
1 About the review

Governments regulate in the public interest to prevent undesirable social, economic and environmental outcomes, or to promote beneficial outcomes. This can include regulating to ensure a fair and competitive marketplace, protect the health and safety of workers, encourage innovation or preserve the natural environment. Regulation is, therefore, a necessary and accepted part of modern society.

However, excessive, inconsistent or poorly designed regulations can impose unnecessary costs on businesses and on the wider Australian economy through higher prices, and reduced innovation and choice. In such cases, regulations can be removed or altered to reduce costs and increase benefits for business and the wider community.

The Council of Australian Governments (COAG) recognises that the costs of existing regulation may be unnecessarily high and is considering how this regulatory burden on the community can be reduced as part of a broader reform process. These actions can improve the efficiency and competitiveness of the Australian economy, leading to increased living standards in the community.

1.1 What the Commission has been asked to do

As part of the COAG process, the Commission has been asked to conduct ongoing annual reviews of the regulatory burdens on business which stem from Commonwealth regulation. This includes where Commonwealth regulation overlaps with state government regulation. The Commission has been conducting the review as a series over five years, and each year a different sector has been reviewed. The inaugural review was published in 2007.

The Commission is to identify key areas where regulation imposes unnecessary burdens on business. Further, the Commission is required to identify regulatory and non-regulatory options for action, and provide recommendations where appropriate. These options and recommendations must take into account the underlying policy intent of the government regulation.

The focus areas for the five annual reviews are specified in the terms of reference as follows:

- primary industries in 2007 (completed)
- manufacturing and distributive trades in 2008 (completed)
- social and economic infrastructure services in 2009 (current — box 1.1)
- business and consumer services in 2010
- economy-wide generic regulation and any regulation missed in earlier reviews in 2011.

Box 1.1 Industries included in the 2009 review – social and economic infrastructure services

The business activities that are considered to be within the scope of this year's review are based on particular divisions of the Australian and New Zealand Standard Industrial Classification (ANZSIC). These include:

Division D: Electricity, gas, water and waste services

- electricity supply
- gas supply
- water supply, sewerage and drainage services
- waste collection, treatment and disposal services

Division E: Construction

- building construction
- heavy and civil engineering construction
- construction services

Division I: Transport, postal and warehousing

- road transport
- rail transport
- water transport
- air and space transport
- other transport
- postal and courier pick-up and delivery services
- transport support services

(continued on next page)

Box 1.1 (continued)

- warehousing and storage services

Division J: Information media and telecommunications

- publishing
- motion picture and sound recording activities
- broadcasting
- internet publishing and broadcasting
- telecommunications services
- internet service providers, web search portal and data processing services
- library and other information services

Division O: Public administration and safety

- public administration
- defence
- public order, safety and regulatory services

Division P: Education and training

- preschool and school education
- tertiary education
- adult, community and other education

Division Q: Health care and social assistance

- hospitals
- medical and other health care services
- residential care services
- social assistance services

Source: ABS (2006).

The full terms of reference are set out on pages IV-VI.

1.2 Industry characteristics

The social and economic infrastructure services sector is a major contributor to economic activity in Australia. It accounted for 33 per cent of Australian GDP (\$338 billion) in 2007-08. Of the relevant industries, construction contributed the

largest share, 7.9 per cent of GDP (\$82.1 billion), followed by health care and social assistance with 6.3 per cent (\$65.4 billion), while information media and telecommunications contributed the smallest share, 2.3 per cent of GDP (\$23.9 billion) (table 1.1).

The social and economic infrastructure services sector is also a significant employer, accounting for 43 per cent national employment in May 2009 (over 4.5 million persons). Of this, health care and social assistance was the most significant employer, accounting for 11 per cent of national employment (over 1 million persons), followed by construction with over 9 per cent of national employment (984 100 persons).

