



Australian Government
Productivity Commission

Performance Benchmarking of Australian Business Regulation

Productivity
Commission
Discussion Draft

This is a discussion draft prepared for further public consultation and input.

The Commission will finalise its report to the Government after these processes have taken place.

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The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by consideration for the wellbeing of the community as a whole.

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.

Terms of reference

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

Productivity Commission Act 1998

The Productivity Commission is requested to undertake a study on performance indicators and reporting frameworks across all levels of government to assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business.

Stage 1: Develop a range of feasible quantitative and qualitative performance indicators and reporting framework options

In undertaking this study, the Commission is to:

1. develop a range of feasible quantitative and qualitative performance indicators and reporting framework options for an ongoing assessment and comparison of regulatory regimes across all levels of government.

In developing options, the Commission is to:

- consider international approaches taken to measuring and comparing regulatory regimes across jurisdictions; and
 - report on any caveats that should apply to the use and interpretation of performance indicators and reporting frameworks, including the indicative benefits of the jurisdictions' regulatory regimes;
2. provide information on the availability of data and approximate costs of data collection, collation, indicator estimation and assessment;
 3. present these options for the consideration of COAG. Stage 2 would commence, if considered feasible, following COAG considering a preferred set of indicators.

The Stage 1 report is to be completed within six months of commencing the study. The Commission is to provide a discussion paper for public scrutiny prior to the completion of its report and within four months of commencing the study. The Commission's report will be published.

Stage 2: Application of the preferred indicators, review of their operation and assessment of the results

It is expected that if Stage 2 proceeds, the Commission will:

4. use the preferred set of indicators to compare jurisdictions' performance;
5. comment on areas where indicators need to be refined and recommend methods for doing this.

The Commission would:

- provide a draft report on Stage 2 for public scrutiny; and
- provide a final report within 12 months of commencing the study and which incorporates the comments of the jurisdictions on their own performance. Prior to finalisation of the final report, the Commission is to provide a copy to all jurisdictions for comment on performance comparability and relevant issues. Responses to this request are to be included in the final report.

In undertaking both stages of the study, the Commission should:

- have appropriate regard to the objectives of Commonwealth, state and territory and local government regulatory systems to identify similarities and differences in outcomes sought;
- consult with business, the community and relevant government departments and regulatory agencies to determine the appropriate indicators.

A review of the merits of the comparative assessments and of the performance indicators and reporting framework, including, where appropriate, suggestions for refinement and improvement, may be proposed for consideration by COAG following three years of assessments.

The Commission's reports would be published.

PETER COSTELLO

11 August 2006

Contents

Terms of Reference	III
Contents	V
Abbreviations	IX
Glossary	XI
Key Points	XVIII
Overview	XIX
1. What is this study about?	1
1.1 Policy background	1
1.2 Scope	2
1.3 Approach	4
1.4 Conduct	8
1.5 Report outline	9
2 Benchmarking issues	11
2.1 Why benchmark regulatory burdens?	12
2.2 Benchmarking components	13
2.3 Cost-effectiveness issues	21
3 What can be learnt from other studies?	25
3.1 Informant surveys	26
3.2 Personal interviewing surveys	31
3.3 Self-enumeration surveys	37
3.4 Lessons from key studies	43

4	Becoming and being a business	45
4.1	Industry concerns	46
4.2	Benchmarking objectives	50
4.3	Proposed indicators	57
4.4	Data availability and collection	58
4.5	Caveats	60
5	Doing business	63
5.1	Industry concerns	64
5.2	Benchmarking objectives	67
5.3	Possible indicators	68
5.4	Data availability and collection	76
5.5	Caveats	81
6	Doing business interstate	83
6.1	Industry concerns	84
6.2	Benchmarking objectives	91
6.3	Proposed indicators	93
6.4	Data availability and collection	98
6.5	Caveats	100
7	Benchmarking the quantity and quality of regulation	101
7.1	Benchmarking the total stock of regulation	102
7.2	Benchmarking the burden on a business type	105
7.3	Benchmarking the quality of regulatory design, administration and enforcement	107
7.4	Government initiatives to reduce regulatory burden	115
7.5	Caveats	118
7.6	Data availability and collection	119

8	Benchmarking program and implementation	121
8.1	Summary of benchmarking opportunities	122
8.2	Developing a benchmarking program	126
8.3	Other implementation and reporting issues	136
8.4	In summary	143
Appendix A	Public consultation	145
Appendix B	Theory and practice of composite performance indexes	149
References		169

Abbreviations

Abbreviations

ABA	Australian Bankers Association
ABCB	Australian Building Codes Board
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACPBR	Advisory Committee on Paperwork Burden Reduction (Canada)
ALGA	Australian Local Government Association
AMRA	Australian Mutual Recognition Agreement
ANZSIC	Australian and New Zealand Standard Industrial Classification
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASCC	Australian Safety and Compensation Council
BCC	Business Cost Calculator
BRE	Better Regulation Executive (United Kingdom)
CFIB	Canadian Federation of Independent Business
CIBE	Construction Industry Business Environment
COAG	Council of Australian Governments
EIS	Environmental Impact Statement
EPBC	Environment Protection and Biodiversity Conservation (Act)
FBI	Fringe Benefits Tax
GAO	General Accounting Office (United States)

GST	Goods and Services Tax
HMRC	Her Majesty's Revenue and Customs (United Kingdom)
MCA	Minerals Council Australia
NRA	National Reform Agenda
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
OPPAGA	Office of Program Policy Analysis and Government Accountability (Florida, United States)
ORR	Office of Regulation Review
PAYG	Pay As You Go (withholdings)
RAIA	Royal Australian Institute of Architecture
RBA	Reserve Bank of Australia
RIS	Regulatory Impact Statement
SBDTF	Small Business Deregulation Task Force
SCM	Standard Cost Model
TFN	Tax File Number
TPA	Trade Practices Act
UCCC	Uniform Consumer Credit Code
UDIA	Urban Development Institute of Australia
VCEC	Victorian Competition and Efficiency Commission

Glossary

Administrative compliance cost	Paperwork compliance costs and those non-paperwork costs directly associated with the paperwork activities.
Allocative efficiency	A state achieved when resources are allocated in a way that maximises the net benefit attainable through their use. In other words, when resources are allocated such that no possible reallocation could make one agent (producer or consumer) better off without making at least one other agent worse off.
Baseline	A specific standard, level or value at a point in time that serves as a basis for comparison or control.
Benchmark	A measure, or reference point, of performance used for goal setting or to compare performance between similar entities.
Benchmarking	A standardised method for collecting and reporting critical operational data in a way that enables relevant comparisons of performance among different entities. It can also involve comparing information over time.
Best practice	A practice, technique or methodology that is considered to have delivered a desired or optimum result or outcome, given the circumstances.
Business demography	Information pertaining to the structure and characteristics of businesses.

Capital holding cost	Types of cost associated with keeping and maintaining a stock of outputs in storage. Includes interest on money incurred on investment projects delayed by regulations.
Compliance cost	Costs incurred by business to meet the requirements imposed on them by regulation. Comprised of paperwork and non-paperwork compliance costs.
Composite (sub-)index / indicator	An aggregation of multiple performance indicators that provides a measurement of comparative performance.
Continuous improvement	Ongoing evaluation and change of processes, products, programs or services to facilitate improvement.
Direct measure	A measure that records explicit or actual aspects of the phenomenon of interest.
Dynamic efficiency	The state achieved in which the processes for achieving allocative efficiency over time are unconstrained from maximising the net benefit attainable. The processes involve agents adapting and responding to change and development in economic conditions.
Economic cost	A measure of the alternative opportunities foregone in the choice of one good or activity over others. Adverse regulations can induce a range of economic costs, including allocative and dynamic inefficiencies, as they may artificially distort the use of resources.
Framework	A description of the underlying structure, including components, of a complex entity or process.

Incremental cost	The cost that would not have been incurred in the absence of regulation. For example, assume a company spends \$1 million per annum on Occupational Health and Safety (OHS). If the company would have spent \$600 000 on OHS, regardless of any regulatory requirements, the incremental cost attributable to regulation would be \$400 000 per annum (\$1 million minus \$600 000).
Indirect measure	A measure that records indirect aspects of the phenomenon of interest. Indirect measures are sometimes referred to as proxy measures.
Meta-index	An aggregation of composite sub-indexes, each representing a measure of performance in a particular aspect.
Metric	A scale of measurement.
Non-paperwork compliance cost	Investment and output modification costs, capital holding costs, and time spent in meeting regulatory requirements.
Normally efficient business	A business that conducts administrative tasks in a normal manner, which is no better or worse than expected. This concept is used by the Standard Cost Model (SCM) to assess regulatory compliance costs.
Paperwork compliance cost	Compliance costs associated with filling out forms and providing information, and associated administrative costs, such as record-keeping and obtaining advice from external sources.
Performance benchmarking	A standardised method for collecting and reporting critical operational data in a way that enables relevant comparisons of performance among different entities. It can also involve comparing information over time.

Performance gap	Difference between actual performance and the desired standard of performance.
Performance indicator	Individual statistical, or other, unit of information, or combination of units, which is considered to highlight performance in quantitative and qualitative terms.
Primary legislation	An Act made by Parliament which provides the regulatory framework for society. It provides for the making of regulations, determinations, declarations and other forms of subordinate legislation.
Process benchmarking	A standardised method for collecting and reporting information that provides a comparison of practices and procedures across entities.
Prospective assessment	An assessment based on anticipated changes or activities, which are expected before an event (also sometimes referred to as an <i>ex ante</i> assessment).
Quasi-regulation	Rules or arrangements used by governments to influence business conduct that do not involve the use of explicit ('black letter') laws. Examples include industry codes of practice, guidance notes, bi-part agreements with industry, and accreditation schemes.
Reference business	In the context of this study, a business entity selected on the basis that information collected on regulatory burdens is comparable across jurisdictions.

Reference business activity	The economic, financial and operational activities of reference businesses. For example, development approval applications by a reference business.
Regulation	A principle, rule or law designed to control or govern conduct. Regulation includes primary and subordinate legislation; orders and other rules issued by all levels of government and by bodies to which governments have delegated regulatory powers.
Regulatory administration	Ongoing management of regulation by governments to ensure regulations' proper functioning, including promoting compliance with regulation.
Regulatory benefit	The benefits that accrue to agents due to the regulatory framework, such as cleaner air and water attributable to environmental regulation.
Regulatory burden	The costs borne by agents attributable to the regulatory framework. Includes compliance and economic burdens borne by businesses as a result of regulation.
Regulatory design	The planning and creation of regulation to achieve a particular regulatory purpose or effect.
Regulatory enforcement	Initiatives undertaken by government to compel observance of, and adherence to, regulation.
Regulatory environment	Aspects of regulatory design, administration and enforcement by government that can affect the incidence of regulatory burden.

Regulatory reach	The incidence and impact of regulatory burden on businesses.
Retrospective assessment	An assessment based on analysis of past performance (also sometimes referred to as an <i>ex post</i> assessment).
Standards benchmarking	A standardised method for establishing best practice standards or targets that entities can aspire to as part of their planning and continuous improvement processes.
Subordinate legislation	Rules or instruments that have the force of law, but are made by an authority to which the Parliament has delegated part of its legislative power. Includes statutory rules, disallowable instruments, and other subordinate legislation not subject to parliamentary scrutiny.
Total cost	The sum of fixed (capital and ‘overheads’) and variable (such as labour) costs. In the context of this study, the costs attributable to regulation, including those that might not be avoided if the regulation were removed..
Unnecessary regulatory burden	The extent to which the burdens of regulation exceed what is necessary to achieve the policy objectives underlying the regulation.
Yardstick competition	A process of comparative competition between entities.

OVERVIEW

Key points

- Benchmarking business regulation to identify potentially unnecessary regulatory burdens is feasible, if carefully implemented and confined to areas of regulation that have similar objectives.
- Benchmarking opportunities include:
 - comparing regulatory compliance costs;
 - measuring changes to the quantity of regulation over time; and
 - examining the quality of regulation against ‘best practice’ principles.
- In benchmarking regulatory compliance costs, the approach would have to be tailored to the nature of the regulation and the burden it imposes, including:
 - the administrative compliance cost in complying with regulations that have to be met in *becoming and being a business*;
 - the time taken, certainty and complexity of obtaining approvals in the course of business activity — that is, regulations that have to be met in *doing business*; and
 - the extent and materiality of duplication and inconsistency in *doing business interstate*, for areas of regulation where governments have agreed there is a case for national consistency or mutual recognition.
- Benchmarking the quantity and quality of regulation itself has the added benefit of establishing a baseline from which changes over time can be gauged. It would also provide insights into the sources of regulatory burden and systemic problems.
- The effectiveness of any benchmarking would depend on whether measurable differences in compliance burdens exist and how compelling the results are in convincing governments to effect change — something that will be known only after some regulations have been benchmarked.
 - This suggests that any benchmarking should initially be undertaken on a modest scale.
- A suite of indicators would be necessary to provide a picture of regulatory burdens and where the performance gaps exist across jurisdictions. Indirect measures would have to be used because of the difficulty of directly measuring incremental compliance costs.
- The cost of a modest (small number of regulations) but comprehensive program (covering most of the suggested forms of benchmarking) could be in the order of several million dollars per annum.
- The regulatory ‘hot spots’ identified by COAG could be benchmarked initially and periodically re-benchmarked as necessary. These areas of regulation comprise:
 - rail safety regulation; occupational health and safety; national trade measurement; chemicals and plastics; development assessment arrangements; and building regulation.
- Many of the suggested benchmarking indicators would not require business to provide data. Where some business input is unavoidable, the suggested approach would be to involve the smallest number of businesses possible to limit costs.

Overview

Business leaders in Australia have become increasingly vocal in their concerns about regulatory compliance burdens. While these costs might have been tolerated in the past, they have now reached such a level that business is demanding that there be no *unnecessary* compliance costs — that is, costs that could be eliminated without compromising the benefits of the regulation. Moreover, governments are responding to these concerns.

The Regulation Taskforce (2006) established by the Australian Government concluded that benchmarking across jurisdictions would assist in identifying unnecessary burdens and improving regulatory regimes. The Council of Australian Governments (COAG) subsequently agreed in-principle to the development of a common framework for benchmarking, measuring and reporting on the regulatory burden on business (COAG 2006a).

This study is intended to assist COAG assess the feasibility of benchmarking regulatory burdens. It comprises two stages. In this first stage, the Productivity Commission has been asked to assess the feasibility of developing performance indicators and framework options for benchmarking, measuring and reporting on business regulatory burdens. Subject to COAG's endorsement, the Commission will proceed with the benchmarking in the second stage of the study.

Why benchmarking?

A key to improving regulatory regimes is for governments to deepen their understanding of the burdens that their regulations impose, and to generate debate about whether identified differences in burdens are justified, or whether better approaches exist. For this reason, the Regulation Taskforce (2006) proposed benchmarking regulatory regimes across jurisdictions to facilitate this understanding, after concluding that attempts to quantify regulatory burden at the aggregate level are likely to be problematic.

Modelling work currently being undertaken by the Productivity Commission for COAG, while still preliminary, suggests that the economic gains from further regulatory reform could be large. For example, if reducing the regulatory burden

lowered compliance costs by one fifth from conservatively estimated levels, a cost saving of around \$7 billion (0.8 per cent of GDP) would be achievable (PC 2006a).

There is evidence that significant differences in the level of burden across jurisdictions exist in areas of comparable regulation. For example, the Housing Industry Association (HIA 2006a) claim that Occupational Health and Safety (OHS) regulation is more onerous in New South Wales than in any other Australian jurisdiction. A survey by the Royal Australian Institute of Architects (RAIA 2003) revealed considerable variation in average processing times for planning approvals across and within jurisdictions. Further, governments have agreed that there is a case for national consistency in some areas of regulation, yet they have yet to fully achieve harmonisation.

These differences suggest that benchmarking could be an effective way of identifying the potential magnitude of unnecessary burdens and shed light on where and how they might be reduced. The rationale for benchmarking could therefore be expressed in terms of the management mantra — *what is measured gets managed, and what is managed gets done*. Reporting on performance encourages ongoing improvement through ‘yardstick’ competition. The increased transparency afforded by benchmarking can also increase government accountability.

Is it feasible and meaningful?

Benchmarking regulatory burdens on business in most areas of regulation appears to be feasible. Specifically, it is possible to benchmark the cost of administrative compliance activities and delays — that is, paperwork and some associated operating costs — for regulations with similar objectives.

Burdens arising from regulatory requirements such as safety equipment or pollution mitigation technologies — the burden of meeting the underlying policy objective — could not be considered. The impact of these burdens are typically specific to the circumstances of a business and it is difficult to isolate their efficiency costs and benefits.

Limiting the benchmarking to administrative compliance activities reduces the need to have regard for differences in benefits or outcomes of regulation. Slight differences in regulatory objectives are unlikely to have a major influence on administrative compliance costs. Where differences, say in administrative reporting requirements, are imposed because of additional objectives, the cost of the activity would have to be netted out or at least supplemented with appropriate qualifications or caveats before comparing administrative burdens across jurisdictions.

The identification of differences in compliance costs across jurisdictions, which are not the outcome of differences in regulatory objectives, would constitute *prima facie* evidence that unnecessary burdens are being imposed on businesses in those jurisdictions with relatively high costs. These differences can in turn provide a focus for regulatory reform.

Moreover, information produced in the course of benchmarking on the source of unnecessary burdens would provide useful insights for governments into what is required to fix the problems revealed, especially if supplemented by information on the quality of regulation. The benchmarking could also be used to assist governments in monitoring their progress in implementing specific reforms and in reducing burdens over time more generally.

There are some limitations, however, to benchmarking regulatory burdens. Benchmarking would not, of itself, reveal ‘best practice’ or whether a regulation is appropriate. All that can be measured is relative performance and performance gaps that might be addressed. For this reason, it is important to identify systemic problems that increase the potential for unnecessary burdens by also undertaking the suggested quality of regulation benchmarking.

As with measuring aggregate compliance costs, it would not be feasible to construct a ‘meta’ (single composite) indicator of relative jurisdictional performance. There is currently insufficient information on business demographics and the reach of regulations to construct composite indicators of the overall burden of a regulation in different jurisdictions. And, more data would be required, significantly increasing collection costs.

Any benchmarking program will be costly to implement, possibly in the order of several million dollars per annum. It would involve a technically challenging process of identifying objectives, determining accurate and reliable indicators, collecting information and reporting results that are appropriately qualified. Inevitably, such a process comes at a cost.

How could it be done?

Two types of benchmarking could be undertaken — *performance* and *standards* benchmarking. The other significant form — *process* benchmarking — is unsuitable for benchmarking differences in compliance costs or measuring the quantity and quality of regulation. However, process benchmarking has a potentially important role in other contexts, such as developing ‘best practice’ regulatory design, administration and enforcement processes.

Performance benchmarking involves measuring and comparing indicators of the compliance burden of regulations with similar objectives, across jurisdictions and over time. Any differences are taken to be indicative that unnecessary burdens could exist in those jurisdictions that have measures that exceed the minimum.

It is suggested that this form of regulation benchmarking could be used to identify unnecessary burdens and changes to the level of burden over time, associated with:

- the administrative compliance cost of licensing, tax regulation (across jurisdictions and over time in the case of Commonwealth taxes), and OHS — that is, in complying with regulations that have to be met in *becoming and being a business*; and
- the time taken, degree of uncertainty and complexity of obtaining approvals in the course of business activity — that is, regulations that have to be met in *doing business*.

In addition, it is suggested that performance benchmarking be used to identify changes to the *quantity* of regulation over time. These changes would be indicative of increasing or decreasing overall levels of regulatory burden — strictly, changes in the *potential* for unnecessary burdens. The measurement of the stock of regulation at any point in time (in total and affecting specific business types) would provide useful contextual information for benchmarking regulatory burdens. It would also provide a baseline from which to measure changes over time.

Standards benchmarking involves the comparison of indicators against ‘best practice’ standards or policy targets. It is suggested that this form of benchmarking could be used to identify:

- the extent and materiality of duplication and inconsistency in regulation in *doing business interstate*, where governments have acknowledged that there is a case for national consistency or mutual recognition; and
- the potential for unnecessary burdens by comparing indicators of design, administration and enforcement characteristics against generally accepted standards of ‘best practice’ regulation.

Possible indicators are suggested for each of the identified benchmarking opportunities (box 1). These were selected with a view to minimising the burden of data collection on business.

Box 1 Sample of possible indicators

Becoming and being a business

- Estimated administrative compliance costs, obtained through face-to-face business interviews.
- Number of licences, permits and registrations required for business; number of agencies involved in the process; availability of on-line lodgement; and the existence of statutory time limits on agency processing.

Doing business

- Time taken to process different aspects of required approvals.
- Project specific cost of delays; scope for and use of pre-lodgement procedures; and the speed of appeals processes.

Doing business interstate

- Number of inconsistent and duplicate requirements relative to national consistency and mutual recognition.
- Expert assessment of the materiality of inconsistency and duplication.
- Activity-specific cost of having to meet additional requirements.

Changes in the quantity of regulation in total and affecting specific business types

- Number of regulations; net number of new regulations; and the number of reporting requirements.

The quality of regulation

- Use of a regulatory impact statement in designing regulation; complexity that requires expertise to comply; and the existence of a sunset clause.
- Administration reporting requirements; accessibility to appeals processes; and the separation between regulation setting and administration.
- Degree of enforcement; existence of risk-based enforcement strategies; and the publication of enforcement outcomes.

Only regulations, or aspects of their administration, with similar policy objectives would be benchmarked. This would help ensure that differences in indicators reflected unnecessary burdens, rather than differences in desired regulatory outcomes. It also avoids having to benchmark and report regulatory benefits.

Indirect measures of regulatory burdens would have to be used. It is difficult to measure *direct* indicators of *incremental compliance costs* because business accounting systems do not identify these separately. Moreover, the counter-factual of what would be done in the absence of regulation is usually unknown.

In measuring the administrative compliance costs associated with becoming and being a business, it is proposed to benchmark carefully selected *reference businesses* — for which characteristics such as size, the number of employees, and so on, are specified (box 2). This will maximise comparability and limit the need to obtain information from, and thus impose further costs on, a large number of businesses. Similarly, a *reference business activity* would be benchmarked to compare delays in obtaining approvals, for example.

Box 2 The concept of a reference business

The quantity of business regulation and the resulting burdens, vary with types of business and their economic, financial and operational characteristics. Consequently, benchmarking comparisons of compliance burdens will only be robust if the basis of comparison effectively controls for these differences.

The characteristics of the reference businesses have to be well-specified to ensure that differences in compliance burdens represent unnecessary burdens, and not differences in the impact of the regulation as a consequence of differences in the size or other characteristics of the business. To account for this variability in business characteristics and the impact of regulation on them, a *range* of reference businesses would have to be selected to provide insights into the ‘sensitivity’ of collected burden information. For example, data on administrative compliance costs for reference business indicators would be obtained from actual businesses that have the same or similar specified characteristics.

Reference businesses are not necessarily statistically representative of the total business population. Nonetheless, they would account for those characteristics that are considered to be typical, or common, of businesses affected by the regulation under consideration.

A similar concept can be used to define *reference business activities* for benchmarking the burdens associated with obtaining approvals.

It is considered that administrative compliance cost indicators would be best collected by surveying businesses in *face-to-face* interviews because of the need for detailed guidance. The frameworks outlined in the international Standard Cost Model and its Australian elaboration, the Business Cost Calculator, could be used for administrative compliance cost data collection. Further, the Business Cost Calculator, now the responsibility of the Office of Best Practice Regulation, could be a useful tool for storing data by compliance activity.

Data for other indicators would be collected from government agencies and specialists with specific knowledge of regulatory requirements and their impact on business, such as legal experts. For example, in benchmarking the burdens facing businesses operating interstate, specialists would examine regulations in each

jurisdiction to identify inconsistencies and duplication, and then estimate or rate the materiality of these differences.

Most of the data required for the proposed benchmarking of regulation against ‘best-practice’ principles of design, administration and enforcement, is readily available from legislation and government agencies. However, information on whether regulations are actually administered and enforced in accordance with the procedures outlined in regulations or published guidelines, could be more difficult to obtain.

All qualifications affecting the interpretation of the benchmarking results would have to be reported, to lessen the risk of results being misinterpreted or misrepresented. The main limitations of benchmarking regulatory burdens that could give rise to qualified results are listed in box 3.

Box 3 Sources of qualifications and caveats

The main limitations of benchmarking that would give rise to qualifications and caveats on the comparison of regulatory burdens include:

- All possible indicators are indirect measures of regulatory burden —most a measure of total rather than incremental costs of regulation.
- Many indicators are partial and should not be interpreted in isolation.
- Indicators of administrative compliance costs relating to becoming and being a business, doing business and doing business interstate can only be compared across regulations with the same or similar objectives.
 - For regulations with varying policy objectives, the administrative compliance cost would have to be adjusted for differences in compliance activities or the benchmarking comparisons would have to be further qualified.
- The comparability and robustness of indicators could be influenced by the selection of reference businesses, as well as the number of businesses sampled. Although increasing the sample size could improve comparability, it would also increase the cost of benchmarking.
 - This also applies to the selection of reference business activities, as discussed in relation to indicators of burdens arising from doing business.
- Indicators of the quality and quantity of regulation only identify the potential for unnecessary burdens.
- Indicators requiring expert assessment are qualitative and, hence, subjective.
- Data quality is likely to vary across jurisdictions.
- Differences between the letter of the law and the way a regulation is administered and enforced.

How would businesses be affected?

Data for many of the indicators required for benchmarking can be obtained without imposing on business. Where the collection of information from business is unavoidable, the imposition could be minimised by benchmarking a relatively small number of selected reference businesses with similar characteristics. Further, participating businesses could be compensated if necessary.

Representatives of the business community would be invited to participate in the selection of appropriate indicators and the specification of their metrics. However, as indicated above, this would generally involve providing advice, rather than data.

Which regulations should be benchmarked first?

There is a large quantity of regulation. Consequently, priorities have to be agreed before implementing a benchmarking program. Ideally, the benefits and costs of the benchmarking should guide this choice. However, there is little information on the costs of the suggested benchmarking options. Further, it is not possible to estimate the benefits of benchmarking, which would depend on its relative influence in promoting regulatory reform.

In the interim, however, an obvious starting point is to select from the regulatory reform 'hot spots' identified by COAG (2006a, 2006b). These areas include rail safety regulation, Occupational Health and Safety, national trade measurement, chemicals and plastics, development assessment arrangements and building regulation. Other areas COAG has agreed to pursue are business registration, bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999*, personal property security registrations and product safety regulation.

In addition, it would be appropriate to have regard to other complementary regulatory reform initiatives to minimise duplication. For example, initiatives such as the Standard Business Reporting project, overseen by a committee of Australian and State Government officials, could be supported by benchmarking the progress of reforms.

Finally, the benchmarking could potentially encompass New Zealand regulation and regulatory initiatives, given the similarity in institutional arrangements and the emphasis placed on trans-Tasman harmonisation in recent years. This would broaden the scope of the benchmarking to identify best current practice in minimising compliance costs.

How would a benchmarking program be implemented?

There would be merit in benchmarking a limited number of regulations initially, and expanding over time if the benchmarking proves worthwhile. Further, some of the more difficult-to-benchmark regulations could be left to the second and subsequent years to allow sufficient time to develop a robust approach.

A rolling program of periodic benchmarking could be adopted for some areas of regulation. Periodic benchmarking would be a cost-effective way of monitoring the change in regulatory burdens because reform and other changes in regulation take time to implement.

To ensure that any benchmarking continued to drive regulatory reform, it is suggested that:

- the benefits and costs of benchmarking are clearly articulated and any resulting initiatives are reported;
- ways of improving benchmarking are continuously sought;
- interested parties are kept aware of progress and have the opportunity to provide input into the development of new indicators or other aspects of the benchmarking and reporting; and
- the benchmarking should be integrated into the policy making process and given continued focus on regulations that are considered to cause significant regulatory burdens.

Efficient regulation is an important policy goal. Carefully designed and implemented benchmarking could contribute to the achievement of this goal, especially if coupled with a commitment from governments to eliminate any unnecessary burdens identified in the process.

Finally, the benchmarking process itself could be improved over time. The experience gained would provide for a better understanding of how to collect data cost-effectively and how to identify which regulations are likely to have the greatest unnecessary burdens.

1 What is this study about?

The Terms of Reference for this commissioned study were received from the Commonwealth Treasurer, Peter Costello, on 11 August 2006. The study is to be conducted in two stages.

In the first stage, the Productivity Commission is to develop performance indicators and framework options for benchmarking, measuring and reporting on the regulatory burden on business — a feasibility study. Subject to the Council of Australian Governments (COAG) endorsement, the benchmarking is to be undertaken in the second stage of the study.

This is a Discussion Draft of the report on the first stage of the study.

1.1 Policy background

Business leaders in Australia have become increasingly vocal in their concerns about regulatory compliance burdens. While these costs might have been tolerated in the past, they have now reached such a level that business is demanding that there are no *unnecessary* compliance costs — costs that could be eliminated without compromising the benefits of the regulation. Indeed, the Regulation Taskforce (2006) highlighted that Australia has experienced a dramatic rise in the volume and reach of regulation affecting business, in response to a range of social, environmental and economic issues.

There is a paucity of information on the magnitude of the problem and comparative performance. Nevertheless, the weight of this concern, the results of business surveys and the findings of recent reviews suggest that the problem could be significant.

Regulations can provide substantial benefits for society — a fact recognised by the business community. However, they also impose costs on businesses, governments and the community more generally. That said, large compliance costs do not necessarily imply that regulation is inappropriate — the benefits may still outweigh the costs. Further, a greater level of regulatory burden in one jurisdiction might be justified by additional benefits that the regulation brings.

On the other hand, *unnecessary* compliance cost burdens are a drag on economic performance that must be eliminated if the nation is to prosper. Reducing the regulatory burden on business is not just warranted where benefit–cost analysis shows that the costs (the burden of that regulation to business) outweigh the benefits of that regulation to the wider community. Reducing unnecessary burdens ensures that the net benefit of the regulation is maximised and the least possible cost is imposed on business.

In response to business concerns about unnecessary burdens, governments have introduced a number of burden reduction initiatives and suggested others. One such suggestion was to benchmark the regulatory burdens across all levels of government to identify which jurisdictions have performed the best in minimising unnecessary regulatory burdens.

The Regulation Taskforce (2006) also concluded that benchmarking across jurisdictions would assist in improving regulatory regimes. Subsequently, COAG agreed in-principle to the development of a common framework for benchmarking, measuring and reporting on the regulatory burden on business (COAG 2006a).

This study is intended to assist COAG assess the feasibility of benchmarking by establishing such a framework and developing suitable indicators.

1.2 Scope

COAG’s overarching objective for this study is to improve regulation by minimising regulatory burdens. This is to be achieved by identifying unnecessary burdens through benchmarking. It involves examining how burdens can be measured and compared, the types of performance indicators that could be used, and how the results should be reported and qualified.

