



Australian Government



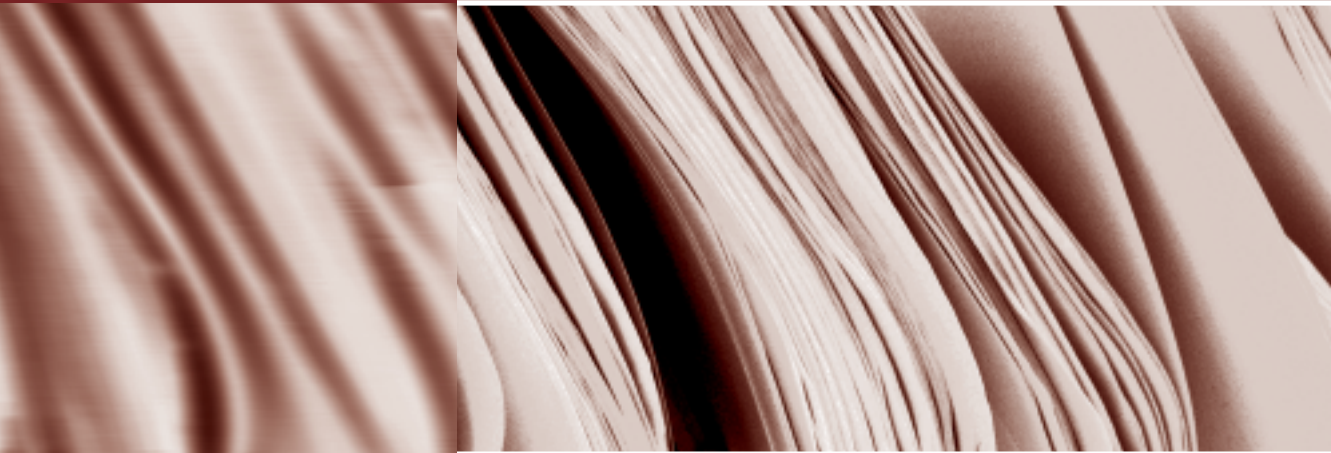
RETHINKING REGULATION

Report of the Taskforce on Reducing
Regulatory Burdens on Business

January 2006



Australian Government



RETHINKING REGULATION

**Report of the Taskforce on Reducing
Regulatory Burdens on Business**

January 2006

© Commonwealth of Australia 2006

ISBN 0-646-45764-0

This work is subject to copyright. Apart from any use as permitted under the *Copyright Act 1968*, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgment of the source. Reproduction for commercial use or sale requires prior written permission from the Attorney-General's Department. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Canberra ACT 2600.

This publication is available in hard copy or PDF format from the Regulation Taskforce website at www.regulationtaskforce.gov.au. If you require part or all of this publication in a different format, please contact Media and Publications (see below).

Publication Inquiries:

Chair, Regulation Taskforce
c/- Productivity Commission
PO Box 80
Belconnen ACT 2616

Telephone: (02) 6240 3200
Facsimile: (02) 6240 3399
Email: maps@pc.gov.au

An appropriate citation for this paper is:

Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January.



Foreword

Just as individuals and businesses need to compete successfully to achieve their goals, nations must do the same. In recent years, following wide-ranging reforms, Australia has shown how successful it can be in the international arena. However, even successful nations cannot rest on their laurels. The relentless forces of globalisation mean that Australia needs to continue to drive reforms aimed at removing any impediments to efficiency and innovation.

Underpinning a country's competitive success internationally is the effectiveness of its domestic regulatory structures. Good regulation can enhance Australia's ability to compete and prosper economically; inappropriate or costly regulation will handicap our performance. Like many other developed countries, Australia has undergone a relatively rapid rise in regulation over the past couple of decades, in response to a succession of social, environmental and economic needs and pressures. In our view, business is justified in protesting at the compliance and other burdens that this regulatory inflation has entailed.

Regulatory burdens fall disproportionately on the economy's many small (including 'micro') businesses, which lack the resources to deal with them. Tailoring regulation to limit the impact on small business and keeping regulatory costs down generally are essential if the 'engine room' of employment and economic growth is to prosper.

Following extensive consultation with business and government, we have identified in this report many reforms that would provide relief to business and benefit the wider community. Given the complexities in some areas, we have also developed a forward agenda of more detailed reviews. Beyond this, we propose a number of reforms to the processes and institutions responsible for regulation, which we believe are necessary to reduce the scope for regulatory problems to re-emerge.

Just as regulation naturally develops in response to society's needs, its excesses are largely driven by societal and political pressures. Key among these, in our view, has been a growing and unsustainable aversion to risk, demanding a rethink about the role of regulation in modern society. Political leadership will be crucial to achieving a better understanding within the Australian community of the importance of a more balanced approach to regulation and to making the changes within government that are essential to a lasting improvement.

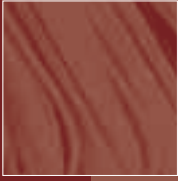
Gary Banks (Chairman)

Rod Halstead

Richard Humphry

Angela MacRae

31 January 2006



Acknowledgements

The Taskforce is grateful to the many representatives of business and other organisations who took the time to meet with it and provide submissions, the quality of which was very high. Thanks are also due to Government departments, who responded promptly to requests for information, including in relation to preliminary reform proposals. Thanks also to Clayton Utz, the Department of Industry, Tourism and Resources and the Australian Bureau of Statistics for providing facilities for meetings, and to the Productivity Commission for accommodating the Secretariat in its Belconnen (ACT) office. Finally, the Taskforce would like to record its heartfelt appreciation for the efforts of the team of people seconded from across the Australian Government who constituted its Secretariat (see appendix A). Most ably led by Sue Weston of the Office of Small Business, they did a magnificent job in supporting the work of the Taskforce, under significant time pressure.



Contents

Foreword

Acknowledgements

Contents

Abbreviations

Overview and recommendations i

1	The Taskforce and its brief	1
1.1	Setting the scene	1
	Previous initiatives	1
	Ongoing concerns	1
	A new wave of reviews	2
1.2	The Taskforce's review	2
	A broad-ranging brief	2
	Extensive business involvement	3
2	The rising regulatory burden	5
2.1	The expanding volume of regulation	5
2.2	The variable quality of regulation	7
2.3	The costs of regulation	9
	Compliance costs for business	9
	Direct costs to government (and the taxpayer)	12
	Broader community costs	12
	What does it all add up to?	12
2.4	What is driving this regulatory growth?	14
	Rising risk aversion and other pressures	14
	Incentives for over-regulation	15
2.5	The need for reform	16
3	Reducing existing regulatory burdens	17
3.1	Many suggestions for reform	17
3.2	The Taskforce's approach	17
3.3	Proposed reforms set a forward agenda	18
3.4	Key themes in proposed reforms	19
4	Social and environmental regulation	21
4.1	Health-related regulation	22
	General practice	22

	Private health insurance	24
	Pharmacy	27
	Therapeutic products and medical devices	29
	Aged care	33
4.2	Labour market regulation	35
	Occupational health and safety	36
	Workers' compensation	40
	Skills mobility and licensing	41
	Business migration	43
	Education	45
	Childcare	48
	Employment reporting	49
4.3	Consumer-related regulation	50
	Consumer protection	51
	Privacy	53
	Food regulation	57
	Chemicals and plastics	62
	Legal administration	70
4.4	Environmental and building regulations	72
	Environmental regulations	73
	Building regulations	82
5	Economic and financial regulation	87
5.1	Financial and corporate regulation	88
	The regulatory approach	89
	Cooperation and coordination between regulators	94
	Engagement with industry	96
	Specific regulatory reforms	101
5.2	Tax regulation	107
	Sources of tax complexity	108
	Consequences of tax complexity	110
	Overview of tax compliance costs	110
	Reducing the cumulative burden of tax compliance	111
	Reducing specific compliance burdens	114
5.3	Superannuation regulation	125
	Superannuation guarantee	125
	Superannuation taxation complexity	127
5.4	Trade-related regulation	128
	Trade regulations	129
	Commonwealth procurement	134
6	Reducing burdens across government	137
6.1	Accessing information	137
	Finding relevant information	138
6.2	Presenting information in a business-friendly manner	138

6.3	Exploiting information technology	139
	Smart forms and cards	139
	Portals	139
	Electronic tools	140
	Other information technology	140
6.4	Minimising duplication of reporting	140
	Standardising data collection	141
	Streamlining business registration	142
7	Addressing the underlying causes of over-regulation	145
7.1	The principles of good regulatory process	146
7.2	Improving regulation-making	148
	The problem	148
	Better analysis	148
	Coordinated and comprehensive consultation practices	150
	Stronger enforcement of 'good process' in developing regulations	154
	Resourcing	157
7.3	Ensuring good performance by regulators	158
	The problem	158
	Clarifying policy intent	160
	Sharpening accountability	161
	Improving communication and interaction with business	163
7.4	Avoiding overlap, duplication and inconsistency	166
	The problem	166
	Addressing overlaps and inconsistencies in new regulation	168
	Addressing existing overlaps and inconsistencies	168
	Developing institutional mechanisms to enforce consistency	169
7.5	Ensuring that regulation delivers over time	172
	The problem	172
	Ad hoc reviews	172
	Sunsetting	173
	Systematic reviews	173
7.6	Other systemic matters	175
8	The way forward	177
A	The Taskforce's brief and composition	A1
A.1	The Taskforce's brief	A1
A.2	Taskforce members	A2
A.3	Members of the Taskforce Secretariat	A2
B	Conduct of the review	B1
B.1	Informal consultations	B1
B.2	Roundtable and forum participants	B3
B.3	List of submissions	B5
	References	R1



Abbreviations

ABCB	Australian Building Codes Board
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACEA	Association of Consulting Engineers Australia
ACN	Australian Company Number
ACT	Australian Capital Territory
ALH	Australian Leather Holding
ANAO	Australian National Audit Office
ANTS	A New Tax System
ANZTPA	Australia New Zealand Therapeutic Products Authority
APRA	Australian Prudential Regulation Authority
APVMA	Australian Pesticides and Veterinary Medicines Authority
AQIS	Australian Quarantine and Inspection Service
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
AVCC	Australian Vice-Chancellors' Committee
BAS	Business Activity Statement
BCA	Business Council of Australia
CGT	Capital Gains Tax
CHC	Complementary Healthcare Council of Australia
CLERP	Corporate Law Economic Reform Program
COAG	Council of Australian Governments
CPLG	Chemicals and Plastics Leadership Group
DEH	Department of the Environment and Heritage

DEST	Department of Education, Science and Training
DITR	Department of Industry, Tourism and Resources
DoFA	Department of Finance and Administration
DoHA	Department of Health and Ageing
DSICA	Distilled Spirits Industry Council of Australia
EPBC	Environment Protection and Biodiversity Conservation
EU	European Union
FBT	Fringe Benefits Tax
FIRB	Foreign Investment Review Board
FSANZ	Food Standards Australia New Zealand
FSR	Financial Services Reform
FSRA	Financial Services Reform Act
GHG	Greenhouse Gas(es)
GHS	Globally Harmonised System for Classifying and Labelling Chemicals
GP	General Practitioner(s)
GST	Goods and Services Tax
HIA	Housing Industry Association
HIH	HIH Insurance
IC	Industry Commission
IGA	intergovernmental agreement
ISCA	Independent Schools Council of Australia
LRCC	low regulatory concern chemicals
NCP	National Competition Policy
NEPM	National Environment Protection Measure
NICNAS	National Industrial Chemicals Notification and Assessment Scheme
NPI	National Pollutant Inventory
NSW	New South Wales
NTRBs	Native Title Representative Bodies
OECD	Organisation for Economic Cooperation and Development
OH&S	occupational health and safety
ORR	Office of Regulation Review

PACIA	Plastics and Chemicals Industry Association
PAYG	Pay As You Go
PBS	Pharmaceutical Benefits Scheme
PC	Productivity Commission
PCAS	PACIA Carrier Accreditation Scheme
PHI	private health insurance
PPS	personal property securities
RBA	Reserve Bank of Australia
RBL	reasonable benefit limit
RIS	Regulation Impact Statement
SG	Superannuation Guarantee
STS	Simplified Tax System
TGA	Therapeutic Goods Administration
USA	United States of America
VECCI	Victorian Employers Chamber of Commerce and Industry



Overview and recommendations

Australian governments have undertaken major policy reforms over the past two decades, which are contributing to this country's strong economic performance. These reforms have included regulatory changes to expose the economy to greater competitive pressures and to provide firms with greater flexibility to respond. In the same period, however, Australia has experienced a dramatic rise in the volume and reach of regulation, in response to a variety of social, environmental and economic issues. Indeed, since 1990 the Australian Parliament has passed more pages of legislation than in the nine preceding decades since Federation.

Business has become increasingly vocal about the compliance and other burdens associated with this regulatory inflation. Governments have responded with a number of initiatives. In particular, the Australian Government has foreshadowed changes to regulatory processes, notably in the area of cost-benefit analysis, and reviews of existing regulation.

The work of this Taskforce

To provide a basis for early actions across a broad front, in October 2005 the Prime Minister and the Treasurer announced the establishment of this Regulation Taskforce. Its remit has been to identify actions to address areas of Australian Government regulation that are 'unnecessarily burdensome, complex, redundant, or duplicate regulations in other jurisdictions' (see appendix A). The main focus has not been on policy as such, but rather on any undue costs for business in the implementation of policy through regulation.

Following wide-ranging consultations with business and government, the Taskforce is convinced that many of the concerns raised by business and other organisations are fully justified. Australia clearly could not function well without regulation. However, in the Taskforce's view, there is too much regulation and, in many cases, it imposes excessive and unnecessary costs on business. The Taskforce has identified a forward agenda comprising some 100 reforms to existing regulation that would provide relief to business, and proposed that about another 50 areas of regulation be investigated in greater depth. In addition, the Taskforce has considered how the processes and institutions responsible for regulation could be improved to avoid the same problems simply re-emerging.

What is driving excessive and costly regulation?

It is important to recognise the forces behind the growth in regulation if sustainable solutions are to be found. Perhaps the most fundamental of these is the changing needs and expectations of society itself. Some of this is a natural and desirable consequence of rising affluence and increased scientific knowledge. However, in the Taskforce's view, a more problematic influence has been increasing 'risk aversion' in many spheres of life.

Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. Any adverse event — especially where it involves loss of life, possessions, amenity or money — is laid at government's door for a regulatory fix. The pressure on government to 'do something' is heightened by intense, if short-lived, media attention.

Supporting this assessment, a number of submissions cited a recent speech by British Prime Minister, Tony Blair (2005, p. 1):

In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to see as a normal part of life. This is putting pressure on policy making [and] regulatory bodies ... to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora of rules, guidelines, responses to ‘scandals’ of one nature or another that ends up having utterly perverse consequences.

In responding to such pressures, governments themselves are often attracted to regulatory solutions, both as a tangible demonstration of government concern and because the costs are typically ‘off-budget’, diffuse and hard to measure. Moreover, each regulatory solution tends to be devised within individual government agencies. Within such policy ‘silos’, the cumulative impact of regulation across government is poorly understood and rarely taken into account.

In this climate, a ‘regulate first, ask questions later’ culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration. Further, agencies responsible for administering and enforcing regulation have tended to adopt strict and often prescriptive or legalistic approaches, to lessen their own risks of exposure to criticism. This, in turn, has contributed in some areas to excessively defensive and costly actions by business to ensure compliance.

The costs are substantial

Quantifying the excessive burdens stemming from all this regulation is difficult, partly because some compliance activities are unavoidable or would have been undertaken by business anyway. However, even the more conservative survey-based estimates put gross compliance costs at tens of billions of dollars annually, suggesting considerable scope for gains from reform. This assessment has been reinforced by the evidence of costs faced by many individual companies presented to the Taskforce.

Box 1

Compliance costs — business’s experience

Across the ACEA membership there is a loss in revenue totalling \$18.5 million per annum caused by unnecessary regulation. Association of Consulting Engineers Australia, sub. 79, p. 4

[T]he implementation of the Consumer Credit Code from its enactment in 1994 saw one-off implementation compliance costs for banks of approximately \$200 million with ongoing annual recurring costs of approximately \$50 million. Australian Bankers’ Association, sub. 116, p. 10

Australian Leather Holding (ALH) in Perth ... lost a number of overseas contracts when it found that some chemicals necessary for its furniture leather finishes could not be used in Australia ... every time a new substance is developed, ALH must accept a 12 month delay. Remove Obstacles to Australian Manufacturers, sub. 76, p. 2

The costs of regulation to business involve not just extra time, paperwork and capital outlays, but also deflect management from the core activities of the business. Submissions indicated that compliance matters can consume up to 25% of the time of senior management and boards of large companies. The impact is even greater for small businesses, which generally do not have the in-house capacity to deal with and keep abreast of the regulatory morass. Regulation can thus stifle innovation and crowd out productive activity in the ‘engine room’ of Australia’s economy. At the same time, it involves substantial government resources and thus significant burdens on taxpayers.

Having made important progress in many policy areas, Australia now risks undermining these gains through burgeoning regulatory imposts on business. It is important to introduce reforms that can provide relief on a sustainable basis.

Identifying key reform needs

The breadth of the Taskforce's remit, and the limited time available to it, meant that it had to rely on business to help identify areas of regulation where compliance burdens are potentially excessive. The Taskforce asked business to provide supporting evidence or analysis, as well as practical remedies.

Business responded very positively to this challenge, putting forward a wide array of suggestions in some 150 submissions. The Taskforce, in analysing material and forming its conclusions, examined all proposals, including consulting relevant government agencies on their implications and workability. An important consideration was to ensure that any proposed changes to regulation did not simply shift costs from business to government or other sections of the community. To recommend a reform, the Taskforce needed to be satisfied that it would generate a net benefit to society as a whole. In the time available, however, the Taskforce could not hope to identify appropriate reforms in all cases, particularly for more complex matters or those with inter-jurisdictional dimensions. It has accordingly identified a number of issues requiring more in-depth review.

The resulting agenda is extensive and necessarily covers many areas of social, environmental and economic regulation. Not all of the reform proposals are of equal weight. Indeed, seen in isolation, some reforms may seem relatively minor. However, just as the burdens of regulation on business can be cumulative, so too can the relief gained from seemingly minor regulatory reforms.

Because everything cannot be done at once, the Taskforce has set out in chapter 8 of this report what it judges to be the most significant or pressing reforms among its longer list of recommendations. (The full set of 178 recommendations is listed in summary form at the end of this overview.)

Priority reforms to existing regulation

Of the reforms to specific areas of regulation that could be readily implemented, a number stand out in terms of the likely significance of the burdens for individual businesses and the number of businesses potentially affected. These were generally found to have one or more of the following features:

- *Excessive coverage, including 'regulatory creep'.* The Taskforce identified a number of regulations which appeared to catch more activity than originally intended or warranted, or where the coverage of smaller businesses had become more extensive over time as the real value of thresholds had been eroded by inflation. Such 'regulatory creep' can be pervasive and impact on many small businesses.
- *Overlapping and inconsistent regulatory requirements.* While these arise within governments, the more vexed instances occur across jurisdictions. They impose significant costs for national companies seeking to operate in what should be a national market.
- *Regulation that is redundant or not justified by policy intent.* Some regulations have simply been badly designed and thus give rise to unintended or perverse outcomes. Others have become ineffective or unnecessary as circumstances have changed over time. In these cases, compliance costs are borne for no good reason.
- *Excessive reporting or recording burdens.* Companies face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary. These are rarely coordinated and often duplicative.
- *Variations in definitions and reporting requirements.* Such differences generate confusion and extra work for many businesses on such basic questions as who is an employee or contractor, or what is a small business.

The full list of the Taskforce's priorities for a reform program across these categories is set out in chapter 8. Table 1 provides just a sample.

Table 1 Examples of priority reforms to existing regulation

Issue	Reform proposals
Excessive coverage	<ul style="list-style-type: none"> – Raise thresholds for the superannuation guarantee exemption, FBT minor benefits, PAYG withholding, etc – Change definition of ‘large proprietary company’
Overlap/inconsistency	<ul style="list-style-type: none"> – Implement national OH&S standards (especially ‘duty of care’) – Conclude bilateral agreements under the EPBC Act
Not justified by policy	<ul style="list-style-type: none"> – Freeze country of origin food labelling – Implement remaining GP red tape reforms
Excessive reporting/recording	<ul style="list-style-type: none"> – Develop a whole-of-government business reporting standard – Allow website annual reporting unless hard copy requested
Variations in definitions/criteria	<ul style="list-style-type: none"> – Align definition of ‘employee’ for SG and PAYG purposes – Ensure consistency with international standards for chemicals and other products

Priorities for further review

A number of the regulatory problem areas identified by the Taskforce require more in-depth review to determine the best solutions. This reflects their complexity, multi-jurisdictional nature or linkages to policy. Many of these reviews should or could be initiated by the Australian Government. However, those with heavy state and territory involvement, where better national outcomes are sought, would be best sponsored by COAG.

Among the large number of reviews proposed in this report, the Taskforce has assigned priority to those potentially yielding the largest gains. Their significance would, in the Taskforce's view, warrant a program of independent public reviews in most cases.

Again, the full list of the Taskforce's priorities in this area is provided in chapter 8. A sample of these, containing brief rationales, is provided in table 2.

Table 2 Examples of priority reviews

Review	Reason
<i>Australian Government priorities</i>	
Privacy laws	– Lack consistency and constrain beneficial information-sharing
Directors' liabilities (Corporations Act)	– Potentially excessive, driving risk-averse compliance
NCP Legislation Review Program	– Significant unfinished business, notably anti-dumping and wheat export marketing
Private health insurance	– Rigidities and complexities
Superannuation tax provisions	– Undue complexity
<i>COAG priorities</i>	
Food regulation	– Inconsistencies are persisting despite IGA
Consumer protection	– Consistency and appropriateness issues
Chemicals regulation	– Myriad of costly regulations
Financial regulation	– Inconsistencies in key areas
State stamp duty and payroll tax	– Costly variations in administrative provisions

Priorities for systemic reform

While periodic culling of excessive or poor-quality regulation can clearly be beneficial, unless the underlying causes of such regulatory problems are addressed, it is likely that they will simply re-emerge, as in the past. ‘Prevention is better than cure’ was a common refrain from business groups, who urged the Taskforce to address the systemic causes of bad regulation and made many detailed suggestions as to how this could be done.

Box 2 Business views on the need for systemic reform

The BCA urges the Taskforce to use the opportunity of this inquiry to point Government in the direction of further substantial reforms that will be necessary to improve business regulation. These reforms must include putting in place institutional arrangements to ensure greater accountability and transparency around regulation making, improved processes for assessing the impacts of regulatory proposals and more effective consultation with those affected by regulation. Business Council of Australia, sub. 109, executive summary, p. 4

From our perspective, the Taskforce would make a major contribution towards the objective of containing the cost of business regulation within acceptable boundaries by recommending improvements to the process of regulation. This would help to ensure that additions to the current stock of regulation are well balanced and consistent with an efficient regulatory regime. International Banks and Securities Association of Australia, sub. 71, p. 18

Principles of good regulatory process

In the Taskforce’s view, good regulatory process requires governments to apply the following six principles:

- Governments should not act to address ‘problems’ through regulation unless a case for action has been clearly established. This should include evaluating and explaining why existing measures are not sufficient to deal with the issue.
- A range of feasible policy options — including self-regulatory and co-regulatory approaches — need to be assessed within a cost-benefit framework (including analysis of compliance costs and, where relevant, risk).
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant.
- Mechanisms such as sunset clauses or periodic reviews need to be built in to legislation to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at the key stages of regulation-making and administration.

On the evidence available to it, the Taskforce considers that the above requirements for good regulatory process have generally not been well discharged. It concurs with business groups that this has been a major contributor to the problems identified with specific regulations. Governments need to publicly endorse the principles and take action to embed them in regulatory practice.

Better analysis and consultation

The Taskforce supports the government's recent decision to require more rigorous cost-benefit analysis of regulatory proposals. This should be extended to different options and include quantification of compliance costs and analysis of risk where relevant.

A second major deficiency that needs to be addressed is consultation. As business has demonstrated, this has been sporadic and half-hearted in many cases, and often too late or leaving too little time for business to respond. A whole-of-government policy on consultation should be promulgated, setting out best practice principles for effective and timely consultation across the regulatory cycle.

Enforcing good regulation-making

Given the pressures and incentives for government to 'regulate first', mechanisms to enforce good regulation-making processes are essential. To this end, since 1997 the government has required proponents of any regulation with potential impacts on business to prepare a regulation impact statement, with compliance monitored by the Office of Regulation Review. Business expressed strong support for these 'gate-keeping' arrangements, but argued that they needed strengthening. The Taskforce endorses this view, and considers that this should be achieved by:

- 'raising the bar' on the standard of analysis considered acceptable for a regulation impact statement to be approved; and
- making it harder for a regulatory proposal to proceed to a decision if the government's requirements for good process have not been adequately discharged.

Ensuring good performance by regulators

Many business groups considered that the culture and behaviour of regulators were compounding the problems they faced with regulation itself. In the Taskforce's view, regulators, like anyone else, will respond to the incentives in their operating environments. As indicated above, these influences have tended to promote unduly risk-averse approaches. Changes are needed to promote a more balanced approach. There is also scope to improve the way regulators interact and consult with business.

In a number of areas, regulators need clearer guidance about the policy intent behind regulation, including in enabling legislation. The foreshadowed ministerial Statements of Expectations should also facilitate this. They will be of particular benefit in guiding the financial market regulators. The responsiveness of regulators to the need for a balanced approach would be reinforced by annual reporting against a wider range of performance indicators that reflect this balance. Regulated entities should also have timely access to internal and third-party review on the merits of key decisions.

To enhance consultation by regulators and their interaction with stakeholders, among other things:

- standing consultative bodies comprising senior stakeholder representatives should be established or maintained (including a joint body for the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission); and
- each regulator should have a code of conduct setting out the rights and responsibilities of the agency and those it regulates, and report annually against it.

The way forward

To ensure the effective implementation of the above reforms, clear processes need to be established to carry them forward, both at the Australian Government level and under COAG. Key elements of the processes in each case should be:

- a forward agenda, identifying at the outset what actions are to be taken, both in relation to specific reforms and further reviews;
- indicative timelines for the various components of this forward agenda; and
- institutional arrangements to monitor and facilitate progress in implementation.

The announcement of such an agenda would provide an important opportunity for government to issue a strong signal about the need for a new approach to regulation.

Such a statement should demonstrate government's commitment to the principles of good regulatory process. In particular, it should strongly convey that government will not take regulatory action (including in response to perceived 'crises') without a careful assessment of the costs and benefits of different options, and after appropriate consultation.

At a broader level, the Taskforce considers that there is a need for strong leadership in the pursuit of a more balanced approach to regulation in Australia. Regulation is essential to the effective functioning of our economy and society, but it has costs and limitations. A better appreciation must be fostered within the community, and within government itself, that regulation should seek to manage risk, not eliminate it, and that a failure to deal sensibly with risk would expose Australians to even greater threats to their wellbeing in the years ahead.

Were these principles to be reflected in the approach of all governments to their regulatory responsibilities, the Taskforce is confident that Australia could build on the successful reform efforts of the past, better placing this country to deal with the challenges of the future.

Summary guide to recommendations

Following is an abridged summary of the Taskforce's recommendations. The recommendations themselves can be found at the page numbers nominated.

Regulatory area	Rec.	Page
HEALTH-RELATED REGULATION		
General medical practice		
Implement remaining recommendations of reviews of GP red tape	4.1	23
Introduce a single provider number for each GP	4.2	23
Remove the PBS authority approval requirement	4.3	24
Rationalise incentive programs for non-vocationally recognised GPs	4.4	24
Private health insurance (PHI)		
Review the regulatory framework for PHI	4.5	25
Widen age groups in the PHI redistribution formula	4.6	26
Simplify lifetime health cover administrative arrangements	4.7	26
Simplify PHI rebate administrative requirements	4.8	26
Streamline the PHI premium increase approval process	4.9	27
Require information about out-of-pocket costs for surgery to be provided to patients	4.10	27
Facilitate publication of data on charging practices of medical specialists	4.11	27
Enable publication of data on hospital treatment outcomes	4.12	27
Pharmacy		
Review the impact of changes to the PBS 20-day rule	4.13	28
Redesign the PBS prescription reconciliation report for pharmacies	4.14	28
Review PBS medication supply arrangements in residential aged care facilities	4.15	29
Simplify the regulatory system for advertising therapeutic products in pharmacies	4.16	29
Therapeutic products and medical devices		
Develop the regulatory framework for the ANZTPA in accordance with COAG principles	4.17	30
Improve domestic regulatory arrangements for therapeutic products and medical devices	4.18	30
Allow choice of certification body for medical device manufacturers	4.19	31
Apply an internationally agreed definition of the central circulatory system for medical devices	4.20	31
Streamline change of sponsor procedures for new medical devices	4.21	32
Review health technology assessment procedures	4.22	33
Aged care		
Remove Australian Government residential aged care building certification requirements	4.23	34
Allow residential aged care providers choice of accreditation agencies	4.24	35
Improve resident classification scale documentation for residential aged care providers	4.25	35

Regulatory area	Rec.	Page
LABOUR MARKET REGULATION		
Occupational health and safety		
Implement nationally consistent OH&S standards	4.26	37
Harmonise duty of care provisions	4.27	38
Improve OH&S education of employers and employees	4.28	39
Improve advice from regulators re OH&S responsibilities	4.29	39
Introduce a single regulator for mine safety	4.30	40
Workers' compensation		
Achieve national consistency in workers' compensation arrangements	4.31	41
Skills mobility and licensing		
Implement mutual recognition for para-professionals and professionals	4.32	42
Align training and occupational licensing systems	4.33	43
Reduce compliance cost of employing apprentices and duplication for group training organisations	4.34	43
Business migration		
Streamline processes and improve provision of advice	4.35	44
Education		
Address issues in the PhillipsKPA report to reduce red tape for universities	4.36	46
Rationalise reporting requirements for non-government schools	4.37	47
Introduce alternatives to universal data collections within the school system	4.38	47
Abolish the Financial Questionnaire for Non-Government Schools	4.39	48
Childcare		
Implement mutual recognition of accreditation requirements	4.40	49
Conduct an independent public review of regulatory arrangements	4.41	49
Employment reporting		
Streamline information-reporting and work visa verification requirements	4.42	50
Replace mandatory Equal Opportunity for Women in the Workplace Act reporting with voluntary reporting	4.43	50
CONSUMER-RELATED REGULATION		
Consumer protection		
Review consumer protection framework	4.44	52
Review regulation of connections to specified telecommunications services	4.45	53
Review telecommunications industry reporting requirements	4.46	53
Privacy		
Endorse national consistency in privacy-related regulations	4.47	55
Undertake a comprehensive public review of privacy laws	4.48	57
Food regulation		
Review governance arrangements for the food regulatory system	4.49	58

Regulatory area	Rec.	Page
Monitor time taken to develop or amend food standards	4.50	59
Review food safety programs	4.51	60
Review country of origin labelling requirements	4.52	61
Freeze further changes to country of origin labelling requirements	4.53	61
Investigate extending performance-based inspection levels under the Imported Foods Inspection Scheme	4.54	61
Remove inconsistencies between New Zealand Dietary Supplements Regulations and the Food Standards Code	4.55	62
Chemicals and plastics		
Implement performance indicators and targets for regulators	4.56	65
Reduce variation from international standards	4.57	66
Develop an integrated national chemicals policy	4.58	67
Improve management of security sensitive chemicals	4.59	69
Improve administration of low risk chemicals	4.60	70
Finalise reforms to disinfectant products	4.61	70
Legal administration		
Harmonise Evidence Acts	4.62	71
Harmonise conveyancing laws and establish a national land register	4.63	71
Harmonise and rationalise personal property securities laws	4.64	72
ENVIRONMENTAL AND BUILDING REGULATIONS		
Environment Protection and Biodiversity Conservation Act		
Implement assessment and approval bilateral agreements	4.65	74
Improve advice and consultation on EPBC processes with affected parties	4.66	74
Improve guidance on 'significant impact' trigger	4.67	74
Native Title Act		
Consider issues in context of the current Attorney-General's review	4.68	75
Consider alternative mechanism for Indigenous Land Use Agreements	4.69	75
Other environmental regulations		
Implement selected recommendations from the 2005 review of the National Pollutant Inventory	4.70	77
Consider issues in context of the current review of the Assessment of Site Contamination National Environment Protection Measure	4.71	78
Undertake further analysis of the merits of the Product Stewardship National Environment Protection Measure	4.72	78
Continue collaboration to implement the Productivity Commission's 2004 recommendations on native vegetation and biodiversity	4.73	79
Develop nationally consistent regulation in the plantation timber industry	4.74	80
Implement the Australian National Audit Office's 2005 recommendations on biosecurity and quarantine services	4.75	80

Regulatory area	Rec.	Page
Assess the merits of regulatory alternatives for controlling salt discharge from laundry detergent	4.76	81
Implement nationally consistent regulation for domestic ballast water management	4.77	81
Building regulations		
Finalise and implement the new intergovernmental agreement	4.78	83
Refer all variations to the Australian Building Code by states and territories back to the Board for consideration	4.79	83
Ensure local government planning approval processes do not undermine the Building Code of Australia	4.80	83
Ensure an effective disabled access premises standard without imposing unreasonable costs	4.81	84
Ensure timely resolution of applications for unjustifiable hardship exemptions from the Disability Discrimination Act	4.82	85
Conduct an ex-post review of energy efficiency standards for residential buildings	4.83	86
FINANCIAL AND CORPORATE REGULATION		
Ensure Statements of Expectations provide guidance on the balance between pursuing safety and investor protection and market efficiency	5.1	89
Develop additional performance indicators for APRA and ASIC having regard to all statutory objectives	5.2	90
Review the penalties for breaches of directors' duties	5.3	90
Ensure finance and corporate legislation provides flexibility to accommodate differing circumstances	5.4	91
Review guidance material to ensure it does not impose additional requirements	5.5	92
Explore options to attract and retain staff with the necessary technical skills and market experience	5.6	92
Ensure decisions are subject to review on their merits	5.7	93
Cooperation and coordination between regulators		
Amend breach reporting requirements to improve consistency	5.8	95
Review the 'responsible officer' and 'responsible person' regimes to achieve greater consistency	5.9	95
Ensure corporate governance requirements are consistent with the principles of the ASX Corporate Governance Council regime	5.10	96
Review data collection and regulatory reporting obligations	5.11	96
Engagement with industry		
Convene a joint industry consultative body	5.12	98
Develop industry charters setting out rights and responsibilities for regulators and regulated entities	5.13	98
Improve accessibility of officers dealing with complex regulatory issues	5.14	99
Provide more specific guidance in areas where concern has been raised	5.15	100
Ensure regulatory requirements and supporting operational guidance are readily available and accessible	5.16	101

Regulatory area	Rec.	Page
Specific regulatory reforms		
Further refine the operation of the financial services reforms regime	5.17	102
Examine the application of insider trading regulation to over-the-counter transactions	5.18	102
Develop a mechanism for rationalising legacy financial products	5.19	103
Allow companies to make annual reports available on their website and distribute hard copies on request	5.20	103
Raise the thresholds for the definition of a large proprietary company	5.21	104
Review incentives for small businesses to incorporate	5.22	104
Review the existing reporting requirements for executive remuneration	5.23	105
Consider removing the requirement for the executive remuneration report to be included in the concise report	5.24	105
Review the requirement to provide a prospectus when issuing shares and options to employees	5.25	105
Review the multiple former audit partner restriction	5.26	106
Review the requirement for recording telephone calls made to retail security holders during a takeover	5.27	106
Review key areas of overlap in financial and corporate regulation to achieve more nationally consistent regulation	5.28	107
TAX REGULATION		
Fringe benefits tax		
Limit FBT reporting to remuneration benefits	5.29	115
Increase the FBT reporting threshold	5.30	116
Increase the FBT minor benefits threshold	5.31	116
Clarify the FBT minor benefits threshold exemption guidelines	5.32	116
Reduce compliance cost for FBT on road tolls	5.33	116
Review FBT and GST interaction and FBT treatment of car parking	5.34	117
Consider allowing optional group FBT returns	5.35	117
Allow employers the same extension to lodge FBT returns as tax agents	5.36	117
Goods and services tax		
Provide a simplified accounting method for restaurants, cafes and caterers	5.37	118
Increase the compulsory GST registration threshold	5.38	119
Promote BAS policy for capital items worth \$1000 or less	5.39	119
Examine providing brief explanatory information on the BAS	5.40	119
Income tax		
Incorporate the Medicare Levy into personal income tax rates	5.41	120
Increase the PAYG withholding threshold for quarterly remitters	5.42	121
Harmonising tax definitions		
Align and rationalise definitions in tax law	5.43	122

Regulatory area	Rec.	Page
Align definitions of 'employee' and 'contractor'	5.44	123
Harmonise payroll tax administration across states and territories	5.45	123
Harmonise stamp duty administration across states and territories	5.46	123
Standardise tax administration across jurisdictions	5.47	124
Other tax issues		
Issues for consideration by Board of Taxation	5.48	125
SUPERANNUATION REGULATION		
Increase superannuation guarantee exemption threshold	5.49	126
Amend accrual accounting treatment of superannuation guarantee contributions	5.50	127
Simplify superannuation tax rules	5.51	128
TRADE-RELATED REGULATION		
Trade		
Review mechanisms to streamline national trade measurement	5.52	129
Review anti-dumping policy and administration	5.53	130
Extend Accredited Client Program to lessen compliance burden for selected importers	5.54	131
Rationalise and ease reporting for businesses trading internationally	5.55	131
Review separate accounting requirements for gas pipelines	5.56	132
Bring forward the review of the Wheat Marketing Act	5.57	132
Review FIRB requirements on real estate, and raise approval threshold for other acquisitions	5.58	133
Review '.com.au' domain name administration	5.59	133
Commonwealth Procurement		
Review implementation of procurement policies	5.60	135
Establish a program to assess credentials of regular tender participants	5.61	136
Raise the Public Works Committee threshold	5.62	136
REDUCING BURDENS ACROSS GOVERNMENT		
Rationalise definitions, use common terms and present information more clearly	6.1	139
Encourage use of information technology to reduce compliance costs	6.2	140
Develop and adopt a business reporting standard	6.3	142
Streamline business name, ABN and related licensing registration processes	6.4	143
ADDRESSING THE UNDERLYING CAUSES OF OVER-REGULATION		
The principles of good regulatory process		
Endorse the principles of good regulatory process	7.1	147
Improving regulation-making		
Undertake cost-benefit analysis (including risk assessment) of regulatory options	7.2	150
Mandate use of the Compliance Costing Tool in assessing regulatory options	7.3	150
Develop in-house cost-benefit skills in departments and agencies	7.4	150

Regulatory area	Rec.	Page
Adopt a whole-of-government policy on consultation	7.5	154
For major or complex regulatory matters, produce a policy ‘green paper’ and/or exposure draft	7.6	154
Establish a consultation website	7.7	154
Strengthen RIS adequacy requirements	7.8	157
Tighten ‘gate-keeping’ requirements for regulatory proposals	7.9	157
Endorse strengthened requirements for regulation-making	7.10	157
Include good process requirements in Legislative Instruments Act	7.11	157
Elevate oversight of regulatory processes and reform program to Cabinet level	7.12	157
Agencies to ensure regulatory analysis is adequately resourced	7.13	158
Ensuring good performance by regulators		
Provide clear guidance to regulators on policy objectives	7.14	161
Ministers to emphasise policy objectives in Statements of Expectations	7.15	161
Develop broader performance indicators for regulators	7.16	163
Establish internal review mechanisms for regulatory decisions	7.17	163
Ensure timely merit review of administrative decisions	7.18	163
Ensure regulators issue protocols on consultation procedures	7.19	165
Establish consultative bodies with stakeholders	7.20	165
Develop a code of conduct covering regulators and regulated entities	7.21	165
Establish ‘relationship manager’ roles in regulators	7.22	165
Ensure regulatory appointees have industry experience	7.23	165
Avoiding overlap, duplication and inconsistency		
Review areas with significant jurisdictional overlap	7.24	171
Develop a framework for national harmonisation of regulation	7.25	171
Ensuring that regulation delivers over time		
Amend the Legislative Instruments Act to provide for 5 year sunset clauses	7.26	174
Conduct selective post implementation reviews after 1-2 years	7.27	174
Assess regulations not subject to sunset clauses every 5 years	7.28	174
Other systemic matters		
Evaluate scope for cross-jurisdictional benchmarking of regulatory regimes	7.29	175

1

The Taskforce and its brief

1.1 Setting the scene

Previous initiatives

Over recent decades, Australian governments have implemented major regulatory and other economic reforms to make businesses more competitive and the economy more efficient and productive. The reforms have included:

- reducing protection against imports (such as abolishing quotas and progressively reducing tariffs on imported cars);
- reducing regulation that shields firms from competition (such as the old 'two-airlines' agreement, and conveyancing laws that granted lawyers a 'closed shop');
- introducing regulation to facilitate competition in certain previously monopolised markets (such as telecommunications and rail freight);
- introducing measures to broaden the tax base and close 'loopholes' (including fringe benefits tax, capital gains tax and goods and services tax); and
- making a partial shift from centralised wage fixing towards enterprise bargaining.

While the success of individual reforms has varied, there now seems little doubt that the net effect has been to contribute to the extended period of sustained economic growth and rising incomes that Australia is enjoying.

Although not the main focus of reforms to date, governments have also made some attempts to limit or reduce the costs that businesses face in complying with regulation, and to counter forces leading to over-regulation generally. For example:

- there have been a number of ad hoc reviews addressing business compliance costs, most notably by the (Bell) Small Business Deregulation Taskforce (1996); and
- some systemic reforms have also been introduced, such as the Regulation Impact Statement process adopted by the Australian Government, the Council of Australian Governments (COAG) and most state and territory governments, which seeks to ensure that regulations are properly assessed before being implemented.

Ongoing concerns

Notwithstanding these initiatives, the volume of regulation has expanded rapidly over more recent years. Governments have introduced new regulations in areas such as finance, corporate governance, superannuation, business taxation and, most recently, workplace relations, and regulation in social and environmental areas has continued apace. The growth in regulation in Australia mirrors developments in other countries. While it partly reflects an increasing pursuit of legitimate economic, social (including equity) and environmental objectives, it is also clear that much regulation continues to be poorly justified and implemented.

Reflecting these developments, business groups and others have increasingly aired concerns about the growth of regulation and its effects. For example, in a major study released in May 2005, the Business Council of Australia (2005) argued that regulation is generating large and unnecessary compliance burdens on business and the community, as well as high administrative costs for government. Many other business groups, including representatives of manufacturers, builders, farmers and small business, have raised similar concerns and called for further reform.

A new wave of reviews

Governments have responded to these concerns by initiating a number of reviews and reforms, including:

- COAG's current review of National Competition Policy;
- the Board of Taxation's reviews of aspects of tax legislation; and
- the Australian Treasury's Financial Services Reforms Refinement project.

In addition, the Australian Government recently announced enhanced processes for assessing new regulations, involving more rigorous use of cost-benefit analysis. It has also foreshadowed that the Productivity Commission will undertake annual reviews of the stock of Australian Government regulation.

To provide a basis for early actions across a broad front, in October 2005 the Prime Minister and the Treasurer announced the establishment of the Regulation Taskforce.

1.2 The Taskforce's review

A broad-ranging brief

The Prime Minister and Treasurer's Joint Press Release (appendix A) indicated that the Taskforce was to:

- identify specific areas of Australian Government regulation that are unnecessarily burdensome, complex or redundant, or duplicate regulations in other jurisdictions;
- indicate areas where regulation should be removed or significantly reduced as a matter of priority;
- examine non-regulatory options (including business self-regulation) for achieving desired outcomes and how best to reduce duplication and increase harmonisation within existing regulatory frameworks; and
- provide practical options for alleviating the Australian Government's 'red tape' burden on business, including family-run and other small businesses.

Reflecting the Joint Press Release, the Taskforce has focused on reducing the *compliance burden* that regulation imposes on business, rather than on reducing regulation *per se*. While clearly redundant regulation should be abolished, in many cases regulation is necessary to help achieve important community objectives. For example, it can help mitigate accident and security risks, limit pollution, prevent fraud or anti-competitive conduct and set standards for corporate governance. Some compliance burden on business associated with such regulation is unavoidable.

The key question for the Taskforce was therefore whether a regulation and/or its implementation imposes an *unnecessary*, and therefore avoidable, burden on business; that is, whether the legitimate policy goals underlying the regulation can be achieved in a way that does not impose as high a burden on business. It was also important that reforms did not simply shift costs from business to government and other sections of society. Rather, to recommend a reform, the Taskforce needed to be satisfied that it would generate a net benefit for society as a whole.

For the purposes of the review, the Taskforce defined ‘regulation’ to include any laws or other government ‘rules’ that influence or control the way people and businesses behave. Under this definition, regulation is not limited to legislation and formal regulations, but also includes quasi-regulation, such as codes of conduct, advisory instruments and notes. The term regulation is also used in this report to encompass the way particular regulations are administered and enforced.

Further, the Taskforce did not limit itself to examining compliance burdens on for-profit businesses, but also considered the effects on organisations such as schools, hospitals and non-profit organisations where relevant.

Extensive business involvement

In preparing its report, the Taskforce:

- released an issues paper and invited submissions on the matters under review;
- visited some 62 business groups, government agencies and other stakeholders to explain the nature of its brief and elicit views and information on regulation and potential areas for reform;
- held business roundtables on economic regulation, employment and environmental regulation, and small business issues;
- convened two smaller forums to examine aged care and childcare regulation;
- invited state and territory governments to make submissions to address areas of overlap; and
- consulted with relevant Australian Government departments and agencies, including to elicit views on the feasibility of different reform proposals.

In total, the Taskforce consulted with around 90 organisations and received 151 submissions. Appendix B lists the organisations consulted, the roundtable and smaller forum participants, and the written submissions received by the Taskforce.

Notwithstanding the tight timeframe, businesses and other organisations provided numerous case studies and other information to support claims that particular regulations impose *unnecessary* compliance burdens on them, as the Taskforce had requested in its issues paper. The Taskforce’s examination of the potential for reform to various areas of regulation is contained in chapters 3 to 6.

In addition, many of the roundtable and forum participants, organisations visited and submissions received by the Taskforce were emphatic about the need to address the systemic causes of over-regulation to avoid recurrence of the problem. These matters are addressed in chapter 7.

2

The rising regulatory burden

No modern society can function effectively without regulation. Some laws are necessary simply to uphold public order and facilitate everyday economic transactions. Further, the way some markets work can have perverse economic, social or environmental side-effects. Sensible regulation can help address some of these problems.

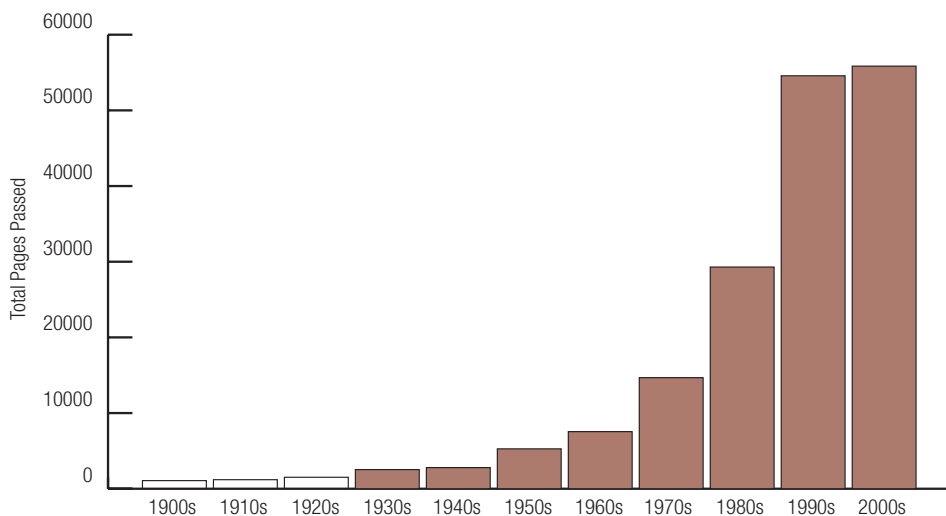
In many areas, however, regulation has gone beyond what is sensible. As set out in chapters 4 and 5, the Taskforce found numerous instances where regulations are excessive and/or poorly designed or administered, and are thus imposing unnecessary compliance burdens on business. It also heard evidence, particularly from small business, that red tape is absorbing much time and energy and becoming a drag on entrepreneurial drive.

This chapter outlines the extent and nature of the problem and its drivers. Later chapters set out some actions governments can take to address the problem.

2.1 The expanding volume of regulation

The volume of regulation has grown dramatically in recent years. For example, since 1990, the Australian Parliament has passed more pages of legislation than were passed during the first 90 years of federation.

Estimated growth in pages of Australian Government primary legislation



Source: Business Council of Australia, sub. 109, p. 3

This does not mean that the burden of regulation has necessarily increased to the same extent. Among other things, many of the new regulations appear to have replaced old ones, some of which imposed major costs on the economy; and Office of Regulation Review figures also suggest that a considerable number of recent Australian Government Acts and regulations may not have significantly affected business (PC 2005f).

Moreover, there have been legitimate reasons for growth in some areas of regulation, for example:

- As in other advanced economies, rising income levels in Australia have brought increased expectations or demands on our governments to regulate to address a range of worthwhile social and environmental goals — motor vehicle safety and pollution control, for instance.
- Some recent economic reforms have necessitated increases in (or new forms of) regulation. An example is the introduction of ‘access regimes’ to promote more efficient use of major infrastructure, such as gas pipelines and electricity grids, previously run as monopolies.

Be that as it may, the cumulative impact of more than a century of regulatory activity — good and bad — is that Australians, and businesses operating in Australia, are now subject to a vast and complex array of laws and regulations (see box 2.1). Submissions frequently noted that, while individual regulations are generally manageable, the cumulative burden is a major concern.

General regulatory requirements faced by all small businesses such as real estate agencies include preparation, lodgement, and record-keeping associated with matters such as the GST, payroll tax, company tax, worker’s compensation, superannuation, Australian Workplace Agreements, privacy, and occupational health and safety. Real Estate Institute of Australia, sub. 16, p. 2

Each piece of new regulation may, when proposed in isolation, look reasonable. The overall effect, however, can be a considerable regulatory burden. Business Council of Australia, sub. 109, p. 5

Box 2.1 Some rough indicators of the extent and complexity of regulation in Australia

- There are more than 1500 Commonwealth Acts of Parliament, some of which (notably the tax Acts, even with their recent revisions) are extremely long and complicated. There are also around 1000 statutory rules in force, plus an unknown amount of other Commonwealth ‘subordinate’ legislation.
- Each state and territory government administers a large body of its own legislation and regulation. For instance, NSW has about 1300 Acts and 650 principal statutory instruments, with a further 5500 local government planning instruments (Business Council of Australia 2005, pp. viii, 8). And in Victoria, 69 regulators of business administer 26 000 pages of legislation and regulation (VCEC 2005, p. xxi).
- There are also literally millions of pages of rulings, explanatory memoranda, advisory notes and so on, plus a number of self-regulatory regimes, sometimes introduced to ward off the ‘threat’ of government regulation.
- One particularly striking indicator of the extent and complexity of regulation affecting business is that, in mid-2003, the three levels of government appeared to administer more than 24 000 different types of licences for businesses and occupations (Human Solutions 2005).

Where does all this regulation come from? As well as Australian Government, state and territory governments and local councils, numerous specialist bodies have been established to develop and/or enforce particular areas of regulation — examples at the national level are the Australian Prudential Regulation Authority and the Therapeutic Goods Administration. Several joint Australian Government–state ministerial councils and national standard-setting bodies, such as the Environment Protection and Heritage Council, are also actively engaged in promulgating regulation.

By some estimates, there could be up to 600 regulators Australia-wide (PC 2005f, p. 1). This figure does not include Australia’s approximately 700 local governments, which develop their own regulations (such as by-laws), as well as enforce regulations.

2.2 The variable quality of regulation

While the growth in regulation (and frequency of revisions to key regulations) is itself a cause of complexity and cost, arguably greater problems can arise from the nature and design of regulation, and how it is administered and enforced.

Notwithstanding widespread improvements in some areas, the Taskforce became aware of a number of problematic features in the design of regulations, including:

- unclear or questionable objectives;
- a failure to target the regulation sufficiently — for example, regulation that is too blunt or disproportionate to the problem;
- undue prescription;
- excessive reporting or other paperwork requirements;
- overlap, duplication or inconsistency with other regulation, either within jurisdictions or between jurisdictions;
- poorly expressed and confusing use of terms, including the use of inconsistent definitions in different regulations; and
- unwarranted differentiation of local regulation from international standards.

There are also problems with how some regulation is administered and enforced. Indeed, a number of business groups argued that the behaviour of regulators can be just as problematic as the regulations themselves. Issues commonly identified include heavy-handedness and undue legalism; failure to use risk assessment when determining how stringently or widely to enforce a regulation; poor and ineffective communication; and a lack of certainty and guidance to business about compliance requirements. These and other issues are discussed in section 7.3. Box 2.2 contains a range of participants’ comments on what they see as problematic aspects of regulation. Further examples are in chapters 4 and 5.

Box 2.2 Some business complaints about regulation

ACCORD has noticed a disturbing tendency by the regulators to undertake activities outside the scope of their legislation. This is usually in the areas of policy, the provision of public information services (both of which are funded from industry cost-recovered monies) and regulator’s requirements for industry quality improvement programs which seek higher standards than those required in legislation. ACCORD Australasia, sub. 85, p. 6

It is the experience of Science Industry Australia members that ‘over zealous’ black and white implementation of regulations is a major component of the angst and therefore opportunity cost of most regulations. Regulators need to become more aware of, and responsive to, the impact of the detail of their regulations at the small to medium enterprise level. Science Industry Action Agenda, sub. 56, p. 4

(continued next page)

Box 2.2 (continued)

Too many times COAG agree on principles, but then state government departments develop inefficient, inconsistent regulatory approaches in each State, adding to the costs of running business. QFF believes that there needs to be more consistent, national approaches across a whole raft of areas that impact on primary producers, including food safety and quality assurance; biosecurity and quarantine matters; occupational health and safety; natural resource management; and transportation. Queensland Farmers' Federation, sub. 50, p. 5

Nonprofit entities have frequently been damaged by the unconsidered application to them of laws and regulations designed for for-profit entities... [S]ubstantial and unnecessary costs are imposed on the nonprofit sector by inconsistent, contradictory, burdensome and poorly targeted government regulation. National Roundtable of Nonprofit Organisations, sub. 110, p. 2

[R]ather than drowning consumers with vast amounts of disclosure, a far better alternative would be to ensure that fundamental protections are built into the legislation itself. Consumer advocates themselves are now publicly questioning what protection disclosure in fact provides and whether or not detailed and prescriptive disclosure actually improves consumers' understanding. Australian Association of Permanent Building Societies, sub. 14, p. 2

The silo mentality of government is also a problem. Government agencies have a tendency to merrily design legislation, and impose obligations, in glorious isolation — without reference to any other agency with similar public policy interests. K.M. Corke and Associates, sub. 11, p. 7

It should be noted that in many cases, poor or excessive regulation is not the result of bad policy, but rather the implementation of this policy. Institute of Chartered Accountants in Australia, sub. 41, p. 4

These facets of regulation contrast sharply with the principles of good regulation enunciated by the Organisation for Economic Cooperation and Development (OECD) and others (see box 2.3).

Box 2.3 Checklist for assessing regulatory quality

According to the OECD and other experts, regulations that conform to best practice design standards are characterised by the following seven principles and features.

- Minimum necessary to achieve objectives
 - Overall benefits to the community justify costs
 - Kept simple to avoid unnecessary restrictions
 - Targeted at the problem to achieve the objectives
 - Not imposing an unnecessary burden on those affected
 - Does not restrict competition, unless demonstrated net benefit
- Not unduly prescriptive
 - Performance and outcomes focused
 - General rather than overly specific
- Accessible, transparent and accountable
 - Readily available to the public
 - Easy to understand
 - Fairly and consistently enforced
 - Flexible enough to deal with special circumstances
 - Open to appeal and review

(continued next page)

Box 2.3 (continued)

- Integrated and consistent with other laws
 - Addresses a problem not addressed by other regulations
 - Recognises existing regulations and international obligations
- Communicated effectively
 - Written in ‘plain language’
 - Clear and concise
- Mindful of the compliance burden imposed
 - Proportionate to the problem
 - Set at a level that avoids unnecessary costs
- Enforceable
 - Provides the minimum incentives needed for reasonable compliance
 - Able to be monitored and policed effectively

Source: Argy & Johnson 2003

2.3 The costs of regulation

Compliance costs for business

The most visible costs to business are the paperwork burden and related compliance costs, which derive from:

- providing management and staff time to fill in forms and assist with audits and the like;
- recruiting and training additional staff, where needed to meet compliance burdens;
- purchasing and maintaining reporting and information technology systems;
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance; and
- obtaining licences and/or attending courses to meet regulatory requirements.

Evidence provided to the Taskforce indicates that these costs can be significant. For example:

- a recent survey by the State Chamber of Commerce (NSW) (sub. 35, p. 2) found that the average business in NSW spends up to 400 hours a year (or nearly \$10 000), in time alone, complying with regulations or meeting its legal obligations; and
- one large business (QBE Insurance Group, sub. 53, p. 2) estimated that, in total, it spends \$60 million a year on compliance matters.

Box 2.4 contains other estimates from individual businesses or surveys by business groups.

As well as the monetary cost, regulatory compliance obligations can also divert management attention from a company's core business. Submissions indicated that compliance issues can consume up to 25% of the time of senior management and boards of some large companies — which among other things risks stifling innovation and creativity.

While the paperwork burden and compliance matters may hamper and distract large businesses, empirical evidence, some of which was cited in submissions, indicates that they have a disproportionate impact on smaller enterprises. Small businesses, which comprise more than 95% by number of

Box 2.4 Compliance costs — business's experience

A number of Australian companies suggest that aside from NICNAS [National Industrial Chemicals Notification and Assessment Scheme] fees, it costs somewhere between \$150 000 & \$250 000 per substance to obtain NICNAS accreditation. Remove Obstacles to Australian Manufacturers, sub. 76, p. 1

ACEA took a sample of small, medium and large consulting engineering firms ... The results show the following:

- *Sole traders and small firms incur ... on average \$40 000 per year each in unnecessary compliance costs.*
- *Medium and large firms ... incur on average \$180 000 per year each in unnecessary compliance costs.*

Across the ACEA membership this is a loss in revenue totalling \$18.5 million per annum caused by unnecessary regulation. Association of Consulting Engineers Australia, sub. 79, p. 4

Based on data provided to the Restaurant & Catering Australia, the average restaurateur or caterer spends \$552 per month (or \$6600 per annum) on GST compliance. Restaurant & Catering Australia, sub. 70, p. 10

Telstra must now make over 480 routine reports each year to government and regulators. This requires at least 70 full time staff resources devoted to reporting alone that could otherwise be delivering better services to customers. Telstra Corporation, sub. 66, p. 14

[I]n NSW and in particular the Newcastle area ... additional council requirements were estimated to add around \$3000 to the cost of a new \$150 000 house. Master Builders Australia, sub. 100, appendix A, p. 3

One BCA Member company estimates the cost of duplication in licensing to be \$500 000 per annum plus \$500 000 to obtain the separate [registrable superannuation entity] licences. Business Council of Australia, sub. 109, p. 20

[T]he implementation of the Consumer Credit Code from its enactment in 1994 saw one-off implementation compliance costs for banks of approximately \$200 million with ongoing annual recurring costs of approximately \$50 million. Australian Bankers' Association, sub. 116, p. 10

[T]he ongoing cost of giving privacy notices over telephone sales costs the industry between \$1–2 million per annum due to ongoing costs of training, staff time and other compliance considerations. Insurance Council of Australia, sub. 98, p. 7

[T]he initial licensee education and training requirements of FSRA resulted in a total transition cost of about \$200 million for the 4200 Australian Financial Services Licence holders at that time. The research also showed ... [the ongoing costs] will be more than \$100 million across the industry. Business Council of Australia, sub. 109, attachment A, pp. 9–10

The cost of acquiring an APRA licence is estimated to be between \$100 000 and \$200 000 per licence. Given there is expected to be about 350 plus licensees, the overall cost to industry will be between \$35 and \$70 million. We further expect that, for many funds, the additional costs of complying with APRA licensing, both initially and on an on-going basis, will be considerable. Association of Superannuation Funds of Australia, sub. 103, p. 2

all businesses, have a narrower revenue base over which to spread the fixed (or set-up) costs of compliance. Many also do not have in-house regulatory expertise to help with compliance. Further, small businesses may lack the time to readily keep abreast of regulatory developments (see box 2.5). In addition, the complexity of regulation, and threat of penalties for even inadvertent non-compliance, can be disheartening and a source of considerable stress for some small business people.

Beyond the direct paperwork burden and related costs, regulation can also cause businesses to adjust their processes in ways that add to costs, and it can make some commercial pursuits unviable or less attractive. Box 2.6 contains a number of examples.