However, the social and economic infrastructure services sector accounted for a proportionally low volume of exports — 10.8 per cent in 2007-08. Indeed, most industries in the sector had negligible exports. The exceptions to this were education, and transport, postal and warehousing, which together accounted for 93 per cent of the exports from the sector in 2007-08. Education contributed 6 per cent towards national exports in 2007-08 (\$14.2 billion), up nearly a quarter on the previous year. It is now Australia's third largest export industry, behind only coal and iron ore. Transport accounted for 4 per cent (\$9.4 billion) of national exports in 2007-08.

Large variations exist in industry size and structure between the relevant industries. In construction, close to 38 per cent of businesses were classified as small or medium (employing between 1 and 19 people and between 20 and 199 people respectively). Similarly, close to 54 per cent of businesses in health care and social assistance were classified as small or medium businesses. In these industries, the proportion of large businesses, which employed 200 or more workers, was negligible — 0.3 per cent. This contrasts with electricity, gas, water and waste services, where a small portion of businesses, 2.9 per cent, were large businesses. Further, electricity, gas, water and waste services consisted of just under 2000 businesses, compared with over 320 000 businesses in construction, close to 120 000 businesses in transport, postal and warehousing, and over 90 000 businesses in health care and social assistance. Overall, there was close to 576 000 businesses in the social and economic infrastructure services sector in 2006-07 (table 1.2).

Table 1.1 Social and economic infrastructure sector summary statistics

| | Electricity, gas, water and waste services | Construction | Transport postal and warehousing | Information media and telecoms | Public admin and safety | Education and training | Health care and social assistance | All industries covered |
|---|---|------------------|--|--------------------------------------|-------------------------------|---------------------------|---|------------------------------|
| Gross value added 2007–08 (current prices) | | | | | | | | |
| Contribution to GDP | \$m (per cent) | 24 827 2.4 | 82 139 7.9 | 53 454 5.1 | 23 866 2.3 | 43 048 4.1 | 65 350 6.3 | 338 066 32.5 |
| Exports (2007–08)^a | \$m | N/A ^b | 115 | 9 394 | 746 | 848 | N/A | 25 267 |
| Contribution to services sector exports | (per cent) | N/A | 0.2 | 18.3 | 1.5 | 1.7 | N/A | 49.3 |
| Contribution to national exports | (per cent) | N/A | 0.1 | 4.0 | 0.3 | 0.4 | N/A | 10.8 |
| Employment (May 2009) | | | | | | | | |
| Number of persons | ('000) | 136.7 | 984.1 | 599.2 | 224.3 | 693.1 | 1 189.4 | 4 635.6 |
| Contribution to national employment | (per cent) | 1.3 | 9.1 | 5.6 | 2.1 | 6.4 | 11.0 | 43.0 |
| Businesses (June 2007) | | | | | | | | |
| Contribution to total national business count | (per cent) | 1 968 0.1 | 322 404 16.0 | 117 323 5.8 | 23 998 1.2 | N/A ^c N/A | 92 318 4.6 | 574 276 28.5 |

^a Export data are not classified by ANZSIC categories, and the data in this table are from approximate SITC categories ^b Export data for the electricity, gas and water; and health and community services sectors do not appear to be collected by the ABS. ^c Data does not include public sector organisations.

Sources: Gross value added data from ABS, *Australian National Accounts*, Cat. No. 5204.0; Export data from DFAT, *Composition of Trade Australia, 2007-08*; Employment data from ABS, *Labour Force, Australia, Detailed*, Cat. No. 6291.0.55.001 May 2009 values; Business data from ABS, *Counts of Australian businesses including entry, and exits*, Cat. No. 8165.0. June 2007