The regulatory burdens examined were broadly defined to include the cost of administrative compliance activities and delays — that is, paperwork and some associated operating costs. Other burdens imposed by specific regulatory requirements, which can significantly affect production costs in some cases, were not considered. These burdens are typically specific to the circumstances of a business and it is difficult to isolate their broader efficiency cost.

The Productivity Commission’s Terms of Reference are broad. Consequently, all forms of regulation were considered as potential candidates for benchmarking — including those contained in principal acts and subordinate legislation, those created by administrative decisions, and quasi-regulation established in licences and contractual arrangements (box 1.1).

Box 1 What is regulation?

Regulation can be defined as a principle, rule or law designed to control or govern conduct. Alongside government expenditure and taxation, regulation is widely viewed as a fundamental policy tool used by governments. Regulations may shape incentives and influence how people behave and interact, helping societies deal with a variety of problems. At their best, regulations ‘create order and the basis for stability and progress’ (Banks 2001, p. 1).

Regulations can be categorised in a number of different ways. One level of categorisation distinguishes between economic regulations (which intervene directly in market decisions such as pricing, competition, market entry or exit) and social regulations (which protect public interests such as health, safety, environment and social cohesion). Some economic and social regulations apply widely applied to all agents, while other directly or indirectly affect just activity in certain industries, including agriculture, mining, construction, food and beverage processing, chemicals and plastics manufacturing, and financial services.

Regulation can also be classified into groups on the basis of the legal mechanism by which it is made. These include:

- *Primary legislation* consisting of Acts of Parliament.
- *Subordinate legislation* comprising all rules or instruments which have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power. These include statutory rules, disallowable instruments, and other subordinate legislation not subject to parliamentary scrutiny.
- *Administrative decisions* and instruments that are generally made by public officials and involve the application of legislation to particular circumstances. While not legislative in character, they can affect the way business pursues its commercial interests.

Apart from these explicit forms of regulation, there are also codes, instruments and standards which governments use to influence behaviour, but which do not involve ‘black letter’ law — known as *quasi-regulation*. Some examples of quasi-regulation include industry codes of practice, guidance notes, industry-government agreements, and accreditation schemes. There are also various international treaties that directly or indirectly influence conduct.

Sources: Banks 2001; Commonwealth of Australia 1997; OECD 2003a.

Not all regulation could be benchmarked. One such area is economic regulation, mainly because compliance burdens are highly specific to market circumstances. Another is Commonwealth regulation for which there are no other equivalent regulations to benchmark against. However, Commonwealth regulation could be benchmarked over time.

The Terms of Reference direct the Productivity Commission to provide information on the availability of data and the approximate costs of data collection, collation, indicator estimation and assessment. Another requirement is to consider international approaches taken to measure and compare regulatory regimes across jurisdictions.

The Productivity Commission was asked to report on any caveats that should apply to the use and interpretation of performance indicators and reporting frameworks. Caveats are required in any benchmarking. However, they were given particular attention in the current study for two reasons. First, they are central to the assessment of feasibility. Second, there is a potential risk that governments could be exposed to unreasonable pressures for reform if benchmarking results are partial in character and not strictly comparable.

Government administration costs were not benchmarked. However, differences in the degree of compliance facilitation had to be considered because it affects compliance costs. Compliance facilitation typically increases government administration costs but reduces business compliance costs. Occupational health and safety is a prominent area of regulation where these differences exist.

The Productivity Commission considered the feasibility of constructing a ‘meta index’ to rank the overall performance of each jurisdiction. However, it was found that a sufficiently robust composite index could not be constructed (chapter 2 and appendix B).

1.3 Approach

The main purpose of benchmarking is to promote benchmark competition and other incentives for continuous improvement. This is to be achieved by identifying and drawing attention to the possible existence, scale and source of unnecessary burdens that could be avoided by better regulatory design, administration and enforcement.

The stock of regulation is very large with many types of burden. Consequently, the approach taken was to develop a range of possible indicators that could be used to benchmark burdens in most areas of regulation and to build up a complete picture of the situation over time.

Costs are incurred by those providing data. Consequently, the benchmarking options were developed on the basis that the cost imposed on business and government in the process would be kept as low as possible.

Benchmarking

The Productivity Commission considered two broad ways of identifying unnecessary burdens:

- *benchmarking regulatory compliance costs* for similar regulation across jurisdictions to identify *unnecessary burdens* from differences in the level of compliance burden; and
- *benchmarking the regulatory environment* to identify the *potential for unnecessary burdens*, and the possible sources of such burdens.

Two forms of benchmarking were considered — performance and standards benchmarking. The choice depended on the benchmarking objectives and the nature of the burden.

For regulatory compliance costs, distinctively different benchmarking approaches emerged for each of the following types of burden:

- the administrative compliance costs of *becoming and being a business*;
- uncertainty and delays in gaining approvals when *doing business*; and
- the unnecessary effort and cost of having to deal with inconsistent and duplicative regulation in *doing business interstate*.

For the regulatory environment, the benchmarking included comparisons of:

- the *flow* over time in the *stock* of regulation in aggregate and as it affects businesses; and
- the quality of the design, administration and enforcement against *accepted best practice principles*.

Benchmarking the changes in the stock of regulation could also be useful because baselines of the regulatory environment are established in the process. Baselines can be used to measure the progress of reform initiatives such as the achievement of regulatory burden reduction targets by including specific measures of the reform objectives.

In developing indicators of compliance burdens, the approach taken was to assume that compliance costs are typical of *normally efficient* businesses. Moreover, it was assumed that differences in compliance burdens are indicative of unnecessary burdens if the benchmarked regulations have similar objectives, or that any dissimilarity is unlikely to affect the compliance burden.

Regulation benefits

Only regulations with similar objectives were considered suitable for benchmarking. This obviated the need to specifically measure and normalise for differences in regulatory burdens emanating from differences in objectives.

Without this restriction, any additional paperwork and associated burdens that arise because of differences in regulatory objectives would have to be taken into account in benchmarking comparisons. Otherwise, differences in performance indicators would reflect these additional burdens as well as the possible existence of unnecessary burdens.

Where there are slight differences in the objectives of benchmarked regulations that impose additional burdens, the approach was to place caveats on the interpretation of differences in performance indicators.

Indicators

The feasibility and effectiveness of indicators were considered in broad terms only, having regard for data availability, the cost imposed on others in data collection, and the benchmarking objectives. Deciding how to measure indications in detail was considered something best left to the implementation stage of the study.

Indeed, indicators would have to be developed in cooperation with business and government. Without agreement on objectives, indicators and their metrics, the benchmarking results would not have broad support, which could compromise the usefulness of the study.

Both quantitative and qualitative indicators were considered. However, quantitative indicators were favoured because interval measures reveal the magnitude of relative differences, whereas qualitative indicators are typically ordinal measures and usually subjective in character.

Indicators can either be *direct* measures — the actual incremental cost of compliance attributable to a regulation — or *indirect* measures. At the outset of the study it was recognised that most indicators would be indirect because of the difficulty in measuring actual incremental costs.

Given the necessary reliance on indirect measures, the Productivity Commission took the view that it would be prudent to establish a range of indicators that provide a general picture of the extent to which performance gaps exist and their source. However, as the benchmarking program develops, studies should be undertaken to

discover the relationship between indirect indicators and estimates of the incremental compliance cost to verify their robustness.

The use of *reference businesses* and *reference business activities* as a basis of benchmarking was explored as a means of achieving comparability while minimising the cost that would be imposed on business in collecting information. Although this approach ensures that ‘like’ is being compared with ‘like’, the results would not necessarily be representative of average burden.

Indicators of the regulatory burdens of many such reference businesses would be required to build up a picture of average costs so that aggregate burdens could be estimated. In addition, the relationship between indirect indicators and actual incremental cost would have to be quantified in order to estimate actual compliance costs reliably.

Even if actual incremental compliance costs could be estimated, it would be difficult to enumerate aggregate costs. Currently, there is a paucity of information on the demographics of business and a lack of understanding of the reach of regulations to estimate the number of businesses affected by unnecessary regulatory burdens.

This highlights the importance of developing better information on compliance costs generally. Indeed, without estimates of the aggregate cost of unnecessary burdens, priorities for reform could be incorrectly identified.

Implementation

The issues in the development and implementation of the proposed benchmarking and reporting options are discussed in chapter 8. This should assist governments in reaching a decision on whether to proceed to implementation. Specifically, the issues associated with establishing benchmarking priorities and the forward program are discussed.

There was no presumption of which regulations should be benchmarked in the implementation stage of the study. Although this broadened the scope of this feasibility study, it increased the flexibility of the identified benchmarking to meet any priorities that governments place on benchmarking specific regulations. It is also consistent with developing the benchmarking program over time as more information comes to light on the size of unnecessary burdens and the benefits of the benchmarking.

Terminology

There is no standard terminology that could be used for this report. Accordingly, the Productivity Commission attempted to select terms that are widely accepted. Further, the terminology used in this report has been defined and used consistently to avoid confusion.

In this report, the term *regulatory burden* is typically used to refer to the compliance administrative costs incurred by business as well as other economic costs. *Compliance costs* include both paperwork and operational costs. *Administrative compliance costs* include paperwork costs and those operational costs associated with the paperwork.

These terms are discussed in more detail in chapter 2 and defined in a glossary which has been provided to assist readers.

1.4 Conduct

The Productivity Commission followed its normal processes which are aimed at facilitating broad community input and ensuring transparency. Interested parties were invited to register their interest in the study and make submissions. An Issues Paper was circulated to all those who registered an interest and was posted along with submissions on the Productivity Commission's website. A list of submissions received up until 11 November can be found in table A.1 of appendix A.

The Productivity Commission sought the advice of business on their regulatory concerns to ensure that the proposed benchmarking and reporting options are relevant. As this study was initiated by COAG, governments were also consulted to gain an understanding of their expectations for the study and any reservations that they might have about benchmarking. All those visited and consulted are listed in table A.2 of appendix A.

Interested parties are invited to provide feedback on the proposed options outlined in this Discussion Draft through submissions. The Productivity Commission will also hold roundtable discussions with invited government, business community and academic representatives to obtain feedback on the proposals presented in this report.

1.5 Report outline

In the following chapter, an overview of benchmarking processes and their potential application to examining and comparing regulatory burdens is described (chapter 2). This chapter is supported by a technical discussion of index measures (appendix B).

The lessons to be learnt from similar studies in Australia and in other countries are reported in chapter 3. The costs of these studies, where obtainable, are reported.

In the three following chapters (chapters 4, 5 and 6), the feasibility of benchmarking the main types of regulatory burden are described using examples. The main purpose of these chapters is to outline the chosen approach to benchmarking the relevant regulatory burdens, and to provide examples of possible indicators. Further, data requirements and the limitations in making valid comparisons of administrative compliance costs are discussed.

Proposals for benchmarking the quantity and quality of regulatory environment are described in chapter 7. A suggested basis for benchmarking the change in the stock (flow) of regulation, in aggregate and as it affects specific businesses, is outlined. Indicators on features of the design of regulations, the way they are administered and how they are enforced are suggested for comparison against standards of accepted ‘best practice’.

Finally, issues that have to be resolved in developing and implementing a benchmarking program are discussed in chapter 8. Information is also provided on expected benefits and costs to assist governments to decide whether to proceed with the benchmarking and how to program the work.

2 Benchmarking issues

Key points

- Benchmarking involves collecting and reporting information in a way that enables relevant performance comparisons across entities and over time.
- Regulation benchmarking offers the prospect of a deeper understanding of regulatory burdens across jurisdictions. It may also provide benefits in terms of jurisdictional ‘yardstick’ competition and greater accountability in minimising unnecessary burdens.
- The key components of benchmarking include specifying:
 - objectives — the rationale and purpose for benchmarking regulatory burdens;
 - coverage — what regulatory burdens should be covered;
 - performance indicators — choosing specific indicators to illustrate performance for each type of burden measured;
 - data management — protocols regarding collection, compilation and assessment procedures; and
 - reporting — how the results should be presented and interpreted.
- There are cost-effectiveness issues that must be considered when developing a practical regulatory burden benchmarking analysis. These include the cost–benefit trade-offs of collecting additional performance indicators.
- Any benchmarking should minimise data collection burdens on business. The judicious selection of ‘reference’ businesses, and surveying their activities, would help alleviate these costs.
- There are a vast number of regulations that could be benchmarked. However, it is unclear at this stage what would be the optimal coverage and approach.

Benchmarking involves comparing information across entities, and over time, to identify differences in practice, to set improvement targets, and to measure progress against underlying objectives. According to a recent study published by UNESCO, benchmarking can be described as:

A standardized method for collecting and reporting critical operational data in a way that enables relevant comparisons among the performances of different organizations ... usually with a view to establishing good practice, diagnosing problems in performance, and identifying areas of strength. (Vlăsceanu, Grünberg and Pârlea 2004, p. 25)

Initially a comparative tool used by the private sector, benchmarking has been widely adopted by public sector entities seeking to improve their practices by comparing their performance against peers.

Benchmarking regulatory burdens offers the prospect of identifying those regulations that potentially impose *unnecessary* burdens on business. It also has the potential to assist governments in identifying reforms to reduce these burdens.

The case for benchmarking regulatory burdens across jurisdictions is outlined in section 2.1. Broad aspects of the components of a regulation benchmarking framework are discussed in section 2.2. In section 2.3, issues concerning the cost-effectiveness of regulation benchmarking are considered.

2.1 Why benchmark regulatory burdens?

As outlined in chapter 1, regulation provides a host of potential benefits including creating order, shaping incentives and influencing how individuals behave and interact. Regulation can also help societies deal with otherwise intractable economic, social and environmental problems (Banks 2001). These benefits invariably play a central role in defining the underlying policy objectives, and motivate the implementation of regulation.

Although regulation is essential to achieving desirable economic, social and environmental objectives, it can also impose costs on business, government and the community more generally. From this perspective, it is important that policymakers ensure that the net benefits of regulation are maximised, rather than minimise the burden.

A departure from the realisation of maximum net regulatory benefits for a given regulation, or its implementation, is likely to impose an unnecessary, and therefore avoidable, burden on business. The concept of unnecessary burdens is central to shedding light on whether the legitimate policy goals underlying the regulation can be achieved in a way that does not impose as high a burden on business (Regulation Taskforce 2006).

A key to improving regulatory regimes is for governments to deepen their understanding of the burdens that their regulations impose, and adopt regulatory approaches that avoid unnecessary burdens on business (given policy objectives). In other words, measuring unnecessary regulatory burdens is critical to reducing them to the greatest extent feasible. This sentiment is expressed by Osborne and Gaebler (1992, pp. 147—154) in the context of general performance reporting in the public sector:

If you cannot measure results, you cannot tell success from failure. If you cannot see success, you cannot reward it. If you cannot reward success, you are probably rewarding failure. If you cannot see success, you cannot learn from it. If you cannot recognise failure, you cannot correct it. If you can demonstrate results, you can win public support.

The Regulation Taskforce (2006) concluded that benchmarking across jurisdictions would assist in improving regulatory regimes. They noted that:

While ... attempts to quantify red tape at the aggregate level are likely to be fraught, it should be possible ... to benchmark regulatory regimes periodically across jurisdictions and develop reporting frameworks and performance indicators that provide a guide to likely regulatory burdens. (Regulation Taskforce 2006, p. 175)

Reporting performance potentially encourages ongoing improvement in the regulatory environment through ‘yardstick’ competition among jurisdictions or levels of government. To the extent that gaps between better and current practices can be ascertained, benchmarking could also provide greater accountability and transparency that encourages policy makers to generate systemic improvements in their regulations that reduce unnecessary burdens on business.

Benchmarking to monitor changes in regulatory burdens over time could also facilitate a process of continual improvement by jurisdictions to reduce these burdens. It is important to note that the purpose of benchmarking in this context is not to reduce the net benefits that accrue from regulation, but to alleviate the extent to which regulations impose unnecessary burdens on business.

Finally, benchmarking that reduces unnecessary regulatory burdens could yield significant long-term improvements in Australia’s economic growth and productive capacity. This was noted in a submission by the Insurance Council of Australia:

An effective benchmarking process has the potential to create real economic efficiency gains for Australia through integrating the current view supporting the elimination of unnecessary or inefficient regulation within the systems and processes of governments and regulators. (sub. 18, p. 2)

Reforms to existing regulations and regulation-making processes attributable to benchmarking would serve to build on the gains from microeconomic reform efforts undertaken by Australian governments over the past two decades.

2.2 Benchmarking components

The specification of key benchmarking components, and the selection of a preferred benchmarking program from these components, will help to ensure that the process

is rigorous, manageable and open to external scrutiny. The components outlined in this study include:

- Objectives — establishing the rationale and purpose for benchmarking regulatory burdens.
- Coverage — deciding what regulatory burdens should be covered.
- Performance indicators — choosing specific indicators to illustrate performance for each type of burden measured.
- Data management — establishing protocols regarding collection, compilation and assessment procedures.
- Reporting — determining how the results should be presented and interpreted.

Objectives

Following the release of the Regulation Taskforce (2006) report, the Council of Australian Governments (COAG) agreed in-principle to adopting a common framework for benchmarking, measuring and reporting on the regulatory burden on business (COAG 2006a). The overarching purpose of the COAG agreement is to identify the types of unnecessary burdens of concern to business, given policy objectives.

A number of benchmarking techniques could be used to identify regulatory burdens:

- *Performance benchmarking* — the comparison of performance across entities using a range of indicators. In the context of benchmarking regulatory burdens, performance benchmarking could help identify the extent of unnecessary burdens for similar regulation across jurisdictions. This form of benchmarking could also help assess whether regulatory improvement initiatives are increasing or decreasing the extent of unnecessary burdens over time.
- *Process benchmarking* — the analysis of systems to identify best practices and operations. This form of benchmarking has led to the establishment of best practice processes for regulatory impact assessments, such as that published by the former Office of Regulation Review (PC 2005).
- *Standards benchmarking* — the identification of ‘best practice’ standards or policy targets that entities can aspire to as part of their planning and continuous improvement processes. It could be useful, for example, in helping governments monitor the progress of burden reduction targets, such as the 25 per cent reduction in red tape commitment in Victoria (Victorian Government 2006).

The main purpose of this study is to determine the feasibility of identifying unnecessary regulatory burdens using performance benchmarking. It is expected

that benchmarking could help to identify gaps in relative performance of jurisdictions in terms of regulatory burdens imposed. This could be accompanied by standards benchmarking of the extent of regulatory duplication and inconsistency (chapter 6) as well as regulatory design, administration and enforcement characteristics (chapter 7).

Coverage

In the context of regulation benchmarking, coverage relates to which regulatory burdens are to be observed, analysed and reported for benchmarking purposes. Coverage has important implications for the extent of research into regulatory burden, the types of performance indicators used, and the resources required.

There are a number of potential regulatory burdens on business that could be benchmarked. These burdens include the various costs borne by businesses in order to comply with regulatory requirements.

The *compliance costs* of regulation include *paperwork compliance costs* — the costs imposed on the administrative structures of a business due to filling out forms and providing information. Also included are other administrative costs, such as record-keeping and obtaining advice from external sources (such as accountants and lawyers), which arise in the course of providing information in accordance with regulatory conditions.

In addition, there are a range of operating costs incurred, or *non-paperwork compliance costs*, such as:

- additional human capital investment (staff training and education) and physical investment costs (re-configurations to plant and equipment), as well as the costs of modifying output, to conform with regulations;
- ‘capital holding’ costs associated with regulation-induced delays in business projects;
- costs associated with dealing with inconsistent and duplicative regulation across jurisdictional boundaries; and
- time spent in meeting regulatory requirements, such as undergoing audits and inspections of premises or processes.

Apart from these compliance costs, the broader *economic costs* of regulation arise where regulation artificially distorts the use of resources within the economy. Regulations are established to address market failures and thus improve resource allocation. However, they can also have an adverse effect on *allocative efficiency* in cases where they induce changes to business production that increase costs, which

would not have otherwise occurred. Regulations can also adversely affect the efficient use of resources over time, impacting on competitiveness, innovation and entrepreneurial activities (otherwise known as *dynamic efficiency*).

Given the difficulties associated with estimating the economic costs of regulation that are widely diffused throughout the economy (Gellman, Berardino and Tiffany 1979), it is expected that only administrative compliance burdens of regulation could feasibly be benchmarked.

In addition to cost burdens, it would be useful to benchmark various features of the *regulatory environment*. This would highlight changes over time in the quantity of regulation and aspects of regulatory design, administration and enforcement that can be the underlying causes of unnecessary regulatory burdens. For example, these regulatory characteristics could be benchmarked against accepted best practice principles as a way of identifying the potential sources of unnecessary burdens. Indeed, they could also be used as surrogate indicators for actual cost burdens, if compliance costs cannot be measured.

Benchmarking the regulatory environment was supported by a number of participants, including the Business Council of Australia (sub. 13), Australian Bankers' Association (sub. 16), Finance Industry Council of Australia (sub. 17) and the Insurance Council of Australia (sub. 18).

Regulatory burdens that affect specific business activities and operations, such as establishing a business, aspects of business expansion relating to attaining project development approvals, and undertaking business operations across jurisdictional boundaries, are considered in chapters 4, 5 and 6 respectively. It is considered that most regulation, including those identified as 'hot spot' priority areas for regulatory reform by COAG (COAG 2006a, b), fit into these broad areas of coverage and are amenable to benchmarking across jurisdictions.

The feasibility of benchmarking various aspects of the regulatory environment across jurisdictions is considered in chapter 7.

Performance indicators

A performance indicator is an individual statistical (or other information) unit, or combination of units, which is considered to highlight performance. Specifically, performance indicators serve to 'operationalise' the various aspects of regulatory burden discussed above.

Performance indicators can either be *quantitative* (statistical or empirical) or *qualitative* (descriptive). Quantitative indicators are preferable since interval

measures reveal the magnitude of relative differences in regulatory burden, whereas qualitative indicators are typically ordinal measures and subjective by nature.

Composite indicators of a number of these measures could be developed, using a relevant set of weights or by directly adding indicator measures, to provide an indicator of overall performance. However, the development of composite indicators is unlikely to be feasible in the context of regulatory burden benchmarking (appendix B). This is because there is often insufficient information on business demographics and the reach of regulations to construct composite indicators of the overall burden of a regulation. Also, large quantities of data would be required, which would significantly increase data collection costs for business and those collecting the information.

Ideally, the regulatory burdens identified above should be measured in terms of the incremental cost imposed on a business by one or more regulations — that is, the cost avoided if the regulations were withdrawn. Once the incremental cost of regulation is measured, it is necessary to estimate the quantum that represents the *unnecessary* burden. These unnecessary burdens would be estimated across jurisdictions in order to identify which impose relatively low burdens.

Incremental cost burdens, however, are not straightforward to measure after regulation has been introduced. This is because most businesses adapt to the burdens imposed by the new regulatory environment over time. Consequently, it is difficult to distinguish between new and ongoing requirements. Generally, there are also some fixed costs associated with normal commercial practices that would not be avoided in the absence of regulation.

Given these measurement difficulties, indirect measures of regulatory burdens, such as *total costs*, have to be used. Consequently, the calculation of the cost burdens of regulation is conditional on the premise that the indirect measure is a satisfactory indicator of direct compliance costs.

Given these qualifications, the choice of performance indicators for benchmarking, measuring and reporting on the regulatory burden should satisfy the following criteria:

- *Acceptability and ease of interpretation* — indicators should be sufficiently simple to be interpreted by intended users. They should be unambiguous in what they are measuring, and have broad support.
- *Data availability and cost* — the information required for an indicator should be obtainable at a reasonable cost in relation to its value. Data gaps or limitations can erode the value of the information provided by the indicator.

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- *Comparability* — the data collected should allow for meaningful comparisons between jurisdictions. Where data are not comparable across jurisdictions, benchmarking over time within jurisdictions would be particularly important.
 - *Robustness* — the benchmarking should produce consistent results over time.
 - *Significance and relevance* — an indicator should be significant in the sense that it represents an important aspect of business regulatory burden, and relevant to ensure that policy responses to improve results based on it can achieve the underlying objective of reducing unnecessary burdens.
 - *Timeliness* — indicators should provide information within reasonable time periods.

Other characteristics that might be relevant are *sensitivity* to policy changes, and *empirical support* for links to causality or outcomes. The latter is particularly important when indirect indicators are being used.

Data management

It is important to ensure that protocols are in place for the collection, collation and assessment of data needed to compile the performance indicators. Such standards would help establish a predictable benchmarking process for stakeholders such as governments and businesses, from which data might be obtained. Appropriate data management protocols would also assist in ensuring consistency in the measures, so that indicators are comparable across jurisdictions.

Data collection

As noted above, both quantitative and qualitative information could provide insights into the unnecessary burden of regulation borne by business. Deriving these indicators would require the collection of data from various sources.

Some of the more frequently used approaches to quantitative data collection include *inferential data analysis*, *statistical analysis*, and *observation studies* using checklists or other forms of building synthetic data from collected information. On the other hand, for qualitative data, the common techniques for collection include *questionnaires*, *interviews*, *diaries* and *activity logs*.

While some of these techniques may be useful in benchmarking regulatory burdens, a major concern is that data collection is not too onerous on business. Another consideration is that businesses with comparable economic and financial profiles are surveyed across jurisdictions. These businesses would be typical but would not

necessarily have representative burdens. One way to address these concerns is to survey a limited number of *reference businesses* or activities (box 2.1).

Box 2.1 'Reference' business approach to data collection

One approach to collecting data is to obtain information from a sufficient number of selected reference businesses, to make information collected on regulatory burdens comparable across jurisdictions.

The reference business data collection approach represents a form of non-random, stratified sampling of the known business population across jurisdictions that are subject to specified regulatory burdens. The characteristics of the reference businesses are specified to the degree necessary to ensure that differences in compliance burdens represent unnecessary burdens, and not differences in the impact of the regulation on compliance costs.

There are a number of issues that must be considered when undertaking this approach to data collection. Businesses vary in their characteristics. Indeed, this limits the capacity of benchmarking to provide robust aggregate information on regulatory burdens by jurisdiction from small samples.

In practice, a range of factors, including the type of regulation, size of business turnover or employment and industry characteristics, would have to be taken into account in selecting a reference business. By way of an illustrative example, consider food safety regulation imposed on businesses in the accommodation, cafes and restaurants sector (ABS ANZSIC classification H). Businesses across jurisdictions would have to be selected on the basis of their size (possibly measured by the number of employees) and other characteristics. Businesses that approximate these characteristics would be identified and surveyed to provide sample information on the magnitude of regulatory burden associated with food safety regulation.

Ideally, the benchmarked typical reference business would be broadly representative of the population affected by the regulation under consideration. However, there is an incomplete picture of the demographic profile of Australian businesses, with differences in the approach taken to define a 'business'. For example, the cumulative number of entities with an ATO Australian Business Number (ABN) (5.2 million) could be viewed as businesses. However, the majority of these entities are not active, or at least do not have any active tax roles. On the other hand, there are 1.4 million companies registered with the Australian Securities and Investments Commission (ASIC), yet such a frame does not consider the significant numbers of unincorporated businesses. The ABS defines a business as an ABN actively either trading in goods or services or employing staff. There are some 2 million of these businesses.

Consequently, the selection of reference businesses and their characteristics for the purpose of benchmarking would have to be guided by expert judgement and analysis. This approach is not costless, however it could be expected to yield cost savings relative to other methods aimed at establishing a representative business or large-scale population sampling.

The selection of reference businesses has the potential to provide consistent, ‘like-with-like’ comparisons of burden across jurisdictions. This approach avoids biases attributable to differences in the inherent characteristics of individual businesses. Further, it could also reduce the overall cost to the business community of providing the data required to compile indicators (section 2.3).

The benchmarking examined in this report also relies on data obtained from existing sources and government agencies which would not place additional burdens on business.

In addition, a data collection plan would be necessary to streamline efforts to collect information from various parties. Important factors to consider in this context include:

- identifying how much data would have to be collected, the population from which the data would come, and the length of time over which to collect the data;
- ascertaining the types of comparisons that would be made with the data collected, and the calculation method;
- considering how the data might be presented (such as in textual form, or in tables, graphs and charts); and
- establishing an agreed approach to refining the data collection process, including establishing new and improved performance indicators, over time.

Resources would be needed for the data collection effort, with the costs of using different methods of data collection to be taken into account (section 2.3).

Another consideration is the consistency of data supplied by government agencies. It might be necessary for an agreement to be established that enables information to be collected from jurisdictions in a standardised manner, according to the agreed indicators. These issues are discussed further in chapter 8.

Data compilation

The compilation of data from disparate sources would be required. A key issue is whether the data collected from jurisdictions and business groups should be processed through manual or automated systems, or a combination of both. It is likely that an automated system for data compilation, such as a central database, would be required.

Regardless of the choice between manual or automated compilation systems, there should be sufficient flexibility in compilation procedures to respond to

improvements, or changes, to data. Indeed, the Productivity Commission is required under its Terms of Reference to make suggestions for refinement and improvement, where appropriate, for consideration by COAG after three years of assessments. Further, the system should be accessible and user-friendly.

There are also issues regarding how the costs of data compilation should be financed, and from which stakeholders, if any, costs should be recovered.

Data assessment

Finally, another issue to be considered is the extent to which data provided by jurisdictions and businesses is to be reviewed or validated. At a minimum, jurisdictions could be invited to comment on the benchmarking results before it is released publicly.

Reporting

The extent and nature of reporting option has significant implications for the cost of the benchmarking and the capacity of stakeholders, including governments, businesses and the general community, to evaluate, understand and use regulatory burden benchmarking information according to their respective needs. It is critical that benchmarking results are conveyed effectively to stakeholders, thereby assisting all relevant parties to gain the greatest value from the benchmarking exercise.

What is reported will ultimately depend on the nature of the benchmarking, how often it is undertaken, how many indicators are used, and the presentation of caveats associated with benchmarking. These issues are further discussed in chapter 8.

2.3 Cost-effectiveness issues

Measuring the burdens of regulation on business is necessary if governments wish to benchmark and monitor their performance to reduce these burdens. The amount of effort and resources required for benchmarking will be influenced by the purpose of the benchmarking, the forms and number of regulations covered and the rigour of the process.

There are a number of trade-offs that have to be considered in the development of a practical regulatory burden benchmarking program. For example, the analysis becomes more costly (whether assessed in terms of dollar costs, or additional effort required) if additional burden measures and performance indicators, or greater

accuracy for each indicator, are sought. These costs have to be carefully balanced against the broader benefits of collecting, collating, assessing and reporting additional information.

Data availability is expected to be a key consideration in recommending indicators, and would affect the cost-effectiveness of the benchmarking. A study by the US General Accounting Office (GAO 1996) revealed significant challenges in measuring the cost of compliance from business sources (box 2.2). Similar concerns have been raised by the World Bank (2006a) and by the Regulation Taskforce (2006) in Australia.