More broadly, as the Science Industry Action Agenda (sub. 56, p. 2) noted:

The economic cost of complying with regulations is a key determinant of national competitiveness and the investment environment for businesses. These costs can be direct, such as capital and operating costs. They can also be indirect, that is, opportunity costs, where the principal(s) of the businesses are taken away from their strategic roles of driving innovation, securing investment and increasing productivity.

The net effect on business is to reduce incentives for productive endeavour, with multiple adverse effects on matters such as investment, employment, incomes, tax receipts and overall economic activity. Box 2.7 provides an example.

Box 2.5 Small business views on the paperwork burden

[S]mall businesses are feeling swamped by the procedures they face just to exist and this is not just directly with government. Indirect red tape is also playing havoc with the little time available to small business owners and their staff. Council of Small Business Organisations of Australia, sub. 17, p. 4

Government reports are three per month, two per quarter, three annual ones. We computerised to make this reporting process easier, but have found the daily updating of the computer just as time consuming. The additional impost of constant changes to government laws, e.g., food safety, flammable goods, superannuation, taxation and now industrial relations requires continual education of self as well as staff. It's hard to run a small business as well as try to keep abreast of these changes. Retailer quoted in National Association of Retail Grocers of Australia, sub. 40, p. 3

Think 'Business Activity Statement Instructions' ... which weighed in at over 150 A4 pages. 150 pages worth of instructions to fill in a single form? And that was supposed to be a simplification of the tax system! ... If the compliance legislation is too complex to explain in a small concise document, then it is too complex to expect business owners to consistently comply with it. Starkis Design, sub. 5, p. 2

Box 2.6 Lost opportunities

Rebound Ace tennis courts are the province of a Queensland based company. ... New technology became available ... superior and more environmentally acceptable than the ... system in use. [However] one ingredient used in small quantities ... could not be used ... the cost of accreditation was such that ... Australia lost export opportunities.

A major multi-national who manufactures resins ... in Australia wanted to make ... a new foundry sand binder ... principally for use in automotive foundries. ... The new system offered performance, environmental, OH&S benefits. ... [But] one of the components ... was not listed [in Australia] so as a result of the time and cost of accreditation the product was dropped. Remove Obstacles to Australian Manufacturers, sub. 76, pp. 2–3

Box 2.7 One firm's cumulative burden

We have a direct cost of employment, legal costs, consultancy and senior management time generated by inconsistent laws and regulations around occupational health and safety, payroll tax, workers' compensation, environmental regulation, property transfer laws, tax laws, company law (particularly its inconsistency with globally accepted regulations) and consumer protection laws. We estimated that, if each of these areas was consistent across Australia and, where appropriate, consistent with our international obligations, we could reduce our costs in this area by 20 per cent. This would equate to approximately 0.75 per cent of our revenue and increase our company tax contribution to the economy by \$1–2 million per annum and provide an additional \$2–4 million per annum for investment.

We have opportunity costs of many times that amount. The distraction to our organisation by this regulatory complexity should not be underestimated. If our regulatory framework were rationalised and simplified, our competitiveness would dramatically increase, particularly into export markets. Too many of our managers are spending time distracted by regulatory complexities. Our company has expanded at a rate of 15 per cent per annum for the last four years. Given simple, consistent and sensible regulation we would have been able to increase that growth rate by at least 50 per cent. Apart from the benefits to employment and our balance of trade, it would also have put an additional \$8–10 million into the Treasurer's coffers over that period of time and produced an additional \$24–30 million for further investment. Member company cited in Business Council of Australia, sub. 109, p. 35

Direct costs to government (and the taxpayer)

Governments incur costs in designing, implementing, enforcing, reviewing and updating regulation. Determining the proportion of government administrative expenses attributable to regulatory functions is difficult. However, the administrative expenses of 15 dedicated Australian Government regulatory agencies approached \$2 billion in 2003–04. The Australian Taxation Office accounted for a further \$2.3 billion in that year (PC 2005f, p. 2).

Broader community costs

Where regulation increases business costs, these are often passed on to consumers in the form of higher prices for goods and services. Some regulations may also unnecessarily restrict consumer choice.

Further, regulation that increases business costs or restricts business opportunities may jeopardise not only the profits of owners, but also the job security and wages of their workers. Where unemployment results, tax receipts fall, and welfare expenditure rises.

Finally, sometimes regulations with worthy objectives can have unintended social or economic side-effects (see box 2.8).

What does it all add up to?

While a number of studies have sought to estimate the economic costs of regulation in Australia, the limitations of such studies mean that the estimates should be treated with caution (see box 2.9). Further, none of the studies measure the extent to which the compliance costs exceed what is necessary to achieve the policy goals underlying the regulations, which is the focus of this review. Quantifying this unnecessary element is even more difficult, and clearly beyond the Taskforce's scope in the time available.

Box 2.8 Some unintended consequences of regulation

We would note our industry's experience of consumer frustration at the complexity, in particular, of product disclosure statements and the disclaimers and legalistic procedures that now govern all aspects of industry relationships with their customers. Consumers appear to be more confused about the range of products available and perplexed that comparison of products, without seeking expert financial advice, is virtually beyond the average consumer. Australian Friendly Societies Association, sub. 114, p. 2

[T]here is ... evidence of non-compliance and pre-emptive clearing undertaken as insurance against possible future policy changes. Reclassification of 'regrowth' as 'remnant' vegetation after a certain period, for example, often encourages early clearing to avoid possible future restrictions. Productivity Commission 2004a, p. XXVI

[U]nintended side effects of the [Higher Education Support] Act [2003] that restrict existing university practices: universities face shutting down summer schools unless legislative amendments are passed; existing arrangements for students from one university to take units from another as part of their course are also dependent on legislative amendment. Australian Vice-Chancellors' Committee, sub. 9, p. 4

Comparison rates [under the Uniform Consumer Credit Code] mislead consumers because the complexity and variety of financial products prevents a simple comparison measure. It is also open to abuse by unscrupulous lenders who can manipulate fees and charges to lower the comparison rate. Australian Association of Permanent Building Societies, sub. 14, attachment A, p. 2

It is now mandatory to fence off every construction site. This requirement is extremely difficult to implement in the construction of a swimming pool in a backyard of a house being occupied by the owner during the course of construction. The Red Zebra Centre, sub. 18, p. 6

Authorisation processes under the Trade Practices Act for medical rosters are expensive and discourage medical practitioners from entering into certain rostering arrangements designed to ensure continuing patient access to medical services. Rural areas in particular are disadvantaged. Australian Medical Association, sub. 23, p. 4

However, the unnecessary costs may well total billions of dollars. This judgement reflects:

- the size of the more conservative (and, in the Taskforce's view, more credible) estimates of aggregate compliance costs mentioned in box 2.9; in conjunction with
- evidence of significant unnecessary compliance burdens at the individual enterprise level, some of which is reported in the boxes above.

Even if the unnecessary component of compliance costs represented only one-fifth of their total, then using the Lattimore et al. (1998) pre-GST estimate of aggregate compliance costs, the unnecessary component of these costs alone would amount to almost \$3 billion a year (in today's dollars).

Overall, the Taskforce has no doubt that there are considerable national benefits to be had from reducing unnecessary regulatory burdens on business.

Box 2.9 Some crude estimates of the total cost of regulation

Studies that have sought to estimate either business compliance costs or total costs of regulation suggest that the costs are large:

- In a Productivity Commission staff research paper, Lattimore et al. (1998), drawing on a range of data including the results of the 1996 Bell survey of business compliance costs, estimated regulatory compliance costs at around \$11 billion in 1994–95.
- A 2001 OECD study, compiled with the assistance of the Australian Chamber of Commerce and Industry, estimated that Australian tax, employment and environmental regulations imposed some \$17 billion in direct compliance costs on small and medium enterprises in 1998.
- A 2005 study by the Australian Chamber of Commerce and Industry, drawing on a range of cost components, data sources and estimation procedures, claimed that the total costs of regulation to the Australian economy (including potential efficiency losses as well as compliance costs) could be as high as \$86 billion, or 10.2% of gross domestic product, based in part on methodology from a US study.

However, quantifying the costs of regulation is not easy. This is partly because regulators and other bodies do not systematically collect compliance cost information. Another problem is that, while a number of industry surveys have examined compliance costs, these face potential ‘response bias’, and other methodological problems, which can limit their usefulness. In the Taskforce’s view, the estimates, particularly those at the higher end, should not be interpreted as robust estimates of the actual compliance and/or other costs of regulation.

2.4 What is driving this regulatory growth?

Rising risk aversion and other pressures

A variety of forces appear to be contributing to excessive and poor quality regulation, and the costs it generates. However, in the Taskforce’s view, a fundamental driver is increasing ‘risk aversion’ in many spheres of life. In effect, regulation has come to be treated as a panacea for many of society’s ills and, in particular, is seen as an easy means to protect people against an array of risks — big and small, physical and financial — that arise in daily life. Reflecting this view, a failure by governments and their regulators to ‘do something’ in response to the crisis of the moment often brings criticism from political opponents and in the media.

Business groups and others have seen this as a major issue, with several citing a recent speech by the British Prime Minister, Tony Blair (2005, p. 1):

In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to see as a normal part of life. This is putting pressure on policymaking [and] regulatory bodies ... to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora of rules, guidelines, responses to ‘scandals’ of one nature or another that ends up having utterly perverse consequences.

These pressures to regulate augment more traditional demands for regulation, including those of interest groups lobbying for regulation to achieve particular ends. In some cases, business groups themselves are active players.

Despite complaints about 'rising red tape', businesses are very selective in their criticisms of regulation. Protected industries (pharmacy, broadcasting, airlines, taxis, the professions) both fight tooth and nail to keep the regulations which insulate them from competition. We have yet to find any business in the finance sector that has called for an end to compulsory superannuation, despite the fact that this is burdensome and radically interventionist. Australian Consumers' Association, sub. 129, pp. 5–6

Incentives for over-regulation

Ideally, pressures for regulation would be mediated through good regulation-making processes, so that only regulations that bring a net benefit to society would be introduced. Such processes would also impose disciplines on governments introducing regulations to identify and minimise any unnecessary compliance costs associated with administration and enforcement, as well as any adverse side-effects.

In practice, however, a number of features of the way governments operate have worked against this.

First, many of the costs of regulation are diffuse and 'off-budget' — they are incurred by a multitude of businesses and individuals across the economy. Accordingly, the compliance costs are effectively 'hidden' to those promulgating regulations, and are thus less likely to be taken into account, or given due weight, in government decisions about whether a regulation should be introduced. As a number of participants observed, this contrasts with the much sharper disciplines that budgetary measures face through the Expenditure Review Committee process.

Second, the cumulative burden of regulation, and potential overlaps and inconsistencies between particular regulations, are unlikely to be given much consideration because regulations are generally developed within policy 'silos' — that is, portfolios with responsibility for a specific area of policy, such as transport, immigration or the environment — while the compliance costs are not of direct concern. For instance:

- the natural focus of officials in environmental agencies is on protecting the environment, not on minimising the costs of compliance to businesses affected by environmental regulation; and
- officials in a particular portfolio (or jurisdiction) are often unaware of whether the reporting requirements their regulations impose on business overlap with those of another portfolio (or jurisdiction).

Third, the culture of some regulators itself tends to foster excessive or poor quality regulation. The full list of business grievances about regulatory agencies is extensive (see section 7.3). Among other things, business groups complained of encountering 'government knows best' attitudes and a general distrust of business people by regulators. In addition, regulators face their own incentives to minimise risk — in this case, the risk that they will be criticised for failing to 'protect' consumers. Reflecting these attitudes and incentives, some regulators have tended to use heavy-handed and legalistic practices in administering and enforcing regulation. Indeed, even in policy areas where there have been legislative attempts to share risk more evenly between business and consumers (as in aspects of superannuation and financial regulation), the response of agencies responsible for administering and enforcing such legislation has been to add additional prescriptive elements to constrain the way business operates.

As noted in chapter 1, most governments in Australia have introduced disciplines to limit the effect of these and other influences on the extent and quality of regulation, most notably the Regulation Impact Statement requirements. However, as discussed in chapter 7, while sound in principle, the requirements have often been circumvented or treated as an afterthought in practice. The upshot is that they have often not realised their potential to improve the quality of regulation.

2.5 The need for reform

While governments in Australia have undertaken much worthwhile regulatory and other economic reform over the last 20 years, they have not given as much attention to regulatory compliance burdens on business. Such burdens can reduce the competitiveness of Australian businesses competing against imports and those seeking to penetrate export markets alike. More generally, they inflate costs, restrict business opportunities and thereby hamper business investment, employment and overall economic activity. Accordingly, reform to address compliance burdens has the potential to enhance Australia's living standards and growth potential. The evidence provided to the Taskforce indicates that the extent of unnecessary compliance costs, and thus the potential benefits of reform, are considerable.

The need for reform is heightened by several factors. As is often pointed out, Australia faces a number of economic challenges in the years ahead, not least those posed by an ageing population, and increasing competition from low-cost and lightly regulated economies such as China and India. These emerging challenges are in addition to the inherent disadvantages posed by our economy's relatively small scale and the great distances between markets (domestically and internationally). Moreover, our competitors are not standing still in relation to regulation reform. As the Business Council of Australia (2005, p. vi) has noted:

Many other countries have recognised the need to reform business regulation to keep their businesses competitive. If Australia does not match these efforts, we will fall behind and economic growth will slow. If we can surpass the efforts of other countries, Australia's business regulatory environment will be a source of competitive advantage, making Australian businesses more competitive and attracting more foreign investment into Australia.

This does not mean that Australia should engage in a 'race to the bottom' and abandon worthwhile regulations. There are important economic, social and environmental goals that warrant regulation, and should not be traded off simply to improve business competitiveness. That said, in the Taskforce's view, a robust program of regulatory reform is essential to secure Australia's living standards into the future.

3

Reducing existing regulatory burdens

This chapter comments broadly on suggestions for reform to the existing stock of regulations from business and other organisations, and outlines how the Taskforce selected and prioritised its own reform proposals.

As outlined in chapter 1, the Taskforce defined regulation broadly, to encompass a variety of rules and requirements, as well as the way particular regulations are administered and enforced.

The Taskforce examined not only Australian Government regulations, but also those areas of state and territory regulation that have national implications, or overlap with Australian Government regulation.

3.1 Many suggestions for reform

Business and other organisations responded positively to the challenge issued by the Taskforce to identify specific regulations of concern and to suggest potential remedies. A large number of regulatory issues were raised in submissions and consultations with the Taskforce as candidates for reform.

Overall, health-related regulation and regulations in the financial, corporate and tax areas drew most attention, but business also raised concerns about regulations covering a range of other areas. These included regulations relating to trade and public procurement; labour-related regulation covering skills, education, employment, occupational health and safety, workers' compensation, business migration and childcare; consumer-related regulation covering consumer protection, privacy, food, chemicals and legal administration issues; environmental regulation, including native title; and building regulation.

All suggestions were carefully evaluated including consulting relevant government departments and regulatory agencies. The Taskforce sought to ensure not only that the compliance costs associated with the regulation to be reformed were unnecessarily high, but also that there would be a net benefit to the economy from the proposed reform – taking into account its effects on the community as a whole.

The main concerns raised about regulation in specific areas, and recommendations for reform, are presented in chapters 4 and 5. Chapter 4 examines social and environmental regulation. Economic and financial regulation is addressed in chapter 5.

Chapter 6 examines opportunities within and across government to lessen the compliance burdens associated with existing regulations, including through better access to information, use of information technology, and minimising duplicate reporting.

Suggestions for reforms to address concerns about deficiencies in the processes and institutions responsible for making and administering regulation are addressed in chapter 7, as well as proposals to help ensure that existing regulations are properly maintained and reviewed.

3.2 The Taskforce's approach

In the time available, the Taskforce largely confined itself to screening the considerable number of suggestions for reform it received, assessing their potential to yield net benefits and developing concrete proposals. More suggestions were made than are dealt with in this report. The Taskforce applied the following criteria in choosing which regulations to focus on.

- *Regulation should be the responsibility of the Australian Government, or a state or territory regulation that overlaps or interacts with Australian Government regulation.* In line with the Taskforce's brief, specific state, territory and local government regulations were not examined, although in some cases interaction with Australian Government regulation was interpreted broadly.
- *Regulation should be unnecessarily burdensome, complex, redundant or duplicative.* The Taskforce focused on regulations where the compliance burden appeared unnecessarily high and therefore where there was an avoidable burden on business, and a likely net benefit from reform.
- *Reforms to the regulation would not raise fundamental policy issues.* The Taskforce's brief was to identify practical options for alleviating the compliance burden on business — rather than addressing underlying policy matters. Most matters raised by business were consistent with this. However, in a number of submissions and consultations, action to address compliance costs would offset the underlying policy objectives. In some cases, the Taskforce judged that this was difficult to avoid, particularly where the compliance burden is inextricably linked to the policy objectives, such as for taxation or superannuation regulation.
- *A regulatory reform was likely to have an impact on a large number of businesses or industries or have a potentially significant impact on the productivity of business across the economy.* An early indicator was the extent to which a regulatory issue was raised across submissions.
- *Practical reform options were readily apparent, with associated complications or uncertainties not obvious or insurmountable.* The Taskforce consulted with relevant government departments to help assess the practicalities of proposals. Where a reform need was clear, but the best way forward was not, the Taskforce has advocated a more in-depth examination.
- *Regulations that were recently enacted or yet to be effectively implemented were generally not considered.* A number of important areas of regulation were being developed or implemented at the time of the review, making any assessment of the likely associated compliance burdens speculative. Some prominent examples include the competition and infrastructure provisions of the Trade Practices Act, changes to workplace relations regulations, and a number of regulations in the telecommunications arena. However, where regulation-making processes were still in play and the Taskforce had evidence that these may fail to adequately address significant compliance concerns, recommendations were made.
- *The regulation was not the subject of a recently completed review* for which the relevant recommendations were being considered by government or had recently been acted on. This was relevant to a number of areas of infrastructure regulation, for example, and explains their lack of attention in this report. The Taskforce notes in particular the May 2005 Exports and Infrastructure Taskforce report and that regulatory issues related to export infrastructure were handled through that process.

3.3 Proposed reforms set a forward agenda

Given the open-ended remit of the Taskforce (reflected in the number and diversity of reform proposals), the Taskforce developed three broad categories or groups of recommendations for reforms to existing regulations, namely:

- regulations that warrant early reform because the necessary action was clear and the expected benefits of reform would clearly outweigh the costs;
- regulations recommended for further review, because:
 - while there appeared to be significant potential benefits from reform, the Taskforce was unable to investigate the relevant issues in sufficient depth; or

- there was a significant policy dimension associated with the compliance problems which needed to be considered in identifying appropriate solutions; and
- cross-jurisdictional issues that would require the cooperation of state and territory governments, through the Council of Australian Governments (COAG) or other national leadership bodies.

In developing its recommendations, the Taskforce sought to coordinate its report with a number of reviews that the Australian Government has initiated. Some have only just been commenced, such as the review of small business compliance costs by the Board of Taxation, and some have only recently been concluded, such as COAG's National Competition Policy review.

Some of these reviews relate to areas identified by the Taskforce for reform, review or COAG action, and are reflected in recommendations as appropriate.

3.4 Key themes in proposed reforms

While the Taskforce examined proposals for the reform of regulation within specific portfolios or areas, many proposals revealed common themes in relation to compliance issues. Some of these encompassed issues that were of higher priority for reform than others, and these are revisited in chapter 8.

- *Progressive expansion in the coverage of a regulation over time* ('regulatory creep'). This can occur, for example, where threshold criteria specified in dollar terms are eroded by inflation, and there are no appropriate adjustment mechanisms. As a result, many smaller enterprises end up being covered by a regulation or having to bear compliance costs that were not initially foreseen or intended. For example, thresholds that determine whether a proprietary company is small or large in relation to the preparation and filing of accounts have not changed since they were established in 1995, and many Foreign Investment Review Board thresholds have remained unchanged since 1987.
- *Overlapping and inconsistent regulatory requirements across jurisdictions*. In some cases, this reflects Australian Government involvement in traditional state or territory areas via funding and related new regulatory oversight. In other cases, it reflects jurisdictions moving away from agreed positions. Examples include, modifications to the Building Code of Australia at state and local government levels; and the failure of states to mutually recognise trade qualifications.
- *Redundant regulations or reporting requirements, or regulation not justified by the policy intent*. In these circumstances, compliance costs can be borne for no good purpose. For example, the financial questionnaire non-government schools were required to complete before 2001 to facilitate allocation of government funding is still required despite the new funding model being based on socioeconomic status; and while the retention, management and rehabilitation of native vegetation and biodiversity are important, current regulatory approaches have had perverse effects and imposed significant costs. Redundancies in taxation provisions provide another example, with some 2100 pages of tax legislation slated to be removed from the books.
- *The same or similar information being required* by a number of departments and agencies. For example, similar financial reports are required by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC), and similar information (with irritating variations) is required across government departments in relation to procurement.
- *Confusing variations in definitional and operational reporting requirements* across areas of regulation. For example, there are differences in the definition of an 'employee' and a 'contractor' in various pieces of legislation at the different levels of government; and of breach reporting requirements, with APRA requiring all breaches to be reported while ASIC requires only material breaches to be reported.

Some additional themes were also evident in proposals and were often associated with one or more of the key themes above.

- *Specific regulations duplicating generic regulation*, in ‘belt and brace’ fashion. For example, the overlap of corporate governance requirements imposed by ASIC, the Australian Stock Exchange and APRA; and the imposition of building quality certification procedures in aged care facilities on top of Building Code of Australia requirements.
- *Excessive prescription and micromanagement*, where such detail and interference is not warranted. For example, the prescriptive nature of the capital gains tax small business concessions in relation to controlling individuals; and the level of prescription in the financial services reforms regime, which has led to lengthy documents such as product disclosure statements.
- *Blunt or poorly targeted regulation*. For example, the Building Code of Australia being used to deliver standards beyond minimum effective standards, and non-compliance with reporting requirements resulting in ineligibility for school funding.
- *A lack of timeliness of regulatory decisions* creating and prolonging uncertainty for business. For example, time delays in securing short-term business migration visas can disrupt business production and investment processes.

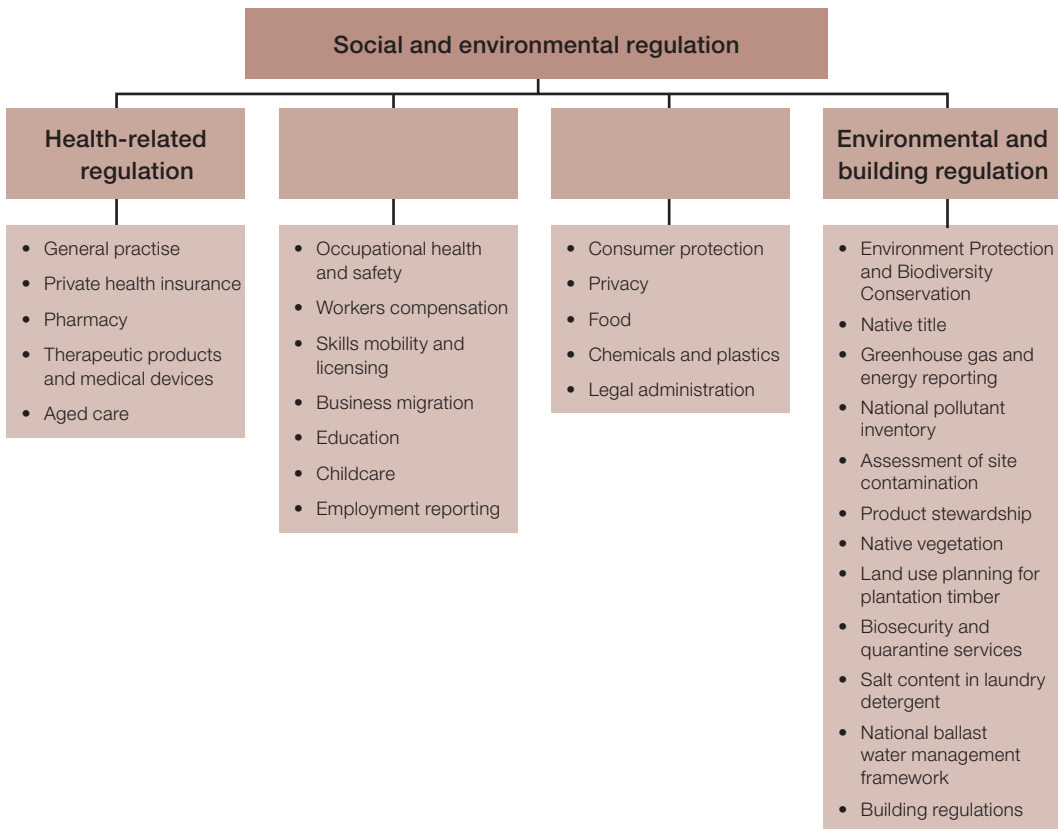
The Taskforce returns to some of these themes in chapters 7 and 8. Meanwhile, the next three chapters identify specific areas for reform or review within key subject areas.

4

Social and environmental regulation

There has been substantial growth in regulation within this broad grouping over the last 20 years. Much of this has involved new or amended regulations, which have attracted considerable debate and sometimes controversy. Most submissions commented on some specific regulations within these categories. The Taskforce also received extensive comments during its informal discussions with interested parties.

Reflecting the comments received, the Taskforce identified four sub-groups of social and environmental regulation: health-related regulation; labour market regulation; consumer-related regulation; and environmental and building regulation (see below). Most of the sub-groups include several different forms of regulation. In all, this chapter examines 19 specific areas of social and environmental regulation. In addition to proposals for reforms to particular regulations, the Taskforce also received comments on the process of making regulations in these areas as well as the administration and enforcement of some of the regulations. Broader systemic issues relating to the latter areas are examined more fully in chapter 7.



4.1 Health-related regulation

The community looks to the health system to provide a safe and healthy environment; prevent avoidable disease and injury; provide accessible and affordable care in times of illness; safe, effective and affordable medicines; and access to long-term care services as people become vulnerable with age.

There is also the expectation that the cost of health services, currently around 10% of gross domestic product and growing, will be contained within reasonable bounds and not become an undue burden on taxpayers, private health insurance premiums or co-payments for services.

It is an area where the community expects government to play a major role, if not in actual service delivery, then in regulating its supply by other parties to ensure safety and quality, accessibility and affordability, and to address information asymmetries between providers and users. It is an area where the community also looks to government to manage risks on its behalf.

The degree to which government should take responsibility, and how it is exercised, is an ongoing tension in all health systems. For example, governments argue that individuals should take more responsibility for the health risks associated with smoking. Service providers and insurers argue that regulation limits their ability to innovate or provide services efficiently. Everyone argues about the cost of government regulation.

Regulation is therefore a focal point for consumers, providers and government. The Taskforce received submissions relating to regulations affecting general practice, private health insurance, pharmacy, therapeutic goods and aged care.

While concerns were wide-ranging, reflecting the diversity of the health system, concerns about over-regulation, inadequate consultation by regulators, limited understanding of the impact of regulatory requirements at the coalface, and poor coordination of regulatory activity apply across the system.

General practice

As health professionals and small business operators, general practitioners (GPs) and pharmacists (see below) are subject to dual sets of regulation. Both professional groups nominated government administration of programs, as much as regulation, as the cause of red tape, with government requiring compliance with administrative rules, rather than trusting their professional judgement. GPs cited authority prescriptions as an example. They are particularly concerned about delays in reducing red tape associated with government programs. The Department of Health and Ageing (DoHA) emphasised the objectives of government regulation, including encouraging good patient consultation and prescribing practice, to encourage GPs to locate in areas of shortage and to constrain growth in spending.

Reducing red tape around government programs

A Productivity Commission report (2003b) on the compliance and administrative burden GPs face in participating in government programs found that government-initiated paperwork adds substantially to the already heavy workload of GPs, resulting in growing stress and frustration. In response, the government established a Red Tape Taskforce of senior officials to ensure the identified issues were addressed.

Complex and prescriptive administrative structures under two programs to encourage and reward quality general practice (the Practice Incentives Program and Enhanced Primary Care) were identified as a major source of red tape. The Australian Medical Association has acknowledged implementation of a new Enhanced Primary Care program as a major success, with effective consultation a critical contributor. On 23 November 2005 the Minister for Health and Ageing announced a restructure of the Practice Incentives Program to address GP concerns.

GPs are in a continuous state of disappointment over regulation reform. They have one request: implement the recommendations of the Productivity Commission's 2003 review. Australian Medical Association, meeting with the Taskforce, November 2005

It is the Taskforce's view that GP concerns about the lack of progress in implementing other reforms are justified.

Recommendation 4.1

The Australian Government should implement the outstanding recommendations of the Productivity Commission's 2003 report, *General Practice Administrative and Compliance Costs*, and those of the Red Tape Taskforce, in particular in relation to:

- supporting cross-government initiatives to make government forms available electronically;
- adopting information collection principles to help standardise information collection and form design;
- remunerating GPs for providing medical information;
- coordinating programs and communication affecting GPs; and
- introducing monitoring arrangements to ensure government agencies continue to reduce red tape.

Streamlining provider numbers

An immediate priority for GPs is rationalising the provider number system. GPs have different provider numbers for each location. They routinely fill in up to 11 forms each time they work in a new practice, and can accumulate more than 30 provider numbers. GPs argue that, while this may be an irritant when they move locations, it is a significant disincentive for locum work, particularly in rural areas.

The Department of Human Services advised the Taskforce that administrative changes can be made to streamline the provider number application process. While acknowledging changing the system will involve costs, the Taskforce considers that this unnecessary regulatory imposition and disincentive on GPs should be removed.

Recommendation 4.2

The Australian Government should introduce a single provider number for each general practitioner and reduce the paperwork required for new provider numbers.

Changing authority prescription approvals

In certain circumstances, patients can receive Pharmaceutical Benefits Scheme (PBS) subsidised medicines only if their GP obtains authorisation from Medicare Australia. To obtain authority approval, a prescribing GP must provide information, including prescribing approval details, the patient's Medicare number and details about the patient's medical condition. Authorisations can be completed over the phone, online, or by mail. After receiving approval, GPs write an authority prescription for the patient and retain a copy on file for 12 months.

More than 420 medicines currently require authority approval. In 2004-05 around 6.3 million authority approvals were requested. Significantly, only 169 629 (0.2%) were rejected.

GPs consider this a stupid barrier that reduces the time they could better spend with patients, and can be easily circumvented. Australian Medical Association, meeting with the Taskforce, November 2005

GPs see the approval process as imposing excessive red tape and implying they cannot be trusted to use their professional judgement in prescribing listed medicines. The DoHA, however, noted that the authority prescription requirement is an important cost containment measure. The Taskforce considers that the available evidence supports changes to lessen the unproductive regulatory outcomes highlighted by GPs.

Recommendation 4.3

The Australian Government should consider removing the Pharmaceutical Benefits Scheme authority approval requirement or allow GPs to re-use an authority number for a repeat prescription where a patient's condition is unlikely to change.

Rationalising incentive programs for non-vocationally recognised GPs

Four Australian Government programs offer access to a higher (A1) Medicare rebate for non-vocationally recognised GPs who provide services in rural and remote locations and areas of workforce shortage, such as outer metropolitan areas and after-hours practices.

It is estimated that around 1500 of 2500 non-vocationally recognised GPs currently access the higher Medicare rebate through incentive programs.

The Taskforce endorses the view that the range of incentive programs is complex, confusing and administratively costly to government.

Recommendation 4.4

The Australian Government should rationalise incentive programs providing higher Medicare rebates for non-vocationally recognised general practitioners.

Private health insurance

The private health insurance industry is seeking a review of what it saw as a complex, outdated and multi-layered regulatory framework. It considers that the framework not only imposes increasingly burdensome and costly compliance requirements, but adversely affects industry competition, limits efficiency gains, and imposes unnecessary barriers to achieving better health outcomes for its members.

Reviewing the overall regulatory framework

Private health insurance operates within a complex regulatory framework covering premiums paid by consumers, benefits provided and prudential safeguards.

The *National Health Act 1953*, the primary governing legislation, is now 53 years old. It was crafted in a different regulatory and health care environment, reflecting a predominantly publicly funded health system, rather than the current mixed public and private system. There have been numerous amendments and new legislation, with many of these additions introduced to address public concerns about excesses by particular insurers.

Multiple regulatory frameworks apply, with DoHA administering the National Health Act and health fund rules, and the Private Health Insurance Administration Council regulating the financial condition of health funds.

As a result, the overall regulatory regime is extremely complex and imposes increasingly burdensome compliance requirements. Ultimately, this results in higher premiums for fund members and higher outlays for the Australian Government via an increased private health insurance rebate.

There are many components of the regulatory framework that adversely affect industry competition and impose unnecessary barriers on private health funds achieving better health outcomes for members. Australian Health Insurance Association, sub. 42, p. 1

Section 126 of the *Health Insurance Act 1973* limits the payment of benefits to medical services provided in a hospital setting, even though it may be more appropriately provided outside hospitals. This section of the Act is cited as a major impediment to reducing costs and achieving better care outcomes.

Hospitals are expensive components of the health system, whereas community-based substitutes can be cheaper, safer and preferred by patients — for example, ‘hospital-in-the-home’, early discharge, home support, and prevention services to avoid or minimise hospitalisation.

Given the high cost of hospital care, the Taskforce considers there is a strong case for reviewing regulations that create perverse incentives for hospital admission and enshrine inefficiencies within the private hospital sector.

As the last public review of the private health insurance sector was almost a decade ago (Industry Commission 1997), the Taskforce considers that a follow-up review would be timely.

Recommendation 4.5

The Australian Government should commission an independent and public review of the regulatory framework for private health insurance to promote competition and efficiency gains and to achieve better health outcomes. The review should also address current impediments to providing less expensive and more appropriate care services outside hospital settings.

Addressing specific regulatory constraints

The Australian Health Insurance Association, the private health industry’s peak representative body, identified several regulatory constraints faced by health insurance organisations in delivering a product to meet the changing needs of today’s health system. The Taskforce’s assessment is that a number of these suggestions have merit and should be examined.

Reinsurance

Reinsurance is a system that redistributes benefit payments for high users of the health system (members over 65 years) and the chronically ill. The aim is to ensure that these people are not discriminated against. This means that the entire industry is responsible for the most vulnerable in the community, a concept supported by the industry.

The industry argues that the current system creates perverse incentives, as only hospital treatments can be included in the reinsurance pool. For example, if a health fund provides more appropriate alternative treatments for its sicker members, it cannot submit these costs to the reinsurance pooling mechanism.

The current reinsurance system may therefore create a disincentive to provide more appropriate care, and penalise funds that try to manage their health care risks proactively.

Recommendation 4.6

The Australian Government should consider widening the age groups included in the private health insurance redistribution formula to better reflect the current distribution of high-cost treatments, and enable health funds to pool costs associated with helping members to access more appropriate forms of substitute care.

Lifetime health cover

Lifetime health cover is a policy initiative, developed in response to an Industry Commission report (1997), to encourage people to take out private health insurance earlier in life, and to maintain their cover. Under lifetime health cover, funds can charge different premiums based on a person's age when they first take out insurance cover.

The industry argues that lifetime health cover provisions are complicated and burdensome, with a multitude of dates affecting entitlement. For example, there are several different lifetime health cover criteria applying to migrants. Such boundaries make it difficult for health fund staff and members to identify when an entitlement applies, complicated by a need to communicate with people whose first language is not English.

Recommendation 4.7

The Australian Government should simplify lifetime health cover administrative arrangements which are complex and difficult for people to understand.

Private health insurance rebate

Tax rebates on private health insurance are intended to ensure private health insurance remains affordable and sustainable.

The current rebate scheme replaced the Private Health Insurance Incentives Scheme. Details about the scheme remain in the Health Insurance Act on the premise that a patient could be better off financially under this rather than the current scheme. There are costs for health funds in having to manage two types of rebates and issue two types of tax statements. These are hard to justify.

The current Savings Provision Entitlement for the rebate is very complex and confusing. It is difficult for health fund staff, let alone fund members, to understand. It is also a problem when a person leaves one health fund and joins another.

Annual letters mailed to fund members notifying them of a rate change must include the old and new rebates. This imposes an administrative burden on health funds for no apparent gain, other than providing information on the rebate's value.

Recommendation 4.8

The Australian Government should:

- a) abolish the redundant Private Health Insurance Incentives Scheme to simplify health fund administration;**
- b) streamline operation of the Savings Provision Entitlement; and**
- c) allow funds to advise members only that the private health insurance rebate amount has increased and the new amount.**

Premium increase approval process

The Australian Government, through the Private Health Insurance Administration Council and the DoHA, scrutinises all applications for premium increases. The regulatory requirement is to set premiums at rates that will maintain the viability of funds and be affordable for consumers.

Funds consider the annual approvals process to be arduous and labour-intensive, while providing no certainty for individual funds in forecasting future premium income.

In a report on private health insurance, the Industry Commission (1997) argued against screening/approval processes for premium adjustments. While recognising that such mechanisms are a policy issue, the Taskforce considers that at least they need to be cost-effective.

Recommendation 4.9

The Australian Government should introduce a more transparent, timely and consistent process to consider applications for increases to private health insurance premiums.

Information disclosure

Health funds can enter into agreements with providers to pay for services at levels above the Medical Benefits Schedule, but they cannot compel the provider to accept only that benefit — specialists are still free to charge at their own discretion.

The *Privacy Act 1988* prohibits funds providing information to consumers about specialists' charging practices. And often where a patient is asked to make a 'gap payment', that person will not have met the specialist issuing the account. Out-of-pocket expenses are the number-one complaint by consumers after receiving hospital treatment — especially costs that are not explained to a patient before surgery. This suggests an absence of informed financial consent.

The private health insurance industry is concerned that it cannot collect and publish information about hospital treatments by service providers. Further, defamation laws make it very difficult for health funds to publish information that identifies providers. Without the ability to provide this information to consumers, industry is hampered in its efforts to improve patient safety and treatment outcomes. Such information may help reduce unnecessary hospitalisation or adverse events in hospitals.

Recommendations 4.10–4.12

- 4.10 The Australian Government should require the 'specialist-in-charge' to take responsibility for informing patients of all medical costs associated with a procedure or, alternatively, specialists involved in the procedure who do not advise the patient before surgery of out-of-pocket costs should not be permitted to charge a gap payment.**
- 4.11 The Australian Government should facilitate the publication of industry-wide data on the charging practices of individual medical specialists.**
- 4.12 The Australian Government should amend laws to enable data on hospital treatment outcomes to be published.**

Pharmacy

As health professionals and small business retailers, pharmacists are subject to dual sets of regulations relating to health and business. In relation to health, pharmacies are subject to Australian Government regulations governing the operation of the PBS, including the location of PBS-approved pharmacies and the pricing of PBS-subsidised drugs.

The Pharmacy Guild of Australia believes the compliance burden on pharmacies is often a direct result of the administration of programs, rather than regulation *per se*. It has identified four specific issues to reduce the red tape burden on pharmacies.

Reviewing the 20-day rule

The 20-day rule was introduced about 10 years ago to prevent medicines being hoarded and wasted. It requires a 20-day gap between dispensing PBS medicines used for long-term therapy. But pharmacists could provide repeat supplies within the 20-day period if the medicine was destroyed, lost or stolen, or required urgently for the treatment of the patient.

A 2005 Budget decision, which took effect from 1 January 2006, introduced a financial penalty for resupplying PBS medicines within the 20-day limit. The measure is intended to promote the safe use of medicines and contain PBS outlays by discouraging the stockpiling of medicines. However, as a result, some patients seeking to have repeat supplies of medicines within 20 days will either not have the item counted for their safety net or will be forced to pay a higher co-payment.

[T]he measure is inherently unworkable and impractical for pharmacies, and unfair and potentially a health risk for patients... Pharmacy Guild of Australia, sub. 108, p. 7

It will also be difficult to implement the 20-day rule in nursing homes, particularly for packaging more than one month's supply in a dose administration aid. In rural and remote locations, lack of regular access to pharmacies may result in people paying more for medications.

The rule appears to have been introduced without adequate consultation with pharmacists and other major stakeholders, which would have enabled negative impacts or unintended consequences to be taken into account before the rule was implemented.

Recommendation 4.13

The Australian Government, in consultation with pharmacies, should review the impact of changes to the 20-day rule, to address negative impacts on pharmacies and consumers.

Redesigning the reconciliation report

Issued by Medicare Australia each month to approved pharmacies, the reconciliation report sets out details of prescriptions claimed, paid and rejected in the past month. As there is not a separate list of rejected prescriptions, pharmacists have to search through the list page by page and identify the rejected prescriptions to examine the feasibility of correcting the 'error' made in the claiming process, and then resubmit the rejected prescriptions for payment.

Recommendation 4.14

Medicare Australia should redesign the reconciliation report to group rejected prescriptions.

Changing PBS arrangements in aged care facilities

It is quite common for a doctor to prescribe sleeping tablets or pain medication in a prescription that lasts less than a month. However, aged care facilities often require pharmacies to provide one or even two months supply so that it can be dispensed in a dose administration. To meet this need, the pharmacist is forced to bend the rules and supply the medication on an 'owing script' basis. The pharmacist bears the administrative burden of following up with the doctor to obtain a written prescription so that the resident can receive medicines at the subsidised PBS price and continuity in treatment.

These arrangements appear to serve little purpose. They frustrate the nurses, doctors and pharmacists involved in supplying medicines to nursing home residents and waste their time.

Recommendation 4.15

The Australian Government should review the supply of PBS medicines in residential aged care facilities, including what may constitute a prescription in this setting, and safe and effective packaging issues.

Simplifying advertising regulations

The Therapeutic Goods Advertising Code, the Price Information Code and the registering authorities provide a framework to regulate the advertising of medicines and devices, and price information about medicines that cannot be advertised.

Pharmacists support these regulations because they help consumers and support Australia's National Medicine Policy and Quality Use of Medicines initiative. However, the regulations are considered to be complex and confusing. For example, most pharmacists and members of the public are unaware of how the advertising complaints component works.

States and territories have different health complaints mechanisms and, while they may be integrated with local registering authority complaints processes, they are not integrated with the national system for advertising complaints.

The Taskforce agrees that there is a need to address deficiencies in the regulatory framework for handling the advertising of medicines and medical devices.

Recommendation 4.16

The Australian Government should simplify the regulatory system for advertising therapeutic products to provide greater clarity and awareness of pharmacies' obligations.

Therapeutic products and medical devices

Manufacturers of medical devices are concerned about inconsistency with international standards and inefficiencies in the regulatory system. Along with manufacturers of other therapeutic products, they would like to see the regulatory framework and supporting legislation being developed for the Australia New Zealand Therapeutic Products Authority (ANZTPA) used to improve the existing domestic arrangements, in accordance with the principles of good regulatory practice agreed to by the Council of Australian Governments (COAG).

Therapeutic products are subject to a high level of regulation in Australia, as in most developed countries.

The primary legislation, the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990* and *Therapeutic Goods (Medical Devices) Regulations 2002*, are supported by a number of orders, codes, standards and determinations, referenced in the Australian Government legislation or adopted into state legislation. The Therapeutic Goods Administration (TGA) issues supporting documentation in the form of guidelines to industry, and there is a substantial body of separate state and territory legislation.

In 2000 COAG undertook a review of drugs, poisons and controlled substances legislation (Galbally Review), with the aim of rationalising jurisdictional responsibilities to address impediments to competition. Key recommendations were directed at reducing the level of regulation, introducing a co-regulatory approach, improving efficiency, and developing a uniform approach across jurisdictions to avoid overlap and duplication. The industry is optimistic that implementing the recommendations of the Galbally Review (2000) will eliminate many of the problems caused by jurisdictional differences.

Getting the Australia New Zealand Therapeutic Products Authority right

In December 2003 the governments of Australia and New Zealand signed a treaty to establish a joint scheme for regulating therapeutic products. The new ANZTPA will be governed by a ministerial council drawn from both countries. The details of the regulatory framework and legislation have not yet been finalised and a start date is still to be agreed.

The implementing legislation will result in a single, harmonised regulatory scheme that will apply to the manufacture, import, export, supply and scheduling of unapproved therapeutic products in both countries.

Manufacturers are concerned that the regulatory regime applying in Australia (and which is under development for the new authority) should not be more complex or onerous than comparable overseas regimes.

The development of legislation for the authority provides an opportunity to address outstanding regulatory issues. Industry considers that the supplementary guidelines issued by the TGA are a particular concern, especially as they are not always subject to the same review procedures as the primary or subsidiary legislation. The Taskforce concurs with these views.

[[I]t is important that the new Trans Tasman legislation is developed in accordance with the principles of good regulatory practice and that industry is fully consulted and involved... Medicines Australia, sub. 99, p. 6

Bilateral and multilateral arrangements have been negotiated to facilitate harmonisation of regulatory requirements between countries. The medical devices industry is, however, concerned that unique Australian requirements are being applied in a belief that they represent best practice.

The Australian Self-Medication Industry is particularly concerned to ensure that jurisdictional differences in regulations related to scheduled drugs, poisons and controlled substances (currently regulated by the National Drugs and Poisons Schedule Committee) are addressed.

Industry bodies indicated to the Taskforce that it is important to get the new Trans Tasman regulatory regime and processes right, even if this means postponing the start date.

Recommendations 4.17–4.18

- 4.17 The Australian Government should ensure that the regulatory framework and supporting legislation for the Australia New Zealand Therapeutic Products Authority are developed and implemented in accordance with the principles agreed by COAG for good regulatory practice, particularly in relation to industry consultation.**
- 4.18 The Australian Government should improve existing domestic regulatory arrangements for therapeutic products and medical devices, particularly by:**
- rationalising amendments to the Therapeutic Goods Act, together with the supporting orders, codes, standards and determinations and guidelines issued by the Therapeutic Goods Administration, and
 - removing requirements specific to Australia unless they can be fully justified.

Improving certification of medical devices

Peak bodies representing local medical device manufacturers and individual manufacturers identified several regulatory and administrative constraints in developing and supplying products and competing with overseas manufacturers.

The Department of Industry, Tourism and Resources is overseeing development of the Medical Devices Industry Action Agenda, which is considering most of the medical devices issues raised with the Taskforce.

Conformity assessment

Revisions to the Therapeutic Goods Act, enacted in October 2002, require separate Australian verification and certification of conformity assessment procedures developed and implemented by Australian manufacturers. The rationale reflects a belief that Australian requirements represent best practice. As the national regulator of therapeutic products, the TGA is the only regulatory approval body for Australian manufacturers.

The regulatory and safety objectives of the TGA could be easily maintained and simplified with attendant cost savings to Australian health care and businesses. N Stenning and Co., sub. 75, p. 1

Significantly, the Act permits the TGA to accept certification for devices manufactured in other countries from overseas conformity assessment bodies designated under a mutual recognition agreement with the European Union (although not all devices are covered by the agreement).

Australian manufacturers contend that the costs of the domestic inspections, the limited auditing resources in the TGA and time delays are putting Australian manufacturers at a significant trading disadvantage in relation to certified overseas manufacturers. Industry believes that the TGA has not demonstrated that its certification program provides greater benefits for consumers than imported products approved by overseas assessment bodies.

Recommendation 4.19

The Australian Government should consider allowing Australian manufacturers to choose a certification body (acceptable to the Therapeutic Goods Administration), based in Australia or overseas, to verify and certify their conformity assessment procedures (having regard to the recommendations of the Medical Devices Industry Action Agenda).

Definition of the central circulatory system

Regulation 1.3 of the Therapeutic Goods (Medical Devices) Regulations places all medical devices covered by the TGA's definition of the central circulatory system under the 'high risk' class III classification. This requires a design dossier review to be submitted.

[T]he definition of the [central circulatory system] adds unnecessary complexity with ... no demonstrated concomitant regulatory or safety benefits. Medical Industry Association of Australia, sub. 30, p. 11

Medical device manufacturers believe the Australian definition to be more extensive than the definition applied in the European Union and other countries. The TGA advised the Taskforce that the Global Harmonisation Task Force — an international body representing governments and industry, that is working to harmonise the regulation of medical devices — is currently reviewing the definition of the central circulatory system. The Taskforce supports work to establish internationally consistent regulations.

Recommendation 4.20

The Australian Government should apply an internationally agreed definition of the central circulatory system to all applicable medical devices.

Change of sponsor

The Therapeutic Goods Act requires therapeutic goods to be entered on the Australian Register of Therapeutic Goods in relation to a sponsor who intends to place a medical device on the Australian market or export a device. Under the previous regulatory system for medical devices (active until the end of the transition period to the new system in 2007), it was possible to change product sponsor with a simple notification to the TGA. This arrangement also applies to the system used by the TGA to regulate medicines.

Certain variables are listed under the definition of 'kind of medical device' in the Act. When changed, these variables require a new inclusion on the Australian Register of Therapeutic Goods and a new application. 'Sponsor' is listed as one of these variables. Moreover, change of sponsor is a frequent occurrence as distribution arrangements constantly change. The current process, requiring a separate application and approval step, incurs all the fees related to a new application process. Further, the approval timeframes are not predictable.

New sponsors are not allowed to legally supply their products while awaiting approval. This presents lost marketing opportunities and threatens continuity of consumer access to important therapeutic goods.

Recommendation 4.21

The Australian Government should, in establishing the Australia New Zealand Therapeutic Products Authority, address the concerns of the medical device industry about the procedures for change of sponsor of new medical devices.

Health technology assessment

The Australian health technology assessment framework is administered by government bodies and advisory committees, including the TGA, the Pharmaceutical Benefits Advisory Committee, the Medical Services Advisory Committee, the Prostheses and Devices Committee, and by state hospital committees.

Manufacturers and suppliers are concerned that having multiple, separate health technology assessment bodies adds to the complexity of regulating medical devices and products. A particular concern of manufacturers is that administering agencies and advisory committees duplicate some methods used to measure the cost-effectiveness of medical devices. This causes delays in bringing products to market.

Separate processes for including medical devices on the Australian Register of Therapeutic Goods and seeking approval from the Prostheses and Devices Committee for reimbursement by private health insurance funds were cited as an example of overlap which could be addressed by a single application process.

The Australian medical devices industry desires a regulatory system that is international best practice, that is transparent to all stakeholders, conforms to international standards and offers consistency and efficiency to device companies. Medical Devices Industry Action Agenda Strategic Industry Leaders' Group, sub. 104, p. 6

Manufacturers are also concerned that the cost of regulation and the time taken for regulatory processes in Australia exceed those of our trading partners. This adversely affects the competitiveness of the Australian medical devices industry.

In a recent review of the impacts of advances in medical technology on health costs, the Productivity Commission (2005b) found that Australia's health technology assessment processes were highly fragmented, leading to inefficient duplication and unnecessary costs and delays. The commission

was also critical of the lack of procedural transparency in health technology assessment. It called for a system-wide review to reduce overlaps and improve coordination of health technology assessment at a national level. The Taskforce endorses the review proposal.

Recommendation 4.22

The Australian Government should undertake a system-wide, independent and public review of health technology assessment, with the objective of reducing fragmentation, duplication and unnecessary complexity, which can delay the introduction of beneficial new medical technologies. Health technology assessment processes and decisions should also be made more transparent, in line with good regulatory practice.

Aged care

The vulnerability of aged-consumers, several well-publicised adverse events in nursing homes, and the relative lack of sophistication of some providers have created pressures for extensive government regulation of the aged care industry.

In 1997 the Australian Government introduced a package of reforms based on unifying the former hostel and aged care sectors. Quality of care was addressed through a process of building certification and strengthened quality assurance, including the introduction of an independent Aged Care Standards and Accreditation Agency to monitor care standards and support continuous improvement. The reform package is widely seen as delivering substantial improvements in access, affordability and quality for consumers, as well as promoting industry efficiency.

The 2004-05 Budget provided extra funding in response to the *Review of Pricing Arrangements in Residential Aged Care* (Hogan 2004).

The industry reforms involve a separate quality assurance and accreditation regulatory framework. This exists on top of, and in many respects duplicates, other Australian Government, state, territory and local government regulations and administering agencies. Such an intensive level of regulation appears unique to the sector, and is predicated on the need to provide assurance to a concerned public and assist less sophisticated providers.

There is, however, an increasing level of concern by industry that this additional and separate level of regulation is not well matched to desired policy goals. The duplication appears unnecessarily costly for both providers and government. It may also restrict the development of a mature industry able to take responsibility for its own actions.

While the need to protect vulnerable consumers is acknowledged, the Australian Government has gone too far in a number of areas, creating a separate tier of regulation on top of existing, and adequate, Australian, State, and local government structures. Aged care industry forum, November 2005

Rationalising the certification process

Certification was introduced as a component of the 1997 reform package to improve the physical standards of aged care facilities. Facilities that are 'certified' can ask residents to pay accommodation bonds, and are eligible for additional government supplements for financially disadvantaged residents.

To achieve certification, a home is inspected to see if it meets certain minimum building standards relating to fire safety, security, access, hazards, lighting, heating, cooling and ventilation. The certification

arrangements largely duplicate the Building Code of Australia, which is managed by the Australian Building Codes Board. The code is a long-established mechanism to assess building standards, with privacy and space requirements being the only criteria not explicitly covered by it. Certification does not remove a care provider's other obligations under state, territory and local government laws, such as fire and safety laws.

Duplicating the Building Code of Australia, and related state, territory and local government provisions, is unnecessary and involves additional and avoidable costs for both the industry and the Australian Government. The Taskforce agrees with the industry that loosening the Australian Government's regulation of accommodation services would be a first step in encouraging the development of a mature industry that could take greater responsibility for safety and quality. It should also enable the Australian Government to better focus its resources for monitoring standards in the aged care sector.

Recommendation 4.23

The Australian Government should remove any additional building certification requirements on top of the Building Code of Australia and state, territory and local government laws and monitoring arrangements, in order to better focus its resources for monitoring standards in aged care. Requirements not addressed by the code and state, territory and local government mechanisms could be mandated separately.

Providing choice in aged care accreditation

A key feature of the 1997 reforms was the establishment of the Aged Care Standards and Accreditation Agency. Its role is to ensure aged care homes reach high standards of care through inspections and by developing systems for continuous improvement. The agency advises DoHA on quality issues. The department is responsible for ensuring homes meet their obligations under the *Aged Care Act 1997* and for taking compliance action, such as imposing sanctions.

The agency is an independent, wholly owned Australian Government company with exclusive rights to manage the accreditation process. It is funded by Australian Government grants (of some \$66 million over four years) and accreditation fees paid by individual services.

[S]ingle stand alone process applying to only one of the many aged care programs and a single agency with a monopoly on accreditation service provision is less than optimal and inhibits its overall effectiveness. Aged and Community Services Association, submission to the Senate Community Affairs Committee Inquiry into Aged Care, 2004, p. 3

DoHA considers the accreditation arrangements are appropriate for the industry, given its size, and allow for national consistency in accreditation.

There are alternative arrangements to provide quality management and quality improvement services in an open and competitive marketplace. The Joint Accreditation System of Australia and New Zealand provides a mechanism to accredit bodies providing accreditation and facilitate a common approach to accreditation, regardless of funding sources.

Competition could reduce accreditation costs to industry and the grants provided to the agency. An open and contestable quality improvement environment would benefit those providing a broader range of services to older people, including retirement villages and community-based and other residential care programs. Under current arrangements, they are required to participate in multiple accreditation systems to cover all their activities.

Recommendation 4.24

The Australian Government should allow residential aged care providers to select from a range of approved quality improvement and quality management agencies.

Improving Resident Classification Scale documentation

The Resident Classification Scale was introduced as part of the 1997 reforms to provide a single funding tool that would cover the full spectrum of care needs and enable government funding to be allocated according to dependency, regardless of the location of residents.

The classification scale removed the differential funding system that had applied to nursing homes and aged care hostels to prevent residents from remaining in the one facility as their care needs changed. The new system also reduced complexity in the payment system by providing for non-acquitted subsidies in place of the previous acquittal requirements.

The classification scale has, however, generated a considerable amount of documentation, in particular, to satisfy Australian Government assessors that residents are accurately classified to one of eight dependency categories. Assessors can downgrade classifications and reduce funding retrospectively. The Aged and Community Services Association (2003) — the national peak body for non-profit residential care providers — recently found that residential care staff spent, on average, 9% of their time on classification scale documentation, and registered nurses up to 16% of their time.

Industry representatives are concerned that the documentation requirements in aged care facilities are much greater than in hospitals, further reducing the attractiveness of the aged care industry as a career for nursing staff.

The [Resident Classification Scale] is a highly regulated method of funding which requires a large amount of resources to support the process and optimise the organisation's income. Aged and Community Services Association 2003, p. 3

The Australian Government has accepted the recommendations of the Hogan Review (2004) to reduce the number of categories in the Resident Classification Scale from eight to three, and a new funding instrument will be introduced to replace the scale. An e-commerce platform for the residential aged care payment system is being introduced to reduce paperwork and increase efficiency in exchanging information with service providers. DoHA is also reviewing Resident Classification Scale documentation. This should be completed in 2007.

The Taskforce considers that this evidence supports expeditious implementation of the new payment system.

Recommendation 4.25

The Department of Health and Ageing should expedite its review of Resident Classification Scale documentation to implement improvements as soon as possible.

4.2 Labour market regulation

Regulations affecting the employment, education and training of Australians are among the most pervasive of all areas of regulation considered by the Taskforce. At the end of 2005 there were over 10 million people in the labour market and over 3 million Australian businesses. Around 97% of businesses were small businesses (less than 20 employees), including the self-employed (ABS 2005; 2004).

Concerns raised by business about labour market regulation often focused on problems around complexity and compliance burdens associated with consistency. This theme was especially strong in references to workplace health and safety and workers' compensation. Unnecessary complexity was the main issue raised around business migration. Concerns about skills mobility and certification, including in the childcare sector, focused on the need for greater national consistency and the failure of mutual recognition to achieve nationally consistent outcomes.

In other areas such as employment reporting, higher education and the independent schools sector, the burden imposed by government reporting requirements was the main focus.

Occupational health and safety

An area of regulation that affects every workplace in Australia — including all employees, employers and anyone visiting the workplace — relates to preventing workplace death, injury and disease. These rules are known as occupational health and safety (OH&S). Deficiencies in the way they have been implemented and are administered emerged as a common theme in a wide range of submissions to the Taskforce.

All Australian jurisdictions have drawn on an approach to regulating for safer workplaces involving a principal OH&S Act that codifies the duties of care under common law. There are nine principal OH&S jurisdictions across Australia — six state, two territory and the Commonwealth. Within each jurisdiction there may be several pieces of legislation regulating OH&S. The Commonwealth, for example, is responsible for two statutes, one relating to Australian Government employees and another to seafarers. A number of other statutes relate to mine and offshore petroleum safety and the situation is further complicated in some states by breaking mining down into coal mines and other mines, including quarries. In addition, all OH&S Acts provide for the making of regulations and many of these are supported by codes of practice, which may refer to relevant Australian standards.

While employers and their representatives confirmed their support for the policy objectives underlying OH&S regulation, they were concerned that inconsistency across jurisdictions adds significantly to compliance costs for businesses operating nationally; that liability is not reasonably shared between employers and employees; that OH&S training is not embedded in industry training packages; and that regulators are reluctant to provide advice and support on compliance and changes to the rules.

The chief feature of Australia's OH&S and workers' compensation schemes is their inconsistency. Within each state the schemes are predominantly complex and difficult to understand for both businesses and workers ... This situation works against the national objective of safe work environments and effective worker injury management schemes. Institute of Public Affairs, sub. 127, p. 14

The mere fact that there are costs on business to comply with regulations is not a reason to reduce or abolish regulation. This is particularly relevant in the case of occupational health and safety and workers' compensation, where strong regulation with enforceable provisions and penalties, and prescriptive obligations on business has saved lives. Australian Council of Trade Unions, sub. 28, p. 2

Employee representatives emphasised the important benefits of having robust regulations in place.

Implementing nationally consistent standards

OH&S Acts and regulations are generally implemented through workplace systems, policies and procedures. However, the varying provisions across jurisdictions impose additional compliance costs on businesses operating across borders and undermine the concept of a national standard or code of

practice. These differences may be as fundamental as the definition of the area being regulated and the scope of application (for example, the National Standard on Major Hazard Facilities).

In 2004 the Productivity Commission published an inquiry report covering national workers' compensation and OH&S frameworks (PC 2004b). In responding to the report, the Australian Government noted its commitment to achieving national consistency in both workers' compensation and OH&S. However, it did not support key elements of the commission's proposed national framework, including the requirement that all jurisdictions adopt uniform OH&S regulations. The government noted that it would be unlikely that the states would agree to the proposed uniform legislative regime required under the commission's model.

However, the government recognised that current national consultative arrangements were not working and decided to pursue greater national coordination of OH&S and workers' compensation by establishing a non-legislative national OH&S and workers' compensation advisory council — the Australian Safety and Compensation Council. The primary function of the new council, which replaced the National Occupational Health and Safety Commission, is to recommend initiatives aimed at national consistency in OH&S and workers' compensation.

A concurrent review of Victoria's OH&S Act (Maxwell 2004) described the case for uniform national OH&S legislation as 'overwhelming', noting a number of 'indefensible consequences' flowing from the current system:

- the level of OH&S protection for a person at work varies according to the state or territory in which they work;
- the compliance cost for employers operating in more than one jurisdiction is inevitably greater; and
- considerable inefficiency and duplication of effort as individual states take it in turns to review and update their legislation (Maxwell 2004, p. 93).