Table 1.2 Business Size ^{a,b,c}

Number of businesses (percentage of total in sector), June 2007

| | <i>Small business (1 to 19 employees)</i> | <i>Medium business (20 to 199 employees)</i> | <i>Large business (200 or more employees)</i> | <i>Non employers</i> | <i>Total</i> |
|--|---|--|---|--------------------------|----------------|
| Electricity, gas, water and waste services | 477 (24.3) | 93 (4.7) | 57 (2.9) | 1 335 (68.0) | 1 962 |
| Construction | 117 204 (36.3) | 6 324 (2.0) | 375 (0.1) | 199 335 (61.7) | 323 238 |
| Transport, postal and warehousing | 35 811 (30.4) | 3 141 (2.7) | 282 (0.2) | 78 522 (66.7) | 117 756 |
| Information media and telecommunications | 8 814 (36.1) | 468 (1.9) | 39 (0.2) | 15 105 (61.8) | 24 426 |
| Education and training | 6 150 (37.4) | 894 (5.4) | 69 (0.4) | 9 339 (56.8) | 16 452 |
| Health care and social assistance | 45 795 (49.7) | 4 038 (4.4) | 318 (0.3) | 42 012 (45.6) | 92 163 |
| All industries covered | 214 251 (37.2) | 14 958 (2.6) | 1 140 (0.2) | 345 648 (60.0) | 575 997 |

^a These data may not correspond to table 1.1, as data has been rounded to preserve the confidentiality of individual businesses. ^b Percentages may not add to 100 due to rounding. ^c Does not include public sector organisations.

Source: ABS, *Counts of Australian businesses including entry and exits*, Cat. no. 8165.0.

Regulation in the social and economic infrastructure services sector

The social and economic infrastructure services sector is characterised by a high degree of shared regulatory responsibility between the three levels of government. State governments retain constitutional responsibility for regulation of energy, water, waste management and most transport infrastructure. The Australian Government is responsible for regulation of telecommunications and access to infrastructure through the *Trade Practices Act 1974*. Further, some state government regulatory responsibilities, for example waste management, are delegated to local governments. Consequently, there is often weak demarcation, and overlap, of regulatory responsibilities between the different levels of government. For example, responsibility for public transport and health facilities (nursing homes), are shared between all levels of government, including local government.

Whilst there is a heavy burden of regulation on all sectors within the economy, the burden of regulation on the social and economic infrastructure services sector is especially heavy.

This is due to the unique characteristics of the industries under review which encompass:

- natural monopoly infrastructure
- operation across many jurisdictions
- community expectations of service, especially ‘essential services’
- vulnerability of end users combined with regulatory risk aversion
- dependence of industries on government funding.

Natural monopoly infrastructure

The core networks in many economic infrastructure services industries are natural monopolies. Historically, governments have owned and operated the infrastructure in these industries — for example roads, electricity and telephone networks.

In the 1990s, many of these economic infrastructure networks were corporatised or privatised and/or opened to competition. These industries are therefore subject to an additional layer of regulation which aims to protect consumers and the community by promoting competitive market outcomes, through markets that operate fairly and efficiently. This regulation can include, for example, third party access to infrastructure, including access prices.

Jurisdictional and regulatory differences

Many businesses in the social and economic infrastructure sector operate across several jurisdictions. This is especially true of transport services. This cross-border operation leads to a high cumulative burden of regulation, especially when the relevant regulation is duplicative or inconsistent. Examples include differences in higher mass limits across jurisdictions in the road transport industry, and jurisdictional differences in ships’ ballast water regulations in the shipping industry.

Essential services and cost shifting

Many of the industries examined in this review are considered to be ‘essential services’, with community expectation that the government will ensure their provision and service quality. Governments have often used regulation to ensure the accessibility of these services on an equitable basis for all Australians. Telstra’s ‘Universal Service Obligations’ (USOs) are an example of such regulation. USOs aim to ensure that all Australians have access to telecommunications services on an equitable basis and include, for example, the requirement for Telstra to provide

public telephones across Australia. In effect, this regulation shifts the cost burden of providing those services from government to industry. The cost of these regulations is especially high when the regulations are not updated with changes in the market and advances in technology. This failure to keep abreast of the latest developments is particularly a concern in industries with rapid technological change. For example, one component of Telstra's USOs is a 'Digital Data Service Obligation' under which Telstra must ensure that a 64 kilobits per second Integrated Services Digital Network (ISDN) service, or satellite link of comparable quality, is available to all people in Australia on an equitable basis. However, this regulation has not been updated since its initial implementation in 1999, even though ISDN technology has been superseded by faster broadband technologies.

