

INQUIRY INTO REFORM OF SOUTH AUSTRALIA'S REGULATORY FRAMEWORK

DRAFT REPORT

SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION

17 September 2021

SA HEALTH (Health Protection and Licensing Services) SUBMISSION

Preliminary

Thank you for the opportunity to respond to the recommendations of the Draft Report of the Inquiry into the Reform of SA's Regulatory Framework.

Health Protection and Licensing Services (HPLS) in SA Health has a large portfolio of regulatory responsibilities and aims to protect the community from preventable health risks associated with; the consumption of unsafe food, use of prescribed drugs of dependence, environmental vectors such as mosquitos, supply of tobacco, poisons control, water and wastewater quality, environmental pollutants including lead and other chemical hazards. HPLS also has responsibility for administering regulatory licencing of private hospitals, private day procedure centres and private ambulance services.

HPLS work closely with local government and other state regulators, such as the EPA, PIRSA and SA Water, where relevant, to ensure enforcement and compliance activities are as co-ordinated and consistent as possible, while maintaining the highest possible protection for the SA community from the risks to public health.

HPLS also commit to national and bi-national systems and legislation which provides opportunity for collaboration and joint work to refine systems. For example, the Food and Controlled Drugs Branch work within a Bi-national food regulation system and adopt the Australia New Zealand Food Standards Code as law under the SA Food Act 2001. This means that consistent food safety, labelling and food composition requirements are implemented across Australia and New Zealand, providing consistent expectations for businesses and consumers. While this system recognises the value of consistency, there is also the ability to vary requirements through the implementation of state legislation such as the SA Food Act, where there is a local issue or need.

The Draft Report seeks to ensure improved governance and accountability for state regulators which is commendable however caution should be applied to ensure that any new state-based requirements do not impact on existing legislative requirements and relationships nationally and internationally.

Please find below comments on specific draft Recommendations.

DRAFT RECOMMENDATIONS

The recommendations made by the Productivity Commission Draft Report are in general supported by HPLS. Specific comments are made below.

Draft Recommendation 3.1: Performance measurement and reporting

- To increase the transparency and accountability of SA regulators, the Commission recommends that the SA Government establish an across government policy framework to guide measurement, monitoring and assessment of performance by regulators, in line with good practice principles. This framework would include the following characteristics:
- be flexible enough to recognise that regulators are a heterogeneous group with different legislative obligations, roles, structures and functions; and
- not be overly burdensome but be integrated into each regulator's performance monitoring and review cycle.

Response

This recommendation is strongly supported in the interest of improving transparency, shared learnings and continuous improvement and increased consistency.

Although performance measures are important, measuring a change of behaviour in regulated businesses is difficult and outcomes are hard to quantify. While all regulating agencies seek this change of behaviour, standard KPIs may not adequately reflect outputs; eg. measuring the number of food businesses inspected or compliance undertaken, are not measures that reflect the success of regulation. Soft measures such as culture of the organisation, changing understanding by business operators, focus on high risk activities are all examples of measures that are more meaningful (although harder to measure). The national food regulatory system is currently grappling with this issue, and significant work has been undertaken in the area of food safety culture.

Lead indicators, such as number of businesses engaged in the voluntary food safety rating system (rewarding good compliance/ inspection results) may be more useful. A set of principles may also be helpful to provide a general set of 'rules' for all regulators.

Draft Recommendation 3.2: Statement of expectations

To provide greater clarity about government objectives, policies and deliverables relevant to each regulator, the Commission recommends that the SA Government provide statements of expectations (SOE) to all state business regulators. These SOEs would include a requirement to foster economic growth and specify key performance indicators (KPI) that regulators will be assessed against and require that regulators:

- are timely, outcome focused and proportionate in managing risks;
- are open, transparent and efficient in their dealings with regulated entities;
- pursue continuous improvement and apply innovative processes to reduce regulatory burden; and
- report annually on achievement of their KPIs, based upon self-assessment and stakeholder feedback on performance.

Response

Support.