The Taskforce also notes that following a review of offshore safety in 2001, the Australian, state and Northern Territory governments worked together with industry and unions on a single national offshore petroleum safety agency to regulate activities in both Commonwealth and state/Northern Territory waters. This model of a national regulator that operates efficiently and is respected by all stakeholders is one that the Taskforce considers could be applied to other areas of OH&S regulation. The Taskforce strongly supports COAG's work to improve implementation and uptake of national OH&S standards.

Recommendation 4.26

COAG should implement nationally consistent standards for occupational health and safety (OH&S) and apply a test whereby jurisdictions must demonstrate a net public benefit if they want to vary a national OH&S standard or code to suit local conditions.

Harmonising employer liability requirements

Guidance material issued by the Australian Safety and Compensation Council indicates that the 'duty of care' requires everything 'reasonably practicable' to be done to protect the health and safety of others at the workplace. This duty is placed on all employers, their employees, and any others with an influence on the hazards in a workplace.

Importantly, however, for the purposes of paying compensation, all jurisdictions operate a 'no fault' system. This means that an injured employee does not have to prove negligence by their employer for their claim to be successful. Liability therefore, given the no fault system, rests with the employer or any person who is in control of a workplace but is not the employer, such as a building or property owner or manager.

The strong view of business is that in some jurisdictions the duty of care has been interpreted as an absolute duty on employers. The Australian Chamber of Commerce and Industry (ACCI 2005b, p. 40), in its blueprint for improving OH&S, notes that this requires employers to have full control over the conduct of all staff, contractors and third parties on or within their businesses. ACCI (2005b, p.55) recommends that OH&S legislation be based on a general duty of care limited by what is reasonable, foreseeable, controllable and realistic.

OH&S laws have gone overboard in compliance regulations — it is bad enough if we or an employee has an accident, but then the OH&S can come in and fine us amounts that are unreal in relation to our income level ... no matter how careful we had been. National Association of Retail Grocers of Australia, sub. 40, p. 3

[OH&S] is of substantial concern to Australia's farmers with the extraordinary complexity of compliance ... the problems associated with OH&S red tape are such that workplace risk is simply being shifted as the sole responsibility of the farmer rather than being shared with employees ... National Farmers' Federation, sub. 22, p. 2

The concepts of 'reasonably practicable', 'foreseeable' and 'control' have been significantly distorted in several Australian jurisdictions, to the point where they no longer reflect what is reasonable, practical or achievable. Master Builders Australia, sub. 100, attachment B, p. 17

The Taskforce notes the strong concerns of business on this issue but is unable to consider ACCI's recommendation that OH&S legislation be based on a general duty. This would entail a significant change to current no fault policy and as such lies outside the terms of reference for this study. The Taskforce does, however, strongly endorse the principle of national consistency. On the issue of the inconsistent interpretation of duty of care in some jurisdictions, the Taskforce regards the recent reforms in Victoria as a good model.

The Victorian Government, in responding to the Maxwell Review (2004), implemented changes to its OH&S legislation explicitly recognising that duties under the Act include not only employers and employees, but also a range of third parties such as 'designers of buildings or structures' and 'manufacturers and suppliers of plant and substances'. The changes also recognise that those duties are not absolute, but are qualified by requiring what is 'reasonably practicable' in the circumstances (VECCI 2004).

Recommendation 4.27

COAG should request the Australian Safety and Compensation Council to examine the duty of care provisions in principal occupational health and safety Acts as a priority area for harmonisation. In undertaking this work, the council should give weight to recent reforms in Victoria.

Integrating OH&S education and training

Business is concerned that OH&S skills and competencies are not sufficiently integrated and embedded in relevant industry training packages, and are often taught in isolation from their practical application. Induction training programs within a broader framework of on-the-job training and lifelong learning — for both employees and employers — could provide a powerful mechanism for embedding and continuously improving workplace health and safety knowledge and practices.

This raises a number of issues about who is responsible for driving OH&S education and training, how nationally consistent outcomes can be supported through current national arrangements, and when training is needed and when it needs to be updated.

Business believes greater consistency is likely if responsibility for OH&S training is vested in agencies responsible for vocational education and training, such as industry training and skills councils, rather than OH&S authorities. The Taskforce agrees that OH&S education and training should be practical and relevant to individual workplaces.

Australian Government funding of the development of national training packages could be used to support nationally consistent integration of OH&S skills and competencies.

Recommendation 4.28

COAG should give responsibility for developing national occupational health and safety training to relevant industry training and skills councils, and ensure that accredited induction training programs are developed for all major industries, within a defined framework of on-the-job training and lifelong learning. The aim should be better educating employers and employees about the duty of care responsibilities relevant to their workplace, and embedding and continuously improving workplace health and safety knowledge and practices.

Encouraging advice from regulators

Business strongly believes that regulators should be required to provide advice and support to employers and other parties with an interest in ensuring compliance with OH&S regulation. The ACCI (2005b) describes this in terms of regulatory bodies having a 'dual role' as both information providers and enforcers.

Of particular concern for business, especially small to medium businesses, is the complexity of OH&S regulations and how often they change. The Taskforce agrees that OH&S bodies should work more closely with business to provide advice on compliance and changes to regulations.

Recommendation 4.29

COAG should direct the Australian Safety and Compensation Council to examine the capacity of occupational health and safety bodies to respond to direct requests from business for advice on compliance and provide options for removing any impediments.

Supporting national uniformity in mine safety

While all jurisdictions have their own OH&S Acts, the problem of inconsistency across jurisdictions is further complicated by having a separate set of mine safety Acts and of general workplace health and safety Acts. This raises issues about the adequacy of the current mine safety regime, its practical application and the risk of misinterpretation across different jurisdictions and regulations.

Efforts by jurisdictions, through the Ministerial Council on Mineral and Petroleum Resources, to develop a coherent national framework for mine safety regulation are under way, but appear to be taking much longer than expected.

While the National Mine Safety Framework (NMSF), endorsed by the Ministerial Council on Minerals and Petroleum Resources in March 2002, was intended to achieve a nationally consistent approach towards legislation, enforcement, compliance, competency, data, consultation and research, implementation has been very slow. This has largely been due to a lack of a dedicated implementation team, no specific resource allocation and poor coordination of effort ... The ultimate goal should be a single national regulatory body replacing the existing state bodies, and a single piece of national legislation supplanting existing state legislative frameworks. Minerals Council of Australia, sub. 147, pp. 21–2

At its meeting in November 2005, the Ministerial Council on Mineral and Petroleum Resources:

- re-endorsed its ‘vision statement’ that jurisdictions look for opportunities to improve consistency and efficiency through the National Mine Safety Framework, in consultation with key stakeholders; and
- directed officials to agree to the make-up of a representative group, comprising employers, employees and government, and advise on initiatives to contribute to a long-term strategy for mine health and safety by the next council meeting.

The Taskforce supports the National Mine Safety Framework as bringing a national approach to the overall regulatory framework, including in the areas of induction training, site visits, enforcement, competency and compliance. These arrangements could be further strengthened by developing a single national regulatory body.

Recommendation 4.30

COAG should establish a high-level representative group to oversee the National Mine Safety Framework. This group should work closely with the Ministerial Council on Mineral and Petroleum Resources to oversee the next stage of reform, including the delivery of a single national regulatory body.

Workers’ compensation

As with OH&S, there are multiple workers’ compensation schemes: eight state and territory schemes; one Australian Government scheme; and a number of industry-specific schemes.

Each scheme operates as a compulsory, no-fault insurance arrangement. Employers are obliged to pay premiums to a public or private insurer to cover their liability for all work-related fatalities, injuries and illnesses. Employers can self-insure if they meet certain requirements — for example, in relation to prudential matters, employment size, claims management and OH&S (PC 2004b, p. 345).

National consistency is the key issue. Employers operating across jurisdictions are required to comply with a variety of state and territory laws that can differ in fundamental ways, such as:

- access and coverage, including the definition of ‘employee’ and ‘work-relatedness’;
- benefit structures, payouts, step-down rates and commutations;
- injury management processes involving early interventions, rehabilitation and return to work; and
- reporting requirements, financial and prudential requirements and the definition of a ‘reportable accident’.

Workers’ compensation is a very sensitive area where changes to the system structure can have major impact on the cost, competitiveness and soundness of the system. The jurisdictional systems vary significantly, however a common theme is the growing micro management approach to claims administration and injury management. Chamber of Commerce and Industry Western Australia, sub. 130, p. 3

A national employer may be required to pay workers’ compensation premium instalments in different months of the year (for example, in each State, the date of payment is different), to maintain valid insurance across the country. This creates an enormous administrative burden for a company.

This patchwork of State-based legislation means companies are often unable to centralise their management of workers’ compensation issues and benefit from a more efficient allocation of resources. Instead, they may be required to retain staff in a number of States in Australia to ensure compliance with the State-specific reporting and financial obligations, even where the company may only employ a relatively small number of staff in those States and even though the workers’ compensation claims may also only number as few as one or two at any given time. Business Council of Australia, sub. 109, attachment A, p. 47

In its response to the Productivity Commission's 2004 inquiry into national frameworks for OH&S and workers' compensation, the government supported a number of recommendations aimed at achieving greater national consistency in a range of areas. These included principles for defining an employee, work-relatedness, return to work, benefit structures, premium setting and self-insurance.

The Taskforce notes that workers' compensation has been included within the remit of the recently established Australian Safety and Compensation Council, and strongly supports the principle of national consistency for workers' compensation arrangements.

Recommendation 4.31

COAG should request the Australian Safety and Compensation Council to develop a model for achieving national consistency in workers' compensation arrangements. It should ensure the following areas are addressed as a matter of priority:

- **return to work requirements, including reporting and documentation;**
- **the definition of a worker for the purposes of workers' compensation;**
- **the definition of wages for renewal of workers' compensation insurance;**
- **the level and timing of premium payments for businesses operating across borders; and**
- **self-insurance arrangements.**

Skills mobility and licensing

The ability of Australian businesses to attract skilled workers and the mobility of skilled workers across Australian jurisdictions underpin a well-functioning labour market and productivity growth. A common theme across a range of submissions was the way various occupational licensing regimes effectively undermine these requirements. The two key areas of regulation are those governing Australia's national training system and occupational licensing regimes.

The Australian vocational education and training system is governed by a mix of Australian Government and state and territory government legislation. Each state and territory government administers its own legislation for registering training bodies and accrediting vocational education and training courses. The two main elements of the national training system are training packages (competency-based, industry-endorsed) and the Australian Quality Training Framework (articulated school, vocational education and training, university qualifications).

National recognition is the cornerstone of the Australian Quality Training Framework. The principle of national recognition features in both sets of framework standards and its implementation is critical to a nationally consistent vocational education and training system.

Occupational licences are administered by a wide range of state, territory and national bodies, depending on the industry.

The key concern of business is the impact of inconsistent training and licensing arrangements across jurisdictions. This adds to compliance costs for businesses operating nationally and creates complexity for smaller businesses operating in cross-border regions.

Enabling national skills mobility

Evidence from business groups indicates that the principle of national or 'mutual' recognition has not been successfully implemented. For example, in cross-border localities such as Albury-Wodonga, liquor licence holders may have staff with a Responsible Service of Alcohol certificate qualification in one state who cannot work across the border because the qualification is not recognised by the other state. This lack of mutual recognition extends to other business regulations.

One of the biggest issues is the paperwork required for all professionals and trades people living on the border and working both sides. They require two sets of driver's licences, builders licences, trade certificates etc merely because they come under the jurisdiction of two different state governments. Licences issued by Workcover in NSW are not recognised by Worksafe in Victoria. ... These issues don't just affect businesses working near state borders, they affect all businesses which operate in more than one state. Indeed some companies are forced to employ at least one full-time worker just to keep track of all the different licences each one of their employees is required to have. State Chamber of Commerce (NSW), sub. 35, p. 3

The ineffectiveness of mutual recognition is also an issue for the health sector, where the professional certification and licensing of nursing staff by states and territories create impediments to labour mobility and a lack of uniformity in areas such as the aged care sector. The Taskforce notes that COAG asked the Productivity Commission to examine issues affecting the health workforce, including the supply of, and demand for, health workforce professionals, and propose solutions to ensure the continued delivery of quality health care over the next 10 years. Its report, just released, recommends the establishment of a uniform national system of accreditation for health professionals (PC 2005g).

Changes to the training system were introduced on 1 July 2005, including a national governance and accountability framework, a national skills framework, and revised ministerial oversight through a new Ministerial Council of Vocational Education and Training.

At its meeting in June 2005, COAG recognised the need for a more responsive and flexible national apprenticeship and vocational education and training system. A joint Commonwealth-state working group was established to address, among other things, the problems around mutual recognition (COAG 2005).

The Taskforce recognises the significance of COAG advancing its work on mutual recognition and improving the effectiveness of the national training system in trade-related occupations. It considers this could be usefully extended to include the professions and para-professionals such as lawyers, veterinarians and nurses.

Recommendation 4.32

COAG should extend its work on skills, training and mutual recognition to include both para-professional and professional occupations.

Implementing national licensing and registration

Not only do different jurisdictions require different levels and types of competency and related training to be undertaken to obtain a specific occupational licence, but coverage of the licences may also differ across jurisdictions. There may also be different entry requirements in terms of individual experience, character tests and background checks. The real estate sector is an example, with eight different eligibility regimes for obtaining a real estate agent licence.

The time taken to issue licences and the frequency of renewal or review are also issues. For example, in the childcare sector it can take up to six months for individual carers to obtain a licence as they move through a sequential process of police checks, first aid certification, and house/car clearance. In the real estate sector, licences are issued annually in five jurisdictions, reviewed annually in one, and issued for one or three years in another; and a triennial registration process applies in another jurisdiction.

Recommendation 4.33

COAG should consider measures to align the national training system with occupational licensing and registration regulations, including the development and adoption of minimum effective national standards for licensing and registration across a range of industries and sectors.

Mobilising new skills

Business is concerned that employing apprentices and trainees is made more difficult because of the additional compliance costs. For example, Master Builders Australia is concerned that there are significant business risks, particularly with state legislation, that work against employers taking on young people. These include the costs of insurance, payroll taxes, workers' compensation, manslaughter and OH&S provisions, and the tax on employer incentives.

Group training organisations, especially those operating in multiple jurisdictions and/or as registered training organisations, face particular regulatory issues as their core business is managing apprentices and trainees. Issues include:

- being subject to overlapping audits under the National Standards for Group Training Organisations and the National Standards for Registered Training Organisations; and
- having to apply the threshold test under the Australian Government's *Equal Opportunity for Women in the Workplace Act 1999* to apprentices and trainees employed by host employers under a group training arrangement. This effectively brings most group training organisations within the scope of the Act. A recommendation has been made to address this issue (see recommendation 4.43).

Recommendation 4.34

COAG should:

- develop regulatory options for reform to enable business to better manage the regulatory compliance cost and risk associated with employing trainees and apprentices, including insurance costs, occupational health and safety provisions and the treatment of employer incentives; and**
- align the audit requirements for group training organisations with the audit process for registered training organisations to reduce duplication of information and the reporting burden on group training businesses.**

Business migration

Effective business migration processes are important to the smooth operation of Australia's labour market. These processes have attracted more attention in response to the progressive tightening of the labour market in recent years. Business migration is also a crucial element in attracting skilled people and business activity to regional areas.

Streamlining business visas and labour agreements

Using employer-sponsored temporary and permanent migration arrangements and labour agreements can help Australian business meet their skills needs. It is possible for Australian business to sponsor personnel from overseas to meet either permanent or temporary labour needs under the employer nomination categories or through labour agreements.

Labour agreements are agreements between the Australian Government and an employer or industry association to allow employers to recruit a specified number of workers from overseas in response to identified or emerging labour market or skill shortages. Agreements are generally negotiated within 6 to 12 weeks.

The Taskforce heard of business concerns that the process of sponsoring overseas personnel and in some instances negotiating labour agreements can be sluggish and impede business in sourcing the skills when they need them. During a visit, the Western Australian Division of the Australian Veterinary Association gave an example where a veterinary practice had previously sponsored two overseas equine veterinarians to perform work during the stud season. However, despite wanting to re-hire the same veterinarians the following year, the practice had to go through the same protracted process again.

Improving information and advice

Business also raised concerns about a lack of information and effective advice on business migration policies and procedures. Business expressed support for the level of scrutiny applied to the process but did not consider they had access to timely and streamlined information.

In addition there is concern that business may not be using the visa system effectively, and may not understand that some visa options are more suitable than others in attracting appropriate skills and expertise.

The business was not appraised of what was required of it as a sponsor nor what information the Department needed for its assessment. An outline of sponsor obligations and information would have helped. Capital Region Area Consultative Committee, sub. 142, p. 1

[T]here are still unnecessary costs and complexity involved in employers taking on migrant labour. Queensland Farmers' Federation, sub. 50, p. 12

It is apparent that farmers are not effectively using the existing visa system and/or the existing visas or their criteria may not necessarily be consistent with requirements of Australian farmers. National Farmers' Federation, Labour Shortage Action Plan 2005, p. 75

Business supported the Regional Outreach Officer initiative, where Department of Immigration and Multicultural Affairs officers are seconded to industry associations to explain business migration options and required procedures. The Taskforce believes that outreach officers could help business much more broadly by providing timely, accurate guidance on migration-related issues to industry associations and individual employers.

The Taskforce acknowledges the substantial amount of material on the Department of Immigration and Multicultural Affairs website. However, in the time available, it could not determine whether better guidance was warranted, for instance in relation to checklists and summaries of processes.

Recommendation 4.35

The Australian Government should:

- a) streamline the processes associated with sponsoring overseas personnel and negotiating labour agreements, including the time taken for processes and approvals;
- b) consult with business employers and industry associations to ensure available information and advice meets their needs; and
- c) consider the broader use of migration outreach officers.

Education

The Taskforce met with the Australian Vice-Chancellors Committee (AVCC), representing higher education providers, and the Independent Schools Council of Australia (ISCA), representing independent primary and secondary education providers. It received submissions from both groups.

Both groups raised concern about excessive accountability and performance-reporting requirements, burdensome data requirements and inadequate consultation about the impact of recent requirements. The independent schools sector was also concerned about jurisdictional duplication and inconsistency, and redundant regulation.

Higher education

Reducing data collection and reporting requirements

The policy paper *Our Universities: Backing Australia's Future* and the *Higher Education Support Act 2003* set out the Australian Government's policy objectives and reform agenda for the higher education sector. It includes a commitment to reducing the regulation of universities, as well as reducing red tape and unnecessary reporting requirements.

The AVCC was concerned that implementation has led to additional, and costly, reporting requirements and closer control of key decisions about the best balance of students and courses. The Australian Government's requirements frequently extend beyond government-funded programs to those funded from private sources, which represent around 60% of university income.

The increased reporting requirements and regulatory interventions make life very difficult for universities and take funds away from the core business of universities — teaching and research.
Australian Vice-chancellors' Committee, sub. 9, p. 1

Greater use is being made by government of administrative guidelines issued by the Department of Education, Science and Training (DEST), rather than guidelines issued by the Minister as disallowable instruments subject to parliamentary scrutiny. Taken together, these ministerial and departmental guidelines represent a significant increase in the complexity and detail of administrative and reporting requirements.

A survey conducted by the AVCC in 2004 showed that, on average, universities are spending an additional \$1.2 million on administration to implement government reforms, although only an additional \$250 000 was provided, on average, to each university for this purpose.

Universities deal with four corporate groups within DEST (the Higher Education, International Education, Science, and Indigenous and Transitions groups), which each request data for particular purposes. The purpose of data collection is not always clear and, in some cases, different areas within DEST request similar information. The AVCC noted that there is no consolidated set of data requirements to help DEST rationalise and coordinate requests, and universities to respond.

The AVCC commented that neither it, nor individual universities, are generally consulted in developing new guidelines, although it is often asked to comment on near final drafts. The new guidelines have not been exposed to Regulation Impact Statement (RIS) processes.

Addressing the problems

The AVCC has engaged consultants PhillipsKPA to investigate the additional reporting required since the introduction of *Our Universities: Backing Australia's Future*. The consultancy is to comment on areas where regulation can be reduced. An advance copy of the consultants' report, which is expected to be available in February 2006, was provided to the Taskforce.

DEST advised the Taskforce that it is committed to working with the sector to identify areas for improvement and has been cooperating with the PhillipsKPA consultancy. The Taskforce considers that publication of the PhillipsKPA report will provide a focus for government agencies to work with the higher education sector to reduce regulation.

Recommendation 4.36

The Department of Education, Science and Training and other relevant agencies should work with the Australian Vice-Chancellors Committee to address issues identified in the PhillipsKPA report to reduce red tape.

Independent schools

Being businesses, as well as providers of education, independent schools are subject to several accountability frameworks. As companies limited by guarantee or incorporated associations, independent schools are subject to the same financial and governance accountabilities as corporations. As education providers, they are subject to regulations addressing financial, professional (of teachers and administrators), educational and social accountability.

Independent schools and their representative body, ISCA, expressed concern at the substantial increase in reporting requirements tied to new Australian Government funding arrangements, with sanctions for non-compliance being ineligibility for funding. These requirements are in addition to corporate governance provisions and the requirements of state and territory education authorities.

Reviewing the new regulatory regime

New requirements for the 2005–08 period are set out in the *Schools Assistance (Learning Together — Achievement Through Choice and Opportunity) Act 2004* and *Schools Assistance (Learning Together — Achievement Through Choice and Opportunity) Regulations 2005*. They include new national benchmark testing requirements and public reporting on a range of performance measures. They also stipulate how schools must report to parents on student performance. The new funding requirements have not been exposed to RIS processes.

While the purpose is to lift the performance of schools that are underperforming, all schools have been caught up in a bureaucratic system that is growing like topsy. Independent Schools Council of Australia, meeting with Taskforce, November 2005

ISCA noted that the regulatory burden falls disproportionately on smaller schools and non-systemic schools that do not have the support of a centralised administration or the necessary economies of scale to absorb the cost of increased regulation. In recent years, schools have engaged increasing numbers of non-teaching staff to manage the cumulative administrative burden of regulatory and compliance requirements, including duty of care, child protection, OH&S and other workplace regulations, as well as specific fiscal, governance and education-related regulations.

Reducing duplication and inconsistency

ISCA asserted that the increased burden has been compounded by the response of state and territory governments to the Australian Government's new requirements (which also apply to government schools, although in a slightly different form).

Some states and territories have introduced parallel changes to their regulatory regimes to meet the Australian Government's requirements for government schools. However, because state and territory governments are the prime regulators of non-government schools, the changes have been extended to the non-government sector. This means that independent schools in some states and territories

now have to comply with two sets of reporting requirements, which are sufficiently different in form and detail to constitute a double reporting burden.

The Taskforce considers there is a particular need to address overlapping Australian Government and state and territory government regulations.

Recommendation 4.37

The Australian Government and state and territory governments should rationalise their respective reporting requirements for non-government schools to reduce duplication and minimise administrative workloads.

Improving data collection

As a condition of funding, the Australian Government requires schools to collect substantial background data on students. ISCA noted that some of the required data is valuable for planning, performance monitoring and accountability purposes, for example, longitudinal data on literacy and numeracy. But it questioned the value of other data, for example, information on parents' socioeconomic status and educational attainment to provide a context for student performance standards.

Notwithstanding the value of some of the data, all schools need to employ or divert additional (usually non-teaching) resources to comply with the requirements. It is the Taskforce's view that, given the costs involved in providing data, clear grounds need to be established for data collections and the least costly methodology adopted.

Recommendation 4.38

The Department of Education, Science and Training should implement alternatives to universal data collection, including, for example, sampling or better targeting data collections within the school system.

Removing redundant regulation

In 2001 the Australian Government introduced a new funding system for allocating general recurrent funding to non-government schools. The new system uses a 'needs-based' model, with need determined by the socioeconomic status of a school community, derived from census data. Before 2001 Australian Government funding was allocated under a resources model that took account of school income. DEST collected this school financial data using a Financial Questionnaire for Non-Government Schools.

Independent schools still have to complete the questionnaire to obtain funding. However, ISCA reported that the data has not been required for funding purposes for five years and is not required to prove a school's financial standing. This requirement is met through school registration by state and territory governments and providing annual audited financial statements. Further, it is not needed to account for spending of government funds on a contracted purpose, as this is satisfied by a variety of certified statements from accountants, auditors, architects and other suppliers.

Completing the questionnaire represents a substantial administrative burden as it requires information in a format that varies from the standard presentation of data in audited accounts.

The Taskforce could not identify a sound basis to warrant retaining the Financial Questionnaire for Non-Government Schools. It is the Taskforce's view that government agencies should use existing information wherever possible to minimise reporting requirements for business.

Recommendation 4.39

The Department of Education, Science and Training should abolish the Financial Questionnaire for Non-Government Schools.

Childcare

Improving quality accreditation and licensing arrangements

Access to affordable and quality childcare services is becoming more important because of the role these services play in facilitating child development and parental participation in the labour force. Duplication between requirements under the quality assurance systems administered by the Australian Government and state and territory licensing regulations causes unnecessary burdens for service providers, and can act as a deterrent to potential service providers.

Business indicated that such duplication is extensive and, despite differences in the objectives of the two regulatory systems, there are instances where almost identical requirements apply. While this duplication may appear to be a minor issue, in practice the requirements impose an unnecessary compliance burden. For example:

- Australian Government Quality Improvement and Accreditation System inspections for a centre with between 30 and 60 places typically take around two days, with a significant proportion of this time spent looking at written policies and procedures; and
- state regulator inspections for such a centre typically take between a half to a full day, again, with a proportion of this time spent looking at the same policies and procedures.

[D]uplication arises primarily because of content and of administration, and, in particular, the manner in which state licensing systems interact with the Commonwealth regulatory system. Child Care NSW, sub. 54, p. 3

[P]articipants identified the regulatory environment, most notably the NSW Children's Services Regulation and the Quality Improvement and Accreditation System to have an unnecessarily burdensome impact... Paperwork requirements were perceived to be excessive and repetitive... and/or how they were interpreted by reviewers from regulatory bodies, was perceived to be overly prescriptive. Institute of Early Childhood, sub. 26, p. 1

There are also fundamentally different regulatory approaches between jurisdictions. Some are modern outcomes based and others are highly prescriptive. For example some require the fences at a Carers home be 'adequately fenced' (QLD) and others set the height of the fence (WA). National Family Day Care Council of Australia, sub. 31, p. 3

Some progress towards addressing these concerns has been made in Queensland, where the licensing regulator has agreed that a quality audit by the Australian Government regulator will be recognised as meeting state regulatory requirements. This removes the need for the state regulator to duplicate the inspection process. The Taskforce endorses this development and considers that it should be adopted by other jurisdictions.

A joint review of National Standards for Child Care Services by the Australian Government and state and territory governments is due to report in March 2006. The regulatory duplication issues raised with the Taskforce are not within the scope of the review.

Recommendations 4.40–4.41

- 4.40** The Australian Government, through the Health, Community and Disability Services Ministerial Council, should encourage all states and territories to adopt the mutual recognition initiative as implemented in Queensland — where quality certification by the Australian Government regulator is recognised as meeting the overlapping requirements of the state regulations.
- 4.41** The Australian Government should commission an independent public review of:
- the role of the Australian Government and state and territory governments in regulating the childcare sector, including possible mechanisms to reduce duplication in regulation between governments;
 - measures to enhance the efficiency of the childcare sector to deliver desired quality outcomes; and
 - the merits of aligning regulatory approaches across jurisdictions towards achieving minimum effective regulation of the sector.

Employment reporting

A significant number of regulations affect business employment. The Taskforce considers that steps should be taken to ease compliance and thereby contribute to an increase in employment, where appropriate. Recommendations concerning the regulation of employment also appear in other parts of this report.

Reducing compliance requirements

Centrelink relies on information and support provided by the business sector to meet its payment obligations. Business raised concerns about the compliance burden associated with requests for information on either current or former employees.

Centrelink has recently adopted a number of initiatives to reduce the compliance burden on business, including asking employers to verify an employee's income only if a customer cannot produce the required information. The Taskforce encourages this approach but notes that implementing such a policy, as well as continually seeking ways to reduce the compliance burden, will require continued support from senior management.

The Taskforce also supports whole-of-government approaches (such as joint department forms and web-based applications) to collecting administrative data which minimise duplication and inconvenience to employers. Joint government approaches to collecting data can potentially reduce the compliance burden on business, especially those employing large numbers of casual and itinerant workers (see chapter 6).

The Department of Immigration and Multicultural Affairs requires employers to comply with work visa regulations. Migrants or visitors seeking to undertake any work in Australia must have a valid visa and a work right (many visa categories permit the holder to work in Australia). Employers can check the visa status of potential workers before employing them, either online through the Employment Verification Online service or through a fax-back service.

While acknowledging that the online employment verification service has helped, business considered the visa checking requirement to be tedious, especially where large numbers of temporary or seasonal workers are employed (for example fruit picking). The Taskforce considers that some instantaneous (voluntary) statement of work rights, or some acceptable alternative proof of entitlement to work, would streamline work visa compliance checks of all migrants and visitors.

Recommendation 4.42

The Australian Government should:

- a) consider implementing broader arrangements for governments to jointly collect compliance information, avoiding the need for employers to answer separate queries from Centrelink and other agencies; and
- b) examine avenues to further streamline work visa checks undertaken by employers.

Rationalising equal opportunity arrangements

Submissions to the Taskforce raised concerns about the *Equal Opportunity for Women in the Workplace Act 1999*. The Act requires employers with more than 100 employees to provide annual information about equal employment opportunities for women. The information required includes:

- completion of a workplace profile;
- analysis of the profile and identification of any issues;
- feedback from employees on equal opportunity issues;
- description of actions taken during the reporting period; and
- description of actions that will be undertaken in the next reporting period to address issues raised.

[A] BCA member highlights the Equal Opportunity for Women in the Workplace Act 1999 (EOWW Act) as a regulation of concern ... The BCA member highlights that such annual reporting that is required under the EOWW Act takes time to complete ... The BCA member believes that this process is perhaps becoming less relevant in a modern society ... and today companies should be focusing on diversity issues in the workplace ... The BCA member believes this could be best resolved by removing the requirement to report as this costs approximately \$16 000 per annum to complete the report and conduct surveying or focus groups. Business Council of Australia, sub. 109, pp. 38—40

Business saw these requirements as excessive and costly. Group Training Australia expressed concern that apprentices and trainees they employ and place with businesses are also covered under the Act because of the broad definition of 'employer'. This is despite the fact that they have little direct control over the workplaces where their apprentices and trainees are placed.

The Taskforce considers that these requirements are no longer justified.

Recommendation 4.43

The Australian Government should replace mandatory reporting under the *Equal Opportunity for Women in the Workplace Act* with voluntary reporting that focuses more broadly on workplace diversity, rather than just the participation of women in the workplace.

4.3 Consumer-related regulation

There is an array of regulations governing transactions between business and consumers, designed to protect consumer interests and improve market outcomes. These are important objectives. However, where such regulations impose an excessive compliance burden on business, they can have unintended consequences — including increasing prices or limiting consumer choice.

This section deals with a number of areas of consumer regulation that have been raised as a priority for reform or review. Specifically, it focuses on consumer protection, privacy and legal administration

regulations, as well as industry-specific regulations covering the food and chemicals and plastics sectors of the economy.

Concerns raised by business in submissions to the Taskforce fell into four broad categories:

- inconsistencies and duplication in requirements between agencies and across governments (including international) that impose avoidable compliance cost burdens on business;
- overly prescriptive industry- or product-specific regulation;
- inconsistencies between general and industry-specific regulations which create uncertainty and reduce competitiveness; and
- duplication of data collection amongst government agencies and within supply chains, leading to cumulative compliance costs.

Consumer protection

All businesses selling products or services to the public are subject to consumer protection regulations. It is important that consumers have access to effective information about goods and services, that they are protected from unfair practices or dangerous goods, and that they are protected from possible excesses of market power in industries characterised by limited contestability. But it is also important that regulations are based on the notion of minimum effective regulation, to guard against business being burdened with excessive or unnecessary requirements.

[G]ood quality regulation is essential to the operation of effective markets, and it is essential for the protection of consumers when those markets don't work ... Ultimately consumers endure the burden of both failed regulation, either as victims of market failure or increased prices resulting from compliance costs ... [W]here markets fail appropriate regulations provide essential safeguards needed to protect vulnerable consumers and maintain consumer confidence in the fairness and security of markets. Australian Consumers' Association, sub. 129, p. 3

Reviewing the consumer protection framework

Various inconsistencies in regulations across Australia's nine jurisdictions were brought to the attention of the Taskforce. This lack of national uniformity leads to greater compliance costs and burdens for companies that operate nationally, such as food franchises and banks.

Growing divergence in consumer protection regulations goes against the original intent of governments in amending Part V of the *Trade Practices Act 1974* in 1983 to have nationally consistent laws. For example, in 2002 the ACT introduced changes to offerings of credit card limit increases, while in 2003-04 Victoria and NSW introduced similar but different telemarketing provisions in their mirror consumer protection legislation. Business suggested that the 1983 ministerial agreement could be revisited to include explicit obligations to ensure consistency.

[M]any regulators appear to see themselves as the last line of defence between helpless consumers and rapacious businesses. This creates a culture where regulators focus excessively on capturing 'corporate crooks' and are not focused on facilitating vibrant and dynamic business sectors that can best deliver the goods and services desired by customers. Business Council of Australia, sub. 109, p. 19

One of the major achievements of consumer protection regulation over the last few decades has been the reduction in the extent and severity of risks that consumers face in a range of areas, for example in vehicle safety ... [we] would strongly oppose any attempt to shift the risk of significant harm onto consumers under the guise of 'reducing red tape'. Australian Consumers' Association, sub. 129, p. 13

While Part V of the Trade Practices Act also contains product safety regulations, Australian regulatory agencies impose additional regulations under the broader banner of consumer protection. Business highlighted that the dispersal of regulatory responsibilities between Australian Government and state and territory agencies creates inconsistencies and weakens enforcement of product safety laws. In a review of Australia's consumer product safety system, the Productivity Commission (2005e) argued for harmonisation.

There has not been a comprehensive review of the consumer protection provisions of the Trade Practices Act since they were introduced in 1983. The Parliamentary Secretary to the Treasurer has committed to work with the Ministerial Council on Consumer Affairs to achieve a nationally uniform consumer framework. The Taskforce endorses the call by the Productivity Commission (2005d) in its recent review of National Competition Policy for a comprehensive review of Australia's consumer protection framework.

The real estate industry raised particular concerns about consumer protection regulations. It indicated that inconsistencies in state and territory regulations dealing with property sales create an uncertain environment for real estate agents and their clients. The Taskforce notes that this issue has been raised with the Standing Committee of Officials of Consumer Affairs. The concerns raised should be handled in the wider review.

Recommendation 4.44

COAG, through the Ministerial Council on Consumer Affairs, should initiate an independent public review into Australia's consumer protection policy framework and its administration.

Reducing telecommunications industry regulation

The extensive regulation of the telecommunications industry has been subject to fundamental changes over the last decade to support the progressive liberalisation of the market. Many of the changes were made in response to reviews. While many within the industry, as well as user industries, acknowledged a need for regulation, a number of issues were raised.

Several of business's concerns have not been taken up in the Taskforce's recommendations. These include issues to do with sections 60 and 106 of the *Radiocommunications Act 1992* covering restrictions on allocations of bandwidth; telecommunications-specific consumer contracts; and preselection regulation. After careful consideration, the Taskforce concluded that the issues had either been investigated recently, or involved significant policy considerations and were therefore outside the scope of this review. The Taskforce also understands that a more comprehensive review of telecommunications regulations is scheduled for 2008.

Additional material on issues relevant to the telecommunications industry is contained in the next section on privacy regulation, and in section 5.1.

Reviewing the Customer Service Guarantee

Telstra argued strongly for a review of the Universal Service Obligation and the Customer Service Guarantee. It considers that elements of the guarantee relating to enhanced call-handling features, credit management, and reporting of Customer Service Guarantee performance are redundant.

The Taskforce notes that the Universal Service Obligation and the Customer Service Guarantee are key parts of consumer safeguards introduced by the Australian Government following deregulation of the telecommunications industry. The government reviewed these parts of the Customer Service Guarantee in 2004, and again considered and amended them as part of its consideration of the Telstra sale legislation in 2005.

Telstra also raised as an issue the possible redundancy of regulation covering connections to specified services — which are defined as the standard telephone service or an enhanced call-handling feature. Telstra argued that this regulation should be amended, as there are participants and new entrants in the telecommunications sector that own their infrastructure and the regulation should reflect this. The Taskforce believes this issue is worth investigating.

Recommendation 4.45

The Australian Communications and Media Authority should consult with all telecommunications providers as part of a review of the need for regulation of connections to specified services, in the context of wider development of the market for these services.

Modifying reporting obligations

Industry representatives argued that there was a dramatic increase in information requirements between 2004 and 2005 under section 105 of the *Telecommunications Act 1997*. It was alleged that the Australian Communications and Media Authority was misusing this section — with no explanation of how each piece of information required would be used nor how it is relevant to the reporting objective of the regulator. It was suggested that it would be more appropriate to use a targeted approach, with reporting designed to meet genuine information needs.

Vodafone is particularly concerned that regulators are allowing third party consultants to prescribe the required information, adopting a 'cast the widest net possible' approach to gather as much information as possible, rather than a targeted approach designed to meet genuine information needs. Vodafone, sub. 97, p. 16

The Australian Communications and Media Authority section 105 Annual Report contains 13 modules (collectively containing 34 sub modules) ... This report consumes about 20 000 hours each year, which is equivalent to about 10 full time staff. The extent of Section 105 reporting is excessive in relation to the objectives. Telstra Corporation, sub. 66, p. 37

The Taskforce notes that in response to a recommendation in the Estens Report (2002) and following industry consultation, the Australian Communications Authority (now the Australian Communications and Media Authority) reviewed and modified the reporting framework. Given that almost three years have passed since changes were last made to the reporting framework, the Taskforce considers that it is time to review the reporting obligations, including opportunities for lessening the associated compliance costs. The Taskforce also considers there should be regular reviews to rationalise information requests.

Recommendation 4.46

The Australian Government should initiate a review of the reporting requirements associated with the telecommunications industry to ensure they remain relevant. The review should consider opportunities for lessening compliance costs by modifying the reporting requirements under section 105 of the Telecommunications Act.

Privacy

Privacy legislation is designed to give individuals greater control over the way their personal information is handled by government agencies and private sector organisations. In achieving this, the right of individuals to protect their privacy needs to be balanced against a range of other community and business interests, such as the general desirability of a free flow of information (through the media and otherwise) and the right of business to achieve its objectives efficiently.

Business identified the pervasive nature of privacy requirements as an important contributor to the cumulative regulatory burden it faces.

ACCI's 2004 Pre-Election Survey provides a qualitative gauge of the effect regulation has upon the business community ... Workplace occupational health and safety inspections were seen as a major or moderate problem by 50.8 per cent, followed by compliance with privacy requirements (47.4 per cent). Australian Chamber of Commerce and Industry, sub. 25, p. 10

The Office of the Privacy Commissioner (sub. 93, p. 2) noted that Australia's privacy regime is based on OECD principles written in the late 1970s and stated that it may be appropriate for the government to undertake a wider review to ensure the legislation best serves the needs of Australia in the twenty-first century. The Taskforce agrees that a comprehensive review of Australia's privacy laws is warranted.

Specific issues raised with the Taskforce included national consistency, consistency with other Australian Government legislation; consistency between government and business privacy requirements, and sharing data. Recommendations to address deficiencies in these areas and observations to guide a review of privacy laws are set out below.

Improving national consistency

Business is concerned about inconsistencies in privacy laws, including fragmentation and duplication with state and territory government privacy legislation.

State and Commonwealth legislation touching upon privacy issues (such as laws on privacy, direct marketing, anti-money-laundering, workplace surveillance and anti terrorism) should be uniform and express an appropriate balance between employer/business interests and employee/customer interests ... Both the report of the Office of the Privacy Commissioner and the Senate Committee Report into privacy acknowledge that the privacy regime is fragmented. Business Council of Australia, sub. 109, p. 13

Workplace surveillance

The move towards state-based legislation of workplace surveillance activities is contributing to inconsistencies in Australia's privacy regime. Recent reform proposals in Victoria and NSW are an example. Business expressed concerns that if other states and territories follow this lead, the required systems modifications, altered work practices and additional staff training required to manage the differences would increase compliance costs for entities operating nationally.

Business put forward the idea of the Office of the Privacy Commissioner developing voluntary national workplace privacy guidelines. This would not prevent individual states and territories legislating on workplace surveillance, and the success of the guidelines would depend on them being widely adopted by business. The Privacy Commissioner has already issued guidelines on workplace email, web-browsing and privacy and, while the guidelines are not legally binding, business has largely adopted them as a benchmark.

The Taskforce sees merit in considering this option further in the wider review.

Direct marketing

Business also called for direct marketing and telemarketing laws in Australia to be aligned, given the operational complexities and costs companies that trade nationally have in ensuring they comply with differing regimes. For example, the Business Council of Australia noted that while there are similarities between the NSW and Victorian legislation, there are also key differences that have proven complex and costly for telephone marketing firms to implement. This is compounded by the fact that the amendments introduced in Victoria and NSW also affect operations in other states.

A telephone marketing call centre based in one State, which makes outbound calls to customers in Victoria and New South Wales, is required to apply different administrative rules depending upon the regulatory regimes that exist in the state where the customer they are calling resides. Business Council of Australia, sub. 109, attachment A, p. 58

The Taskforce notes that achieving nationally consistent minimum effective privacy requirements across states and territories is an important factor in reducing compliance costs for business.

Recommendation 4.47

The Australian Government should ask the Standing Committee of Attorneys-General to endorse national consistency in all privacy-related legislation based on the concept of minimum effective regulation.

In addition, the Office of the Privacy Commissioner noted that comprehensive coverage could be guaranteed only if section 3 of the *Privacy Act 1988* is amended to remove any ambiguity about the regulatory intent of the private sector provisions.

The Taskforce notes that this issue should be examined in the context of the wider review.

Ensuring consistency with other legislation

In addition to concerns about national consistency, business also raised concerns about consistency between Australian Government privacy requirements and other government regulations, including the Telecommunications Act and the *Spam Act 2003*.

Telecommunications Act

Submissions to the Taskforce highlighted a need to clarify the relationship between the Privacy Act and the Telecommunications Act. Telstra, for example, claimed it is not necessary to have Part 13 of the Telecommunications Act (which deals with privacy) as well as a number of other codes and standards that deal with privacy.

Privacy issues should be concentrated in one law rather than scattered across different legislation and codes. Telstra Corporation, sub. 66, p. 40

In its review of the private sector provisions of the Privacy Act, the Office of the Privacy Commissioner (2005) stated that it saw merit in clarifying the relationship between the Privacy Act and Part 13 of the Telecommunications Act.

The Taskforce considers that the need to clarify and harmonise the interaction between the Telecommunications Act and the Privacy Act should also be examined in a wider review.

Direct marketing and the Spam Act

Of concern to business is the overlap, as well as limitations to marketing, caused by the interaction of the Privacy Act, the *Corporations Act 2001* and the Spam Act. The Business Council of Australia argued that the Spam Act requirements reduce the ability of business to use electronic means to notify customers quickly in response to commercial or other needs and to use technology to streamline customer communications generally.

The Taskforce notes that the Department of Communications, Information Technology and the Arts is examining the interaction of the Spam Act and Privacy Act as part of its broader review of the Spam Act. The review is to be completed in 2006. The findings of this review should be considered in the broader review on privacy.

Workplace privacy legislation

A related concern expressed by business was that workplace privacy legislation being introduced by some states may introduce inconsistencies with other regulations, such as depriving employers of the ability to comply with obligations in the area of harassment and bullying, OH&S and fraud detection.

Laws which prevent employers from dismissing or disciplining staff for OH&S breaches or inadequate attention to safe work practices and laws or guidelines that shield employees from employer scrutiny under the guise of privacy (such as property searches, information technology control or drug and alcohol testing in appropriate circumstances) are counterproductive and contrary to OH&S objectives. Master Builders Australia, sub. 100, attachment B, p. 23

The Taskforce considers that the recommended review should examine whether workplace privacy requirements unduly restrict business from meeting its obligations in other areas, including OH&S and fraud detection.

Considering uniform privacy principles for government and business

Submissions to the Taskforce also raised concerns about a lack of consistency between the Information Privacy Principles applying to government agencies and the National Privacy Principles applying to private sector organisations. This can create problems for government contractors who have to comply with two different sets of privacy requirements.

This is consistent with the findings of the Office of the Privacy Commissioner in its review of the private sector provisions of the Privacy Act.

The Taskforce considers that the recommended review of privacy laws should systematically examine both Information Privacy Principles and National Privacy Principles, and consider the merits of developing a single set of principles that would apply to Australian Government agencies and private sector organisations.

Sharing data to lessen reporting

Another issue raised with the Taskforce was that businesses are often required to supply the same information to multiple government agencies. This can be time-consuming and frustrating for business.

One issue that really annoys business people is the feeling that they are constantly providing the same information just in different forms to different government authorities (or different sections of the same government authority). National Institute of Accountants, sub. 107, p. 3

While electronic solutions can reduce the time it takes business to provide this information to government, they do not address the core issue of businesses being asked to provide the same information to different government agencies. For the most part, barriers to sharing data between different government agencies reflect limitations in existing data collection systems and a lack of coordination between agencies (see chapter 6). However, while much of the information collected may be business-related, some of it could be 'personal information' (such as income data provided by sole traders) and be regulated by the Privacy Act. Under existing privacy principles, government agencies face some restrictions in sharing personal information provided by business with other agencies.

The Taskforce sees merit in the Australian Government considering the impact of privacy requirements on government agencies sharing data.

Business also raised concerns about private sector privacy guidelines regarding the treatment of tax file numbers attached to documents provided to them and claimed that complying with these requirements is not practicable (Mortgage Industry Association of Australia, sub. 6, p. 5). The Taskforce notes that the business compliance costs of privacy laws should be examined in the context of the wider review.

Recommendation 4.48

The Australian Government should commission a comprehensive, independent public review of privacy laws in Australia. The review should consider:

- the impact of privacy requirements on business compliance costs;
- all options for achieving effective nationally consistent privacy protection, including self-regulation and voluntary codes;
- whether there is a need to amend section 3 of the Privacy Act to remove any ambiguity about the regulatory intent of the private sector provisions;
- whether workplace privacy requirements unduly restrict business from meeting its obligations in other areas, including OH&S and fraud detection;
- the interaction of the Privacy Act with other Australian Government legislation including the Telecommunications Act and the Spam Act;
- the merits of developing a single set of privacy principles that could apply to both Australian Government agencies and private sector organisations; and
- the impact of privacy requirements on government agencies sharing data.

Food regulation

The government regulates food and food safety extensively, reflecting community expectations that food supply will be controlled in the interests of public health and safety. In some cases, regulations are designed to meet consumer demand for information about food products.

The Australian Government has no specific constitutional power to regulate domestic food supply. In response to the Report of the Food Regulation Review (Blair 1998), COAG reached an intergovernmental food agreement in 2001. The agreement established the Australia and New Zealand Food Regulation Ministerial Council, which is responsible for developing food policy. Responsibility for developing food standards rests with Food Standards Australia New Zealand (FSANZ), a statutory authority established in 2001. The states and territories are responsible for implementing and enforcing food standards.

While business generally agreed that there have been improvements as a result of these changes, it raised a number of ongoing issues with the food regulatory system in submissions to the Taskforce. These included:

- overlap and duplication between state Food Acts and the Australia New Zealand Food Standards Code;
- inconsistencies in applying and enforcing standards across jurisdictions;
- lack of enforcement of some elements of the code, in particular, labelling and health claims; and
- the timeframes and complex processes associated with developing or amending food standards.

Business also raised concerns about a number of regulations introduced without adequate cost-benefit analysis, or where the analysis suggested a net cost from the regulation — for example, mandatory food safety plans and new country of origin labelling requirements.

The mandatory Horticulture Code of Conduct is expected to be considered by government in early 2006. Business expressed concerns that the form of the code differs from the option recommended in the RIS (a code covering all parties). As the proposed approach has not yet been finalised, the Taskforce has not been able to make any specific recommendations, but notes that mandatory codes of conduct can increase compliance burdens on business.

Reviewing governance arrangements

The Blair Review (1998) found the regulatory framework for food in Australia to be complex and fragmented. It recommended creating an integrated and coordinated national food regulatory system with nationally uniform laws.

Yet despite the adoption of an intergovernmental food agreement in 2001, there are still significant inconsistencies in laws across jurisdictions. Some states and territories have adopted only the core provisions of the Model Food Act and retained their own laws, which sometimes overlap with national laws. Further, there are significant inconsistencies in implementing and enforcing standards across jurisdictions. This creates uncertainty for businesses operating across jurisdictions, as well as a competitive disadvantage for those operating in jurisdictions that interpret the standards more strictly.

Although the original purpose of the Blair Review in 1998 was to simplify food regulation in Australia and New Zealand, the operation of the new system has accumulated excessive red tape and poor delivery in commercial time frames, disadvantaging industry without generating the benefits consumers and government(s) deserved from the reforms. Australian Food and Grocery Council, sub. 36, p. 4

The current food regulatory system was developed in response to the Blair Review of 1998. While there have been significant improvements as a result of implementing the Blair Review recommendations, it is now timely to take a stocktake of outcomes to identify the extent and effect of ongoing issues. Department of Agriculture, Fisheries and Forestry, sub. 105, p. 6

The Australia and New Zealand Food Regulation Ministerial Council is reviewing the intergovernmental agreement and is due to report to COAG in December 2006. The Taskforce considers there would be value in undertaking a supporting review of the progress in reforming Australia's regulatory framework for food by providing external input to the ministerial council's review.

Recommendation 4.49

The Australian Government should commission an independent public review to examine:

- **implementing outstanding recommendations from the Blair Review on the consistent application of food laws;**
- **aligning levels of enforcement (including penalties) across jurisdictions; and**
- **the role of the Australian Government in the food regulatory system, including whether it could play a greater role in enforcing standards.**

Along with the Australia and New Zealand Food Regulation Ministerial Council review, the review recommended by the Taskforce should be used to provide input for COAG consideration of the intergovernmental food agreement due by December 2006.

Reducing time taken to develop or amend food standards

The current processes for developing or amending a food standard can be long and cumbersome. For example, between January 2002 and May 2005 the average time taken to approve an unpaid proposal was 35 months. Business raised a number of issues in this context:

- *'One size fits all' approach.* Almost all applications and proposals for developing and amending food standards are currently subject to the same application and approval processes.
- *FSANZ waiting for 'policy guidance' from the ministerial council.* Applications or proposals

for developing or amending standards may be made on matters where the policy still has to be developed. This can create lengthy delays while relevant policy guidelines are finalised and notified to FSANZ.

- *Review power of the ministerial council.* Under the intergovernmental food regulation agreement, a single jurisdiction on the Australia and New Zealand Food Regulation Ministerial Council can request a review of a draft standard or variation. A subsequent review can be called for by the majority of jurisdictions. Each review adds about seven months to the approval process.

To innovate successfully, the ground rules must be clear, red tape kept to the minimum necessary, and consistent decisions made quickly within the policy and standard development process.
Australian Food and Grocery Council, sub. 36, p. 6

In response to recommendations from the Food Regulation Standing Committee review of FSANZ approval processes, the ministerial council agreed at its October 2005 meeting to:

- introduce a risk-based assessment process, whereby most applications will require only one round of public consultation, with more complex or controversial proposals subject to two rounds of comment;
- take steps to streamline the process of giving direction to FSANZ during the approvals process; and
- eliminate one round of review, but still allow a single jurisdiction to request a review.

These proposals are undergoing another round of consultation, with amended legislation expected to be introduced to Parliament in the autumn sitting of 2006. The Taskforce supports the proposed changes to the FSANZ approval process, but notes that further process amendments may be necessary if approval timeframes are not reduced.

Recommendation 4.50

Food Standards Australia New Zealand should monitor the impact of the proposed changes to its assessment and approval processes on the time taken to develop or amend a food standard. It should regularly report to the Australia and New Zealand Food Regulation Ministerial Council on the timeframes.

Reviewing food safety programs

The Australia and New Zealand Food Regulation Ministerial Council agreed in December 2003 that national food safety programs should be mandated in the highest risk sectors: food services to vulnerable populations (for example, hospitals/nursing homes); catering operations serving food to the general public; producers of manufactured or fermented meat; and producers, harvesters, processors and distributors of raw oysters and other bivalves.

The food safety program standards are expected to become law early in 2006 (with the exception of seafood, which was gazetted in May 2005). State and territory governments will then have two years to implement the standards.

In Victoria, where food service businesses are already required to prepare a food safety program, business indicated that the monitoring and record-keeping requirements associated with the programs generate significant costs. For example, the Office of Small Business (2003) indicated that food service businesses spend an average of four hours a week complying with food safety plans.

Businesses in Victoria are the only foodservice businesses required at this point to have a food safety plan. They indicate that the monitoring and record keeping associated with their Food Safety Plans requires significant resources. In the main they question the effectiveness of the record keeping requirement in ensuring good hygiene practices. Restaurant & Catering Australia, sub. 70, p. 9

The Taskforce notes that the Department of Health and Ageing undertook significant work assessing the costs and benefits of introducing food safety plans in response to industry concerns. However, it considers that the policy should be reconsidered if, after two to three years, the estimated significant benefits (in terms of reduced food-borne illness) fail to materialise or the compliance burden is considerably higher than expected.

Recommendation 4.51

The Australian Government should undertake an independent public review of the food safety program policy, including a full cost-benefit analysis, two to three years after the policy comes into force.

Reviewing country of origin labelling requirements

The Australia and New Zealand Food Regulation Ministerial Council recently agreed to introduce country of origin labelling requirements for unpackaged food and increase requirements for packaged foods. The new standards were gazetted on 8 December 2005 and will come into full effect for unpackaged fruit, vegetables, nuts and seafood products six months after this date. Producers of unpackaged pork products and packaged goods will have 12 and 24 months respectively to comply.

The RIS for these changes indicated substantial costs and only negligible consumer benefit. The National Association of Retail Grocers of Australia estimates that the set-up costs for the independent grocery sector from the changes are likely to be about \$3 million, with ongoing annual compliance costs in the order of \$10 million (sub. 40, p. 6).

New Zealand has decided to opt out of introducing the requirements and three Australian jurisdictions have already announced they will not enforce them.

The recently announced changes to the Country of Origin Labelling regime potentially entail a substantial burden ... if a tray of sliced salami is labelled 'Product of Hungary', who is to know whether it might in fact be 'Product of Italy'? Who will verify and how? ... Red tape imposts distract owners and staff from their core business, reduce the funds each business has to invest in revenue-generation, divert the business owner and staff from their main functions — serving their customers and helping to generate profit for re-investment in the business and creating jobs. The funds are instead diverted to costs which do not generate income and which are of uncertain benefit to customers. National Association of Retail Grocers of Australia, sub. 40, p. 6

Nonetheless, at the request of the Australian Government, FSANZ is investigating extending country of origin labelling requirements to products with two or less 'whole food' ingredients. It is due to report back to the government by the end of March 2006. Any changes will complicate information available to consumers and add further compliance costs to industry.

Recommendations 4.52–4.53

- 4.52** The Australian Government should undertake an independent public review of the country of origin labelling requirements, including a full cost-benefit analysis, two to three years after the policy comes into force.
- 4.53** The Australian Government should withdraw its request to Food Standards Australia New Zealand to consider further extending country of origin labelling requirements.

Improving imported food control regulations

The legal basis for inspecting imported food in Australia is the *Imported Food Control Act 1992*. The National Competition Policy review of the Act made 23 recommendations, including that

AQIS [Australian Quarantine Inspection Service] consult with stakeholders to develop and implement an assurance regime that is based on the individual and collective performance in the imported food control industry. (Tanner 1998)

The Australian Quarantine and Inspection Service is working with stakeholders to implement the review recommendations.

Business considered that extending the use of performance-based inspection levels would reduce the compliance costs associated with the Imported Foods Inspection Scheme. While the highest risk food category is subject to performance-based inspection levels, the proportion of goods to be inspected in lower risk categories is prescribed in regulation. Thus inspection rates for the lower risk categories may be inconsistent with the relative risk profile of producers.

DISCA [Distilled Spirits Industry Council of Australia] does not believe the Regulation per se is unnecessary rather the way it is applied should be changed ... DSICA members who import are globally affiliated companies who subscribe to rigorous internal controls to ensure their products meet relevant local regulation ... By contrast smaller importers may not have similarly rigorous controls ... and therefore should be subject to a higher rate of inspection than legitimate operators who have a high 'success rate' with product subject to the IFIP [Imported Food Inspection Program]. Distilled Spirits Industry Council of Australia, sub. 24, appendix 1, p. 1–2

Australian Quarantine and Inspection Service inspections impose a significant cost on importers, including delays to shipments, and holding and personnel costs. The Taskforce supports an examination of the merits of extending the use of performance-based inspection levels.

Recommendation 4.54

The Australian Quarantine Inspection Service should investigate the merit of extending the use of performance-based inspection levels for the lower risk categories of food under the Imported Foods Inspection Scheme.

Removing inconsistencies in trans-Tasman arrangements

Under the *Trans Tasman Mutual Recognition Act 1997*, some dietary supplements that do not comply with the Food Standards Code but are legal under the New Zealand Dietary Supplements Regulations 1985 can be supplied in Australia by New Zealand businesses. Australian businesses are therefore competing against products containing ingredients that they cannot legally include in their own products.

The CHC [Complementary Healthcare Council of Australia] is also aware that some businesses are moving their manufacturing to New Zealand in order to import (legally) product that is not required to comply with the Food Standards Code. Complementary Healthcare Council of Australia, sub. 69, p. 9

The Australia and New Zealand Joint Food Standards Treaty will be reviewed in 2006, providing an opportunity to amend this anomalous regulatory provision.

Recommendation 4.55

The proposed review of the Australia and New Zealand Joint Food Standards Treaty should examine mechanisms to remove inconsistencies between the New Zealand Dietary Supplements Regulations and the Food Standards Code.

Chemicals and plastics

The chemicals and plastics industries are integral to the performance of Australia's manufacturing sector. The industries account for around 10% of all Australian manufacturing output and employment, and about 70% of production is taken up as inputs and intermediaries for other manufacturing sectors such as automotive, building and construction, and packaging (Department of Industry, Tourism and Resources 2005).

The chemicals and plastics sector is regulated by a complex web of legislation. In 1998 it was estimated that there were 144 pieces of Commonwealth, state and territory legislation governing the sector. The purpose of regulation is to ensure an appropriate balance between the benefits to society, such as increased agricultural and industrial productivity, and the risks to human health and the environment associated with exposure to potentially harmful substances.

The three main Australian Government regulatory agencies are the Therapeutic Goods Administration (TGA); the National Industrial Chemicals Notification and Assessment Scheme (NICNAS); and the Australian Pesticides and Veterinary Medicines Authority (APVMA). Other relevant national regulators include the Australian Safety and Compensation Council; Foods Standards Australia New Zealand; the Australian Consumer and Competition Commission; the Australian Quarantine Inspection Service; the Australian Customs Service; and the Australian Security Intelligence Organisation.

In each area of regulation, state and territory governments have their own arrangements for regulation, administration, policy development and enforcement. Local government authorities carry some enforcement responsibilities for jurisdictional legislation. They also exercise some planning approval powers potentially affecting chemical facilities or small businesses using chemicals.

Developing a national chemicals policy

Given the volume and complexity of regulation in the sector, it is perhaps not surprising that one of the greatest areas of concern to business is duplication and inconsistency between Australian Government and state and territory regulatory regimes.

[S]tates/territories invariably invoke different enforcement/compliance regimes, often at the whim of regional offices or even individual officers. It is obvious that the concept of one country, one standard does not percolate much below the high level regulatory decision makers. Science Industry Action Agenda, sub. 56, p. 5

There was a sense of urgency in submissions around the need for a national chemicals policy. The overriding concern is that achieving national uniformity (or even national consistency) is essential to the competitiveness of the industry. This is still far from being realised, despite numerous recent reviews and reforms in the sector.

These reviews include a review of the legislation and regulation controlling drugs, poisons and controlled substances (Galbally 2000); a Chemicals and Plastics Industry Action Agenda, provided to the Australian Government in March 2001, which contained 10 recommendations on regulation including one on developing a national chemicals policy; the establishment in May 2002 of a high-level National Chemicals Taskforce, under the auspices of the Environment Protection and Heritage Council, with a working group currently developing a proposal for a national environmental risk management framework for chemicals; a national review of the regulation, reporting and security surrounding the storage, sale and handling of hazardous materials, initiated by COAG in December 2002; and a report by the Chemicals and Plastics Leadership Group in August 2004, addressing ongoing concerns with regulatory issues and calls for a Productivity Commission study.

The Taskforce agrees with the principle of a national chemicals policy. A number of issues raised in submissions are relevant to developing such a policy:

- information-sharing to reduce duplication;
- duplication across the supply chain;
- timely and cost-effective approval and renewal processes;
- consistency with international standards;
- prescriptive regulation of packaging and labelling; and
- self-regulation and co-regulatory alternatives.