Risk aversion and vulnerability of end users

A further cause of regulatory burden on this sector has been the trend towards 'risk aversion' in public policy. Governments respond to many adverse outcomes — loss of life, money, possessions and amenity — with increased regulation. This can lead to a high cumulative burden of regulation, including regulation which is excessive, interventionist, or highly prescriptive.

This phenomenon of risk aversion is especially prevalent in health, aged care and child care because the end users of these services are vulnerable and consequently their ability to inform and protect themselves is limited. Any adverse incidents in these industries are often met with intense media attention. In response to this media attention, governments often implement regulation to be seen to be 'doing something'. That is, while there is clearly a need to protect those unable to protect themselves, there can be a disproportionate desire to regulate risk out of the system. Not only is elimination of risk infeasible, it can lead to unintended adverse consequences in service delivery by reducing flexibility and innovative practices. It can also result in confusing or complicated reporting arrangements which take up the staff resources of providers at the expense of service delivery. Regulations in health, aged care and child care are generally highly prescriptive, with excessive reporting requirements. An example of the regulatory framework typically faced by an aged care home is provided in box 1.2.

Dependence on government funding

Many social infrastructure services are fully or partially funded by government due to their characterisation as 'essential services'. In many cases, governments attach conditions to funding access. This can be done either as a 'carrot' by increasing, or

Box 1.2 Regulatory framework for aged care homes

Aged care homes are subject to many regulatory measures including special provisions to protect the vulnerable. In addition to generic regulation, such as tax and occupational health and safety regulation, aged care homes face the following regulatory framework:

- government approval of aged care providers and vetting of all key personnel
- accreditation of all services
- unannounced and scheduled visits to monitor accreditation standards
- minimum building standards (building certification)
- annual fire safety declaration
- food safety regulations
- police checks for all staff and volunteers
- compulsory reporting of all suspected resident-on-resident and staff-on-resident abuse
- a free complaints investigation scheme open to the whole community
- a regime of sanctions for non-compliant providers
- an aged care commission to receive appeals
- prudential reporting in respect of any bonds held
- multiple reporting in respect of missing persons
- compliance with caps on 'extra service' places
- compliance with needs based planning framework.

providing funding if requirements are met, or a 'stick' — decreasing or removing funding if requirements are not met. For example, in aged care, providers face sanctions if they do not comply with requirements under the *Aged Care Act 1997*, including having their approval as a provider of aged care services revoked or suspended.

A further side effect of the dependence of health and aged care on government funding is that regulation is used to limit the cost of these services to government. In health care for example, some regulation actively limits the number of services medical practitioners can provide to patients. The Australian Medical Association (AMA) provides the following example:

The funding of new services in the Medicare Benefits Schedule (MBS), normally comes with prescriptive guidelines and rules that dictate how many times a service can be delivered for a patient, when it can be delivered, who it can be delivered to, how it must be delivered, what records must be kept and so on. (sub. 33, p. 2)

Similarly, the needs based planning framework for aged care providers acts as a rationing mechanism, determining the number of places offered in a particular region.

1.3 The regulatory reform context

Foundations of the current review: Taskforce on Reducing Regulatory Burdens on Business

In October 2005, the Australian Government announced a taskforce to identify practical options for reducing the regulatory burden on business arising from Government regulation – the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006).

The Taskforce’s focus was on Commonwealth regulation that was ‘unnecessarily burdensome, complex, [or] redundant’, with a remit to also identify burdens arising from ‘duplicate legislation in other jurisdictions’ (Regulation Taskforce 2006, p. i).

The Taskforce reported in January 2006, and identified close to 100 reforms of existing legislation, as well as proposing 50 areas of regulation to be investigated in greater depth by the Australian Government or COAG. In addition, the Taskforce suggested some 30 improvements to the processes and institutions responsible for regulation making and enforcement.