Box 2.2 General Accounting Office findings on measuring regulatory burden

The US General Accounting Office (GAO) was directed to identify the impact of federal regulations on businesses by asking them to identify which regulations applied to them, the costs and other impacts of those regulations, and the regulations that were most problematic.

The GAO concluded that there are inherent difficulties and assumptions involved in producing estimates of the incremental cost imposed on business.

Most of the businesses approached by the GAO declined to participate in the review, citing various reasons, including:

- limited resources and higher priorities;
- regulatory requirements being hard to identify because they had become part of standard practice; and
- difficulty in distinguishing between federal requirements and those of other jurisdictions.

Businesses recognised some benefits to regulation. Nevertheless, they were concerned about the high compliance costs; unreasonable, unclear and inflexible demands; excessive paperwork; a tendency of regulators to focus on deficiencies rather than outcomes; and poorly coordinated requirements among agencies and between government jurisdictions.

Not all of the participating businesses could list the regulations applicable to them. More significantly, none of the surveyed businesses could provide comprehensive data on the costs of regulatory compliance because, among other things, their financial systems were not geared to identifying the costs they would have incurred in the absence of regulation.

The GAO was unable to verify most of the data businesses provided on the costs of regulatory compliance, because there was little documentation to support their cost estimates.

Source: GAO 1996.

As noted by the Industry Commission, in previous benchmarking studies of utilities and government services:

... the performance measurement process is likely to work more effectively when it ... tackles data issues iteratively [and] makes any assumptions and qualifications transparent. (Industry Commission (IC) 1997, p. 95)

In the context of regulatory burden benchmarking, the publication of available comparable data and information, even if imperfect, can still be useful with the appropriate caveats specified regarding the derivation of the indicators. Further, it would provide an impetus for improving the benchmarking methodology and the quality of indicators over time.

Moreover, costs are typically incurred by those collecting data as well as those providing it. The latter could include both business and government. It is important, therefore, that these additional burdens are taken into account when assessing the cost-effectiveness of the benchmarking.

This consideration is important in framing the selection of surveyed reference businesses to measure the regulatory burden across jurisdictions. It is clearly inappropriate, from a cost-effectiveness perspective, to acquire information from all enterprises comprising the business population.

Quite apart from the costs associated with data collection, it is likely that benchmarking all, or even large samples of, businesses would represent an inappropriate burden on business. However, the judicious selection of reference businesses, and surveying their activities, could reduce aggregate data collection costs and yet still ensure that differences in performance indicators are representative of differences in regulatory burden across jurisdictions.

3 What can be learnt from other studies?

Key points

- International studies have limited application to what the Productivity Commission has been asked to do.
 - The World Bank *Doing Business* report identifies the cost to the business of complying with government policy as well as administrative compliance costs.
 - Others, like the Standard Cost Model, have a narrower interpretation of administrative compliance costs (mostly paperwork costs).
- Australian studies have relied on survey techniques that are insufficiently reliable or robust enough to identify differences in burdens.
 - Specifically, they are generally subject to unrepresentative sampling and response biases.

The Terms of Reference for this study direct the Productivity Commission to consider international approaches taken to measure and compare regulatory regimes across jurisdictions. For completeness, Australian initiatives to measure the regulatory burden on businesses were also investigated.

The proposal to identify unnecessary burdens by benchmarking regulatory compliance costs does not appear to have been attempted before in Australia or elsewhere. Consequently, past and current studies into regulatory compliance costs are not directly relevant to this study. Nevertheless, these studies provide insights into the best approach to collecting and processing the information required to generate benchmarking indicators of compliance costs.

At the international level, there have been a number of studies undertaken to estimate the cost of regulatory burden. Although the approach used in each is different, their aim is generally to identify regulations that constrain business investment, productivity and growth, with a view to implementing burden reduction strategies.

In Australia, surveys to measure regulatory burden for the most part have been limited to selected businesses or sectors. Their purpose has been to collect data on

perceptions about the problems posed by regulatory burdens and, in some cases, the time and cost to the business.

Three broad survey methodologies have been used to collect information in the examined studies. They include the use of informant surveys, personal interview surveys, and self-enumeration surveys as discussed in section 3.1, section 3.2 and section 3.3 respectively. The lessons learnt from the international and Australian studies are outlined in section 3.4.

3.1 Informant surveys

Informant surveys are administered through a number of intermediaries who have the skills, relevant knowledge and experience to collect the data required for a particular study. This approach is used by the World Bank through the use of local experts as country informants. It was also adopted by the Minerals Council of Australia (MCA) where a group of consultants were used as industry informants.

World Bank

The World Bank has published a series of annual reports comparing the costs of doing business in a number of selected countries. The latest report *Doing Business 2007: How to Reform* presents comparable quantitative indicators for 175 countries (World Bank 2006b).

The aim of these annual reports is to determine whether regulation is hindering the competitiveness of a particular country and to highlight those countries where investment is more attractive because of a relatively favourable regulatory environment.

Survey methodology

Ten indicators of the time and cost of meeting regulation on areas of everyday business activity are measured for each country (box 3.1). A ranking is applied to each indicator and a simple average (of the ranking given to each of the 10 indicators) is calculated to derive a single composite ranking for each country surveyed.

The indicators presented are measures of the cost of complying with government policy as well as the administrative compliance cost on small- and medium-sized

businesses.¹ The indicators do not account for a country's proximity to large markets, macroeconomic conditions or the underlying strength of institutions, quality of infrastructure services (other than services relating to trading across borders), the security of property from theft and looting, and the transparency of government procurement (World Bank 2006b).

Box 3.1 Doing Business in 2007 — the World Bank indicators

The indicators used by the World Bank comprise:

- Starting a business — a measure of the time and cost of complying with all the procedures that are officially required for an entrepreneur to start up and formally operate an industrial or commercial business.
- Dealing with licences — a measure of the time and cost of completing all procedures including all necessary licenses and permits, receiving all required inspections and completing all required notifications and submitting the relevant documents (for example, building plans and site maps) to the authorities.
- Employing workers — a measure of the regulation of employment, as it affects the hiring and firing of workers and the rigidity of working hours. The measure does not include the cost of hiring workers.
- Registering property — a measure of the full sequence of procedures necessary when a business purchases land and a building.
- Getting credit — a measure of the legal rights of borrowers and lenders and the sharing of credit information.
- Protecting investors — a measure of the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain.
- Paying taxes — a measure of the total tax burden borne by businesses. The measure includes all labour contributions paid by the employer (such as social security contributions) and excludes consumption taxes (such as sales tax or value added tax). The measure is expressed as a percentage of commercial profits rather than gross profit.
- Trading across borders — a measure of the cost associated with exporting and importing goods as well as the time and number of documents required.
- Enforcing contracts — a measure that reflects a typical contractual dispute over the quality of goods rather than a simple debt default.
- Closing a business — a measure of the time, cost and outcomes of bankruptcy proceedings involving domestic entities.

Source: World Bank (2006c).

¹ Administrative compliance costs include the paperwork compliance costs and those non-paperwork costs directly associated with the paperwork activities.

The World Bank collects data in a standardised format to enable comparisons across countries and over time. Several assumptions are required to make the data comparable including the type of business, its size, and location, and the nature of its operations.

In measuring the costs of starting a business, for example, it is assumed that the business is a limited liability company; operates in the country's most populous city; is 100 per cent domestically owned; performs general industrial or commercial activities; has 50 employees one month after the commencement of operations, all of them nationals; has a turnover of at least 100 times income per capita; and has a company deed 10 pages long.

The surveys are administered through more than 5000 local government officials, lawyers, accountants, freight forwarders, architects, business consultants and other professionals who routinely administer and advise on legal and regulatory requirements.

In order to ensure quality control, the *Doing Business* team undertakes several rounds of interactions with the local experts, involving conference calls, written correspondence and country visits. The data from the surveys are subject to numerous tests for robustness, which lead to revisions or expansions of the information collected.

The World Bank claim that their annual *Doing Business* reports provide an invaluable resource tool for policy makers to compare regulatory performance with other countries, learn from best practices globally and prioritise reforms.

The benefits of a single composite ranking for each country are claimed to create pressure to reform, identify patterns in business regulation and quantify reform impacts (World Bank 2006a). Indeed, 43 countries reduced the regulatory burden for business start-up by simplifying procedures, reducing costs and delays in 2005-06 (World Bank 2006b).

Lessons

The World Bank database provides objective rather than subjective measures of business regulations. That is, the questions asked of respondents relate to observable phenomena, rather than asking for the opinions of respondents (Hall and Casey 2006). Although the data collected are based on factual information concerning laws and regulations in force, the data collection method is subject to a high degree of subjectivity.

The methodology used to enable comparisons across countries also has other limitations that should be considered when interpreting the survey results:

- The collected data refer to businesses in the country's most populous city and might not be representative of regulatory practices in other parts of the country.
- The data often focus on a specific business form — that is, a limited liability company of a specified size — and might not be representative of the regulation of other businesses such as sole proprietorships.
- Transactions described in a standardised case study refer to a specific set of issues and might not represent the full set of issues business encounters in each country.
- The measure of time involves an element of judgement by the expert respondents — when sources indicate different estimates, the time indicators reported represent the median values of several responses given under the assumptions of the case study.
- It is assumed that a business has full information on what is required and does not waste time when completing procedures, whereas in practice, completing a procedure might take longer if the business lacks information or is unable to follow up promptly (World Bank 2006c).

Minerals Council of Australia

In February 2006, URS Australia completed the *national audit of regulations influencing mining exploration and project approval processes* for the MCA. The aim of the audit was to 'document the regulatory processes involved in gaining exploration and mining project approvals in all Australian jurisdictions' and to 'analyse the scope for improvement' (URS 2006a, p. 1–3).

The consultants used recently completed reports and consultation with industry to identify the regulations applying to the mining industry. They then analysed those regulations to determine the different compliance activities required in each Australian jurisdiction. The audit contained seven recommendations highlighting deficiencies in current regulatory arrangements.

Following this report, a group of consultants with exploration and mining project approvals experience across Australia, including URS Australia, completed a further report titled *Scorecard of Mining Approval Processes* for the MCA. The aim was to 'define areas of concern to frequent users of the statutory approvals systems across Australia', and 'to engage with governments in a process to address the identified weaknesses and thereby, increase the efficiency of those systems' (URS 2006b, p. ES–1).

Survey methodology

In undertaking the *Scorecard of Mining Approval Processes*, the consultants developed a scorecard to assess and compare approval processes across Australian State and Territory jurisdictions (excluding Queensland).

The scorecard covered 17 issues that affect mining investment, including environmental, mining specific, land access and water management issues.

A set of indicators were developed to measure:

- How well the policy and regulations for approval processes are designed in each jurisdiction for the 17 issues identified.
 - The indicators covered the clarity of processes, institutional framework, stakeholder input and appeals, and the efficiency of chosen regulatory measures.
- How well the approval policies and arrangements are administered in each jurisdiction for the 17 issues identified.
 - The indicators covered timeliness, compliance costs, government agency capability, predictability and certainty, effectiveness, and transparency.

Each indicator above was ranked on a scale from 1 (poor) to 5 (very effective). The ranking that was applied to each indicator was averaged to derive a single composite ranking for each individual issue being assessed in each jurisdiction.

Lessons

The scorecard results were based on qualitative data and reflect the opinions of a select number of consultants from participating companies.²

In interpreting the results it was noted by URS that:

Uncertainty exists in some cases where policy and regulations are undergoing changes, or where changes have recently been made but are yet untested. ... In addition, some inconsistency in scoring may derive from the very different numbers of project approvals and project complexity which exist between the various jurisdictions. (2006b, p. 2–4)

Despite some limitations with the methodology, the study demonstrated that industry assessments of the approval processes across jurisdictions are possible.

² Qualitative data describe the attributes or properties that an object possesses. The properties are categorised into classes that might be assigned numeric values. However, there is no significance to the data values themselves, they simply represent attributes of the object concerned (OECD 2004).

3.2 Personal interview surveys

Personal interview surveys involve face-to-face interviews or telephone interviews. The former involves having an interviewer visit each ‘member’ selected from the sampling frame for the survey (ABS 1999).

A number of countries have used this survey approach to measure the cost of regulatory burden on business.

The Standard Cost Model and the Business Cost Calculator

The international Standard Cost Model (SCM) was initially developed by the Netherlands Government to measure the administrative compliance costs of regulation — that is, the cost of administrative activities that businesses are required to incur in order to comply with information obligations imposed through central government regulation.³

The SCM can be used to measure:

- Anticipated administrative consequences of a draft law, draft executive order or other initiative before implementation (referred to as a prospective measurement).
- Administrative costs that arise after a regulation has come into effect and has been able to have an effect on business (referred to as a retrospective measurement).
 - Retrospective measurements can be undertaken to develop a ‘baseline’ measurement of all existing regulations — that is, the initial measurement of the overall administrative costs that business must incur to comply with the current set of regulations at a given point in time.
 - With retrospective measurements, it is also necessary to keep the baseline measurements updated with the consequence of new or amended regulations.

The SCM is used as a tool for limiting administrative burdens stemming from new legislation and for reducing existing administrative burdens on business. It has been used or assessed in a number countries (box 3.2).

³ This is a narrower interpretation of administrative compliance costs than what is used in this study.

Box 3.2 Use of the Standard Cost Model

European countries

In 2005, an *international comparison of measurements of administrative burdens related to value added tax in the Netherlands, Denmark, Norway and Sweden* was undertaken. The study focused on a selection of EU value added tax legislation, how it was implemented at the national level, and compared the differences in administrative burdens among the countries.

United Kingdom

In response to the release of *Regulation — Less is More*, the UK Government decided to adopt the Standard Cost Model (SCM) to measure the administrative burden.

The adoption of the SCM has been coordinated by the Better Regulation Executive (BRE) within the UK Cabinet Office and Her Majesty's Revenue and Customs (HMRC):

- The BRE was responsible for coordinating the baseline measurement of the administrative burden of regulation on UK businesses, charities and voluntary organisations. PricewaterhouseCoopers was awarded the contract to conduct the measurement exercise across 20 regulatory departments and numerous independent regulators.
- HMRC led a parallel exercise, which focused on the administrative impact of tax and duty regulations on the business sector only. KPMG was awarded the contract to conduct this measurement exercise which was completed in March 2006.

OECD

The OECD is using the SCM to measure and compare the administrative burden of selected road freight regulation across 13 OECD countries.

New Zealand

The SCM is currently being evaluated by the New Zealand Ministry of Economic Development.

Australia

The Victorian Government have recently developed their own version of the SCM, which is designed to measure changes in administrative costs imposed by the State Government's regulations on business (sub. 21, p. 11).

Sources: BRE (2005); BRTF (2005); KPMG (2006); Ministry of Finance et al. (2005); OECD (2006b); UK Cabinet Office (2005).

The Business Cost Calculator (BCC) was developed by the Australian Office of Small Business within the Department of Industry, Tourism and Development, with similar objectives to the SCM in mind.

The BCC is an IT-based extension of the SCM and is primarily used to assist policy makers measure and analyse the business compliance costs of policy options. Although designed for prospective evaluations, it could be modified for retrospective evaluations. Unlike the SCM, the BCC covers all compliance costs associated with a particular regulation or policy, of which administrative compliance costs are but a subset. The BCC has been mandated for regulatory impact assessments by all Commonwealth and SA Government agencies.

Survey methodology

The SCM requires the detailed mapping of all regulations that impose a burden on business and the identification of the underlying activities businesses have to perform to comply with government regulation.

The SCM involves the use of personal interviews with businesses and experts to place indicative values on those activities. The process involves a high degree of involvement by different parties including:

- business practitioners;
- professional bodies and industrial organisations;
- professional experts (such as accountants); and
- government departments.

The work of implementing a SCM measurement is usually undertaken by a consultant in collaboration with a central coordinating unit. This unit is responsible for the timetable and for ensuring that the method is consistently applied by the consultant and that the cooperation between the consultants and the departments is running as planned.

The SCM breaks down the administrative compliance costs of regulation into a number of manageable and measurable compliance activity components, consisting of information obligations, data requirements and administrative activities (box 3.3).

Box 3.3 **The measurable compliance activity components of the Standard Cost Model**

The SCM categorises compliance activity into the following components.

Information obligations — are the obligations arising from regulation to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data or messages that businesses have to report. They might include applications for subsidies or grants, reports about labour conditions, a payroll, labelling provisions, or an annual account.

Data requirements — each information obligation consists of one or more data requirements. A data requirement is each element of information that must be provided in complying with an information obligation. The data requirements could be the identity of the business, business's turnover, tax number, or the number of employees.

Administrative activities — for each data requirement, a number of specific administrative activities have to be undertaken. The SCM estimates the costs of completing each activity which could include a calculation, reporting and submitting information, and archiving information. These activities might be undertaken internally or be outsourced.

For each administrative activity, a number of cost parameters need to be collected including:

- price — the wage costs plus overheads for administrative activities done internally or hourly cost for external service providers;
- time — the amount of time required to complete the administrative activity; and
- quantity — the size of the *population* of businesses affected and the *frequency* that the activity must be completed each year.

Combining these cost parameters gives the basic SCM formula:

Administrative Activity Cost = Price x Time x Quantity.

Source: SCMN (2005).

Lessons

The SCM's focus is on the activities that must be undertaken in order to comply with regulation. For the most part it does not include the cost of capital items such as plant and equipment that has to be purchased to comply with regulation.⁴ Moreover, the measured administrative compliance costs are not necessarily incremental compliance costs.

⁴ These capital items are referred to as content obligations in the SCM explanatory material.

There are some challenges in measuring the cost of each administrative activity that have to be considered. These include issues relating to:

- Price components — which are a series of estimates of the costs that a ‘normally efficient business’ might incur — it can be difficult to establish what is a normally efficient business.
- Quantity components — which involves determining the population (generally the number of businesses affected by a given regulation) in order to determine the aggregate cost — it can be difficult to determine how many businesses are affected.

SCM exercises already undertaken have been costly. For example, the BRTF (2005) estimated that a baseline measurement of the administrative burden of all the regulation on UK businesses, charities and voluntary organisations would cost around £35 million over five years.

The Chamber of Minerals and Energy of Western Australia (sub. 20) compared the relative cost of using the SCM, the World Bank model and the MCA Scoreboard methodology. They concluded that the SCM was the most expensive methodology to measure the cost of regulation over entire industry groups and jurisdictions.

Ed Humpherson, the Director of the Regulation (Value for Money) Team in the UK National Audit Office is supportive of the SCM, but has noted that the ‘numbers are a distraction and can be a risk’. He claims that ‘the SCM has the appearance of scientific objectivity and of (largely illusory) accuracy’. He suggests that the real benefit of the SCM is in the discipline it imposes on policy makers when developing regulations (Humpherson 2006).

In relation to applying the SCM to measure the administrative impact of tax and duty regulations on business, Craig Richardson from HMRC commented:

- it is designed to be consistent across the different areas of the tax system — the experience of tax experts, and a small team doing the work, ensured the estimates were consistent;
- it is not designed to be a statistically representative process (HMRC conducted around 1000 face-to-face interviews, which was insufficient for a statistically robust sample);
- the administrative burden is a subset of the compliance cost, but arguably the more measurable part; and
- it is a resource intensive exercise — around 80 000 calls were made to arrange the interviews (HMRC 2006).

United States

In the United States, systematic efforts to track and account for regulatory burdens on business are limited. The studies that have been undertaken relate to the impact of Federal regulations rather than State or Local Government regulations on business. They include:

- A study undertaken by the US General Accounting Office (GAO) to investigate the cumulative impact of Federal regulations on a limited number of businesses (GAO 1996).
- Three studies commissioned by the Office of Advocacy within the US Small Business Administration to estimate the total cost of all Federal regulations on small businesses (Crain 2005; Crain and Hopkins 2001; Hopkins 1995).⁵

In the latter three studies, the data used to estimate the compliance costs were not based on business surveys but obtained from relevant government agencies.

The Office of Program Policy Analysis and Government Accountability (OPPAGA), an office of the Florida Legislature, released a report on some possible approaches to estimate the State's costs to administer regulatory programs and business costs to comply with State regulation (OPPAGA 1999).

The OPPAGA concluded that such a study is feasible but estimating the administrative and compliance costs of State regulatory programs and activities would be complex and costly. Only limited data were available on these costs and such a study would require extensive data collection from both State agencies and private businesses.

The OPPAGA recommended that the Legislature, if it wished to pursue such a study, should direct the Governor's Office to engage a consultant with sufficient experience, expertise and resources to carry out a large, multi-phase, multi-year project.

The GAO survey methodology

The GAO identified 51 businesses, mostly through public sources, of which only 15 small, medium and large businesses agreed to participate in the survey. Each business was interviewed and asked to supply the following information:

- the aggregate list of regulations with which the business must comply;

⁵ Small business is defined as a business employing fewer than 20 employees. They account for 90 per cent of all businesses in the United States.

-
- the aggregate impact (cost and other) of all those regulations on the business;
 - the regulations the business viewed as most problematic;
 - what the business believed government and business could do to correct or mitigate those problematic regulations; and
 - what the business viewed as the benefits of Federal regulations.

The study was conducted over a two year period from June 1994 to July 1996 and cost around US\$300 000 to US\$400 000 (GAO 1996; OPPAGA 1999).

Lessons

Of the businesses surveyed, none provided the GAO with a complete list of applicable Federal regulations. This affected their ability to provide comprehensive data on the cost of regulatory compliance. As a result, the cost data provided were likely to be incomplete. As noted by the GAO:

Companies frequently provided little documentation to support their cost estimates, and we had no basis to judge whether the costs identified were reasonable, comparable to costs incurred by similar companies, or even whether such costs were, in fact, the direct result of a specific federal regulatory requirement. (1996, p. 26)

The businesses surveyed also found it difficult to identify their incremental costs. That is, costs that would not have been borne in the absence of Federal regulation because none of them had a database capable of capturing incremental costs.

3.3 Self-enumeration surveys

Self-enumeration surveys are those in which it is left to the respondents to complete the survey questionnaires. Although these are primarily postal, or mail-out surveys, they can also include hand-delivered questionnaires and email and internet surveys (ABS 1999).⁶

This is by far the most common approach used by many organisations and countries to survey perceptions about the cost of regulatory burdens.

⁶ Hand-delivered questionnaires are delivered to, and or collected from, the respondents personally by an 'interviewer' or collector (ABS 1999). This method is useful for addressing concerns and questions posed by respondents.

OECD

The OECD (2001) produced a report *Businesses' Views on Red Tape* based on the results of a survey of almost 8000 small- and medium-sized businesses in 11 OECD countries.

The aims of the survey were to:

- measure and compare direct regulatory and administrative compliance costs across member countries, policy areas and businesses by using a standardised methodology;⁷
- assess business perceptions of the quality of regulations and the quality of regulatory administration; and
- evaluate aspects of indirect costs arising from employment related regulation.

Survey methodology

The survey covered the impact of tax, employment and environmental protection regulations on businesses across all levels of government including local, regional, national and international.

Three standardised questionnaires were prepared, one for each of the three regulatory areas chosen. Each business in the sample was sent only one questionnaire (on either tax, employment or environment).

Gallup France developed a statistical protocol so that the results could be compared across countries, policy areas and business sizes. For example, the data were classified by size of business and economic sector. The sample covered businesses in three size categories (1–19, 20–49, and 50–499 employees), and in both the manufacturing and service sectors. Provision was made to split the service sector businesses into two further groups — that is, services which impact on the environment (such as those in the transport sector) and professional services (with less impact on the environment) (OECD 2001).

A total of 22 544 businesses were surveyed of which 7859 businesses responded (a response rate of 37 per cent) (OECD 2001).

⁷ The compliance costs cover the time and money spent by businesses on the paperwork involved in complying with regulations. They do not include capital costs such as the investment and equipment needed to comply, although these costs could be larger than paperwork costs.

Lessons

The use of multi-country large scale postal surveys has a number of advantages and limitations. The OECD chose this survey approach because it:

- is a relatively inexpensive method of collecting data *vis-à-vis* most other methods of data collection;
- allows respondents more time to think and complete the questionnaire; and
- is useful for producing estimates of the cost of administrative compliance that are of the right ‘order of magnitude’.

Nevertheless, this approach has some limitations that should be considered when interpreting data:

- It relies on estimates provided by respondents that might not be an accurate reflection of the actual costs. It was not possible for the OECD to obtain data on actual costs because businesses do not monitor administrative compliance costs in their internal management information systems.
- The data collected reflect business perceptions, not empirical independent measurement. The OECD questionnaires were constructed to guard against bias, but the possibility exists that businesses might erroneously report the costs — that is, they can either overstate or understate the costs for any number of reasons.
- Opinion surveys of businesses are susceptible to the business cycle. Responses might reflect either good or poor business performance.
- Multi-country surveys can reflect cultural factors that can influence the way in which respondents complete questionnaires (OECD 2001).

Canada

Some studies have been, or are currently being, undertaken in Canada to measure the regulatory burden on business. Most, like the studies undertaken by the Canadian Federation of Independent Business (CFIB), are based on qualitative data.

An exception is a 1995 study undertaken for the Joint Forum on Paper Burden Reduction to measure the cost to small- and medium-sized businesses in meeting Federal information reporting requirements. However, the cost of regulatory burden on businesses at the Provincial and Municipal levels was not surveyed.

Jones and Graf (2001) from the Fraser Institute estimated the costs that were incurred by the private sector (individuals and businesses) in complying with

regulations across all levels of government. However, in estimating the cost, Jones and Graf did not rely on a business survey. Rather they:

- first quantified how much the Federal, Provincial, Territorial and Local Governments in Canada spent on administering their regulatory activities in 1997-98; and
- then estimated the costs incurred by the private sector using a multiplier derived by Weidenbaum and DeFina (1976), who had estimated that for every dollar the public sector spent to administer regulatory activity, the private sector spent Can\$20 to comply with government regulation.

Since 2005, greater emphasis has been placed on measuring the impact of regulatory compliance on small businesses. A joint private–public sector Advisory Committee on Paperwork Burden Reduction (ACPBR) was established in March 2005. Their aim is to ‘gather objective and quantitative data on the resources allocated to compliance obligations to better inform government and its stakeholders regarding burden reduction decisions’ (ACPBR 2005).⁸

The ACPBR has commissioned Statistics Canada to undertake a survey to measure the cost of compliance for small- and medium-sized businesses in meeting key regulatory requirements that are the responsibility of various levels of government. The final results are expected to be released by December 2006.

Statistics Canada survey methodology

The Statistics Canada survey measures the cost of complying with a number of common categories of Federal, Provincial, Territorial and Municipal regulations relating to employees, taxation, corporation registration, mandatory Statistics Canada surveys, municipal taxes and business licences (ACPBR 2006).

Statistics Canada’s Business Register was used as the sampling frame for the target population of all private sector, for-profit establishments with fewer than 500 employees and gross revenues of between Can\$30 000 and Can\$50 million. The sampling frame contained 665 480 establishments.

The initial stratification was by region and business size, as defined by the number of employees in the establishment. A small business was defined as having fewer than 100 employees, and a medium-sized business was defined as having fewer than 500 employees (Statistics Canada 2005).⁹

⁸ Quantitative data express certain quantities, amounts or ranges (OECD 2006a).

⁹ In Canada, more than 98 per cent of businesses employ less than 100 employees.

Statistics Canada's *Survey of Regulatory Compliance Costs* was distributed to 30 000 businesses. They were asked to provide information on the time spent and salaries of the people involved in preparing and submitting information relating to individual regulations completed internally within a business. They were also asked to provide a list of outsourced activities (including non-regulatory), and the total cost for the activities being supplied by an external provider.

The survey was also distributed to 5000 business service providers (bookkeepers, accountants, tax specialists and payroll companies). The intention was to measure the relative time spent by service providers in completing various regulatory requirements, accounting activities and provision of financial advice on behalf of business clients.

The survey will be repeated every three years. The results of the first survey will be used to establish a baseline measure of the cost of compliance from which government can track its progress.

Data were collected via a paper mail-out and mail-back voluntary survey. At least three follow-up attempts were made to all respondents to convince them to return their questionnaire. The survey response rate was 29 per cent (Statistics Canada 2005).

Lessons

The survey does not measure all the compliance costs a business faces, only those relating to the provision of information. Further, mail-out surveys are subject to low response rates particularly when it is not mandatory for business to complete the survey. This can lead to potential problems with data quality and reliability.

Australia

Australian studies that involved the measurement of business compliance costs are few in number. Those undertaken have for the most part focused on selected businesses or sectors within a State rather than benchmarking the regulatory burden across jurisdictions. Further, they have focused more on perceptions about the problems posed by regulatory burden, than on the time and cost to business.

Some surveys like the NSW Red Tape Register survey have been undertaken annually. Others, including the WA Red Tape Buster Service survey, the Australian Industry Group survey 2004, the SA Small Business survey 2006, and the MCA National Scorecard of Mining Project Approval Processes 2006 (as discussed in section 3.1), were one-off studies.

Although the studies undertaken report survey results, limited information is provided on survey design, sampling methodology and procedures used to address non-response bias.

The Red Tape Register survey which has been undertaken on an annual basis since 2003, however, provides enough information to make some informed comments. The aim of the survey is to identify how much time and effort small- and medium-sized businesses spend in complying with selected regulations with a view to identifying areas with unnecessary burdens.

Red Tape Register survey methodology

The Red Tape Register survey undertaken by the NSW State Chamber of Commerce focuses on the time required by small- and medium-sized businesses to comply with State and Federal legislation relating to payroll tax, GST, company tax, workers compensation, occupational health and safety, superannuation, and industrial relations (SCC 2005).

The calculations of time spent by business owners or employees include time in meetings with external accountants and legal advisors, but not time spent by outsourced services. For example, the time spent preparing papers for an accountant and meeting with them is included, but the time spent by the accountant completing the tax form is excluded.

In the three years to 2005, around 350 to 600 small- and medium-sized businesses have responded to the survey.

Lessons

The annual Red Tape Register surveys provide valuable information on the time business spends complying with selected regulations. The surveys identify what regulations are of the greatest concern to business and track what is happening year-to-year to ascertain if the regulatory burden is increasing or decreasing.

The State Chamber of Commerce represents over 50 000 businesses in New South Wales which range from small proprietors to multinational corporations. A small proportion of member businesses responded to the Red Tape Register surveys. However, their responses might not be representative of the broader business community, and hence cannot be reliably used to infer the time spent on compliance at the State level.

3.4 Lessons from key studies

The survey methodologies covered in this chapter — informant surveys, personal interview surveys and self-enumeration surveys — have different inherent trade-offs between the cost of data collection and data quality. The choice of survey methodology depends on the cost effectiveness of data collection meeting the objectives of the study.

Benchmarking unnecessary regulatory burdens would require a high degree of data accuracy to compile robust indicators. The advantages and disadvantages of the survey methodologies used in key studies are discussed below with this in mind.