Some specific recommendations to address deficiencies in these areas are set out below, together with observations to guide the recommended review of the chemicals and plastics sector.

Information-sharing to reduce duplication

With national regulation split across three regulatory agencies, a number of submissions raised the issue of duplication of information requirements.

Industry has for a number of years raised its concerns about the need for the APVMA, TGA, NICNAS and the Australian Government Department of the Environment and Heritage (DEH) to streamline their assessment processes and data requirements so that relevant information can be more freely exchanged between regulatory agencies, hence reducing the reporting and cost burden on industry seeking approval for the same chemical for different purposes from different regulatory agencies. ACCORD Australasia, sub. 85, p. 15

Industry would prefer regulators to share information rather than require the same data to be provided separately.

The recommended review of the chemicals and plastics sector should look at ways to streamline data requirements and assessment processes, including developing a common national chemicals database.

Duplication across the supply chain

The problem of duplication of information requirements is exacerbated by industrial chemicals being regulated according to their functional application. That is, for regulatory purposes, industrial chemicals are defined not by how or where they are made, but how they are used (TGA 2005).

The practical effect of this definition is regulatory duplication across the supply chain. This is illustrated in the dairy industry, where the same chemical is used for the same purpose but regulated twice in the supply chain.

For a single identical formulation for a dairy sanitiser that is used to clean the milk vat on a dairy farm and the same formulation used to clean the milk tanker that picks up the milk ... and used throughout the rest of the milk handling, processing and production chain there is totally separate regulation ... The product used on the dairy farm is required to be specifically registered by the APVMA, have unique labelling and pay levies on every dollar of sales ... The APVMA has noted that it is 'incongruous that the APVMA regulates in isolation one small segment of dairy food hygiene ie on-farm dairy cleansers'. ACCORD Australasia, sub. 85, p. 12

A review of the scope of products regulated by APVMA, and the level of regulation needed, is due to commence in early 2006. This work will be undertaken through the Product Safety Integrity Committee, a COAG body with representatives from Australian Government, state and territory agriculture departments; health, environment and workplace relations ministerial councils and APVMA. The committee provides advice on agricultural and veterinary chemicals policy to the Primary Industries Ministerial Council.

The regulation of disinfectant systems in the pool and spa industry was raised as an issue in submissions and the Taskforce notes that this will be considered in the context of the above Product Safety Integrity Committee review. A further issue for the pool and spa industry is the regulation of backyard construction sites; however, this is a state and territory government responsibility. Given the Taskforce's focus on Australian Government regulation, it is hoped that state and territory governments will pursue this issue through an appropriate process.

The recommended review of the chemicals and plastics sector should take into account the duplication of regulation across the supply chain and work by the Product Safety Integrity Committee on the scope of products regulated by APVMA.

Timely and cost-effective processes

A major area of concern for industry is the apparent increase in the time and cost involved in obtaining approvals or renewals. Submissions contained a range of examples, many concerning NICNAS accreditation processes.

Australian Leather Holding (ALH) in Perth ... lost a number of overseas contracts when it found that some chemicals necessary for its furniture leather finishes could not be used in Australia ... every time a new substance is developed, ALH must accept a 12 month delay.

Rebound Ace tennis courts are the province of a Queensland based company ... new technology became available ... superior and more environmentally friendly than the ... system in use [however] one ingredient used in small quantities ... could not be used ... the cost of accreditation was such that ... Australia lost export opportunities.

A number of Australian companies suggest that aside from NICNAS fees it costs somewhere between \$150 000 and \$250 000 per substance to obtain NICNAS accreditation. Remove Obstacles from Australian Manufacturers, sub. 76, pp. 1–3

The practical effect of regulatory delays and high compliance costs is to stifle innovation and product diversity. Measures to strengthen transparency and accountability could help address these issues, which are not limited to the chemicals and plastics sector. Chapter 7 includes a broader discussion and some possible solutions.

The recommended review should examine the adequacy of cost-recovery arrangements, time limits and stop-the-clock provisions for regulators in the chemicals and plastics sector.

Recommendation 4.56

The Australian Government should ensure that national regulatory agencies in the chemicals and plastics sector have key performance indicators, developed with independent input, and agreed performance targets for the timely and cost-effective approval of regulated products within their jurisdiction. National regulatory agencies should publicly report, if not already doing so, performance against targets for the timely and cost-effective processing of regulatory requirements.

Consistency with international standards

Related to the issue of regulatory approval and assessment processes, industry is concerned that there is inadequate recognition of international standards and approval processes. There are two broad issues here:

- failure to recognise products in Australia that are well established in overseas markets; and
- the addition of 'uniquely' Australian requirements on top of those required by international standards Australia has agreed to.

An importer wanted to introduce a new ... substance for use in anti-perspirants/deodorants ... accredited for use in Europe, USA and Japan. The cost of NICNAS accreditation was such that introduction was not completed and large export contracts... were lost. Remove Obstacles from Australian Manufacturers, sub. 76, p. 3

[A] common complaint is the high number of regulatory requirements unique to Australia. Many [products] ... are imported from Europe, USA, UK, Japan and Canada and have already been assessed for public health and safety outcomes. Australian regulatory agencies still require additional controls, many of which do not contribute to safety or improved consumer knowledge but add costs and barriers to the importation of innovative products into the Australian market place. ACCORD Australasia, sub. 85, p. 20

The Australian Government has noted its commitment to participate in international harmonisation efforts, and the major overseas schemes of the European Union and the United States are being reviewed. In 2002 the government initiated consultation on the implementation of aspects of the Globally Harmonised System for Classifying and Labelling Chemicals (GHS). While GHS is voluntary, considerable work has been undertaken internationally and the system is supported by industry.

Given that Australia is a small player in the chemicals world (representing less than one per cent of global production), it is important that regulatory reform in Australia is aligned to the maximum extent possible with international standards, and that the opportunity is taken to draw on testing and research undertaken in other countries in relation to chemicals safety and use. Plastics and Chemicals Industry Association, sub. 58, p. 11

The Taskforce endorses the Australian Government's commitment to GHS and supports its implementation in Australia as soon as practicable, with any local variation subject to an assessment of net public benefit.

The recommended review of the chemicals and plastics sector should take into account the development and implementation of arrangements for GHS, and consider the ramifications of GHS for classifying and labelling domestic agricultural and veterinary products.

Recommendation 4.57

The Australian Government should ensure that any ‘uniquely Australian’ variation of international standards or agreements relating to regulations in the chemicals and plastics sector is contingent on a demonstration of net public benefit.

Prescriptive regulation of packaging and labelling

Most of the issues raised in submissions covering this area relate to APVMA's prescriptive regulation of labelling. Examples include:

- requiring separate approval numbers for different pack sizes;
- proscribing the use of blank labels for limited print runs; and
- requiring special applications for any deviation from the standard label, including adding promotional information or changing the shade of the label.

The sector also claims that many of the requirements for labelling agricultural and veterinary products exceed those of over-the-counter medicines administered by the TGA. Stakeholder feedback to APVMA on the issue of packaging and labelling led to the establishment of a Label Approval Process Working Group in late 2005.

A major component of regulation in the chemicals and plastics sector is OH&S. A National Code of Practice for the Labelling of Workplace Substances was developed by the National Occupational Health and Safety Commission (the predecessor of the recently created Australian Safety and Compensation Council). The Department of Employment and Workplace Relations is revising the code to reflect the GHS requirements described above.

The recommended review of the chemicals and plastics sector should take into account current work revising the National Code of Practice for the Labelling of Workplace Substances to reflect GHS requirements and the work of APVMA's Label Approval Process Working Group.

Self-regulation and co-regulation

The chemicals and plastics sector appears to have been particularly active in the area of self-regulation and co-regulation. A number of self-regulatory and co-regulatory arrangements are described in box 4.1.

Box 4.1 Some examples of self regulatory and co regulatory schemes in the chemicals and plastics sector

- Responsible Care® — widely implemented in major industrialised countries, requires signatory companies to adhere to codes of practice in relation to community awareness, process safety, employee health and safety, environmental protection, storage and transport safety and product stewardship.
- Plascare™ — developed by the Plastics and Chemicals Industry Association (PACIA) to perform a similar self-regulatory role to Responsible Care in the plastics fabrication sector.
- PCAS — the PACIA Carrier Accreditation Scheme complements Responsible Care by ensuring that drivers and handlers with accredited carriers have appropriate training in safety systems and physical hazard inspection.

(continued next page)

Box 4.1 Continued

- Scheme for Phosphorous Content and Labelling of Detergents — a voluntary industry initiative aimed at addressing significant health, environmental and/or consumer issues.
- WashRight — a proposed self-regulatory scheme aimed at educating consumers and changing behaviour by promoting household laundry practices that reduce water use, are energy-efficient and reduce 'salt' discharge, where needed.
- Agsafe — administers three industry stewardship programs: The Agsafe Guardian Program to ensure that there is responsibility, regulatory compliance and duty of care throughout the supply chain; drumMuster for collecting and recycling empty, cleaned, non-returnable crop protection and animal health chemical containers; and ChemClear® for collecting and disposing of unwanted, currently registered rural chemicals.

In PACIA's view, Responsible Care, *Plascare* and *PCAS* provide comprehensive, effective co-regulatory schemes for the chemicals and plastics sector which ensure the efficacy and safety of the processes involved and the products produced. While there was general consensus in submissions that the chemicals sector is currently over-regulated, there was disagreement over the alternatives — self-regulation or co-regulation.

Our members have demonstrated their industry responsiveness through proactive establishment of self-regulation to address distortions in the market place rather than wait for government intervention through regulation. ACCORD Australasia, sub. 85, p. 19

... the inherent risk of any voluntary program — that higher risk elements opt out — is an issue that might only be addressed through additional co-regulatory measures. Plastics and Chemicals Industry Association, sub. 58, p. 3

The concern expressed by PACIA about the inherent fallibility of voluntary schemes is realistic. One submission raised the particular issue of an apparent conflict between the operation of the Agsafe range of co-regulatory initiatives and state regulations. The Taskforce notes that this issue was raised in the context of the 2005 annual review of conditions for authorisations of Agsafe accreditation by the Australian Competition and Consumer Commission. The review concluded that Agsafe was meeting its obligations under current commission authorisations.

The recommended review of the chemicals and plastics sector should take into account current self-regulatory and co-regulatory schemes and consider these and other similar options to reduce the burden of regulation on the sector, noting the need for such schemes to be effective, with clear accountability.

Recommendation 4.58

COAG should establish a high-level taskforce to develop an integrated, national chemicals policy. The taskforce should commission and oversee an independent public review of regulation in the chemicals and plastics sector. This work should be coordinated with processes currently in train, including the development of a national environmental risk management framework and the COAG review of hazardous materials.

In addition, the recommended review should:

- **look at ways to streamline data requirements and assessment processes, including developing a common national chemicals database;** *(continued next page)*

Recommendation 4.58 (continued)

- take into account the duplication of regulation across the supply chain and work by the Product Safety Integrity Committee on the scope of products regulated by the Australian Pesticides and Veterinary Medicines Authority (APVMA);
- examine the adequacy of cost-recovery arrangements, time limits and stop-the-clock provisions for regulators in the chemicals and plastics sector;
- take into account the development and implementation of arrangements for the Globally Harmonised System for Classifying and Labelling Chemicals (GHS), and consider the ramifications of GHS for classifying and labelling domestic agricultural/veterinary products;
- have regard to current work revising the National Code of Practice for the Labelling of Workplace Substances and the work of APVMA's Label Approval Process Working Group; and
- take into account current self-regulatory and co-regulatory schemes and consider these and other similar options for reducing the burden of regulation on the sector, noting the need for such schemes to be effective, with clear accountability.

Improving arrangements for security sensitive chemicals

Closely related to the issue of national consistency and the development of a national chemicals policy is the treatment of security sensitive substances. As noted above, COAG is reviewing regulation of these chemicals to minimise the risk of misuse by terrorists.

The COAG review is split into four parts: security sensitive ammonium nitrate, radiological sources, harmful biological materials and hazardous chemicals. So far recommendations have been made for only security sensitive ammonium nitrate, and implementation is expected to have commenced in all jurisdictions by early 2006. The review of radiological and biological components is well under way. The hazardous chemicals review is acknowledged as the most complicated and industry consultation is expected to commence later in 2006.

The key issues for industry are the associated compliance costs, the inconsistent implementation of security sensitive ammonium nitrate arrangements across jurisdictions, and the possibility that this will be repeated for the other substances, including chemicals.

There is usually intergovernmental consultation and therefore standardisation on what are deemed to be major regulatory changes — an example is the controls on the use of ammonium nitrate, a potential agent of terror. However, the detailed changes to the relevant state/territory regulations, such as requirements for labelling, paperwork trails, reporting, monitoring and implementation dates, are far from standardised. In some cases, other minor changes are laid on top of previous minor divergences to create larger divergences, thus increasing the burden on industry to maintain up-to-date and compliant with (each) state/territory requirements. Science Industry Action Agenda, sub. 56, p. 5

A complex regulatory regime is not conducive to anti-terror preparedness. Frontline agribusiness staff need to be clear to whom they are responsible and fully apprised of the current regulations and industry issues. The current regulatory framework is a barrier to this goal. Guyra Rural Services, sub. 10, p. 4

Cross border variations in regulations occur in relation to agricultural and veterinary chemical regulations, fertiliser regulations, occupational health and safety standards, and food safety standards. Such regulatory inconsistencies greatly increase the compliance burden facing farm businesses.

While some efforts are being made to harmonise the objectives of regulations between different States, to date no concerted effort has been made to harmonise regulatory processes or requirements. This issue must represent a high priority for a national reform agenda into the future. National Farmers' Federation, sub. 22, p. 1

The broader issue, and of more concern, is the way policy implementation could potentially undermine the achievement of policy objectives.

The Taskforce notes that inconsistency is unlikely to be an issue for the remaining areas of the COAG review of hazardous substances. Whereas the security sensitive ammonium nitrate arrangements were implemented through state and territory legislation, Australian Government legislation is likely to be the best way to regulate the remaining areas of review.

Recommendation 4.59

The Australian Government should urgently review the implementation of arrangements across jurisdictions for security sensitive ammonium nitrate and provide a report to COAG assessing the risk to policy associated with inconsistent implementation of arrangements across jurisdictions, including the quality of guidance material available on complying with the regulations.

In reviewing arrangements for radiological sources, harmful biological materials and hazardous chemicals, COAG should explore the use of existing regulatory frameworks, such as occupational health and safety, and request an independent analysis of the compliance costs to business, net public benefit of the proposed arrangements in each case and practical guidance material required to support compliance with the new arrangements. COAG should also ensure that post-implementation reviews are undertaken for each of these areas to verify the cost to business and the effectiveness of the new arrangements.

Implementing arrangements for low regulatory concern chemicals

At the other end of the regulatory spectrum, the treatment of low-risk chemicals has been an ongoing issue for the chemicals industry. The Taskforce notes that industry has widely welcomed recent legislative reforms for low regulatory concern chemicals (LRCC). For example, the Chemicals and Plastics Leadership Group acknowledges that some progress was made in regulating low-concern and non-hazardous polymers and chemicals with the passing of the *Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Act 2004*.

The issue appears to be the way in which similar reforms have been implemented in the agricultural and veterinary sectors.

The CPLG particularly welcomes the recent NICNAS LRCC reforms which have the effect of immediately 'excluding' various low concern categories from unnecessary and bureaucratic requirements.

The CPLG commends NICNAS's management and staff on both the speed and professional manner with which the reforms were developed and introduced.

Industry feedback to the CPLG indicates that, despite its similar intent, experience with the equivalent APVMA LRCC reforms is that these have failed to deliver on the promise of cutting red-tape ... [the APVMA process] can be more complex (and potentially more costly) for companies than simply continuing to meet the requirements associated with normal product registration. Chemicals and Plastics Leadership Group, sub. 59, p. 8

The concerns expressed by the Chemicals and Plastics Leadership Group are backed up by ACCORD Australasia, which claims that despite some 80 pages of amendments to the *Agriculture and Veterinary Chemicals Code Act 1994*, APVMA has not made one approval under the low regulatory concern chemicals provisions.

Recommendation 4.60

The Australian Pesticides and Veterinary Medicines Authority should review as a matter of priority its implementation of arrangements for low regulatory concern agricultural and veterinary chemicals.

Reforming regulation of related therapeutic products

Industry is concerned that common disinfectants are currently regulated as therapeutic products by the TGA under a special category called 'related therapeutic products'. This special treatment of hospital, household and commercial grade disinfectants in Australia contrasts with their treatment in New Zealand, even though the two countries share a common regulatory framework under the Closer Economic Relations policy.

The effect is to limit competition from New Zealand by imposing a higher regulatory standard in Australia, and place Australian exporters at a competitive disadvantage because of higher domestic compliance costs. The Taskforce considers that the Australian Government needs to examine reform options to address this problem.

Recommendation 4.61

The Australian Government should progress industry reforms for regulating disinfectant products and report progress to COAG.

Legal administration

Businesses that operate in multiple jurisdictions have to comply with up to nine different regimes covering administrative legal processes and procedures. The issues raised by business in this area require the cooperation of all governments to resolve.

Aligning Evidence Acts

The Australian Government and state and territory governments each have legislation regarding evidentiary requirements. Business indicated that this added an unnecessary compliance burden, particularly the requirement to retain a copy of an original document as proof of contents in some states.

While the Australian Government and the NSW and Tasmanian governments have explicitly repealed the requirement for an original document to be retained as proof of contents of that document, other states and territories have different provisions. Some jurisdictions (Victoria, Queensland and South Australia) have implicitly abolished the rule by allowing the admissibility of statements produced by computers. However, the provisions of the different Acts are inconsistent and therefore difficult and costly to comply with, creating uncertainty for business.

A national policy on the status of electronic records providing consistent principles across all jurisdictions as to the ability to rely on electronically stored copies of documents is urgently required.

Business Council of Australia, sub. 109, attachment A, p. 70

The Taskforce observes that the Commonwealth and NSW Evidence Acts are drafted consistently. As such, they provide a good model for national harmonisation of these Acts, with any differences between the two cross-referenced to clearly show the difference.

Recommendation 4.62

The Australian Government, through the Standing Committee of Attorneys-General, should develop and implement options to harmonise state and territory Evidence Acts and, in particular, examine the merit of the requirement to retain original documents as proof of contents.

Aligning conveyancing laws

Each state and territory has its own system of preparing and completing sale contracts for property and land assets. Witnessing and documentary requirements for registering mortgages differ across jurisdictions. Businesses need to be aware of requirements in both the purchaser's jurisdiction and the jurisdiction of the asset being purchased. This increases costs for businesses operating in multiple jurisdictions (such as financial institutions and law firms) as they cannot implement standardised procedures or provide consistent training or manuals to staff.

Businesses that purchase property interstate are also affected, as the legislative provisions differ between jurisdictions. The Taskforce cannot identify any clear benefits from maintaining the variations between jurisdictions.

[C]omplexities are compounded for multi-jurisdictional transactions (for example, where a Victorian purchases property in Queensland) which require employees of the company involved to be familiar not only with the documentation and processes required of the purchaser's jurisdiction, but also those of the jurisdiction of the purchased property. The inconsistency in requirements across states and territories adds significant complexity to staff compliance training as well as a substantial risk of non-compliance with largely technical requirements.

[As an] example, in Queensland and the Northern Territory, a registration of a mortgage must be witnessed by a Justice of the Peace or legal practitioner. In all other states and territories, the document need only be witnessed by a person over 18 years of age. Business Council of Australia, sub. 109, attachment A, pp. 54–55

A National Electronic Conveyancing Office has been formed to establish a national electronic conveyancing system, pending the implementation of such systems being developed by Victoria and NSW. However, the proposed national system is being developed to accommodate jurisdictional differences in conveyancing laws, and will not in itself achieve harmonisation. It does, however, provide a good opportunity to start harmonisation. A national electronic land register would also be a useful step in harmonising conveyancing regimes. The Taskforce recommends that this opportunity to harmonise conveyancing legislation across jurisdictions be taken as a priority as there do not appear to be any real benefits in retaining state-specific regimes.

Recommendation 4.63

The Australian Government should work with state and territory governments, through the Standing Committee of Attorneys-General, to harmonise conveyancing laws across jurisdictions, including through the establishment of a national electronic land register.

Rationalising personal property securities law

There is considerable inconsistency between and within jurisdictions in over 60 pieces of legislation covering personal property securities (PPS) across all levels of government. Business indicated that the regulations relating to the classification, lodgement and priority of these securities are complex and costly, and encourage legal disputes.

The ABA now supports, in principle ... reform of the law relating to PPS and to identify the conditions that member banks consider must be applied in proceeding ahead with PPS reform. The ABA agrees that PPS reform should create efficiencies in the taking, registration, management and enforcement of PPS, reduce costs and legal disputation and harmonise PPS rules within Australia and with some overseas countries, particularly New Zealand. Australian Bankers' Association, sub. 61, p. 28

In March 2005 the Standing Committee of Attorneys-General formed a working group to consider options to reform personal property securities legislation, having regard to international models. An issues paper is due for release shortly, before consultations commence. The Taskforce supports action to move Australia closer to a national system of legislation in this area.

Recommendation 4.64

The Australian Government, through the Standing Committee of Attorneys-General, should consider options to harmonise and rationalise legislation relating to personal property securities and, in particular, examine the merits of various international models of personal property securities law.

4.4 Environmental and building regulations

There has been a proliferation of environmental and building regulations in recent years. This partly reflects increased affluence, and also greater awareness or expectations in relation to health, safety and protection of environmental and heritage resources across the community.

Many of these regulations operate across jurisdictions and have multiple goals. For example, fuel standards seek to improve air quality to promote health and safety objectives, as well as lessen greenhouse gas (GHG) emissions. And, while the core goals of building regulations cover health, safety and amenity, the regulations are increasingly being extended towards wider goals such as energy efficiency and improving access for people with disabilities.

Experience with regulations in these areas demonstrates that it often takes time to identify the more cost-effective approach. However, some progress has been made in recent years, evidenced by a shift toward performance-based requirements for environmental and building regulations. In addition, the building code has reduced differences in technical requirements between jurisdictions and, notwithstanding some weaknesses, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has delivered a more efficient and effective regulatory framework for business than previous legislation.

Concerns raised by business in submissions to the Taskforce reflected the breadth of environmental and building regulations affecting business. Several general themes emerged.

- Inconsistency and duplication across jurisdictions; for example, variation in the way states interpret legislation and implement nationally agreed approaches.
- Approvals and licensing processes which have taken the focus of businesses away from managing risks and motivated them to focus narrowly on gaining an 'approval tick'.
- A lack of early consultation with business, which can result in concerns with the quality and transparency of regulation-making processes, including their ability to adequately assess the costs and benefits.
- In some cases, inadequate implementation and execution of programs, which has limited the ability to achieve potential benefits.

[R]ecent years have seen a substantial expansion in both the scope and the stringency of building regulation, generating very significant cost increases to consumers ... A fundamental problem is that the issues purportedly being addressed by these regulatory requirements go far beyond the core role of building regulation in ensuring the safety and durability of the built environment. Housing Industry Association, sub. 48, p. 3

Legislation on environmental issues, while improving, is still not yet consistent, nor are standard national practices adopted on issues such as assessment of risk, clean up of contaminated land, contaminated land audit schemes and the measurement and management of emissions. For companies operating across state boundaries, these variations add considerable cost. Business Council of Australia, sub. 109, p. 17

Environmental regulations

Improving arrangements under the EPBC Act

Overall, business groups appeared to endorse the principles and broad framework underlying the EPBC Act. However, there appears to be considerable scope to streamline and improve the way it operates. The EPBC Act provides the ability to reduce duplication in environmental assessments and development approvals via bilateral agreements between the Australian Government and state or territory governments. Under these agreements, the Australian Government can effectively delegate assessment and approval powers to states and territories so that business has to undertake only one assessment and approval process, even where projects are likely to trigger the need for approvals under the EPBC Act.

To date, bilateral agreements covering assessments have been signed with the Northern Territory, Queensland, Tasmania and Western Australia. Agreements with NSW, Victoria, South Australia and the ACT are still in draft form. No bilateral agreements covering approvals have been signed. Where bilateral agreements are in place, the focus of negotiations on states achieving minimum legal requirements means there appears to have been little effort to encourage increased efficiency in state administrative and approval processes.

When the Commonwealth Government introduced the Environment Protection and Biodiversity Conservation Act 1999, one of its primary objectives was to rationalise when Commonwealth or state environmental impact assessment and approval was necessary ... This was to be achieved through bilateral agreements between the Commonwealth and states and territories. However, since the Act was introduced six years ago few agreements have been entered into ... Where there is no assessment bilateral agreement, let alone an approval bilateral agreement, this creates uncertainty, and unnecessary duplication in a proponent's environmental assessment procedures. Business Council of Australia, sub. 109, pp. 18, 72

When the Department of Environment and Heritage effects an informed assessment about developing a subdivision, it likely and usually draws the information from the existing data that states and territories already hold. Thus, it is duplicating the process by drawing on the same information that the state and territory agencies have already used in order to make their assessments. Australian Spatial Information Business Association, sub. 13, p. 2

Due to the 'gap' between the Act's potential scope for and actual implementation, together with the use of the somewhat ambiguous 'significant impact' as the referral trigger, there remains a degree of uncertainty about the Act's direct and indirect impact on landholders both now and for the future. Queensland Farmers' Federation, sub. 50, p. 9

Some sections of business appear to mistakenly believe that an action can be referred for consideration under the EPBC Act only after achieving the required approvals at the local and state level, thereby unnecessarily delaying the approval process. The trigger for referral under the EPBC Act, a ‘significant impact’, is not clearly defined in the Act or accompanying guidelines. While business recognised that efforts have been made to provide guidance, it remains uncertain about when the trigger will apply. This ambiguity accentuates the perceived uncertainty and lack of transparency about how a referred action will be assessed.

In addition, business raised concerns regarding the draft GHG trigger proposed in November 2000. Under this proposed trigger, the EPBC Act would apply to any major new developments likely to result in GHG emissions of more than 0.5 million tonnes of carbon dioxide equivalent in any 12 month period. Despite substantial consultation with business during the development of the proposed trigger, some business groups remain uncertain about its status. The Taskforce recognises that there are other processes currently in train, in relation to GHG, and would encourage resolution of the trigger’s status through these processes.

This underlines the need to ensure a process of transparent consultation with business when considering any possible new triggers under the EPBC Act.

Recommendations 4.65–4.67

- 4.65 The Australian Government should seek to expedite the signing of environmental assessment bilateral agreements with all remaining states and territories, and all bilateral agreements should be extended to include the approval process. Further, in implementing these agreements, the Australian Government should provide national leadership aimed at achieving efficiencies in state and territory administrative and approval processes.**
- 4.66 The Australian Government should enhance information and consultation processes related to operation of the Environment Protection and Biodiversity Conservation Act so that affected (or potentially affected) parties better understand the associated regulations and their requirements. In particular:**
- a) that proposals can be referred for consideration under the Act at any stage, including in parallel with other planning and approval processes; and**
 - b) to ensure that affected parties are consulted about any new triggers considered for inclusion as matters of national environmental significance under the Act.**
- 4.67 The Australian Government should improve the guidance it provides on application of the ‘significant impact’ trigger, particularly, in relation to the issues and reporting requirements that arise where a referral trigger is engaged.**

Improving arrangements under the Native Title Act

The *Native Title Act 1993* provides the opportunity for Indigenous communities to claim native title rights and interests in relation to lands and waters. Under the Act, native title claimants can seek assistance in resolving native title claims and future act processes (the system whereby claimants can negotiate about proposed activities that affect native title while their applications are being resolved), lodge development objections on the basis of a range of issues, including Indigenous heritage and environmental protection, and request dispute resolution negotiations through Native Title Representative Bodies (NTRBs). Notwithstanding previous reforms, business raised concerns about the excessive delays and uncertainties arising from development objections by NTRBs. In addition, there are difficulties in administering the ‘right to be informed’ requirement under the Native Title Act.

NFF agrees with the fundamental principle of native title but the current process is too slow, too time consuming and too costly. National Farmers' Federation, sub. 22, p. 2

The MCA is keen to ensure that the regulatory impositions on NTRBs do not impede their effective operation and are consistent with good business practice. We remain concerned that overly onerous governance requirements on NTRBs would distort their focus from their core business — that of claims resolution and the completion of future act processes. Minerals Council of Australia, sub. 147, p. 18

On 7 September 2005 the Attorney-General announced a package of proposed measures to improve the native title system. The proposals are to be finalised following consultation with all stakeholders, including Indigenous representatives, industry and farming groups, and state and territory governments.

On 22 November 2005 the Western Australian Government released for comment a proposed Alternative Settlement Framework for native title. It offers claimants the opportunity to negotiate for appropriate and tangible outcomes in exchange for surrendering native title rights over the claim area. The aim of the framework is to create a more certain environment for everyone with interests in land and water subject to native title claims.

Recommendations 4.68–4.69

4.68 Concerns regarding the role of Native Title Representative Bodies and 'right to be informed' requirements should be considered in the current round of consultations associated with the reform package foreshadowed by the Attorney-General.

4.69 The Alternative Settlement Framework proposal developed by the Western Australian Government should be considered as a possible mechanism for developing Indigenous Land Use Agreements in other jurisdictions.

Rationalising greenhouse gas and energy reporting

Multiple government GHG and energy reporting regimes have caused duplication in information and reporting requirements for business. Submissions indicated that some businesses currently report under 23 different reporting regimes (or proposed reporting regimes) across Australia.

The most important criterion, from industry's perspective is that GHG emissions reporting in Australia should be managed in a single, national system ... Such a system would be efficient and the reporting consistent for industry and government. Minerals Council of Australia, sub. 147, p. 37

What we've actually got is no consistency whatsoever about the basis on which each of those [greenhouse gas] emissions are to be reported, and no single point of collection and single process. ... We've got to get an efficient system to report these things, a one-stop shop that has a proper description of the limitations of use of data. Employment and Environmental Roundtable, November 2005

In response to the proliferation of these reporting requirements, all jurisdictions have agreed to work towards streamlining requirements. The Environment Protection and Heritage Council and Ministerial Council on Energy established a joint working group to examine options. This group reported in November 2005, recommending further work to assess policy options and technical measures. Agreement was given for this work and industry consultations will be carried out during May/June 2006, with a final report to the ministerial councils in June 2006.

The Taskforce acknowledges progress towards streamlining reporting requirements and encourages the ministerial councils to respond to the recommendations of these working groups in a timely manner, including communicating the outcome to affected (or potentially affected) businesses.

Implementing recommendations of the National Pollutant Inventory review

The National Pollutant Inventory (NPI) was established to facilitate the community's 'right-to-know' about pollutant emissions in their local area and the potential health and safety risks of these emissions. However, business expressed concern that substantial under-resourcing of this measure has limited the capacity of the administering agencies to meet the primary goals of the NPI.

[O]ngoing failure by government to adequately fund the NPI has manifested itself in areas such as the lack of adequate contextual data and the failure to keep pace with improvements in measurement and reporting techniques ... The significant gaps in the contextual information on substances are a particular problem, as it makes it difficult for users to form an accurate view of the risks from an emission. Minerals Council of Australia, sub. 147, p. 35

An external review of the NPI conducted for the Environment Protection and Heritage Council in 2005 included the following recommendations:

- increased funding is required to enable the objectives of the program to be met and to raise public awareness of the NPI and its role;
- resource materials that provide instructions for calculating pollutant emissions need to be updated to reflect the latest knowledge and Australian conditions;
- the NPI should be revised to incorporate GHG, agricultural and veterinary chemicals and waste transfers; and
- data should be made available to technical and public users via separate interfaces to reflect the differing needs. For public users, the database presentation should be simplified and delivered with contextual data to facilitate understanding (Environment Link 2005).

[S]ome of the proposed changes to the NPI ... diverge from the very intent of the NPI ... A case in point is the proposal to add the reporting of greenhouse gas emissions ... and waste transfers to the scope of the NPI ... adding these areas to the NPI would represent a very significant additional cost to industry, with little discernable public utility, and would place additional pressure on an already under-resourced scheme. Minerals Council of Australia, sub. 147, p. 35

[R]eporting of greenhouse gases through the NPI would be very burdensome, and their reporting, particularly as inefficient as it is at the moment, is just not an acceptable way. Employment and Environmental Roundtable, November 2005

First and foremost, the idea that when you're not doing your existing job [administering the NPI] all that well, to try and include major new reporting areas is silly. The key comment about the NPI is it has never been funded properly, it has never been given the resources needed to do its job. Employment and Environmental Roundtable, November 2005

In response to concerns raised by business regarding under-resourcing of the NPI, the Taskforce considered the recommendations of the 2005 review to increase the scope of the NPI:

- while the Taskforce recognises the need for a consistent national system for reporting GHG, including them in the NPI would not appear consistent with the primary objectives of the NPI;

- to limit the potential to increase the reporting burden on business, the Taskforce considers that any consideration of including agricultural and veterinary chemicals in the NPI should be deferred until current work on national chemicals policy is finalised;
- the Taskforce recognises the potential role that including waste transfers would play in facilitating NPI objectives. However, any such consideration should be deferred until shortcomings in existing NPI requirements are resolved; and
- when considering the inclusion of additional pollutants to the NPI, the Taskforce encourages the use of scientific evidence, consistent with the intent of the NPI, to establish that pollutant emissions are occurring at levels that pose a potential health and safety risk.

Recommendation 4.70

- a) **The Australian Government should implement the recommendations from the 2005 review of the National Pollutant Inventory, with the following exceptions:**
 - reporting for greenhouse gases should remain outside the National Pollutant Inventory framework;
 - consideration of including agricultural and veterinary chemicals should be deferred pending the outcome of other work under way in this area; and
 - the inclusion of waste transfers should be deferred and reconsidered when the capacity of the National Pollutant Inventory to deliver existing requirements has been improved.
- b) **The Australian Government should ensure that in considering the inclusion of additional pollutants, scientific evidence is used to establish that pollutant emissions are occurring at levels that pose a potential health and safety risk, consistent with the intent of the National Pollutant Inventory.**

Improving Assessment of Site Contamination

This National Environmental Protection Measure (NEPM) is administered by state and territory governments. As a result of differences in legislation, the requirements for notifying contamination differ between jurisdictions and, in some cases, regulations account poorly for historical contamination — often a significant contributor to contamination. In addition, business expressed concern that a lack of technical skill and knowledge among state regulators has resulted in the measure being poorly administered, resulting in inappropriate use of NEPM data by regulators.

The MCA is concerned that the Site Contamination National Environment Protection Measure (NEPM) leads to inappropriate use of data by regulators ... regulators are confusing the initial trigger levels with the triggers for site clean-up, resulting in a significant increase in the burden for companies. Minerals Council of Australia, sub. 147, p. 26

[M]ost states develop individual technical guidelines that overlap and can appear contradictory to the NEPM. This results in a divergence between the national standard and the practical application of this standard by individual state based regulators. Business Council of Australia, sub. 109, p. 73

The Taskforce acknowledges business concerns, and notes that a review of the measure is underway and due to be completed in December 2006.

Recommendation 4.71

In the context of the current review of the Assessment of Site Contamination National Environment Protection Measure, the Australian Government should examine and report on:

- the need to ensure adequate training/guidelines are provided to staff of state and territory regulators on the use of investigation and remediation trigger levels in site assessments;
- the need for risk-related considerations to inform decisions about the merits of site remediation, particularly when the relocation of contaminated material is being considered;
- the adequacy of procedures to verify compliance with remediation actions; and
- the capacity to account for historical contamination in determining the necessary action.

Further analysing Product Stewardship

This NEPM is at the proposal stage and is not yet an agreed policy. Business is concerned that the initial policy discussion paper released in December 2004 did not adequately articulate the problem to be addressed by the measure, nor canvass alternative policy options to demonstrate the inability of self-regulation to meet desired objectives. Despite these concerns, around 80% of submissions responding to the policy discussion paper supported the proposed measure, although some offered qualified support depending on clear evidence of the rationale for the co-regulatory measure.

[G]overnments appear to be keen to intervene even when there is little evidence to support their case, rather than let industry self regulate ... Where self regulation has clearly failed and this can be objectively demonstrated, then alternatives to self regulation should be considered. ACCORD Australasia, sub. 85, p. 19

The Productivity Commission is undertaking a Review of Waste Generation and Resource Efficiency, which is due to be completed in October 2006. As part of its terms of reference, the review is examining opportunities for resource use efficiency and recovery throughout the product lifecycle, and will also investigate a range of regulatory and voluntary approaches to managing waste.

Recommendation 4.72

The Australian Government should undertake further analysis to assess the merits of the Product Stewardship National Environment Protection Measure proposal. This analysis should consider the findings of the Productivity Commission Review of Waste Generation and Resource Efficiency, particularly in relation to the potential merits of a self-regulatory regime compared to any feasible alternatives.

Reviewing Petroleum (Submerged Lands) Act regulations

Regulations developed under the *Petroleum (Submerged Lands) Act 1967*, based on objectives for safety, the environment, pipelines, diving safety, data and well operations, require management plans to be submitted to government. While business supported introducing objective-based regulations, it is concerned that where compliance is required with a number of the regulations, the requirement to include similar information in multiple management plans results in an additional time and cost burden to business.

[T]he growing requirement for management plans to be submitted to government and approved is imposing a significant cost and time burden on the industry, and can create substantial duplication in regulation. Australian Petroleum Production and Exploration Association, sub. 106, p. 1

In response to business concerns, the Department of Industry, Tourism and Resources recently foreshadowed establishing a working group, comprising regulators and industry participants, to review the operation of existing regulations, in particular: the potential for some regulations to be subsumed into others where overlaps occur; and where changes can be made to improve the efficiency and effectiveness of the regulatory framework.

The first meeting of this working group is scheduled for 17 March 2006. The Taskforce endorses the establishment of this working group, with industry participation, as a mechanism to address business concerns. It encourages the Ministerial Council on Mineral and Petroleum Resources to oversee the progress of the working group, according to an agreed implementation timeline to be developed during the first meeting.

Enhancing native vegetation management

In recent years, the increasing number of regulations affecting natural resource management has added to the cost and complexity of managing landholdings. In particular, the array of state native vegetation laws and overlapping national regulations has introduced onerous information requirements for applicants. Specific concerns have been raised about administrative inefficiencies in processing applications and with regulatory inflexibility, which jeopardises the efficiency of regulated businesses.

[M]uch of the information requested in the documents of application can be irrelevant and take the focus away from managing the risks — the applicants often receive no real benefit from the information other than an ‘approval tick’ ... A more practical approach would be to identify the risk areas of the farm in question and to provide information on, and more importantly, to develop management approaches, based on the specific risks. Queensland Farmers’ Federation, sub. 50, p. 8

Arguably, the Act was intended to limit broad scale clearing, however, the prohibition is creating unnecessary uncertainty and delays for existing and proposed infrastructure. Business Council of Australia, sub. 109, attachment A, p. 34

A recent Productivity Commission review (2004a) concluded that the current heavy reliance on regulation has imposed substantial costs on many landholders who have retained native vegetation on their properties. Moreover, in some situations it appears to have been counterproductive in achieving environmental goals.

The commission recommended a process for devolving more responsibility to the regional level, formalised in state and territory guidelines. Under these arrangements, landholders would bear the costs of actions that directly contribute to sustainable resource use, while the wider community would pay for the extra costs of providing environmental services, such as biodiversity conservation.

At the June 2005 COAG meeting, the Australian Government submitted the recommendations from the Productivity Commission report. COAG noted the work of the state and territory governments in this area and encouraged them to continue to examine appropriate regulation.

Recommendation 4.73

The Australian Government should continue to work collaboratively with the states and territories to implement the recommendations from the recent Productivity Commission review to enhance the effectiveness of regulatory arrangements for native vegetation and biodiversity.

Rationalising land use planning for plantation timber

During the late 1990s the Australian Government, together with the state and territory governments and industry, launched a framework for developing Australia's plantation timber industry — *Plantations for Australia: The 2020 Vision*. While states and territories agreed to develop nationally consistent regulation where appropriate, variation in progress has resulted in inconsistency.

This inconsistency across jurisdictions appears to be impairing the development of a national industry. While the Australian Government has limited constitutional power in this area, the Taskforce considers that it could perform a useful leadership role in encouraging state and territory governments to develop a nationally consistent regulatory regime for the industry.

Recommendation 4.74

The Australian Government should continue to provide national leadership and work with state and territory governments to develop nationally consistent regulation of the plantation timber industry.

Improving biosecurity and quarantine services

Australia's quarantine and biosecurity systems depend on implementing science-based risk assessments to inform decisions about import risk assessments and quarantine inspection services. However, there are concerns that biosecurity approvals/responses and Australian Quarantine Inspection Service inspection requirements impose significant costs and delays on business. There is also a perception that these inefficiencies are accentuated by inadequate consultation with business.

Industries involved in exporting plant and animal materials are not happy with the cost effectiveness of Australian Quarantine Inspection Service (AQIS) services ... There is a clear need for an efficiency review of AQIS services to ensure that export inspections occur in a timely and effective manner.
Queensland Farmers' Federation, sub. 50, pp. 11–12

The most recent of numerous reviews of Australia's biosecurity and quarantine services over the last few years was carried out by the Australian National Audit Office (2005b). Notwithstanding significant recent improvements, the Australian National Audit Office indicated that the transparency and efficiency of biosecurity and quarantine services could be further improved. The Taskforce endorses the report prepared by the Australian National Audit Office and considers that its recommendations should be adopted as soon as practicable.

Recommendation 4.75

The Australian Government should ensure the timely implementation of the recent Australian National Audit Office recommendations on biosecurity and quarantine services that have already been agreed by the relevant departments, with a specific focus on the efficiency and timeliness of approval and risk assessment processes.

Regulating salt discharge from laundry detergent

In response to the growing scarcity of water, there is increased consideration of the role of water recycling programs to help manage demand for water for non-drinking purposes. Concerns about the long-term impact of salt levels in recycled water have led the Environment Protection and Heritage Council to consider regulation — either requiring the mandatory labelling of salt content or, alternatively, reformulation of products to meet salt content standards. This is despite industry having proposed a fit-for-purpose and seemingly efficient self-regulatory scheme to achieve targeted reductions in salt discharge from laundry products.

Self-regulation by the industry appears to have proved an effective mechanism to address market distortions and respond to matters of environmental, health and consumer significance. An example is the Scheme for Phosphorus Content and Labelling of Detergents.

Recommendation 4.76

The Australian Government should ensure that, through assessing the relative merits and effectiveness of different regulatory regimes, the Regulation Impact Statement covering regulation of salt content in laundry detergent clearly demonstrate why self-regulation would not be an appropriate mechanism to achieve the desired policy goal.

Ensuring a consistent National Ballast Water Management Framework

The introduction of marine pests, which can occur via transfer from ballast water and sediment discharge from shipping vessels, is a threat to marine biodiversity and sustaining viable coastal economies.

Responsibility for managing the risk of marine pest incursions and translocations in Australian waters is shared between jurisdictions, with the Australian Government responsible for managing foreign ballast water and state and territory governments responsible for managing domestic ballast water. In recognition of the benefits arising from nationally consistent regulation, in 1998 governments undertook to establish a national framework for managing risks from both foreign and domestic ballast water.

In July 2001 the Australian Government implemented management requirements for foreign ballast water discharges in Australian waters. Industry commended the implementation of these requirements, which are consistent with a recently agreed international convention for ballast water management requiring all ships to exchange or treat their ballast water to an agreed standard.

In contrast, industry expressed concern that the states have been slow in establishing nationally consistent requirements for managing domestic ballast water, despite the development of an Intergovernmental Agreement on a National System for the Prevention and Management of Marine Pest Incursions in April 2005.

It is concerning that development of the national system ... has been so slow and that Victoria has decided ... to introduce its own approach ahead of a national system ... Even if they aim to introduce a system that is consistent with the international convention ... lack of coordination and harmonization of policy approaches is a real possibility. National Bulk Commodities Group, sub. 144, p. 5

The Taskforce shares business concerns in this area and considers that there is a need for timely action to expedite the development of nationally consistent regulation at the state level.

Recommendation 4.77

The Australian Government should:

- a) encourage the remaining states to become signatories to the Intergovernmental Agreement on a National System for the Prevention and Management of Marine Pest Incursions; and
- b) expedite collaborative work with the states and territories to develop nationally consistent legislation and management requirements for domestic ballast water that accord with Australian Government requirements for managing foreign ballast water.

Building regulations

The Australian building and construction industry is an important part of the national economy. It directly accounts for around 6–7% of gross domestic product and employment, and provides end products (such as residential dwellings) as well as major inputs (such as office blocks and factories) for producing other goods and services. Hence the performance of the industry, particularly its cost-efficiency and productivity, influences Australia's overall economic performance.

The industry is subject to a diverse range of regulations by all levels of government. The Building Code of Australia (building code), in particular, contains standards aimed at achieving health, safety and amenity objectives. While acknowledging substantial improvements to the overall regulatory framework over the past decade, business also expressed concerns about increased compliance costs in some areas and the flow-on impacts on housing affordability and economy-wide business input costs.

Some concerns raised by the building industry highlighted broader issues such as underlying deficiencies with existing RIS processes, and the importance of transparency and accountability for bodies constituted to oversee interstate harmonisation. Of particular concern to business is minimising the risks of regulatory escalation that can occur in pursuing national uniformity. Systemic issues associated with regulatory impact assessment and good regulatory development processes and institutions are examined in chapter 7.

Promoting national consistency

The building code was developed by the Australian Building Codes Board (ABCB), which also administers it. The ABCB was established by an intergovernmental agreement signed in 1994 by the Australian Government and state and territory ministers responsible for building regulation. Although the ABCB maintains a uniform national building code, states and territories retain the power to make regulations. This has resulted in inconsistencies with the building code in a number of areas. These inconsistencies impose higher construction costs in some jurisdictions and increase costs for construction companies that work across state and territory borders.

Master Builders strongly supports the need for a nationally consistent building code, standards and regulatory system. We believe that this approach has created significant economies of scale and benefits ... Master Builders is very concerned that the states and territories continue to erode the National Building Code of Australia with state and territory variations. Master Builders Australia, sub. 100, p. 5

Building regulation should be designed to remove poor practice (or introduce standards that represent the 'minimum standard acceptable to the community'), not to set leading practice as the regulatory benchmark. Property Council of Australia, sub. 122, p. 33

While welcoming harmonisation of Commonwealth and state regulations, HIA would stress that national consistency is less important to small businesses than appropriate, minimum effective regulation. Almost 99% of small businesses operate in a single jurisdiction and would not benefit from harmonised but more onerous regulations. Housing Industry Association, sub. 48, p. 4

Working towards minimum effective regulation

Business also expressed concerns about moves away from minimum effective regulation in this area. A Productivity Commission review (2004c) found that recent developments are undermining a sound national building regulation system. It called for a new intergovernmental agreement that would, among other things, strengthen the commitment to both minimum effective standards and national consistency, emphasise the importance of the ABCB giving priority to core business, and strengthen the use of regulatory impact analysis.

A new intergovernmental agreement was developed following the Productivity Commission review. The Taskforce understands that, while some jurisdictions are yet to formally approve the agreement, the Australian Government and most state and territory governments have agreed to it. The new agreement reinforces the need for minimum effective standards; provides for greater accountability and transparency; commits to the rigorous assessment of regulations; limits the grounds for variations; and seeks to have state and territory governments pressure local governments to not undermine the building code.

There is an urgent need for the intergovernmental agreement to commence, to allow the Board to plan for the future. The government should work to encourage these states to sign the agreement immediately so that the new Board can be constituted. Property Council of Australia, sub. 122, p. 32

Business expressed concerns about the delay in implementing the new intergovernmental agreement. The Taskforce agrees that it is critical that all states and territories accept and execute the intergovernmental agreement as soon as possible.

Recommendations 4.78–4.79

4.78 All governments should commit to the new intergovernmental agreement for building regulation so that it can be finalised and implemented as soon as possible. Governments should adhere to the objectives and responsibilities of the new intergovernmental agreement, including by introducing new regulations only after rigorous assessment and justification, in line with COAG principles.

4.79 State and territory governments should refer all proposed changes to building regulations to the Australian Building Codes Board for consideration.

Reducing local government variations

A related concern of business is the increasing use of planning powers by Australian local governments to undermine the building code and unnecessarily delay building projects, as well as impose additional costs on business.

There is a growing tendency for local government to use planning powers to address non-planning related issues, such as access, energy efficiency and sound insulation. As well as representing an inappropriate use of powers, such decisions create substantial problems of regulatory inconsistencies between local government areas and reduce predictability as to regulatory requirements. Housing Industry Association, sub. 48, p. 3

Master Builders completed a survey earlier this year which found that local government variations to the BCA [Building Code of Australia] in building regulations adds approximately \$600 million to construction costs above and beyond BCA requirements per annum. Master Builders Australia, sub. 100, p. 6

The Taskforce considers this to be a significant problem and recognises the importance of state and territory governments limiting local government variations to the building code.

Recommendation 4.80

State and territory governments should, as a matter of priority, implement measures to ensure local governments do not undermine the Building Code of Australia through planning approval processes, and report on their progress to COAG.

Achieving an effective premises standard without unreasonable costs

A major area of concern raised with the Taskforce was the proposed Disability Standards for Access to Premises (premises standard). In response to a request from business, in April 2001 the Australian Government asked the ABCB to recommend changes to the building code to allow it to form the basis for a national premises standard. The government's directive was to explore cost-effective outcomes that would ensure that publicly accessible buildings do not provide unnecessary and unreasonable barriers to the participation of people with disabilities, but without imposing unreasonable costs. The premises standard is not intended to impose new obligations on business, but to include in the building code existing obligations under the *Disability Discrimination Act 1992*. Once the premises standard is finalised, the building code will be amended to ensure that its technical provisions mirror those in the standard. This is intended to ensure that, as far as possible, compliance with the building code will also satisfy obligations under the Disability Discrimination Act.

The ABCB (2004) released a draft consultation RIS in February 2004, which estimated that the premises standard would generate costs of \$26 billion and benefits of \$13 billion over 30 years. Submissions made in response to the draft RIS by stakeholders such as the Property Council of Australia suggested that these estimates understated the likely actual costs of complying with the proposed standard. Business also questioned the projected benefits from improved access, such as the magnitude of the expected increase in employment of disabled people.

Business groups were concerned that costs could be particularly onerous for small low-rise commercial building owners as refurbishments that trigger the new disability standards could require costly modifications. Stringency was also a concern.

[T]he Property Council's own assessment was that the amendments would cost around \$60 billion for only \$6.3 billion worth of benefits. In assessing the feedback from the public consultation period, the Australian Building Codes Board, rather than taking into account the legitimate concerns of industry, responded defensively. Property Council of Australia, sub. 122, p. 48

Master Builders is concerned ... that the proposed regulations went beyond existing international standards particularly in the area of disabled access. The costs increases were significant and would impact greatly on small business and regional Australia. Master Builders Australia, sub. 100, p. 7

HIA believes that the [disability] standard, if adopted for commercial buildings, would lead to unjustifiably large costs, given the relatively small size of the core beneficiary groups, and mean that many buildings would be less useful as a result of the spatial and access reorganisation that would be required of new buildings and buildings subject to refurbishment. Housing Industry Association, sub. 48, p. 18

The Australian Government is considering revised provisions proposed by the ABCB in May 2005. The Taskforce understands that the Attorney-General has advised affected parties the revised proposals take into account concerns raised in earlier consultations with business and other groups.

The Taskforce notes that the premises standard should not exceed minimum effective requirements, consistent with meeting the obligations of the Disability Discrimination Act.

Recommendation 4.81

The Australian Government and state and territory governments should ensure the provisions of the premises standard (and Building Code of Australia) are the minimum necessary to satisfy obligations under the Disability Discrimination Act and do not impose unreasonable costs.

Ensuring timely resolution of unjustifiable hardship appeals

The Productivity Commission (2004d) completed a wider review of the Disability Discrimination Act in April 2004. However, the scope and timing of the review did not allow a detailed examination of the draft premises standard RIS released by the ABCB or industry responses to the proposal. In January 2005 the Attorney-General announced that the Australian Government accepted the majority of the commission's recommendations, including strengthening the 'unjustifiable hardship' provisions so that the test would require adjustments to produce net benefits to the community (Ruddock 2005).

Business expressed concern that there might be lengthy delays for projects if large numbers of applications for exemption on the grounds of unjustifiable hardship follow the introduction of the premises standard. Without knowing the details of the revised standard, in particular the treatment of existing buildings, the Taskforce cannot determine how likely this is. However, it notes the importance of timely resolution of applications for exemption on the basis of unjustifiable hardship to avoid lengthy delays for building projects.

Recommendation 4.82

The Australian Government should ensure that the process for resolving applications for exemption from the provisions of the Disability Discrimination Act, or premises standard, on the basis of unjustifiable hardship will not involve lengthy delays for the building industry.

Reviewing energy efficiency standards

The building code currently includes mandatory energy efficiency standards for residential buildings. The objective of the standards is to improve the thermal energy performance of buildings by developing nationally consistent, cost-effective energy efficiency regulations and thereby reducing GHG emissions.

Following the adoption of energy efficiency standards for houses in January 2003, some jurisdictions announced that they would require a higher minimum star rating than required under the building code (then 3.5 stars for northern climate zones and 4 stars for southern climate zones). In 2004 the ABCB reviewed the building code's energy efficiency standards. In February 2005 it released a draft RIS (ABCB 2005) for public consultation proposing that the minimum required energy rating for houses in all climate zones be raised to 5 stars in May 2006.

Business expressed strong concerns about the building code adopting a 5-star rating.

Master Builders is concerned that the assessment of benefits of the regulations in the RISs may be overstated. Master Builders conversely is also concerned that the assessment of costs of the regulations in the RIS's may be understated. In addition, there appear to be inconsistent approaches to selecting the discount rate and asset lives that may also bias the RIS's results. Master Builders believes there is considerable doubt as to whether introduction of the regulations will singularly and significantly contribute to the reduction of Australia's greenhouse gas emissions. Master Builders Australia, sub. 100, pp. 7–8

[R]ather than removing poor practice, the proposed changes instead set a very high level of efficiency ... The true costs, and the ensuing benefits, of the proposals were never properly assessed. Property Council of Australia, sub. 122, p. 49

Desk-top modeling used to predict energy savings has been strongly challenged by many experts, notably because most models have been developed with little or no reference to the industry or to real data on actual energy usage patterns. ... even abstracting from the uncertain nature of such benefits, it must be underlined that these societal benefits are being purchased at the cost of the new home owner alone, without any consideration of capacity to pay. It is therefore discriminatory and moreover tends to impact on younger people buying their first home, who are likely to be among the less wealthy members of society and, in many cases, have lower than average incomes. Housing Industry Association, sub. 48, p. 11

Although Victoria's 5-star requirements are not identical to those proposed for the building code, they provide an example of the difficulty in estimating costs in this area. Initial estimates by the Victorian Building Commission (2002) predicted that the cost of a new house would rise by 0.7–1.9% (or up to \$3300). But a more recent survey of 600 builders undertaken for the Victorian Building Commission (Chant Link and Associates 2005), found actual cost increases were more than three times this.

The Productivity Commission's final report into the private cost-effectiveness of improving energy efficiency was released in August 2005. After examining the available evidence, the commission found there is still considerable uncertainty about how much building standards have reduced energy consumption and emissions, and whether financial benefits have been achieved. The commission also noted that the limited available evidence suggests that the costs were higher than initially expected (2005c, p. 232).

The Productivity Commission noted that it appeared the stringency of the building code's housing requirements had been driven largely by a desire to catch up to the most stringent state or territory standard. It called for a rigorous *ex post* analysis of existing energy efficiency requirements in the building code and in NSW, Victoria and the ACT to determine their impact on building energy efficiency, and whether actual (not simulated) energy savings outweigh the costs. The Taskforce understands the government aims to respond to the commission's recommendations in March 2006.

On 25 November 2005 the ABCB determined that 5-star energy efficiency should be the national standard for implementation by May 2006, subject to stakeholders providing any new information by 10 January 2006.

Australian Government ministers responded on 2 December 2005 with a joint media statement expressing dissatisfaction over the pre-emptive decision of the ABCB to adopt 5-star energy efficiency measures (Macdonald et al. 2005). They called for introduction of the measures to be deferred until the benefits and costs were independently assessed. The Taskforce supports this view and notes that the ABCB decision appears premature, given the considerable uncertainty surrounding the likely benefits and costs of increasing energy efficiency standards for residential buildings.

Recommendation 4.83

The Australian Building Codes Board should establish an independent public review to undertake an *ex post* evaluation of building energy efficiency standards, to assess:

- **the effectiveness of the standards in reducing actual (not simulated) energy consumption; and**
- **whether the financial benefits of the standards to individual producers and consumers outweigh the associated costs.**

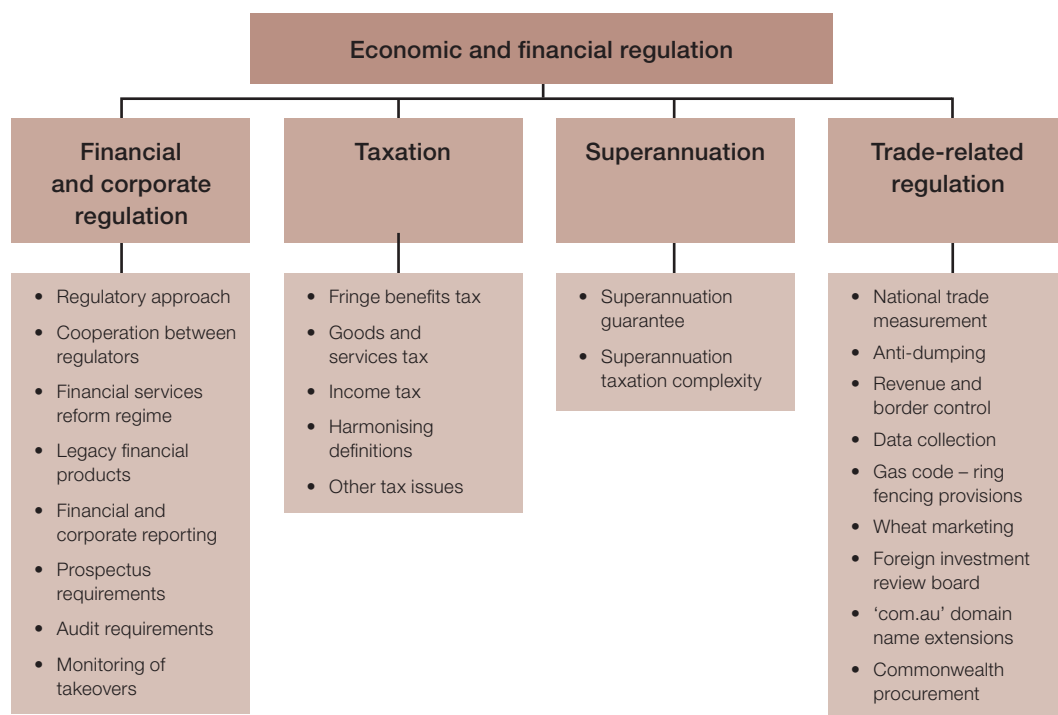
The Taskforce acknowledges that deferral and *ex post* evaluation of the measures could lead to inconsistencies between some states and territories in adopting energy efficiency standards. In any event, national consistency is unlikely to be obtained as a result of the ABCB's recent decision, as some state and territory governments have publicly stated that they will not be adopting the 5-star energy efficiency measures for residential buildings at this time.

5

Economic and financial regulation

Regulations falling within this broad category have displayed significant growth as well as amendments over the last 20 years or so. These regulations attracted considerable attention in submissions, as well as comments during informal consultations with interested parties.

Reflecting comments received and its own analysis, the Taskforce identified four sub-groups of economic and financial regulation: financial and corporate, taxation, superannuation and trade-related regulation (see below). Most submissions focused on financial and corporate and taxation regulation. These two sub-groups attracted considerable comment on associated regulation-making processes as well as the administration and enforcement of particular regulations. These comments are picked up in this chapter. However, they also raise broader systemic issues about the processes of making regulations and enforcing them which are taken up in some detail in chapter 7.



5.1 Financial and corporate regulation

The financial and corporate sectors are a key element of the Australian economy and their effective performance is integral to its overall strength. These sectors also account for a significant proportion of the accumulated wealth of many Australians.

Given their significance, the financial and corporate sectors maintain a high profile with the public, within the Parliament and in the media. In particular, participants are expected to act with honesty and integrity and effectively discharge their obligations. Where these expectations are not met, the community expects timely and decisive action to address the problems.

Two key regulators — the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) — have prime responsibility for fulfilling the expectations of the community and Parliament through implementing and administering the extensive and comprehensive regulatory regimes that apply to these sectors. Specifically, APRA is charged with the prudential regulation of certain enterprises in the financial sector, while ASIC is responsible for protecting investors and promoting market integrity. When assessing the regulatory burden imposed on business, it is important to distinguish the roles and policy objectives of APRA and ASIC. However, in a number of areas APRA and ASIC could usefully adopt common approaches to help reduce business compliance costs.

The Reserve Bank of Australia (RBA) and the Australian Competition and Consumer Commission (ACCC) also have regulatory roles in the financial and corporate sectors. The RBA is responsible for maintaining financial system stability and promoting the safety and efficiency of the payments system. The ACCC's involvement primarily reflects its economy-wide mandate to promote competition and fair trade.