The Government accepted many of the report’s recommendations in 2006 and implemented regulatory reforms. Further, additional reviews have been announced or set in train. The report of the Taskforce forms the foundation of this annual review cycle, of which this report is the third of five reviews.

COAG’s National Reform Agenda

Regulatory reform was further advanced in 2006-07, when COAG agreed to a long-term National Reform Agenda (NRA), one component of which aims to reduce the regulatory burden imposed by all levels of government.

In 2008, COAG signed an agreement to deliver a seamless national economy. This agreement committed the Commonwealth and state and territory governments to reform 27 priority areas, including accelerating the implementation of reforms for existing ‘hot spots’. Reforms as part of this agenda commenced in 2008-09 in line

with an implementation plan. The reforms of specific relevance to the social and economic infrastructure services sector are:

- reforms to health workforce regulation
- implementation of national rail safety legislation and a nationally consistent rail safety regulatory framework
- implementing a single national approach to maritime safety for commercial vessels
- development of a national framework for regulation, registration and licensing of heavy vehicles
- development of a National Construction Code on building, plumbing, electrical and telecommunications standards
- development of a national trade licensing system.

Various broader reforms agreed to by COAG also impact on the social and economic infrastructure services sector. These include the implementation of nationally uniform Occupational Health and Safety (OHS) laws, the development of a more harmonised and efficient system of environmental assessment and approval and payroll tax harmonisation.

Standard Business Reporting

A further COAG initiative for reducing regulatory burden on business is the development of Standard Business Reporting (SBR), to be implemented by 31 March 2010 (Swan and Tanner 2008). The practical consequences of SBR will be the streamlining of business reporting requirements for financial data, including the removal of unnecessary duplication of financial data in government forms, the ability to automatically pre-fill data, and a single online secure sign on point for financial reporting. Once implemented, the SBR program has the capability to be expanded to encompass non-financial data, including in industries under review this year such as aged care and education. Detailed information on SBR can be found in appendix B.

Previous and current reviews concerning regulatory reform

Parallel to this review, the Commission is benchmarking regulatory compliance burdens across all jurisdictions in Australia, since the costs of regulatory burden are compounded for business which operate across jurisdictions with inconsistent regulations. In 2008, the Commission reported on the cost of starting a business

(business registrations) and, in 2009, the Commission is benchmarking food safety and OHS.

In addition to the reforms initiated through COAG, there are many current, or recently completed, industry reviews which involve the regulatory framework of the social and economic infrastructure services sector. A selection of these reviews is provided below:

- the National Health and Hospitals Reform Commission Report, on a long term national health and aged care plan
- the Bradley Review into Australian higher education
- the development of National Quality Agenda for the childcare industry by the Department of Education, Employment and Workplace Relations
- the National Broadband Network discussion paper on reforming the existing telecommunications regime
- the Department of Infrastructure, Transport and Regional Development's National Aviation White Paper on the future of the air transport industry.

A selection of recent and current reviews involving the social and economic infrastructure services is provided in appendix C.

State and territory government reviews

State and territory governments have committed to actively undertake reviews of existing legislation as part of the COAG agenda.

Since 2005, for example, the Victorian Government through the Victorian Competition and Efficiency Commission (VCEC) has undertaken an annual stocktake of business regulation and regulators as part of its initiative to reduce regulatory burden on Victorian businesses (for example, VCEC 2005). In 2006, the New South Wales (NSW) Government, through the Independent Pricing and Regulatory Tribunal (IPART) conducted an investigation into the burden of regulation in NSW and improving efficiency (IPART 2006), as well as a review into State taxation (IPART 2008). The Queensland Department of Tourism, Regional Development and Industry conducts an annual red tape reduction stocktake.

Environmental regulation is an area currently subject to a number of reviews. VCEC undertook an inquiry into the metropolitan retail water sector in 2008 (VCEC 2008), and recently submitted a final report into environmental regulation in

Victoria to Government. In NSW, IPART recently released a review in climate change mitigation measures in the state (IPART 2009).