Informant surveys

The World Bank uses informant surveys to obtain the data for their *Doing Business* reports. The use of informants or local experts poses questions of how they were chosen, and how their skills and knowledge were validated. Further, the data collected by informants or local experts might not be as reliable as those collected through face-to-face interviews. More specifically:

- Although the *Doing Business* reports are suitable for looking at a ‘league ladder’ and identifying significant differences, as a tool it is unlikely that the survey approach is refined enough to identify differences in regulatory burden between Australian jurisdictions.
- The World Bank indicators measure both the cost of complying with the government policy as well as the administrative compliance costs. The Productivity Commission’s mandate is to develop indicators that will measure the administrative compliance costs not the full cost of complying with government policy.

Personal interview surveys

The SCM involves the use of personal interview surveys supplemented by other available data. This approach has also been used by the US GAO. In most cases, the data were collected through face-to-face interviews. This form of data collection is highly effective in terms of boosting response rates and data quality, and collecting sensitive and complex data, in comparison with other survey methodologies.

The downside of personal interviews is the cost (in staff, time and money required to obtain, train and manage interviewers and call backs when respondents are not

available), as well as the possibility of bias being introduced by interviewers (ABS 1999).

Despite the cost, the SCM framework could be used in the measurement and comparison of the administrative compliance costs of regulation across Australian jurisdictions. In particular, its main strength is that it provides detailed information on the compliance costs of individual activities that can be used to identify the sources of inter-jurisdictional differences and unnecessary burden.

It also has the flexibility to be used for prospective and retrospective measurements, and it allows policy makers to identify where there is potential burden, diagnose the problem and prescribe solutions. However, the SCM does not measure all the compliance costs of regulation, but could be extended to do so, as in the case of the BCC.

Self-enumeration surveys

The OECD and the ACPBR in Canada have used self-enumeration surveys to collect data for their studies. The advantage of mail-out, mail-in surveys is that they are a relatively inexpensive method of collecting data particularly for a large scale survey.

The disadvantage is that this form of survey has a lower response rate compared with face-to-face surveys (particularly when it is not mandatory for respondents to complete the survey). Where low response rates exist, substantial bias can result if non-respondents have different characteristics from those who do respond. However, response rates can be improved through follow-up, well-written introductory letters and incentives for timely return of questionnaires.

Most of the surveys undertaken in Australia to measure regulatory burden have relied on survey techniques which are likely to be insufficiently reliable or robust to identify differences in burdens. Despite the limitations of the Australian studies, the results provide guidance on key issues of concern and assist in highlighting where the priority areas for reform might be.

4 Becoming and being a business

Key points

- The regulatory burdens associated with *becoming and being a business* include those arising from:
 - obtaining licences, permits and registrations;
 - meeting tax requirements; and
 - satisfying Occupational Health and Safety (OHS) regulations.
- The administrative formalities undertaken to comply with regulatory requirements that generate one-off and ongoing burdens could be benchmarked using indicators of *administrative compliance costs*.
 - The burdens associated with specific activities could also be benchmarked. For example, in the case of OHS regulation, the administrative compliance costs incurred after an accident, or when a provisional improvement notice is issued, could be compared.
- The Standard Cost Model framework could be used to collect data through *face-to-face* business interviews.
- Other possible indicators of administrative compliance costs, reflecting the difficulty for businesses in obtaining licences, permits and registrations, include the:
 - number of licences, permits and registrations required for business;
 - number of agencies and steps in the process;
 - duplication of information requirements;
 - availability of on-line lodgement; and
 - existence of statutory time limits on agency processing.
- The use of *reference businesses* would provide a basis for ‘like-with-like’ comparisons across jurisdictions and would reduce the cost to business of supplying information.

Regulations associated with *becoming and being a business* typically require business to provide information that enables governments to exercise and implement regulatory objectives, and monitor compliance. Such information obligations are considered to be *administrative compliance costs* — that is, the *paperwork compliance costs* and *non-paperwork compliance costs* that are directly related to ‘paperwork activities’ (such as staff training and education) that must be

carried out to comply with the requirements of regulation. ‘Capital holding’ costs, for example, are not included as part of administrative compliance costs.

Administrative compliance costs can involve one-off costs (such as businesses acquiring sufficient knowledge to meet their regulatory obligations), and recurring and ongoing costs (such as renewing licences). Some of these costs are incurred by business because of regulation and, in other cases, voluntarily as part of ‘standard’ business operations.

In this chapter, the regulations considered are in the areas of licensing, permits and registrations, tax regulation, and Occupational Health and Safety (OHS) regulation. However, other forms of regulation that impose administrative compliance burdens associated with becoming and being a business could potentially be benchmarked.

The selected regulatory compliance burdens are regularly raised by industry as being unnecessary (section 4.1). In section 4.2, the objectives of benchmarking administrative compliance costs are considered. An approach for developing performance indicators is provided in section 4.3. In section 4.4, issues associated with data availability and collection are considered. Finally, caveats that could apply to the benchmarking of administrative compliance costs across jurisdictions are discussed in section 4.5.

4.1 Industry concerns

The Australian Chamber of Commerce and Industry (ACCI) (2005) noted that its 2004 Pre-Election Survey results highlighted:

The complexity of government regulations, and the cost of compliance with this regulatory burden head the list of concerns of Australian business in dealing with government regulation. (p. 10)

Specifically, the burden of compliance with OHS regulation, including OHS inspections, ranked high among business concerns. Further, the overall complexity of taxation systems was found to be a ‘major or moderate’ impediment to business. Other concerns included compliance with privacy requirements, environmental regulations and corporations law requirements.

Similarly, the State Chamber of Commerce of New South Wales (SCC 2005) highlighted small-business concerns (box 4.1) about the compliance burden of OHS regulation and payroll tax. Respondents claimed that these burdens were a considerable drain on businesses’ time.

Box 1 Small business concerns

A concern raised by the Australian Chamber of Commerce and Industry (ACCI) (2005) from its 2004 Pre-Election Survey was the disproportionate regulatory burden on small business. Taxation compliance was claimed to be a particularly acute burden for smaller businesses.

The burden of regulation is widely held to fall more heavily on small businesses — not because they are more heavily regulated, but because they have the least capacity to cope (Banks 2003a). Compliance costs per unit of output are likely to be higher for small business, which could lead to a competitive advantage for larger businesses (IC 1997).

The Small Business Deregulation Task Force (SBDTF) (1996) identified numerous areas of regulation where recording and reporting obligations on business were judged to be excessive. The SBDTF found that, among other concerns:

- small businesses generally do not understand their compliance obligations;
- unnecessary delays in processing and approvals, and duplication of information requirements, were resulting in lost time; and
- inconsistency in administrative interpretation was resulting in uncertainty about processes and outcomes, which adversely affects business confidence.

Another business concern is with regulations relating to personal property securities, which has been added by COAG (2006b) to the list of ‘hot spots’ highlighted for reform. Also, the pervasive nature of privacy requirements, and financial and corporate regulation were raised in submissions to the Regulation Taskforce (2006) as significant contributors to the cumulative regulatory burden.

Occupational health and safety regulation

Deficiencies in the way OHS has been implemented and administered emerged as a common theme in a number of submissions to the Regulation Taskforce (2006). Submissions raised specific concerns about:

- inconsistency across jurisdictions adding significantly to compliance costs for businesses operating nationally (chapter 6); and
- regulators displaying reluctance to provide advice and support on compliance matters and changes to the rules.

Tax regulation

The regulatory burden of tax compliance also featured prominently in submissions to the Regulation Taskforce. The Taskforce noted that:

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. (2006, p. 107)

Although concerns highlighted by the Regulation Taskforce were specific to Commonwealth taxes, there appear to be similar concerns about the complexity and cost of complying with State and Territory tax regulation.

Personal property securities

Personal property securities arrangements require borrowers to register encumbrances on assets. This reduces the risks associated with lending, and potentially makes corresponding savings available to debtors through lower interest rates, and reduced fees and charges.¹

Personal property security registers in each jurisdiction identify the parties involved in securities transactions and the property to which the transaction relates. Given the policy objectives, arrangements should minimise the associated compliance and transaction costs on business (Standing Committee of Attorneys-General 2006).

Concerns about the regulatory burden of existing personal property securities arrangements include:

- mandatory and cumbersome registration procedures;
- the reliance on hard copy registration over electronic lodgement; and
- the absence of comprehensive electronic search facilities.

Related concerns about the unnecessary additional costs for businesses that operate in more than one jurisdiction are noted in chapter 6.

¹ A business can finance its activities through equity capital provided by its owners, or by debt capital sourced from credit providers. Credit providers might seek to protect their loans by taking securities over collateral owned by debtors. A security secures payment of the debt by giving the lender access to collateral, as an alternative to direct legal action against the debtor personally (Standing Committee of Attorneys-General 2006).

Privacy regulations

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 is balanced against a range of other community and business interests — such as the general desirability of a free flow of information and the right of business to achieve its objectives efficiently (Regulation Taskforce 2006).

State and Territory governments are able to enact privacy laws in instances where there is not a clear statement in the Australian Constitution on whether regulation of personal information is the responsibility of the Australian Government or the respective State or Territory government (ALRC 2006).

Respondents to the ACCI 2004 Pre-Election Survey (ACCI 2005) considered that compliance with privacy requirements is a problem. This supports ACCI's earlier recommendations that an in-depth study should be commissioned to examine compliance costs for business (ACCI 2004). This was reiterated by the Regulation Taskforce (2006), which recommended that the Australian Government establish a comprehensive public review of privacy laws, including the impact of privacy requirements on business compliance costs.

The Australian Law Reform Commission is currently conducting an inquiry into the extent to which the *Privacy Act 1988* and related laws continue to provide an effective framework for the protection of privacy in Australia, including the desirability of minimising the regulatory burden on business in this area.

Financial and corporate regulation

Two key regulators — the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) — have prime responsibility for implementing and administering the extensive and comprehensive regulatory regimes that apply to the financial and corporate sectors.

Data collection and regulatory reporting are fundamental aspects of the financial and corporate regulatory regimes, and represent core supervisory tools for both APRA and ASIC. The information collected is also important to other agencies such as the Reserve Bank of Australia (RBA) and the Australian Bureau of Statistics (ABS). The requirement to provide information represents a significant compliance cost to regulated entities (Regulation Taskforce 2006).

Although 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 submissions to the Regulation Taskforce. In particular, they suggested that APRA and ASIC might 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 (Regulation Taskforce 2006).

The Regulation Taskforce, in light of industry comment and given the significant costs associated with data collection and regulatory reporting, noted:

... 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. (2006, p. 96)

4.2 Benchmarking objectives

The objective of benchmarking administrative compliance costs associated with becoming and being a business is to reveal the possible existence of unnecessary administrative compliance burdens. This could include differences in the burdens related to areas of licensing, permits and registrations, and tax and OHS regulation, across jurisdictions.

It should be recognised, however, that differences in administrative compliance costs can arise because of disparate policy objectives that result in additional burdens in some jurisdictions. Administrative compliance costs would not be comparable unless the impact of such differences is minimal or taken into account.

Licences, permits and registrations

Licences, permits and registrations are among the most pervasive instruments of business regulation and control. Such regulatory tools are created under government authority — for example, by legislation, regulation, ministerial order, by-law or similar legal process. Licences, permits and registrations can be applicable for general business operations as well as specific business activities.

Licences and permits can be issued by industry associations (under co-regulation) or by private certifiers authorised by law. Licensing typically involves meeting minimum requirements, which are not necessarily uniform between business types and jurisdictions. Therefore, the burdens imposed can reflect differences in the circumstances of individual businesses. Registrations, on the other hand, can be

implemented to reduce the costs of identifying and locating businesses, and are not activity related.

The number of licences, permits and registrations currently in force varies across jurisdictions (table 4.1). Any benchmarking would have to be prioritised because of their vast number. Criteria such as employment, contribution to GDP, the number of businesses affected, and the number of tiers of government involved in regulating the businesses affected, could be used for this purpose.

Table 1 Estimated number of licences, permits and registrations by areas of control and jurisdiction

<i>Control</i>	<i>Commonwealth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>
Person ^a	72	121	137	119	112	83	81	61	73
Premise ^b	13	19	19	18	21	12	9	9	11
Place ^c	18	22	63	32	30	22	14	16	19
Product or equipment ^d	54	38	31	34	31	24	27	18	21
Entity ^e	30	11	8	10	9	7	8	5	6
Activity ^f	127	142	179	149	149	104	97	76	91
Public resource ^g	17	38	63	49	45	34	40	25	30
Estimated licences	331	391	500	411	397	286	276	210	251

^a Permits a specified individual to, for example, perform a service, use certain equipment or handle certain products. ^b Permits the establishment, operation or specified activities to be undertaken at a specified premise or facility. ^c Permits activities to be undertaken at a specified location or event. ^d Permits a product or equipment to be, for example, used, labelled or stored. ^e Permits business structures to be established or controls general business operations (such as employment, taxation registrations, levies and duties). ^f Permits the holder to undertake a specified activity or provide a service. ^g Permits activities involving collection, extraction, interfering with, taking, using, or harvesting, of a public resource (such as petroleum, minerals, water, flora and fauna).

Source: Stenning and Associates 2006 (unpublished).

Another consideration in selecting licences, permits and registrations to be benchmarked is that they should be common across jurisdictions, and are likely to have significant differences in administrative compliance costs. Areas of business licensing regulation that fall into these categories could include:

- entity establishment — such as business names registration;
- employment — such as the Working With Children Check and registration for WorkCover;
- dangerous goods — such as dangerous goods bulk vehicle licence, and licences to manufacture explosives and security-sensitive dangerous substances;
- poisons, drugs, agricultural and veterinary chemicals — such as commercial operator licences and commercial pesticide business registration;
- occupational licences in building and related trades — such as contractor licences, for example, electrical, supply of kit homes and buildings;

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- health and medical services — such as registration as a chiropractor, registration of radiation apparatus and equipment, recognition as an enrolled nurse, registration of private hospitals and day procedure centres, and registration of a pharmacy business;
 - property services — such as registration as an auctioneer and registration as a real estate, business or stock agent;
 - transport operations — such as hire and drive licence, perpetual taxi licence, licences to conduct guided tours and activities in national parks, and accreditation as a railway operator;
 - food and beverage manufacturing, wholesaling and retailing — such as retail meat premises, dairy manufacturers licence, knackery licence and liquor off-licence (brewer); and
 - training and education services — such as recognition as a registered training organisation, registration as a teacher and registration as a non-government school.

In the case of licences, permits and registrations, administrative compliance costs would include the wage costs and time involved in applying, gathering information, and filling out and submitting application forms; obtaining and filing the licence, permit or registration; any purchase of computer equipment or software to enable the business to comply with information requirements; and maintaining the minimum administrative standards to conduct the activity.

Alternatives to licences, permits and registrations include accreditation and certification schemes, and negative licensing systems. The mandatory nature of licensing means that businesses cannot choose whether or not to achieve the performance standard or level of quality specified in the licence. However, voluntary mechanisms, such as accreditation and certification systems, could also provide indicators of quality (BIE 1996).

Similarly to licensing, accreditation and certification schemes are concerned with attesting that an individual or business complies with certain professional guidelines on qualifications and continuing education, and addresses the information asymmetry between business and consumers. Although a lack of accreditation or certification does not necessarily prevent a service provider from lawfully engaging in the relevant business activity, the documentation requirements can be an onerous form of regulation — as reported by some childcare businesses (box 4.2).

Box 1 Childcare business accreditation

Businesses engaged in managing childcare are subject to a range of regulatory requirements from all tiers of government. In submissions to the Regulation Taskforce (2006), industry representatives contended that the most onerous form of regulation for the sector was associated with State and Commonwealth accreditation processes.

The Institute of Early Childhood, for example, noted that the NSW Children's Services Regulation and the Australian Government's Quality Improvement and Accreditation System, were perceived to have excessive and repetitive documentation requirements that distracted staff away from its core responsibilities of teaching and caring for children (QIAS 2005).

In the case of negative licensing systems, a licence or permit is not required before commencing operations, but a business committing serious breaches of the required standards can be barred from continuing the activity.

The administrative compliance costs for business acting in accordance with accreditation and certification schemes, and in overcoming a breach of standards for negative licensing systems, could potentially be benchmarked across jurisdictions to reveal the possible existence of unnecessary burdens.

Financial and corporate regulation

The administrative compliance costs related to data collection and regulatory reporting imposed on businesses by the APRA, ASIC, RBA, ABS and other relevant government agencies (as discussed above), could be benchmarked over time to measure changes and monitor any improvement or deterioration in administrative compliance burdens.

Tax regulation

There are two objectives of benchmarking administrative compliance costs associated with tax regulation. Firstly, State and Territory tax regulations could be benchmarked across jurisdictions to reveal the possible existence of unnecessary burdens. Additionally, Commonwealth tax regulation could be benchmarked over time to measure changes and monitor any improvement or deterioration in administrative compliance burdens. The administrative compliance costs would generally include:

- the monetary and time costs incurred in collecting and maintaining tax information;

-
- educating and training staff to meet regulatory requirements;
 - maintaining and developing up-to-date reporting systems;
 - completing tax forms and necessary disclosures, or preparing information for professional advisers to enable them to do this; and
 - dealing with the relevant government agency collecting the tax.

State and Territory tax regulations² that could be benchmarked across jurisdictions include:

- *Land tax* — calculated on the basis of the combined unimproved value of taxable property. The laws across jurisdictions (except for the Northern Territory where no land tax exists) are broadly similar (with some variations).
- *Payroll tax* — calculated on the amount of wages a business pays per month, above an exemption threshold (which varies between jurisdictions). Businesses must register for payroll tax with the respective Revenue Office in each jurisdiction.
- *Rates* — property taxes charged by local government on properties in their municipal area. The rates structure varies across jurisdictions on the basis of property value, method of valuation and timing of rates payments.
- *Stamp duty* — State and Territory governments impose taxes on a range of paper and electronic transactions. These taxes vary across jurisdictions and could include transactions such as:
 - motor vehicle registration and transfer;
 - insurance policies;
 - leases and mortgages;
 - hire purchase agreements; and
 - transfers of property (such as businesses or land).

Commonwealth tax regulations² that could be benchmarked over time include:

- *Capital gains tax* — tax paid on any capital gain, included as part of an annual income tax return.
- *Excise duty tax* — levied on certain types of goods produced or manufactured in Australia. For example, excisable goods include alcohol, petroleum and tobacco.

² A list of Commonwealth, State and Territory tax regulations can be found at business.gov.au (website accessed 25 October 2006).

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- *Fringe benefits tax (FBT)* — payable by employers for benefits paid to an employee or the employee's associate. FBT is separate from income tax and is based on the taxable value of the various benefits provided.
 - *Goods and Services Tax (GST)* — a broad-based tax of 10 per cent on the sale of most goods and services in Australia.
 - *Income tax for business* — levied on the taxable income of a person or a business. It is calculated on assessable income less any allowable deductions.
 - *International tax* — Australian businesses are liable based on worldwide income and non-Australian businesses are liable only on income derived from Australian sources.
 - *Pay As You Go (PAYG) withholding* — a legal requirement to withhold amounts for income tax purposes.

Further, administrative compliance costs would be incurred by businesses in registering for taxes, including for the Australian Business Number (ABN), FBT, GST, PAYG withholding and Tax File Number (TFN).

It might be possible to benchmark the administrative compliance burdens of Commonwealth taxation internationally. However, this would be beyond the scope of this study as defined in the Terms of Reference and has therefore not been considered in this chapter.

Occupational health and safety regulation

It is a common law duty of all organisations to effectively identify and manage risks associated with OHS for employees, contractors and visitors. The policy objective of OHS regulation is notionally the same across Australia — that is, to prevent workplace injury and illness. However, there are nine principal OHS statutes — six State, two Territory and the Commonwealth — and within each jurisdiction there could be several pieces of legislation regulating OHS.

All OHS Acts provide for the making of regulations.³ These set out in detail the carrying out of some aspects of the more general duties outlined in the Acts. They cover such matters as working in confined spaces, plant design and use, electrical hazards, manual handling, risk management, consultation, and training. Failure to comply is a breach of the relevant OHS Act and could result in a penalty being imposed (PC 2004b).

³ Many of the regulations are supported by codes of practice. These explain the processes that will achieve the outcomes required by the regulations, with practical examples and references to relevant Australian Standards.

In benchmarking OHS regulations for the purpose of revealing the possible existence of unnecessary administrative compliance burdens, it would be important to make a distinction between prescriptive and performance-based OHS regulations. Under the latter approach, businesses and individuals are free to meet their duty in the fashion that is most appropriate to their circumstances, so long as the duty is met and any mandatory requirements under the relevant OHS Act are adhered to (PC 2004a).

The administrative compliance cost for some businesses in following a prescriptive approach should be less than that for a performance-based approach, as compliance has been facilitated by government incurring part of the costs. For other businesses, however, prescriptive regulation has the potential to limit innovation and increase administrative compliance costs.

Consequently, any benchmarking of administrative compliance costs would have to be undertaken separately for those businesses choosing to follow a prescriptive approach, and those exercising their duty of care under the performance-based approach. The benchmarking would highlight differences in administrative compliance costs caused by varying degrees of prescription and not the cost of a particular policy. As such, the costs should be reasonably comparable. Where large differences exist it would be up to governments to justify the administrative complexity of their prescriptive approach.

There are many differences in OHS arrangements between jurisdictions in Australia — for example, the Housing Industry Association (2006a) claim that OHS regulation is more onerous in New South Wales than in any other jurisdiction. These differences arise in principal legislation in each jurisdiction, the regulations and codes, and in the style and extent of enforcement.

A matrix of comparative information on the different OHS arrangements in each jurisdiction is presented bi-annually by the Workplace Relations Ministers' Council (WRMC 2006). For example, differences across jurisdictions include general duties, reporting requirements for work injuries and dangerous occurrences, and powers of OHS representatives.

Administrative compliance costs related to businesses satisfying OHS regulations would generally include the wage costs and time involved in meeting their OHS responsibilities — such as the cost of identifying, obtaining and understanding the relevant OHS regulations.

Examples of employers' OHS responsibilities that could impose burdens include:

- developing an OHS policy in consultation with employees and other appropriate representatives, such as unions;

- providing for a health and safety representative in a business-designated workgroup to undertake duties, including training, workplace inspections and consultation;
- reporting after a provisional improvement notice is issued to a business, including notifying affected employees and ensuring that the notice is complied with; and
- reporting and managing accidents and dangerous occurrences.

4.3 Proposed indicators

Indicators are proposed for administrative compliance burdens related to licences, permits and registrations, and tax and OHS regulation (table 4.2). These indicators fall into two main classes — administrative compliance costs, and the difficulty for businesses in obtaining licences, permits and registrations.

Table 1 **Possible administrative compliance burden indicators — becoming and being a business**

<i>Indicators</i>	<i>Metrics</i>
Administrative compliance costs	
Cost of each activity	Dollar value
Difficulty for businesses in obtaining licences, permits and registrations	
Number of licences, permits and registrations required for business	Count
Number of agencies in the process	Count
Number of steps in the process	Count
Duplication of information requirements	Yes/no
Availability of on-line lodgement	Yes/no
Existence of statutory time limits on agency processing	Yes/no

Administrative compliance costs

Administrative compliance costs could be calculated by estimating the costs in terms of:

- unit costs — wage costs (including for staff training and education) plus overheads for administrative activities, or hourly costs for external service providers;
- time — hours required to complete administrative activities (including time spent in undergoing audits and inspections of premises or processes);
- quantity — frequency that activities must be completed each year; and

-
- any plant and equipment (including computer software) that are purchased solely to enable the business to comply with a specific information obligation.

Additionally, the administrative compliance cost associated with particular activities could be measured. For example, the costs of notifying, reporting, recording and investigating accidents in the workplace could be measured.

In measuring administrative compliance costs, the approach specified in the Standard Cost Model (SCM) could generally be followed. As discussed in chapter 3, the SCM provides a pragmatic and consistent framework for estimating administrative compliance costs. Further, the related Business Cost Calculator (BCC) — an IT-based extension of the SCM — would provide a transparent system of storing and reporting the information collected.

Administrative compliance cost indicators would be a measure of the costs businesses incur specifically to satisfy regulatory requirements, as well as the activities that a business might continue if the particular regulation were removed. The incremental costs — that is, the costs avoided if the regulations were withdrawn — cannot be separately identified because of the inherent difficulties and assumptions in establishing the ‘counterfactual’.

Difficulty for businesses in obtaining licences, permits and registrations

The difficulty of becoming and being a business could be measured by indicators related to obtaining licences, permits and registrations (table 4.1).

In benchmarking these indicators it would be assumed that there is a positive relationship between the number and duplication of information provisions of such requirements, and the administrative compliance burden imposed on business. Also, the availability of on-line lodgement is an essential means of facilitating regulatory compliance. Further, the existence of statutory time limits on agency processing is important in decreasing costs for business, including in reducing delays and uncertainty.

4.4 Data availability and collection

For the proposed indicators, it would be important to ensure that the necessary information is collected cost-effectively. Further, data collection should be such that the indicators accurately reflect compliance cost differences across jurisdictions.

Administrative compliance cost indicators

Businesses are considered to be generally in the best position to understand the impact of administrative compliance costs, as they have a direct understanding of the costs placed on them.

In estimating administrative compliance costs, it is important to ensure that systems are in place for the identification, collection, collation and assessment of data required. The SCM manual (SCMN 2005) could be used to assist this process — such as for identifying information requirements and conducting business interviews — and could provide a general framework for defining and quantifying administrative compliance costs.

Before attempting to measure administrative compliance costs, it would be important to clearly identify all the critical assumptions employed. For example, the level of business compliance with regulation could be assumed to be either ‘full’ or ‘partial’:

- *Full compliance* — businesses follow regulation completely and interview questions would be directed in this manner. Such an assumption, though possibly not truly representative of the costs to business, could provide for a more accurate comparison across jurisdictions.
- *Partial compliance* — businesses do not necessarily fully comply with regulatory requirements because they misinterpret legislation, or consciously fail to follow parts of the provisions of regulation. Interview questions would target genuine costs incurred by business, and confidentiality would have to be ensured to reduce any bias in business responses.

In preparing to measure administrative compliance costs, consultation with key stakeholders, including government agencies, business and consumer groups, and consultants, would be essential.

It is likely that *face-to-face* interviews with businesses would be the best way of collecting information because of its advantages in terms of collecting sensitive and complex data, and its relatively high response rates and data quality (chapter 3). For this purpose, a comprehensive interview guide should be formulated and should ensure uniform, consistent and accurate data collection, and effective use of business time.

Conducting face-to-face interviews with businesses in each jurisdiction is a task that would require experienced interviewers with fundamental knowledge of the method and area of regulation, including an understanding of the compliance requirements. Further, any available supporting evidence should be collected and documented.

The collection of data from appropriately selected *reference businesses* would provide a consistent basis for comparing administrative compliance costs across jurisdictions. It would also reduce the expense to businesses in providing the necessary data (box 2.1).

It would also be important that the businesses interviewed are considered *normally efficient* — that is, the businesses selected manage their compliance in a normal or reasonably expected manner (SCMN 2005). Compliance cost data would have to be collected from a sample of businesses to ascertain normally efficient activities and practices.

Finally, the results, supporting evidence and assumptions would have to be stored in a database. The BCC could be used for this purpose and it also provides useful reporting options.

Indicators of the difficulty for businesses in obtaining licences, permits and registrations

In measuring the difficulty for businesses in obtaining licences, permits and registrations, government agencies and industry associations regularly keep useful data and information that could be collected. For example, the Business Licence Information Service (BLIS) for each jurisdiction provides a comprehensive and readily available search facility.

These services generally identify licences and their compliance requirements, as well as provide useful information, such as application forms and contact details. Further, each jurisdiction has a business agency or department that provides advice and support to business.

4.5 Caveats

Benchmarking administrative compliance costs across jurisdictions would be comparable if policy objectives or the related benefits are similar or, if dissimilar, do not impose additional burdens. If slight differences exist, however, there would be scope for supplementary information or appropriate qualifications to provide grounds for comparisons.

Indicators of administrative compliance costs are indirect measures. As discussed above, such indicators would measure the *total cost* of regulatory burdens imposed on business, and not just the *direct* or *incremental costs*.

Indicators of the difficulty for businesses in obtaining licences, permits and registrations can provide some useful insights into the extent to which information obligations are imposed in different jurisdictions. However, if used as indicators they should not be interpreted in isolation. Differences across jurisdictions in a single indicator would not, by itself, signify the possibility of unnecessary burdens. The evidence is far stronger if differences are also present for the other indicators.

As discussed in chapter 1, estimates of the aggregate cost of unnecessary burdens imposed on business would be important in motivating governments to actively reduce unnecessary burdens. However, there is currently a paucity of information on the demographics of business and a lack of understanding of the reach of regulations.

Although careful selection of reference businesses could provide a basis for industry-level estimates of administrative compliance costs, a greater understanding of business demographics, the reach of regulations and their impact on administrative compliance costs would be required to reliably estimate the aggregate cost of unnecessary burdens. Further, the relationship between indicators of total cost and incremental costs would have to be established.

5 Doing business

Key points

- Government administered approval processes can impose significant burdens on business — in the form of delay, uncertainty and administrative compliance costs.
- The forms of regulatory burden, which vary with business activity, approval process and legislative framework, determine the aspects of an approval process that should be benchmarked and which indicators should be used.
- A range of indirect, quantitative indicators and contextual information could be used to benchmark the timeliness, certainty, and administrative compliance costs of selected approval processes. The outcomes could be used to identify opportunities to improve regulatory processes and to measure improvement over time.
- Benchmarking approval processes would generally rely heavily on government agencies to provide information. However, it should be feasible to keep the burden on governments to a minimum in many cases by selecting indicators that can be compiled with existing data.

Governments require certain business activities to be approved to ensure that economic, social and environmental objectives are met. An essential element of these approval processes is that regulators are provided with sufficient time to meet due process in assessing applications. However, inefficiencies in approval processes can result in delays and uncertainty that affect investment decisions and project costs.

The National Office of Local Government, for example, in its submission to the Small Business Deregulation Task Force, estimated that delays and over regulation in development approvals processes added 2.3 per cent to the costs for a routine building development. Overall, the cost to the community, industry and governments was estimated to be up to \$1 billion per year (SBDTF 1996).

Planning approvals and environmental approval processes have been selected for further consideration as examples to examine the feasibility of benchmarking in this area. Both examples were chosen because they have been identified by COAG (2006a, 2006b) as ‘hot spot’ areas for reform across jurisdictions. However, it is envisaged that the approach developed for these examples could be applied more broadly to assess other approval processes.

Industry concerns associated with planning and environmental approvals are outlined in the following section. In section 5.2, the objectives of benchmarking approval processes are considered. Possible performance indicators are discussed in section 5.3. In section 5.4, issues associated with data availability and collection are considered. Finally, caveats that could apply to the benchmarking of approval processes are discussed in section 5.5.

5.1 Industry concerns

The aspects of approval processes that are claimed to contribute to delays and uncertainty include:

- complexity in application processes;
- duplication, inconsistency or poor coordination between regulatory agencies;
- inconsistency in the interpretation of regulation within and across jurisdictions; and
- poor incentives for government agencies to deliver timely decisions.

These concerns generally relate to regulatory burdens borne by industry that are usually passed on to consumers.