The Taskforce received extensive submissions regarding regulation of the financial and corporate sectors. This was driven, in part, by the relatively recent and major regulatory changes still being bedded down, including:

- the introduction of the financial services reforms through the *Financial Service Reforms Act 2001*;
- the adoption of international regulatory standards such as International Financial Reporting Standards and Basel II reforms for authorised deposit-taking institutions; and
- regulatory changes arising from major corporate failures, notably that of HIH Insurance.

A number of other matters were also raised with the Taskforce. The majority were the responsibility of the government, APRA or ASIC. There were also some issues relating to the RBA in submissions. The absence of attention to the ACCC may reflect the extensive reviews that have already occurred in the areas for which it has responsibility, such as the *Review of the Competition Provisions of the Trade Practices Act* (Trade Practices Act Review Committee 2003) and the Exports and Infrastructure Taskforce (2005).

The Taskforce's view is that several challenges need to be addressed to further promote a balanced and efficient regulatory environment in the financial and corporate sectors. However, it is important to keep these in perspective. Australia's financial and corporate sectors, and the associated regulatory structures, are highly regarded internationally. Moreover, the broad policy framework has widespread support within business and the wider community in Australia. Also, a number of reform initiatives recently announced or under way will further improve the efficiency of the regulatory framework. A number of these initiatives are highlighted in this section. Nevertheless, in the Taskforce's view there is significant scope to do better and Australia cannot afford to ignore such opportunities.

Given the repercussions from a number of high-profile corporate collapses in Australia and internationally, there is a natural tendency for regulation and regulators to respond to political and community concern and seek to minimise risk of further exposure. The challenge is to balance this against the risk of restraining the efficient functioning of the commercial sector and the economy.

The regulatory approach

Given the key role the financial and corporate sectors play in the performance of the economy, it is crucial that regulation is designed, implemented and administered effectively. In particular, regulation should:

- seek to maintain an appropriate balance between achieving safety and investor protection and ensuring that regulated entities are not unduly constrained in conducting business;
- be applied flexibly in recognition of the diversity within the sectors and the pace of structural change and innovation; and
- allow for decision-making to occur within a framework that promotes transparency and public confidence.

Achieving a balanced approach to regulation

A common theme in submissions was a belief that APRA and ASIC, and to some extent policy-makers, are overly risk-averse. Despite policy intentions to the contrary, this is seen as having led to a prescriptive and rigid approach to regulation aimed at eliminating risks. There was also concern that such a risk-averse culture contributes to enforcement action that may be disproportionate to the risks involved.

Indeed, it is natural that a regulator in these circumstances would adopt a very risk-averse approach to its mission even if that approach were more costly. The incentives the regulator faces are not symmetric — the criticism and impact on reputation of being implicated in a failure of a financial company would be much more severe than any rewards for keeping costs down and encouraging flexibility and innovation in the delivery of financial products. Finance Industry Council of Australia, sub. 77, p. 33

While the Taskforce appreciates business concerns, it also acknowledges the challenges facing APRA and ASIC in this sensitive and important area of regulation and considers that there is an important role for government in creating an appropriate environment and incentive structure for the regulators. Government must provide guidance to regulatory agencies on its expectations in carrying out their functions. In particular, it should provide specific guidance to APRA and ASIC about what it expects of them in achieving an appropriate balance between achieving safety and investor protection and market efficiency, consistent with their statutory responsibilities. The implementation of the Uhrig Review (2003) recommendations, through the Statement of Expectations, offers an important additional opportunity to achieve this in a transparent manner that does not infringe on the regulators' essential independence.

Recommendation 5.1

The Treasurer's Statements of Expectations should provide specific guidance to APRA and ASIC about the appropriate balance between pursuing safety and investor protection and market efficiency.

In order to encourage a balanced approach to regulation, performance should be measured against a broader suite of indicators than the existing safety measures. This is consistent with the statutory responsibilities of both APRA and ASIC. In particular, APRA is already required to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality. ASIC is charged with, *inter alia*, improving the performance of the financial system and entities within that system in the interests of commercial certainty and reducing business costs.

The performance indicators reported by the regulators do not support the Government's and Parliament's intentions as seen in legislation. AXA Asia Pacific, sub. 55, p. 2

The Taskforce considers there is merit in developing a range of performance indicators targeted at measuring outcomes in all aspects of the regulators' objectives. It acknowledges that this is a very challenging task, and an evolving area of work internationally. It is important that the presentation of the performance indicators provides guidance on their interpretation, particularly where outcomes may be influenced by factors beyond the regulators' control. The measures should be developed by APRA and ASIC, in consultation with the Australian Government, and in light of the government's Statements of Expectations. Performance against the measures should be reported in each regulator's annual report.

Recommendation 5.2

APRA and ASIC, in consultation with the Australian Government, should develop additional performance indicators to measure the outcomes they achieve, having regard to all their respective statutory objectives, including efficiency and business costs. These indicators should be developed in the context of the Statements of Expectations received from the Treasurer.

While business expressed concerns about the undue risk aversion of regulators, it was evident during the Taskforce's consultations that business has also been very risk-averse in relation to matters subject to regulation. As for the regulators, the attitude to risk of regulated entities reflects the incentive structures they face. In part, this will reflect concerns about the potential damage to reputation that can occur if an enterprise is found to have breached its regulatory obligations.

Comments to the Taskforce indicated that the magnitude of penalties attaching to breaches of regulation have been a major driver of a regulated entity's approach to managing risks. For example, business groups noted that the personal liability attaching to a number of directors' duties had led to a very conservative approach by some directors to the detriment of business development.

While the Taskforce supports the deterrent value of penalties for breaches of regulatory obligations, it is important that the use of penalties strikes an appropriate balance between promoting good behaviour and ensuring business is willing to take sensible commercial risks. A risk-averse approach by business may limit their willingness to adopt innovative approaches in developing products and meeting new challenges. It would also be reflected in an overly cautious approach to compliance such as in product disclosure statements. This would undermine the overall efficiency and dynamism of the economy.

The Taskforce accordingly considers that there is considerable merit in reviewing the structure of penalties attaching to breaches of directors' duties to ensure that they achieve an appropriate balance.

Recommendation 5.3

The Australian Government should review the penalties for breaches of directors' duties to ensure that they strike an appropriate balance between promoting good behaviour and ensuring business is willing to take sensible commercial risks.

Achieving flexible regulation

Submissions to the Taskforce indicated widespread support for a principles-based approach to financial and corporate regulation. This reflected the view that the diversity of participants and the dynamic nature of the sectors require a regulatory regime that provides flexibility in achieving required outcomes. In the interests of efficiency and innovation, it is important that regulation does not unduly limit the ability of markets and their participants from evolving to meet the development of new products, the needs of consumers and the challenges of international competition.

During consultations with the Taskforce, many stakeholders noted the importance of building flexibility into the regulatory framework. This allows regulation to be applied to achieve the desired outcomes, while

also accommodating the specific circumstances faced by regulated entities. Stakeholders suggested there was scope to further increase the flexibility of the regulatory framework — for example, APRA's exemption powers under the *Superannuation Industry (Supervision) Act 1993* should be extended to the licensing provisions.

The Taskforce supports allowing APRA and ASIC to adopt a flexible approach to applying regulation where this is consistent with policy objectives. In addition to extending APRA's exemption powers under the *Superannuation Industry (Supervision) Act*, the government should provide appropriate flexibility throughout the enabling legislation in the financial and corporate sectors.

Recommendation 5.4

The Australian Government should ensure that the enabling legislation in the corporate and financial sectors provides APRA and ASIC with sufficient flexibility to tailor requirements to accommodate differing circumstances.

In providing regulated entities with flexibility in meeting their regulatory obligations, it is inevitable that there will be some tradeoffs with greater uncertainty. A significant challenge in successfully implementing a principles-based approach to regulation is providing guidance on the minimum benchmarks that regulated entities should meet in order to satisfy their regulatory obligations.

Guidance material provided by regulators should provide regulated entities with a clear understanding of the key aspects of their operations and processes that the regulator will examine to determine compliance with the regulatory obligations. It could also provide examples of approaches that are considered good practice. However, to preserve the core benefits of the principles-based approach, such guidance should not be presented or interpreted as the *only* way regulated entities can meet their obligations.

There was widespread concern in consultations with the Taskforce that APRA and ASIC were adopting prescriptive approaches to regulation. In particular, stakeholders considered that in many cases the guidance was viewed by the regulators as the only acceptable way regulated entities could operate. They identified as examples of the problem the guidance provided by ASIC on financial services reforms requirements and the draft guidance provided by APRA on the proposed 'fit and proper' standards.

While these [ASIC Policy Statements and information releases] essentially constitute ASIC's interpretation of the relevant legislation and so are not legally binding, their observance has become almost mandatory and those that treat them as non-binding do so at their own peril. They are now in effect de facto law. Association of Australian Permanent Building Societies, sub. 14, p. 5

While the Taskforce was concerned by the feedback from stakeholders, it also noted that many regulated entities had sought more detailed guidance from APRA and ASIC to help them understand their regulatory obligations. This presents a challenge to the regulators as they must avoid prescribing how regulated entities are to act, but provide them with assistance and a level of certainty. Nonetheless, it appears to the Taskforce that aspects of the guidance material developed by APRA and ASIC could be interpreted as prescribing regulation.

The Taskforce supports a principles-based approach to regulation (see chapter 7). The benefits of this approach need to be preserved by ensuring that guidance provided to regulated entities is not presented or interpreted as the required approach to meeting their regulatory requirements. APRA and ASIC need to conduct a thorough review of their guidance material to ensure it does not prescribe approaches to meeting regulatory requirements.

Recommendation 5.5

APRA and ASIC should review their guidance material to ensure it provides effective guidance on good practice in meeting regulatory requirements and does not impose additional or inflexible regulatory requirements.

The Taskforce considers APRA's recent commitment to review its guidance material and produce prudential practice guides is a positive initiative in this area. To date, APRA has developed draft prudential practice guides for the proposed prudential standards on financial and risk management, corporate governance and the fit and proper requirement. The Taskforce also understands that ASIC's 2006 business plan includes a systematic review of its guidance material.

As noted, applying a principles-based approach to regulation in the financial and corporate sectors presents a significant challenge to APRA and ASIC. Performing their supervisory and compliance functions will require assessing the appropriateness of the approach adopted by regulated entities to meeting their regulatory obligations. This not only requires staff with strong technical skills, but also market experience. However, the regulators compete in a very strong labour market for staff with this profile, which is likely to lead to difficulties in attracting and retaining sufficient staff with the requisite skills.

Submissions from stakeholders suggested that the effective operation of APRA and ASIC could be further enhanced by improving their access to staff with extensive market experience. While action has been taken at the senior executive levels in APRA and ASIC, the Taskforce considers there is scope to explore ways to improve access to the necessary skills and market experience at operational levels, particularly where staff deal directly with industry participants. This may include initiatives such as outward industry secondments and industry/regulator training partnerships. Consideration should also be given to the experience of overseas regulators in offering conditions of employment comparable to those in the applicable market.

Recommendation 5.6

The Australian Government, APRA and ASIC should explore options for enhancing the regulators' capacity to attract and retain operational staff with the necessary technical skills and market experience.

Maintaining confidence in regulatory decision-making

Maintaining confidence and credibility in regulatory regimes requires regulators to adopt a balanced, consistent and transparent approach to decision-making and enforcement. It is also important that regulators are accountable for their decisions. This promotes trust among market participants by raising the level of predictability and understanding of the regulators' approach.

The issues of enforcement also raise questions of trust. If there is a lack of trust between regulators and regulated entities, the efficacy of a regulation hierarchy is weakened: notwithstanding regulators' stated comments, entities will always fear that any breach can lead to the imposition of a strong penalty or adverse publicity. AXA Asia Pacific, sub. 55, p. 8

Where these elements are deficient or absent, there may be adverse impacts on the approach regulated entities take to complying with requirements. For example, a narrow and legalistic approach to enforcement could in turn lead regulated entities to take a more risk-averse and compliance-dominated approach. This would result in higher than necessary compliance costs and stifle innovation and efficiency.

A number of stakeholders identified concerns with aspects of the decision-making and enforcement approaches adopted by the regulators. In particular, there were concerns that some administrative decisions were not subject to independent review — for example, decisions by the RBA to designate a payments system. Stakeholders considered that the absence of an appropriate review mechanism undermines confidence in the regulatory regime and diminishes the accountability of the regulators.

The Taskforce supports the availability of independent review of administrative decisions on their merits to promote transparency and sound decision-making by regulators (see chapter 7). However, it is also necessary to ensure that the availability of merits review is well targeted and does not restrict the ability of regulators to respond to major risks such as systemic instability. Nor, obviously, should it apply to policy-related decisions such as monetary policy decisions. Guidelines developed by the Administrative Review Council provide a well-developed framework for identifying administrative decisions that are appropriate for merits review and have been widely adopted.

The Taskforce notes that most of the administrative decisions taken by ASIC under the *Corporations Act 2001* are subject to merits review by the Administrative Appeals Tribunal, as are selected APRA decisions. Given the significant administrative powers provided to regulators such as APRA, ASIC and the RBA, the Taskforce considers it important that merits review is broadly available for the administrative decisions made by these regulators. The administrative decisions subject to merits review should be determined with reference to the Administrative Review Council Guidelines. Where feasible, the review process should incorporate a straightforward mechanism for reconsidering the initial decision taken by the regulator and providing timely resolutions. This would promote greater transparency and consistency of administrative decision-making and underpin confidence in the financial and corporate regulatory regimes.

Recommendation 5.7

The Australian Government should ensure that administrative decisions made by APRA, ASIC and the RBA are subject to administrative review on their merits. Those administrative decisions subject to merits review should be consistent with the guidelines developed by the Administrative Review Council. Review mechanisms should be straightforward and provide timely resolution of issues.

There was further concern that enforcement action taken by a regulator sometimes results in a higher standard being set than was envisaged in the regulation. Stakeholders indicated that these problems arose when there appeared to be divergences between guidance provided on meeting regulatory requirements and subsequent enforcement outcomes. This leads to other regulated entities adopting the higher standard and incurring the additional compliance costs to avoid the risk of regulatory action. To avoid this problem, regulators should ensure that the ramifications of enforcement action are widely understood.

Past experience has demonstrated that enforcement action by the regulator can unnecessarily add complexity ... In both instances [PrintSuper and UniSuper] there was considerable confusion as to whether these voluntary undertakings reflected general ASIC standards or were in response to a specific set of facts or circumstances. Association of Superannuation Funds of Australia, sub. 103, pp. 4–5

Cooperation and coordination between regulators

The structure of financial sector regulation in Australia is based on the so-called ‘twin peaks’ model, with APRA responsible for prudential regulation and ASIC focusing on investor protection and market integrity. A fundamental challenge arising from the twin peaks model is the need for the two regulators, notwithstanding their different roles, to maintain a high level of cooperation and coordination on regulatory development and administration. This is necessary to ensure that regulatory approaches do not conflict or overlap and that compliance costs are not imposed where differing regulation of a similar issue is required. It is also important that APRA and ASIC cooperate to ensure their supervisory activities are coordinated.

Developing and administering regulation

It is essential that APRA and ASIC maintain a high level of cooperation and coordination in developing and administering regulation to ensure overall compliance costs are kept to a minimum. Each regulator needs to recognise the mandate and requirements imposed by the other to promote an integrated and efficient regulatory regime for the financial and corporate sectors. This is particularly important in those aspects of the financial sector where there is significant overlap in the regulated entities covered by both regulators.

APRA and ASIC sometimes impose regulatory requirements in the same areas, although the requirements may differ somewhat to reflect the underlying policy objectives. But it is important that there is effective coordination to avoid, where possible, unnecessary costs associated with meeting differing regulatory requirements, including additional compliance infrastructure and staff training.

Comments received by the Taskforce during consultations identified concerns with the level of coordination and cooperation between APRA and ASIC. Areas of concern included the regulators allegedly not sharing documentation and information provided as part of a licensing process; and a lack of cooperation where entities under investigation by both regulators were required to meet separately with APRA and ASIC and provide similar information. Stakeholders also identified concerns about cooperation between the regulators and the Australian Taxation Office (ATO) on superannuation matters, in particular, the consistency of interpretation and enforcement of superannuation requirements by APRA, ASIC and the ATO.

Seldom, and then only randomly, do individual regulators concern themselves with questions about how their regulation intersects or overlaps with the regulation of other institutions. Credit Union Industry Association, sub. 148, p. 7

The Taskforce considers that compliance costs in the financial and corporate sectors can be reduced by a renewed focus on cooperation and coordination between APRA and ASIC in developing and administering regulation. They should fully utilise the range of processes in place to help coordinate regulatory activities, including memoranda of understanding, regular liaison meetings and the Council of Financial Regulators.

Stakeholders identified several specific areas where there is scope to achieve greater consistency in the regulatory approach and so reduce the compliance burden on regulated entities. The Taskforce understands that APRA and ASIC have established a joint working group to review areas of perceived regulatory overlap or duplication between the two agencies.

Breach reporting requirements

The Taskforce received comments from a range of stakeholders outlining concerns with the breach reporting requirements of APRA and ASIC. In broad terms, APRA requires any breaches of prudential requirements to be reported, while ASIC imposes a materiality test to limit reporting to breaches that

may represent a significant risk. The timeframes for reporting breaches also differ. The rationale for the differing requirements is that APRA is seeking to identify early indications of potential problems. However, the stricter requirements impose costs on regulated entities through the need to maintain separate compliance and reporting procedures.

The Taskforce considers that the government, APRA and ASIC should amend the breach reporting requirements imposed on regulated entities to achieve greater consistency. In particular, a materiality threshold should be introduced into the APRA requirements, and reporting processes and timeframes aligned.

Recommendation 5.8

The Australian Government, in consultation with APRA and ASIC, should amend the breach reporting requirements to improve consistency and reduce the compliance burden.

Responsible person and officer requirements

A further area of inconsistency identified during consultations was between the ‘responsible officer’ requirements administered by ASIC and requirements imposed by APRA, including the ‘responsible person’ requirements in the proposed fit and proper prudential standards. Concerns raised with the Taskforce included differing:

- definitions of people covered by the requirements;
- tests and checks for determining fitness; and
- reporting requirements.

While recognising that divergences in the responsible officer and person regimes partly reflect the differing policy objectives of APRA and ASIC, the Taskforce considers there is some scope to streamline aspects of the regimes. In particular, consideration should be given to increasing the use of information, such as police checks, gathered for one process to be used in the other.

Recommendation 5.9

The Australian Government, in consultation with APRA and ASIC, should review the ‘responsible officer’ and ‘responsible person’ regimes with a view to achieving greater consistency, to the extent that this is consistent with the underlying policy objectives.

Corporate governance requirements

Industry stakeholders also raised concerns about corporate governance requirements. While ASIC and the Australian Stock Exchange have primary carriage of corporate governance regulation, APRA is developing a corporate governance prudential standard and has been consulting with industry stakeholders. There is widespread concern about the potential for duplication and inconsistency.

The Taskforce acknowledges these concerns. This review has demonstrated the risks of additional complexity and compliance burdens arising from duplication and inconsistency when multiple regulators set requirements in the same area.

The Taskforce's view is that if APRA considers it necessary to impose regulation in this area, it should have regard to the principles underpinning the Australian Stock Exchange Corporate Governance Council regime and incorporate a similar level of flexibility. The Taskforce considers that the requirements should be implemented flexibly to ensure arrangements can be tailored to individual entities. There should also be scope to update the requirements to reflect contemporary corporate governance practices. The Taskforce also notes APRA's commitment to industry in October 2005 that the corporate

governance prudential standard will no longer require entities to make performance assessments of senior managers and directors available to APRA. This was a specific issue that generated significant concern among industry stakeholders.

Recommendation 5.10

The APRA corporate governance requirements should be consistent with the principles of the Australian Stock Exchange Corporate Governance Council regime and incorporate a similar level of flexibility. There should also be scope to update the requirements to reflect contemporary corporate governance practices.

Rationalising data collection and regulatory reporting

Data collection and regulatory reporting are fundamental aspects of the financial and corporate regulatory regimes and core supervisory tools for both APRA and ASIC. They are also important for other agencies such as the RBA and the Australian Bureau of Statistics (ABS). But the requirement to provide information represents a significant compliance cost to regulated entities, so it is important that information collected is necessary for supervision and other economic functions.

While industry stakeholders recognised the need for extensive data collection and regulatory reporting, they consistently queried the need for the current level of information provided to government agencies. In particular, they suggested that APRA and ASIC may not be able to assess all the data and reports currently required. Stakeholders also consider that there are a number of overlaps in the information and reports provided to APRA and ASIC and other government agencies. For example, credit unions have to provide annual financial accounts and reports to ASIC and also provide ASIC with their annual accounts as holders of an Australian Financial Services Licence. Another example of overlap is the assets and liabilities data provided to APRA and the RBA for reporting purposes.

In light of industry comment, and given the significant costs associated with data collection and regulatory reporting, the Taskforce considers there would be considerable merit in the government reviewing the data collection and regulatory reporting requirements imposed in the financial and corporate sectors. This review should be comprehensive and incorporate the obligations imposed by APRA, ASIC, the RBA, the ABS and other relevant government agencies. It should also consider the scope to establish an integrated data collection portal to avoid multiple reporting of the same information.

Recommendation 5.11

- (a) The Australian Government, in consultation with the relevant agencies and industry stakeholders, should review the data collection and regulatory reporting obligations imposed on regulated entities to ensure the information obtained is essential for supervision and other economic functions. There should be a particular focus on eliminating overlaps in information provided to the regulators.**
- (b) The review of data collection and regulatory reporting should also assess the scope to establish an integrated data collection portal to ensure that regulated entities have to provide information only once.**

Engagement with industry

A consistent theme identified by many business groups was the crucial role consultation and feedback play in the development, implementation and administration of effective and efficient regulation. This is reflected in a number of the recommendations on the institutional framework for regulation outlined in chapter 7.

Many comments from the corporate and financial sectors also underscored the importance of effective consultation between government, regulators and industry stakeholders. This aspect of regulation is considered particularly important because the sectors are diverse and subject to constant change as innovation occurs and markets and products evolve. In this context, effective dialogue between policy-makers, regulators and industry is important to ensure that regulation is effective in meeting its objectives over time and does not impose unnecessary costs. Effective consultation is also important to establishing and maintaining effective relationships between the regulators and their regulated entities.

Ensuring effective regulatory development

Engagement and consultation with industry stakeholders during the development of regulation improves the prospects for achieving the desired objectives with the lowest possible compliance costs. It should occur at each stage of the development process — problem identification, possible options for response, option design, implementation and, where appropriate, post-implementation.

Industry argued that the level of consultation on regulatory issues in the financial and corporate sectors needs to be raised significantly. While they generally consider that there is appropriate consultation on the design of proposed regulation, they believe consultation on emerging issues and risks, possible options to deal with these issues and risks, and implementation issues is inadequate.

Stakeholders highlighted a number of recent examples where consultation could have been improved. The initial consultation with industry on developing the proposed anti-money laundering regime was raised as an area where the government should have engaged earlier — although the subsequent consultative process was considered effective. Consultation on implementing financial services reforms and developing regulations on corporate governance and fit and proper were other instances where earlier consultation by APRA and ASIC would have been more effective.

While a number of the recommendations in chapter 7 target improvements in consultation across government as a whole, the Taskforce also considers it important to specifically improve the level of consultation on supervisory issues in the financial and corporate sectors. In particular, there would be benefit in the regulators regularly meeting jointly with industry representatives to identify areas of concern, including possible overlaps and inconsistencies. To achieve this, the Taskforce considers that APRA and ASIC should have a joint standing industry consultative body that would:

- meet regularly to discuss emerging supervisory issues that are within their responsibilities;
- contribute to the development of regulation;
- review aspects of the financial and corporate supervisory regimes (including regulatory coordination) and recommend possible reforms;
- provide a mechanism to identify and test industry concerns and communicate them to the regulators; and
- report annually on its activities.

To promote transparency and accountability, reviews of the supervisory regimes and associated recommendations and annual reports should generally be made public, along with the response from APRA and ASIC.

Several options could be considered for establishing the industry consultative body.

- A new body could be established, with membership drawn from the key financial sector industries regulated by APRA or ASIC and the regulators themselves. This would require developing supporting processes and infrastructure.
- An alternative option would be to draw on the Council of Financial Regulators and the Financial Sector Advisory Council. This could involve the two bodies (or their representatives) meeting jointly

on a regular basis (such as quarterly). However, the composition of both bodies reflects their broad policy-based mandate and may need to be supplemented to include appropriate representation to discuss detailed regulatory and operational matters.

The requirement to convene the joint industry consultative body should be included in the Statements of Expectations provided to APRA and ASIC.

Recommendation 5.12

APRA and ASIC, in consultation with the financial services industry, should convene a joint industry consultative body. This standing body should be empowered to:

- **meet regularly to discuss emerging supervisory issues that are the responsibility of the regulators;**
- **contribute to the development of regulation by APRA and ASIC; and**
- **review aspects of the financial and corporate supervisory regimes (including regulatory coordination) and recommend possible reforms to APRA and ASIC.**

These recommendations and the response of APRA and ASIC should generally be made public.

Ensuring effective administration of regulation

While the effective development and implementation of regulatory requirements are key steps to achieving an efficient regulatory regime, it is also important that regulation be well administered. In particular, this requires ensuring a sound working relationship between regulators and the entities they supervise, and that entities understand the regulatory requirements and how they will be enforced.

Effective relationships

Comment from industry stakeholders suggested that the relationship between APRA and ASIC and the entities they supervise could be enhanced. There were particular concerns about issues such as delayed responses to stakeholders on queries or regulatory approvals, and short timeframes for meeting information requests. This can increase uncertainty and impact on business processes and product development.

The Taskforce considers there would be value in APRA and ASIC developing industry charters, setting out the key rights and obligations of each regulator and their regulated entities. The principal objective of the charters would be to clarify key expectations on both the regulated entity and each regulator to enhance transparency and accountability. For example, the charters could indicate the time that APRA will take to consider a license application and other approval processes. The Taskforce accepts that aspects of the charters may need to be set out in general terms, given the complex nature of some of the interactions between the regulators and their regulated entities.

The Taskforce sees merit in developing the charters following the receipt of the Statement of Expectations from the government. This would allow the charters to articulate how APRA and ASIC intend to meet aspects of the statement. The charters should be developed in consultation with industry, and performance against the charters reported every year in each agency's annual report.

Recommendation 5.13

APRA and ASIC should, in consultation with the Australian Government and industry stakeholders, develop industry charters that set out the rights and responsibilities of the agencies and their regulated entities in the course of their dealings. Performance against these charters should be reported in annual reports.

A further issue raised with the Taskforce was the need to strengthen the relationship between ASIC and the larger entities it regularly deals with. There are concerns that larger regulated entities have difficulties with ASIC, such as in obtaining quick responses to complex regulatory queries. This appears to reflect issues such as problems with identifying and accessing officers with the necessary background and knowledge of their business and skills to interpret complex regulatory requirements.

In short, a working relationship between ASIC and wholesale market licensees that more closely reflects our shared interest in financial market confidence and integrity would improve its administration of regulation. International Banks and Securities Association, sub. 71, p. 28

The Taskforce considers that ASIC should examine ways to improve the accessibility of officers who can deal with complex issues raised by large regulated entities. This could involve changes such as improving the transparency of the areas responsible for providing advice and identifying clear entry points for regulated entities seeking guidance. These reforms should be developed in consultation with industry stakeholders.

Recommendation 5.14

ASIC, in consultation with industry stakeholders, should examine ways to improve the accessibility of officers dealing with complex regulatory issues raised by large regulated entities.

Regulatory obligations

The efficient administration of regulation requires government and regulators to clearly articulate the objectives of regulation and provide guidance on interpretation and operation to ensure regulated entities understand how regulators will enforce requirements. This allows entities to conduct business and develop products with confidence that they will meet expected standards, and reduces the likelihood that regulators will need to take action.

Feedback to the Taskforce suggested there is a need to improve the guidance provided to entities operating in the financial and corporate sectors. In particular, stakeholders identified concerns about uncertainty with the application of aspects of financial services reforms and the way entities should comply with their regulatory obligations. This uncertainty, together with the risk of penalties and reputational damage, leads to lengthy and complex product disclosure statements and statements of advice to reduce the risk of entities failing to meet their obligations.

Unlike other regulators such as the ATO and the ACCC, ASIC has not implemented a rulings process. As a result, industry has been overly cautious when implementing new regulations such as FSR [Financial Services Reforms], which has contributed to lengthy Product Disclosure Statements and Statements of Advice. AMP Financial Services, sub. 67, pp. 2–3

While ASIC provides general guidance through mechanisms such as policy statements and frequently asked questions, the Taskforce considers that it could provide more specific guidance, for example, in areas such as product disclosure statement requirements. However, given the significant number of documents such as product disclosure statements produced each year, the Taskforce acknowledges that it is not feasible to examine individual documents. The Taskforce also sees that industry stakeholders, such as industry associations, have a potential role to play in helping their industry comply with regulatory requirements. For example, industry associations and ASIC could jointly develop model documents or templates as a guide to expectations for complying with regulatory obligations, thereby minimising the need to examine individual documents.

The Taskforce considers that ASIC, in consultation with the Australian Government and industry stakeholders, should examine options to provide more specific guidance in relation to compliance with specific obligations. The effectiveness of this guidance should be reviewed in two years by the industry consultative committee (see recommendation 5.12).

Recommendation 5.15

ASIC, in consultation with the Australian Government and industry stakeholders, should examine options to provide more specific guidance on meeting regulatory obligations in areas where concerns have been raised. The effectiveness of this guidance should be reviewed in two years.

A further example of the importance of effective guidance is highlighted by the impact of the uncertainty in applying APRA's proposed fit and proper prudential standards. Some industry stakeholders appear to have adopted a narrower interpretation of the skills requirements of senior officials than is necessary to demonstrate their fitness. For example, some companies apparently have avoided appointing otherwise well-qualified directors if they do not have certain specific technical skills. While this appears to be inconsistent with APRA's intention for the fit and proper requirements, it is clear that there is scope to improve the industry's understanding of the application of the requirements. There is a concern that the fit and proper test may inadvertently exclude otherwise appropriate appointments due to adopting narrow criteria.

It is also important that APRA and ASIC provide guidance on their supervisory activities. In performing those activities, both regulators undertake specific reviews or surveillance campaigns to examine a particular aspect of the sectors they are responsible for. While industry stakeholders generally understand the rationale for such projects, there were concerns about a lack of understanding of the drivers for undertaking particular projects, the costs to industry associated with them, and a lack of reporting on results.

While the Taskforce recognises that these reviews and campaigns form an important part of the supervisory activities of APRA and ASIC and their usefulness should not be undermined, it considers that there should be scope to provide greater transparency. For example, there would be value in communicating to industry stakeholders the rationale and objectives for a proposed project and the key results. In certain circumstances, there may also be value in engaging with industry to identify the most effective way to approach a particular project.

Available and accessible regulatory requirements

While there was a focus in consultations with the Taskforce on reforming regulation to reduce compliance burdens, improving the availability and accessibility of information on regulation can also reduce compliance costs. The cost and complexity of identifying and complying with business regulation are increased if information on requirements is fragmented across multiple sources and difficult to understand. A number of stakeholders indicated that this was a particular problem in the corporate and financial sectors, given the pace of recent regulatory change.

A contemporary example raised with the Taskforce was the financial services reforms regime, which consists of a multitude of different sources of information including legislation, regulations, class orders, policy statements and other explanatory material. While many of the changes were designed to provide greater certainty to stakeholders or reduce the regulatory burden, the resulting instruments and guidance material have contributed to an already extensive range of information. This level of information, combined with a lack of consolidation, has added to the difficulty and cost of understanding and meeting the regulatory requirements.

The Taskforce considers there is scope to ease the compliance burden on business by making regulatory requirements more accessible through regularly consolidating changes into the principal instruments and providing an authoritative commentary explaining the operation of the regulatory regime. This approach should be adopted for all major regulatory regimes. There would be significant benefits in applying this approach to the financial services reforms regime as soon as possible.

Recommendation 5.16

The Australian Government, in conjunction with the regulatory agencies, should ensure that regulatory requirements and supporting operational guidance are readily available and accessible, including through regular consolidations of the principal instruments. Initially, Treasury and ASIC should centralise the material setting out the requirements of financial services reforms, and review the existing explanatory material to improve its accessibility.

Specific regulatory reforms

The consultations undertaken by the Taskforce and submissions subsequently provided identified a significant number of proposed reforms to specific corporate and financial sector regulation. The Taskforce identified several key areas of regulation where considerable administrative efficiencies could be achieved.

Refining financial services reforms

The Taskforce received extensive comments on the implementation of the financial services reforms. While this was to be expected, given that the regime was only recently introduced, it became apparent that there are widespread concerns about the costs and complexities associated with implementing the reforms. In particular, there is a consensus among industry stakeholders that the policy objectives of the reforms can be achieved with a much lower compliance cost.

The government has recognised industry's concerns and recently refined key aspects of the financial services reforms regime. There was strong support for the action the Parliamentary Secretary to the Treasurer and the government are taking to improve the operation of the regime. While the Taskforce acknowledges the steps already taken, it considers that significant work is required to deal with the unnecessary burdens imposed on business by the reforms.

Of the considerable number of issues about financial services reforms raised with the Taskforce, key areas identified for further reform included:

- relaxing the existing limitations on the range of information that can be included in documents such as product disclosure statements and statements of advice by reference to other information sources;
- reviewing the present distinction between general and personal financial advice to improve the availability of advice to consumers (including areas such as online calculators and over-the-counter service); and
- amending the training required for staff involved in the sale of different financial services products to improve consistency and achieve a closer alignment between the inherent risks of a product and training obligations.

Other specific issues raised with the Taskforce that should be examined include the operation of 'in-use' notices and disclosure requirements relating to termination values and fees and charges on individual financial products.

In light of the success of the initial refinement process and the scope to achieve further substantial administrative cost savings, the Taskforce considers that further refinement should be an immediate priority.

Recommendation 5.17

The Australian Government should establish a further process to enable additional refinements to be made to the operation of the financial services reforms regime in outstanding areas of concern.

A further issue raised with the Taskforce about the financial services reforms was the extension of the existing prohibition on insider trading to specific additional financial products, including those traded off-market (or over-the-counter). There were concerns that extending the prohibition had created regulatory risks for over-the-counter market participants and increased compliance costs. For example, the prohibition may prevent financial conglomerates managing financial risks on a whole-of-group basis because one entity establishing a currency hedge to manage the risk of a foreign currency bond held by another entity may represent insider trading. This uncertainty may affect the effective structuring of group operations and increase costs.

The Taskforce considers there is merit in the government examining the application of the insider trading prohibition to these over-the-counter markets to address such unintended consequences.

Recommendation 5.18

The Australian Government should examine the application of insider trading regulation to over-the-counter transactions to address unintended consequences.

The financial services reforms regime was introduced to provide a comprehensive and consistent framework for regulating financial services. The regime covers regulated entities that were previously subject to a range of disparate regulatory instruments, including statutory rules and codes of practice. As financial services reforms are bedded down, stakeholders included in the regime should consider reviewing any self-regulatory instruments that are still in place, such as the Credit Union Code of Practice, to assess their interaction with the new requirements. In particular, the reviews should seek to address any duplication or inconsistencies.

Rationalising products

Innovation in the financial products provided to consumers, together with technological and regulatory developments, has led to a significant number of so-called legacy products — financial products that are closed to new investors and supported by outdated administrative infrastructure. Stakeholders indicated that there are significant costs and operational risks in having to maintain legacy products and their associated infrastructure and continue to meet regulatory requirements. These costs and risks are carried by both the industry and consumers.

While a number of industry-specific mechanisms (for example, superannuation and managed investments) could be used to rationalise legacy products, experience has shown that the necessary processes are usually lengthy and costly. Moreover, it has often been difficult to achieve adequate engagement with investors to get their approval.

The Taskforce considers that implementing a simplified product rationalisation mechanism that could be applied to the full spectrum of financial products would significantly improve operational efficiency and reduce the operational risks carried by financial entities. In designing such a mechanism, it is important to balance achieving greater operational efficiencies with ensuring that consumers are not disadvantaged by having financial products terminated. This would require a whole-of-government approach, as issues such as taxation at both the Australian Government and state levels would need to be dealt with.

Recommendation 5.19

The Australian Government, state and territory governments, APRA and ASIC, should, in consultation with industry stakeholders, develop a mechanism for rationalising legacy financial products. This mechanism should balance achieving greater operational efficiency with ensuring that consumers of the products are not disadvantaged.

Streamlining financial and corporate reporting

Financial reporting requirements are an important element of the disclosure regime and help to promote efficient markets and well-informed investors — but they also impose administrative costs. It is important that these benefits and costs are effectively balanced. Moreover, given the range of reporting requirements imposed by a number of different bodies, avoiding unnecessary compliance costs requires a coordinated approach to limit inconsistencies and duplication.

Annual reporting

A number of stakeholders highlighted in consultations with the Taskforce that, given widespread share ownership in Australia, the requirement to provide shareholders with a hard copy of a company's annual report each financial year imposes a significant cost.

Companies must send an annual report [to] all shareholders unless they opt out. This may involve tens of thousands of shareholders and is an expensive exercise. International Banks and Securities Association, sub. 71, p. 10

While the existing legislative framework does allow electronic distribution of annual reports, this depends on individual shareholders nominating or agreeing to this. Moreover, approaching shareholders is a time-consuming and costly task, and response rates are often low.

In light of the increasingly widespread availability and uptake of information technology in Australia, the Taskforce considers that the underlying policy objective of promoting informed investors would still be achieved by establishing as a default requirement that companies make their annual reports available on the internet. This should be accompanied by a safeguard that the annual report would be made available in hard copy to any investors who request it or where a company does not have access to a website. While the Taskforce has initially confined this to company annual reports, it considers that there would be merit in extending such arrangements to other entities such as superannuation funds and managed investment schemes.

Recommendation 5.20

The Australian Government should introduce amendments to allow companies to make annual reports available on the internet and require hard copies to be sent only to investors who request them.

The financial reporting requirements for proprietary companies are set by reference to several criteria, including gross assets and employees. Proprietary companies that meet these criteria are defined as 'small' and do not have to prepare a financial report and directors report, except in limited circumstances. Large proprietary companies must complete these reports each financial year. The financial report must be prepared in accordance with accounting standards, and be audited and lodged with ASIC.

The criteria for determining whether a proprietary company is small or large have not been changed since they were established in 1995. This has led to increasing numbers of relatively small companies

being defined as large proprietary companies and thus subject to the reporting requirements. This has in turn led to higher costs for many smaller, unlisted companies.

It is proposed that the thresholds included in the criteria for defining small and large proprietary companies be increased, to ensure that non-public interest companies are not required to meet the more onerous reporting requirements. The thresholds should be regularly reviewed to ensure they continue to meet the underlying policy objectives.

Recommendation 5.21

The Australian Government should raise the thresholds for the definition of a large proprietary company. The thresholds should be subject to periodic review to ensure that only economically significant proprietary companies are defined as large proprietary companies.

Small business representatives also raised concerns about the lack of incentives for those of their members who are sole traders and partnerships to become incorporated. While reporting requirements have been reduced for small companies, there are still significant upfront and ongoing costs of incorporation. Upfront incorporation fees, including the purchase of a shelf company, can be more than \$1000, and include an ASIC fee of several hundred dollars. The current annual fees for proprietary companies are currently set by ASIC at \$212. Other costs include additional accounting fees to meet director obligations and requirements to advise ASIC of changes to business details.

While the Taskforce acknowledges that ASIC operates on a cost-recovery basis, it considers there is merit in easing the compliance faced by small businesses that need to consider becoming a proprietary company — for example, to obtain finance and expand or to utilise the new workplace relations system. This issue should be considered as part of the review of corporation fees and charges, which the Taskforce understands will be conducted in 2007, if not earlier.

Recommendation 5.22

The Australian Government should review incentives for small businesses to incorporate, including the level of fees and reporting requirements. At the latest, these issues should be considered in the 2007 review of corporation fees and charges.

Executive and director remuneration reporting

Reporting requirements are imposed through Australian Accounting Standards which reflect International Financial Reporting Standards, the Corporations Act, the Australian Stock Exchange listing requirements and the recommendations of the Australian Stock Exchange Corporate Governance Council. Stakeholders identified some inconsistencies and overlaps in executive and director remuneration reporting requirements that contribute to uncertainty and higher compliance costs. While regulations have been introduced to limit the overlap, there are still concerns about overlap and duplication. For example, there is potential for the disclosure requirements in the accounting standards and the Corporations Act to apply to different people.

The Taskforce believes further action is warranted and that the existing requirements should be reviewed. In particular, consideration should be given to removing requirements imposed by the Corporations Act where they conflict with Australian Accounting Standards. To the extent to which additional information is required, the Corporations Act can set additional obligations. It is important that departures in Australian Accounting Standards from the International Financial Reporting Standards be avoided, so that the benefits of adopting internationally accepted reporting requirements are not undermined.

Recommendation 5.23

The Australian Government should review the existing reporting requirements for executive remuneration. The review should consider the merits of removing the requirements imposed by the Corporations Act where they conflict with Australian Accounting Standards.

A further area of concern was the length and complexity of the concise report; in particular, the extra length associated with having to report on remuneration. While action to address concerns with the remuneration report should help address the problem, the Taskforce also sees merit in considering removing reporting on remuneration from the concise report and making it available separately.

Recommendation 5.24

The Australian Government should consider removing the requirement for the executive remuneration report to be included in the concise report.

Reviewing prospectus requirements

The issuing of shares and related instruments is governed by a range of regulatory requirements, including disclosure obligations such as distributing a prospectus. Further regulatory obligations, such as tax, arise where shares or related instruments are issued to company employees. A number of stakeholders indicated that, collectively, these requirements can impose considerable costs on employers seeking to issue company shares to employees.

There have been steps to provide relief to employers seeking to issue shares and related instruments to employees, for example, ASIC has granted class order relief from the prospectus requirements for listed entities. However, the Taskforce considers there is merit in assessing the scope to provide further relief from the disclosure requirements, particularly for smaller, unlisted companies. Any assessment must ensure that employees continue to have access to sufficient information to determine the risks associated with shares issued to them. The Taskforce understands that the Australian Government is consulting with industry on aspects of the regulation related to issuing shares to employees. This process is an appropriate mechanism for examining the disclosure obligations.

Recommendation 5.25

The Australian Government should review the requirement to provide a prospectus when issuing shares and options to employees.

Controlling access to member registers of mutual organisations

Representatives of mutual organisations raised concerns about the application of the Corporations Act and the existing regime for gaining access to the member register of a mutual organisation. Given that the member register is also a mutual organisation's client list, this represents a risk to the organisation and its members. A number of options to address these risks were flagged with the Taskforce, including:

- restricting access to the member register to legal purposes carried out in accordance with the law and controlled by the mutual; or
- the mutual or a third-party mailing house distributing any communication that is allowed with members to maintain confidentiality.

The Taskforce understands that Treasury is consulting with industry on ways to protect the confidentiality of member registers of mutual organisations. The issues raised with the Taskforce should be incorporated in this review.

Reviewing auditing requirements

In recent years there have been a number of reforms to the regulation of auditors. A change made in the context of the Corporate Law Economic Reform Program was a prohibition on more than one former audit partner of an auditing firm joining the board or senior management of a company that was audited by the firm (multiple former audit partner restriction). This was in response to a specific recommendation of the HIH Royal Commission. Feedback to the Taskforce indicated that the prohibition was cast too widely and affected a company's ability to attract individuals with appropriate skills. The Taskforce considers there is merit in reviewing the prohibition.

Recommendation 5.26

The Australian Government should review the multiple former audit partner restriction with a view to either repealing the restriction, or limiting it to audit partners directly involved with auditing the company.

Refining telephone monitoring of takeovers

The Corporations Act requires the bidder and target (and their agents) to record telephone calls made to retail security holders during a takeover bid. The requirement is prescriptive and covers issues such as the identification, indexing, storing, accessing, copying and destruction of recordings. Feedback from industry stakeholders suggested that this prohibition has a broader impact than envisaged by the original policy and imposes unnecessary compliance costs on corporate advisers, and may reduce retail investors' access to information.

The Taskforce considers that there is merit in reviewing these requirements to assess possible alternative options to narrow their scope and reduce the associated compliance costs.

Recommendation 5.27

The Australian Government should review the requirement for recording telephone calls made to retail security holders during a takeover.

Reviewing cross-jurisdictional issues

Submissions from a number of stakeholders identified several areas of Australian Government, state and territory government regulations affecting financial sector entities that are inconsistent and entail unnecessary complexity and compliance costs for entities operating nationally.

- The Uniform Consumer Credit Code was implemented to provide a consistent approach to regulating consumer credit across states and territories. However, it appears that individual jurisdictions have implemented a number of changes that have undermined the consistency of regulation and added significantly to complexity. There were also concerns that aspects of the code are unnecessarily costly or ineffective.
- The regulation of statutory trusts varies across jurisdictions in areas such as calculating and remitting interest, and reporting. These variations require the implementation and maintenance of different systems and processes, adding to administrative costs and complexity.
- There are inconsistencies across jurisdictions in provisions applying personal liability for company directors and officers, creating more complexity and uncertainty for individuals in these roles. This issue is currently being reviewed by the Corporations and Markets Advisory Committee.
- There is no uniform approach to regulating finance and mortgage brokers, with different jurisdictions adopting varying approaches. This has resulted in divergences in the extent and intensity of regulation, and increased regulatory complexity and costs for entities operating in several jurisdictions. A

working group, which includes the Australian Government, is currently exploring options for uniform state and territory regulation of the finance and mortgage broking industry. It is due to report to the Ministerial Council on Consumer Affairs by June 2006 with its post-consultation findings and recommendations.

- A number of state and territory governments operate statutory general insurance schemes and prudentially regulate general insurers providing statutory insurance. Most state and territory governments also impose a range of duties and taxes on general insurance products. Collectively, the different approaches to general insurance regulation and taxation contribute significantly to the compliance burden for general insurers.

The Taskforce considers there is scope to review these areas of regulation to achieve a more nationally consistent approach and improve administrative efficiencies for regulated entities.

Recommendation 5.28

COAG should initiate reviews to identify reforms to achieve more nationally consistent regulation of:

- a) consumer credit;**
- b) statutory trusts;**
- c) personal liability for company directors and officers following the completion of the Corporations and Markets Advisory Committee review;**
- d) mortgage and finance brokers after the Ministerial Council on Consumer Affairs has received its recommendations; and**
- e) general insurance regulation and taxation.**

5.2 Tax regulation

Tax is an integral feature of Australia's system of government and the source of funding for essential public services and infrastructure. It affects virtually every individual, business and industry in the nation.

The consistent message from business and tax practitioners is that tax complexity and compliance costs remain a significant concern. Business rated tax issues as being among their highest regulatory burdens.

The size of the Income Tax Assessment Act has become a barometer for business concern about growth in the quantum and complexity of regulation in general. The recent government announcement that it is removing 2100 pages of inoperative provisions was welcomed by business. While business did say that that this will not significantly reduce their tax compliance costs, they nonetheless acknowledged that removing these pages will make it easier to navigate the tax law, and may make further reform easier to identify.

In preparing its report, the Taskforce was conscious that the tax compliance burden falls disproportionately on small business, a view widely recognised in submissions.

Unfortunately, the net effect of tax policy in recent years has been to increase compliance costs rather than reduce them ... CPA Australia, sub. 113, p. 12

There are clear and consistent claims and some supporting empirical evidence that the global small business tax compliance costs post ANTS/Ralph have increased significantly ... Taxation Institute of Australia, sub. 78, p. 17

The burden on small business to comply with tax legislation is considerable and other than a few intrepid souls, most hand the responsibility to their accountant ... Council of Small Business Organisations of Australia, sub. 17, p. 6

When I first studied tax in 1976, the Income Tax Assessment Act was an inch and a half thick. It now comes in three volumes of 4 inches plus ... The newly revamped tax system is the most burdensome intrusion of government on all business, especially small business. Its implementation suits large companies and bureaucrats. It is expensive and complex for small business. VEBIZ, sub. 8, p. 1

Sources of tax complexity

Tax complexity is one of the principal sources of tax compliance costs. While some complexity is unavoidable, reflecting relatively sophisticated and complex markets and business structures, complexity is also a legacy of choices made by governments and parliaments, past and present. Sources of complexity include tax policy tradeoffs — for example non-tax objectives being implemented through the tax system — interactions within the tax system and between the tax and social security systems, and ‘black letter’ approaches to the law.

[T]he complexity of the taxation system has dramatically increased over time. This is due in no small part to the expansion of the tax system’s role from collecting revenue, to being increasingly required to deliver regulatory programs, user pays programs, penalties regimes, welfare and business subsidies. Institute of Chartered Accountants in Australia, sub. 41, p. 4

Tax policy tradeoffs

In general, there are inevitably tradeoffs between simplicity, equity and efficiency in the design of tax policy. The complexity of the tax system reflects a heavier focus by government and Parliament on equity and efficiency over simplicity.

There are numerous examples of tax concessions and exemptions which, in pursuing equity objectives, add to complexity and compliance costs.

- For example, the goods and services tax (GST) exemption on food imposes significant compliance costs on many small businesses, including restaurants and grocers.
- Grandfathered arrangements achieve an equity objective at a cost of higher complexity (for example, see the discussion of superannuation taxation in section 5.3).

Business groups also lobby for tax concessions, which can add to complexity. Businesses (and taxpayers more broadly) may be prepared to tolerate complexity provided the reduction in the tax burden exceeds the increase in compliance costs. However, while the net benefit to beneficiaries may be positive, this may impose costs on other businesses, government and the broader community.

The efficiency objective involves minimising concessions from a neutral tax base to maintain a ‘level playing field’. Where policy objectives warrant concessions being introduced, minimising the revenue cost of achieving policy objectives is an important consideration. Tax concessions are usually accompanied by rules to limit access to the target group and minimise the scope for tax avoidance and evasion.

Rules to protect the revenue base impose significant complexity and compliance costs on taxpayers. While some revenue protection measures are essential to the integrity of the tax system, it is important that policy-makers take into account the tradeoffs of higher complexity and compliance costs when designing tax law.

The focus on revenue neutrality, integrity and anti-avoidance measures in tax system changes have led to system complexity ... Brett Bondfield, sub. 80, p. 2

Different tax rules for different taxpayer classes and entities increase the need for revenue protection measures. For example, differences in personal and company tax rates give rise to complex rules to prevent arbitrage between the personal and company tax systems, including personal services income rules, rules concerning loans to shareholders and family trust elections. Many of these rules impact heavily on small business.

Tax system interactions

Complexity arises not only from complex provisions, but from interactions between separate provisions that may in themselves be relatively simple. For example, social security recipients now have the option of collecting their benefits as a reduced tax liability, which adds complexity as a result of the interaction between the social security and tax systems. This complexity is unnecessary for both collecting revenue and delivering welfare payments.

Interactions within the tax system are also a source of complexity. A recent Treasury research paper (Oliver & Bartley 2005) noted an exponential relationship between the number of tax measures and complexity.

A new tax measure does not have to be complex itself to increase the level of tax system complexity. Often, government is asked to make a 'simple' change to the tax law, but the compounding effect of many separate relatively simple tax measures can result in complex interrelated provisions. Oliver & Bartley 2005, pp. 56–57

Black letter law

Complexity can also reflect overly prescriptive 'black letter' tax law, particularly where it lacks clarity and transparency. Inconsistencies in drafting styles and approaches over time have also made the tax law unwieldy. As a result, the Australian Government is shifting towards the 'coherent principles' approach to drafting tax law where appropriate.

The coherent principles approach includes expressing the high-level policy principles in the law to articulate the essence and intent of the law, making the law intuitive to those who understand its context, and writing the law in a non-technical style.

The Taskforce supports greater use of the coherent principles approach to tax law drafting as an important means of reducing complexity in the law.

In part, the increased amount of detailed income tax legislation has been an attempt to clarify all possible events or circumstances that can arise to increase certainty for taxpayers. However, it has had the opposite effect. The average taxpayer now finds it increasingly difficult to understand and comply with the tax laws Chamber of Commerce and Industry Western Australia, sub. 130, p. 6

Consequences of tax complexity

Tax complexity imposes compliance costs on business which are ultimately shared by everyone through higher prices for goods and services and the redirection of society's productive resources into compliance activities. Complexity has a number of other undesirable consequences, including:

- loss of business effort, as more time is devoted to fulfilling regulatory obligations;
- higher risk of inadvertent breaches of the law by taxpayers who genuinely attempt to comply;
- increased scope for tax avoidance;
- adverse equity consequences, as complexity provides a barrier to accessing government programs and benefits;
- a barrier to entry for new businesses;
- an impediment to the underlying policy objective (for example, see the discussion of superannuation complexity in section 5.3); and
- broader economic impacts, including reduced international competitiveness.

Even tax professionals appear to be having difficulty with the current degree of tax complexity. For example, anecdotal evidence was provided to the Taskforce that small accounting firms and sole practitioners are finding it more difficult to cover all areas of an increasingly complex and voluminous tax law. This may be contributing to a decline in the number of small accounting firms, which poses particular difficulties for micro and small businesses operating in rural and remote areas.

Overview of tax compliance costs

While tax complexity is the main source of compliance costs, rapid changes to the tax law also increase the compliance burden by redirecting business resources and effort to keeping up with change and modifying business compliance activities.

[T]ax agents nominated tax law complexity coupled with the continual changes to tax legislation as the most critical element of the compliance burden faced by themselves and their clients. CPA Australia, sub. 113, p. 14

Tax compliance cost concerns raised by business can be divided into two broad categories:

- the cumulative burden of tax compliance; and
- specific concerns with the tax law, such as aspects of fringe benefits tax, GST, income tax and tax administration.

The remainder of the tax section deals with these two categories of compliance concerns and ways government can reduce the compliance burden.

Consistent with the terms of reference of the Taskforce, the central focus is on identifying areas of tax where compliance costs are disproportionately high. The Taskforce acknowledges that there are few easy options for reducing compliance costs which would not have revenue implications and a number of the recommendations involve trading off some tax revenue for lower compliance costs. The Taskforce emphasises that this revenue loss should not be regarded in isolation as a 'cost' of reform, but rather assessed in the context of whether a proposed change generates a net benefit to society. A further consideration is whether there is a more efficient, equitable and administratively simple way of covering any such revenue loss. Finally, removing impediments to business may generate higher productivity and income, and in turn higher tax revenue.

In addition, the Taskforce has had to rely largely on qualitative rather than quantitative analysis in balancing compliance cost reductions and the possible revenue implications, due to the limited time available to prepare this report. The Taskforce supports and encourages quantitative assessment of its recommendations, particularly the conduct of cost-benefit analysis.

Reducing the cumulative burden of tax compliance

The cumulative burden of tax compliance is of great concern to both small and large business and featured heavily in submissions and Taskforce consultations. In isolation, few areas of tax compliance involve unmanageable compliance burdens. However, as the number of tax measures and requirements continues to grow, the cumulative burden on business will inevitably grow too.

The problem is not so much with any individual tax, but the cumulative effect of many individual taxes imposed on businesses. Australian Chamber of Commerce and Industry 2004, p. xi

Reducing the cumulative burden of tax compliance is inherently more difficult than responding to specific pressure points, and raises fundamental policy tradeoffs which are beyond the scope of this review. Tax is different to other areas of regulation in that the instrument for collecting revenue is often an integral part of government policy.

However, business desire for government to tackle the cumulative tax compliance burden was a strong and recurring theme of submissions. Ultimately, tax law design must take into account the cumulative compliance burden, or impose significant and unproductive costs on society. As a result, the Taskforce reaffirms the importance of a number of tax design principles that it considers would help government develop longer term solutions to reducing tax compliance costs.

The Australian Government should give priority to the following principles when developing future tax changes:

- 1. Tax system design should be predominately about raising revenue efficiently using a 'broad-base, low-rate' approach.***
- 2. Direct expenditure, including the social security system and direct grants, should be used to achieve equity objectives and compensate for tax changes.***
- 3. Measures to protect the revenue base must balance the revenue risk against the costs of compliance.***
- 4. Effective consultation with business and good tax design are fundamental to ensuring that tax decisions adequately account for compliance costs.***

Principle No. 1: Tax system design should be predominately about raising revenue efficiently using a 'broad-base, low-rate' approach.

A broad-base, low-rate approach tends to produce a tax system with lower compliance costs. The approach involves significantly fewer concessions and exemptions from the general tax regime. This reduces the number of complex interactions in the tax law and avoids the need for complex and onerous rules to prevent concessions becoming avenues for tax avoidance.

To shift towards such a system, business would need to accept fewer concessions in exchange for lower compliance costs. Business, and the broader community, must also accept that this is unlikely to be achieved in a 'no losers' environment.

Where concessions are granted, the policy intent should be clearly articulated to minimise policy drift and avoid complex tax law.

Principle No. 2: Direct expenditure, including the social security system and direct grants, should be used to achieve equity objectives and compensate for tax changes.

Tax is a relatively blunt instrument and is often less efficient in achieving equity objectives than direct expenditures and grants. For example, individual taxable income can be a crude method of identifying taxpayer need, as there are many low-income taxpayers in high-income households. On the other hand, the social security system and payment of grants can use broader eligibility criteria than taxable income, such as family income and assets, to better target those in need.

The tax system is only likely to be preferable when seeking to achieve relatively broad equity outcomes (for example, the use of progressive marginal income tax rates).

Greater use of direct expenditure and grants in pursuing equity objectives, in preference to the tax system, would significantly reduce tax complexity. While some complexity would be transferred to (for example) the social security system, this approach avoids imposing complexity and compliance costs on non-beneficiaries of concessions. This, coupled with better targeting of concessions, can reduce the overall compliance costs of achieving policy objectives.

Furthermore, in recent years the tax system has been used to pay welfare benefits, such as family tax benefits and the private health insurance rebate. This adds complexity and compliance costs which are unnecessary to achieve the policy objectives. Removing this interaction would simplify the tax system and reduce compliance costs, without reducing the benefits available to welfare recipients.

[T]he government needs to review its current strategy of using the tax system as a vehicle for the delivery of social welfare type payments and/or other benefits ... CPA Australia, sub. 113, p. 20

Principle No. 3: Measures to protect the revenue base must balance the revenue risk against the costs of compliance.

In designing tax law, it is important to accept that not every tax dollar can be collected. A number of the Taskforce's tax recommendations relate to areas where the compliance costs appear disproportionate to the revenue risk.

Principle No. 4: Effective consultation with business and good tax design are fundamental to ensuring that tax decisions adequately account for compliance costs.

Consultation

A critical determinant of good tax law design is to consult with business after the policy objective has been identified but before the method of implementation has been settled, and allow business adequate time to respond. This approach can produce better tax law with lower compliance costs.

Business expressed concern about 'tax design by press release', and where consultation occurs after the implementation framework has been settled and announced. This obviously denies it the opportunity to devise alternative, potentially lower cost, approaches and present its views about whether the policy change is needed.

[T]he Taxation Institute strongly believes that we need to focus on improving the processes around the making of our tax laws. Taxation Institute of Australia, sub. 78, p. 1

In 2002 the Board of Taxation identified a number of principles for effective tax consultation (see box 5.1). The adoption of these recommendations in 2002 by the Treasurer led to significant changes and improvements to the tax consultation process, and the Taskforce applauds the progress that has been made. Nevertheless, based on industry feedback, the Taskforce believes that there is scope

to further improve the tax consultation process and to apply more rigorously the Board of Taxation's recommendations.

For example, business has advised that some tax legislation is still being introduced into Parliament with little effective consultation. Any amendments subsequently required can be costly for business to implement and costly for government in terms of the resource-intensive parliamentary processes.

Other amendments are often made 'just in time', which creates difficulties for businesses developing information technology systems and for business planning and advice.

Box 5.1 Making better tax law through effective consultation: Board of Taxation Report

The Board of Taxation released a report in 2002, *Government Consultation with the Community on the Development of Taxation Legislation*, calling for a more coordinated and consistent approach to consultation. It recommended that the government adopt a framework for consultation embracing three key phases of external involvement:

- early external input to the identification and assessment of high-level policy and implementation options (before the public announcement of policy intent);
- technical and other input from external stakeholders in developing policy and legislative detail; and
- thorough 'road-testing' of draft legislation and related products before they are implemented.

The board also recommended that the government enhance the transparency of consultation arrangements, by:

- ensuring that the policy intent of each new tax measure is clearly established and articulated when it is publicly announced;
- developing and releasing for each new (substantive) tax measure a consultation plan that outlines the objectives of the consultation, the processes to be employed and indicative timeframes;
- having the Treasurer release the government's indicative tax legislation forward work program each year; and
- improving feedback to external participants.

The Taskforce also notes the review of self-assessment recommended that the Board of Taxation, in consultation with the Treasury, review consultation processes to identify any improvements to the Australian system, especially for non-controversial minor policy or technical amendments, and report to government. The Taskforce supports this review.

