

28 March 2011

Mr Graeme Maddern
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Dear Mr Maddern

ASSESSMENT OF REGULATORY IMPACT STATEMENT

Thank you for seeking an assessment of the Regulatory Impact Statement (RIS) on the proposed *Subordinate Legislation (Legislative Instruments) Regulations 2011*.

The Victorian Competition and Efficiency Commission (VCEC) assesses the adequacy of RISs as required under section 11 of the *Subordinate Legislation Act 1994* (the Act). The VCEC's assessment 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.

I advise that, on balance, the final version of the RIS received by the VCEC on 25 March 2011 meets the requirements of section 10 of the Act.

In making this assessment, the VCEC has recognised the inherent difficulties of being able to demonstrate categorically that the benefits of the proposed Regulations outweigh the costs. Nonetheless, the VCEC notes that there are some issues in the analysis in the RIS that stakeholders may wish to particularly bear in mind when considering the RIS.

Exemptions under the public interest criterion

More than one-third of the prescribed instruments are exempted on the basis of public interest, a broad criterion designed to capture instruments where the Department of Premier and Cabinet (the Department) believes there is a net benefit for exemption, but that do not meet the specific criteria allowed for under section 12F of the Act. The *Victorian Guide to Regulation (VGR)* requires that, before a particular regulatory proposal can be implemented, it needs to be demonstrated that the net benefits associated with the proposal are greater than the net benefits of other approaches available to address the problem. Due to the large number of instruments, the rationales provided for exemptions under the public interest criteria (presented in the Attachment with examples in Table 3 of the RIS) do not provide a comprehensive analysis of costs and benefits of exempting each of these instruments. That is, the RIS does not sufficiently demonstrate that the benefits of prescribing some of the instruments outweigh the potential costs of doing so.

- For example, the VCEC considers that the RIS has not sufficiently demonstrated that the benefits of exempting instruments that relate to insurance cover for architects, builders and plumbers exceed the costs of doing so, particularly when insurance requirements for some other

occupations, such as electricians, are subject to independent scrutiny and public consultation through the RIS process. The VCEC notes that one of the aims of the recent amendments to the Act was to ensure that the level of scrutiny of an instrument related to its substance rather than to its form.

Exemptions under the RIS equivalency criterion

The proposed Regulations prescribe a number of instruments as exempt on the basis that they are subject to 'RIS equivalent' processes. The VCEC understands that the relevant Departments or agencies (such as the Essential Services Commission and the Environment Protection Authority) have undertaken to have analysis of their relevant instruments independently assessed in the future. However, it is not clear from the RIS what process will be used to ensure such independence.

Feedback from stakeholders in relation to the proposed list of prescribed instruments to be exempt, including the appropriateness of the criteria used to define public interest, will be especially important in helping the Department to develop the final list of prescribed instruments to be included in the Regulations.

The VCEC also notes that ongoing monitoring and evaluation, as well as the review of the Regulations, which the Department has indicated will take place within four years, will be an important means of assessing the extent to which the Regulations have been able to meet their objectives.

The VCEC strongly recommends that, in the interests of transparency, you publish this assessment letter alongside the RIS when it is released for public consultation.

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

Yours sincerely



Sam Abusah

Assistant Director

Victorian Competition and Efficiency Commission