Unnecessary burdens associated with approval processes depend on the form of approval and the type of project, business or industry affected. For example, businesses commonly cite inconsistency and duplication across jurisdictions, as the primary concern associated with environmental approval processes (Regulation Taskforce 2006). In contrast, unnecessary ‘holding costs’ are cited by property developers as their main concern when they are delayed by the development approval process (UDIA (Vic), pers. comm., 28 August 2006).

The complexity of approval processes also varies. Some processes can be simple and quick, and only involve one regulatory agency, while others can involve multiple agencies and numerous approval processes. For example, undertaking a mining project triggers numerous legislated review and approval processes involving multiple regulatory agencies (URS 2006a).

Development approval processes

Stakeholders have raised a number of problems that contribute to the uncertainty of planning approval processes, including:

- the expanding coverage of planning approval requirements, along with the number of referral agencies and rigidity of planning systems (HIA 2003);

-
- the capacity for councillors to amend approvals due to political pressure (Yarrum Equities 2004); and
 - the limited experience and training of those assessing planning applications (RAIA 2003).

The Royal Australian Institute of Architects (RAIA) contended that the difficulty and delays associated with obtaining planning approvals have been distorting land and property values. RAIA (2003) estimated that the price of a typical block of land could increase by as much as 41 per cent if it was sold with a planning permit.

In the 2004 *First Home Ownership Inquiry*, the Productivity Commission noted that many industry participants believed that delays, compliance costs and uncertainty regarding outcomes, had increased significantly in the years leading up to the report (PC 2004a).

The Productivity Commission concluded that while the evidence did not clearly demonstrate that ‘unwarranted’ delays had increased, there was likely to be scope to improve the decision-making process to enhance efficiency without compromising due process (PC 2004a).

Industry participants claim that unnecessary development approval delays continue (UDIA (Vic), pers. comm., 28 August 2006; PCA pers. comm., 21 September 2006; ALGA, pers. comm., 19 September 2006).

Environmental impact assessments

Business activities are affected by a range of environmental regulation and associated accreditation or approval processes. Although most businesses endorse the general principles and framework of environmental regulations, such as the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, there are a number of concerns associated with the implementation and administration of environmental regulation (Regulation Taskforce 2006).

It is claimed that inconsistency and duplication within and across jurisdictions, in implementing and administering regulations, can result in increased uncertainty and delays. Canberra International Airport Propriety Limited, for example, suggested that the introduction of the EPBC Act has made development approval processes ‘more cumbersome’ and ‘no longer certain’, with some major development plans taking up to a year to be approved (sub. 12, p. 2).

Moreover, critics have claimed that approval processes can be overly prescriptive and inflexible. They cite reporting requirements that are not commensurate with the

associated environmental risks that result in significant costs to business and, in some cases, prevent investment.

URS (2006a) noted that TasGold was required to conduct costly surveys to meet Environmental Impact Statement (EIS) requirements to ascertain the impact of exploration activities on an endangered species. The surveys cost TasGold approximately \$20 000 each and reduced the five month window available for exploration activity by 20 per cent. It was further claimed that the potential for the exploration activities to impact on the endangered species was unlikely to be significant (URS 2006a).

The NSW Institute of Public Affairs noted that processes for gaining approval to clear land in New South Wales are onerous, entailing:

... [Thirty] or more steps, numerous consultations ... and a mountain of paper ... [putting] such a process beyond the reach of most landowners ... (IPA 2003, p. 4)

It is also claimed that there can be a lack of *clarity* and *transparency* in decision-making processes that lead to uncertainty about how a referred action will be assessed. The Regulation Taskforce (2006) noted that the legislation and guidelines that define the 'significant impact' trigger for a referral under the EPBC Act were unclear.

Other potential areas of benchmarking

Potentially, there are many other approval processes that could be benchmarked. For example, the Regulation Taskforce (2006) identified medical technology assessments and food safety approvals as just some of the processes that place unnecessary burdens on business.

Further, some accreditation processes act much like approval processes and impose similar burdens on business. For example, the accreditation requirements for childcare services can result in significant compliance burdens for service providers and 'act as a deterrent to potential service providers' (Regulation Taskforce 2006, p. 48).¹

In some cases, the scope for benchmarking in these areas is limited by the absence of an equivalent approval process to benchmark performance against. For example, aged care accreditation is managed by a single provider on behalf of the Australian

¹ The ongoing compliance burdens associated with accreditation processes are discussed in box 4.1.

Government. However, there are likely to be benefits from monitoring indicators over time to measure changes in regulatory burdens.

5.2 Benchmarking objectives

A primary objective of benchmarking regulation to identify unnecessary burdens is to establish which jurisdiction has the lowest burden without compromising the quality of outcomes or due process. In relation to approval processes, this could be achieved by measuring and comparing performance in three key areas:

- timeliness;
- certainty; and
- administrative compliance costs.

Benchmarking approval processes relates to how effectively government agencies assess applications. Consequently, policy objectives or legislative frameworks do not necessarily need to be the same across jurisdictions to benchmark types of approvals. For example, P&A Walsh Consulting et al. (2002) noted that even though the legislated objectives of ‘planning systems’ varied across jurisdictions, there is sufficient commonality in planning systems to develop some form of comparative performance benchmarking.

Certain approval processes could also be benchmarked both within and across jurisdictions. For example, the processing of planning applications can vary greatly across local government areas within a State, despite a common legislative framework.

As previously noted, some business activities trigger numerous approval processes and in some cases involve more than one regulatory agency. In such cases, the burdens generated by each regulatory process can vary. URS (2006b) noted that, although the overall efficiency of mining approval processes is similar across jurisdictions, performance varies significantly for selected regulatory processes. Consequently, it could be necessary to benchmark a number of regulatory processes.

Although benchmarking an approval process is a complex task, it would assist governments in identifying the potential for implementing better practice (by comparison with other jurisdictions) and in monitoring improvements in their own systems over time.

5.3 Possible indicators

Indicators can be developed to assess the timeliness, certainty and administrative compliance costs of specific approval processes. However, it is unlikely that a uniform set of indicators of regulatory burden could be applied to all approval processes.

A range of quantitative, indirect measures of the regulatory burden are suggested as performance indicators. In addition, it is suggested that other contextual information should be collected to improve the interpretation of the quantitative indicators. It would also be possible to construct qualitative indicators based on this contextual information, by having experts rate or rank performance in these areas.

In many cases, the indicators and contextual information could be collected for a *reference business activity* to ensure that the benchmarking is targeted and comparable across jurisdictions.

Reference business activities are suggested because approval processes are triggered by the activities being assessed rather than by the type of business lodging the application. For example, the planning approvals for an industrial development could be different to the approvals for a housing development, even though both applications could be lodged by the same property developer (or business). The principles for using reference business activities are discussed in chapter 2.

Timeliness

The time taken by regulators to assess applications is extremely important to business as it can have significant cost implications for a given project. For example, capital holding costs associated with housing developments ‘can be in the order of thousands of dollars per week’ (UDIA (Queensland) 2006, p. 2) (box 5.1).

The total time taken to process applications provides a useful but indirect indicator of whether there is a burden associated with the approval process. Such a measure can be compared within and across jurisdictions to provide some indication of what constitutes an appropriate timeframe for a given approval process, and in which jurisdictions unnecessary burdens might exist.

Measuring processing times would involve a range of factors being taken into account — including the level, quality and consistency of the available data. The most appropriate and useful approach would be to use aggregated agency data relating to whether statutory time limits are being met. However, in some cases, it

would be useful to complement such measures by selecting representative projects or activities and comparing processing times across jurisdictions.

Box 5.1 Measuring the cost of delays

Delays in approval processes for activities that involve large capital investments can result in significant costs for business. The Brisbane City Council and the Royal Australian Institute of Architects (RAIA) have used different approaches to estimate the cost of delays from development approval processes.

Total cost estimates were sensitive to estimates of holding costs, which, in turn, were influenced by the length of delays.

In relation to land subject to a development approval, holding costs include:

... interest on loans, rent payable for the business occupying another premise, additional consultancy fees whilst the application is pending, contractual obligations, builder contracts and material procurement. (UDIA (Queensland) 2006, p. 1)

The two approaches used different methodologies for estimating holding costs and delays. The RAIA selected a reference business activity — building a housing unit in a medium density housing development in a middle ring suburb — then estimated the value of the housing unit in each jurisdiction and assumed the average holding cost of the land at 6 per cent for the delay period to estimate holding costs. In contrast, the Brisbane City Council assumed that holding costs were \$1000 per week for an average small development and \$1500 per week for an average large development.

The RAIA used the difference between the lengths of time to gain approval in 2003 and 2000, with data drawn from survey responses to estimate delays. In contrast, the Brisbane City Council estimated how much quicker all approvals could be processed if a new system for assessing planning approvals for lower risk developments were implemented.

The RAIA estimates of increases in housing unit costs due to planning factors varied across jurisdictions. The increases in costs for a housing unit ranged from \$5400 in Tasmania to \$14 200 in New South Wales. New South Wales had the most expensive land valuation, while Tasmania had the lowest. Further, Tasmania's additional delays were estimated at one month whereas estimated delays increased by three months in New South Wales.

The Brisbane City Council estimated that if development approval processing times could be improved by four weeks for a quarter of applications in South East Queensland, the industry and community would save \$89 million per year. Holding costs savings were estimated to account for around 56 per cent of this amount.

Both approaches provide a useful starting point for estimating the cost of delays and identifying the magnitude of costs that the industry and ultimately consumers bear as the result of delays from approval processes. However, both approaches would need to be refined to ensure that estimates are comparable across jurisdictions.

Sources: Brisbane City Council (pers. comm. 26 October 2006); RAIA (2003); UDIA (Queensland) (2006).

It is important that total time measures are not considered in isolation of other performance indicators and contextual information because processing times are influenced by many factors, such as the complexity of the application, and speed should not come at the expense of due process. Specifically, additional information would be required to identify the causes of unnecessary delays — these are outlined below.

Incentive structures

Business generally has clear financial incentives to expedite approval processes. In contrast, government agencies typically do not experience the same degree of incentive to process applications within statutory timeframes.²

It is possible to assess government policies to ascertain whether there are incentives for agencies to meet statutory deadlines. This would provide some indication of the likelihood that applications will be processed in a timely manner. However, measuring the strength or effectiveness of the incentives agencies face would require expert but nevertheless subjective assessments.

Stakeholder engagement

Open dialogue among regulators, applicants and other stakeholders, especially at the outset of the application process, generally improves the quality and therefore timeliness with which applications are processed. As the complexity of applications and regulatory approval processes increases, so too do the benefits from clear communication.

Reviewing approval processes to determine whether they provide scope for early stakeholder consultation — such as pre-lodgement procedures — is relatively straightforward. However, assessing whether consultation improves the timeliness (or certainty) of approval processes would be more difficult to assess. It would either require more thorough (and therefore more costly) assessments of approval processes or be reliant on subjective expert assessments.

Flexibility

Approval processes should have sufficient flexibility to ensure that assessment processes are aligned with the complexity and risks associated with the application.

² This is not to say that governments and agencies are free from incentives to process applications in a timely manner. For example, many governments monitor and publicly report on the performance of their agencies through the use of key performance indicators.

Flexibility is also important because it provides scope for applicants to amend applications if circumstances change.

Determining whether particular approval processes allow for different forms or ‘tracks’ of assessment can be determined by reviewing the relevant legislation. In addition, there may be scope for assessing whether jurisdictions using assessment ‘tracks’ have reduced processing times and costs.³

Appeals processes

Approval processes should generally provide sufficient scope for those adversely affected by decisions to object or appeal. However, appeals processes can also be a source of delay and uncertainty. Indeed, appeals processes that result in court proceedings can be time consuming and costly for all stakeholders (PC 2004a).

Where appeals processes exist, useful indicators could include the average time taken for appeals processes, and whether there are mechanisms — such as mediation — to expedite the process and to reduce the need for legal proceedings.

Capability of agency

A commonly cited concern with approval processes is the number, experience and skills of staff assessing the applications. Regulatory agencies that are under-resourced or under-skilled are more likely to take longer to process applications. The quality of assessment might also decline.

Contextual information such as the number of applications per staff member and the average years of experience, could provide some insight into the capacity (not necessarily the ability) of regulatory agencies to assess applications within statutory time limits.

An agency’s capacity to meet statutory timeframes will also be influenced by its ability to manage processing requirements during periods of increased demand, particularly when demand is cyclical. This could be measured by assessing each agency’s ability to outsource during high demand, if such arrangements are practicable and would not impinge on due process.

³ The Development Assessment Forum has proposed that project applications be streamed into specific assessment tracks early in the development assessment process cycle. Each track would comprise a specific set of decision-making steps relevant to the project’s complexity and impacts on the built and natural environments (DAF 2005).

Predictability and certainty

In making investment decisions, businesses have to consider the risks associated with the approval process. Generally, as the uncertainty associated with an investment decision increases, the amount that a business is willing to invest decreases or their capital borrowing costs increase.

The question that business typically want answered is:

To what extent are two identical [projects] in the same jurisdiction, likely to receive a similar approvals journey? (URS 2006b, p. 2-3)

Indicators of the overall predictability and certainty of an approval process could potentially be based on the appeals activity. For example, growth (or fluctuations) in the proportion of applications that are appealed, and the proportion of appeals that result in amendments or reversals, could suggest increasing uncertainty in the approvals process.⁴

Other contextual information that could provide some indication of the potential certainty and predictability includes the clarity of the policy objectives, discretion in decision making, agency coordination and transparency of the decision-making process.

Clarity of policy objectives

A principle of good governance is that policies, whether achieved through legislation, regulation or code of conduct, should have clearly stated objectives (COAG 2004). Clarity of policy objectives becomes particularly important when there are multiple agencies or jurisdictions interpreting and enforcing the same piece of legislation.

Business concerns associated with unclear policy objectives include:

- increased use of discretion in interpreting and implementing the regulation; and
- increased uncertainty associated with how conflicting determinations by referral agencies should be managed or addressed.

Assessing the clarity of stated policy objectives of a regulation — particularly where approval processes are affected by a number of regulations — would require

⁴ Such indicators are dependent on the form of appeals structure associated with the approvals process. There may be little or no value in contrasting such indicators where appeals processes are not available, limited in scope (for example, heritage listing can only be appealed on technical aspects of the process rather the reasons for the determination (PC 2006b)), or where lodging appeals can be prohibitively costly.

qualitative, expert assessment. In undertaking this assessment, issues relating to the stock of regulation and the degree to which regulations are based on principles of good regulatory practice, would also have to be considered. These issues are discussed in greater detail in chapter 7.

Discretion in decision making

A common business concern with approval processes is that there is too much latitude for government agencies to make decisions that are beyond the scope of the regulations or are driven by political influence. For example, it has been claimed that councillors sometimes refuse planning applications to appease lobbying residents rather than to uphold established planning policies (PC 2004a).

Contextual information could be used to compare the scope for discretion in decision making. Examples include an assessment of whether the approval process allows for decisions to be amended or overturned for reasons other than those specified in the regulation and the proportion of times such powers are used. Ranking or measuring the level or relative variation in discretion across jurisdictions, would require qualitative assessments.

Agency coordination

A further problem that businesses can experience in attaining approvals is that separate government agencies might stipulate actions that are in conflict with the requirements of other mandatory regulations. This occurs when regulations are developed separately with no consideration of existing regulatory requirements. Such inconsistencies can cause uncertainty and unnecessary burdens on business.

Contextual information that could be used to assess agency coordination includes whether multiple agencies assess applications concurrently when there is scope for conflicting determinations, and whether mechanisms exist to address conflicting agency determinations.

Transparency

The COAG (2004) principles of good regulatory practice include transparency in regulation reviews as a means of reducing *bureaucratic discretion* and uncertainty. Similarly, greater transparency in approval processes, particularly providing information as to how applications will be assessed and reasons for failing applications, should ensure that decisions are made based on due process.

It would be possible to measure whether mechanisms to facilitate greater transparency in approval process exist or not. However, measuring the level of transparency for a given process, or the relative variation in transparency between jurisdictions, would rely on more subjective assessments.

Administrative compliance costs

Government agencies require information from businesses to ensure that applications meet regulatory requirements. However, in some cases, where information requirements are not proportional to the risks posed by the project, or duplicated between different government agencies, they can result in unnecessary *administrative compliance costs*.

Using reference business activities, it should be possible to measure the costs of meeting information requirements for approval processes across jurisdictions. This could be achieved by generally applying the Standard Cost Model (SCM) framework (chapter 4). However, as with total time indicators, differences in total compliance costs do not necessarily imply differences in incremental compliance costs across jurisdictions.

Other aspects of approval processes that cause compliance burdens, such as the levels of prescription and duplication, could be measured to assist with the interpretation of administrative compliance cost comparisons.

Prescription

The provision of information from business is a necessary condition of any approval process. Consequently, clearly defined information requirements and collection processes can reduce compliance burdens because business knows what information it should provide, and agencies should be able to more quickly assess information that is provided uniformly and consistently.

As noted in section 5.1, however, some approval processes appear to require information for its own sake (URS 2006a), and the information can be unrelated to the risks associated with managing the activity (QFF 2005).

Quantitative information, such as the number of forms, surveys, or discrete pieces of information, could give some indication of how prescriptive different approval processes are. However, expert assessments would be required to determine the materiality of differences in prescription and whether approval process requirements are proportional to the risks associated with the project.

Duplication

In some cases, businesses are required to submit similar information in different formats to separate agencies from different tiers of government. Such duplication results in time being spent unnecessarily on making minor amendments to essentially the same information and in managing multiple approvals.

In Western Australia, for example, the information requirements for environmental impact assessment under the *Environmental Protection Act 1986* are similar to those of Notice of Intent required by the *Mining Act 1978*. However, the formatting requirements for the two documents are different, which results in unnecessary costs associated with reformatting what is essentially the same information (URS 2006a).

A potential mechanism to reduce duplication is for agencies to recognise determinations made by similar agencies. For example, most States and Territories have reached agreement with the Australian Government regarding enforcement of the EPBC Act (Regulation Taskforce 2006). Therefore, an assessment of whether mutual recognition agreements are used could be a possible indicator of reduced duplication (chapter 6).

Where duplication extends beyond formatting changes, determining the extent of unnecessary duplication because of overlapping information requirements across agencies would require experts to make qualitative assessments. Such assessments would be required because different agencies might request similar information with different focuses, to make assessments.

Summary of indicators

In the discussion above, it is proposed that indicators of the timeliness, certainty and administrative compliance costs could be used to benchmark approval processes. A list of possible indicators and their metrics is presented in table 5.1.

Table 5.1 Doing business — possible indicators

<i>Indicators</i>	<i>Metrics</i>
Timeliness	
Total time taken to process the application	Number of days (average/median); assessments completed within statutory timeframe (percentage)
Time taken to prepare applications	Number of days (survey based)
Certainty	
Use of appeals processes	Proportion of determinations appealed Number of appeals and the successful party
Administrative compliance costs	
Cost of completing application process	Dollar value
Number of processes	Numbers of forms and steps in approval process

In addition, it has been proposed that contextual information should also be collected to assist with the assessment of unnecessary burdens. Some of this contextual information could also be used as indicators of compliance burdens (table 5.2).

These lists are only intended as a guide to possible indicators. The choice of actual indicators would ultimately depend on factors such as the specific objectives of the benchmarking study and the availability of relevant data.

5.4 Data availability and collection

A range of possible quantitative performance indicators and contextual information has been identified in this chapter. However, an important criterion for assessing whether benchmarking is feasible is to determine whether the relevant data are both available and collectable.

Some of the issues associated with gathering data (and contextual information) to develop performance indicators for planning and environmental approvals are discussed below. This should provide some guidance to the types of issues that could be associated with data availability and collection for other approval processes. However, the extent to which data are available and collectable will depend on the specific approval process being benchmarked.

Table 5.2 Doing business — contextual information or additional compliance cost indicators

<i>Indicators</i>	<i>Metrics</i>
Timeliness	
Incentive structures	
Mechanisms to promote timely processing	Expert assessment
Stakeholder engagement	
Scope for pre-lodgement procedures	Expert assessment
Use of pre-lodgement procedures	Proportion of applications
Flexibility	
Scope for tracks of assessment	Expert assessment
Appeals processes	
Clear guidelines for appeals/challenges	Yes/no
Scope for mediation	Yes/no
Speed of appeals processes	Number of days
Agency capability	
Appropriate staffing	Number of applications per assessor Number of applications sent to appeal
Certainty	
Clarity of purpose	
Key pieces of legislation	Expert assessment
Objectives clearly stated in legislation	Yes/no (expert assessment)
Objectives consistent across relevant legislation	Expert assessment
Clearly defined triggers for statutory referrals	Yes/no (expert assessment)
Discretion in decision making	
Independence of dispute resolution mechanisms	Expert assessment
Agency coordination	
Capacity for concurrent assessments	Yes/no (expert assessment)
Mechanism for coordinating agency responses	Yes/no (expert assessment)
Transparency	
Documentation of decisions and reasons	Yes/no (expert assessment)
Administrative compliance costs	
Prescription	
Level of prescription in regulatory requirements	Expert assessment
Duplication	
Level of duplication in regulatory requirements	Expert assessment
Use of mutual agreements to reduce duplication	Yes/no (expert assessment)

Quantitative indicators

Good practices in the governance of approval processes would suggest that government agencies should maintain data that can be used to construct quantitative measures of performance. However, the availability of data and their comparability across jurisdictions will vary.

In relation to planning approval processes, some governments currently prepare and publicly report on a range of quantitative performance measures. Examples include:

- The ACT 2006-07 Budget Papers report on a range of ‘accountability indicators’ for the ACT Planning and Land Authority. Indicators include the percentage of development approvals processed within statutory timeframes, and the percentage of appeals that are determined in the Authority’s favour (ACT Government 2006).
- The NSW Department of Local Government reports on four key performance indicators for planning and development services across local councils each year. Indicators include the number of development applications determined, mean and median times for determining applications, and legal expenses as a proportion of total planning and development costs (DLG 2005).
- The Victorian Government reports on planning permit activity. Indicators include the number of planning permits separated by land use or development activity and by planning scheme. Future reports are expected to also include information such as the time taken to determine applications and value of works (DSE 2006).
- In South Australia, schedule 25 of the Development Regulation 1993 requires all councils, referral agencies and the courts to provide the SA Government with a range of development approval data on a quarterly basis. Performance measures will be reported in the Annual Report on the administration of the *Development Act 1993*.

In addition, most States are currently in the process of implementing electronic systems to improve the efficiency of planning approval processes. These electronic systems should also improve the capacity of governments to provide data for benchmarking purposes.

The availability of data suggests that there is some scope to benchmark planning approval processes across jurisdictions at a relatively low cost. However, it could take some time to ensure that quantitative performance measures are consistent across jurisdictions. For example, average processing times could initially be inconsistent across jurisdictions if jurisdictions vary in their use of calendar days or working days as the metric for collecting and reporting data.

Some data are also publicly available for environmental approval processes. For example, both the WA Environment Protection Agency and NSW Department of Environment and Conservation provide information on a range of performance indicators in their annual reports, including the processing of environmental impact

assessments (EPA 2006; DEC 2005).⁵ However, the extent and comparability of data on environmental impact assessments appear to be more limited than the information available for planning approvals.

The administrative compliance costs of approval processes could also be estimated by generally applying the SCM framework to reference business activities. In addition, estimates will be sensitive to the type of reference business activity selected as compliance costs are likely to vary significantly with the size and complexity of the project.

Cost estimates of planning approvals timeliness could also be constructed for reference business activities (box 5.1). As discussed, such estimates provide some indication of the magnitude of the benefits from improving the timeliness of an approval process. However, sensitivity of estimates to differences in land values, interest rates and the selection of delays limit their comparability and robustness.

The availability of data to construct estimates of costs of administrative compliance or delays will depend on the reference business activity selected for benchmarking.

An alternative approach to estimating the value associated with regulatory burden was used by the RAIA (2003) in relation to planning approvals. The RAIA compared the value that planning approvals added to the typical block of land in selected local government areas in each capital city (except Darwin). This information should be publicly available. Such measures are also subjective as the price differential could be attributed to factors other than the planning approval. Further, the scope to apply such an estimate to other approval process could be limited because of the availability of data.

Contextual information

Contextual information can be used to improve the way in which quantitative indicators are interpreted. For the purposes of this report, contextual information can be viewed as objective — such as assessing whether an approval process incorporates appeals mechanisms — or subjective — such as assessing the consistency of objectives in different pieces of legislation.

⁵ The Environmental Protection Authority of Western Australia provides information on the mean processing time (in weeks) of environmental impact assessment for major projects. The NSW Department of Environment and Conservation reports (in its annual report) the percentage of integrated development assessment processes issued within statutory time frames.

Some contextual information, particularly subjective information, could be used to develop qualitative indicators of the regulatory burden.

Objective information

Objective information provides a means of determining differences in the characteristics of approval processes across jurisdictions. Gathering objective information should be free from interpretations and bias. For example, determining whether an approval process system incorporates appeals mechanisms should be straightforward.

Once the set of desired objective information is determined, it should be possible to complete the assessment from publicly available information — such as by reviewing the relevant legislation.

In some cases, the assessment will already have been undertaken as part of other studies or assessments of approval processes. CRC Construction Innovation, for example, noted that it had drawn upon ‘previous attempts to develop a comprehensive outline of the regulations affecting the industry’ (sub. 27, p. 2).

Subjective information

In contrast to objective information, subjective information is ‘perception based’. It could be gathered by using independent, expert panels to assess the quality of different aspects of an approval process. It could also be possible to use this information to develop qualitative indicators if the information is provided in a numerical form such as a rating.

The availability and reliability of this information will depend on the whether there are independent experts that can assess approval processes consistently within and across jurisdictions. The availability of such experts will depend on the type of approval process being benchmarked. For example, URS was able to assemble ‘a panel of consultants with extensive experience in the mining industry’ to assess mining approval processes across jurisdictions (URS 2006b, p. 1-2).

The use of expert qualitative assessments, such as that used by URS to develop the scorecard of mining approval processes across jurisdictions, was endorsed by the Chamber of Minerals and Energy of Western Australia as the ‘most effective benchmarking model’ (sub. 20, p. 9). Nevertheless, the robustness of subjective, qualitative measures could be limited and would need to be addressed in the design phase of the benchmarking study.

5.5 Caveats

The possible indicators proposed in this chapter were selected on the basis that they are significant and relevant for the purposes of identifying unnecessary burdens from approval processes. Further, issues associated with the availability and collection of data were considered. As noted in chapter 2, indicators should also be comparable, robust, acceptable, interpretable and timely. Some of the caveats associated with these criteria are outlined below.

The first and most important caveat is that assessing the regulatory burden from approval processes will require a range of quantitative performance indicators and contextual information. It is important that indicators are not interpreted in isolation of one another nor the contextual information. For example, a jurisdiction with the quickest times is not necessarily imposing the least burden on applicants — it might just be processing a smaller number of applications at a given time. Another example is that a smaller number of agencies, or fewer pieces of legislation, might not increase the efficiency of an approval process if dealing with that agency or legislation is more complex and takes longer.

The comparability of indicators across jurisdictions (and in some cases within jurisdictions) can be affected by differences in how the base data are collected and reported. For example, SKM Consulting (2005) reported that Victorian councils were inconsistent in classifying when applications were ‘received’ — some use the lodgement date, while others use the date when applications contain all required data, or when all fees are received — which affects the comparability of measures of timeliness. The DLG (2005) reported that the complexity of development approvals, degree of public consultation, the level of building activity and growth rate of the area are just some of the factors that affect its indicators.

Such inconsistencies in data can be and are being addressed. For example, the Victorian Government developed a data dictionary for information collected on planning permit processes to increase consistency in how councils report on planning applications. In addition, different metrics could be used to assist with the comparability of data — for example, the proportion of applications assessed within statutory timeframes could be used to complement measures of the number of days to complete assessments.

Another problem that could be associated with qualitative performance measures is related to obtaining the data in a timely manner, particularly if information is drawn from publicly available sources such as annual reports. There can be a high degree of variation in when agencies release their annual reports each year. To ensure benchmarking studies are timely, it could be necessary to obtain data from sources other than annual reports.

The comparability and robustness of administrative compliance cost estimates could be influenced by the selection of reference business activities, as well as the number of businesses sampled. Although increasing the sample size could improve comparability, it would also increase the cost of benchmarking.

Interpreting objective, qualitative information without additional subjective information could be of limited value. For example, it is possible to evaluate whether an appeals process allows determinations to be appealed and publicly reported on determination. However, this information alone does not indicate that the approval process will have a high degree of certainty. Such objective assessments should be complemented with some subjective assessments, such as what issues can be appealed — as appeals limited to technical issues could be of limited value to business.

Finally, it will be important to ensure that assessments using subjective information are made in a clearly specified framework. In addition, if this information is used to construct qualitative indicators — such as rankings or scores — the assessment criteria should be suitably rigorous to ensure that assessments are comparable across jurisdictions and robust over time.

6 Doing business interstate

Key points

- The burden of having to satisfy duplicate and inconsistent regulatory requirements across jurisdictions can be significant for businesses operating or trading interstate.
- Standards benchmarking could serve to highlight unnecessary burden due to duplication and inconsistency, in areas of regulation where governments have agreed that there is a case for national consistency or mutual recognition.
- The extent of the regulatory burden from duplication and inconsistency depends on the area of regulation being considered, with some areas involving greater burden from inconsistency than those from duplication, and vice versa.
- Indicators of the source of duplication and inconsistency are more readily measurable than the unnecessary costs incurred, because costs can depend on the businesses affected and the area of regulation being considered.
- Indicators would have to be prepared for each jurisdiction according to consistent methodologies, utilising industry expertise and seeking input from government agencies.

Business leaders have expressed concern about regulatory overlaps and inconsistencies among States and Territories and, in some cases, between Australian Government and State and Territory jurisdictions. Where the objectives of regulation are equivalent in each jurisdiction, there can be little to warrant regulatory variation. In such cases, variation needlessly adds to the compliance costs of businesses operating interstate. Regardless of whether such costs are borne by the owners of business or passed on to consumers, there is a loss of economic efficiency.

The benchmarking examined in this chapter focuses on the unnecessary burden for businesses operating or trading interstate that arises due to regulatory duplication and inconsistency. For areas of regulation where this burden is significant, the regulation within each jurisdiction that creates compliance costs could be compared to that created under the benchmarks of mutual recognition or national consistency. This would be a form of standards benchmarking (chapter 2).

Differences in the indicators among jurisdictions, where objectives or standards do not vary, might point to the existence of unnecessary burden. Feasible indicators

could be produced that ensure differences in their values highlight the unnecessary burden. Even if policy aims vary among jurisdictions, differences in the proposed indicators can be beneficially compared.

The benchmarking examined in this chapter would cover the same types of compliance costs considered in previous chapters. Chapter 4 concentrates on a set of narrowly defined compliance costs relating to the administrative costs of becoming and being a business. Such administrative costs are also included in chapter 5, in addition to non-administrative compliance costs such as capital holding costs. However, the benchmarking examined in this chapter could also encompass additional forms of compliance costs, where material, that are caused by duplication and inconsistency.