Good tax design

In addition to consultation, good tax design requires:

- rigorous cost-benefit analysis — for example, if new information is sought on tax returns, the need for it must be tested against the compliance costs it will impose;
- allowing sufficient time between the announcement and implementation of tax changes for taxpayers to put appropriate systems in place, and aligning the commencement dates where there are multiple changes to the tax system so that taxpayers can make concurrent changes to their systems;
- ensuring mechanisms are in place for tax thresholds to be periodically reviewed; and
- having a structured process for conducting post-implementation reviews, as discussed in box 5.2.

Box 5.2 Post implementation consultation

While consultation processes for the implementation and review phases for tax legislation were outside the scope of the Board of Taxation's report, these issues are addressed in New Zealand's Generic Tax Policy Process. It provides a template of other measures that complete an effective consultation process. The New Zealand model could be closely reviewed in response to the review of self-assessment recommendation outlined above.

The post-implementation reviews by the Board of Taxation (on non-commercial losses and small business capital gains tax concessions) are good examples of how post-implementation reviews can work. However, there needs to be broader business input when deciding what priority to give to areas requiring review. Allowing public consultation on a forward work program would provide an avenue for this.

Reducing specific compliance burdens

The Taskforce identified a number of areas where the tax compliance burden can be reduced, including fringe benefits tax (FBT), GST, income tax, aligning definitions, and other taxes. The recommendations outlined below generally fall into one of four categories:

- tax compliance costs that appear to be disproportionate to revenue collected;
- tax thresholds that have not been reviewed over time;
- harmonisation of different parts of the tax law; and
- duplication.

Streamlining fringe benefits tax arrangements

FBT is important to the integrity and fairness of the income tax system. It limits the scope for taxpayers to avoid income tax by receiving remuneration as non-cash benefits. That said, a consistent theme raised with the Taskforce by both small and large business groups was the onerous nature of FBT compliance costs. FBT has been a concern to business for many years and business groups participating in this review considered that little had changed to reduce compliance costs.

... FBT [is] the worst of all taxes from a compliance perspective ... Restaurant & Catering Australia, sub. 70, p. 11

According to research reported by the Australian Chamber of Commerce and Industry in their Tax Reform Blueprint (2004), FBT has the highest compliance costs of all taxes, estimated at 23% of revenue collected. The compliance burden on small businesses is estimated at 40% of revenue collected.

These estimates are out-of-date: for example they relate back to 1990-91 and exclude fringe benefits reporting. Nevertheless, they do support anecdotal evidence heard by the Taskforce about the relatively high compliance costs of FBT compared to other taxes, and that the compliance burden falls disproportionately on small businesses.

The Taskforce consider that parts of FBT law impose compliance costs that are disproportionate to the revenue risk. While lessening or removing these compliance costs will affect tax revenue, the Taskforce notes that the Government already benefits from taxing fringe benefits at the top income tax rate, as opposed to the relevant individual rate. The Taskforce considers that reform of these areas should be pursued as a matter of priority.

One proposal raised with the Taskforce to reduce FBT compliance costs is to levy FBT on the employee rather than the employer. However, it was not clear to the Taskforce that this would reduce compliance costs overall.

Reportable fringe benefits

Employers have to identify fringe benefits paid to each employee and report them on employee payment summaries, except for employees with total fringe benefits of less than \$1000. Fringe benefit reporting does not affect an employer's FBT liability, but ensures there is no incentive for employees to salary package to avoid tax obligations (such as the superannuation surcharge or Higher Education Contribution Scheme repayments), gain access to government benefits, or avoid child support payments.

Reporting some fringe benefits on employee payment summaries imposes compliance costs which are disproportionate to the policy benefit. The principal concern of business is in attributing benefits to individual employees and apportioning pooled benefits across employees. Reporting is a laborious and unproductive exercise for employers, and a source of contention with employees.

[T]he current reporting system imposes a significant compliance burden on all employers for the sake of achieving equity ... for a minority of employees — and this minority has surely been further reduced through the recent abolition of the superannuation surcharge. Corporate Tax Association, sub. 68, p. 2

The compliance burden that this [reporting fringe benefits] places on large employers is overwhelming, and it would be welcomed if this could be reviewed. So much valuable time is wasted each year in allocating various 'benefits' ... to individual employees, and again in arguing the allocations with disgruntled staff members. Business Council of Australia, sub. 109, attachment A, p. 29

There would probably be little revenue risk in exempting many items from fringe benefits reporting. This could include, for example, pooled work cars which are not for private use, recreational work functions and the provision of tools of trade. Moreover, recent policy decisions to abolish the superannuation surcharge and reduce the family tax benefit withdrawal rate to 20% significantly reduce the risk to revenue of exempting items from fringe benefits reporting. This reduction in the revenue risk makes it appropriate to reduce the compliance burden on business.

The Taskforce recommends limiting reportable fringe benefits to items that pose a high risk to revenue. This is likely to be confined to salary-packaging benefits that form part of an employee's remuneration.

Recommendation 5.29

The Australian Government should limit reporting of fringe benefits to remuneration benefits only.

The Taskforce considers that this recommendation would alleviate a wide range of fringe benefits reporting compliance concerns. But if the government chose not to implement this recommendation, the Taskforce considers there would still be scope to reduce compliance costs by:

- increasing the threshold for FBT reporting from \$1000 to \$2000, to reduce the need for employers to apportion and report relatively minor expenses for many employees; and
- increasing the number of exemptions from FBT reporting, particularly where benefits are shared among a number of employees, such as pooled motor vehicles that are not for private use, recreational work expenses, tools of trade, and travel costs for employees living in one city and working in another.

Recommendation 5.30

In the event that recommendation 5.29 were not accepted, the Australian Government should increase the threshold for FBT reporting from \$1000 to \$2000 and exempt a wider range of benefits from reporting.

Minor benefits

The minor benefits exemption relieves employers of the trouble of having to pay FBT on infrequent and irregular items costing up to \$100. The minor benefits threshold has not changed since 1996 and has been eroded in real terms by inflation. As a result, businesses are increasingly calculating and paying FBT on relatively minor items. For example, the cost of staff Christmas parties for some businesses may exceed the minor benefits threshold and hence be subject to FBT.

In addition, the administrative costs of tracking and paying FBT on items worth a little over \$100 are also disproportionate to, and may exceed, revenue collected. As the threshold is low, businesses may have to apportion relatively small pooled benefits to ensure they fall under the threshold.

The Taskforce considers that a significant increase in the threshold is warranted to better balance compliance costs with revenue collected. For example, increasing the threshold to \$300 (where revenue collected will generally be greater than \$150) represents a better balance of compliance costs and revenue collected.

Recommendation 5.31

The Australian Government should increase the FBT minor benefits threshold from \$100 to \$300.

Business is also somewhat uncertain about which benefits are ‘irregular’ and ‘infrequent’, and thus eligible for the minor benefits exemption. The Taskforce is aware that the ATO has already provided guidance on this matter, but it is apparent from consultations and submissions that confusion remains. This area of the FBT law could be further clarified.

Recommendation 5.32

The Australian Taxation Office should review and clarify its guidelines about what is considered ‘irregular’ and ‘infrequent’ for the purposes of the FBT minor benefits exemption.

Issues of FBT liability

The compliance costs of recording and tracking road toll amounts and distinguishing tolls incurred for business and private use, particularly when there are multiple users of a car, are disproportionate to the amount of revenue collected. The Taskforce is aware that the ATO has done some work in this area, but the results do not appear to have been widely communicated. The Taskforce encourages the ATO to better publicise the work it has done to reduce compliance costs in reporting road tolls and to identify administrative solutions to further reduce compliance costs in this area.

Recommendation 5.33

The Australian Taxation Office should examine and implement administrative solutions to further reduce the compliance costs of calculating FBT on road tolls and better publicise the work it has already done.

Fringe benefits are reported on a GST-inclusive basis, while small business accounting systems generally record GST-exclusive values. Employers must therefore manually determine which items need to be grossed-up to the GST-inclusive value, adding to compliance costs. This area of the fringe benefits law could be reviewed.

A number of businesses called for an optional standard valuation to calculate the FBT liability on car parking. However, the Taskforce notes that there are already different valuation methods available under the legislation and adding new formulas in the past has not removed compliance concerns. The Taskforce considers that a broader review and simplification of the calculation of FBT on car parking is required.

Recommendation 5.34

The Australian Government should review the following areas of FBT with a view to reducing compliance costs:

- a) interaction between FBT and GST; and**
- b) treatment of car parking.**

FBT returns

A number of business groups believe that allowing grouped entities to lodge a single FBT return would reduce compliance costs. This would eliminate a source of confusion and an inconsistency in the law (grouped entities can lodge grouped income tax returns but not FBT returns), and allow grouped entities to transfer refunds. But allowing consolidated FBT returns is also likely to introduce additional complexities.

In the time available, the Taskforce was unable to form a view about whether the benefits of group lodgement outweigh the costs, and recommends further work in this area.

Recommendation 5.35

The Australian Government should consider giving entities the option of submitting group FBT returns.

The lodgement date for annual FBT returns (21 May) can place employers under significant resource pressure, particularly as it can be difficult to collect all relevant information by this date. One solution is to grant employers the same automatic extension provided to tax agents to lodge annual FBT returns.

Recommendation 5.36

The Australian Government should give employers the same automatic extension to lodge FBT returns it gives tax agents.

Other FBT issues

A number of other FBT issues were raised that are outside the scope of this review, but would be candidates for consideration in a comprehensive review of FBT policy. They include:

- treatment of childcare benefits;
- adjustment of remote area benefit boundaries; and
- exclusion of some vehicles from the definition of a 'car'.

Reviewing goods and services tax arrangements

Mixed input businesses

The GST exemption on food is a major concern for small businesses with mixed GST inputs, such as restaurants and grocers. These businesses effectively operate separate accounts for inputs and/or sales that are GST-free and those that are subject to GST. This is time-consuming and costly for small business.

The introduction of the goods and services tax regime imposed a substantial compliance burden on independent grocers, arising mainly from the exemption of some food products. National Association of Retail Grocers of Australia, sub. 40, p. 4

... GST across the board would benefit the smooth operation of the GST and BAS systems. Council of Small Business Organisations of Australia, sub. 17, p. 8

The original plan to apply GST consistently on all goods and services would have made things a lot simpler. The increase in the cost of living for lower income earners could have easily been offset by increasing existing benefits and raising the lowest income tax threshold. Starkis Design, sub. 5, p. 1

Research commissioned by the National Association of Retail Grocers of Australia found that ongoing GST compliance costs as a percentage of GST collected were 28.25%, 13.53% and 1.25% respectively for small, medium and large retail grocers. These costs are particularly high for small business.

Restaurants and caterers have similar concerns but, unlike grocers, do not have access to a simplified accounting method, which reduces compliance costs by allowing businesses to approximate the apportionment of GST and non-GST inputs. The Taskforce understands that a simplified accounting method for restaurants and caterers is being considered by the Commissioner of Taxation and believes that this should be progressed as a priority.

Recommendation 5.37

The Australian Taxation Office should provide small restaurants, cafes and caterers with access to a simplified accounting method for calculating their GST liability and input tax credits.

Compulsory GST registration threshold

Businesses with an annual turnover of \$50 000 or more are required to register for GST. This threshold is low and captures many part-time and micro-businesses. In addition, the threshold has not increased since it was legislated in 1999 and has been eroded in real terms by inflation.

By registering for GST, such businesses are likely to incur disproportionately high compliance costs relative to the revenue they collect.

For example, the threshold to avoid GST registration also requires monthly checks of business turnover, including a look-back and look-forward test. Accordingly, unless a business is confident of staying under the threshold for a two-year period, they may choose to register for GST to avoid the burden of monthly checks. A higher threshold would give more micro-businesses the confidence to remain outside the GST system.

[Having micro-businesses in the GST system] creates a substantial administrative cost for firms and for the ATO. Moreover, it is doubtful that the GST revenue collected is even equal to the ATO's cost of administration. Office of the Small Business Commissioner (ACT), sub. 7, p. 3

The Taskforce sees merit in increasing the threshold beyond what is required to account for inflation to better reflect the compliance costs to business, and because the threshold is unlikely to be reviewed again for some years. An increase in the equivalent threshold for non-profit organisations, currently double the threshold for business, should also be considered. While many businesses would choose to remain registered for GST if the threshold were raised, it would relieve many micro-businesses of a disproportionate compliance burden.

The Taskforce notes that a change to the compulsory GST registration threshold requires state and territory support.

Recommendation 5.38

The Australian Government and state and territory governments should agree to raise the threshold for compulsory GST registration from \$50 000 to \$75 000.

Business activity statements

Notwithstanding the major improvements the government has made to business activity statements, they remain a source of concern for many small businesses.

In considering submissions for change, the Taskforce was mindful that businesses generally now have systems in place for preparing activity statements and that further change would be costly. Accordingly, the Taskforce was not attracted to suggestions that would require changes to software, accounting practices and/or additional training, unless they could significantly reduce compliance costs.

The most difficult part of completing the activity statement for small business is to distinguish between capital and non-capital purchases. The distinction does not affect GST paid, but provides valuable quarterly data to the ABS for preparing the national accounts. If the distinction between capital and non-capital items were removed, the ABS would have to find an alternative means of collecting this data, which is also likely to impose compliance costs on business.

The ATO has advised it now has a policy of allowing all items with a purchase price of \$1000 or less to be reported as non-capital, which should greatly ease the burden on small businesses that complete their own activity statement. The Taskforce strongly endorses this approach and encourages wide dissemination of this information.

Recommendation 5.39

The Australian Taxation Office should promote its policy to allow items with a purchase price of \$1000 or less to be reported on the business activity statement as non-capital items.

Another key concern with the business activity statement is the length and complexity of the accompanying instructions. The Taskforce sees value in having detailed instructions available, but is concerned that businesses with relatively straightforward activities may be reluctant to read long and detailed information. This concern is exacerbated by the absence of any guidance on the form itself.

As a longer term goal, the Taskforce recommends that the business activity statement include basic information about the contents of each box, similar to the approach used by the ABS on survey forms. This could include tips to avoid common errors.

Recommendation 5.40

The Australian Taxation Office should examine the merits of including brief explanatory information on the business activity statement about each input box.

The Regulation Taskforce found significant support among business for the ATO Business Portal, which allows businesses to lodge their activity statement electronically. The Taskforce strongly endorses ATO work to integrate activity statement reporting with business accounting software.

Other GST issues

Business raised the compliance costs of the 'going concern' concession, in particular the need to obtain a binding private ruling from the ATO to remove the risk of post-settlement GST liabilities arising from vendors. The Taskforce understands that the Treasury and ATO are examining the operation of the going concern rules, including the farmland concession, and supports this work.

Reviewing income tax arrangements

Medicare Levy

The use of two or more instruments to achieve one policy objective is an obvious candidate for review to reduce compliance costs. An example in the tax system is the Medicare Levy.

The Medicare Levy, which dates back to the mid-1980s, is a second income tax administered under a separate Act with a tax base that is not materially different from personal income tax. Partitioning Medicare Levy revenue from personal income tax revenue adds compliance costs to business (and the tax system more generally) for no offsetting purpose or benefit. The government could achieve the same revenue and equity objectives in broad terms by incorporating the Medicare Levy into personal income tax rates and adjusting existing rebates and benefits.

It is important to note that revenue from the Medicare Levy is not hypothecated to health expenditure (health expenditure far exceeds it) and abolishing the Medicare Levy or changing the way it is collected would not effect expenditure, nor the high priority the government places on health care. Abolishing the *Medicare Levy Act 1986* need not affect the Medicare Levy Surcharge, which is administered under a different Act.

Incorporating the Medicare Levy into personal income tax rates would allow for the abolition of four pay as you go (PAYG) withholding schedules, which are used by employers to calculate how much tax to withhold from employee salaries. This would reduce the number of PAYG withholding schedules from 33 to 29 and reduce complexity and compliance costs for business. The Taskforce sees merit in further reducing and simplifying the number of PAYG withholding schedules.

Abolishing the Medicare Levy as a separate tax would also remove an irritant to business and software providers. By convention, the government announces indexation of the Medicare Levy exemption threshold in the Budget each year, requiring software providers and the ATO to update PAYG withholding schedules every year. Abolishing the Medicare Levy would also simplify income tax returns for individuals.

The Taskforce acknowledges that the simple way to implement this recommendation would involve a tradeoff between revenue neutrality and avoiding the potential for 'losers'. The Taskforce considers that the presence of this tradeoff is not sufficient to justify keeping the Medicare Levy.

Recommendation 5.41

The Australian Government should incorporate the Medicare Levy into personal income tax rates and abolish the Medicare Levy Act 1986.

PAYG withholding threshold

PAYG withholding requires entities to remit withholding tax quarterly, monthly or even more frequently, depending on whether they are deemed to be small, medium or large withholders respectively. If total

withholdings in the previous year are \$25 000 or less, an entity is deemed a small withholder and can remit quarterly.

This threshold (and the equivalent threshold under the former pay as you earn system) has not changed since 1 July 1998 and the real value has been eroded by inflation. The result is that more and more small and micro-businesses have to remit withholding tax monthly instead of quarterly, imposing additional and unnecessary compliance costs.

Increasing the PAYG withholding threshold for quarterly remittance would particularly assist small companies where the director is the sole employee.

In making this recommendation, the Taskforce supports the ATO retaining the power to shift entities with a poor compliance record from quarterly to monthly remittance. The use of this power by the ATO should alleviate many of the compliance concerns associated with increasing the threshold.

Recommendation 5.42

The Australian Government should increase the PAYG withholding threshold for quarterly remitters from \$25 000 to \$40 000.

Simplified tax system

While anecdotal evidence suggests that the ‘simplified tax system’ works well for many micro-businesses, there appear to be problems and complexities for businesses close to the thresholds.

One suggestion was that concessions under the simplified tax system could be delivered directly to businesses, without the complexity of a separate system. The Taskforce was unable to properly evaluate this proposition in the short time available, and therefore recommends that the Board of Taxation consider this issue in its scoping study into small business compliance costs (see recommendation 5.48).

Conceptually STS is a potentially concessional tax system that sits on top of and has to interact with the rest of the tax laws. Having an add-on system that delivers concessional treatment of some tax items (prepayments and capital allowances) is not inherently simple. It raises the question of whether some simple concession or rebate the eligibility for, and quantum of, being dependent on a measure of business size would deliver an equivalent benefit without the associated compliance costs.

Taxation Institute of Australia, sub. 78, p. 6

Foreign resident withholding

Business raised concerns about the application of the foreign resident withholding arrangements in some circumstances. These regulations were recently legislated and require taxpayers to withhold 5% from payments to foreign residents for works and related activities. The ATO is preparing a draft tax ruling on the application of the withholding provisions and the circumstances where variations will be granted, and is examining options to further streamline the variation processes.

Harmonising definitions

Tax law definitions

Australian Government tax, superannuation and other legislation contains numerous definitions of ‘small business’, ‘employee’, ‘salary and wages’ and ‘associate’. This adds complexity to the law and creates confusion for business and tax practitioners. It also contributes to inadvertent breaches of the law when taxpayers mistakenly apply an incorrect definition.

While many differences reflect specific policy objectives, business argued that the differences are not always justified. Consistent with this view, the Institute of Chartered Accountants in Australia has commissioned a study to help develop a simple and consistent definition of small business.

The Institute believes that a significant improvement in the law and reduction in this [compliance] burden can be realistically achieved if there is focus on just one key aspect of the tax system — consolidating and simplifying the ‘definition’ of small business. Institute of Chartered Accountants in Australia, sub. 41, p. 6

The provision of standardised definitions would go a long way towards the creation of a more streamlined administrative and regulatory framework, and lower compliance issues for small firms. Office of Small Business Commissioner (ACT), sub. 7, p. 4

The Taskforce acknowledges that different policy objectives mean a single definition is often not achievable, but it also considers that many definitional differences have not been rigorously tested or do not take into account the broader effects on complexity. For example, see ‘Definition of employee’ below.

As a first step, requiring new tax provisions to use an existing definition should be strictly enforced.

Recommendation 5.43

The Australian Government should take steps to align and/or rationalise different definitions in the tax law including ‘small business’, ‘employee’, ‘salary and wages’, and ‘associate’.

Definition of employee

The Taskforce considers that the definitions of ‘employee’ and ‘contractor’ should be aligned for PAYG withholding purposes and superannuation guarantee purposes. The definitional boundary between employee and contractor was a common issue raised by business.

Under the superannuation guarantee legislation, the definition of employee includes a person engaged under a contract where more than half the value of the contract is for the person’s labour (although the rule does not apply if the contractor is engaged to produce a result or is free to engage other people to perform the work). There is almost certainly a high level of non-compliance with this aspect of the law as many employers are not aware that contractors should be covered in this way.

A lady ... a genuine operator ... hadn’t appreciated there was actually a different definition when it came to superannuation and she hadn’t been paying approximately \$30 000 worth to staff. She was horrified. She was a genuine player who went to all the courses ... so that definitional thing is quite an issue. Steve Jamieson, Business Enterprise Centres Australia, at the Small Business Roundtable, November 2005

Most employers are well aware of their PAYG withholding obligations, so aligning the PAYG and superannuation guarantee definitions of employee would reduce compliance costs and also help to overcome the problem of unwitting non-compliance.

Altering the superannuation guarantee definition would mean that some contractors currently covered would fall outside the system. But the impact would be relatively small because:

- there is probably a high level of non-compliance with the existing rules; and
- only unincorporated contractors would be affected, as those who are incorporated would be employees of their own company, and so caught by the superannuation guarantee rules.

Redefining the term ‘employee’ for the purposes of the superannuation guarantee may also remove a barrier to using independent unincorporated contractors (currently some larger companies may not take on unincorporated contractors because of superannuation guarantee and other liabilities).

Recommendation 5.44

The Australian Government should align the definitions of ‘employee’ and ‘contractor’ used for superannuation guarantee and PAYG withholding purposes.

Cross-jurisdictional harmonisation

Different legislation covering essentially the same matters across jurisdictions can impose very large transaction and compliance costs on taxpayers. Examples include payroll tax, stamp duty, and issues of tax administration.

Payroll tax differences across the states and territories involve a significant burden for businesses operating in more than one jurisdiction. The Taskforce heard that harmonising the payroll tax base would significantly reduce compliance costs for affected businesses.

The Taskforce considers that there is significant merit in harmonising the payroll tax base and administrative provisions across the states and territories. Policy issues relating to tax rates and thresholds would continue to be determined independently by each state and territory government. Given that previous attempts at harmonisation have failed, the Taskforce recommends that the Australian Government take a leadership role through COAG.

[I]t has for many years been very frustrating for business to have to negotiate six or more separate payroll tax regimes, each with their own slightly different definition of what constitutes an employee. ... steps to harmonise the various definitions, so that at least the tax base would be uniform ... would significantly reduce compliance costs for business. Corporate Tax Association, sub. 68, p. 3

Recommendation 5.45

COAG should develop measures to harmonise the tax base and administrative arrangements of payroll tax regimes across the states and territories.

Business raised similar issues about differences in stamp duty administration across the states and territories. While there was some success in harmonising stamp duty in the 1990s, some states and territories did not participate and there are still significant differences. Even where the legislation is the same, there can be differences in interpretation and application. Such differences make it more difficult for business to operate nationally.

The Taskforce also notes that a number of stamp duties are expected to be eliminated under the Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations between the Australian Government and state and territory governments, and encourages this.

Recommendation 5.46

COAG should encourage the elimination of stamp duties included in the Intergovernmental Agreement and should develop measures to harmonise the administration of any remaining stamp duty regimes.

Differences in tax administration across jurisdictions are another source of confusion and compliance cost. The Taskforce can see no reason why aspects of tax administration should differ from one jurisdiction to another, including time periods for retaining documents, interest penalty rates and remission regimes, and time limits for assessments, reassessments and refunds.

Recommendation 5.47

COAG should develop measures to standardise tax administration across the states and territories and the Australian Government.

A number of other cross-jurisdictional issues are addressed in chapter 6.

Reviewing other tax arrangements

Capital gains tax

The capital gains tax (CGT) law is highly prescriptive and complex. The current approach of specifying ‘CGT events’ can miss transactions or result in one transaction being caught by multiple events. One view put to the Taskforce is that rewriting capital gains tax laws on a ‘coherent principles’ basis would significantly simplify the law.

The small business capital gains tax concession is a particular area of concern. The underlying policy objective is impeded by complex eligibility rules, particularly for the ‘controlling individual’ requirement, which are not well understood and appear to exclude businesses that are part of the policy intent. The Board of Taxation recently reviewed this concession, although its findings are not yet known. The Taskforce supports simplifying the concession to ensure the policy intent is more effectively achieved.

Promoter penalties

The government is currently undertaking consultation on draft legislation to deter the promotion of aggressive tax schemes. The Taskforce received a number of submissions that raised concerns with the proposed measures, suggesting that the compliance costs will be high and that the measures will seriously impede business investment decisions. The Taskforce encourages the government to address these issues when it refines the legislation.

[T]he proposed legislation would significantly increase the cost of regulation on Australian business ... [A] company's expenditure on internal and external tax advice would increase in proportion to new tax risk placed on it ... Transactions that are time critical would be impeded or stymied by unavoidable procedural delays ... companies would necessarily have to adopt a more conservative approach to their business decision making in order to contain their exposure. International Banks and Securities Association of Australia, sub. 71, pp. 15–16

Anti-avoidance provisions

The Income Tax Assessment Act has a general anti-avoidance provision, Part IVA, and a multitude of other provisions with a specific anti-avoidance purpose. Business believes this approach is unnecessary and burdensome. For example, if the general provision was in any way deficient, it should be amended in preference to introducing anti-avoidance provisions elsewhere in the tax law.

The Taskforce considers that this principle applies more broadly — it is important to test the existing tax law before introducing new provisions.

The Taskforce has been informed that the Treasury, in consultation with the ATO, is reviewing the anti-avoidance provisions in the tax law with a view to reducing the volume and complexity of the legislation. The Taskforce supports this review.

There is an extremely strong general anti-avoidance rule within Australian tax law and it is unnecessary and burdensome for specific anti-avoidance rules to be littered throughout the Act. Taxation Institute of Australia, sub. 78, p. 4

Elections

Rules for notifying the Commissioner of Taxation of an election, transaction or event can be complex and inconsistent across tax laws. The review of self-assessment recommended that the Treasury review the design of elections and establish guidelines for framing future elections. The Treasury has started the review, aimed at increasing consistency and flexibility and reducing complexity. The Taskforce supports the review.

Board of Taxation scoping study

In response to concerns about small business compliance costs, the government asked the Board of Taxation to undertake a scoping study of tax compliance costs facing small business. The Board of Taxation is expected to report to the Treasurer in the second half of 2006. The Taskforce commends this initiative, which will enable the Board of Taxation to examine small business compliance issues in considerably greater detail than has been possible in this review.

The Taskforce has identified a number of potential sources of unnecessary complexity and compliance costs that the Board of Taxation study could usefully consider.

Recommendation 5.48

The Board of Taxation should consider the following areas in its scoping study of small business compliance costs:

- the simplified tax system;
- trust loss provisions and family trust elections;
- possible benefits of including additional information on activity statements to assist users;
- ways of reducing the number of PAYG withholding tables; and
- developing a systematic approach to adjusting thresholds in the tax law.

5.3 Superannuation regulation

The main issues that business raised with the Taskforce relating to superannuation were:

- the compliance costs of making small superannuation contributions; and
- the complexity of superannuation tax rules.

The high level of complexity in the superannuation system and the close link between complexity and policy meant that business generally had few concrete suggestions for change. There was a widespread view that reform of the whole superannuation system would be needed to significantly reduce compliance burdens.

The Taskforce acknowledges that the Australian Government's recent decision to abolish the superannuation surcharge has removed a significant compliance burden from superannuation funds and their members.

This section looks at the taxation of superannuation, the superannuation guarantee, and rules affecting superannuation contributions and payments. Issues relating to the prudential regulation of superannuation funds are covered in section 5.1.

Superannuation guarantee

Employers are required to make superannuation guarantee contributions on behalf of eligible employees.

To reduce administration costs, employers do not have to make superannuation contributions for employees who earn less than \$450 a month. However, the threshold for this exemption has not increased since it was introduced in 1992 and its real value has been eroded by inflation.

Business is also concerned that the administrative costs of making small superannuation contributions are disproportionate to the benefits to employees. Employers in industries with high staff turnover and/or a large number of itinerant workers are particularly concerned about the need to make small, one-off contributions.

For example, a Tasmanian apple orchardist employed 100 casuals for the picking season for an average period of two weeks each. The compliance costs of determining eligibility for the superannuation guarantee, calculating entitlements and paying contributions for each worker were significant, particularly since each worker was paid a different amount based on the volume of fruit picked. In addition, many of the contributions for the 75 workers eligible for superannuation guarantee were less than \$100.

The benefits to workers in this example are unclear. Many superannuation guarantee contributions made on behalf of itinerant farm workers become lost superannuation and are never claimed, as reflected in the large number of void tax file numbers returned to farmers, and group certificates 'returned to sender'.

[M]aking very small superannuation payments to many staff is an administrative burden on the business and of questionable value to staff. Restaurant & Catering Australia, sub. 70, p. 8

Increasing the superannuation guarantee exemption threshold would reduce the number of small, one-off contributions and reduce the need for superannuation funds to maintain very small accounts over long periods. Small accounts impose ongoing costs on fund administrators and other fund members. Increasing the threshold to around \$800 a month would represent approximate indexation to average weekly ordinary time earnings since 1992. (This is the basis for indexing other superannuation thresholds like reasonable benefit limits.)

The Taskforce acknowledges that this will reduce superannuation guarantee coverage and may disadvantage some long-term casual and part-time workers in particular. However, the Taskforce considers that an increase in the threshold is warranted because the compliance costs of the superannuation guarantee in these instances may be disproportionate to the benefit received by employees. Increasing the threshold may also increase employment opportunities for affected workers by reducing employment costs.

Some businesses would also like to see a shift from a monthly to a quarterly exemption threshold to align it with the requirement to pay superannuation quarterly. This would reduce compliance costs for many employers and decrease the number of itinerant and short-term employees (including working holiday makers) eligible for superannuation guarantee contributions. These workers are least likely to benefit from superannuation guarantee contributions.

Recommendation 5.49

- a) The Australian Government should raise the superannuation guarantee exemption threshold to \$800 per month, and periodically review the threshold.**
- b) The Australian Government should allow employers to use a quarterly exemption threshold (equal to the monthly exemption threshold multiplied by three).**

The timing of deductibility of superannuation guarantee contributions was another issue raised by business. Employers can claim a deduction for contributions only in the year the contributions are received by the fund. This may be inconsistent with the accrual accounting treatment of other business expenses. Furthermore, anecdotal evidence suggests that some businesses are unaware of this and may be incorrectly accounting for superannuation contributions.

The Taskforce supports allowing businesses to account for superannuation guarantee contributions in a way that is consistent with how they treat other expenses. To ensure security of contributions for employees, businesses would still need to have paid contributions before a deduction could be claimed.

Recommendation 5.50

The Australian Government should allow businesses to account for superannuation contributions which have been paid on a cash or accruals basis to be consistent with the way they treat other expenses.

Superannuation taxation complexity

The taxation of superannuation is highly complex and imposes considerable compliance costs on all parties — superannuation funds, product retailers, financial advisers, government and potential investors. Much of this cost is ultimately borne by superannuation fund members and taxpayers.

The superannuation rules have been repeatedly amended over time, and serve as an example of how piecemeal change can undermine overall policy outcomes if there is inadequate regard for consequent system complexity. While particular policy changes may have been warranted in their own right, successive changes over time have produced a highly complex system. Unlike some other areas of regulatory complexity that largely affect professionals and corporations, the complexity of the superannuation system will directly affect most Australians as they make savings choices throughout their lives, and particularly as they approach retirement.

Complexity includes multiple taxation points, grandfathering rules and a multitude of contribution categories, among other things, although the greatest area of complexity is the taxation of end-benefits. People who are approaching retirement are likely to be financially disadvantaged if they do not obtain financial advice on their options and the associated tax consequences. While much of the complexity in the superannuation system was introduced to achieve equity objectives, complexity itself contributes to inequity — particularly for unsophisticated taxpayers and those who may not be able to afford financial advice.

There are complex rules for the taxation of superannuation. The Treasury 2005, p. 27

A recent poll by the Institute of members found that taxation laws were considered the biggest regulatory burden hindering the accumulation of retirement or superannuation investments. Institute of Chartered Accountants of Australia, sub. 41, p. 12

The nature of the problem this [Superannuation Guarantee] Act poses is in the complexity of the legislation, having been amended on an ad hoc basis. Business Council of Australia, sub. 109, attachment A, p. 31

The Taskforce considers that the case for simplifying the superannuation system is overwhelming. It would reduce the burden on superannuation fund members. It would also increase the effectiveness of the substantial government concessions to encourage people to provide financially for their retirement and thereby lessen the fiscal burden of an ageing population.

The Taskforce considers that comprehensive simplification is required, with a particular focus on the taxation of end-benefits. It does not believe that piecemeal reforms will achieve the required simplification.

Reforming superannuation

One approach to simplification is to determine the amount of revenue the government is prepared to forgo in tax incentives and then design a system that meets that cost with significantly fewer categories and more streamlined rules than at present. Using this approach, the Taskforce identified the following areas where complexity could be reduced as part of a broader simplification process:

- Crystallising tax liabilities that have accrued on benefits that are subject to grandfathering rules. For example, the government could impose one-off taxes on grandfathered contribution categories and convert these into tax-free (undeducted) contributions.
- Rationalising reasonable benefit limits (RBL) and age-based maximum deduction limits. Under the RBL system, the limits on access to concessional superannuation benefits apply regardless of when contributions are made. A more equitable and simpler system could be achieved by abolishing age-based limits and using only the RBL system to limit access to superannuation concessions.
- Introducing uniform rules for deductibility of contributions. This would reduce compliance costs and provide equitable treatment for different classes of taxpayers. For example:
 - Limiting tax deductibility to 75% for contributions of over \$5000 made by self-employed people imposes compliance costs on the contributor and their superannuation fund. It is inequitable when compared to the 100% deduction for superannuation guarantee contributions and employee salary sacrifice arrangements.
 - Employee salary sacrifice arrangements impose unnecessary costs on an employer and/or employee compared to allowing the employee to directly claim a tax deduction, and can impinge unnecessarily on the privacy of the employee's financial position.
 - Employees who do not have access to salary sacrifice arrangements are the only Australians aged between 18 and 65 who cannot make voluntary tax-deductible superannuation contributions. These are most likely to be small business employees.

Recommendation 5.51

The Australian Government should give high priority to comprehensive simplification of the tax rules for superannuation.

5.4 Trade-related regulation

Trade regulations serve an important purpose in facilitating and monitoring activities undertaken by businesses importing and exporting goods in Australia. The Australian Government also seeks to assist businesses to grow and be innovative through its procurement activities.

In an increasingly globalised market, it is critical that Australia's trade-related regulation is well designed and cost-effective. Concerns raised by business in submissions to the Taskforce on these regulations fell into four broad categories:

- inconsistencies in information and data collection requirements between agencies and across governments that impose avoidable cost burdens on business;
- administrative processes that add complexity, cause delays and add costs to the process of importing goods in Australia;

- provisions that limit marketing options, thereby affecting prices received for exported products; and
- provisions that create uncertainty, impose unnecessary delays and raise costs for little apparent public benefit.

Trade regulations

Over the last two decades Australia has significantly reduced its barriers to trade. This has increased competition in the economy, improved the growth prospects of exporters and other industries, and benefited consumers.

At the same time, regulations for anti-dumping and some export marketing arrangements have not mirrored the reforms evident elsewhere. Beyond this, there is scope to improve administrative arrangements covering areas such as trade measurement, revenue and border control, and data collection by improving their effectiveness and lessening compliance costs for business.

Several submissions from business groups and individual businesses identified regulatory burdens in these and related areas.

Adopting nationally consistent trade measures

In 1990, all Australian jurisdictions agreed to enact uniform model trade measurement legislation. Yet inconsistencies remain between jurisdictions, creating an unnecessary burden on system users. Western Australia is the only jurisdiction not to have enacted trade measurement legislation harmonised with the core Australian Government Act.

Monitoring of measuring instruments is frequently done by licensed private industry certifiers. These certifiers have to comply with the administrative systems in each jurisdiction. For traditional areas of trade measurement (weighing instruments and fuel dispensers) this commonly occurs in border regions. More recently, the introduction of trade measurement controls for the grain and wine industries has meant that nationally operating companies with centralised administrations have had to comply with multiple administrative procedures. This is clearly a cost burden to these businesses and has a negative impact on their competitiveness.

The Australian Government has taken some steps towards progressing uniformity. Following the 1995 Kean Review, it amended the *National Measurement Act 1960*, taking on responsibility for trade measurement in utility meters. It is drafting additional amendments for packaging, aimed at assisting Australia's packaged exports, particularly bottled wine.

The Standing Committee of Officials of Consumer Affairs (the advisory group for the Ministerial Council on Consumer Affairs) recently established a working group on core national trade measurement legislation. The core legislation is also inconsistent due to its staggered introduction and subsequent amendments. The ministerial council has agreed to fund a review of options for national trade measurement.

Recommendation 5.52

The Australian Government should initiate an independent public review to identify practical steps to expedite the adoption of a nationally consistent trade measurement regime and streamline the present arrangements for certifying trade measurement instruments.

Reviewing anti-dumping arrangements

Both local manufacturers and importers criticise the current anti-dumping regime. Local manufacturers argue that the arrangements are too complex and costly to access due to lengthy investigation periods. Importers and others argue that the arrangements impose unnecessary costs on business and consumers by raising the price of some imports, often negatively affecting a business's international competitiveness. Some businesses contend that decisions under the regime are narrowly based and do not reflect an economy-wide perspective.

This policy area is one where different BCA Member companies have conflicting views on the application of the laws, however, there is a shared view that the administration of the anti-dumping legislation needs to be reviewed. Business Council of Australia, sub. 109, attachment A, p. 80

The Australian Government's legislation review program under National Competition Policy (NCP) included a review of the arrangements, but it has not yet been undertaken. In its recent review of NCP, the Productivity Commission (2005d) recommended that the government initiate an independent review of anti-dumping arrangements as soon as practicable.

The Taskforce notes that Customs, in conjunction with other Australian Government departments, is about to examine elements of the administration of anti-dumping arrangements and is due to provide recommendations to ministers in June 2006. Because of the intimate connection between administrative detail and policy outcomes in this area, the Taskforce considers that a broader public review is required.

Recommendation 5.53

The Australian Government should expedite an independent public review of Australia's anti-dumping arrangements to examine both administrative and policy aspects, including an assessment of practical ways of reducing compliance costs.

Improving revenue and border control

The *Customs Act 1901* requires importers to lodge an import declaration providing extensive information to Customs to enable revenue and border control implications to be assessed for every consignment, and to pay any duty due before goods are released.

The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* introduced an Accredited Client Program, whereby highly compliant importers and exporters have to communicate only minimal information at the time of entry, with full details provided monthly. A lower level of physical checks of consignments applies for accredited clients.

While the Accredited Client Program will reduce the regulatory burden for a small proportion of importers, a scheme could be developed to provide benefits to more importers, without affecting real-time border control risk assessment.

The Australian Customs Service has considered international developments with respect to the periodic payment of customs duty and believes that these developments could be adopted and extended to create a more streamlined import declaration process in Australia. Australian Customs Service, sub. 81, p. 2

Customs has developed additional eligibility principles to extend the current parameters of the scheme. It estimates, almost 8000 importers representing over 80% of the volume of imported goods would be able to meet these principles, and so access the scheme.

Although the legislation supporting the Accredited Client Program commenced on 19 July 2005, the program is not yet operating as further legislation is required to implement the mid-month duty payment model agreed by the government in the 2005-06 Budget.

The Taskforce appreciates that extending the program to a wider range of importers will increase the time lag in generating trade statistics. However, given the practical benefits of alleviating the compliance costs of a potentially large number of businesses, the Taskforce considers it worthwhile to investigate extending the scheme, while taking quarantine process issues into consideration. Further, if initial experience with an extended program is positive, it could potentially be broadened to include smaller businesses.

Recommendation 5.54

The Australian Government should introduce the relevant legislation to establish the extended Accredited Client Program, and implement Customs' proposal to broaden the program to a wider group of importers.

Rationalising data collection

Approximately 40 Australian Government, state and territory agencies request data from business to support their roles in regulating international trade. These multiple and overlapping information requirements generate a significant administrative burden on exporters and importers. The Customs Standardised Data Set project is designed to create a single interface between Australian importers and exporters and Australian Government regulatory agencies. The 7649 data elements currently collected have been reviewed by Customs and could be rationalised to 637.

The Taskforce understands that, while the Standardised Data Set has been compiled, significantly more funding is required before it can be implemented and any benefits realised — including security benefits. In the first quarter of 2006 a business case will be sent to the government, canvassing options for a 'single window' — a whole-of-government point for submitting and handling data about international trade transactions.

Recommendation 5.55

The Australian Government should give priority to completing and implementing the Standardised Data Set and the 'single window' approach in order to rationalise and ease related reporting requirements for business trading internationally.

Reforming ring fencing provisions of the Gas Code

Under the ring fencing provisions of the Gas Code, pipeline owners have to maintain separate accounts for all regulated gas pipelines. This is designed to aid transparency in transactions between a pipeline owner and their upstream or downstream affiliates. However, non-vertically integrated pipeline owners, which arguably constitute the majority of pipeline owners, are concerned that the requirement forces them to maintain separate accounts for each pipeline.

Non-vertically integrated pipeline operators argued for an exemption from the ring fencing provisions of the Gas Code. The Australian Pipeline Industry Association indicated that the industry is willing to consider industry guidelines and self-regulation as an alternative regulatory measure, and has prepared a voluntary set of draft accounting guidelines for this purpose.

While transmission pipelines are not necessarily in the public (or the political) eye, they are vital infrastructure that is hampered by over-zealous regulation. Australian Pipeline Industry Association, sub. 92, p. 2

Granting an exemption along the lines sought by the industry would probably require some safeguard against the possibility of pipeline owners artificially inflating costs for regulated versus unregulated pipelines.

The Taskforce understands that the Ministerial Council on Energy is engaged in an extensive energy market reform program, which includes developing a new national gas law and national gas rules to replace the gas pipelines access law. The new legislation will incorporate the ministerial council's response to the Productivity Commission's review of the gas access regime (2004e).

Recommendation 5.56

The Australian Government, through the Ministerial Council on Energy, should examine the need for non-vertically integrated pipeline owners to maintain separate accounting records under the ring fencing provisions of the Gas Code as part of its existing energy market reform program.

Reviewing wheat marketing arrangements

The Australian Wheat Board (now Australian Wheat Board International) has controlled Australia's wheat exports since 1939. While domestic wheat sales were deregulated in 1989, the export monopoly or 'single desk' has remained largely intact. Bulk, container or bag exports by parties other than the Australian Wheat Board International must be approved by the Wheat Export Authority (the regulator), in consultation with the Australian Wheat Board International. The Australian Wheat Board International exercises veto power over applications for bulk exports and all but one bulk export application has been rejected. The smaller container or bag trade for independent producers also declined sharply recently with the regulator rejecting a significant proportion of applications.

Some business and other groups asked for the single desk arrangements to be abolished, stating that the policy intent of the regulation is not being realised.

This regulatory burden has resulted in a severe diminution of market options available to wheat growers, and a lessening of market competition and opportunities in the broader grains industry. Western Graingrowers, sub. 74, p. 2

The abolition of the single desk would produce higher export prices, more innovation, and better customer service for wheat growers, as has occurred with the abolition of the single desk for other agricultural commodities. Institute of Public Affairs, sub. 127, p. 5

A full review of the *Wheat Marketing Act 1989* was included in the government's legislation review program under NCP in 1996. Although a review in 2000 could not conclude that the benefits of the single desk outweighed its costs, it did not apply NCP principles and recommend its removal. Recommendations to liberalise durum wheat exports and the container and bag trades were not implemented. A subsequent partial review of the Wheat Export Authority in 2004 led to some streamlining of the consent arrangements in late 2005.

The next review is scheduled to take place in 2010. In its review of NCP, the Productivity Commission (2005d) recommended that an independent, transparent review of the future of the single desk export wheat marketing arrangements should be conducted as soon as practicable. The Taskforce endorses this.

Recommendation 5.57

The Australian Government should bring forward an independent public review of the Wheat Marketing Act, to be conducted according to National Competition Policy principles, including an assessment of compliance costs.

Improving Foreign Investment Review Board arrangements

Foreign acquisitions of domestic real estate must be approved by the Foreign Investment Review Board, to ensure that they are not contrary to the national interest. Reflecting community concerns, specific restrictions on foreign investment apply to a number of 'sensitive sectors' such as the media and residential real estate. There are a number of different thresholds that apply to foreign acquisitions, all of which have remained unchanged since 1987 with the exception of those applying to United States' investors which were raised in 2005 under the free trade agreement. All purchases of residential real estate, vacant land or accommodation facilities must have the board's approval — regardless of value. For non-United States' investors, developed real estate valued at \$5 million (heritage listed) or \$50 million (non heritage listed) must also have the board's approval.

More than 90% of applications to the board relate to real estate and most are approved — for example, 98.5% in 2003–04. Notwithstanding ongoing refinements to administrative processes in recent years, this process imposes costs on applicants and taxpayers, creates uncertainty, unnecessarily delays transactions, and creates distortions between domestic and foreign investors for little apparent public benefit. Moreover, abolition of the reporting requirements could be expected to improve Australia's attractiveness to foreign investors in this area.

[Foreign Investment Review Board] processes relating to real estate are the outworkings of a policy which has gone beyond its time. Tourism and Transport Forum Australia, sub. 140, p. 6

Business also expressed a concern that many other types of foreign acquisitions, such as the purchase of an interest in an Australian company, are captured in the approval process as the 'substantial foreign interest' threshold is low at 15% (individual) or 40% (aggregate) ownership of any corporation, business or trust.

Recommendation 5.58

The Australian Government should:

- (a) review the requirement for foreign acquisitions of real estate to obtain Foreign Investment Review Board approval; and**
- (b) raise the threshold for approval of other acquisitions.**

Reviewing '.com.au' domain name extensions

The Australian domain name system is critical infrastructure in the context of modern e-commerce. Responsibility for administering the .com.au extension resides with the industry self-regulatory body, au Domain Administration.

Business raised several concerns about domain name governance and regulation. These included the red tape surrounding the prohibition of trading .au domain name licences in a secondary market; and the requirement that an individual or business must have an Australian business number or a tax file number to acquire a domain name with a .com.au extension.

The Taskforce did not have time to examine these concerns, although it acknowledges that *prima facie* there may be issues which warrant a review.

Recommendation 5.59

The Australian Government should consider conducting a review of .com.au domain name administration.

Commonwealth procurement

The Australian Government is a major purchaser of goods and services through its procurement activities. These activities represent a significant use of public resources, with the value of goods and services purchased by Australian Government agencies in 2003-04 exceeding \$17 billion (ANAO 2005a). The government therefore has a responsibility to ensure it obtains value for money.

The *Commonwealth Procurement Guidelines* establish the core procurement policy framework within which Australian Government agencies determine their practices. The guidelines include mandatory procurement procedures that apply to certain 'covered' procurements (those above a certain dollar threshold), in addition to best practice principles for agencies that apply to all procurements (Department of Finance and Administration 2005). The regulation of procurement is largely principles-based, with individual agencies afforded considerable discretion to determine their practices.

The Taskforce received several submissions detailing business concerns about the costs of participating in government tender processes. Business noted that tendering costs are unnecessarily high in some cases due to:

- duplication in the information required across different tender processes;
- the requirements imposed under a request for tender being out of line with the size and risks of the tender; and
- differences in the way agencies request information.

Reviewing procurement policy

The discretion given to individual agencies to determine their own operational procedures for procurement appears to have resulted in significant variation and apparent inconsistencies in the tender requirements of different agencies. For example, some agencies have chosen to incorporate energy and environmental considerations into their procurement decision-making by adopting elements of the Department of the Environment and Heritage's *Environmental Purchasing Guide* and checklists (2003). Variations in tender requirements increase the total cost to business of tendering for a range of agencies.

Further, requests for tender are seen as having become increasingly complex and legalistic. Some agencies seem to adopt a 'one size fits all' approach to tendering, with requests for tender for smaller projects requiring similar documentation and obligations — including, in some cases, insurance requirements — as for very large, complex projects.

These [requests for tender] have become legal documents rather than specifications. It is not uncommon to receive more than 100 pages of documentation of which only one or two actually cover the required work. One shouldn't have to have a law degree to figure out the minor nuances of RFTs [requests for tender]. SICORE International, sub. 27, p. 2

A recent request for tender for medical services by the Department of Defence involved a phone book sized pile of documentation ... The material may well have been suitable for a major defence project tender, but was irrelevant to the medical practitioners who were interested in the tender. Australian Medical Association, sub. 23, p. 2

In some cases, the additional requirements agencies impose on business seem to be against the spirit of the guidelines. For example, the guidelines state that agencies should ensure that their procurement processes are 'commensurate with the scale, scope, and relative risk of the proposed procurement' and 'do not unfairly discriminate against Small and Medium Enterprises' (DoFA 2005, p. 19). Further, where agencies have decided to adopt additional tender requirements, such as

environmental purchasing requirements, these do not appear to have been subject to the normal regulatory assessment process.

These excessive requirements totally disadvantage small business like ours and favour large multinational consultancies. SICORE International, sub. 27, p. 2

The Taskforce notes that, although the Department of Finance and Administration regularly reviews the guidelines, the reviews have focused on consistency with international obligations and impacts on agencies. The scheduled 2005-06 Australian National Audit Office review of the implementation of government procurement responsibilities under the Australia–United States Free Trade Agreement is likely to have a similar focus. The Taskforce considers that, given the concerns raised by business, a review of the implementation and administration of procurement policies is timely, with a focus on improving the accessibility of government tender opportunities.

Recommendation 5.60

The Australian Government should commission an independent public review of the implementation of its procurement policies, including consideration of:

- the extent to which the procurement practices of departments and agencies are consistent with the Commonwealth Procurement Guidelines;
- the costs (including the impact on small to medium businesses) and benefits of any additional requirements currently being imposed, including green procurement requirements; and
- mechanisms to improve the consistency and administrative simplicity of procurement practices, including request for tender documentation, across departments and agencies.

Reducing duplication of information

The *Commonwealth Procurement Guidelines* specify that agencies must limit pre-qualification conditions to those that ensure a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement. For some classes of procurement, businesses are required to establish their financial and corporate credentials for every tender, despite regularly tendering for government contracts. This can create a significant reporting burden for these businesses, particularly where the information requested across agencies is different, or in a different form.

Currently, tenderers are required to establish their financial and corporate credentials for every government tender. This can create a significant cost (both resources and time) for both the tenderer and the agency. Institute of Chartered Accountants in Australia, sub. 41, p. 15

The Taskforce considers that companies that regularly participate in government tenders should have the option of undergoing an annual assessment of their financial and corporate credentials which is recognised on a whole-of-government basis. Undergoing such an assessment would reduce the paperwork burden for businesses that tender frequently. Businesses choosing not to undergo such assessments would still be eligible to participate in tender processes but would need to establish their credentials for each tender.

Recommendation 5.61

The Australian Government should establish and administer an optional program to assess the financial and corporate credentials of regular tender participants. These assessments should be recognised by all government departments and agencies.

Increasing the public works threshold

The *Public Works Committee Act 1969* requires all public works for the Australian Government that are estimated to cost more than \$6 million be referred to the Parliamentary Standing Committee on Public Works. The \$6 million threshold was increased from \$2 million in 1985. Since then, the threshold has been eroded in real terms, leading to progressively more projects being captured by the Act.

A further issue is that the threshold can be changed only by legislative amendment. Referring the threshold to regulation would ensure it could be revised more readily.

The Taskforce notes that this issue is being considered as part of a broader review of the Public Works Committee Act being conducted by the Parliamentary Secretary to the Minister for Finance and Administration.

Recommendation 5.62

The Australian Government should significantly increase the \$6 million threshold under s. 18(8) of the Public Works Committee Act 1969 which determines the value of public works that must be referred to the Parliamentary Standing Committee on Public Works. The threshold should be updated in line with inflation at least every five years.

The process for adjusting the threshold should be referred to regulation to expedite the adjustment process.

6

Reducing burdens across government

In addition to the specific program or portfolio issues discussed in chapters 4 and 5, business raised a number of more generic issues that apply across all levels of government. These include difficulties in finding and using information to help it comply with regulatory obligations, and the need to provide similar information to different agencies and governments for different purposes. Business strongly supported the idea of harnessing the potential of information technology to help it meet regulatory and information requirements.

But this is only one side of the equation. Solutions in this area need to focus on the way governments interact with business. Ideally, the interface between business and government agencies (and levels of government) should be streamlined and seamless. The reality, despite recent improvements in some areas, is that business must deal with a fragmented, duplicative and often inconsistent system.

These problems need to be tackled systematically across government to make it easier for business to understand and meet its obligations.

The Taskforce considers there is considerable scope to streamline the administration of regulation and improve efficiency across government. Areas where the Taskforce considers gains can be made include:

- accessing information;
- presenting information in a business-friendly manner;
- exploiting information technology;
- minimising duplication of reporting including;
 - standardising data collection; and
 - streamlining business registration.

6.1 Accessing information

The sheer number of regulations and rate of change to them can make accessing relevant information difficult for business. The problems are exacerbated for small and start-up businesses, as they often lack time and resources and some may not have ready access to the internet.

Common themes from submissions included calls for:

- a more consolidated, coordinated and targeted approach to disseminating information;
- more use of plain English in information provided;
- better form design for collecting information; and
- the use of standardised definitions within and across portfolios.

An implicit message is that regulations often appear to be designed to suit the needs and interests of government, rather than the needs and interests of business. This is nowhere more apparent than in the different definitions that apply to commonly used terms in different regulations.

Different regulations use varying definitions when seeking to administer the same businesses. For example, the definition of both an employee and a contractor varies markedly between workers' compensation, industrial relations, occupational health & safety, and income tax laws. Office of the Small Business Commissioner (ACT), sub. 7, p. 4

The Taskforce acknowledges that achieving consistency in definitions is not as easy as it may first seem, as different legislation often gives the same word a different meaning. This is the case for words such as 'employee', 'income' and 'spouse'. While legislative change will occur only progressively, in conjunction with other amendments, the Taskforce considers that departments should start rationalising definitions. Also, care should be taken to verify that any new definitions are consistent with other legislation.

Finding relevant information

Governments have introduced a number of initiatives to improve delivery of information to those intending to start a business and those new to business. Tagging specific agency information with the general www.business.gov.au website will help to ensure business is aware of the one-stop shop for government business information covering all levels of government. In addition, a web-based checklist for business is being developed, initially focusing on Australian Government information, but aiming to also cover state, territory and local government information.

The Taskforce strongly endorses such efforts to make access to information about government regulation easier and cheaper for business, especially small business.

6.2 Presenting information in a business-friendly manner

The way information is presented to business needs to be improved.

Some submissions noted that forms aimed at small business often use unnecessarily complex or convoluted language, rather than plain English. Similarly, forms are not designed with an awareness or appreciation of the user. Pharmacists, for example, noted the difficulties in finding time to focus on completing lengthy or complex forms while providing service to an unpredictable stream of customers with varying needs.

Any information provided to business should be edited in the interests of readability and brevity! Business owners do not have the time ... to read through long, wordy books ... Keep it simple and keep it brief! ... Where information discusses specific numbers, it should be explicit about what the number does or does not include. For example: minimum wage information should state whether it includes superannuation or not, or price examples should say whether they include GST or not. It's not fair to assume that the reader just knows this. Starkis Design, sub. 5, p. 2

Industry associations and individuals reported difficulties in identifying and accessing information about regulatory requirements and in obtaining help to understand their obligations.

The Taskforce considers that much can be done to develop integrated information sources to meet business needs.

Recommendation 6.1

The Australian Government should:

- ensure that where possible departments and agencies use common and consistent terms in developing new regulations and start rationalising different definitions in existing regulations; and
- ensure that government information is presented in a business-friendly manner, including through better form design and use of plain English.

6.3 Exploiting information technology

Many submissions to the Taskforce suggested that information technology could be better used to streamline compliance and improve communication with business about regulation.

The key to reducing red tape does not lie with the word reduction alone, we feel as much can be done by introducing and developing facilities and tools for small businesses to assist them to comply. Easy to use web sites and government supplied IT services should be developed and provided to make it easier for compliance. Council of Small Business Organisations of Australia, sub. 17, p. 5

The Taskforce was also made aware of a number of initiatives that have been developed, or are being developed, using information technology solutions.

Smart forms and cards

The Department of Industry, Tourism and Resources has been developing a free 'smart' form to help business and government by pre-populating business profile data. This is expected to save time completing forms, reduce the number of forms, reduce turnaround times, improve accuracy and increase security.

The service is available through the Transaction Manager located at www.business.gov.au, where some 6000 online government forms are available.

The Australian Government has asked the Department of Human Services to investigate the case for a customer service smartcard. Such a smartcard could replace some 20 existing cards and vouchers used to access government services, and streamline service provision by doctors, pharmacists and concession providers.

Portals

The Australian Taxation Office (ATO) is leading the way in adopting and promoting national electronic compliance mechanisms. The Business Portal, Tax Agent Portal and e-tax allow tax returns to be lodged electronically. All received wide acclaim in submissions to the Taskforce.

The ATO has further enhancements in the pipeline, including populating information into e-tax income tax returns and fully integrating accounting software packages and activity statements.

Electronic tools

Many departments and agencies have already developed electronic tools to help with compliance, or are currently developing them. These include:

- e-record (free, electronic record-keeping software);
- a record-keeping evaluation tool;
- an employee/contractor decision tool for the building and construction industry;
- an export capability tool;
- a Wagenet search facility for awards;
- an e-business guide; and
- a digital signing certificate for government authentication.

Other information technology

Information technology can also be used to reduce paperwork and costs. For example, the ATO is clarifying which fringe benefits tax records can be kept electronically, in place of paper originals. In acknowledging the potential of such initiatives, the Taskforce is also aware that their limited use across government and the largely piecemeal approach taken by government limits the capacity to fully exploit the potential of information technology to minimise the administrative burden on business.

Work also needs to be undertaken to increase business awareness of information technology initiatives and support their uptake by business.

The Taskforce is mindful that some smaller businesses, in particular, may not be computer literate or have ready access to the internet. An issue for regional businesses is access to adequate bandwidth. However, the Taskforce also noted comments by small business representatives on the integral role of information technology in supporting their operations and enabling them to keep abreast of changes in the marketplace, consumer expectations and product and service innovation.

Regulation needs to take advantage of such a rapidly developing business environment.

Recommendation 6.2

The Australian Government should:

- **encourage departments and agencies to systematically use information technology to reduce business compliance costs, and consult with business in doing so; and**
- **provide resources to ensure business is aware of information technology solutions.**

6.4 Minimising duplication of reporting

A number of agencies at all levels of government require businesses to report activity. While the information sought is often much the same, the purposes for reporting are seemingly different — to monitor financial trends, calculate tax liability, ensure conformance with compensation policies, track employment trends, manage grant programs, forecast economic growth, calculate debt, drive new policy and monitor non-compliance.

Sometimes the same data (probably known by a different name) is collected by more than one agency, and sometimes data is collected that can be derived from information another agency already has.

Many participants at the small business roundtable convened by the Taskforce, together with those making submissions, indicated their frustration at having to report the same information to multiple government departments and agencies, and also that agencies do not use information from existing sources.

Greater cooperation and coordination between regulatory agencies should be considered further and regularly to determine whether information required from small business can be sourced, shared and exchanged via a single information depository. City of Stirling, sub. 34, p. 5

The key to reducing the record-keeping and reporting burden lies both within and across agencies and will depend on collaboration to rationalise the reporting and data requirements. This approach, however, is foreign to the way government conducts itself, as each agency has autonomous power to determine what will be recorded and reported, different reporting periods and seemingly different outcomes in mind. It is also very likely that departmental funding and accountabilities are based solidly on data collection, reporting and compliance monitoring.

While smart forms and cards, discussed above, can help minimise duplication of effort in re-entering data, the Taskforce strongly supports a call to allow for information to be shared where possible.

The Taskforce notes that the Australian Bureau of Statistics acts as a clearing house for Australian Government data surveys. All surveys must be approved by the bureau, which reviews proposals for data collections to ensure there are clear grounds for conducting the survey (including that the data is not already collected elsewhere) and that sound statistical methodologies are used. The impost on business is also taken into account when assessing the need for a survey.

However there is still considerable potential for government agencies to rationalise the data businesses have to report. This will require an ongoing and intensive drive from the top, and keeping the urgency of the issues alive across a number of fronts.

It is also acknowledged that government agencies face restrictions under existing privacy principles in sharing personal information provided by businesses with other government agencies. This issue is addressed in section 4.3.

Standardising data collection

The Taskforce is aware of some recent initiatives that will help streamline data collection within the Australian Government. As noted in recommendation 5.55, the Customs Standardised Data Set project is developing a single interface between Australian importers and exporters and Australian Government regulatory agencies to lessen compliance burdens faced by these groups.

