisations. SIBA concentrates on the business interests of its members (through a website at <http://www.spatialbusiness.org/>). However, both SSSI and SIBA agree substantially on the importance of efficient and effective regulation in the various phases of development.

We have noted the contents of *Reducing regulatory burdens for Queensland's agriculture and resource industries* - AREC's Research Paper No.1 of July 2012. The Paper's introductory paragraphs are headed – 'Aim of this Paper', 'The Committee', 'The referral', 'Reporting deadline', 'Inquiry Timetable'. The aims of the Paper were given as follows:

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This paper provides background information about the committee's inquiry into Queensland's Agriculture and Resources Industries and flags issues that the committee invites comment on. The paper also provides guidelines to assist submitters.

We note also that the committee has already resolved to:

... focus on 'methods' to reduce regulatory requirements or 'regulatory burdens' having regard to the need to promote economic development whilst balancing environmental protections.

The committee's has adopted the following definitions to define the inquiry scope:

- **Agriculture** - the farming or cultivation of land, including crop-raising, forestry and stock-raising, and the farming of marine animals and plants.
- **Resource industries** - industries connected with the exploration, extraction and processing of coal, petroleum, gas, minerals, gemstones and quarry materials, but excluding energy.

The committee invites comments on:

- The benefits of a variety of methods for reducing regulatory requirements and the relative importance of these methods as indicated by the following – reviewed under a general heading of '**Regulatory requirements**'.
- The combination of methods that will be most beneficial to reducing unreasonable regulatory requirements for Queensland's agriculture and resource industries whilst balancing environmental protections – reviewed under a general heading of '**Better policy development**'.
- '**Other methods**' – where other approaches might be worth considering in relation to achieving the stated goal of reducing unreasonable regulatory requirements for Queensland's agriculture and resource industries.

We have set out more detailed comments - together with references to evidence and opinion – in an attachment to this letter.

The following is a list of comments that SSSI would like AREC to know about:

- Regulatory assessment methods are far from settled from an intellectual viewpoint because needs for and outcomes from regulation are often matters of considerable complexity.
- Complexity grows with the growth of knowledge – for knowledge may be an asset when it is used wisely and a liability when it is used carelessly or maliciously. If there is to be adequate control over outcomes, the remedies are likely to lie in practical strategies for learning to cope with its complexity. 'Everything should be as simple as possible but no simpler.'
- Most legislation operates by conferring mandates on particular persons to perform particular functions; and make particular decisions. This is subject to the keeping of records that provide a full and accurate record of the business activities; and the records become the more routine. Learning the routines to record, search, find and access records is an important element in developing coping strategies for dealing with complex arrangements.
- The Queensland Parliament has adopted a substantially bipartisan approach to overseeing a considerable investment in governance structures that relate to the whole-of-government. However, further efforts are needed to achieve greater compliance with existing right to information laws and Queensland Government information standards to improve the production and use of authoritative information.

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- Access to and use of government information is often the primary source – and in many instances the only consistent and coherent source - of information about agriculture, resource industries and the environment.
- Assessments need to consider the whole of the design, construction or implementation, operational, maintenance, and feedback mechanisms to produce any worthwhile assessments of whether systems are well regulated.
- Systems approaches involve establishing purpose and direction in a regulating entity; the effective delegation of functions to other entities. Each entity with delegated powers needs to consider a general outline of the functions and the establishment of its work routines. These routines are more likely to gain respectability if they can withstand the criticisms of informed observers – wherever they may be.
- Many leading private firms and organisations have adopted quality management procedures as a way of coping with the complexity of modern business and these can be adapted to improve performance in Queensland’s public sector.
- Many of the ideas under constant review in organisations devoted to setting standards for productive enterprise can also be adapted to Queensland’s existing whole-of-government arrangements.
- Remedies will depend ultimately on using the best available knowledge resources to achieve better results using existing allocations of public money. Throwing money at problems in the absence of the necessary knowledge will certainly waste money; and wishful thinking will certainly waste valuable time.

In closing, SSSI is impressed with the use of the Committee system to ask questions and seek the advice that can lead to better government. Such a system of community engagement depends on its ability to establish credibility with all parties involved. SSSI is willing to participate and bring the best of our ability, skills and advice to assist the Committee in its deliberations. As a response to the potential of the Committee system, SSSI is currently examining its own procedures to improve the understandings of public policy issues within its own membership. Hopefully, and with some practice, we will be able to improve our response times and the quality of the advice we are able to give in a way that represents SSSI’s diverse membership.