In this chapter, industry concerns and past studies are presented in the areas of regulation for which benchmarking this type of regulatory burden is recommended (section 6.1). The benchmarking objectives for this type of burden are outlined and indicators presented in section 6.2, and associated methodological approaches in section 6.3. Finally, data availability and collection are examined in section 6.4 and the caveats associated with interpretation are presented in section 6.5.

6.1 Industry concerns

Business concerns about unnecessary compliance costs associated with operating and trading interstate generally relate to areas of regulation which ostensibly serve the same purposes across jurisdictions, but add substantially to compliance costs already incurred. Such areas include Occupational Health and Safety (OHS), building regulation and consumer protection regulation.

Businesses in the financial services industry have been particularly concerned, as many operate across jurisdictions and are already subject to a considerable degree of regulation. For example the Finance Industry Council of Australia (FICA) noted that:

Lack of harmonisation can lead to considerable, unnecessary compliance costs ... the regulatory regime in the finance sector is influenced by a number of Australian and international authorities whose approach is not always consistent. (FICA, sub. 17, p. 14)

Businesses in other sectors are also affected. A survey of participants in the energy industry in 2003 revealed that these businesses face considerable unnecessary compliance costs relating to inconsistency and duplication among jurisdictions:

The greatest concern was although jurisdictions had similar policy goals for licensees, the implementation of the goals through the license conditions in areas such as

consumer protection and greenhouse gas issues varied significantly from jurisdiction to jurisdiction. Also, the type and nature of information provided to demonstrate compliance also varied across jurisdictions. Differences in similar license requirements meant that business systems that were in use in one jurisdiction were only partly functional in other jurisdictions. Significant investment in developing jurisdiction specific business systems is required. (Short 2003, p. 7)

These types of problems are not new. There has been broad agreement across jurisdictions that the objectives are not dissimilar in a number of regulatory areas. In light of this, governments have taken steps toward reducing unnecessary burdens associated with duplication and inconsistency, such as executing the Australian Mutual Recognition Agreement (AMRA) in 1992¹ and implementing uniform national standards, such as the Uniform Consumer Credit Code (UCCC).

In other areas of regulation with less similarity in the underlying objectives, there can still remain scope for greater harmonisation to reduce this type of burden on business. The lack of such harmonisation could be highlighted by benchmarking regulatory duplication and inconsistency. From a benchmarking perspective, useful comparisons could be made across jurisdictions if supplementary information provides suitable grounds for the comparison.

Inconsistent regulation

The following areas of regulation are *illustrative* of the burdens created for interstate businesses when regulation is inconsistent among jurisdictions. Benchmarking these areas would provide measures of the extent and materiality of the burden and identify the potential for greater harmonisation. The examples also provide an indication of common concerns arising from inconsistency between regulations.

Occupational health and safety regulation

There are usually several pieces of legislation within each Australian jurisdiction regulating OHS. The principal OHS Act in each jurisdiction codifies the common-law duties of care on employers in providing a safe workplace. Each OHS Act also provides for the making of regulations and many are supported by codes of practice.

¹ A Cross-Jurisdictional Review Forum established by the Council of Australian Governments (COAG) and the New Zealand Government currently promotes broad policy discussion among agencies in each jurisdiction in respect of areas of economic activity where it considers there may be value in exploring the potential to expand current mutual recognition arrangements.

A business wishing to operate in multiple jurisdictions is generally required to undertake OHS compliance activities that differ among jurisdictions. In many cases, these differences are perceived as unnecessary. Such perceptions arise because regulations in each jurisdiction are essentially codifying the same duties of care required of the employer under common law.

The Regulation Taskforce (2006) found that businesses have been particularly concerned by inconsistency problems in OHS regulation. The Institute of Public Affairs (IPA) noted in their submission to that study that the problems added significant compliance costs for businesses operating nationally:

The chief feature of Australia's OHS 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 OHS prosecution in one State and not another for identical occurrences. (IPA 2006, p. 14)

In their submission to this study, FICA also pointed to the usefulness of benchmarking in the area of OHS:

For cross jurisdictional comparisons, benchmarking should be performed within narrow and comparable areas of regulation that are for the most part targeting the same objectives (such as OH&S or consumer protection). (FICA, sub. 17, p. 10)

A non-legislative advisory body, the Australian Safety and Compensation Council (ASCC) was established in 2005 to pursue greater national coordination of OHS and workers' compensation across jurisdictions.

The ASCC comprises State and Territory governments, employers and employees. One of the ASCC's primary functions is to provide a forum for members to consult and participate in the development of national standards and codes of practice. The national standards and codes agreed by the ASCC provide guidance and are advisory only, with no requirement for them to be enacted in State or Territory regulations.

Building regulation

The Australian building and construction industry is subject to a diverse range of regulation by all levels of government. The Australian Building Codes Board (ABCB) was established by an intergovernmental agreement in 1994 and given responsibility for the development and administration of the Building Code of Australia (the building code). The aim of the building code is to achieve health, safety and amenity objectives across all jurisdictions on a uniform basis.

Although the ABCB develops and maintains the uniform national building code, States and Territories retain the power to make regulations. The Regulation Taskforce (2006) found that this has led to inconsistencies with the building code in a number of areas. In submissions to the Regulation Taskforce it was noted these inconsistencies are imposing unnecessarily higher costs for construction companies with operations across state and territory borders:

We believe that it is more preferable to have a national body developing building regulation than struggling with eight different state and territory jurisdictions each introducing their own provisions. Unfortunately there are still too many examples where state or territory regulators, and in fact a number of local authorities, insist upon introducing variations to the Building Code of Australia. This should be discouraged, as it undermines the whole purpose of having a national code and makes it harder and more costly for developers to work in more than one jurisdiction. (Property Council of Australia (PCA) 2006, p. 32)

The Regulation Taskforce (2006) also noted the concerns of business regarding local governments' use of planning powers, which are having the effect of undermining the building code:

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 installation. 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 (HIA) 2006b, p. 3)

In their submission to this study, the CRC for Construction Innovation pointed to significant benefits available from harmonisation in the construction sector:

Reducing the regulatory burden on the property, design, construction and facility management sectors is predicted to result in a significant improvement to Australia's GDP. Reduction in inconsistencies between jurisdictions seems to proffer a salient way forward — enabling regulatory burden (adaptation costs) on industry to be reduced, while ensuring consumer stakeholders' protection. (sub 27, p. 10)

In 2004, the Productivity Commission recommended a new intergovernmental agreement on building regulation, to among other things, limit the grounds for variation within the building code (PC 2004c). The agreement was concluded in April 2006.

In response to the Regulation Taskforce (2006) recommendations regarding local governments' use of planning powers, COAG has requested the Local Government and Planning Ministers Council to report by the end of 2006 on the content and timetable for implementing further building reforms, including a nationally consistent building code.

Duplicated regulation

The following areas of regulation generate additional compliance burdens that are generally viewed by business as arising from duplication and overlap. Elements of the regulatory burden are also the result of inconsistent regulation.

General insurance regulation and taxation

Australian, State and Territory governments currently undertake prudential regulation of insurers that underwrite or act as agents for statutory schemes of insurance. Such schemes include compulsory third party, workers' compensation and builders warranty insurance. The regulation is in addition to prudential oversight of each insurer's overall financial condition by the national regulator, the Australian Prudential Regulation Authority (APRA).

In submissions to the Regulation Taskforce (2006), concerns about duplication and inconsistency between jurisdictions were raised in relation to prudential regulation of these statutory classes of insurance:

Duplication and inconsistencies between pieces of regulation arise largely because of ... overlapping regulatory responsibilities between APRA and State prudential regulators. (ICA 2006, p. 15)

FICA reiterated this concern to the current study:

A priority for harmonisation across jurisdictions includes the state regulated statutory classes of insurance (workers compensation, and compulsory third party). (sub. 17, p. 15)

The HIH Royal Commission recommended in 2003 that the APRA become the sole prudential regulator of general insurance (HIH 2003). After referring the recommendation to the States and Territories in 2003, the Australian Government reported in May 2004 that the majority of relevant States and Territories had given in-principle support to the recommendation, although in some cases, the support had been expressed subject to conditions (Costello 2004).

Prudential regulation of statutory classes of insurance exists in jurisdictions because of State and Territory government involvement in underwriting statutory classes of insurance in their jurisdictions, particularly in the case of workers' compensation insurance. In the event of failure of a private insurer underwriting in these classes, State and Territory governments would have to cover any liabilities (as was the case in New South Wales and Queensland after the failure of HIH).

Changes in the arrangements for failure management in the Australian financial system might soon obviate State and Territory nominal insurer arrangements. The

Council of Financial Regulators recently recommended a model for a Financial Claims Compensation Scheme that would cover retail policyholders and depositors in the event of insurer or bank failure (CFR 2005).

Benchmarking in this area would nonetheless serve to highlight the costs of the existing duplication until these reforms are achieved.²

Consumer protection

Any business selling products or services to the public is subject to consumer protection regulation. At the national level, consumer protection is regulated under provisions contained within Part V of the *Trade Practices Act (TPA) 1974*. The TPA also contains a product liability regime which complements common-law rights, under which consumers can seek redress and compensation for any harm caused by unsafe products.

Under the Constitution, the coverage of Australian Government consumer protection legislation is generally limited to corporations. State and Territory fair trading agencies extend provisions that are similar, but not identical, to the provisions of the TPA through mirror legislation to any ‘persons’ (including sole traders, partners and corporations) operating within their jurisdictions.

Growing divergence in consumer protection regulations at the State and Territory level has reduced the extent of national uniformity. The ACT Government’s introduction of changes to regulations associated with offerings of credit card limit increases in 2002 is an example of this. In 2003-04 the NSW and Victorian Governments also introduced telemarketing provisions in their consumer protection legislation, which differ in certain areas.

Submissions to the Regulation Taskforce (2006) pointed to higher compliance costs for a variety of companies that operate nationally:

There is emerging inconsistency about how the nine Australian Governments use fair trading legislation ... to drive consumer protection initiatives. This leads to a national lack of uniformity in these laws and greater compliance burdens and costs for companies, such as banks that operate nationally. (Australian Bankers’ Association (ABA) 2006, p. 22)

... the issue of state/territory laws inconsistently dealing with property sales across borders creat[es] an uncertain business and consumer protection environment. (Real Estate Institute of Australia (REIA) 2006, p. 2)

² As chair of the Council, the Reserve Bank recently completed industry consultations and reported its support for the scheme and a summary of suggested changes to the Federal Treasurer (RBA 2006).

Vodafone holds that [t]he depth of replication of [consumer protection regulation] ... is unnecessary and burdensome to business. (Vodafone 2006, p. 18)

In submissions to the Regulation Taskforce (2006), businesses also highlighted inconsistencies across jurisdictions within the product safety area of consumer protection regulation. A recent Productivity Commission review of the product safety regime in Australia (PC 2006c) similarly found that inconsistencies in product safety between jurisdictions are creating difficulties for businesses operating across more than one jurisdiction.

The Productivity Commission (2006c) found that the inconsistencies have arisen because the impetus for governments to harmonise product safety regulation is muted. The AMRA is a mechanism implemented by governments to reduce regulatory impediments to the mobility of goods and services. This is achieved by allowing complying products in one jurisdiction to be sold in other jurisdictions, overriding most problems caused by differing requirements in various jurisdictions.

The agreement is also intended to encourage jurisdictions to harmonise standards. If the standards in one jurisdiction differ from those in another, the agreement nevertheless allows for potentially non-complying products to be sold in the jurisdiction. The Productivity Commission (2006c) noted this possibility can encourage jurisdictions to harmonise product standards.

The Productivity Commission (2006c) found however, that concerns over liability had deterred businesses from supplying in some jurisdictions despite the operation of the AMRA. It was noted that this had tended to allow governments to maintain different standards or bans indefinitely.

Other areas of regulation

Australian business representatives informed the Regulation Taskforce (2006) of numerous other cases of duplication and inconsistent regulation (table 6.1). Conceptually, the approach adopted for benchmarking duplication and inconsistency discussed in this chapter could also be used in these and other areas where similar concerns arise.

Table 6.1 Other areas of regulation that generate regulatory burden for businesses operating interstate

<i>Areas of regulatory inconsistency and duplication</i>	<i>Jurisdictions primarily involved</i>
Australian food standards	Australian Government, States and Territories, local governments involved in enforcement
Regulation of chemicals and plastics	Australian Government, States and Territories, local governments involved in enforcement
Greenhouse gas emissions reporting	States and Territories
Privacy laws	Australian Government and States and Territories
Personal property securities	States and Territories
Firearms	States and Territories
Certification and licensing of nursing staff	States and Territories
General insurance taxes and levies	States and Territories
Transport industries	States and Territories

Source: Regulation Taskforce (2006).

6.2 Benchmarking objectives

The objective of benchmarking the regulatory burden of duplication and inconsistency is to identify inconsistent and duplicated requirements in each jurisdiction that pose material burdens on interstate businesses. This includes regulation that is nominally national, but implemented or administered differently across jurisdictions.

Businesses making submissions to this study strongly supported benchmarking this type of regulatory burden:

... [T]he benchmarking exercise should aim to identify the costs associated with lack of harmonisation and to identify where these issues are most problematic. (FICA, sub 17, p. 15)

... [O]ne of the most important benefits that could come from [the benchmarking] process would be the harmonisation of regulations across jurisdictions and the elimination of areas of overlap and duplication between State/Territory and Commonwealth regulation. (ICA, sub. 18, p. 2)

It is proposed that the compliance requirements in each jurisdiction be benchmarked against either the operation of mutual recognition or nationally consistent regulation. This represents a form of standards benchmarking, where compliance

requirements are compared against requirements under the benchmarks of mutual recognition and nationally consistent regulation.

In general, standards benchmarking involves establishing ‘best practice’ standards or policy targets against which entities are benchmarked. In this context, mutual recognition or nationally consistent regulation would be used as benchmarks against which the regulatory requirements in each jurisdiction would be compared. The choice of appropriate benchmarks depends on the regulatory context and is discussed further below.

The types of compliance requirements that could be identified in a jurisdiction arising from duplication, for example, include conducting and lodging the results of safety inspections multiple times to different regulatory bodies. On the other hand, compliance requirements arising due to inconsistency could include those required due to different methods for verifying compliance. Such requirements can exist because jurisdictions use varying definitions or administrative arrangements.

It is important to note that where governments have generally agreed to a national approach — either mutual recognition or national consistency — to reduce unnecessary burden, the objectives of the regulation in each jurisdiction are broadly equivalent. This similarity of policy aims underlies the logic behind using mutual recognition or nationally consistent regulation as the benchmark against which jurisdictional requirements are compared.

Nevertheless, areas of regulation for which policy objectives vary across jurisdictions could still be usefully benchmarked. For example, slight variations in policy objectives might not have any effect on the burden caused by duplication or inconsistency. Indeed, where governments have recognised the need to achieve national consistency or mutual recognition, it can be argued that policy differences should not exist, and from a benchmarking perspective could be overlooked.

When comparing the burden across jurisdictions, the wider implications of any real variation in policy objectives would be considered in order to establish suitable grounds for comparison, where possible. However, the benchmarking process and comparisons are likely to become more complex with greater variation in policy objectives among jurisdictions.

This type of regulatory burden could be measured either directly in terms of the costs of compliance activities, or by using indicators of the source of unnecessary compliance burden generated within the regulation.

There are a number of practical and conceptual advantages in adopting indicators of the source of regulatory duplication and inconsistency, rather than attempting to

measure the eventual costs generated. For example, in order to directly measure the unnecessary burden caused by a jurisdiction’s regulatory arrangements, it would be necessary to separately identify the activities that would be undertaken in the absence of the overlap or inconsistency.

Indicators that measure the source of duplication or inconsistency present a conceptually simple means for benchmarking jurisdictions. Furthermore, scope exists for establishing cost estimates and gauging their materiality.

6.3 Proposed indicators

Indicators of regulatory duplication and inconsistency would be prepared for each jurisdiction on the basis of detailed examinations of each jurisdiction’s regulation. These would be combined with assessments of the compliance activities generated for varying categories of notional business or business activities.³ The regulations that generate compliance activities for the notional business(es) (the regulatory requirements), would be identified by utilising actual business data on costs and compliance activities.

The number of unnecessary regulatory requirements the notional business(es) are subject to in each jurisdiction would be determined on the basis of a common benchmark standard in the area of regulation being considered. A key methodological choice is the benchmark standard to be used — mutual recognition or national consistency. This choice would have to be made according to the regulation being considered and the desirability of either regulatory ‘ideal.’

A sequence of key steps that would be required to produce the proposed indicators of duplication and inconsistency is presented in box 6.1.

³ Not unlike the use of reference businesses proposed in earlier chapters (and covered in greater detail in chapter 2), the use of notional businesses enables a consistent comparison of like-with-like across jurisdictions. Notional businesses are instead ‘synthetic’ or hypothetical, because actual businesses would not be surveyed. Factors to be considered in the choice of notional businesses are discussed further in section 6.4.

Box 6.1 Key steps to generate indicators of the regulatory burden from inconsistency and duplication

The following steps would be followed to produce the proposed indicators:

- Decide on the area of regulation in which jurisdictions will be benchmarked, having regard for the expected extent and materiality of regulatory burden.
- Consult with interested parties on the benchmarking process and methodology, specifically:
 - the most appropriate benchmark (mutual recognition or national consistency) that each jurisdiction’s regulations will be measured against; and
 - the notional business(es) or business activities to use as the basis of the benchmarking comparisons.
- Engage industry experts and consult with government agencies to examine each jurisdiction’s regulation. Data would be sourced via surveys and consultation with business and government agencies.
- Report indicators and materiality of duplication and inconsistency.

The number of duplicate or inconsistent requirements identified for a jurisdiction could be used to form a ratio with the number of total compliance requirements for the notional businesses (in the area of regulation involved) (table 6.2). Cost estimates of the materiality of the burden in each jurisdiction could also be reported in most cases.

Table 6.2 Possible indicators — doing business interstate

<i>Indicators</i>	<i>Metrics</i>
Benchmarking against mutual recognition	
Duplicate or inconsistent regulatory requirements that generate compliance activity	Number
Proportion of duplicate or inconsistent regulations that generate compliance costs, out of total number of regulations that generate compliance costs	Per cent
Proportion of unnecessary compliance costs out of total compliance costs for notional interstate business(es)	Per cent
Benchmarking against national consistency	
Inconsistent regulatory requirements that generate compliance activity	Number
Proportion of inconsistent regulations that generate compliance activity, out of total number of regulations that generate compliance activity	Per cent
Proportion of unnecessary compliance costs out of total compliance costs for notional interstate business(es)	Per cent

Benchmarking against mutual recognition

Indicators of regulatory duplication and inconsistency for each jurisdiction could comprise the difference between the number of existing compliance requirements and those required under mutual recognition. Put another way, the requirements within a jurisdiction's regulation could be isolated on the basis that they would not exist for the notional business if a scheme of mutual recognition were in operation.

These indicators would be measured for a notional business(es) or business activity which are compliant with the regulation in (at least) the two jurisdictions under consideration. Data could be gathered to establish appropriate notional businesses for the area of regulation involved. In particular, information on past experiences with expansion into the jurisdiction in question would be used. The choice of notional business is discussed further under section 6.4 in the context of data availability and collection.

A choice would have to be made of the jurisdiction that all others are benchmarked against — the jurisdiction in which the notional business is assumed to be already compliant. Options include:

- the jurisdiction that generates the least compliance activities, making it the 'best case scenario' for a system of mutual recognition; and
- the jurisdiction that achieves the highest standard in terms of the objectives of the area of regulation.

Another alternative would be to benchmark on a pair-wise basis, jurisdiction against jurisdiction. Although likely to require greater resources, this would allow for consistent, multiple, comparisons across jurisdictions. The highest or lowest pair-wise measure for each jurisdiction would be selected for comparison among jurisdictions. Finally, another option would be to compare averages of the pair-wise measures for each jurisdiction.

It might not be appropriate in certain cases to select the jurisdiction with the lowest compliance cost as the benchmark. Benchmarking results under such a choice could be interpreted as presenting some potential for lowering standards, or other policy changes within jurisdictions, which is not an objective of the benchmarking exercise. These matters should be addressed during consultation with business and government agencies prior to benchmarking.

Benchmarking against national consistency

An alternative approach to what is proposed above could be to benchmark the difference between the number of compliance requirements and the number under nationally consistent regulation for each jurisdiction. This indicator would differ from benchmarking against mutual recognition because only the number of each jurisdiction's requirements that are inconsistent would be counted, not those that are duplicated.

This approach differs from benchmarking against mutual recognition only in the use of national consistency as the benchmark standard. With mutual recognition, one jurisdiction is compared against the others while with national consistency, each jurisdiction is examined separately.

This approach is likely to be more suitable in areas such as building regulation, where measuring inconsistency reflects the regulatory burden caused by a lack of harmonisation. This indicator would also reflect the extent of progress in areas of regulation where governments have agreed that national consistency would reduce regulatory burden.

In many of the areas of regulation where businesses have identified duplication, there are templates for nationally consistent regulation that could be used as benchmarks, such as the national building code and the UCCC. Where such templates do not exist, another jurisdiction's regulation could be selected as the benchmark, as in the case of mutual recognition. The alternatives available and their rationale are equivalent to those outlined above in relation to benchmarking against mutual recognition.

Choice of benchmarks

The choice of benchmark(s) should be made according to the area of regulation being considered. This choice is straightforward where governments have agreed that either mutual recognition or national consistency would reduce regulatory burden.

Where governments have not reached agreement on a national approach, it would be appropriate to choose the benchmark according to the type of regulatory burden more closely associated with the area of regulation. Where the regulatory burden is largely the result of duplication, such as the prudential regulation of general insurance, the appropriate methodology is to benchmark each jurisdiction against the operation of mutual recognition. This is conceptually similar to a single set of

regulations. Such an approach would also be appropriate for measuring duplication in the area of product safety.

On the other hand, in areas such as OHS and building regulation, benchmarking each jurisdiction against nationally consistent regulation would better measure the burden of inconsistent regulation. This approach also reflects wider agreement that State- and Territory-based, but nationally consistent, regulation in these areas would best serve policy objectives.

Cost indicators

The consequential costs and materiality should be established, where possible, of the regulatory duplication and inconsistency identified. Such estimates allow for more direct comparisons of the regulatory burden between jurisdictions and provide an indication of the relative differences between them. The proposed cost indicators are listed in table 6.2.

The indicators of burdens would be the administrative compliance costs of meeting the regulatory requirements identified for notional businesses in each jurisdiction using the methodology described above. These estimates would be the *paperwork compliance costs* (as defined in chapter 2) of meeting the requirements.

Where substantial, some *non-paperwork compliance costs* could be included, such as physical investments to reconfigure information systems, when determining the materiality of the overall burden prior to the benchmarking process. Including such costs would be beneficial in that context for comparing the potential benefits among different areas of regulation from reducing or eliminating unnecessary burdens.

The estimates for an area of regulation should be based on a consistent methodology across jurisdictions that reflects current industry compliance practices and technologies, including the level of compliance appropriate to the notional business(es) chosen.

Industry expertise

It is likely that all of the indicators would have to be produced with the involvement of industry specialists, with experience in compliance and implementation of the regulation being considered. This experience should be drawn upon, along with input from governments and regulators, to assess the regulation and compliance activities generated and rate their materiality.

The assessments would need to be undertaken on the basis of a standardised methodology relevant to the area of regulation being considered and applied to consistent categories, such as business size or type of business operation. Assessments might have to be undertaken for each business in a range of business activities and categories of business size, according to the area of regulation and its associated impact and reach.

The choice of a notional business or businesses is discussed in the following section.

6.4 Data availability and collection

As discussed above, the indicators would be produced by industry experts making direct assessments of the regulations in consultation with government and regulatory bodies. Consequently, businesses would not be subject to significant further burden as a result of this component of the benchmarking exercise.

It would also be important to involve bodies currently promoting reform in the areas concerned, such as the Australian Safety and Compensation Council (ASCC), who would have a detailed understanding of duplication and inconsistency across jurisdictions in their areas of responsibility.

Existing data

There have been studies into the extent of duplication and overlap across jurisdictions. For example, Everton-Moore et al. (2006) took stock of strata title law across Australian States and Territories and identified important similarities and differences. Surveys of perceptions about regulatory regimes, such as that conducted by the Fraser Institute (2006), compare the attitudes of respondents in relation to inconsistency and duplication in the regulation of mining activities among Australian jurisdictions.

The CRC Construction Innovation is currently undertaking the Construction Industry Business Environment (CIBE) project, using a similar approach to that suggested in this study. Part of the CIBE project has been an examination of the similarities and differences in the content of regulations among State and Territory jurisdictions (sub. 27, p. 11).

Stage 3 of the CIBE project will involve the analysis of specific policy areas including OHS, environmental sustainability and builders licensing, in which a coordinated approach across all levels of government would benefit the construction

industry. Once completed, the data produced could be useful to a future benchmarking exercise.

Overall, the existing studies on their own do not include the detailed data or information required for the proposed approach. The information required to benchmark inconsistency and duplication would go beyond anything that is already available.

The information needed to construct the proposed indicators of duplication and inconsistency and their materiality resides primarily with industry experts and compliance practitioners. However, the benchmarking process should draw on any information gathered by Ministerial Councils or other groups charged with harmonisation.

Some information would have to be obtained from businesses to validate estimates of the materiality of compliance burdens. In particular, it may be necessary to assess certain non-paperwork compliance costs and economic costs, where they are material to deciding on the area of regulation to be benchmarked. Specific information from businesses with recent experience of expanding interstate would also be sought.

Establishing notional businesses

The suggested indicators would not be produced on the basis of face-to-face interviews with business, unlike those for the benchmarking outlined in chapter 4. Rather, the indicators would be ‘synthetic’ or hypothetical, being based on regulatory requirements applied to the notional business(es) or business activities. Nonetheless, the notional business(es) or business activities used should ideally be typical of the actual businesses affected.

If the reach of regulation is wide, such as in OHS, a range of notional businesses of varying size and activities would be required to ensure that the results are typical of the burden. Further, differences in business demographics between jurisdictions would have to be considered to ensure that the choice of notional business(es) does not affect the robustness of the comparisons.

The notional business(es) used should also be typical of interstate businesses that operate in the jurisdictions being benchmarked. This is necessary so that the indicators produced for each jurisdiction reflect differences in the regulatory burden, rather than reflecting the choice of notional business. For example, using an interstate construction business that specialises in the construction of events facilities as a notional business might distort the indicators for jurisdictions where this type of construction is uncommon.

The information required to determine the appropriate notional business(es) could be gathered through consultation with business and government agencies.

6.5 Caveats

As mentioned earlier, indicators of inconsistency and duplication could be based on an underlying similarity in policy aims of the regulation in each jurisdiction. Where there is variation among jurisdictions that materially affects the burden estimate, supplementary information could be needed to provide grounds for comparison.

The identification of the sources of regulatory inconsistency and duplication among jurisdictions, on its own, would not identify which jurisdiction has ‘best practice’ regulation. Nonetheless, identifying inconsistent or duplicate regulations and their materiality could be a trigger for retrospective regulatory assessments and further reform.

The degree to which the proposed indicators are representative of actual burden would be limited by the range of industries, business sizes or activities that are covered. This limits the possibility of aggregating compliance costs for jurisdictions in areas of regulation where cost indicators could be established.

7 Benchmarking the quantity and quality of regulation

Key points

- Benchmarking the total stock of regulation over time and by form would serve to identify potential unnecessary burdens resulting from the growing amount, complexity and reach of regulation.
- The number of regulations and regulatory requirements applying to a particular business type could also be benchmarked.
- Principles of best practice regulatory design, administration and enforcement could be used to benchmark the quality of regulation and its implementation, and the potential for unnecessary regulatory burdens.
 - In each instance, the design, administration or enforcement of a regulation will be compared against best practice principles.
- Features of regulation could be benchmarked over time to track reform progress from a baseline measure.
 - This could be extended to benchmarking against targets set by governments.
- Reporting on the quantity and quality of regulation would also:
 - provide contextual information for the interpretation of the benchmarking results generally;
 - facilitate identification of systemic regulatory problems; and
 - provide a baseline from which to measure the progress and success of reform initiatives.

Regulations have significant proven benefits. Indeed, the Australian economy would not function well without regulation (Banks 2006). However, the growing quantity of regulation in aggregate can be a significant source of burden for many businesses. As can be the turnover, complexity and reach of regulation. Hence, benchmarking the quantity of regulation over time and by form could identify the potential for unnecessary burdens caused by changes to the stock of regulation (section 7.1).

For individual businesses, the burden is likely to be related to the number of regulations applying to their business and the requirements contained within those

regulations. Possible indicators for benchmarking the burden of specific types of business are discussed in section 7.2.

Businesses are also likely to face unnecessary burdens where regulations are not designed, administered or enforced in keeping with best practice principles. Benchmarking the quality of regulation and its implementation against principles of best practice regulation could also provide an indication of the potential for unnecessary burdens (section 7.3).

An advantage of benchmarking the design, administration and enforcement of a regulation is that the benefits of the regulation do not have to be considered when making comparisons between regulations or jurisdictions. Moreover, benchmarking against accepted good practice principles does not depend on having the same regulatory objectives.

Benchmarking over time could be used to track the progress of reforms aimed at reducing unnecessary burdens. In particular, the information could be used to establish a *baseline* from which to evaluate the effectiveness of government initiatives to reduce regulatory burden. Reporting this information over time would allow such initiatives to be assessed against their objectives and could be used to inform future initiatives (section 7.4).

Finally, reporting such information would provide a context for the benchmarking options discussed in the earlier chapters, and would facilitate the identification of systemic regulatory problems.

Caveats for the benchmarking are discussed in section 7.5, and data availability and collection are discussed in section 7.6.

7.1 Benchmarking the total stock of regulation

Benchmarking the total stock of regulations affecting business would be a useful starting point in assessing the aggregate regulatory burden on business. As stated by Argy and Johnson:

Although not a direct measure of the compliance burden, simple indicators of the volume of regulation, and trends in those indicators, can be pointers to the pervasiveness of regulatory requirements and suggestive of possible trends in compliance costs. (2003, p. xiv)

Useful information could include the number of regulations that affect business and the turnover in new regulation. This would also provide useful contextual information for the other benchmarking options.

Forms of regulation

There are many forms of regulation that impose compliance costs on business. These are implemented at all levels of government and, in aggregate, can impose a significant burden on business. The different forms of regulation — such as primary legislation, subordinate legislation and quasi-regulation — are defined in chapter 1.

There would be merit in categorising the stock of regulation by its form. This would make trends in the different forms of regulation apparent. Specifically, tracking the stock of regulation by form over time would allow any disproportionate changes to be identified across jurisdictions.