1.4 The approach and rationale of this review

A more complete discussion of the approach taken to defining regulation, the costs associated with poor regulation and the limitations of these annual reviews can be found in the first report of this series, *Annual Review of Regulatory Burdens on Business: Primary Sector* (PC 2007).

Defining Regulation

Regulation can be defined as any ‘rule’ that influences or controls the way people and businesses behave. It is not limited to legislation and formal regulations, but also includes quasi-regulation, such as codes of conduct, and co-regulation (box 1.3).

Box 1.3 Common types of regulation

- *Primary legislation* — Acts of Parliament, including those that underpin treaties signed by Australia.
- *Subordinate legislation* — rules or instruments which have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power. These include statutory rules, ordinances, by-laws, disallowable instruments and other subordinate legislation which is not subject to Parliamentary scrutiny.
- *Quasi-regulation* — rules, instruments and standards by which government influences business to comply, but which do not form part of explicit government regulation. Examples include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry-government agreements and national accreditation schemes.
- *Co-regulation* — a hybrid, in that industry typically develops and administers particular codes, standards or rules, but the government provides formal legislative backing to enable the arrangement to be enforced.

Defining Unnecessary Burden

While regulation necessarily imposes costs on those being regulated, an unnecessary burden arises when the policy objective of the regulation could be achieved with a lower cost to affected parties.

This may arise where regulation is poorly designed and/or implemented, for example through:

- excessive coverage including overlap or inconsistency
- complex approval and licensing processes
- heavy-handed regulators
- exceedingly prescriptive measures and burdensome reporting.

‘Regulatory burdens’ have been broadly defined to include:

- the time and financial costs directly involved in complying with regulations, such as form filling, mandatory returns and so on
- changing the ways by which goods and services would otherwise be produced by business
- changing or restricting the goods and services that would otherwise be produced by business
- the costs of forgone or reduced opportunities resulting from constraints on the capacity of business to enter markets, innovate or respond to changing technology, market demand or other factors.

To be examined in this year’s review, ‘regulatory burdens’ needed to satisfy the following three criteria:

- there are compliance costs imposed by the nature of the regulation or the actions of the regulator that appear to be unnecessary in order to achieve the regulation’s objectives
- the regulations mainly affect the social and economic infrastructure services sector, whether directly or indirectly
- the regulatory burdens are the consequence of regulation by the Australian Government, which includes areas where state and territory government regulations overlap with Commonwealth regulation or involve Australian Government policy participation.

Scope and limitations of the review

The terms of reference define the scope of the review and the coverage of its recommendations.

The focus is on Commonwealth regulation

The terms of reference for this review refers only to Commonwealth regulation, thus, the Commission will not be examining regulations that are solely the responsibility of state, territory or local governments. However, this does not preclude areas where there is duplication or overlap of regulatory responsibilities between the Australian Government and other jurisdictions.

Indeed, there are likely to be areas where particular regulations — or the activities of particular regulators — overlap and possibly conflict. Even where there has been national agreement to remove duplication and inconsistency across jurisdictions these problems may continue due to delays and jurisdictional inconsistencies in implementing such reforms (PC 2007).

The focus is on business impact

The terms of reference for this review focus on the regulatory burdens on business. This includes businesses of any legal form and size — from multinational corporations to unincorporated sole traders.

Importantly, the cumulative impact of business regulation will also be taken into account. Business is subject to regulation at its establishment, and during its production, marketing and expansion phases. An additional layer of regulatory burdens can arise when a business operates across jurisdictional boundaries. The cumulative impact of this regulation means that even when the impact of a single regulation in isolation is small, the combined burden can be significant. This provides justification for seeking to remove even the smaller unnecessary burdens.

Policy objects of the regulation

The terms of reference for the review do not allow scope to examine the underlying policy objectives of the regulation. The concern of the review is on the translation of policy intent into regulation, not with the objectives themselves. Therefore, while some comment might be made on objectives where the Commission considers them to be demonstrably inadequate, focus is placed on the unnecessary costs of regulations required to meet the policy objectives.