Yours sincerely

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This is an attachment to a letter dated 17 August 2012 addressed to:
The Research Director
Agriculture, Resources and Environment Committee
Queensland Parliament

Scope of comments

AREC approved the release of an issues paper to provide guidance to persons wishing to make submissions in relation to its current inquiry.¹ In paraphrasing and summarising AREC's issues paper, and in considering the particular knowledge, skills and experience of SSSI members that may assist the current inquiry, this work focuses its analysis and comments on:

- The benefits of a variety of methods for reducing regulatory requirements and the relative importance of these methods as indicated under a general heading of '**Regulatory requirements**'.²
- The combination of methods that will be most beneficial to reducing unreasonable regulatory requirements for Queensland's agriculture and resource industries whilst balancing environmental protections – reviewed under a general heading of '**Better policy development**'.³
- Other methods – in trying to obtain better value from the considerable investment of time and effort that goes into trying to achieve better government and better regulation.⁴

Regulatory requirements

The processes of regulation are sometimes likened to steering a ship or a ship of state —and sometimes in exercising statesmanship and leadership. It begins with the cognitive processes of observing, anticipating, and taking action and continues through cycles of learning through the experience of taking action. This applies to individuals and social organisations at various levels. Generally, the objects are:

- To steer towards the potential for and the realisation of beneficial outcomes.
- To steer away from the potential for and the realisation of harmful outcomes.

The problem for individuals —and for organisations at various levels of aggregation or hierarchy —is the extent to which they are able to exercise control over their circumstances. Even government have their limits on how much control they may exercise. They are bound by the constitutional constraints of a democratic society. They depend fundamentally on signals that derive from various voting arrangements; and their effectiveness depends on the willingness of people to be bound by the requirements of their government.

In a post-doctoral research report referred to herein as (Cook 2011),⁵ the author adopted a systems-oriented approach in describing the information processes required to achieve a well regulated society. The research is set out in two parts

- **Part A** was deposited with QUT in a digital version on 13 March 2011. Its chapter headings are as follows:
 - **Chapter 1** – Introduction
 - **Chapter 2** – Overview of concepts and themes
 - **Chapter 3** – Purpose of government and need for information
- **Part B** is well advanced as a work in progress. It comprises the following chapters:

1 Agriculture, Resources and Environment Committee, *Reducing regulatory burdens for Queensland's agriculture and resource industries*, Paper No.1, Queensland Parliament, July 2012, pp., accessed online at URL

2 AREC, *Reducing regulatory burdens*, in discussion on 'Regulatory requirements' from pp.2-4

3 AREC, *Reducing regulatory burdens*, in discussion on 'Better policy development' from pp.4-6

4 AREC, *Reducing regulatory burdens*, in discussion on 'Points for comment' at p.6

5 John S Cook, *A review of rationale for allocating costs and payments in producing and supplying public sector information*, (Part A of 2 Parts – Chapters 1, 2 and 3), 13 March 2011 version, accessible online at URL <http://eprints.qut.edu.au/40727/>

- **Chapter 4** –Economic factors in producing government information
- **Chapter 5** –Factors in supplying information
- **Chapter 6** – Paying for government information

The abstract to this work is as follows:

This work reviews the rationale and processes for raising revenue and allocating funds to perform information intensive activities that are pertinent to the work of democratic government. 'Government of the people, by the people, for the people' expresses an idea that democratic government has no higher authority than the people who agree to be bound by its rules. Democracy depends on continually learning how to develop understandings and agreements that can sustain voting majorities on which democratic law making and collective action depends. The objective expressed in constitutional terms is to deliver 'peace, order and good government'. Meeting this objective requires a collective intellectual authority that can understand what is possible; and a collective moral authority to understand what ought to happen in practice. Facts of life determine that a society needs to retain its collective competence despite a continual turnover of its membership as people die but life goes on. Retaining this 'collective competence' in matters of self-government depends on each new generation:

- Acquiring a collective knowledge of how to produce goods and services needed to sustain a society and its capacity for self-government;
- Learning how to defend society diplomatically and militarily in relation to external forces to prevent overthrow of its self-governing capacity; and
- Learning how to defend society against divisive internal forces to preserve the authority of representative legislatures, allow peaceful dispute resolution and maintain social cohesion.

(Cook 2011) considers the purpose of government and its needs for particular information in the following Sections of Chapter 3:

- Section 3.1 – The information dependence of government
- Section 3.2 – Governance and technological change
- Section 3.3 – Structuring of information to achieve governance
- Section 3.4 – Intergovernmental relationships
- Section 3.5 – High-level socio-economic policies

A further research paper elaborates on costs of information that are a significant component in costs of research, development, planning and monitoring that underpins open and accountable regulatory processes.⁶

What is good regulation?