The form of regulation is important because different processes and requirements often apply, affecting the stringency of the initial policy assessment and the accountability for outcomes. For example, although most new legislation requires Cabinet approval, many forms of quasi-regulation do not require any formal process or approval for their introduction.

Inclusion of the various forms of regulation would ultimately be a matter of scope and the relevant costs and benefits should be considered. However, the benchmarking should not create incentives for perverse outcomes — such as biased preference towards introducing forms of regulation outside the scope of the study.

Contextual information

Information collected on the general stock of regulation would help inform possible priority areas for the benchmarking options discussed in the earlier chapters. Depending on the information collected, it could also be used to identify data sources and relevant government agencies.

The Victorian Competition and Efficiency Commission (VCEC), for example, completes an annual assessment of Victoria's regulatory environment. This assessment gathers information on all Victorian regulators and:

- their associated codes of practice and whether these are legislated or not;
- the number of different licences or permits they administer; and
- the number of licences or permits issued or renewed in a given year.

They also collate information on:

- the number of Victorian Acts, pages and net turnover in pages each year;
- the number of Victorian regulations, pages, turnover in pages each year and sunset provisions; and

-
- a list of regulated activities.

Such information could be benchmarked over time. This would be indicative of the potential burden resulting from having to devote more resources towards complying with a growing stock of regulation. It would also reflect the potential for increased burdens associated with increased complexity resulting from interactions between regulations.

The reach of regulation

Not all regulations apply to business. Some regulations, such as those related to registering a business, apply to all business to varying degrees, while other regulations, such as those relating to food safety, only apply to a subset of business.

Hence, identifying the reach of regulation in terms of how many businesses are affected and to what extent businesses are affected, would be a complex task. It would require detailed information on which regulations apply to which businesses, how each of the businesses is affected, and how the impact varies with business size, industry, organisational structure and business activity.

Existing data on business demographics are not detailed enough to identify the number of businesses affected by a regulation and the likely burden on each affected business. Consequently, it would be difficult to reliably report on the reach of regulation, given currently available data. However, more simple measures, such as the number of regulations applying to businesses in each jurisdiction, would be a useful starting point.

Indicators of the total stock of regulation

Possible indicators of the total stock of regulation (discussed above) are summarised in table 7.1.

Other indicators could also be useful in identifying the burden of regulation in aggregate. One example is an indicator on the number of regulatory requirements that impose a compliance burden on business. However, such an indicator would be difficult to measure and might be misinterpreted at an aggregate level.

Although the effects of regulation on all business might be difficult to benchmark, benchmarking the burden on a particular business type appears more promising. This benchmarking option also has the advantage of identifying, for a particular business, the impact of regulations, including impacts resulting from interactions between the different regulations applying to a particular business.

Table 7.1 **Possible indicators — total stock of regulation**

<i>Indicators</i>	<i>Metrics</i>
Regulations affecting business	
Regulations that apply to business ^a	Count
Pages of legislation that apply to business ^a	Count
Licences applying to business	Count
Permits applying to business	Count
Turnover in regulation	
Net number of new regulations ^a	Count
Net number of new pages of regulation ^a	Count

^a Including primary legislations, subordinate regulations and quasi-regulations, at all levels of government.

7.2 Benchmarking the burden on a business type

Different businesses, as determined by their function and size, are subject to different regulations. These regulations have varying impacts on those businesses depending predominately on the requirements contained therein. Hence, in a general sense, the burden of regulation on a particular business is determined by:

- the number and turnover of regulations that apply to the business — including quasi-regulations; and
- the number of things that have to be done to comply with those regulations — including obtaining licences and permits, completing approval processes and complying with reporting requirements.

In this section, a business type is taken to mean businesses undertaking a particular function, such as, hairdressers, mining companies, banks and butchers, for example on. Further distinctions could be drawn as to the size (or other characteristics) of a business of that type, where these are likely to affect the number of regulations applying to that business.

Number and turnover of regulations

‘The most effective relief from regulatory burdens, of course, is not to be covered by regulation in the first place’ (Banks 2006, p. 5). Hence, the number of regulations applying to a particular business type could be a useful indicator in assessing the likely burden on a particular business. The number of pages of regulation applying to a particular business could also be a useful indicator.

The number of regulations is likely to influence the resulting burden in that businesses that are subject to more regulations (or pages of regulation) generally require more resources if they wish to become knowledgeable in those regulations.

Some of these resources will be used when a business first commences operations, while others will be required periodically, or as new regulations are introduced. Hence, the burden might change depending on the life-cycle stage of the business and the turnover in regulations applying to the business.

Turnover in and changes to regulations have the potential to affect the complexity of the regulatory environment, and hence, the regulatory burden faced by business. Atherton Advisory, for example, highlighted ‘the costs which continual regulatory changes impose on business’ as a key factor in assessing the performance of regulation (sub. 9, p. 1).

In general, the resources required are likely to increase with increased turnover in regulation as businesses have to commit more time, effort and expertise to stay up to date with regulatory requirements. Hence, a measure of the *flow* of regulation would be indicative of additional compliance burdens.

Regulatory requirements

Although the number and turnover of regulations applying to a business will be indicative of the burden, a business’s burden is more directly a result of the requirements contained within those regulations. Some regulations might be lengthy in pages, for example, but if they contain few requirements, the resulting burden could be minimal.

Common regulatory requirements include licences, permits, approval processes and reporting requirements. Burdens relating to licences and permits are discussed in chapter 4, and those relating to approval processes are discussed in chapter 5.

Suggested indicators for this form of benchmarking relate more to the cumulative effect of all regulatory requirements applying to a particular business. Hence, suggested indicators relate to how many requirements a business has to adhere to and how frequently these have to be completed.

For licences and permits, for example, indicators could measure the number of licences and permits required by a particular business, and the frequency of their renewal. These measures would be representative of the burden in that burdens are likely to increase with the number of licences and permits and the frequency of their renewal. Some possible indicators are listed in table 7.2.

Further, reporting requirements are likely to be burdensome if they require a large amount of information to be supplied by the business. Hence, the number of reported items might be a useful indicator of the regulatory burden. As with other requirements, the frequency of reporting could also be a useful indicator. In relation to *unnecessary* burdens, an indicator on the number of duplicate items that have to be reported could be used.

Table 7.2 Possible indicators — potential burden for a particular business

<i>Indicators</i>	<i>Metrics</i>
Number and turnover of regulations	
Total number of regulations affecting a business type ^a	Count
Total number of pages affecting a business type ^a	Count
Net number of new regulations affecting a business type ^a	Count
Net number of new pages affecting a business type ^a	Count
Regulatory requirements	
Number of licences, permits and approvals required	Count
Renewal period for licences and permits	Time period
Number of reported items	Count
Frequency of reporting	Time period
Number of duplicate items reported	Count

^a Including primary legislations, subordinate regulations and quasi-regulations, at all levels of government.

7.3 Benchmarking the quality of regulatory design, administration and enforcement

Regulations that are designed, administered and enforced in a manner that is consistent with best practice principles are less likely to impose *unnecessary* burdens on business. This is consistent with the view of the Regulation Taskforce, who, in reference to their six principles of good regulatory practice (box 7.1) stated:

... 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. (2006, p. 147)

Assessing regulations against understood and accepted principles of good regulatory practice could, therefore, be a useful indirect measure of unnecessary burdens. As stated by the National Bulk Commodities Group:

Regulation which is deficient in meeting these [good practice regulation] criteria is likely to fail to achieve its objectives, impose unnecessary costs, impede innovation and/or create barriers to efficiency and productivity. (sub. 4, p. 2)

Benchmarking against good practice principles was supported by a number of participants including the Australian Financial Markets Association (sub. 10) and

the Business Council of Australia (sub. 13). The Australian Bankers' Association stated 'benchmarking regulatory design and process is as important as identifying the costs of regulation' (sub. 16, p. 4).

Child Care New South Wales stated:

... the key factor that we believe needs to be identified is the extent to which particular jurisdictions do not adhere to their own professed regulatory decision-making processes. So far as we are aware, all jurisdictions claim to have rules of good rule-making expressed either in legislative or policy form. So far as we are aware, no jurisdiction complies properly with those principles of regulatory decision-making. That, in a nutshell, is the root of the regulatory burden problem. (sub. 11, pp. 6–7)

Generally agreed principles of good regulatory practice are briefly outlined below.

General principles of good regulatory practice

There are many authoritative statements on principles of good regulatory practice. Two relevant Australian sources are the administration Regulation Taskforce's six principles of good regulatory practice (box 7.1) and the COAG-endorsed principles of regulatory design and (box 7.2).

Box 7.1 Regulation Taskforce's principles of good regulatory practice

- 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.

Source: Regulation Taskforce (2006).

Box 7.2 COAG principles of good regulatory practice

According to COAG, regulation should:

- Be the *minimum required* to achieve pre-determined outcomes.
- Be designed to have *minimal impact on competition*.
- Have *clearly identifiable and predictable outcomes*.
- Be *compatible* with relevant international standards or practices where possible.
- Be *reviewed periodically*, say at least every 10 years.
 - This could be achieved by incorporating sunset provisions into the regulation.
- Be *flexible* and open to revision, adjustment or updating as circumstances change.
 - However, it is important such flexibility does not result in undue uncertainty.
- Attempt to *standardise bureaucratic discretion* to reduce discrepancies between government regulators and to reduce uncertainty and compliance costs.
 - This should not preclude an appropriate degree of flexibility to permit regulators to deal with exceptional or changing circumstances or needs.
 - There should be transparency and procedural fairness in regulation review.
 - Administrative decisions should be subject to administrative review processes.
- Be drafted in *plain language* to improve clarity and simplicity, reduce uncertainty and enable the public to understand the implications of regulation.
- Require or involve only the minimum necessary number of licenses, certificates, approvals and authorities, to achieve the regulatory objectives.

COAG also stated that performance-based requirements that specify *outcomes rather than inputs* should be used where possible.

Further, proposed regulation should:

- be subject to a *regulatory impact assessment* process, which quantifies the costs and benefits of the proposal to the greatest extent possible; and
- include public consultation in the regulatory development process.

Regarding the *enforcement* of regulation, compliance strategies should ensure the greatest degree of compliance at the lowest cost to all parties. Measures to encourage compliance include *clarity, brevity, public education and consultation*.

Mandatory regulations should contain appropriate sanctions to *enforce compliance and penalise non-compliance*. Effective enforcement options should differentiate between the good corporate citizen and the renegade, to ensure that model behaviour is encouraged and renegade behaviour is punished.

Source: COAG (2004).

Other sources include Argy and Johnson 2003; Banks 1999, 2001, 2003a, 2003b, 2005, 2006; Berg 1999; Hampton 2005; OECD 1995; ORR 1998; and URS 2006a.

These sources could be drawn on to establish a set of ‘accepted’ principles that could be agreed upon and used as benchmarking indicators.

Possible indicators of potential unnecessary burdens inherent in individual regulations can be categorised by three main aspects, namely:

- design;
- administration; and
- enforcement.

The design of the regulation

Regulatory design refers to the planning and creation of regulation to achieve a particular purpose or effect. Well-designed regulations should minimise the burden on business — compared with poorly designed regulation. As stated by the Business Council of Australia, ‘if regulation is poorly drafted, inefficient and fails to achieve the outcomes that are intended, then unnecessary compliance burdens are imposed on business and the economy as a whole’ (sub. 13, p. 2).

Principles of good regulatory design and other design issues that are likely to affect the unnecessary burden, include:

- Clarity of purpose — a regulation with a clearly stated purpose is more likely to achieve its purpose effectively and with less uncertainty, which would reduce unnecessary burdens.
- Complexity — more complex regulations are likely to require expertise to ensure business compliance, expertise comes at a higher cost whether it is sourced in-house or contracted in, which would increase the burden.
- How prescriptive the requirements are — more prescriptive requirements are likely to be more complex and onerous which would increase unnecessary burdens. However, in some instances prescriptive requirements are necessary and may help to clarify a requirement or aid compliance which would reduce unnecessary burdens.
- Existence of subordinate legislation, other regulations or quasi-regulations — existence of reliant regulations is likely to increase the complexity of the regulation which could increase unnecessary burdens. A greater reliance on other regulations is likely to increase complexity and uncertainty which would increase unnecessary burdens.
- The translation of Commonwealth legislation into State and Territory legislation — inconsistencies between jurisdictions are likely to increase complexity and uncertainty which would increase unnecessary burdens (chapter 6).

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- Frequency of review — periodic review is likely to improve regulation, which would reduce unnecessary burdens.
 - Use of a Regulatory Impact Statement (RIS) in the review process — use of a RIS in review is likely to improve the regulation which would reduce unnecessary burdens (box 7.3).
 - Inclusion of a sunset clause — a sunset clause is likely to trigger a review or termination of a regulation which would reduce unnecessary burdens.

Box 7.3 Regulatory Impact Statements

Regulatory Impact Statements (RISs) are used to inform decision making regarding whether to implement a particular regulation. They are prepared by the policy body that is developing the regulation to assess the likely impacts of the recommended regulation. A RIS should canvas all objectives and options for a particular policy problem, using benefit–cost analysis to consider the social, environmental and economic impacts. They should also include a statement on consultation, a recommended approach, and a discussion of how the preferred approach should be implemented and reviewed.

Requirements for undertaking a RIS vary across jurisdictions — such requirements are assessed in the annual publication of *Regulation and its Review* undertaken by the Office of Best Practice Regulation (OBPR) (formerly the Office of Regulation Review (ORR)). The OBPR is also responsible for determining whether a RIS is required and whether a RIS has been undertaken to a satisfactory level of analysis (for new Australian Government regulations).

Source: PC (2005).

Prospective assessment processes employed when the regulation is being developed could also be measured, depending on data availability. Possible indicators could include:

- Whether a RIS was completed in the development of the regulation — a RIS is likely to inform the regulation making process which would improve the regulation and reduce unnecessary burdens (box 7.3). (For Australian Government regulations, whether the RIS was deemed adequate by the OBPR (or its predecessor, the ORR) could also be assessed.)
- Whether other assessments were undertaken, such as a Small Business Impact Statement, a Business Impact Assessment or use of the Business Cost Calculator (BCC) (chapter 3) — although other assessments should not preclude or replace a RIS, they are likely to improve the regulation making process which would reduce unnecessary burdens.

- Whether consultation was undertaken in completing prospective processes — consultation during the regulation making stage should improve the process and the resulting regulation, which would reduce regulatory burdens.

If such measures were included, an important caveat is that they would not necessarily reassess the quality of prospective assessment processes.

An assessment of the quality of prospective processes would determine whether the original calculations and assumptions were reasonable, including whether the benefits of regulation were appropriately compared with the costs, and whether all feasible options were identified and assessed. However, this would involve an assessment of the benefits of the regulation which, as outlined in chapter 1, is outside the scope of the current study.

Possible indicators of regulatory design are listed in table 7.3.

Table 7.3 Possible indicators — regulatory design

<i>Indicators</i>	<i>Metrics</i>
Use of RIS in designing regulation	Yes/no
Adequacy of the RIS ^a	Adequate/inadequate
Other assessments in designing regulation	Yes/no
Consultation undertaken	Yes/no
Clarity of purpose ^b	Proportion of unclear objectives
Complexity — whether expertise is required ^b	Yes/no
Overly prescriptive requirements ^b	Yes/no
Subordinate legislation ^c	Count
Reliance on subordinate legislation ^c	Proportion
Translation of national regulation ^d	Count
Time since last comprehensive review	Number of years
RIS undertaken in review	Yes/no
Existence of a sunset clause	Yes/no

^a For Australian Government regulations as determined by the OBPR (or its predecessor, the ORR) ^b Expert assessments would be used. ^c The number of subordinate legislations referred to in the primary legislation. Applies only to primary legislation. ^d The number of differences between the national regulation and State and Territory regulations. This indicator applies for nationally agreed regulations that are translated into State and Territory regulation.

The administration of the regulation

Some aspects of best practice regulation relate to the administration of a regulation. Regulatory administration refers to the ongoing management of regulation (by governments) to ensure their proper functioning. This includes the reporting requirements of a regulation and the associated administration, and administrative arrangements relating to approval processes.

Potential indicators of regulatory administration could include:

- Reporting requirements — more unnecessarily onerous, complex and duplicative reporting requirements are likely to make demonstrating compliance overly difficult, which could increase unnecessary burdens.
- Frequency of reporting — more frequent reporting is likely to require more frequent compliance activities which could increase unnecessary burdens.
- Scope for discretionary reporting requirements — discretionary reporting could increase flexibility, which would reduce unnecessary burdens, but could instead increase uncertainty, which would increase unnecessary burdens.
- Availability of on-line reporting options — on-line reporting is likely to be faster and could allow for easier record keeping and reduce unnecessary burdens.
- Coordination of government agencies — increased coordination between administrating government agencies is likely to reduce unnecessary burdens.
- Provision of supportive, consultative or informational channels — such channels are likely to reduce the time and resources that businesses devote to compliance activities which could reduce unnecessary burdens.
- Time limits on approval processes — time limits are likely to decrease uncertainty which could reduce unnecessary burdens.
- Existence of appeals processes — appeals processes increase transparency and accountability which could reduce unnecessary burdens.
- Separation of regulation making and administration — separation would reduce the potential for perverse outcomes given the different objectives of these roles.

Possible indicators of regulatory administration are listed in table 7.4.

Table 7.4 Possible indicators — regulatory administration

<i>Indicators</i>	<i>Metrics</i>
Items of information reported	Count
Duplicate items reported	Count
Number of agencies information must be submitted to	Count
On-line facilities	Yes/no
Frequency of reporting	Time period
Discretionary reporting requirements	Yes/no
Compliance complexity	Time period
Support channels provided	Yes/no
Time limits (approvals)	Yes/no
Appeals processes	Yes/no
Separation between regulation setting and administration	Yes/no

The enforcement of the regulation

Regulatory enforcement refers to initiatives undertaken by government to compel observance of, and adherence to, regulation by intended affected parties.

In general, business burdens (relating to the enforcement of a regulation) are likely to be minimised where a regulation is enforced in such a way that good behaviour is rewarded and non-compliance is identified and punished (COAG 2004).

Just as excessively stringent enforcement can lead to unnecessary burdens, a lack of enforcement can undermine the regulation itself. The Institute of Body Corporate Managers (Victoria), for example, noted:

Without active enforcement, not only are some of the benefits from regulation foregone, but those businesses that do devote effort to comply are put at a competitive disadvantage to those that do not. (sub. 1, p. 9)

Hence, for regulation to be effective, it must be enforced. Further, for business burdens to be minimised, the compliance costs for businesses should reflect the risk of penalty for non-compliance.

Risk-based enforcement strategies — that target likely non-compliant businesses — are likely to be less burdensome for business than random or ad hoc enforcement strategies. Publication of the chosen enforcement strategy would also aid business compliance, reduce uncertainty and reduce unnecessary burdens.

Useful indicators relating to the enforcement of regulation could include:

- Whether the regulation is enforced.
- The number and coordination of agencies involved in enforcement — the existence of more agencies is likely to increase complexity, if coordination is poor, which would increase unnecessary burdens.
- Whether risk-based enforcement strategies are used — risk-based strategies are likely to target non-compliant businesses and hence, should reduce unnecessary burdens for normally compliant businesses (Hampton 2005).
- Whether the regulator publishes enforcement strategies and outcomes — publishing enforcement strategies is likely to decrease uncertainty and increase accountability which would reduce unnecessary burdens.

An indicator on the degree of separation between the enforcer of regulation and the collector of non-compliance fees could also be included. Where these are undertaken by the same body, conflicting incentives could result in perverse outcomes such as over-enforcement or revenue-based enforcement strategies (rather

than outcome-based strategies). Separation of these activities is preferable. Possible indicators of regulatory enforcement are listed in table 7.5.

Table 7.5 Enforcement of regulation — possible indicators

<i>Indicators</i>	<i>Metrics</i>
Regulation is enforced	Yes/no
Risk of conflicting of enforcement because of multiple agencies involved ^a	Count
Risk-based strategies	Yes/no
Published enforcement strategies and outcomes	Yes/no
Separation of fee collector and enforcer	Yes/no

^a Number of agencies involved in enforcement activities.

7.4 Government initiatives to reduce regulatory burden

In response to business concerns, the Australian, State and Territory governments have implemented a number of initiatives to reduce the regulatory burden on business. These include prospective measures, used to assess and minimise the potential burden of a new regulation before it is implemented, and retrospective measures, used to assess and minimise the burden after a regulation is in effect.

Prospective initiatives are primarily aimed at ensuring that the costs of new regulations do not exceed the benefits and that the best policy option is chosen. This includes an assessment of the likely burden on business from the regulation. Such initiatives include RISs and other assessment requirements for new regulations, and use of the BCC in policy formulation. These measures are discussed in section 7.3.

Retrospective initiatives are more varied and can include regulatory reviews, annual reporting, specific burden reduction policies and burden reduction targets.

Some examples of current (prospective and retrospective) State Government initiatives to reduce the business burden of regulation are presented in box 7.4. The Australian Government is also pursuing a number of burden reduction initiatives, many resulting from recommendations made by the Regulation Taskforce (2006).

Box 7.4 Examples of State initiatives to reduce regulatory burden

Victoria

In the 2006-07 Budget, the Victorian Government committed \$42 million over four years to fund the *Reducing the Regulatory Burden* initiative. The initiative includes:

- a 15 per cent reduction in existing administrative burden over three years, and a 25 per cent reduction over five years;
- ensuring the administrative burden of any new regulation is met by an 'offsetting simplification' in the same area; and
- providing funds to undertake hot spot reviews in areas of undue compliance burden and to reward reduction of the burden.

New South Wales

On 17 January 2006, the NSW Premier announced a dedicated review of regulatory burden on small business, to be undertaken by the Small Business Regulation Review Taskforce. This will be done through a rolling program of sector-by-sector reviews of the regulatory and administrative burdens faced by small business.

In October 2006, the Independent Pricing and Regulatory Tribunal released a report on the burden of regulation (and improving regulatory efficiency) in New South Wales.

South Australia

The SA Government recently established a target of reducing red tape by at least 25 per cent by July 2008. This is being supported by initiatives such as:

- mandated use of the *Business Cost Calculator* for all regulatory proposals that affect business (to be evaluated after 12 months);
- continuation of the sunset program, whereby all regulations except those detailed in section 16A of the *Subordinate Legislation Act 1978* expire on 1 September in the year following the tenth anniversary of their promulgation; and
- a range of projects to inform the process of regulatory planning, including a small business survey to identify and reduce red tape hot spots.

Queensland

The Queensland Government's *Red Tape Reduction Taskforce* provides advice on how to reduce the burden of regulation on Queensland businesses. The Taskforce completes annual Red Tape Reduction Stocktakes (since 2000-01) which include an estimate of the savings to business from regulatory improvements.

In addition to the annual Stocktake, the Taskforce is currently conducting a public review into hot spots for regulatory reform and is finalising industry specific reviews of the impact of regulation in the manufacturing, retail and tourism sectors.

Sources: DSD (2006); DSRD (2006); IPART (2006); Victorian Government (2006).

Possible indicators

As discussed above, conducting a stocktake of existing regulation would provide a baseline from which to benchmark changes in the stock of regulation over time. It could also be used to measure the effectiveness of regulation reduction initiatives over time. In relation to targeted reduction initiatives, specific indicators could be used to assess their effectiveness over time.

One way of doing this could be to track particular indirect indicators relating to the stated goal of an initiative, over time. An example is provided in box 7.5. Two other methods could be performance against commitments and performance against reduction targets, as discussed below.

Box 7.5 Possible indicators for monitoring the progress of standardising business reporting

In response to recommendation 6.3 of the Regulation Taskforce (2006), the Treasurer established a committee of Australian and State Government officials to examine the case for the introduction of standard business reporting. The aim of standard business reporting is to reduce reporting burdens for business by eliminating unnecessary or duplicative reporting, and to improve the interface between business and government.

In this case, indirect indicators of the reporting burden could include:

- the number of items of information that are reported;
- the number of items that fail to conform to whole of government standard definitions for these items;
- the number of businesses from which the data items are collected; and
- the number of agencies that businesses have to report to.

Measurement of these indicators over time, and comparison with baseline levels, could be indicative of the effectiveness of the initiative in terms of reducing reporting burdens.

Sources: The Treasury (Australian Government), pers. comm., 8 September 2006; The Treasury (2006).

Progress against commitments

Benchmarking progress against key reform commitments could indicate the effectiveness of government initiatives to reduce regulatory burdens. This could involve tracking progress on committed initiatives, actions or recommendations. For example, the Australian Government's recent agreement to 158 of the recommendations made by the Regulation Taskforce (2006) could be benchmarked in this way (Lynch et al. 2006). The progress of this could be assessed against nominated completion dates as those dates arise.

Performance against reduction targets

A number of jurisdictions have already set targets for reducing regulatory burden. However, it is (at present) difficult to measure performance against such targets, primarily because the current regulatory burden is unknown. Consequently, it is extremely difficult to make a rigorous assessment about whether the regulatory burden has changed.

By establishing a baseline of the stock of regulation (as proposed in section 7.1), performance against agreed regulation reduction targets could be assessed somewhat. However, such an assessment would still be subject to the caveat that proposed indicators are indirect measures only.

7.5 Caveats

The most important caveat for the benchmarking discussed in this chapter is that possible indicators only identify the *potential* for unnecessary burdens. Hence, the suggested indicators are only indirect measures of unnecessary burdens.

The indicators identified in sections 7.1 and 7.2 are also subject to the caveat that it is assumed that more regulation, or increased turnover in regulation, is likely to increase the unnecessary burden of regulation on business. However, in the case of increased turnover in regulation, for example, some new regulations might reduce the overall burden by replacing or consolidating older, more burdensome regulations.

An important caveat specific to indicators of understood and agreed good practice principles for designing, administering and enforcing regulation, is the assumption that these principles actually improve regulation and eliminate unnecessary burdens.

Several of the proposed indicators would require expert assessment. As these could be subjective, resulting measures would have to be qualified. Further, such analysis would only be robust if the regulation is administered and enforced in accordance with the prescribed regulation. Consultation with business could be undertaken to confirm whether expert assessments were in line with actual procedures.

For assessing the effectiveness of initiatives to reduce regulatory burden, their comparison across jurisdictions might not be overly useful because of the varying objectives of initiatives. However, the success of initiatives in some jurisdictions compared with others, could be evidenced by the benchmarking. This could encourage competition across jurisdictions and could inform future initiatives to reduce regulatory burden.

Another caveat for the assessment of regulatory reform initiatives is that other factors do not mask the progress of such reforms. Further, it is assumed that any commitments made actually reduce regulatory burdens over time. However, a rigorous assessment of the policy initiatives should minimise the risk of unsatisfactory outcomes.

7.6 Data availability and collection

The indicators identified in this chapter could be measured foremost through an analysis of the written regulation itself. Expert advice from legal professionals, government agencies and *reference businesses* could be drawn on in the process, where required.¹

It would be important to engage relevant government agencies in particular, as it is likely that they will already be reporting on some of the indicators proposed above. Early consultation would reveal what information is already collected, and prevent any unnecessary duplication of effort.

In relation to benchmarking regulation reduction programs, it would be crucial to maintain communication and cooperation with the departments or agencies undertaking the initiative.

Existing data

There are a number of Commonwealth, State and Territory data and information sources that could be relevant to the benchmarking exercise. At the Commonwealth level, the OBPR (formerly the ORR) conducts an annual review of regulation in Australia which covers a number of relevant metrics including:

- the number of Commonwealth Acts of Parliament;
- the number of new regulations made by the Australian Government each year;
- the number of Australian Government regulators and national standard setting bodies involved in regulation making and administration;
- the number of Ministerial Councils involved in making regulations;
- regulation reduction initiatives; and
- an assessment of RIS requirements across jurisdictions.

At the State and Territory level:

¹ Reference businesses are discussed in chapter 2.

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- The VCEC completes an annual assessment of the regulatory environment in Victoria (VCEC 2005; 2006b). The corresponding data spreadsheets summarise information that would be relevant to benchmarking the stock of regulation. The VCEC website also contains information on all Victorian RISs undertaken since 2004 (VCEC 2006a).
 - The State Chamber of Commerce (New South Wales) conducts an annual *Red Tape Register* survey (SCC 2005).
 - The Department of State Development (Queensland) has a Red Tape Reduction Taskforce which has undertaken a number of reviews and assessments.

In terms of cost estimates, *The Victorian Regulatory System 2006* (VCEC 2006b) was estimated to cost about \$44 500 in staff time, external editing and printing (not including overheads or regulator time costs). If VCEC overheads and surveyed regulators' time were included, VCEC estimated that the 2006 report cost approximately \$100 000 to produce (VCEC, pers. comm., 14 November 2006).

A number of industry groups have also collated some relevant data. For example, the Australian Chamber of Commerce and Industry, and the Minerals Council of Australia, have undertaken a number of industry surveys and reviews (ACCI 2004, 2005; URS 2006a, 2006b).

Most of these data sources, however, do not include the detailed data or information required to complete the proposed benchmarking — the proposed benchmarking would need to be supplemented with original analysis and consultation.

Review of regulations

As discussed above, many of these possible indicators could be measured by assessing the written regulations themselves. This could involve consultation with legal experts who have a background in complying with business regulations.

Data collection would primarily be undertaken by the Productivity Commission in consultation with legal experts and government agencies, and with input from affected businesses, where required. In this way, additional burdens on businesses providing data for the benchmarking exercise, could be kept to a minimum.

8 Benchmarking program and implementation

Key points

- Benchmarking regulatory burdens on business appears to be feasible, and has the *potential* to offer considerable net benefits.
 - However, the costs of benchmarking would be significant and are difficult to estimate in advance.
 - There is even greater uncertainty over the benefits of benchmarking, although there is potential for them to be in orders of magnitude greater than the costs.
- Prioritising which regulations or areas of regulation to benchmark is essential given the enormous number of regulations that could be benchmarked.
- There is merit in adopting a modest benchmarking program initially because of the uncertainties over achieving net benefits. Benchmarking could be expanded over time and refined, taking advantage of ‘learning-by-doing’ if it proved successful.
- A rolling program is suggested whereby areas of regulation are benchmarked periodically on a rotational basis. This would be a cost-effective approach to benchmarking that allows experience to improve the benchmarking process over time.
- Existing initiatives to improve regulatory systems should be taken into account in developing the benchmarking program to maximise complementarities and minimise duplication.
- Consulting with business and government would be essential in implementing benchmarking, especially for determining how best to measure burdens and to gain reasonable acceptance of the indicators.
- The implementation of benchmarking would also require:
 - establishing data collection methods, reporting templates and appropriate caveats; and
 - a pathway for implementation with clear commitment from all parties.
- Benchmarking would be more likely to improve regulatory performance if effectively integrated into policy-making processes.

The benchmarking opportunities described in previous chapters, and the main overarching messages, are brought together in this chapter, along with an indicative benchmarking program. Several implementation issues that would be important for governments to consider, should benchmarking regulatory burdens on business proceed, are also discussed.

