



Victorian
Competition & Efficiency
Commission

5 July 2013

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Dear Mr Fitzgerald

ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed *Health Services (Private Hospitals and Day Procedure Centres) Regulations 2013*.

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 10(3) of the *Subordinate Legislation Act 1994* (the Act). I advise the final version of the RIS received by the VCEC on 2 July 2013 meets the requirements of section 10 of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis rather than the merits of the proposal itself. **Therefore, the VCEC's advice the RIS is adequate does not represent an endorsement of the proposal.**

In making this assessment, the VCEC notes that the Department of Health is currently reviewing Part 4 of the *Health Services 1988 Act* and that the Government will consider introducing a new Act and policy framework to regulate private hospitals and day procedure centres. The current Regulations have already been extended for 12 months and there was no opportunity to extend for a further 12 months or make interim Regulations to consider the outcomes of the Act review. Thus, while we note that the proposed Regulations will be made for ten years, the Department intends that they be revised following the completion of the review in 2014.

The VCEC notes the cost-effectiveness of the current Regulations, including nurse ratios, was not fully tested by the Department of Health through an evaluation. Consequently, there are several major data gaps and limitations of the analysis, which required judgements and assumptions to be made by the Department regarding the benefits and costs of different options. These judgements and assumptions are made clear in the RIS and stakeholder feedback must be taken into account in deciding whether to proceed with the proposed Regulations.

The RIS explains the rationale for government intervention and the specific problems to be addressed. This includes a discussion of the existing market incentives to ensure adequate patient safety outcomes for the majority of health service establishments and that residual problem addressed by the Regulations mostly relates to the risk of a few providers not meeting minimum safety standards.

The RIS includes a general discussion of the impacts of nurse ratios, drawing on a range of sources, but notes that there is no independent research or evaluation of the current Regulations to demonstrate that proposed nurse ratios are effective in reducing adverse

events and represent a 'minimum' requirement. The RIS includes the Department's judgement that the proposed ratios are a minimum, including comparisons against ratios in other settings.

The VCEC notes that the estimates of costs incurred by health service establishments due to the proposed Regulations are based on Departmental judgements, which assume the majority of the costs incurred by health service establishments are part of standard business practice. A break-even analysis was also undertaken to assess whether the benefits of the proposed Regulations, in terms of reduced adverse events, are likely to exceed their costs. Stakeholder consultation will be important in testing the validity of these assumptions and judgements, and to provide more accurate information on the likely costs and benefits of the options, including the preferred option.

The VCEC also notes the multi-criteria analysis for the senior appointments, staffing and information chapters did not find significant differences between the options and the results largely reflect the judgements made by the Department on the relative costs and effectiveness of the options. Stakeholder comments on whether these judgements are reasonable and other considerations may therefore influence the preferred approach.

Following the review of the *Health Services Act 1988*, the Department will prepare a business impact assessment (BIA) which will provide a robust evaluation of the cost-effectiveness of the overall regulatory framework, which currently imposes significant costs on health service establishments, notwithstanding potentially significant benefits. It should also include a broader and more robust consideration of the nature and extent of risks to patient outcomes and appropriate regulatory and non-regulatory approaches to address the specific problems identified in the RIS.

In particular, the evaluation of the regulatory framework will need to consider other options, including the ability to implement more risk-based and performance-based approaches, such as targeted regulatory requirements for facility types and hospital services that vary according to risk and compliance history. Such approaches appear to warrant further consideration as they may provide greater flexibility for health service establishments, while supporting or strengthening patient outcomes.

The review of the regulatory framework will also include systematic collation and analysis of existing compliance data collected from hospital inspections to assess the link between nurse ratios and rates of adverse events (using VAED data on hospital complications during admissions as a proxy). This will assess whether there is a relationship between hospitals that are systematically non-compliant with regulation requirements and a higher rate of adverse events.

In the interests of transparency, it is government policy that VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact RegulationReview@vcec.vic.gov.au.

Yours sincerely



Jeff Hole

Executive Director

Victorian Competition and Efficiency Commission