More consultation between departments is required to ensure less fragmentation when regulation is being developed. Departments should first consider what information is already being collected by the government before increasing reporting requirements. CPA Australia, sub. 113, p. 11

Developing a business reporting standard

The Taskforce was also made aware of ATO work on a 'business reporting standard' based on a model developed in the Netherlands. Such a standard would require the ATO to identify every data element reported to it so that all duplicate data items can be identified, along with those that can be derived from data the ATO already has. This would rationalise the data businesses need to report, and reduce the data businesses have to keep.

While worthwhile in itself, the Taskforce considers that such a standard would be even more useful if it could be applied across agencies and levels of government. Other agencies seek information from

business, key ones being the Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Australian Competition and Consumer Commission, Australian Communications and Media Authority, Australian Bureau of Statistics, Australian Stock Exchange, and state and territory revenue offices and business registration authorities.

Substantially reduced compliance and administration costs could be achieved by adopting a wide approach to a business reporting standard. The Taskforce sees considerable potential for the Netherlands model to be implemented in Australia (see box 6.1).

Box 6.1 The Netherlands Business Reporting Standards project

A business reporting standards project was recently undertaken in the Netherlands when implementing a requirement mandating electronic record-keeping and information reporting for all businesses.

The initiative was able to reduce around 200 000 data items government requested from business to less than 4000 items (covering all agencies at all levels of government). The annual reduction in reporting costs is expected to be some 750 million.

Any changes to this data model are governed by a whole-of-government approach. The data model is also used by ministers in Cabinet to discuss the introduction of new or changed policy to enable the impact on business to be easily and consistently quantified. Departments must first consider what information the government is already collecting before proposing increased reporting requirements.

Ideally, the work undertaken by the ATO to date would form the basis for the standard, with agencies responsible for identifying and coordinating the data requested from within their own organisations. The entire process would need to be overseen by a coordinating body, and the Taskforce notes that there may be a requirement to amend specific terms in legislation so that there is one definition for each data type. A timetable for implementation of the standard should also be agreed.

Recommendation 6.3

The Australian Government should develop and adopt a business reporting standard within the Australian Government sphere by 2008, based on the Netherlands model and work undertaken by the ATO. COAG should consult with state and territory governments to extend this approach to state, territory and local governments as soon as practical thereafter.

Streamlining business registration

Many submissions called for a more coordinated business registration process that would enable a number of registration processes to be undertaken at the same time, and for business registration details to be shared across all levels of government.

The NIA would like to see a one-stop shop solution for business registration that would apply to all federal and state requirements. Such a register could then be linked to all federal and state regulators and bodies that deal with business. It would have all the contact information about a business, so that any changes would only need to be reported once, and would then be informed to all relevant government agencies. National Institute of Accountants, sub. 107, pp. 7-8

Business support for such an initiative is illustrated by the fact that it appears to regard privacy considerations as a second-order issue compared to reduced compliance costs.

Creating the lowest possible compliance burden means streamlining paperwork and processes for tasks such as tax reporting or licence and registration renewals ...

One measure would be to allow businesses to report and register for taxes under a single identifying characteristic such as an ACN, ABN or customer numbers. This would avoid the unnecessary duplication of information when a business registers for a new licence or tax and would also lower data storage requirements for government departments.

Measures such as this would require different departments sharing private company information. The Chamber understands this raises privacy concerns and creates the potential for inappropriate data use. However, in the 2004 Red Tape Register survey ... almost two-thirds of respondents said they would support government agencies and their departments — both state and federal — sharing their details if it means lower compliance costs. State Chamber of Commerce (NSW), sub. 35, p. 4

Submissions also addressed the issue of misunderstandings over intellectual property rights conferred from trademarks and business names. These partly arise when a business starts up and needs to comply with a number of registration-related regulations, such as registering for an Australian Business Number, registering a business name (through state and territory processes), other business licensing requirements such as company name registration and obtaining a trademark, if required. These activities are frequently disjointed and involve registration by various means — online, over the counter or by mail.

Any redesign of the processes would require close collaboration between Australian Government agencies and state and territory governments. There would, however, be a potentially significant benefit in enabling business to meet its obligations in a coordinated way.

Recommendation 6.4

The Australian Government should:

- **work with the states and territories to streamline business name, Australian business number and related licensing registration processes and report back to COAG; and**
- **improve information available to business about these obligations.**

7

Addressing the underlying causes of over-regulation

Implementing the reforms identified in chapters 4 to 6 would bring significant relief to business, but unless the underlying causes of excessive and poor quality regulation are addressed, it is likely that problems will simply re-emerge, as they have in the past. It has not gone unnoticed that this is not the first ‘red tape’ exercise in recent years. Some businesses were sceptical about whether this review would generate any lasting gains if it focused solely on improving the existing stock of regulation.

While periodic culling of bad regulation is desirable, in the meantime the costs of living with or adapting to such regulation can be high, and periodic changes to existing regulation can bring costs of their own. ‘Prevention is better than cure’ was a theme echoed by many participants. Business and other groups accordingly placed some importance on the need for the Taskforce to address the systemic problems responsible for excessive or inappropriate regulation, and many made detailed suggestions.

The BCA urges the Taskforce to use the opportunity of this inquiry to point Government in the direction of further substantial reforms that will be necessary to improve business regulation. These reforms must include putting in place institutional arrangements to ensure greater accountability and transparency around regulation making, improved processes for assessing the impacts of regulatory proposals and more effective consultation with those affected by regulation. Business Council of Australia, sub. 109, executive summary, p. 2

ICA strongly urges the Regulation Taskforce to consider immediate concerns of business that can be addressed relatively quickly to relieve red tape, together with longer term systemic problems — such as the limited use of consultation, cost-benefit analyses and post-implementation reviews — that will contribute to high costs of regulation in the future. Insurance Council of Australia, sub. 98, p. 3

From our perspective, the Taskforce would make a major contribution towards the objective of containing the cost of business regulation within acceptable boundaries by recommending improvements to the process of regulation. This would help to ensure that additions to the current stock of regulation are well balanced and consistent with an efficient regulatory regime. International Banks and Securities Association of Australia, sub. 71, p. 18

The ATA believes that there are a number of systemic problems in our regulatory frameworks at present, and ... urgent reform at all levels of government is required. Australian Trucking Association, sub. 46, p. 1

As noted in chapter 2, excessive and poor quality regulation has many drivers, not all of which are within the direct control of government. These include a society that is becoming more risk-averse and pressures arising from interest group politics and the influence of the media. Avoiding excessive or inappropriate regulation is thus an issue for society at large, not just for government. But it is government that ultimately determines the exact nature of the policy response, and regulations are made by government and its agencies. How governments go about their core business of making and administering regulation is therefore the key determinant of regulatory outcomes.

The stock of regulation at any point in time is the end result of a sequence of actions. A regulatory 'cycle' typically begins with a perceived economic or social 'problem' being identified for political action. It may either be raised by community or sometimes business groups or anticipated within government. This is followed by the critical phases of deciding what government needs to do and implementing agreed courses of action. Any consequent regulation will then be interpreted, administered and enforced by a government agency in what could be described as the 'active' phase of regulation. Finally, the cycle may eventually conclude with an assessment of how well the regulations are working and whether further actions are needed to improve or replace them.

This 'lifecycle' characterisation of regulation provides a useful frame of reference for considering where problems have arisen and where reforms might be needed. On the evidence available to the Taskforce in this review, it seems clear that issues need addressing across the whole regulatory cycle.

In this chapter, the Taskforce starts by setting out the six principles of good regulatory process that it considers essential for governments to adopt (section 7.1).

It then addresses four systemic areas *within the control of governments* that are critical to giving effect to these principles in order to achieve better regulatory outcomes over the cycle, including reduced compliance burdens. They are:

- introducing better processes for making regulation (section 7.2);
- improving administration of regulation (section 7.3);
- reducing overlaps, duplication and inconsistencies (section 7.4); and
- ensuring regulation remains appropriate over time (section 7.5).

In each area, the Taskforce has identified reforms which it believes would make a significant difference and could be readily implemented. However, a number of the proposed reforms will require major changes in the way governments operate, and these will not occur without political commitment and support. Indeed, the Taskforce is convinced that strong political leadership is the essential precondition for sustained improvement in regulatory outcomes generally.

7.1 The principles of good regulatory process

Good process for developing and administering regulation requires application of six key principles, all of which were generally recognised as important by business and others making submissions to the review, and are strongly endorsed by the Taskforce.

- 1) Governments should not consider introducing or amending regulation unless a case for action is established. What is the problem being addressed? Why are existing regulations inadequate to deal with it? Why are (additional) measures warranted? In considering these questions, it is important to recognise that not all 'problems' will justify (additional) government action. For example, it will generally make more sense to accept a certain level of risk than to implement measures that seek to minimise or eliminate all risk.
- 2) Where a *prima facie* case for action is established, a range of feasible policy options need to be identified and their relative merits rigorously assessed. This should include assessing the costs and benefits of regulatory alternatives, including quantifying compliance costs and undertaking risk assessments where appropriate. Self-regulatory and co-regulatory options also need to be investigated.
- 3) The option that generates the greatest net benefit for the community (taking into account economic, social, environmental and equity impacts) should be adopted. Importantly, this may not be the option that is easiest to administer. For instance, regulatory bodies often favour the control afforded by prescriptive regulation, but principles-based or performance-based regulation will often confer greater benefits overall.

- 4) There needs to be effective guidance to relevant regulators and regulated parties as the regulation is being implemented. Regulators need clear guidance on the policy intent of regulations and how they are expected to administer and enforce them. (A significant additional mechanism to provide such guidance is the ministerial Statements of Expectations recommended by the Uhrig Review (2003) — see section 7.3.) In turn, regulated parties need to be able to ascertain whether they are complying with a regulation and the implications of not doing so.
- 5) There is a need for mechanisms, such as sunset clauses and periodic reviews, to ensure that regulation remains relevant and effective over time. These should encompass removing regulation made redundant by changing conditions, or amending regulation to reflect new circumstances.
- 6) There needs to be effective consultation with regulated parties at all stages of the regulatory cycle. It is important that stakeholders are consulted both at an early stage when policy options and approaches are being considered, and later when the detailed design features are being bedded down. Stakeholders also need to be consulted when regulation is reviewed or reformed after implementation.

In the Taskforce's view, if these principles had been consistently applied, less regulation would have been made or retained, and the implementation of the regulation that was made would have provided much less cause for complaint.

This is not to suggest that good process is a rarity. A number of submissions highlighted positive experiences and there would be many other examples. Equally, though, the problems identified in this report demonstrate that much regulation has not been subject to good process.

Recommendation 7.1

The Australian Government should endorse the following six principles of good regulatory process:

- **Governments should not act to address 'problems' until a case for action has been clearly established.**
 - This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action.
- **A range of feasible policy options — including self-regulatory and co-regulatory approaches — need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.**
- **Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.**
- **Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.**
- **Mechanisms are needed to ensure that regulation remains relevant and effective over time.**
- **There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.**

These principles are discussed further in sections 7.2 to 7.5, along with mechanisms for embedding them in regulatory practice.

7.2 Improving regulation-making

The problem

The Taskforce agrees with business groups that many of the regulations in need of reform exist because of deficiencies in the processes and institutions responsible for them. ‘Regulate first, ask questions later’ is how some business representatives characterised the approach. It seems that policy-makers and regulators have often responded to new social or economic issues with knee-jerk regulatory solutions.

In accordance with the principles set out above, the Taskforce considers that no regulation should be introduced unless the need for government action *and* the superiority of the preferred option have been transparently demonstrated. This is not asking too much. Business has a right to expect that governments will follow good process when making decisions that impact on it, as indeed does any section of the economy or society.

In the Taskforce's view, the key areas where reforms to improve regulation-making are most needed are:

- analytical standards when assessing regulation;
- consultation processes when developing regulations; and
- the mechanisms for enforcing good process.

Better analysis

Many participants agreed that a key failing in regulation-making is that the costs of regulation are not adequately considered. In particular, there was concern at the lack of attention given to compliance costs and that there was generally no attempt to quantify such costs. Unlike government spending programs, most of the costs of regulation are ‘off-budget’ and lacking in transparency, making them convenient to ignore.

The first step to improving the compliance burden is to understand and quantify it. CPA Australia, sub. 113, p. 8

The Taskforce agrees with business that this needs to be addressed as a matter of priority if burdens on business are to be alleviated in any sustainable way. It therefore welcomes the Australian Government's recent announcement that more rigorous cost-benefit analysis is to be used in regulation-making. The Taskforce understands this would also require use of the Office of Small Business Compliance Costing Tool (box 7.1).

Box 7.1 Office of Small Business Compliance Costing Tool

The Office of Small Business, within the Department of Industry, Tourism and Resources, has developed an interactive costing tool that helps measure the compliance costs of regulation and thus the impact of regulation on business (both large and small).

The tool enables the user to systematically cost the various activities or tasks a business is required to undertake to comply with a particular regulation or policy option. Categories of cost include ‘notification’, ‘education’, ‘permission’, ‘purchase cost’, ‘record-keeping’, ‘enforcement’, ‘publication and documentation’, ‘procedural’ and ‘other’.

The costing tool provides a standardised and streamlined process for a key input to policy development and complements existing regulatory process, such as the Regulation Impact Statement.

The availability of an easy-to-use method for costing regulation should encourage policy-makers to assess the compliance burden of both proposed and existing regulations. In so doing, it should also lead to more effective consultation with business to generate the data the model depends on.

It is also important to apply cost-benefit analysis to different options; not just to the proposed or preferred option. In many cases a regulatory proposal may yield a net benefit to society, but at higher cost than an alternative with better design features (for example, a more light-handed or less prescriptive approach).

Such a comparative exercise should include, as a benchmark, the option of choosing *not* to regulate. It is also important that the possibility of self-regulatory alternatives be canvassed as a matter of course. In some circumstances, self-regulation can achieve policy objectives at significantly lower cost (see box 7.2). The potential gains warrant such light-handed approaches being given serious consideration, including when existing regulation is being periodically reviewed.

Box 7.2 What role for self regulation?

Self-regulation is a regulatory regime or arrangement developed, administered and enforced by business. It can apply to a range of market conduct, consumer protection, public health and safety standards and rules which are not part of explicit government regulation, particularly where there are no strong public interest concerns or the risks or consequences of an adverse event are not great.

The potential advantages of self regulation include flexibility and responsiveness. Such arrangements draw on business experience and can provide tailor-made solutions, which can be amended quickly when circumstances change. Self-regulation does not impose costs on government. Quick and cheap dispute resolution processes can also be an important advantage.

Self-regulation can also be a viable and effective alternative to government regulation where there is:

- adequate coverage of the industry concerned;
- a viable industry association, with members committed to achieve agreed goals; and
- evidence that effective sanctions and incentives can be applied.

Self-regulation can also involve 'best practice' solutions that go beyond those required by government regulation. The closely related area of co-regulation, where government provides statutory backing or assistance with the development of codes administered by business, can also be effective.

A number of submissions promoted the benefits of self-regulation (including co-regulation), highlighting examples where it appeared to be working well. These included: the Agsafe Guardian product stewardship program; the Scheme for Phosphorus Content and Labelling of Detergents; the General Insurance Code of Practice; the Australian Communications Industry Forum; and a number of operational standards and protocols developed by the Australian Financial Markets Association.

Potential disadvantages of self-regulation can include the risk that it may confer an advantage on some businesses over others. Self-regulatory systems can be costly for business to develop and implement, and can also be difficult to enforce. There is also a risk that self-regulatory regimes can overlap with existing regulations, thus increasing compliance burdens.

Sources: *Commonwealth of Australia* 1997; Agsafe, sub. 132; Australian Consumers' Association, sub. 129; Insurance Council of Australia, sub. 134; Optus, sub. 45; International Banks and Securities Association of Australia, sub. 71; ACCORD Australasia, sub. 85.

The Taskforce also endorses business calls for more rigorous risk analysis where relevant as part of the assessment process. A number of submissions noted that regulations have sometimes sought to eliminate the possibility of an adverse event, rather than being based on a careful assessment of the risks involved and what response or action would be proportionate to or best targeted at the source of the problem. The submission from the Science Industry Action Agenda (sub. 56, p. 4) observes that the government's regulation-making handbook, *A Guide to Regulation* (ORR 1998), does not give sufficient weight to risk analysis and assessment. The Taskforce considers that it should do so,

including by providing additional guidance on methodologies. Further, it should include a statement explicitly rejecting the notion that zero risk is a policy goal.

On the available evidence, it seems likely that there would be a skill deficit within departments and regulators in meeting these analytical requirements. In recognition of this, the Office of Small Business has undertaken to provide assistance in the use of its costing tool. In the Taskforce's view, applying this tool to regulatory proposals that could have material impacts on businesses would be a major step forward. However, such estimates would need to be embedded within a broader analysis of costs and benefits of different options, including analysis of risks. In some cases, this can be done by consultants. But there would be advantages in building a capacity within departments, both to monitor such commissioned work and to undertake the analysis. To this end, consideration should be given to explicitly broadening the Office of Regulation Review's (ORR) training/advisory role to include providing technical assistance to departmental staff on cost-benefit analysis (including risk assessment).

Recommendations 7.2–7.4

- 7.2 In relation to the Australian Government's decision that rigorous cost-benefit analysis be employed in regulation-making, which the Taskforce endorses, such analysis should be used to compare different regulatory options, and should incorporate adequate risk analysis.**
- 7.3 Use of the Office of Small Business Compliance Costing Tool should be mandated for all regulatory proposals that potentially involve material compliance burdens.**
- 7.4 Departments and agencies responsible for making regulations should build a capacity to undertake cost-benefit analysis (including risk assessment).**
 - The government should consider explicitly broadening the Office of Regulation Review's training/advisory role to include providing technical assistance on cost-benefit analysis.**

Coordinated and comprehensive consultation practices

As outlined in section 7.1, good regulatory process also requires effective consultation with regulated parties at all stages of the regulatory cycle. This applies to consultation by those developing (or reviewing) regulations and by those administering them. Engaging in consultation provides regulators with access to information and perspectives that might otherwise not be available, particularly about the likely compliance costs of different options. It can thereby lessen the risk of unintended consequences from intervention. It may also enhance acceptance of (and compliance with) a regulation once adopted.

However, most business groups saw existing consultation practices as inadequate. Indeed, many saw this as the most important deficiency in regulation-making. Key criticisms included:

- lack of opportunity to comment at an early stage, before a preferred option is 'locked in';
- little opportunity to provide feedback on the 'details' when regulation is closer to finalisation (business participants were emphatic that the devil is often in the detail);
- a reluctance to consult again when regulations need to be reviewed;
- lack of time to provide feedback when asked for it;
- the perfunctory nature of much actual consultation (little 'real listening') which, in any case, is often based on a *fait accompli*; and
- as a result, little evidence that consultation had led to better regulation in many cases.

One of the prime causes of poor regulation is inadequate consultation with relevant stakeholders during the regulatory making process. Often regulators conceive regulation by focusing on the needs of ‘the problem’ without consideration of the flow on effects to small business. Victorian Automobile Chamber of Commerce, sub. 33, p. 3

It should be noted that in many cases, poor or excessive regulation is not the result of bad policy, but rather the implementation of this policy. The Institute strongly believes that in many cases this occurs due to inadequate consultation processes — not only between Government and stakeholders impacted by regulation, but also between policy makers and regulators within government. Institute of Chartered Accountants in Australia, sub. 41, p. 4

[T]o the best of industry’s knowledge, the regulator had not consulted with any industry members before it asked the legislative drafter to incorporate the changes into its instrument. An informal consultation with even one of the telecommunications carriers would have quickly revealed grave concerns about the nature and scope of the proposed changes, as well as the substantial cost impost on the industry [estimated in excess of \$700 million per annum] that was in prospect. Optus, sub. 45, p. 7

The process of consultation with industry all too often occurs after government has already decided to regulate. Industry input at this stage is most often ignored. National Credit Union Association, sub. 38, p. 3

[T]here has been an increasing trend for government agencies to set almost impossibly short periods in which industry must lodge submissions. If one might be a little cynical, it almost seems that in some instances government does not really want to listen to industry, but they want to be able to say they have consulted. National Association of Retail Grocers of Australia, sub. 40, p. 11

In the case of the mandatory horticulture code of conduct ... Public hearings during the consultation process were held in seven capital cities around Australia and two regional locations, namely Mildura and Atherton. For an industry consisting of producers and wholesalers largely based outside metropolitan areas, we believe these public hearings should have been more accessible ... Central Markets Association of Australia, sub. 141, p. 2

[We suggest] [i]ntroduction of a regulated minimum time period of public consultation regardless of its ‘urgency’; more effective consultation mechanisms that mitigate against the ‘we’ve had one consultation meeting and therefore we’ve consulted broadly’ mentality [and] ... more substantive feedback to contributors. Australian Trucking Association, sub. 46, pp. 8–9

The Taskforce should recommend formal guidelines be adopted for effective engagement with business on policy initiatives, from development of the conceptual framework through to the delivery of regulatory instruments in the form of law and associated regulations. International Banks and Securities Association, sub. 71, p. 21

[T]he Taxation Institute strongly believes that we need to focus on improving the processes around the making of our tax laws. In particular, better use of consultation with stakeholders needs to be made in the early stages of the drafting of the law. Experience shows that the end result of such consultation is tax law that is for the most part well formed and workable. Taxation Institute of Australia, sub. 78, p. 1

AFMA encourages continuing consultation before and during the drafting stages of legislation and stresses the need for the final draft of all bills to receive industry-wide consultation before enactment. Australian Financial Markets Association, sub. 101, p. 2

Where consultation has been effective, the outcomes appear to have been positive. A number of examples were cited in submissions and at Taskforce roundtables.

- One is the process for refining the financial services reforms led by the Parliamentary Secretary to the Treasurer. This was generally seen as a considerable improvement on the consultations associated with developing the financial services reforms legislation itself.
- A second and current example is the development of anti-money laundering regulation, where industry was initially presented with a proposal which would have been very costly to implement — one major business estimated the cost at \$100 million for it alone (Business Council of Australia, sub. 109, p. 42). Following this ‘false start’, however, consultation has apparently greatly improved and, provided it is followed through, business is hopeful of achieving a more balanced and less costly regime.

A recent government survey found that only 25% of regulatory agencies have engaged in consultations with the public when developing regulations (Australian Public Service Commission 2005, p. 56). Consultation practices for developing regulations seem to vary appreciably, for no apparent reason. At one extreme, some regulatory bodies have stringent consultation requirements formally laid down in legislation or guidelines. At the other extreme, there appears to be almost total discretion in many areas of government regarding if and when to consult. This has led to a patchy record of consultation that has often not been commensurate with the potential impact of a regulation.

The Taskforce considers that the importance of consultation to achieving good regulatory outcomes is such that a whole-of-government policy is warranted. This should be based on a number of principles that can be applied across different areas of regulation. In the Taskforce’s view, useful guides are provided by:

- the recommendations in the Board of Taxation’s 2002 report (see box 5.1);
- the United Kingdom Government’s Code of Practice (see box 7.3); and
- the International Council of Securities Association’s ‘Statement on Consultation Practices’ (see International Banks and Securities Association, sub. 71, attachment 1).

In the Taskforce’s view, it is particularly important that consultations are conducted early in the process, when different approaches to an issue can still be considered. For new or amended regulations of major significance, a policy options paper (green paper) should be released as a basis for consultation.

As regulation can impose higher burdens on smaller businesses, it is also important that consultation strategies be designed to facilitate input from the small business community, where it represents a significant share of the industry being regulated, and that this input be considered when examining the merits of a regulatory proposal and design features to simplify compliance.

That said, the Taskforce recognises that less extensive and lower-key consultation processes will be appropriate for minor amendments and regulatory issues of less significance, provided that they provide genuine opportunities for input by affected parties, even if only to confirm that the impacts are not significant.

The Taskforce also accepts that, at certain points and for some issues, the need for Cabinet confidentiality — such as for national security, or commercial-in-confidence matters — may limit the scope for public consultation. Even so, there would usually be scope for targeted consultation involving protective mechanisms to preclude the premature disclosure of sensitive information where necessary. In a few cases, it may not be possible to consult even on a restricted basis. An example could involve new initiatives to deal with tax avoidance, although even here there may be value in undertaking restricted ‘early options’ consultation with specialists outside government.

Box 7.3 UK Government's code of practice on consultation

In January 2004 the UK Cabinet Office launched a revised code of practice on government consultation. The code applies to public consultations by all government departments and agencies, including consultations on European Union (EU) directives. The code details six main principles that public consultations must follow. These are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Source: United Kingdom Cabinet Office 2004

For complex and more significant regulatory issues, it is particularly important that the detail of regulation, as it approaches a more advanced stage, also be tested with relevant business groups as the devil generally is in the detail. Allowing scope for comment on the actual draft instrument would seem essential on complex matters with significant potential impacts on business and the broader community. If there are circumstances where this is not possible, there should be provision for post-implementation reviews (see section 7.5).

While general principles such as these provide a good starting point, it is essential that a more detailed approach be adopted in specific policy areas to ensure that consultation does not slip back to mere 'lip service'. An example of how this can be done for a particular sector is shown in box 5.1 in chapter 5.

To provide more effective consultation, the Taskforce sees merit in establishing a business consultation website. The New Zealand Government has a good model (www.businessconsultation.govt.nz). The website provides the opportunity for business owners, operators and others to register their preparedness to participate in consultation on particular issues; and automatically notifies interested parties of relevant public consultation processes. It should be recognised that it takes two sides for consultations to work well — business needs to engage when consultation opportunities are provided if it wants to affect the development, implementation and enforcement of particular regulations.

More generally, a consultation *culture* should be encouraged among policy-makers and regulators, involving demonstrated commitment from senior staff, adequate staffing and resourcing of consultation, and an appropriate incentive structure to promote consultation (by including it in business plans, staff performance and the like). Further, requirements for effective consultation should apply not only to the development of regulations, but also to the administration of regulations and to post-implementation reviews (see sections 7.3 and 7.5).

Recommendations 7.5–7.7

- 7.5 There should be a whole-of-government policy on consultation requirements, setting out best practice principles that need to be followed by all agencies when developing regulation.
- The policy should be applied rigorously to all major initiatives, and cover all aspects of developing regulation, from the policy proposals/‘ideas’ stage through to post-implementation reviews. Where consultation requirements are not followed, reasons should be given.
- 7.6 For matters of major significance, an initial policy ‘green paper’ should be made available to relevant parties; and, prior to finalisation, the details of complex regulations should be tested with relevant business interests, including through exposure drafts for significant matters.
- 7.7 A business consultation website should be established to allow registration of businesses prepared to be consulted on particular regulations, and to automatically notify businesses and government agencies of consultation processes in areas where they have registered an interest.

Stronger enforcement of ‘good process’ in developing regulations

While government endorsement of better analysis and consultation when developing regulations is a necessary first step, it is also necessary to have measures to ensure that such requirements are complied with.

In recognition of the need to follow good process in regulation-making, in 1997 the government mandated that departments and agencies developing regulation with impacts on business or competition should prepare a Regulation Impact Statement (RIS). This is intended to provide a transparent record of whether key steps in good policy development have been followed, while summarising the results for the benefit of Cabinet or other decision-makers (see box 7.4).

While most participants in this review expressed strong support for the RIS process, they also argued that the requirements needed to be stronger and better enforced.

Robust and dynamic regulation impact assessment processes overseen by independent regulatory gatekeepers are essential if unwarranted costs, including excessive compliance burdens on business, are to be addressed before new regulatory proposals pass into law. National Competition Council, sub. 32, p. 1

A robust RIS must form the basis for greater transparency in regulation through better information of causal relationships and possible alternatives. A clearly defined RIS process also acts as a buffer against political expedience in times when considered policy can be difficult to implement. Australian Chamber of Commerce and Industry, sub. 25, p. 37

In practice, the potential of RISs has not been realised ... The BCA is firmly of the view that the RIS process must be retained, but must also be overhauled to make it more effective and to make those preparing RISs more accountable ... Business Council of Australia, sub. 109, p. 31

We believe that a significant improvement could be achieved if the RIS process was enhanced and it enjoyed a reputation amongst agencies similar to the hard line reputation of, for example, the Department of Finance scrutiny of agency spending proposals. Optus, sub. 45, p. 5

Box 7.4 The Australian Government's Regulation Impact Statement requirements

Since 1997, RISs have been mandatory for significant regulations that have the potential to affect business or restrict competition, including international treaties. They are the responsibility of departments and agencies preparing regulation, with compliance monitored by the ORR.

RISs are also used by states and territories, and internationally, being endorsed by the OECD. They address a number of key elements that collectively comprise good regulatory process. These include an assessment of the problem or issue being considered and a clear statement of the objective of government action. The impact statement should then identify feasible options, include a cost-benefit, impact and risk analysis of each option, and provide justification for the preferred option. It should also summarise the consultation process and stakeholder views on the issues being addressed. In addition, the impact statement should address how the regulation will be implemented and when it will be reviewed.

The RIS process is intended to ensure that all relevant information is presented to the decision-maker, such as Cabinet. Once a decision is made, the RIS is tabled in Parliament or otherwise made public.

The role of the ORR, as outlined in its charter, is to provide impartial advice to departments and agencies developing regulatory proposals on whether a RIS is necessary, and to assess the adequacy of all impact statements prepared. These assessments are not made public at the time a regulatory proposal is developed, but the ORR subsequently reports (annually) on departments' and agencies' compliance with the RIS requirements. It also provides training and guidance to officials involved in reviewing, making and administering regulations.

Sources: ORR 1998; PC 2005f, pp. 6–7.

The Productivity Commission's annual publication, *Regulation and its Review*, reveals that while RIS compliance rates have generally improved since 1997, they remain variable across portfolios and over time (with a drop in the most recent year recorded). Moreover, compliance has tended to be lowest for more significant or controversial regulations, where good process is most needed. Even for those RISs assessed as 'adequate', the ORR has observed that many contain rudimentary analysis of options and indicate limited consultation. In many cases, RISs appear to have been an afterthought, merely justifying decisions already taken.

Strengthening Regulation Impact Statement requirements

The Taskforce considers that the RIS requirements need to be strengthened to reflect the analytical and consultation requirements discussed above. This would mean that:

- RISs should be required to explain why existing regulations would not suffice to deal with the problem being addressed;
- for regulations deemed likely to have material impacts on business, appropriate cost-benefit analysis (including risk assessment) of all options should be undertaken and compliance costs quantified; and
- where a RIS is required, a draft version should be made available for comment (as is required by COAG for making national regulations and standards). The draft should have sufficient detail to enable meaningful feedback.

In addition, as discussed in section 7.4, RISs should explicitly cover relevant existing regulations *at all levels of government*. They should also document directly relevant international standards and, where a proposed regulation differs from them, identify the implications and fully justify this variation.

Failure to meet any of these requirements should result in a RIS being deemed 'inadequate'.

In determining whether a particular RIS meets the adequacy requirements, it is important that the extent of analysis and consultation required be proportionate to the significance of the regulatory issue and its potential impacts. For example, whereas substantially quantified cost-benefit analyses will be warranted for regulations with major impacts, analyses entailing a greater use of qualitative assessments may be sufficient for less significant proposals.

The ORR currently applies a proportionality test in assessing the adequacy of RISs. The Taskforce endorses this, but considers that the bar for analysis and consultation generally needs to be set higher than it has been. The Taskforce also notes that use of the Office of Small Business Costing Tool could assist in initially classifying the likely 'significance' of a regulatory proposal (at least in terms of its impact on business compliance costs), and thus the level of analysis and extent of consultation that would be required for the associated RIS to be deemed adequate.

Enforcing compliance with the requirements

In addition to strengthening the RIS requirements to improve the extent and quality of regulatory analysis, it is also necessary to have appropriate incentives for regulators to comply.

Currently, for regulatory proposals judged to have a significant impact on business, enforcement of good process through the government's RIS requirements appears to depend mainly on the transparency of the ORR's assessment of compliance. This appears not to have exerted sufficient discipline in many cases and has led some to suggest that the office be moved to a central policy department, where it could presumably exercise more direct influence or power. However, like the National Competition Council, the Business Council of Australia and others, the Taskforce considers that the integrity of the vetting and reporting role of such a body requires it to continue to be independent of the policy arm of government.

The ORR's independence is currently secured by its location within the Productivity Commission, which itself has statutory independence (PC 2005f). If the office were to be relocated, it would either require its own statute (as some have suggested) or need to be placed in another independent organisation, such as the Australian National Audit Office.

The efficacy of any gate-keeping requirements clearly depends on them having strong political support. A number of senior people in business and in government contrasted the strong disciplines on budgetary spending proposals, including through the Expenditure Review Committee, with the apparent lack of attention given to a regulatory proposal's potential costs and benefits. If ministers and senior officials are seen as placing importance on the costs of regulation, and on good process generally, this will cascade down to those developing regulations.

In the Taskforce's view, the single most important way of strengthening compliance with the principles of good process would be for the government to adhere to a rule that regulatory proposals that fail to meet the RIS requirements will not be permitted to proceed for consideration by Cabinet or other relevant decision-maker, except in specially defined circumstances. Together with stronger analytical requirements, this would ensure the processes were taken more seriously and at an earlier stage.

A stricter requirement that regulation be subjected to established assessment processes could also usefully help politicians resist public pressure to 'do something' about short-term or possibly one-off issues. However, where there was genuine cause, the obligations could be relaxed by the Prime Minister (as is currently the case) provided a post-implementation review were conducted (see section 7.5).

The National Competition Council and some key business groups suggested that the status of requirements for good process be further elevated by *legislating* them, as some states have done. The Taskforce sees value in this, particularly for subordinate regulation, which generally receives less scrutiny. This could be readily achieved by re-introducing such requirements into the Legislative Instruments Act. (Provisions previously requiring the preparation of a Legislative Instruments Proposal for all regulation were dropped during the long journey of the Bill into law.)

The political profile attached to good regulatory practice would also be enhanced by elevating ministerial responsibility for overseeing the government's regulatory processes to Cabinet level. A minister with such responsibilities could play a more influential role in promoting and encouraging compliance with the government's regulation-making requirements, and could act as arbiter where the adequacy of a RIS is disputed. (The minister concerned could also oversee implementation of the reform program emanating from this review — see chapter 8). This systemic role would complement the responsibilities individual ministers or parliamentary secretaries have for the substance and detail of legislation in their portfolios.

Top-down promotion of good regulatory practice within government agencies may also be more actively pursued if the performance agreements of department heads referred to achieving compliance with the government's best practice requirements.

Recommendations 7.8–7.12

7.8 Grounds for a RIS to be deemed 'inadequate' should include:

- failure to document relevant existing regulations *at all levels of government* and explain why they do not suffice;
- inadequate cost-benefit analysis of regulatory options;
- failure to quantify compliance costs of options;
- inadequate risk analysis and assessment; and
- failure to document directly relevant international standards and, where a proposed regulation differs from them, to identify the implications and fully justify this variation.

7.9 The Australian Government should institute arrangements to ensure that, unless there are exceptional circumstances, a regulatory proposal with material business impacts cannot proceed to Cabinet or other decision-maker unless it has complied with the government's RIS requirements.

7.10 Cabinet should endorse a revised *Guide to Regulation*, containing strengthened requirements on departments and agencies making regulation.

7.11 The Australian Government should seek to amend the Legislative Instruments Act to include requirements for good regulatory process.

7.12 Ministerial responsibility for overseeing the government's regulatory processes and reform program should be elevated to Cabinet level.

Resourcing

While the evidence before the Taskforce on the causes and effects of excessive and poor quality regulation indicates that better regulation-making processes would generate substantial benefits over the longer term, higher standard analysis and more effective consultation processes will come at some additional administrative cost to government. Recent ORR data suggests that, for many proposals, the average costs of RISs to date have not been high. However, this may not be a good guide to what might be needed to follow best practice — for example, when policy options (green) papers for regulatory proposals of major significance are released.

Even so, the additional costs to government are likely to be small compared to the compliance costs to business of many regulations — or to the costs to government of fixing bad regulations. In this context, a somewhat higher administrative cost for government in establishing regulation needs to be balanced by the potential for ongoing administrative savings, to business and government alike, of well designed regulation. Further, provided the proportionality principle is applied in determining the level of consultation and analysis undertaken for any particular regulatory proposal, the additional 'burden' on government and its agencies in undertaking good process would not be excessive or unnecessary.

In the Taskforce's view, the additional costs to government of good process should not be used as an excuse for ongoing under-performance. Rather, proper analysis of regulations before they are implemented should be seen as a core requirement — not an optional extra. Accordingly, the onus should be on government to make the case for any regulatory action it takes, and allocate the necessary resources.

At present, individual departments and agencies are responsible for resourcing their own regulation development processes. Being held to higher standards, while increasing the administrative cost of developing particular regulations, might also act as a useful brake on the aggregate number of regulations that they develop. However, were significant resourcing issues to arise, agencies would have the option of making a case for additional funding through the budget process.

Recommendation 7.13

Government departments and agencies should ensure that their capacity to undertake good regulatory analysis, including appropriate consultation on regulatory proposals, is adequately resourced.

7.3 Ensuring good performance by regulators

The problem

Raising the hurdles for regulation-making, and enforcing them effectively, would clearly better control the flow and quality of new regulation, and hence improve the stock of regulation over time. However regulation does not exist in a vacuum. Key determinants of regulatory outcomes include not only how regulations are specified, but also how they are interpreted and enforced by regulators.

By some calculations, there are roughly 600 regulatory bodies across Australia's federation, with around 100 operating at the Australian Government and national levels. It would be fair to say that business groups were not impressed with their performance on the whole. Indeed, many argued that regulators were a large part of the problem and that sustainable improvements in regulatory outcomes depended on changing regulators' behaviour and performance.

Some concerns with how various regulators operate were briefly outlined in chapter 2. The full list of allegations made by business is a long one, and includes:

- excessive prescriptiveness in interpreting statutes (although sometimes business itself seeks more certainty, and hence more detail);
- lack of risk-based strategies in enforcement;
- harsh or rigid enforcement actions, often directed at large companies, as the easiest targets;
- misuse of the media to publicise pending actions or perceived misdemeanours;
- micro-management in overseeing compliance, including excessive or inappropriate demands for information;
- an adversarial attitude to or general distrust of business people;
- lack of effective communication with business about proposed regulatory changes, interpretations or investigations;
- lack of informal guidance about what constitutes adequate compliance;
- over-reach or undue ambition in seeking to avoid undesirable outcomes such as corporate failure, consumer losses or other adverse events; and
- going beyond implementing or administering policy to what amounts to de facto policy-making.

In addition to the contribution to the compliance burden made by legislation itself, the approach adopted by the regulators and enforcers of legislation can add considerable compliance costs. In particular, compliance costs can be unnecessarily high where there is a lack of delineation between the roles of regulators, a lack of clarity over their powers, confusion over their objectives in exercising those powers and a lack of co-ordination between regulators. The attitude of the regulator to the industry under regulation also has a major impact on compliance costs. Business Council of Australia, sub. 109, p. 18

[Regulators] are responding to the all too often one-sided incentives that push in the direction of trying to eliminate failure, rather than applying a balanced approach to regulation. Finance Industry Council of Australia sub. 77, p. 30

If the regulator assumes that boards and management have a natural inclination to act recklessly or criminally then the result will be heavy handed regulation and compliance monitoring which is expensive and inefficient but still unlikely to deter those who deliberately act dishonestly. Challenger Financial Services Group, sub. 126, p 7

While such concerns were expressed about a cross-section of regulators, there was a particular focus on the financial and corporate regulators, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) (see chapter 5). This was perhaps not surprising, given the major recent changes in financial regulation and its administration that have occurred since the Wallis Review (1997). Business concerns with particular regulators have often coincided with periods of change, either in the rules or in markets. For example, a few years ago the Australian Taxation Office (ATO) was heavily criticised during implementation of the GST, but not so in this review. Similarly, business strongly criticised the Australian Competition and Consumer Commission (ACCC) a few years ago for its approach to merger and other regulation, culminating in the Dawson Review (TPARC 2003), whereas it hardly rated a mention in this review, outside the telecommunications sector.

In fairness to the regulators, it should also be said that they dispute many of the criticisms made of their performance. A reasonable summary of their position is that they are often criticised for doing the job government and the community expects them to do. At the same time, it is also apparent that they are changing the way they do things in response to some concerns and criticisms (including in the period since this Taskforce was initiated). Behavioural changes in the past also help explain why the ATO and ACCC are now viewed somewhat more kindly by business. (For example, the ATO has established a user-friendly internet portal for business and tax agents, and a Listening to the Community Program.)

In the time available to it, the Taskforce has obviously not been able to make any detailed assessment of the various claims and counterclaims about the performance of particular regulators. However, what seems clear is that the actions and attitudes of regulators, like those of business, are shaped by the incentives they face as well as by the requirements placed on them.

For example, the risk aversion exhibited by regulators, which business groups rightly see as a root cause of many of the problems they experience, is to be expected in an environment where any adverse event within the regulator's field of influence is held up publicly as a 'failure', while any beneficial impacts on market performance that a regulator may have are not directly observable and go unremarked. Hence the incentives facing most regulators are to err on the side of being strict in their enforcement activities. In the case of the financial regulators, this has no doubt been exacerbated by HIH Insurance and its aftermath and encouraged by government. (A similar phenomenon occurred in the USA following the Enron collapse — although Australia has at least avoided some of the regulatory excesses of

the Sarbanes-Oxley Act.) To that extent, some correction may be expected to occur naturally over time, but the underlying asymmetry in incentives will remain in the absence of changes to the wider regulatory environment.

A similar issue also arises with the risk aversion of regulated entities. Comments to the Taskforce indicated that the severity of penalties for breaches of regulation have been a major driver of business's approach to managing risks. For example, some business groups noted that the personal liability attaching to various directors' duties had led to a very conservative approach by directors, contributing for example to the blow out in product disclosure statements (see chapter 5), to the detriment of business development.

In the Taskforce's view, Australia has generally been well served by its regulators and its regulatory systems generally compare favourably to those overseas (International Monetary Fund (2005); World Bank (2005)). But more needs to be done to enable regulators to pursue a balanced approach. Indeed, the Taskforce considers that actions are needed in three broad areas:

- the policy context;
- the accountability framework; and
- communication mechanisms and institutions.

Clarifying policy intent

The regulator's job is to administer and enforce government policy laid down in legislation. It is therefore crucially important that the statutes provide appropriate guidance about what regulators should seek to achieve, and how.

The appropriate degree of prescription or detail in legislative standards is a matter for judgement. There is a continuum from prescriptive to principles-based. Each has strengths and weaknesses, and their relative merits will depend on the circumstances.

In recent years there has been a move away from prescriptive to more performance-based or principles-based regulatory standards. The Taskforce broadly supports this shift, particularly in complex or rapidly changing fields, where the most appropriate ways of meeting policy objectives may not be obvious to legislators or be likely to vary across regulated entities or over time. In these circumstances, there is much to be said for establishing the key principles and objectives in legislation and allowing regulators discretion in how they are applied, including through subordinate or quasi-regulation.

Many business groups shared this perspective. Their principal concerns were about the extent of the discretion being provided to regulators and how it is being exercised. This was most manifest in relation to financial services, with a common view being that the principles-based approach in the Financial Services Reforms Act had been undermined by overly prescriptive subordinate regulation and rigid enforcement (see chapter 5).

A key concern for business is not the policy objectives behind legislation and related regulation, but the poor execution of those policy objectives, through poorly prepared and administered regulation. Business Council of Australia, sub. 109, p. 29

A principles-based approach to regulation allows regulators to employ best regulatory practice so that substance is emphasised over form ... Instead, regulators have preferred black-letter, rules-based instruments imposing heavy, industry-wide regulatory burdens ... AXA Asia Pacific, sub. 55, p. 1

Uncertainty, serendipity, mistakes and ambiguities will always exist, and any laws or policies which purport to control all aspects of business behaviour are unrealistic. A law which attempts to control a miscreant 1%, while imposing an unduly heavy burden on the compliant 99%, will always be a bad law. Office of the Small Business Commissioner (ACT), sub. 7, p. 2

In the Taskforce's view, given the inherent incentive for regulators to use any discretion in a way that minimises the possibility of adverse events, it is important that legislation, particularly principles-based legislation, is explicit about policy objectives and the principles or approaches the regulator should follow.

- Where tradeoffs are involved, object clauses in legislation should make clear what balance is sought — for example, the need to pursue identified social or environmental objectives cost-effectively, taking into account wider economic interests — and how such balance is to be achieved.
- Principles laid down to guide regulatory approaches should require regulators to use a risk-based approach, with any measures to be targeted at specified problem areas, and not designed to *eliminate* the risk of an event occurring. As many participants observed, something equivalent to an 80:20 rule would in many cases achieve most of the benefits from regulation, while avoiding most of the unnecessary costs.

In other words, legislation and associated regulations made by the Parliament should be explicit in requiring regulators to take a balanced or 'proportionate' approach. This should also be emphasised in parliamentary second reading speeches, both to reinforce the message to regulatory bodies and create a wider public appreciation of what good regulatory practice entails.

A further important opportunity to clarify policy intent, following the Uhrig Review (2003) of the governance of statutory bodies, is in the ministerial Statement of Expectations. These statements will provide scope to outline the government's current objectives relevant to the authority and any expectations the government may have of how the authority should conduct its operations. They have the potential to be helpful and transparent vehicles for guiding a regulator's approach — and simultaneously educating the community — without infringing on a regulator's essential independence.

Recommendations 7.14–7.15

7.14 Legislation should provide clear guidance to regulators about policy objectives, as well as the principles they should follow in pursuing them.

- Guidance should be explicit about what balance is required, where tradeoffs in objectives exist, and the need for risk-based implementation strategies.

7.15 Responsible ministers should highlight those elements referred to in recommendation 7.14 in parliamentary second reading speeches and in the Statements of Expectations that are to be developed following the Uhrig Report.

Sharpening accountability

Clarifying the government's policy intent and expectations in such tangible ways should help create a more balanced incentive structure for regulators. But it is important that regulators be required to demonstrate that they have responded to the signals. Reporting is one element of accountability that the Taskforce considers could be improved. A second relates to appeal and review provisions.

Expanded reporting requirements

Regulators have formal reporting obligations to the Parliament, as well as being accountable to particular ministers. The latter avenue for accountability will be enhanced by the ministerial Statements of Expectations, including the requirement for regulators to prepare a 'Statement of Intent' in response. These also provide a basis for extending regulators' annual reporting obligations to reinforce the incentives for a balanced approach.

Some business groups were critical of current performance measures. They see them as focusing too much on indicators of enforcement success, such as the number of adverse incidents or prosecutions, rather than broader objectives such as improving market performance. This was seen as compounding the regulators' predisposition to take a strict or rigid approach.

The performance indicators reported by the regulators do not support the Government's and Parliament's intentions as seen in legislation. AXA Asia Pacific, sub. 55, p. 2

The Taskforce considers that regulators should be required to develop and include performance indicators in their annual reports relating to:

- their contribution to all relevant policy objectives;
- efforts to lessen business compliance cost burdens; and
- compliance with:
 - their Statements of Intent;
 - RIS requirements; and
 - consultation policies and other best practice requirements.

In addition, it would be instructive for regulators to include information in their annual reports on actions taken to implement risk-based strategies, to explain any failure to meet RIS or other process requirements, and to respond to criticisms or recommendations emerging from consultative bodies (see below).

Strengthened appeal and review mechanisms

Regulators do not have an easy task. Judgements are frequently called for in circumstances of imperfect information and knowledge about the actions or motives of regulated entities. Errors are inevitable. Indeed this should be *anticipated* in regulatory design, so that regulators are not obliged to over-reach their capabilities.

The likelihood that errors will be made means there needs to be adequate appeal and review mechanisms, both to avoid or rectify adverse consequences for regulated entities and provide a discipline on regulators to make sound decisions. Such mechanisms generally exist for all regulators, but they vary considerably in design and scope, and business groups raised concerns about their adequacy.

The structure of the telecommunications regulatory framework has inadequate checks and balances to prevent the growth of regulation ... there are almost no rights to appeal the imposition of new regulation. Telstra Corporation, sub. 66, p. 20

[One] suggestion is to instigate an administrative appeals process — where industry (and even the Government) could appeal against a regulator's policy statement or guidelines where they are believed to be inconsistent with the relevant law or regulation and associated Explanatory Memorandum. The existing legal processes to address such issues are too cumbersome and costly. AMP Financial Services, sub. 67, p. 3

The body responsible for scheduling decisions (which relate to market access) also decides what products may be advertised. Its decisions fly in the face of economic reality. For example, a weight-loss product, recently scheduled down from Prescription-only to Pharmacist Only (S3) has repeatedly been denied permission to be advertised. There is no appeal process for such decisions other than judicial review. Australian Self Medication Industry, sub. 21, p. 2

Some regulators appear to have no arrangements for internal review. The Taskforce considers that this should be a minimum requirement, at least for certain classes of decisions. The arrangements would need to involve different officials from those who made the disputed decision. For example, under tax laws administered by the Commissioner of Taxation, business and other taxpayers have a *right* to object to a range of decisions made by the ATO — including those relating to assessments, determinations, notices, penalties, shortfall interest charges, income tax and fringe benefits tax private rulings. The decision is reviewed within the ATO, but independent of the original decision-maker. As well as this feature, there would need to be criteria for screening out frivolous or vexatious appeals.

In addition, there needs to be scope for timely review of administrative decisions on their merits (to complement judicial review of the lawfulness of decisions). Merit review by an independent third party not only enhances the accountability of regulators, it can also promote better decision-making over time and increase business confidence.

Again, at a minimum, those unhappy with administrative decisions should have recourse to the Administrative Appeals Tribunal. The Taskforce understands that this is not universally so. In some areas of regulation there are also specialist review bodies. Examples are the Australian Competition Tribunal in relation to the ACCC's decisions under the Trade Practices Act, and the Takeovers Panel, which among other things has the power to review certain ASIC decisions in relation to company takeovers and matters relating to the control of a company. These appear to have generally worked well. However they are not without cost, and would need to be justified on cost-benefit grounds according to the importance and degree of complexity of the area or regulation concerned.

Recommendations 7.16–7.18

- 7.16 Regulators should develop a wider range of performance indicators for annual reporting.**
- 7.17 Regulators without mechanisms for internally reviewing decisions should establish them.**
- 7.18 There should be provision for merit review of any administrative decisions that can significantly affect the interests of individuals or enterprises.**

Improving communication and interaction with business

Beyond issues of achieving balance in regulatory decisions and the need for a better incentives environment for regulators, business raised a number of concerns about the nature of its interaction with regulators. As previously noted, these relate to the adequacy of consultation, difficulties in obtaining information or advice, perceived adversarial attitudes and the use of the media. These go beyond risk aversion to the culture, attitudes and skills of the people in regulatory agencies.

Such allegations are contested by regulators, and the Taskforce has again not been able to make any detailed assessment. That said, it is apparent that the experience of business varies across regulators and has also varied over time for individual regulators. Problems are clearly not universal or immutable. Indeed some regulators' initiatives were praised by business, including some by APRA and the ATO.

There will inevitably be a degree of tension in the relationship between regulators and the regulated. Regulators are required to take a different perspective in many cases and to maintain their independence or distance from regulated entities, so as to ensure impartial decision-making. But they also need to have an open mind and engender trust in their relationships with those they regulate. Effective two-way information flows help regulators do their job well and promote business confidence in the regulatory environment.

In the Taskforce's view, a number of elements of good practice need to be more widely implemented across all regulatory agencies.

As noted, a key one is the need for more effective consultation processes in developing regulation. The Taskforce has recommended a whole-of-government policy in this important area, based on some established principles (see section 7.2). This general policy would need to be given greater specificity through transparent statements or protocols issued by each regulatory body.

Standing consultative bodies

In addition to such targeted consultation processes, the Taskforce considers that there needs to be a standing high-level consultative body for any regulator whose activities can have a significant impact on business or other groups. Its role would be to provide a forum for discussing broader issues and experience, and a focal point for feedback to the regulator about its perceived performance. It would likely promote greater understanding of each side's perspective and provide a mechanism for identifying emerging problems before they become major issues. Where regulators have overlapping responsibilities and common stakeholders, consideration should be given to a joint consultative body (see section 5.1). This could also facilitate better coordination among regulators.

Examples of existing consultative bodies of this kind include the Australian Accounting Standards Board Consultative Group, and the Consumer Consultative Forum established under the *Australian Communications Authority Act 1997*. Their composition will generally need careful consideration to ensure appropriate representation of interests and experience. While their primary purpose is to facilitate a better dialogue with regulated entities, there could be an advantage in also having broader community representation to bring balance and reduce the possibility of 'capture'.

A code of conduct

The Taskforce is also strongly of the view that each regulator should be obliged to have a code of conduct, developed in consultation with stakeholders (and approved by the relevant minister). This should inform regulated entities of their rights and expectations concerning a regulator's actions in the areas of:

- consultation processes when developing regulations or guidelines;
- provision of information on regulations and compliance requirements;
- approach to enforcement and penalties, including where breaches are self-detected and notified;
- use of public statements and the media;
- processes for dealing with complaints and appeal/review mechanisms; and
- timeframes for responses.

As with the ATO taxpayers' charter, codes of conduct could also cover the responsibilities of regulated entities.

The right skill mix

The effectiveness of communication and interaction between regulators and business depends on the qualities and attitudes of the people directly involved. Business raised a number of issues in this area, including problems associated with staff turnover and varying knowledge about the nature of the business activities subject to regulation.

ASFA has received numerous complaints from superannuation funds about inexperienced ASIC and APRA staff causing difficulties, particularly in the respective licensing processes. Association of Superannuation Funds of Australia, sub. 103, p. 8

As well as resulting in delayed response times and difficulties grasping the extent of issues being raised by industry, there is also a tendency to adopt a 'hard line' approach to industry regulation by various officers operating at the 'coal face' level. Zurich Financial Services Australia, sub. 123, p. 2

The perception of most people involved in this audit process has been that the auditors have no idea of how smaller practices run and don't seem to want to listen. Association of Financial Advisors, sub. 117, attachment B, p. 4

The Taskforce agrees with business that regulators should in general appoint 'relationship managers' for the (larger) businesses they have more frequent contact with. This would promote efficient and effective dealings on both sides, including by reducing unnecessary information burdens on business. However, it could be prudent to separate such a liaison role from the regulator's enforcement function, not only (as one business group argued) to engender trust, but also to minimise the potential for the regulator to be 'captured' by business interests.

Ensuring an appropriate mix of skills and experience is a key determinant of the performance of any organisation. In the case of regulators, it is obviously valuable to have people who have a good understanding of the activities being regulated. Given salary differentials, it can be difficult for regulators to attract staff from the business sector. However, the Taskforce considers it important that more people with business experience play a role. Otherwise, the culture and practices of regulatory agencies can become dominated by long-serving officers with little experience outside that agency.

It is particularly important to achieve a blend of experience at the most senior levels of a regulatory body (as well as for those working at the operational level). Precedents among Commonwealth statutory bodies include the ACCC, which has appointees with small business and social credentials, and the Productivity Commission, which under its statute is required to have three commissioners with experience in business, environment and social welfare, respectively. That said, once appointed, such public officials clearly need to be independent and not act as partisan representatives of business or other interests.

Recommendations 7.19–7.23

- 7.19** Regulators should issue protocols on their public consultation procedures. These would need to be consistent with a whole-of-government policy.
- 7.20** A standing consultative body comprising senior stakeholder representatives should be established for each regulator whose decisions can have significant impacts on business and other sections of the community.
- 7.21** In consultation with stakeholders, each regulator should develop a code of conduct covering the key areas of interaction with regulated entities.
- 7.22** Regulators should in general appoint 'relationship managers' to facilitate cost-effective interaction with businesses they have frequent dealings with.
- 7.23** Appointees to regulatory agencies should include a mix of people with experience directly related to the activities being regulated.

7.4 Avoiding overlap, duplication and inconsistency

The problem

The Taskforce was alerted to numerous cases of overlapping or inconsistent regulation. Among other things, business complained of receiving multiple requests for the same information from different Australian Government agencies. It also pointed to Australian regulations that it felt differed needlessly from international standards. However, of most concern were regulatory overlaps and inconsistencies between the Australian Government and the states and territories, or between the states and territories themselves. The different state-based occupational health and safety regimes are a particular sore point. Others include building, environmental, food and transport regulation, and workers' compensation arrangements. Box 7.5 contains several examples. Further cases, together with recommendations for reform or review where appropriate, are discussed in chapters 4 to 6.

While occasional variations in regulations between jurisdictions might be warranted, Australia is in many respects a relatively 'homogeneous' country. Moreover, differences that might warrant regulatory variations, such as different population densities, climatic conditions or attitudes to risk, often do not correlate closely with state or territory borders. It is not at all clear to the Taskforce why, for instance:

- someone licensed to serve liquor in Albury should require a different licence to do so in Wodonga;
- if the 'trigger height' for the use of certain safety equipment on construction projects is 3 metres in Queensland, it is only 2 metres in NSW and Victoria; or
- a product that Western Australians can buy should be banned in Tasmania.

For workers and businesses operating across state and territory borders or on a national scale, such inconsistencies pointlessly add to costs.

These types of problems are not new, and the Australian Government, and the states and territories, have made various attempts to address them. They have established numerous joint Commonwealth–state ministerial councils, or bodies such as the Australian Safety and Compensation Council, to harmonise particular areas of regulation. Further, in the early 1990s they agreed to adopt 'mutual recognition' arrangements for the sale of goods and for occupational licensing, to override some of the problems caused by differing requirements in different jurisdictions.

While there has been headway made in a number of areas, regulatory overlaps and inconsistencies continue to arise and persist, both within and between jurisdictions. There are a number of possible reasons for this.

- There seems to be a tendency for policy-makers and regulators to focus on new regulation, and less on whether existing regulation is sufficient (or is at least not inconsistent with the new regulation). Indeed, when faced with the media crisis of the moment, 'doing something *new*' has obvious political attractions, even if it overlays existing measures partly directed at the same thing.
- Regulation tends to be developed within individual portfolios or jurisdictions, with those inside a particular 'silo' less aware of, or concerned about, outside regulation, or whether information/reporting requirements overlap with those of another portfolio or jurisdiction.
- Particular difficulties arise because of the imbalance in regulatory and fiscal responsibilities between the Australian Government and state and territory governments. Specifically, while the states and territories have had formal responsibility for areas like aged care, childcare and education, the Australian Government provides some funding for these services. To ensure 'value for money' from its subsidies, the Australian Government has increasingly been overlaying existing state and territory regulation with its own quality accreditation mechanisms and reporting requirements.

- More generally, with three levels of government and more than 1300 regulatory bodies Australia-wide (including more than 700 local councils), inter-jurisdictional rivalries and turf protection might account for overlaps and inconsistencies. Indeed, in consultations and submissions the Taskforce learned of cases where regulators appear to have ignored COAG directives to harmonise regulations or comply with mutual recognition provisions. In other cases, COAG directives simply may not make it through to lower levels of the bureaucracy.

Box 7.5 A sample of complaints about overlaps and inconsistencies

Too many times COAG agree on principles, but then State Government departments develop inefficient, inconsistent regulatory approaches in each State, adding to the costs of running business. QFF believes that there needs to be more consistent, national approaches across a whole raft of areas that impact on primary producers, including food safety and quality assurance; biosecurity and quarantine matters; occupational health and safety; natural resource management; and transportation. Queensland Farmers' Federation, sub. 50, p. 5

In the security industry there are firearms instructors who are training people on both sides of the NSW/VIC border. The instructor who has his firearms registered in one state can not use them on the other side of the border. This situation follows the introduction of the so called national firearms laws. Council of Small Business Organisations of Australia, sub. 17, p. 8

The professional certification and licensing of nursing staff by State and Territory jurisdictions creates a lack of uniformity for aged care. A uniform national approach is needed particularly with respect to the enhanced role of Enrolled Nurses with respect to medication administration. Catholic Health Australia, sub. 19, p. 3

There are inconsistent approaches across jurisdictions to the enforcement of food regulations and standards, which not only causes inequities for industry across Australia but can also impact on importers and exporters ... There is uncertainty for businesses operating across state borders, and ineffective regulation when states differ in their compliance approach to the same food standard. Department of Agriculture, Fisheries and Forestry, sub. 105, p. 4

A number of companies provided examples where they have been subject to inquiries from different Commonwealth regulators over the same issue, requiring them to furnish the same or similar information and answer the same or similar questions, with no evidence that the two regulators had attempted to co-ordinate their inquiries. Business Council of Australia, sub. 109, p. 18

The chief feature of Australia's OH&S and workers compensation schemes is their inconsistency ... [F]or businesses that trade in single states the compliance issues are huge. For businesses that trade between states the compliance issues are arguably insurmountable. It is perfectly feasible to face OH&S prosecution in one State and not another for identical occurrences. Institute of Public Affairs, sub. 127, p. 22

NSW and Victoria have passed [compliance and enforcement] legislation broadly utilising the Model Provisions developed through the [National Transport Commission] process. However, this state legislation is not mutually consistent or consistent with the Model Provisions ... Other examples of inconsistent Australian road transport and related legislation abound. Australian Trucking Association, sub. 46, p. 5

Addressing overlaps and inconsistencies in new regulation

Potential overlaps and inconsistencies need to be addressed whenever a regulation is being proposed or developed.

The Australian Government's *Guide to Regulation* and COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 2004a) indicate that, in preparing a RIS, proponents of regulation should indicate whether there is a relevant regulation/policy in place and, if so, its characteristics and administering body.