‘Statements of Expectation’ would formalise activities undertaken by government regulators and provide transparency and clarity about the priorities of an agency. It is important that these SOEs should be developed in conjunction with lead agencies to ensure alignment with specific priorities and legislative commitments.

Care should be taken when focussing on ‘fostering economic growth’. SA government regulators work within the regulatory boundaries and objectives set out by their relevant legislation. Many of these objectives, while not at odds with supporting economic growth and trade, may not primarily focus on this aim. The ability for regulators to comply with the requirements of their legislation should not be constrained.

Statements of Expectation/ purpose are used by other agencies across the world and are currently being considered as part of the current work under the Modernisation of the Food Regulatory System. SOE’s should be principles based rather than directional.

The SOE found on the Victorian Government website (<https://www.vic.gov.au/plsa-statement-expectations-2020-22>) has some good examples of appropriate principles, for example;

I expect PLSA to ensure that regulatory activities are clear and consistent through:

- *demonstrating that all information is collected for clear purpose*
- *demonstrating empathy to stakeholders and responsiveness to lessons learned*
- *undertaking appropriate forward planning and demonstrating an appropriate understanding of future resourcing needs*

(from the CE, Portable Long Service Authority)

Draft Recommendation 3.3: Continuous improvement of practice

To promote and support the improvement of regulatory practice among SA regulators, the Commission recommends that the SA Government establish an across government improvement strategy that, among other things:

- requires regulators to develop, implement and report publicly on improvement strategies with a strong outcomes focus;
- establishes a community of practice among SA regulators and policy agencies to build capability and to share data, management systems and best practice in development, operations and stewardship. The community of practice could also provide a resource for smaller regulators to access specialist skills and expertise for RIA assessment and performance review;
- includes other initiatives to improve the capability, such as a dedicated training that could be rolled out across regulatory agencies;
- includes incentives and assistance for regulators to adopt new technologies that will enhance their efficiency and effectiveness;
- is complemented by a program of external audit of selected priority regulatory agencies to examine the extent to which individual regulators deliver on their objectives and implement good practice. This could be undertaken by the SA Auditor General.

Response

Generally Supported.

A 'community of practice' in principle would provide helpful support and learnings for all regulators. To be most effective, topics for discussion should identify cross cutting issues such as data management and sharing. Such a forum could operate both in person and online but should not be onerous to either the agency forming the Secretariat or the agencies engaged. Topical discussions, case studies and general discussion forums would be useful.

Training, while useful, should not be mandatory and focus on shared skills such as policy development and Cabinet navigation.

Caution should be applied in the use of the Auditor General or another external body to undertake audits of agencies as there may be unintended consequences. The objectives of each agency are very different and as noted above, outcome measures in regulation are difficult to set and tend towards 'softer' measurements such as culture and understanding. For example, a significant body of work is being undertaken in the Bi-national Food Regulation System to explore how better to measure and improve the food safety culture in food businesses.

Draft Recommendations 5.1 and 5.2 – Digital Systems Enhancement and Investment in cross government RegTech solutions

State Government regulators face ongoing reductions in resources, and therefore continue to seek efficiencies in systems, while ensuring our regulatory functions are risk appropriate. Any government wide investment into improved IT systems and other technologies such as real time data collection and verification systems and data sharing portals is strongly supported.

Some government bodies such as Safe Food QLD are exploring new ways to audit their businesses such as direct electronic monitoring systems (<https://www.safefood.qld.gov.au/food-business/monitoring/?keyword=verification>)

This type of system provides an efficient way to monitor a number of verification points across a facility in real time, such recording and relaying temperatures in fridges and ovens.

As shown during the current pandemic, digital systems are increasingly important and have been relied on heavily by regulators, including finding virtual options to inspect or audit premises when the auditor is unable to travel into an area. The expansion of such tools including a digital portal for information relevant to both regulators and businesses, would provide benefits and efficiencies to the whole system.

As well as collecting information from regulated businesses, such a portal would also enable distribution of important information such as Recall notices and information relating to Directions under the Emergency Provisions.