Identifying the significant issues

The development of the list of most important issues and the decision to defer issues to the fifth year in the cycle (the review year) is a matter in which the Commission utilised analysis and judgement. The process followed by the Commission was as follows:

1. A concern or complaint was ruled out of scope entirely if it did not relate to existing regulation which impacts on business and cannot be related to Commonwealth regulation or to a national agreement or arrangement. Generally, a matter was also ruled out of scope if it clearly related to the objectives of regulation rather than its business impact.
2. Where concerns and complaints were recently reviewed this was taken into account. In situations where other reviews are being conducted in industries covered by this review, judgement was made about the adequacy of the terms of reference, the independence and make-up of the review body, transparency, consultation and timeliness.
3. Where interested parties did not raise any concerns in relation to an area of Commonwealth regulation, it was generally taken as prima facie evidence that there is no perceived problems of excess burden. However, the Commission is mindful of review fatigue and is also aware that industries characterised by smaller enterprises are less likely to have the resources to submit substantive submissions.
4. Where the concern appeared indicative of systemic problems with the regulatory framework, the Commission chose to view narrowly expressed concerns with relatively low impact in a wider context.

Quantifying impacts, including unnecessary burdens

The Commission would ideally base assessments of each issue on the unnecessary costs of each burden, and the potential gains from altering or removing the burden. Accordingly, the Commission, in its issues paper and informal meetings with industry stakeholders, asked participants for as detailed information as possible regarding the costs associated with compliance with regulation, and with specific focus on the components of cost that are unnecessarily burdensome, or arise from duplicative or inconsistent regulation.

However, there were significant challenges associated with quantitative approaches to measuring and assessing whether the regulatory burden on businesses was 'excessive'. Many participants were unable to provide information on the pecuniary cost of regulation, and even where data were provided, this was for the overall costs

of regulation, often from all tiers of government, rather than the specific cost from unnecessary burden. Further, the Commission also faced challenges ensuring the integrity of the data, for example ensuring that the data were not compromised by selection bias or measurement errors.

Qualitative indicators of excessive regulatory burdens

As a result of the substantial difficulties in quantifying the cost of regulatory burdens, the Commission based its prioritisation of reforms on a largely qualitative approach supplemented by case studies where available.

Regulations that were developed in line with best practice principles were considered less likely to impose undue burdens on the economy.

Assessment of concerns

In assessing the course of action required for all relevant concerns raised by participants, the Commission first examined and clarified the policy objectives of the regulation in terms of the underlying economic, social and/or environmental objectives.

Where appropriate, consideration was given to possible alternative means of meeting those objectives. Analysis of the associated benefits and costs was also undertaken.

1.5 Conduct of the study

The Commission received the terms of reference for the series of five annual reports in February 2007, and began work on the current review into the social and economic infrastructure services sector in late 2008. An issues paper was issued in December 2008, with a call for submissions by 28 February 2009. In January, February and March 2009, the Commission held informal meetings with various stakeholders across all industries covered in the review. The Commission received 51 submissions prior to the release of the draft report on 26 June 2009.

Roundtables and consultative meetings with stakeholders were held to ascertain views on the recommendations in the draft report. The Commission received a further 50 submissions following the release of the draft report. The Commission wishes to thank all those who have participated in this review.

1.6 Structure of the report

Chapters two to eight address the concerns raised by businesses in their submissions and contain explanations of the issues raised, along with the Commission's recommendations. Chapter two relates to aged care, chapter three to child care, chapter four to information media and telecommunications, chapter five to electricity, gas, water and waste services, chapter six to transport and chapter seven to education and training. Chapter eight draws out those issues which were pertinent across a range of industries within the social and economic infrastructure services sector. Chapter nine makes recommendations to improve the existing regulatory impact analysis processes which aim to ensure the quality of new regulation. The appendices contain supporting information — appendix A provides more information on the Commission's consultation process, an overview of SBR is contained in appendix B, and a selection of recent and ongoing reviews relevant to social and economic infrastructure services is provided in appendix C.