Technology empowers creative people but it also empowers capacity for destructiveness. This is nowhere more apparent than in Information and Communication Technology (ICT) where abuse of the technology causes considerable harm that extends internationally. The consequence is that information may produce a useful and productive use of resources whereas misinformation may produce wasteful misallocation of resources. The waste continues when the systems for dispute resolution are abused through frivolous and mischievous complaints. The value of technology depends on how it is used; and that depends in turn on how people learn to behave and are then prepared to behave.

In empowering creative people, information may provide the basis for better use of existing resources – a reallocation to yield better results from existing investments. Ultimately, obtaining returns from investment follow a pattern of cognitive development that contributes to the growth in human capital and organisational capital. This capital exists in living human memories and in various document repositories –

6 John S Cook, 'Economic issues in funding and supplying public sector information', deposited with QUT ePrints on 10 October 2009, accessible at URL <http://eprints.qut.edu.au/27832/>; Also published as Chapter 17 in Vol.1 of *Access to public sector information: law, technology and policy*, edited by Brian Fitzgerald, Sydney NSW: Sydney University Press, 2010, accessible in digital format at URL <http://eprints.qut.edu.au/34085/>

library networks; government archives and public agency records. However, the value of records depends in part on the human capital available to understand the records and obtain the benefits of the experience that they capture. The idea of evidence-based policy making makes no sense without documentary evidence of acceptable quality and credibility.

Ultimately, the question of whether regulation and policies can be described as 'good' is likely to depend on how much the perceived benefit and costs can be regarded as fair and reasonable. Generally, the perceived benefits of markets are supposed to occur when people can negotiate to the advantage of one or more of the negotiating parties without harming anyone else. In other words, it says that 'things get better if they don't get worse'. If things turn out worse than expected; any loss needs to be offset by value in the knowledge gained through the experience. This implies that processes of trial and error can be advantageous provided that losses are tolerable and are not repeated unnecessarily or result in calamity.

Structured inquiry into performance

Official commissions of inquiry are often asked to investigate problems of government integrity and serious losses through foreseen and unforeseen circumstances. Subject to a commission's terms of reference, the structure or pattern of an inquiry is likely to seek understanding of:

- The mandates that require particular agencies to perform particular functions and maintain particular records.
- Details of the mandates that trace the authority to perform functions from a particular Act of Parliament through various instruments of subordinate legislation, authorised standards, ministerial directions, departmental delegations, other recognised standards and guidelines
- Details of the interactions between public agencies and members of the public; between departments and between governments.

The results of these kinds of inquiries have often pointed to the needs for documentary evidence. Failure to produce evidence in time or attempts to withhold or destroy evidence can cause the commission to lose its credibility and thereby lead to a certain and considerable waste of valuable time and resources.

There is no real accountability for use of resources without a proper analysis of the functions to be performed. From the viewpoint of an interested bystander, this detail of how an agency performs its functions is difficult to obtain. However it is of fundamental importance to a performance audit process.⁷

Better policy development

Policy can be regarded as an investment – a stock of public information resources that is worth retaining if it can be reasonably expected to provide benefits into the future. In essence, it encapsulates the experience involved in coming to high-level agreements about how public and private enterprise can be organised in a way that reduces uncertainty for a wide variety of people in their various undertakings.

The discovery of resources and the recognition of opportunities for their beneficial use precedes the development of shared understandings and agreements about how affairs can be organised. It is well illustrated in the work by Professor Anne Fitzgerald – *Mining agreements: negotiated agreements in the Australian minerals sector*. She shows how the ability to negotiate agreement has provided a basis for

7 Queensland Audit Office, *Performance reviews – using performance information to improve service delivery*, Report No.5 of 2010, tabled in Parliament on 18 April 2010, Brisbane QLD: Queensland Government (Queensland Audit Office), refer especially to Section 4 – 'Better practice principles', accessible online at URL http://www.gao.qld.gov.au/files/file/Reports/2010_Report_No.5.pdf

Refer also to Better practice guide: performance reviews, Brisbane QLD: Queensland Government (Queensland Audit Office), July 2010. This document contains the best practice principle in a stand-alone publication, accessible online at URL http://www.gao.qld.gov.au/files/file/publications/qao_bpg_performance_reviews.pdf

legislative frameworks and international agreements of immense importance to Australia's economic development.⁸

The capacity to organise and do things that have not been done previously is essential to innovation in the way work is done and the kinds of products that are produced. This development provides advantage to an innovating entity; but the advantage persists only until competitors can replicate the success of a leading organisation. Competition differs from a 'competitive edge' in its contributions to productivity.

AREC's issues paper cites the OECD Council's endorsement in March 2012 report prepared by its Council on Regulatory Policy and Governance. There is a direct link from the OECD deliberations and the Productivity Commission through Gary Banks who acts in the position of chair in both agencies.