The Taskforce supports this, but considers it should be bolstered. Specifically, proponents should explicitly be required to:

- document directly relevant existing regulations *at all levels of government*; and
- demonstrate why these are not sufficient to *adequately* address the problem.

Failure to meet these requirements should result in the RIS being deemed 'inadequate' (see recommendation 7.8).

Further, if regulations would apply to items where there are similar international standards, greater emphasis should be given to documenting those standards and, where a proposed regulation differs from them, to fully justifying the variation. In general, the Taskforce considers that well-established international standards should be adopted. Examples of where international standards could be readily recognised and applied in Australia include the Globally Harmonised System for Classifying and Labelling Chemicals, and opportunities for the Therapeutic Goods Administration to accept the certification processes of reputable overseas bodies for medical devices.

There is no point in forcing local businesses which do not export, or are not required to raise capital in the international arena, to comply with international standards for the sake of it. In particular, where elements of international standards may be unduly onerous — as was suggested is the case with international accounting standards — consideration should be given to 'carve-outs' to reduce the burden on local businesses.

In the Taskforce's view, similar requirements should apply when regulation is being developed or amended by state and territory governments.

Addressing existing overlaps and inconsistencies

Existing regulatory overlaps and inconsistencies ideally should be addressed through systematic reviews of the stock of regulation.

This already occurs to some extent where legislation or policy areas are reviewed by the Productivity Commission, the Australian Law Reform Commission, the Victorian Competition and Efficiency Commission, government departments or ad hoc review bodies (such as the recent Exports and Infrastructure Taskforce).

As noted earlier, the Australian Government has announced additional annual reviews by the Productivity Commission, to follow on from this Taskforce, which will provide a channel to consider areas of overlap and inconsistency involving Australian Government regulation. These reviews are likely to be most cost-effective, including for business, if they proceed in a targeted way.

In the Taskforce's view, there is a particular need to address areas of regulation involving overlaps and inconsistencies between the Australian Government and state and territory governments, and between the states and territories themselves. Some key areas for future action are:

- occupational health and safety;
- workers' compensation;

- childcare;
- consumer protection;
- chemicals and plastics;
- vocational education and training;
- building regulation;
- privacy legislation; and
- trade measurement.

Chapters 4 to 6 also identify a range of other areas with more limited and specific overlap and inconsistency across different levels of government.

The Taskforce understands that COAG is assessing the scope to address regulatory overlaps and inconsistencies involving state and territory regulation. Some of the areas identified in chapters 4 to 6 could usefully form part of a COAG work plan. Consideration should also be given to establishing a series of rolling, targeted reviews in the areas of significant overlap and inconsistency where the appropriate response is not immediately apparent. Such reviews, as well as examining the scope to rationalise or harmonise regulation, should simultaneously examine the scope for rationalising the number of regulators (as has occurred in the case of energy regulation).

It is not clear that harmonisation alone is sufficient to overcome all the problems business faces in dealing with differences in regulation across jurisdictions. In the Taskforce's view, as ever more business activity occurs on a national if not global scale, there is an increasingly compelling case for introducing *uniform* regulation across Australian jurisdictions, except where it can be demonstrated that variations would generate net benefits.

In some of the areas nominated above, reviews have already been completed recently, but some of their recommendations have not been agreed to by governments. For example, recent Productivity Commission (2004b) recommendations for a uniform national approach to occupational health and safety and workers' compensation regulation were not endorsed. It may be appropriate for COAG to revisit the merits of those recommendations, in light of the increased weight now being given to the need to reduce unnecessary regulation and the compliance costs it imposes on business.

Developing institutional mechanisms to enforce consistency

While reviews may identify overlaps and inconsistencies and provide recommendations for reform, experience shows that a review program is insufficient to bring about meaningful change. As noted earlier, some COAG initiatives to harmonise regulation have been thwarted because state and territory governments have developed inconsistent regulatory approaches.

Genuine reform will require strong political leadership and follow-through across all jurisdictions. In this context, statements endorsing the desirability of harmonisation and uniformity in regulation are not enough. There is also a need for institutional mechanisms to monitor and enforce COAG agreements aimed at harmonising regulation. The Taskforce considers that action will be required on a number of fronts.

Firstly, it is likely that COAG will need to strengthen mutual recognition arrangements. Mutual recognition is in principle an efficient way of overcoming state and territory regulatory inconsistencies, but Australia's arrangements are limited in scope and their intent is being circumvented in some areas (see box 7.6). Several recommendations from a Productivity Commission (2003a) review were not endorsed for adoption by COAG officials, who took the position that they would be administratively difficult or that there was insufficient evidence to warrant reform (COAG 2004b). Mutual recognition

is scheduled to be reviewed again in 2008. The Taskforce notes that, in the absence of earlier action, this review will provide an opportunity to revisit those recommendations, and consider measures for addressing other problems on which evidence is emerging, with a view to improving the scope and robustness of the mutual recognition arrangements.

Secondly, institutional arrangements to achieve harmonisation, such as efforts to harmonise building regulation through the Australian Building Codes Board, need failsafe mechanisms to ensure that any jurisdictional variations are either legitimated by all parties or annulled. One model was suggested in the Productivity Commission's (2005e) recent draft report on consumer product safety. It recommended a process whereby product bans unilaterally imposed by a particular jurisdiction would automatically lapse after 120 days, unless the relevant ministerial council agreed that the ban should apply Australia-wide, or that a mandatory standard relating to the product should be developed. For areas of regulation where national uniformity has not been agreed to, such a model could be modified to allow individual jurisdictions to maintain their different regulations, subject to a cost-benefit analysis of the variation being prepared, and endorsement by the relevant ministerial council or COAG.

Box 7.6 Mutual recognition in Australia

The Australian Mutual Recognition Agreement allows goods sold lawfully in one jurisdiction to be sold in any other, even though the goods may not comply with the regulatory standards in the other jurisdiction. Similarly, it allows a person registered to carry out an occupation in their home jurisdiction to carry out the equivalent occupation in any other.

The agreement seeks not only to facilitate cross-border commerce within Australia but also to provide regulators with incentives, and mechanisms, to harmonise regulations where significant discrepancies exist — for example, through the auspices of ministerial councils.

However, the Australian agreement contains a number of exemptions and is much narrower in scope than, for instance, mutual recognition in the European Union.

The Australian agreement (along with the Trans-Tasman Mutual Recognition Agreement) was evaluated in 2003 by the Productivity Commission, which recommended 47 improvements to the schemes. These included reforms aimed at limiting exceptions, removing occupational qualification requirements from business licences that are inconsistent with mutual recognition objectives, and increasing the attention given to mutual recognition obligations by regulators and policy-makers (PC 2003a).

One problem identified in the report was that, while product bans and safety standards implemented by individual jurisdictions are not legally binding under mutual recognition, producers appear to be concerned about the legal implications where liability issues arise. This was confirmed in a more recent Productivity Commission draft report (2005e) on consumer product safety, which found that this was allowing jurisdictions to maintain different standards and bans indefinitely, thereby circumventing the intent of mutual recognition laws on the sale of goods.

It is also important that national standard-setting bodies that oversee or facilitate harmonisation in particular areas of regulation be constituted in a way that makes them resistant to pressures for unduly stringent or prescriptive regulation. At present, pressures to achieve multiple objectives in a timely manner can lead to regulatory escalation in the name of national uniformity, as national standard-setting bodies attempt to keep pace with 'leading' jurisdictions. This appears to have occurred recently in relation to energy efficiency standards, for instance. Despite considerable uncertainty about the costs and effectiveness of building standards in reducing energy consumption, the Australian Building Codes Board recently announced an increase in the energy performance requirements for new houses

from a 3.5-to-4-star level to a 5-star level — thereby more closely matching the standards set in NSW and Victoria. As the Productivity Commission (2005c, p. 213) noted in its recent report on energy efficiency:

[I]t appears that the stringency of the Building Code's housing requirements has again been driven largely by a desire to catch up to the most stringent State or Territory standard.

A further concern is that the institutional arrangements for developing national standards in some areas are susceptible to undue time delays. For example, 3 years was the average time taken to approve a certain class of proposal (between January 2002 and May 2005) under the model used for developing national food standards, which includes provision for a single jurisdiction on the Australia and New Zealand Food Regulation Ministerial Council to request a review of a draft standard or variations (see section 4.2).

Accordingly, in the Taskforce's view, an overarching institutional framework for the national harmonisation of regulation needs to be developed that would:

- encourage the timely development of national standards and regulations;
- discourage ministerial councils and national standard-setting bodies from adopting unduly stringent and poorly justified regulations; and
- implement failsafe mechanisms to ensure that any jurisdictional variations from national standards and regulations are either legitimated by all parties or terminated.

This framework could be applied to existing ministerial councils and national standard-setting bodies and would also provide a template for newly created bodies.

More broadly, the Taskforce sees value in the National Competition Policy model as a vehicle for progressing and cementing reform to harmonise regulation throughout Australia. Its key elements are an independent body — the National Competition Council — to gauge progress in implementation, together with a series of fiscal penalties and rewards for progress against agreed implementation goals. While nationally consistent regulation brings its own benefits to the states and territories, it is arguable that there are broader benefits at the national level. Accordingly, there may be a case for the Australian Government to provide incentives to states and territories that adhere to agreed COAG reform commitments.

Recommendations 7.24–7.25

7.24 COAG should consider establishing a series of reviews targeted at areas where there is significant overlap and/or inconsistency between Australian Government and state and territory government regulations.

7.25 COAG should develop an overarching institutional framework for the national harmonisation of regulation that would:

- encourage the timely development of nationally consistent and preferably uniform regulations;
- discourage ministerial councils and national standard-setting bodies from adopting unduly stringent and poorly justified regulations;
- entail failsafe mechanisms to ensure that any jurisdictional variations from national regulations are either legitimated by all parties or annulled; and
- promote compliance with decisions to rationalise and harmonise areas of regulation.

7.5 Ensuring that regulation delivers over time

The problem

Even with good regulation-making processes, problems with regulation will inevitably emerge over time.

One problem is simply the growth in the stock of regulation and the cumulative burden it generates. Several submissions advocated an additional mechanism, namely the adoption by governments of a ‘one in one out’ rule, to guard against excessive regulation. While the simplicity of such a rule has some attractions, in the Taskforce’s view it would be too blunt an instrument and could have some perverse consequences. It would be better to require the proponents of a new regulation to demonstrate a strong case for it, having regard to the effectiveness of any existing related regulations (see section 7.4).

Another set of problems raised in submissions — and the focus of this section — relates to the ongoing relevance and effectiveness of particular regulations after they are implemented.

Many areas subject to regulation raise complex conceptual and practical issues. Reflecting this, there is often some uncertainty about the likely effectiveness of many regulations and significant scope for unintended consequences. Thus, for example, the third-party access regimes for essential infrastructure developed under National Competition Policy had reviews scheduled within 3 to 5 years of their introduction.

In addition, market, technological and environmental circumstances are subject to change, sometimes quite substantial and in relatively short intervals of time. Such changes may make existing regulations redundant or require considerable modification to secure their ongoing effectiveness. Areas like telecommunications and broadcasting provide good examples.

The dynamic and changing nature of domestic and international markets make it important to continually monitor and amend as appropriate the regulatory environment set by all levels of Government. Department of Treasury and Finance (Victoria), sub. 47, p. 1

Several submissions commented on the need for regular reviews of regulations against this backdrop of a dynamic and evolving market economy. The need for systematic and periodic reviews of regulation has also been advocated by the OECD (2005) in its guiding principles for promoting good regulatory outcomes.

The Taskforce considers that it is essential for regulations to be revisited over time to assess their effectiveness and identify opportunities for improving them.

- As discussed earlier, adherence to good regulation-making processes, including effective consultation and RIS requirements, should lessen the onset of regulatory problems and the need for subsequent (often costly and difficult) rectification.
- But this still would not obviate the need for systematic post-implementation reviews of regulation. Indeed, an essential complement to more rigorous regulation-making processes is the periodic review of existing legislation to establish that a case for its continuation exists. If a regulation endures, it should be because it continues to pass stringent tests.

Ad hoc reviews

An important mechanism for improving regulation in Australia has been the many ad hoc reviews of specific policy areas that have taken place over the years, often as a response to perceived problems or changes in circumstances. Recent examples include Productivity Commission reviews of health

workforce issues, consumer product safety and regulatory issues in the areas of building regulation, occupational health and safety, workers' compensation, and native vegetation and biodiversity. These reviews have demonstrated that often there is scope to considerably improve the design and application of regulations to promote better outcomes.

Beyond these selective approaches to improving the regulatory stock, Australian Governments have also progressed a more systematic review of around 1800 pieces of legislation under the Legislation Review Program of National Competition Policy.

[R]egulations that impede efficiency and/or carry an excessive compliance burden, but which do not involve competition restrictions, for example, are unlikely to have been addressed under the NCP. Hence, the legislation review program will not have addressed all unwarranted red tape and the associated efficiency costs. National Competition Council, sub. 32, p. 3

The Taskforce notes that the government intends to introduce a new annual review process to examine the cumulative stock of Australian Government regulation and identify an annual red tape reduction agenda (Howard and Costello 2005).

Sunsetting

Notwithstanding these developments, there is a need for systematic ongoing public reviews of business regulation after implementation. At the federal level, regulations made under the *Legislative Instruments Act 2003* are generally subject to a sunset provision after 10 years of operation. However, little primary legislation is subject to sunset clauses.

Several submissions strongly endorsed the use of sunset clauses as a protection against excessive regulation. While views differed as to whether a sunset clause should apply to all or most regulations, there was broad support for a shorter timeframe than the existing 10-year period — with periods of no more than 5 years often being suggested.

Sunset provisions are of value because, in the absence of appropriate action (such as preparing a RIS or a wider review), a regulation would automatically lapse. This provides a useful housekeeping mechanism for getting rid of much redundant or ineffective regulation. Indeed, data compiled by the NSW Parliamentary Counsel indicates that, since sunset provisions were introduced in NSW in 1990, the volume of statutory rules (measured by both the number of rules and total page length) on the books has roughly halved (Argument 2003).

However, it is questionable whether such sunset provisions are appropriate for significant regulations that are vital to facilitating market transactions, such as regulations applying to financial markets and to corporate governance, or regulations supporting the tax and social welfare systems. Alternative protective mechanisms are therefore also needed.

Systematic reviews

An additional protection against excessive or unduly costly regulation is a post-implementation review mechanism. Such reviews are likely to be particularly important where the introduction of a regulation has been fast-tracked (see section 7.2) or there is considerable uncertainty about compliance burdens or net benefits when the regulation is made. Even so, all regulations should be subject to review processes to ensure their continuing appropriateness and effectiveness.

As recognised in a number of submissions, reviews are not costless, especially if they are done well. Their timing and scope should accordingly be proportionate to the potential gains — a 'one size fits all' approach is not appropriate. The Taskforce agrees with this principle. Reflecting this, the Taskforce

considers there would be merit in adopting a flexible approach to both the scheduling of reviews and the level of analysis involved. That said, it is important that such reviews provide opportunities for genuine and effective consultation with affected parties, including business. The Taskforce's comments on consultation protocols for developing new regulations (see section 7.2) apply equally to later reviews of the regulations.

Early post-implementation reviews

A review should be undertaken within 1 to 2 years of new regulations coming into force for regulations where:

- the introduction of the regulations had been fast-tracked — avoiding the full application of RIS requirements; or
- the extent of the compliance burden or the accuracy of the initial cost-benefit analysis was uncertain.

Such reviews should be used to identify ways of lessening high compliance costs and unintended adverse impacts, and to test whether the net benefits predicted to flow from a regulation were being realised. To ensure cost-effectiveness, a two-stage process could usefully be adopted.

- The first stage would provide an opportunity for interested parties to raise any concerns about associated compliance costs or whether the regulation was meeting its objectives satisfactorily.
- Subject to significant problems being identified, a second stage would involve a more comprehensive analysis covering the design and effectiveness of the regulation.

5-yearly reviews

For remaining regulations not already subject to a sunset clause, a review could be undertaken, say, 5 years after implementation. Again, a two-stage process could be used to screen for priorities. Where such reviews proceed to the second stage, a full review would be undertaken, entailing consideration not only of the design and effectiveness of the regulation but also whether alternatives to it would generate greater net benefits.

Recommendations 7.26–7.28

7.26 The Legislative Instruments Act should be amended to provide for a 5-year, rather than 10-year, sunset clause following implementation.

7.27 Following a screening process, early post-implementation reviews should be held after a regulation has been in place 1 to 2 years, for:

- any regulations exempted from RIS requirements due to fast-tracking; and
- any substantial new regulations where there is uncertainty about the extent of compliance burdens or net benefits at the time of introduction.

7.28 At least every 5 years, all regulation (not subject to sunset provisions) should, following a screening process, be reviewed, with the scope of the review tailored to the nature of the regulation and its perceived performance.

7.6 Other systemic matters

There are three other matters of a systemic nature that in the Taskforce's view warrant particular attention.

First, attention needs to be given to the nature of Australia's participation in international forums considering the strategic direction, development or refining of standards that will ultimately become Australian regulations. The Taskforce heard of cases where Australia was represented on bodies involved in developing international standards only by officials from the relevant regulatory agencies, rather than also by policy-makers, resulting in these agencies virtually assuming a policy role. While input from people with expertise in administering regulation is invaluable, it is important that policy areas of government are appropriately involved to ensure the correct policy focus is applied.

The second relates to the increasing tendency for standards developed by Standards Australia to be referenced in legislative instruments or used as quasi-regulation. There are some 6800 Australian standards, about one-third of which are referenced in legislation and regulations by government. Standards Australia is a non-government standards-writing body. While it receives some government funding, business noted that few quality controls are in place to ensure that its standards are developed and drafted in ways that are consistent with their use as quasi-regulation. A particular concern of business is the extent to which the standards have historically been, and largely continue to be, attempts to codify best practice, rather than to set out minimum acceptable standards.

The use of Australian Standards as effectively quasi-regulation needs to be reassessed to ensure that standards are not unnecessarily adding to the regulatory burden on small business. Housing Industry Association, sub. 48, p. 4

The Taskforce notes that government agencies need to ensure that, before a new or updated standard is referenced, it is subject to a regulatory impact assessment that takes into account, among other things, the compliance costs to business.

Third, there would be value in developing better measures and indicators of the regulatory burden, both within Australia generally and also in individual jurisdictions. That said, as noted in chapter 2, measuring compliance costs at the aggregate level is difficult, and it is even more difficult to determine the extent of unnecessary compliance costs. Further, it would be important to ensure that attempts to measure regulatory burdens on business, such as those entailing studies and surveys of businesses, did not themselves impose undue costs on business.

While this means that attempts to quantify red tape at the aggregate level are likely to be fraught, it should be possible, as the Institute of Public Affairs has noted (sub. 127, p. 18), to benchmark regulatory regimes periodically across jurisdictions and develop reporting frameworks and performance indicators that provide a guide to likely regulatory burdens. The principles of good regulation set out in section 7.1 could help inform the development of such indicators. The Taskforce notes that these assessment exercises should be conducted regularly to better assess the progress in regulatory reform.

Recommendation 7.29

Governments should evaluate the scope to make cross-jurisdictional comparisons on a regular basis of the efficiency and effectiveness of their regulatory regimes.

The recommendations in this report amount to a sizeable reform agenda. All told, the Taskforce identified:

- 99 reforms to specific areas of regulation;
- 51 reviews that need to be undertaken by the Australian Government or under the Council of Australian Governments (COAG); and
- 28 systemic reforms to improve regulation-making and enforcement.

These recommendations meet the request of the Prime Minister and the Treasurer for options to provide significant early relief to business, as well as options for alleviating red tape burdens over time. In the Taskforce's view, the reforms would yield substantial gains to business in both the short and long terms. They would also benefit the wider community and better position Australia's economy to meet the challenges of the future.

The Taskforce is conscious that the government, in responding to the recommendations, will need to develop a forward work program. All the recommended reforms and reviews clearly could not be done immediately and, while the proposed actions are likely to yield net gains, some will be more substantial than others. Decisions about not only what to do, but when to do it, could be very important to the overall outcomes.

Accordingly, in this chapter the Taskforce has sought to assist the implementation process by indicating the priorities as it sees them. These reflect the Taskforce's assessment of:

- the prospective gains from implementing the different recommendations, based on the likely significance of the excessive burdens on individual businesses, and the number of businesses potentially affected;
- the likely ease of implementing the different recommendations; and
- logistical considerations, for example, the need to avoid overloading COAG or particular portfolio areas.

A fair amount of judgement has been necessary, as more detailed empirical analysis was not feasible in the timeframe of the review. A definitive analysis of net benefits from the different reforms and reviews together with their optimal sequencing would in any case be difficult.

Priority reforms to existing regulation

The recommendations for reforms to particular regulations cover a wide array of policy areas, from social and environmental to economic and financial. They clearly are not all of equal weight. Nevertheless, the Taskforce is conscious that, just as individual regulations imposing little compliance cost can together constitute a major cumulative burden, relatively minor reforms can together yield a sizeable cumulative benefit.

The priorities for reform can be assembled under a number of the categories identified in chapter 3. The nature of those categories means that some contain more high priority reforms than others.

Addressing excessive coverage and regulatory creep

The most effective relief from regulatory burdens is not to be covered by regulation in the first place. The Taskforce identified a number of regulations that appeared to catch more activity than warranted, or where the coverage of smaller businesses has become more extensive over time as the real value of thresholds has been eroded by inflation. Such ‘regulatory creep’ can have pervasive effects.

In the Taskforce’s view, priority action is needed to restore or raise the thresholds for:

- goods and services tax registration requirements (recommendation 5.38);
- fringe benefits tax minor benefits reporting (recommendation 5.31);
- quarterly pay as you go withholding (recommendation 5.42);
- the superannuation guarantee exemption (recommendation 5.49);
- the value of public works referred for parliamentary scrutiny (recommendation 5.62); and
- the definition of ‘large proprietary company’ for the purpose of determining the stringency of financial reporting requirements (recommendation 5.21).

The first three of these reforms could involve a direct revenue loss to the Budget, but in the Taskforce’s view they offer broad-ranging reductions in compliance costs, particularly for small business, that more than warrant the direct reduction in tax revenue entailed. As discussed in chapter 5, potential revenue losses from addressing onerous compliance requirements should not be regarded as a ‘cost’ of reform. The more pertinent consideration is whether there is a more cost-effective solution from the perspective of the economy as a whole.

Regulatory overlaps and inconsistencies between jurisdictions

While the Taskforce identified some overlapping and inconsistent requirements between different areas of Australian Government regulation, the more vexed instances occur across jurisdictions. Naturally, reforms to address these matters will generally involve state and territory governments, as well as the Australian Government. In many cases, reviews are required to work out the best way forward. Efforts to strengthen general ‘mutual recognition’ are also important (chapter 7). But the Taskforce has also made a number of specific recommendations for governments to address existing overlaps and inconsistencies in particular areas of regulation.

Of these, the key priority is the multiple regimes for occupational health and safety (OH&S). Most importantly, the Australian Government, together with the states and territories, should re-energise efforts to implement nationally-consistent OH&S standards (recommendation 4.26), including in particular adopting a consistent definition of ‘duty of care’ (recommendation 4.27).

Other reforms warranting priority attention from the Australian Government, together with the states and territories, include:

- finalising and implementing the intergovernmental agreement on building regulation (recommendation 4.78); and
- completing bilateral agreements under the Environment Protection and Biodiversity Conservation Act (recommendation 4.65).

There are also a number of specific reform initiatives requiring action by COAG. Those that the Taskforce sees as priorities entail, or relate to:

- establishing a high-level representative group to oversee the National Mine Safety Framework, including development of a single national regulator (recommendation 4.30);
- developing a model for achieving national consistency in workers’ compensation arrangements (recommendation 4.31);

- extending work on skills, training and mutual recognition to include both para-professional and professional occupations (recommendation 4.32);
- aligning the national training system with occupational licensing and registration regulations (recommendation 4.33); and
- harmonising the administration of payroll tax (recommendation 5.45), stamp duty (recommendation 5.46) and of taxes in general (recommendation 5.47).

Removing regulation that is redundant or not justified by policy intent

The Taskforce identified only a few regulations that were clearly 'redundant', in the sense of having fallen into disuse or duplicating an alternative information requirement. More regulations were assessed as not being justified by policy intent. In some cases, poor regulatory design has given rise to unintended or even perverse consequences. In others, the regulation has become ineffective or unnecessary as circumstances have changed over time. The upshot is that businesses continue to incur compliance costs for no good reason.

Within this category, the priorities that the Taskforce sees for reform entail or relate to:

- abolishing the Private Health Insurance Incentives Scheme (recommendation 4.8(a));
- rolling the Medicare Levy into income tax rates (recommendation 5.41);
- desisting from extending country of origin food-labelling requirements (recommendation 4.53);
- pursuing identified reforms to native vegetation and biodiversity regulations (recommendation 4.73);
- implementing identified measures to reduce red tape on general practitioners (recommendation 4.1);
- further refining the operation of financial services reforms (recommendation 5.17); and
- removing Australian Government building certification requirements for aged care that largely duplicate other building regulations (recommendation 4.23).

Reducing reporting and recording burdens

The Taskforce identified numerous areas of regulation where recording and reporting obligations on business are clearly excessive. Businesses often face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary.

The Taskforce considers that high priority should be given to the following reforms, which have the potential to significantly reduce compliance burdens across a broad suite of businesses. The reforms entail:

- developing a 'whole-of-government' business reporting standard to make it easier for businesses to submit information to multiple government agencies (recommendation 6.3);
- implementing and extending the Accredited Client Program for importers, to reduce the paperwork and physical checks of consignments at the time of entry (recommendation 5.54);
- allowing restaurants and caterers to use a simplified accounting method to calculate their GST liability (recommendation 5.37);
- limiting FBT reporting to cover remuneration benefits only (recommendation 5.29); and
- allowing companies to make annual reports available on the internet and only provide hard copies if requested (recommendation 5.20).

There are also some sector-specific reforms in this category that the Taskforce considers warrant priority attention. These are:

- in the health sector, introducing single Medicare provider numbers for each general practitioner (recommendation 4.2); removing Pharmaceutical Benefits Scheme authority requirements for certain repeat prescriptions (recommendation 4.3) and redesigning reconciliation reports to group rejected prescriptions (recommendation 4.14);
- in the education sector, rationalising reporting requirements for universities (recommendation 4.36) and non-government schools (recommendation 4.37); and
- in the finance sector, aligning breach reporting requirements imposed by both the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission (recommendation 5.8).

Aligning definitions and criteria

The Taskforce identified instances of confusing variation in definitional and operational reporting requirements across areas of regulation. Some of these, while a source of annoyance and additional paperwork, appeared unlikely to cause major costs for individual businesses. Others, however, create uncertainty, require variations in products or procedures for businesses operating in different jurisdictions, and can add materially to the risk of unintended compliance breaches. Within this category, the Taskforce considers that the following should be addressed as priorities:

- ensuring the definition of ‘duty of care’ is consistent for the purposes of OH&S regulation (recommendation 4.27 — mentioned above);
- aligning the definitions of ‘employee’ and ‘contractor’ used for superannuation guarantee and PAYG withholding purposes (recommendation 5.44); and
- limiting the use of ‘uniquely Australian’ variations from international standards in chemical and plastics regulation (recommendation 4.57) and in therapeutic products (recommendation 4.18).

Priorities for further review

In the course of the review, the Taskforce identified many more regulatory problem areas than it could confidently make specific recommendations about. As noted earlier, some proved too complex to assess in the time available. In other cases, measures that would reduce compliance costs would also raise significant policy issues or would require developing an agreed approach across jurisdictions.

To deal with such cases, the Taskforce has recommended that 51 reviews be undertaken. Many could be initiated by the Australian Government, either in its own right or, where Commonwealth–state overlaps are involved, in consultation with (and preferably with the agreement of) state and territory governments. However, some significant ones with predominantly state and territory involvement, where greater national consistency is required, would be best sponsored by COAG.

The following areas are seen as priorities, based on their potential significance for business and the wider community, and the lack of an adequate recent (or prospective) review. Their significance would, in the Taskforce’s view, warrant independent and public reviews in most cases.

Reviews of Australian Government regulation

Of the reviews covering mainly Australian Government regulation, the Taskforce sees the following as warranting some priority:

- *Superannuation tax provisions* (recommendation 5.51). These arrangements are complex and impose high compliance costs on business. A comprehensive approach is needed as piecemeal reform will not achieve the required simplification.
- *Anti-dumping regulations* (recommendation 5.53) and *the wheat export ('single desk') arrangements* (recommendation 5.57). Scheduled reviews of these arrangements under the National Competition Policy (NCP) process have either not been undertaken (anti-dumping) or only partially satisfied (wheat exports).
- *Implementation of procurement policies* (recommendation 5.60). A review could examine ways to reduce the compliance burden for tendering businesses by improving the consistency and administrative simplicity of procurement practices across departments and agencies.
- *Private health insurance regulations* (recommendation 4.5). A review could examine ways of lessening compliance costs with the existing regulatory framework as well as achieving better health outcomes for patients, for example, by lessening impediments to providing care outside hospital settings.
- *Directors' liability provisions under the Corporations Act* (recommendation 5.3). These provisions appear to be creating uncertainty and driving excessively risk-averse compliance behaviour. Their appropriateness needs to be reviewed.
- *Health technology assessment* (recommendation 4.22). A review could identify opportunities to reduce fragmentation, duplication and unnecessary complexity in the system, so as to improve access to beneficial medical technologies.

These reviews should be initiated by the Australian Government.

Reviews involving state and territory regulation

Of the reviews involving Commonwealth-state overlaps, or focusing principally on state and territory regulation, the Taskforce sees the following as warranting some priority:

- *Childcare accreditation and regulation* (recommendation 4.41). A review should examine practical ways of reducing overlapping regulations between governments and explore measures to enhance the capacity of services to deliver affordable and quality outcomes.
- *Privacy laws* (recommendation 4.48). Privacy requirements were identified by business as important contributors to their cumulative regulatory burden. They may also contribute to restrictions on beneficial information-sharing by government agencies aimed at reducing compliance costs. The regime is now dated and a review would be timely.
- *Food regulation* (recommendation 4.49). Despite adoption of an intergovernmental agreement in 2001, the regulatory framework in Australia remains complex and fragmented, with inconsistencies in implementing and enforcing food standards across jurisdictions. The intergovernmental agreement is currently being reviewed by the relevant ministerial council. The Taskforce sees value in an independent review to provide external input.
- *Chemical and plastics regulation* (recommendation 4.58). The sector is governed by a complex web of regulation, and there are concerns that compliance burdens are impairing its competitiveness. Notwithstanding numerous recent reviews, there has been little progress in achieving an integrated and national policy framework.

- *Consumer protection policy and administration* (recommendation 4.44). Business highlighted a number of shortcomings in Australia's consumer protection standards and framework. There has been a growing divergence in consumer protection regulations between jurisdictions, and the consumer protection provisions of the Trade Practices Act have not been comprehensively reviewed since their introduction in 1983.
- *National trade measurement* (recommendation 5.52). Although Australian jurisdictions agreed to uniform model trade measurement legislation in 1990, only Western Australia has enacted legislation harmonised with the core Commonwealth Act. More recently, new measurement controls have been introduced in some industries, leading to additional discrepancies. A review is needed to report on practical steps for implementing a nationally consistent trade measurement regime.
- *Energy efficiency standards for premises* (recommendation 4.83). An increase in national energy efficiency standards for new homes was recently announced. This decision appears premature given the widespread uncertainty about their effectiveness in reducing energy consumption and about their costs. An independent public review could examine these matters.

The reviews should focus on options for achieving harmonisation or at least greater consistency in these areas. This should include consideration of the scope to rationalise the number of regulatory bodies involved. As noted, there would be value in COAG sponsoring these reviews. However, an alternative model would be for the Australian Government to initiate reviews in consultation with state and territory governments.

Priorities for systemic reform

The reforms identified in chapter 7, to improve the way regulations are made and enforced, complement each other and would need to be developed as a package. They are essentially about influencing the regulatory culture within government. No single action is likely to make sufficient headway on its own. Rather, the six principles of good regulatory process should be endorsed by government (recommendation 7.1) and reflected in a series of requirements and actions across the regulatory cycle.

The pre-condition for achieving better regulation boils down to ensuring that the case for it is well made and tested, both at the outset and over time. In the Taskforce's view, the key actions needed to achieve this include:

- 'raising the bar' on the standard of analysis undertaken in assessing regulation, including the rigorous use of cost-benefit analysis (including risk analysis where appropriate) (recommendation 7.2), and the quantification of compliance costs (recommendation 7.3);
- establishing a whole-of-government policy on consultation across all stages of the regulatory cycle (recommendation 7.5);
- strengthening the government's existing Regulation Impact Statement requirements (recommendation 7.8) and instituting arrangements so that, except in specially defined circumstances, regulatory proposals do not proceed to Cabinet or other decision-makers unless good process requirements have been met (recommendation 7.9); and
- providing for sunset clauses (recommendation 7.26) and periodic reviews of regulation to be built into statutes (recommendations 7.27, 7.28).

Perhaps the most important pre-condition for appropriate administration and enforcement of regulation is that the government's policy intent is clear and transparently implemented. In the Taskforce's view, this requires:

- explicit guidance in enabling statutes, explanatory material (recommendation 7.14) and the new ministerial Statements of Expectations, particularly about the need for a balanced and proportionate approach (recommendation 7.15); and
- stronger accountability obligations against such requirements, including annual reporting against a wider range of performance indicators (recommendation 7.16), and opportunities for internal and third-party review on the merits of key decisions (recommendations 7.17, 7.18).

An integrated reform program

To ensure the effective implementation of the above reforms, clear processes need to be established to carry them forward, both at the Australian Government level and under COAG. Key elements of the processes in each case should be:

- a forward agenda, identifying at the outset what actions are to be taken, both in relation to specific reforms and further reviews;
- indicative timelines for the various components of this forward agenda, and
- institutional arrangements to monitor and facilitate progress in implementation, including ministerial oversight.

The Australian Government's program

At the Australian Government level, the foreshadowed annual reviews of the cumulative stock of regulation, to be conducted by the Productivity Commission, would provide a useful independent mechanism for monitoring progress in implementing the reform agenda resulting from this review. Such a stocktake would also enable the commission to identify areas where progress was deficient or further action was needed. This would also help ensure that the Productivity Commission reviews did not simply cover the same ground, seeking the same input from business to this review.

Towards a COAG agenda

At the COAG level, current deliberations about a successor agenda to NCP provide an important opportunity to develop a program of reviews and reforms, together with supporting timelines and institutional arrangements.

As with the reform agenda proposed by the Taskforce for the Australian Government, the COAG reforms should involve not only improvements to the existing stock of regulation but also mechanisms to strengthen the processes and institutions responsible for regulatory outcomes. Such mechanisms, including enhanced analytical and consultation requirements and stronger 'gate-keeping' disciplines, ideally should apply at the state and territory level as well as at the national level. As noted in chapter 7, there is also a need to develop an overarching institutional framework for the national harmonisation of regulation.

While devising such an agenda is an essential first step, one of the lessons of the implementation of NCP is that *accountability* for genuine reform is a key to ensuring that it occurs. It thus makes sense that progress in implementing a new COAG program of reviews and reforms to regulation be overseen by a national body, akin to the National Competition Council's role in NCP. As noted in chapter 7, consideration should also be given to incentives and disciplines that would facilitate change and reflect the national-level benefits.

Political leadership remains fundamental

The Taskforce has identified a range of reforms which it believes could significantly reduce regulatory burdens on business. However, it is also conscious that this will require government to make some major changes to its own *modus operandi*, and that these will only occur if there is sufficient political commitment and support.

The announcement of an agenda emerging from this review, as well as concurrent COAG and other reviews, provides an important opportunity for the political leadership needed. The release of an overarching policy statement could be used not only to issue a strong signal to government officials and regulators, but also to put the case for a new approach to regulation to the wider community.

In the Taskforce's view, among the key messages that any such policy statement would need to convey are:

- government will not take regulatory action (including in response to perceived 'crises') without careful assessment and appropriate consultation;
- where a real crisis demands circumvention of established processes, a sunset clause will apply or a post-implementation review will be held; and
- there will be a presumption of no (additional) regulation, unless a case is made that benefits would exceed costs and, after testing existing regulation, no alternative could do better.

At a broader level, the Taskforce considers that there is a need for strong leadership in the pursuit of a more balanced approach to regulation in Australia. Regulation is essential to the effective functioning of our economy and society, but it also has costs and limitations. A better appreciation must be fostered within the community, and within government itself, that regulation should at best seek to manage risk, not eliminate it, and that a failure to deal with risk sensibly would expose Australians to even greater threats to their well-being in the years ahead.

Were these principles to be reflected in the approach of all governments to their regulatory responsibilities, the Taskforce is confident that Australia could build on the successful reform efforts of the past, better placing this country to deal with the economic challenges of the future.



The Taskforce's brief and composition

A.1 The Taskforce's brief

The following joint press release, by the Prime Minister and Treasurer, sets out the terms of reference for the Taskforce.

Joint Press Release

**THE HON. JOHN HOWARD MP, PRIME MINISTER OF AUSTRALIA
THE HON. PETER COSTELLO MP, TREASURER**

TASKFORCE ON REDUCING THE REGULATORY BURDEN ON BUSINESS

We are pleased to announce today the appointment of a Taskforce to identify practical options for alleviating the compliance burden on business from Commonwealth Government regulation.

The Taskforce will examine and report on areas where regulatory reform can provide significant immediate gains to business.

It will be chaired by Mr Gary Banks, Chairman of the Productivity Commission, and will also include Mr Dick Humphry, the former Managing Director of the Australian Stock Exchange, Mr Rod Halstead, a corporate law expert with Clayton Utz, and Mrs Angela MacRae, a consultant to small business and Chairman of the Independent Contractors Association of Australia.

The Taskforce will:

- identify specific areas of Commonwealth Government regulation which are unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions;
- indicate those areas in which regulation should be removed or significantly reduced as a matter of priority;
- examine non-regulatory options (including business self-regulation) for achieving desired outcomes and how best to reduce duplication and increase harmonisation within existing regulatory frameworks; and
- provide practical options for alleviating the Commonwealth's 'red tape' burden on business, including family-run and other small businesses.

The Taskforce will report by 31 January 2006.

While the Taskforce will focus on areas that are predominantly the responsibility of the Commonwealth Government, it is to identify key areas in which the regulatory burden arises from overlaps with State and Territory legislation. The Taskforce will consult closely with business groups and other stakeholders.

It will be supported by a small whole-of-government secretariat and consult closely with the Secretaries of the Departments of the Prime Minister and Cabinet, Treasury and Industry, Tourism and Resources. The Taskforce's website address is www.regulationtaskforce.gov.au.

(continued next page)

The Australian Government is determined to reduce the burden of regulatory activity. It has already decided to put in place arrangements that will involve a more rigorous use of cost-benefit analysis within government before new regulations are introduced.

The Government also intends to introduce a new annual review process to examine the cumulative stock of Australian Government regulation and identify an annual red tape reduction agenda.

Reviews will be undertaken by the Productivity Commission. The Commission will call for public submissions on areas of red tape concern, based on a direction from the Treasurer and will propose an agenda to the Australian Government.

Regulation can help support business activities. It sets standards for corporate governance, helps ensure our safety and security, guards our freedom and choices and protects our environment.

However, over-regulation or inappropriate regulation acts to impede economic growth. It limits the scope for innovation, undermines entrepreneurial drive and reduces productivity and competition.

12 October 2005

A.2 Taskforce members

Gary Banks	Taskforce Chairman and Chairman of the Productivity Commission
Rod Halstead	Corporate lawyer Clayton Utz
Richard Humphry	Former Managing Director of the Australian Stock Exchange
Angela MacRae	Consultant to small business and Chairman of the Independent Contractors of Australia

A.3 Members of the Taskforce Secretariat

Sue Weston	<i>Secretariat Manager; Office of Small Business</i>
Ian Monday	<i>Deputy Manager; Productivity Commission</i>
Wayne Beswick	<i>Department of Prime Minister and Cabinet</i>
Jessica Brown*	<i>Department of Industry, Tourism and Resources</i>
Colin Clark	<i>Productivity Commission</i>
Shellie Davis	<i>Productivity Commission</i>
Bob Eckhardt	<i>Department of Health and Ageing</i>
Darren Kennedy	<i>Department of the Treasury</i>
Scott Kompo-Harms	<i>Department of Employment and Workplace Relations</i>
Tom Nankivell	<i>Productivity Commission</i>
Iain Scott	<i>Department of the Treasury</i>
Vickii Wales	<i>Department of Industry, Tourism and Resources</i>
Tony Weber**	<i>Department of Industry, Tourism and Resources</i>
Danielle Wood	<i>Productivity Commission</i>

Note: Stephen Rimmer of the Office of Regulation Review acted as advisor to the Secretariat in the initial stages of the review. Trish Boekel of Boekel Communications assisted with the editing of the final report.

** Member of the Secretariat from 21 November 2005 to 31 January 2006.*

*** Member of the Secretariat from 12 October 2005 to 21 November 2005.*

The Taskforce was established on 12 October 2005. An issues paper, detailing the terms of reference for the Taskforce and providing information to help interested parties prepare submissions, was released on 25 October 2005. Media advertisements inviting public participation in the review were published in the business sections of *The Australian*, *Australian Financial Review*, *The Sydney Morning Herald*, *The Age* (Melbourne), *The Courier Mail* (Brisbane), *The West Australian*, *Advertiser* (Adelaide), *The Mercury* (Hobart), *The Northern Territory News*, *Queensland Country Life* and *The Land* newspapers between 1 and 3 November 2005.

In addition to receiving 151 submissions, the Taskforce provided a number of other opportunities for comment, including over 60 consultation visits with individual organisations, as well as 3 roundtable and 2 forum-style discussions covering a number of themes. These were conducted during November 2005. Organisations visited by the Taskforce are listed at B.1, while roundtable and forum participants are listed at B.2. A list of submissions is provided at B.3.

B.1 Informal consultations

AMP Financial Services
 Association of Superannuation Funds of Australia
 Australian Association of Permanent Building Societies
 Australian Bankers' Association
 Australian Building Codes Board
 Australian Bureau of Statistics
 Australian Chamber of Commerce and Industry
 Australian Competition and Consumer Commission
 Australian Conservation Foundation
 Australian Consumers' Association
 Australian Council of Private Education and Training
 Australian Council of Trade Unions
 Australian Food and Grocery Council
 Australian Health Insurance Association
 Australian Industry Group
 Australian Medical Association
 Australian Prudential Regulation Authority
 Australian Securities and Investments Commission
 Australian Stock Exchange
 Australian Taxation Office
 Australian Veterinary Association (WA Division)
 Australian Vice-Chancellors' Committee

Business Council of Australia
CPA Australia
Challenger Financial Services Group
Chamber of Commerce and Industry of Western Australia
Chamber of Minerals and Energy Western Australia
Council of Small Business Organisations of Australia
Credit Union Services Corporation (Australia)
Department of Family and Community Services
Department of Industry, Tourism and Resources
Department of the Prime Minister and Cabinet
Department of Transport and Regional Services
Finance Industry Council of Australia
Financial Planning Association
Franchise Council of Australia
Group of 100
Group Training Australia
Housing Industry Association
Independent Schools Council of Australia
Institute of Chartered Accountants in Australia
Insurance Council of Australia
International Accounting Standards Board
International Banks and Securities Association of Australia
Investment and Financial Services Association
Master Builders Australia
Medicines Australia
Minerals Council of Australia
Motor Trades Association of Australia
MYOB Australia
National Association for Community Based Childcare Services
National Childcare Accreditation Council
National Farmers' Federation
Office of the Federal Safety Commissioner
Pharmacy Guild of Australia
Real Estate Institute of Australia
Restaurant & Catering Australia
Small Business Development Corporation of Western Australia
Standards Australia
Taxation Institute of Australia
The Treasury
Tourism and Transport Forum Australia

B.2 Roundtable and forum participants

Small Business Roundtable (16 November 2005, Canberra)

Australian Business Limited
Australian Chamber of Commerce and Industry
Australian Electrical and Electronic Manufacturers' Association
Australian Hotels Association
Business Advisory Services
Business Enterprise Centres Australia
CPA Australia
Civil Contractors Federation
Franchise Council of Australia
Housing Industry Association
Law Council of Australia
Master Builders Australia
Council of Small Business Organisations of Australia (ACT)
Liquor Stores Association of Victoria
Micro and Home Business Association ACT
Motor Trades Association of Australia
National Association of Retail Grocers of Australia
National Independent Retailers Association
National Institute of Accountants
Pharmacy Guild of Australia
Printing Industries Association of Australia
Real Estate Institute of Australia
Small Enterprise Association of Australia and New Zealand
Small Enterprise Telecommunications Centre

Economic Roundtable (28 November 2005, Sydney)

Association of Superannuation Funds of Australia
Australian Bankers' Association
Australian Chamber of Commerce and Industry
Australian Industry Group
Australian Institute of Company Directors
Business Council of Australia
CPA Australia
Corporate Tax Association
Financial Planning Association
Institute of Chartered Accountants in Australia
Insurance Council of Australia
International Banks and Securities Association of Australia
Investment and Financial Services Association
KPMG Australia
Taxation Institute of Australia

Employment/Environment Roundtable (29 November 2005, Canberra)

Australian Petroleum Production and Exploration Association

Australian Plantation Products and Paper Industry Council

Energy Supply Association of Australia

Master Builders Australia

Minerals Council of Australia

Shell Petroleum

Aged Care Forum (11 November 2005, Canberra)

Aged Care Association Australia

Aged and Community Services Association

Catholic Health Australia

Child Care Forum (15 November 2005, Sydney)

ABC Learning Centres*

Child Care New South Wales*

National Family Day Care Council of Australia

* Jointly represented.

B.3 List of submissions

Participant	Submission number
ABC Learning Centres	102
ACCORD Australasia	85
Advisory Council on Intellectual Property	84*
Aerospace Industry Action Agenda Stakeholder Reference Group	52
Agsafe	132
AMP Financial Services	67
ANZ	111
Association of Consulting Engineers Australia	79
Association of Financial Advisors	117#
Association of Superannuation Funds of Australia	103
Australian Association of Permanent Building Societies	14,121*#
Australian Bankers' Association	61,116#,135
Australian Bureau of Statistics	15
Australian Chamber of Commerce and Industry	25
Australian Chamber of Fruit and Vegetable Industries	37
Australian Communications Industry Forum	49
Australian Construction Industry Forum	60
Australian Consumers' Association	129
Australian Council of Trade Unions	28
Australian Customs Service	81
Australian Dental Industry Association	138
Australian Financial Markets Association	101
Australian Food and Grocery Council	36
Australian Friendly Societies Association	114#
Australian Health Insurance Association	42
Australian Institute of Company Directors	63
Australian Medical Association	23
Australian Mobile Telecommunications Association	72
Australian Petroleum Production and Exploration Association	106
Australian Pipeline Industry Association	92
Australian Plantation Products and Paper Industry Council	57
Australian Self-Medication Industry	21
Australian Spatial Information Business Association	13
Australian Stock Exchange	151
Australian Trucking Association	46
Australian Vice-Chancellors' Committee	9

Participant	Submission number
AXA Asia Pacific Holdings	55
Bondfield, Brett	80
Building Products Innovation Council	20
Business Council of Australia	109
Calcomp Equipment	150
Canberra International Airport	133
Capital Region Area Consultative Committee	142
Catholic Health Australia	19
Central Markets Association of Australia	141
Challenger Financial Services Group	91, 126
Chamber of Commerce and Industry of Western Australia	130
Chemicals and Plastics Leadership Group	59
Child Care New South Wales	54
City of Stirling	34
Complementary Healthcare Council of Australia	69
Corporate Tax Association	68
Cotta, Olavo	44
Council of Small Business Organisations of Australia	17
CPA Australia	113
Credit Union Industry Association	148
David A. Tanzer & Associates, P.C.	143
Department of Agriculture, Fisheries and Forestry	105
Department of the Premier and Cabinet (WA)	145
Department of Transport and Regional Services	112*
Distilled Spirits Industry Council of Australia	24
Farmwise Australia	86*
Finance Industry Council of Australia	77
Financial Planning Association	149
Group of 100	29, 95
Group Training Australia	90
Guyra Rural Services	10
Hodgkinson, Steve	4
Housing Industry Association	48
Independent Schools Council of Australia	139
Industry Funds Forum	118 [#]
ING Australia	39
Institute of Chartered Accountants in Australia	41

Participant	Submission number
Institute of Early Childhood	26
Institute of Public Affairs	127
Insurance Council of Australia	98, 120** [#] , 134
International Banks and Securities Association of Australia	71, 128
Investment and Financial Services Association	89
Issues Management Consulting	12
K.M. Corke and Associates	11
Law Council of Australia	131
Loxton, John	125
Maitland, Alex	3
Master Builders Australia	100
Medical Devices Industry Action Agenda Strategic Industry Leaders'	104
Medical Industry Association of Australia	30
Medicines Australia	99
Metro Properties	43
Minerals Council of Australia	147
Moob Moob Mill	124
Mortgage Industry Association of Australia	6
Motor Trades Association of Australia	94
MYOB Australia	2
N. Stenning & Co.	75*
National Association of Retail Grocers of Australia	40
National Bulk Commodities Group	144
National Competition Council	32
National Credit Union Association	38
National Family Day Care Council of Australia	31
National Farmers' Federation	22
National Institute of Accountants	107
National Roundtable of Nonprofit Organisations	110
Office of Senator Michael Ronaldson	1
Office of the Privacy Commissioner	93
Office of the Small Business Commissioner (ACT)	7
Optus	45
Pharmacy Guild of Australia	108
Philp, Russell	96*
Plastics & Chemicals Industry Association	58
PriceWaterhouseCoopers	82

Participant	Submission number
Printing Industries Association of Australia	64
Property Council of Australia	122
QBE Insurance Group	53*, 119#
Queensland Farmers' Federation	50
Ragless, Stephen	88
Real Estate Institute of Australia	16
Remove Obstacles to Australian Manufacturers	76
Restaurant & Catering Australia	70
Science Industry Action Agenda	56
Sea Transport Corporation	146
Securities & Derivatives Industry Association	115#
SICORE International	27
Small Business Development Corporation of Western Australia	87
Small Enterprise Telecommunications Centre	51
Standards Australia	83
Starkis Design	5
State Chamber of Commerce (NSW)	35
Swimming Pool and Spa Association of NSW	62
Taxation Institute of Australia	78
Telstra Corporation	66
The King's School	137
The Red Zebra Business Centre	18
Tourism and Transport Forum Australia	140
VEBIZ	8
Victorian Automobile Chamber of Commerce	33
Victorian Department of Treasury and Finance	47
Visa International	65
Vodafone Australia	97
Western Graingrowers	74
Young, John S.	73
YP4	136
Zurich Financial Services Australia	123*

* Denotes submissions that contain confidential information not available to the public.

Denotes submissions initially prepared for the Financial Sector Advisory Council's Review of Financial Sector Regulation.

Submission 146 and submissions 148 to 151 were received after 23 December 2005.



References

- ABCB (Australian Building Codes Board) 2005, *Proposal to Amend the Building Code of Australia to Increase the Energy Efficiency Requirements for Houses: Draft Regulation Impact Statement*, Canberra, http://www.abcb.gov.au/documents/energy/RIS2005_ee_reqs_for_houses-apr2005.doc (accessed 7 November).
- 2004, *Disability Discrimination Act Disability Standards for Access to Premises: Draft Regulation Impact Statement*, Canberra, http://www.abcb.gov.au/documents/access/Access_RIS_Summary.doc (accessed 7 November 2005).
- ABS (Australian Bureau of Statistics) 2005, *Labour Force, Australia*, Cat. no. 6202.0, ABS, Canberra.
- 2004, *Australian Bureau of Statistics Business Register, Counts of Businesses — Summary Tables*, Cat. no. 8161.0.55.001, ABS, Canberra.
- ACCI (Australian Chamber of Commerce and Industry) 2005a, *Holding Back the Red Tape Avalanche: A Regulatory Reform Agenda for Australia*, Position Paper, November.
- 2005b, *Modern Workplace: Safer Workplace — An Australian Industry Blueprint for Improving Health and Safety*, April.
- 2004, *Tax Reform Blueprint, A Strategy for the Australian Taxation System 2004–2014*, November.
- Aged and Community Services Association 2004, Submission to the Senate Community Affairs Committee Inquiry into Aged Care.
- 2003, *People Before Paper, Research Findings: The Administrative Requirements for Residential Aged Care Staff*.
- ANAO (Australian National Audit Office) 2005a, *Cross Portfolio Audit of Green Office Procurement*, Audit Report no. 22, 2005–06.
- 2005b, *Managing for Quarantine Effectiveness — Follow-up*, Audit Report no. 19, 2005–06.
- Argument S. 2003, 'Making delegated legislation more accessible', *Clayton Utz Insights*, Clayton Utz, Sydney, http://claytonutz.com.au/areas_of_law/controller.asp?aolstring=17&ns=74&printnewsletter=yes (accessed 1 December 2005).
- Argy S. & Johnson M. 2003, 'Mechanisms for Improving the Quality of Regulations: Australia in an International Context', Productivity Commission Staff Working Paper, July.
- Australian Public Service Commission 2005, *State of the Service 2004-05*, Commonwealth of Australia, November.
- Blair B. 1998, *Food: A Growth Industry, Report of the Food Regulation Review*, Food Regulation Review Committee, Canberra.
- Blair T. 2005, 'Common Sense Culture, Not Compensation Culture', Speech to the Institute of Public Policy Research, London, May.

- BCA (Business Council of Australia) 2005, *Business Regulation Action Plan for Future Prosperity*, Melbourne.
- Chant Link and Associates 2005, *A Quantitative Report on Five Star Energy Efficiency and Environmentally Sustainable Building Practices*, Project 2711, Joint Study for the Building Commission of Victoria and the Housing Industry Association, Melbourne.
- COAG (Council of Australian Governments) 2005, COAG Communiqué, June <http://www.coag.gov.au/meetings/030605/index.htm#formats>, (accessed 13 January 2006).
- 2004a, *Principles and Guidelines for National Standard Setting Bodies and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, Amended by COAG June 2004.
- 2004b, *Evaluation of Mutual Recognition Schemes: Report to the Council of Australian Governments and the New Zealand Government*, December, http://www.coag.gov.au/mra/evaluation_mutual_recognition_schemes.pdf (accessed 1 December 2005).
- Commonwealth of Australia 1997, *Grey-Letter Law: Report of the Commonwealth Interdepartmental Committee on Quasi-regulation*, Canberra, December.
- DEH (Department of the Environment and Heritage) 2003, *Environmental Purchasing Guide*, Commonwealth of Australia.
- DITR (Department of Industry, Tourism and Resources) 2005, Australian Chemicals and Plastics — Key Statistics, www.industry.gov.au/chemicals (accessed 20 December 2005).
- DoFA (Department of Finance and Administration) 2005, *Commonwealth Procurement Guidelines*, Financial Management and Guidance no. 1, Commonwealth of Australia.
- Environment Link 2005, *Review of the National Pollutant Inventory*, http://www.ephc.gov.au/pdf/npi/NPI_Review_April_2005.pdf (accessed 30 November 2005).
- Estens R. 2002, *Connecting Australia: The Report of the Regional Telecommunications Inquiry*, Canberra.
- Exports and Infrastructure Taskforce 2005, *Australia's Export Infrastructure*, Report to the Prime Minister, Canberra, May.
- Galbally R. 2000, *National Competition Review of Drugs, Poisons and Controlled Substances Legislation*, Commonwealth of Australia, Canberra.
- Hogan W. 2004, *Review of Pricing Arrangements in Residential Aged Care*, Commonwealth of Australia, Canberra.
- Howard J. (Prime Minister of Australia) & Costello P. (Treasurer) 2005, 'Taskforce on reducing the regulatory burden on business' Joint Media Release, 12 October 2005.
- Human Solutions 2005, Business licence information, <http://www.bli.net.au/> (accessed 27 January 2005).
- IC (Industry Commission) 1997, *Private Health Insurance*, Report no. 57, Canberra.
- IMF (International Monetary Fund) 2005, *Australia — Staff Report for 2005*, IMF Country Report No. 05/331, Washington DC.
- Kean B. 1995, *Review of Australia's Standards and Conformance Infrastructure* (the Kean Report).
- Lattimore R., Martin B., Madge A. & Mills J. 1998, *Design Principles for Small Business Programs and Regulations*, Staff Research Paper, Canberra.

- Macdonald I. (Minister for Fisheries, Forestry and Conservation), Macfarlane I. (Minister for Industry, Tourism and Resources) & Campbell I. (Minister for the Environment and Heritage) 2005, 'Proposed 'five-star' energy ratings seriously flawed', Joint Media Release, DAFF05/235MJ, 2 December.
- Maxwell C. 2004, *Occupational Health and Safety Act Review*, State of Victoria, March.
- NFF (National Farmers' Federation) 2005, *Labour Shortage Action Plan*, September.
- OECD (Organisation for Economic Cooperation and Development) 2005, *OECD Guiding Principles for Regulatory Quality and Performance*, Paris
- 2001, *Businesses' Views on Red Tape: Administrative and Regulatory Burdens on Small and Medium-Sized Enterprises*, OECD, Paris.
- Office of the Privacy Commissioner 2005, *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988*, Sydney.
- ORR (Office of Regulation Review) 1998, *A Guide to Regulation* (second edition).
- Office of Small Business 2003, *Regulatory Compliance Case Studies Pilot — Hospitality Sector Report*, Canberra.
- Oliver T. & Bartley S. 2005, 'Tax System Complexity and Compliance Costs — Some Theoretical Considerations', *Economic Roundup*, Spring, The Treasury, <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1042> (accessed 12 January 2006).
- PC (Productivity Commission) 2005a, *Conservation of Australia's Historic Heritage Places*, Draft Report, December.
- 2005b, *Impacts of Advances in Medical Technology in Australia*, Research Report, Melbourne.
- 2005c, *The Private Cost Effectiveness of Improving Energy Efficiency*, Report no. 36, Canberra.
- 2005d, *Review of National Competition Policy Reforms*, Report no. 33, Canberra.
- 2005e, *Review of the Australian Consumer Product Safety System*, Discussion Draft, Canberra.
- 2005f, *Regulation and its Review 2004-05*, Annual Report Series, Productivity Commission, Canberra.
- 2005g, *Australia's Health Workforce*, Research Report, Canberra.
- 2004a, *Impacts of Native Vegetation and Biodiversity Regulations*, Report no. 29, Melbourne.
- 2004b, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Report no. 20, Canberra, March.
- 2004c, *Reform of Building Regulation*, Research Report, Canberra.
- 2004d, *Review of the Disability Discrimination Act 1992*, Report no. 30, Melbourne.
- 2004e, *Review of the Gas Access Regime*, Report no. 31, Canberra.
- 2003a, *Evaluation of the Mutual Recognition Schemes*, Research Report, Canberra.
- 2003b, *General Practice Administrative and Compliance Costs*, Research Report, Canberra.
- Ruddock P. (Attorney-General) 2005, 'Review of the Disability Discrimination Act', Media Release no. 13/2005 and Attachment, 27 January.

- Small Business Deregulation Taskforce (Bell Report) 1996, *Time For Business*, Canberra.
- Tanner C. 1998, *National Competition Review of the Imported Food Control Act 1992*, Commonwealth of Australia, Canberra.
- TGA (Therapeutic Goods Administration) 2005, 'What are industrial chemicals?', Office of Chemical Safety, www.tga.gov.au/chemicals/ocs/index.htm (accessed 12 December 2005).
- The Board of Taxation 2002, *Government Consultation with the Community on the Development of Taxation Legislation*, March, <http://www.taxboard.gov.au/content/downloads/consulrep.pdf> (accessed 27 January 2005)
- The Treasury 2005, 'Submission to House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into improving the superannuation savings of under 40s', <http://www.aph.gov.au/house/committee/efpa/super/subs/sub047.pdf> (accessed 12 January 2005).
- TPARC (Trade Practices Act Review Committee) 2003, *Review of the Competition Provisions of the Trade Practices Act* (Dawson Report), January.
- Uhrig J. 2003, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra.
- United Kingdom Cabinet Office 2004, *Code of Practice on Consultation*, <http://www.cabinetoffice.gov.uk/regulation/consultation/> (accessed on 5 January 2005).
- VCEC (Victorian Competition and Efficiency Commission) 2005, *Housing Regulation in Victoria: Building Better Outcomes*, Draft Report, Melbourne.
- VECCI (Victorian Employers' Chamber of Commerce and Industry) 2004, 'OHS Reform Bill Introduced into Parliament', Archived News, <http://www.vecci.org.au/vecci/news/archived+news+2004/ohs+reform+bill+introduced+into+parliament1.asp> (accessed 13 January 2006).
- Victorian Building Commission 2002, *Energy Efficiency Standards for New Residential Buildings*, Regulatory Information Bulletin, Melbourne.
- Wallis S., Beerworth W., Carmichael J., Harper I. and Nicholls L. 1997 *Financial System Inquiry: Final Report*, Canberra.
- World Bank 2005, *Doing Business in 2006: Creating Jobs*, Washington DC.

RETHINKING REGULATION

January 2006