On March 2012, the OECD Council adopted a report—*Recommendation of the Regulatory Policy Committee*.⁹ This work is paraphrased in AREC's issues paper at p.3. This links in turn with National Funding Agreements under Australia's Federal Financial Relations.

Other methods

The Queensland legislature has developed a commendable legislative framework for high-level governance over the past two decades. However many returns on the investment involved in developing this framework cannot be realised until work practices improve within government agencies. This requires improvement in the knowledge and skills of workers. This requires developing plans for improving performance. In this regard, the use of management standards and quality assurance processes has been tried extensively in private organisations for purposes of procuring resources inwards and supplying goods and services outwards.

Pursuing quality improvement according to well-considered plans offers the greatest potential for improvement in the quality of government services. It is important to discover which agencies already possess the necessary knowledge and skills and can provide leadership to other groups that show immediate prospects of delivering benefits. In general, the object is to seek improvements without additional allocations to departments; and finance those agencies that demonstrate their capacity to deliver value for money.

In a recent report to the Joint Committee of Parliament on Public Accounts and Audit, the Commonwealth Auditor-General commented as follows:

Recognising that recordkeeping is an integral part of doing business, and that it contributes to sound business, is a crucial step in the transition from viewing records as an administrative overhead to viewing them as a corporate asset. Under this more strategic approach, development of recordkeeping systems can be an essential part of business process re-engineering. In addition, while technology exists to build better recordkeeping into business processes and electronic document management systems, technology will not be effective without the necessary in-depth needs analysis, policy settings, and understanding and ownership of the recordkeeping changes in the organisation. A staged, planned approach allows time for laying these necessary foundations of effective change.¹⁰

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Most of the organisations included in this audit had business records that were managed through systems that were not recognised and developed as recordkeeping systems. Records affected included significant case and project files, and essential core business data. In the further development of the

8 Anne Fitzgerald, Mining agreements: negotiated agreements in the Australian minerals sector, PhD thesis presented to Columbia University (New York NY) in 2001, reproduced in digital format and deposited with QUT ePrints on 6 August 2011, accessible online at URL <http://eprints.qut.edu.au/34063/>

9 OECD 2012, *Recommendation of the Council on Regulatory Policy and Governance*, (with Foreword by Gary Banks AO, Chair, Regulatory Policy Committee, OECD: and Chairman, Productivity Commission, Australia), OECD Regulatory Policy Committee, Paris France: OECD, accessible online at URL <http://www.oecd.org/gov/regulatorypolicy/49990817.pdf>

10 Auditor-General (P J Barrett), Recordkeeping. Audit Report No.45 2001–02, Assurance and Control Assessment Audit, Report to the Honourable the President of the Senate and the Honourable the Speaker of the House of Representatives, Parliament House, Canberra ACT, 1 May 2002, Section 13, p.14, accessed online at URL http://www.anao.gov.au/uploads/documents/2001-02_Audit_Report_45.pdf

business information systems, organisations need to give consideration to building in the recordkeeping functionality and records management and control information (metadata) for these core business records. Gaps in collection of recordkeeping information compromise an organisation's ability to prove the authenticity, accuracy and integrity of their records and to manage their records efficiently and with appropriate protection.¹¹

In its inquiry into National Funding Agreements, the Joint Committee reported as follows in relation to the importance of performance reporting:

For 2011–12 the Commonwealth dedicated a significant proportion of its funding to the states/territories, with \$45.5 billion to payments supporting National Agreements and National Partnerships. This Committee has an ongoing interest in achieving value for money for the Australian taxpayer and believed the arrangements to distribute this amount deserved parliamentary scrutiny. With the introduction of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) in 2009, the Committee thought it timely to investigate the implementation of national funding agreements under this new approach.

The Committee found there was overall support for the new framework. Witnesses identified that the underlying principles and intent of the new framework address previous issues concerning federal financial relations. These reforms undoubtedly mark a significant milestone in federal financial relations. The JCPAA agrees the underlying principles provide a robust framework for the future and assist in alleviating some of the historical confusion and discontent within Commonwealth-state relations.

While the Committee is pleased that the fundamentals of the new framework have been well received by key stakeholders, evidence presented throughout the inquiry highlighted some separation between these principles and what is occurring in practice. In particular the Committee was concerned with the:

- shortcomings in the performance reporting framework;
- slow pace of necessary cultural change across the public service; and
- adequacy of parliamentary oversight.¹²

11 *ibid.*

12 Rob Oakshott (Chair), Joint Committee of Public Accounts and Audit (JCPAA), *Inquiry into National Funding Agreements*, Report 427, Canberra ACT: Parliament of Australia, November 2011, Foreword, p.vi, accessed online