8.1 Summary of benchmarking opportunities

As outlined in chapter 1, the Productivity Commission has investigated opportunities for benchmarking regulatory burdens on business, and developed possible quantitative and qualitative indicators.

Two broad approaches are suggested — benchmarking regulatory compliance costs, and benchmarking aspects of the regulatory environment (including changes in the quantity and form of regulation over time and comparing regulations against agreed principles of good practice regulatory design, administration and enforcement). For each of these approaches, two forms of benchmarking are suggested — performance and standards benchmarking (chapter 2).

The three types of regulatory compliance costs for which benchmarking is suggested are administrative compliance costs (‘becoming and being a business’), delays in approvals processes (‘doing business’), and duplication and inconsistency (‘doing business interstate’).

A summary of the benchmarking opportunities identified is provided in figure 8.1. Such benchmarking could involve both comparisons across jurisdictions and over time.

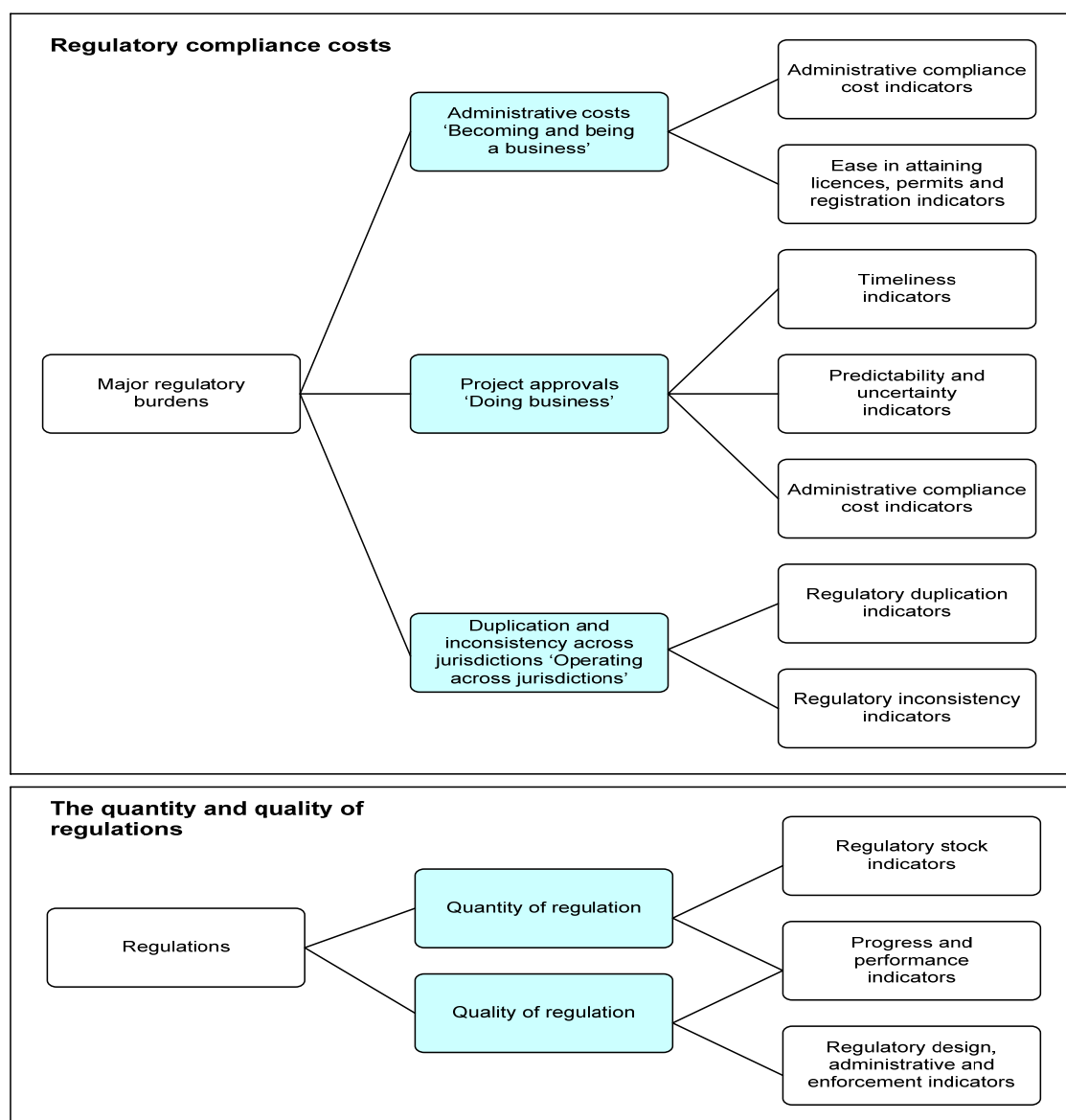
As a package, the suggested benchmarking offers the following advantages:

- It covers most types of regulatory compliance costs and, therefore, many of the concerns businesses have with regulation.
- It complements measurements of compliance costs with comparisons of changes in the quantity and form of regulations and the quality of regulatory design, administration and enforcement. This offers additional insights into possible sources of regulatory burdens, and the progress of reforms to reduce regulatory burdens over time.
- It could be applied across all forms of regulation (including primary legislation, subordinate legislation and quasi-regulation).

Although benchmarking regulatory burdens on business does not explicitly measure regulatory benefits, benefits are not ignored. The objectives of a regulation would

be considered to ensure comparisons of regulatory burdens are meaningful. If the objectives are materially different, and if these have consequences for compliance burdens, comparisons would not be drawn. To the extent that there are differences in regulatory benefits (even though regulatory objectives are the same), caveats or supplementary information could be provided to assist in the interpretation of the regulatory burden indicators.

Figure 8.1 **General framework and indicator categories**



As noted in chapter 2, benchmarking involves a number of process components, including determining the coverage of the benchmarking activity and what to measure, the development of robust indicators, and the collection and reporting of data. These components are discussed in relation to benchmarking different types of regulatory burden (chapters 4, 5 and 6) and the quantity and quality of regulations (chapter 7). The main conclusions and proposals from these chapters are summarised in table 8.1.

The main overarching issues and messages that emerge are:

- There is an enormous number of regulations that could be benchmarked. Consequently, prioritisation (including what to cover and in what order) would be necessary, given that benchmarking involves resource costs and that the benefits of the exercise are difficult to estimate without experience.
- A mix of indicators would be necessary to provide a broad picture of regulatory burden. Indirect indicators would have to be used because it is difficult (and in some cases impossible) to measure direct indicators of incremental compliance costs.
- It would be difficult to estimate the aggregate level of unnecessary compliance costs in the short term for a particular regulation. This is (in part) because of inadequate data on the diverse compliance impacts of regulations on businesses within and across industries, and the reach of regulations. However, work to obtain the necessary information so that aggregate compliance costs could be estimated would be worth exploring.
- Despite in-principle appeal, it would be inadvisable to produce a composite (meta) index to gauge the overall levels of regulatory burden on business across the jurisdictions due to measurement and interpretation difficulties.
- Caveats would be important to ensure indicators are not misinterpreted.
- Data collection and management approaches would have to vary depending on the areas benchmarked and the indicators being used. The use of reference businesses and business activities (chapter 2) appears a useful approach to enable consistent ‘like-with-like’ comparisons and to keep collection costs on business as low as possible.

Table 8.1 Summary of benchmarking opportunities

<i>Key components of the benchmarking process</i>	<i>'Becoming and being a business' (Administrative burdens)</i>	<i>'Doing business' (Approval processes)</i>	<i>'Doing business interstate' (Duplication and inconsistency)</i>	<i>The quantity and quality of regulation</i>
Objective	<ul style="list-style-type: none"> Compare burdens associated with paperwork and administration formalities 	<ul style="list-style-type: none"> Compare delays and uncertainties in regulatory approvals and resulting costs to business 	<ul style="list-style-type: none"> Compare duplicated and inconsistent requirements 	<ul style="list-style-type: none"> Measure changes in the stock of regulation and compare regulatory design, administration and enforcement against principles of best practice
Coverage	<ul style="list-style-type: none"> Regulations generating substantial administrative compliance costs (for example, licences, permits, registrations, tax and OHS regulation) 	<ul style="list-style-type: none"> Regulations requiring administrative approval (for example, development approvals and environmental assessments) 	<ul style="list-style-type: none"> Regulations that impose inconsistent or duplicative burdens on businesses operating interstate (for example, OHS regulations, building regulations and consumer protection laws) 	<ul style="list-style-type: none"> Regulations in all or some industries or in a particular area
Indicator categories	<ul style="list-style-type: none"> Administrative compliance costs Difficulty for businesses in obtaining licences, permits and registrations 	<ul style="list-style-type: none"> Timeliness Predictability and uncertainty Administrative compliance costs 	<ul style="list-style-type: none"> Duplication Inconsistency 	<ul style="list-style-type: none"> General stock (total and by business type) Regulatory design Regulatory administration Regulatory enforcement Reform progress
Data sources	<ul style="list-style-type: none"> Primarily business interviews (face-to-face) 	<ul style="list-style-type: none"> Government agencies Expert assessment Business interviews 	<ul style="list-style-type: none"> Expert assessment 	<ul style="list-style-type: none"> Government agencies Expert assessment
Main caveats	<ul style="list-style-type: none"> Indirect indicators A suite of indicators should be used to interpret difficulties of obtaining licences, permits and registrations 	<ul style="list-style-type: none"> Indirect indicators Quantitative indicators need to be considered in conjunction with contextual information 	<ul style="list-style-type: none"> Indirect indicators Would not necessarily identify which regulatory practices are preferred 	<ul style="list-style-type: none"> Indirect indicators Indicators should be considered in conjunction with contextual information

8.2 Developing a benchmarking program

In addition to identifying benchmarking opportunities, there are several key issues or questions that have to be resolved before benchmarking can proceed. These include deciding:

- Which regulations to benchmark?
- How to schedule the benchmarking program?

Answering these questions should be guided by the likely costs and benefits of the benchmarking program. In addition, other initiatives that have (or have had) similar goals should be considered with a view to maximising complementarities and minimising duplication. One such initiative is the Standard Business Reporting project overseen by a committee of Australian and State Government officials (chapter 7).

Which regulations to benchmark?

In principle, regulations should be selected on the basis of the benchmarking offering the greatest net benefit to the community. This depends in part on the extent of the potential unnecessary regulatory burden imposed by particular regulations and the capacity of benchmarking to identify them and their source.

Although identifying regulations where unnecessary burdens are greatest is difficult, choosing priorities for inclusion in the benchmarking program could be informed by surveys on regulatory burden concerns undertaken by business groups and government agencies. These include the Red Tape Register Survey in New South Wales (SCC 2005) and URS studies for the Minerals Council of Australia (URS 2006a, 2006b). Surveys such as these can help identify where regulatory problems appear to be greatest.

In general, the areas of greatest concern identified in such surveys cover most of the regulatory reform ‘hot spots’ identified by COAG (2006a). These areas include rail safety regulation, occupational health and safety, national trade measurement, chemicals and plastics, development assessment arrangements and building regulation. Other areas in which COAG has agreed to pursue further regulatory reform include business registration, bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999*, personal property security registrations and product safety regulation (COAG 2006b).

The Productivity Commission also received a number of submissions that nominated the regulations that businesses currently consider to be of high priority

(box 8.1). Regulations identified in submissions as being worthy of inclusion in the benchmarking program, but not included in COAG's 'hot spot' list, included food regulations, financial services regulations and childcare.

Box 8.1 Examples of participants' views on benchmarking priorities

Australian Food and Grocery Council stated:

Food Regulation which relies on adoption by States and Territories of a Model Food Act developed by the Commonwealth, for its enforcement would be a suitable benchmarking opportunity. (sub. 3, p. 3)

National Bulk Commodities Group noted:

That a set of qualitative and quantitative performance indicators covering such disciplines as competition, investment, skills, business environment and technology should be developed to assist the Regulator understand the commercial activity, which it regulates. (sub. 4, p. 6)

Real Estate Institute of Australia listed the following regulations for benchmarking:

- (a) professional licensing (real estate agent licensing);
- (b) building regulation;
- (c) development assessment arrangements;
- (d) property law (ownership and title including transfer);
- (e) property taxation (including stamp duties and land taxes);
- (f) the maintenance and operation of trust accounts;
- (g) privacy;
- (h) OH&S;
- (i) industrial relations;
- (j) special property disclosures (e.g. energy efficiency, water efficiency, presence of asbestos);
- (k) foreign investment guidelines; and
- (l) trade practices / fair trading. (sub. 8, p. 5)

The Australian Bankers' Association stated:

The ABA considers that corporations regulation, banking regulation and financial services regulation should be given a high priority in the regulatory benchmarking process because:

- Banks and other financial services providers must deal with an extremely high level of regulation, with many entities subject to multiple regulations and regulators.
- A competitive, innovative and efficient financial system is critical to the performance of the entire economy. (sub. 16, p. 5)

Child Care New South Wales noted they:

... would prefer that coverage should seek to be more narrowly focused rather than comprehensive. Benchmarking should seek to facilitate economic and social improvement in areas of strategic significance. (sub. 11, p. 5)

The cost of undertaking benchmarking should also be considered in determining which regulations to benchmark. In general, the cost of data collection for indicator

assessment would increase with the number of regulations included in the benchmarking. Costs would also most likely be greater if the legislation or regulation is complex.

There might be opportunities to reduce data collection costs, however, by benchmarking a number of regulations that apply to a particular type of business at the same time. Reference businesses could therefore be surveyed regarding several regulations at the one time, enabling ‘economies of scope’ in data collection to be realised.

Actual costs, however, would also depend on factors such as the number of indicators selected, the availability of data, the data collection method and the frequency of reporting.

Without some experience, it is difficult to determine with accuracy which particular regulations are cost-effective to benchmark. However, focusing initially on those regulations that are likely to involve the greatest amount of unnecessary burden, and for which there are variations in burdens across jurisdictions, and adding to these over time if benchmarking proves successful, appears to be a practical way forward.

Which jurisdictions would be involved?

The Productivity Commission has been asked to consider regulatory burdens across all levels of government. The relevance of particular levels of government would depend on the regulations being benchmarked. In the case of food regulations, for example, all three levels of government would be involved (given the national system of developing food standards and local government involvement in food hygiene and enforcement in many areas). In the case of regulations covering building approvals, only State and Territory and local governments would be involved in the benchmarking.

The coverage of the benchmarking could also be expanded to include the regulations of other countries. This would broaden the comparisons and the scope to identify *good practice*, which would be especially helpful in benchmarking some Australian Government regulations where there are no other similar regulations in Australia.

Regulations from New Zealand, in particular, could be included given several regulatory regimes in Australia are already shared with New Zealand, and because many regulatory regimes in both countries have broadly similar objectives and operate in a similar legal framework. The Australia New Zealand Food Standards Code, for example, applies in both countries and several Ministerial Councils operating in Australia include New Zealand as a member (including the Ministerial

Council of Attorneys-Generals and the Ministerial Council on Consumer Affairs). Another example of the integration of regulatory systems in Australia and New Zealand is the Trans-Tasman Mutual Recognition Arrangement which came into operation in 1998.

As already noted, only those regulations which have similar objectives across both countries could be benchmarked.

Scheduling the program — how often to benchmark?

There are various ways to schedule a benchmarking program, including the use of a ‘rolling’ program and differential reporting frequencies for some indicators.

A rolling program could be introduced whereby some areas of regulation are benchmarked periodically. This could involve, for example, benchmarking the three types of compliance costs referred to in this report each year (if appropriate), with areas of regulation changing from year-to-year. Some areas of regulation, however, could be re-benchmarked. As such, the regulations benchmarked in the first year could be benchmarked again some time in the future. For example, benchmarking changes in the stock of regulation and benchmarking regulatory design, administration and enforcement against accepted good practice principles could be undertaken every three or four years.

A periodic, rolling program is likely to be more cost-effective than the annual reporting of all benchmarked regulation. A rolling program has the attraction of benchmarking particular regulations at intervals where changes have occurred and reforms have been introduced.

It is likely to take longer to develop indicators and metrics for more complex regulatory areas. Consequently, it could be practicable to schedule the benchmarking of these areas after the first year. This would also allow for the lessons and experiences from earlier benchmarking to assist in these more difficult areas.

Evaluating the costs and benefits

As noted in earlier chapters, there is limited information available to help estimate the costs of the suggested benchmarking. Notably, costs will vary considerably depending on the indicators selected, the benchmarking coverage and scheduling chosen, and the availability of data in each jurisdiction regarding the regulations benchmarked.

Nevertheless, some indication of the possible magnitude of costs can be attained from other studies measuring regulatory burdens, both in Australia and internationally (table 8.2). For example, measuring administrative compliance costs for ten departments in the Netherlands involved 15 consultants working for six months on each and was estimated to cost €10 million (approximately A\$15 million). A similar study in the United Kingdom covering 20 departments was estimated to cost approximately £15 million (approximately A\$35 million). It was also estimated that ongoing measurement over five years would involve an additional A\$8.4 million and A\$10 million respectively for the two studies (BRTF 2005).

The costs associated with these studies, however, are not strictly comparable with those of the benchmarking opportunities identified in this report because of significant differences in their respective scope and methodology (chapter 3).

Unlike studies of regulatory burden in the Netherlands and the United Kingdom, for example, the benchmarking suggested in this report only covers key regulatory areas. In addition, the suggested benchmarking would not aggregate administrative compliance costs across the jurisdictions (at least initially), as is undertaken in the Netherlands and the UK studies. These differences would have the effect of keeping the costs of benchmarking in Australia relatively low.

That said, the benchmarking suggested in this report covers several types of regulatory burdens (not solely administrative compliance costs as in the United Kingdom and the Netherlands), and Australia has State and Territory governments as well as a National government and local governments (and hence more regulatory agencies). These differences will have the effect of increasing costs for the suggested benchmarking compared with the overseas studies.

In addition to differences in scope, there are also differences in data collection methodologies between the Netherlands and the UK approaches and the benchmarking suggested in this report (chapter 3). For benchmarking administrative compliance costs, for example, it is suggested to sample a relatively small number of *reference businesses* to help lower the benchmarking costs. For other elements of the suggested benchmarking exercise, regulatory agencies and expert advice would be used (table 8.1).

Insights on the possible costs of benchmarking can also be gained from the Productivity Commission's work as Secretariat to the Steering Committee for the Review of Government Service Provision. The Review reports performance indicators for key services delivered by governments in Australia, focusing on performance indicators that provide an overall, system-wide insight into the efficiency and effectiveness of each service area (SCRGSP 2006a). Approximately

14 areas are reviewed (including school education, public hospitals, community services and court administration) with approximately 20 indicators developed for each area (on average).

Table 8.2 Costs of other studies measuring regulatory burdens

<i>Study</i>	<i>Key features</i>	<i>Approximate cost</i>
SCM (Netherlands)	<ul style="list-style-type: none"> • Measured administrative compliance costs only • Covered regulations managed by five regulatory departments 	<ul style="list-style-type: none"> • €10 million (approximately A\$15 million) for creating a regulatory list and measuring burdens for existing regulation (measurement required 15 consultants working for six months on each of the main regulatory departments) • €5 million (approximately A\$8.4 million) per annum for ongoing measurement over five years
SCM (UK)	<ul style="list-style-type: none"> • Measured administrative compliance costs only • Covered regulations managed by 20 departments and other independent regulatory agencies 	<ul style="list-style-type: none"> • £15 million (approximately A\$35 million) for creating a regulatory list and measuring burdens for existing regulations • £4 million (approximately A\$10 million) per annum for ongoing measurement over five years
Reporting on planning permit activities (DSE, Victoria)	<ul style="list-style-type: none"> • Generated reports on reference types of planning activities across Victoria • Indicators included number of applications and time taken in processing 	<ul style="list-style-type: none"> • A\$1.5 million budgeted over three years (for development of strategy, software changes to council systems, reporting system and staff costs) • A\$300 000 per annum as ongoing costs
General Accounting Office (United States)	<ul style="list-style-type: none"> • Estimated the cumulative cost to business of US federal regulations • Face-to-face interviews with 15 businesses over 1994–96 	<ul style="list-style-type: none"> • US\$300 000–400 000 (approximately A\$390 000–520 000)
The Victorian Regulatory System (VCEC, Victoria)	<ul style="list-style-type: none"> • Assessed Victoria's regulatory environment • Information included number of licences, number of Acts and regulations, key performance indicators of regulators and enforcement strategies 	<ul style="list-style-type: none"> • A\$100 000

Sources: BRTF 2005; GAO 1996; DSE 2006; VCEC 2005; VCEC pers. comm., 14 November 2006. See also chapters 3, 5 and 7.

Costs for the Review of Service Provision are shared by the Productivity Commission as Secretariat and government departments and agencies which provide data and are involved in working groups (of which there are 12). The Productivity Commission's costs were approximately \$2 million in 2006.

In April 2002, COAG asked the Steering Committee to also produce a regular report on key indicators of Indigenous disadvantage. This report provides data for 12 headline indicators (such as life expectancy at birth and victim rates of crime), with a number of strategic change indicators also reported in support of these headline indicators (SCRGSP 2006b). As for the report on Government Service Provision, costs are shared with government departments and agencies, with the Productivity Commission's costs in 2006 being approximately \$1 million.

Ultimately, experience will reveal more precisely the costs associated with benchmarking regulatory burdens as suggested in this report and allow better informed judgements as to the possible expansion of benchmarking activities.

The potential benefits from benchmarking are also indicative rather than conclusive. However, business support for benchmarking regulatory burdens during the Productivity Commission's initial consultations, and in participants' submissions, suggests a perception that the gains might be substantial (Insurance Council of Australia, sub. 18; CRC Construction Innovation, sub. 25). The nature and scale of business complaints over regulatory burdens in other reports and surveys also signals scope for substantial benefits to be achieved.

The Regulation Taskforce (2006), for example, highlighted that the regulatory compliance costs for business can be significant. It reported a survey by the State Chamber of Commerce (New South Wales) that found that the average business in New South Wales spends up to 400 hours a year (or nearly \$10 000), in time alone, on complying with regulations or meeting its legal obligations. The Regulation Taskforce (2006) also noted that one large business (QBE Insurance Group) estimated it spends \$60 million a year on compliance matters.

Further indications of the potential benefits from benchmarking can be gained from the Productivity Commission's (2006a) modelling work of the likely benefits of implementing the National Reform Agenda (NRA). This modelling work, while still preliminary, suggests that the economic gains from further reform under the NRA could be large, with both competition-related and other reform areas making important contributions to potential benefits. For example, if reducing the regulatory burden lowered compliance costs by one-fifth from conservatively estimated levels, a cost saving of around \$7 billion (0.8 per cent of GDP) would be achievable.

Although benchmarking would only form a part of the regulatory reform program, it is apparent that if only a small fraction of the potential benefits could be attributable to it, the amount would far outweigh the likely costs of benchmarking.

Caution is needed, however, in using total regulatory costs, and reductions in these as an indication of the size of the possible benefits from benchmarking regulatory burdens. This is because it is the identification of *unnecessary* burdens that influences the benefits from benchmarking, not the total costs. This point was highlighted by the Regulation Taskforce (2006).

Although the Regulation Taskforce emphasised that estimates of the economic costs of regulation in Australia have limitations, including the difficulty in identifying what costs were unnecessary to achieve policy goals, it concluded:

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. (2006, p. 13)

The extent of the benefits from benchmarking compliance costs across jurisdictions will also depend on the existence of differences in regulatory burdens (as the benefit of yardstick competition weakens if all jurisdictions perform similarly). It appears, however, that significant variations in regulatory burdens across jurisdictions do exist in many regulatory areas. For example, the Housing Industry Association (HIA 2006a) noted that New South Wales has more onerous OHS regulations than other States and Territories.

Further, although some differences in regulatory burden could reflect differences in policy objectives or outcomes sought (despite best efforts to only compare regulations with similar objectives), there can still be benefits from highlighting where differences exist. This is because it strengthens the accountability of regulators by requiring them to demonstrate offsetting regulatory benefits where these are claimed. Moreover, benchmarking aspects of the quantity of regulation and the quality of regulations against good practice design, administration and enforcement principles would be beneficial regardless of differences in the objectives of a regulation.

International estimates of the benefits from regulation reduction programs also suggest substantial benefits might be available. The Ministry of Finance in the Netherlands, for example, has claimed cumulative burden reductions of over €900 million (approximately A\$1.5 billion) over 2003 and 2004 as a result of its

program to reduce administrative burdens for business (Ministry of Finance et al. 2005).

Significant gains have also been suggested in the United Kingdom. It has been estimated that the use of the SCM to reduce administrative burdens, as in the Netherlands, would potentially increase GDP in the United Kingdom by £16 billion (approximately A\$35 billion) (BRTF 2005).

In summary, benchmarking has the *potential* to make a significant contribution to reducing regulatory burdens on business. Many of the benefits of benchmarking would come from the process of benchmarking (such as getting parties to share information and establishing systems to collect information). These benefits would complement benefits achieved through identifying opportunities for improvement and facilitating yardstick competition, and policy debate from reporting indicators of regulatory burden.

These benefits could be orders of magnitude larger than the likely costs, assuming the information and incentives from benchmarking are sufficient to engender government action. However, there is no certainty that this would be the case.

A modest program initially

Although benchmarking regulatory burdens offers potentially significant net benefits, there remains uncertainty over the achievement of such gains. There is also much to be learnt from implementing a benchmarking program. As such, there appears merit in adopting a modest benchmarking program initially that could be expanded over time if the benchmarking program proves successful. This would also enable unanticipated problems to be more easily managed.

As such, a small number of key regulations or regulatory areas could be benchmarked initially. If this proved successful, additional regulations could be added to the benchmarking activity. This could continue until the program matures.

The idea of starting with a small number of regulations and expanding the program over time was supported by several participants. Real Estate Institute of Australia, for example, stated:

... it is logical to develop and establish workable benchmarking systems and processes prior to attempting to benchmark all other regulations. This will help to minimise errors which could otherwise be duplicated across many areas. A robust process should first be established for a 'representative' regulation (e.g. OH&S) which may then be used to assess all other similar regulations. (sub. 8, p. 5)

An indicative program

The Productivity Commission’s preliminary view is that there would be merit in benchmarking both compliance costs and the quantity and quality of regulations using a suite of possible indicators (chapters 4 to 7). The key features of a preferred benchmarking program include:

- Adopting a modest program initially — the number of regulatory areas benchmarked could increase over time as lessons are learnt and the net benefits of the benchmarking become clearer (assuming net benefits are achieved).
- Focusing on ‘hot spot’ regulations in the first instance — as the benchmarking program progresses, the focus could be shifted to wherever the expected unnecessary burdens are the greatest.
- A rolling program whereby regulations are benchmarked on a periodical, rotational basis — some regulatory areas could be re-benchmarked and others added to or removed from the program as priorities change.

An indicative program is presented in table 8.3. This program could represent part of an initial tranche.

Table 8.3 Indicative program for benchmarking regulatory burdens — by possible area of regulation

	2007	2008	2009
Compliance costs			
Licensing and administrative compliance costs	<ul style="list-style-type: none"> • Area 1 • Area 2 	<ul style="list-style-type: none"> • Area 3 • Area 4 • Area 5 	<ul style="list-style-type: none"> • Area 6 • Area 7 • Area 8
Approvals processes	<ul style="list-style-type: none"> • Area 1 • Area 2 	<ul style="list-style-type: none"> • Area 3 • Area 4 • Area 5 	<ul style="list-style-type: none"> • Area 6 • Area 7 • Area 8
Duplication and inconstancy	<ul style="list-style-type: none"> • Area 1 • Area 2 	<ul style="list-style-type: none"> • Area 3 • Area 4 • Area 5 	<ul style="list-style-type: none"> • Area 6 • Area 7 • Area 8
Quantity and quality of regulations			
Quantity of regulation	All (baseline)		
Quality of regulation	<ul style="list-style-type: none"> • Area 1 • Area 2 	<ul style="list-style-type: none"> • Area 3 • Area 4 • Area 5 	<ul style="list-style-type: none"> • Area 6 • Area 7 • Area 8

Note: For some regulatory areas it would not be appropriate to benchmark all types of regulatory burdens.

A subsequent ‘three-year’ tranche could be developed based on an expanded set of regulations and indicators if benchmarking proved successful. Some regulations could be re-benchmarked as part of this second tranche.

The Terms of Reference require the Productivity Commission to review the merits of the benchmarking assessments, performance indicators and reporting framework for COAG’s consideration after three years of assessments. This would provide an opportunity to reconsider the coverage of the benchmarking program and how it is scheduled.

Feedback is invited on the benchmarking approaches canvassed in this discussion draft. Specifically, the Productivity Commission seeks further information on the likely costs and benefits of the suggested benchmarking, and on the possible regulations that should be given priority in any benchmarking.

8.3 Other implementation and reporting issues

Several issues would need to be considered in implementing the agreed benchmarking program, including:

- consulting and involving business and government;
- deciding how many and which indicators to report;
- developing data collection methods and standards;
- identifying appropriate caveats to report;
- developing useful templates to collect and report information; and
- ensuring momentum and commitment from all parties.

Consulting and involving business and government agencies

The ongoing engagement of business and government agencies during benchmarking implementation (in addition to upfront consultation) would be highly important. This is because both are likely to be involved in providing data and because of the practical knowledge that each have on what indicators to focus on, how to measure particular burdens and what caveats are most important. Consultation would be required with intermediate businesses, such as accounting and legal businesses, as well as those businesses upon which regulatory burdens fall.

In addition, consultation would be useful in generating business and government support for the benchmarking. This support would be important to encourage governments to acknowledge results and take action to realise the opportunities for improvements identified through the benchmarking.

In order to give effect to these consultation requirements, and to ensure the ongoing involvement of business and governments, it would be useful to establish Advisory Reference Groups. These groups could periodically advise on aspects of the benchmarking program and provide a channel to report back to those they represent.

There would also be benefits from consulting with governments on the results of the benchmarking to provide an opportunity for jurisdictions to comment, enable supplementary information to be added to the benchmarking reports to assist interpretation, and avoid unintended factual errors.

Choosing indicators to report

In selecting a suite of indicators the aim would be to report enough indicators of sufficient quality to highlight actual, or the potential for, differences in regulatory burden across jurisdictions or over time to an acceptable degree of confidence to encourage improvements in regulatory arrangements. In considering the inclusion of an indicator, the criteria identified in chapter 2 should be used to assess its appropriateness.

How many indicators?

There are a large number of indicators of regulatory burden that could be reported. In broad terms, it would be possible to report on a ‘comprehensive’ or a narrower, more ‘focused’ set of indicators.

Expanding the number of indicators to measure and report would obviously increase the costs of the benchmarking and any burden on the business community. However, it is not altogether clear that a large number of indicators (at least beyond some point) is likely to improve the benchmarking outputs or outcomes.

Around five to 35 possible indicators have been identified for each of the three areas of compliance costs and the quantity and quality of regulation (chapters 4 to 7). However, it could be that a smaller or greater number of indicators would be appropriate to present a sufficiently robust picture of regulatory burden to compare across jurisdictions. The number of indicators might also change over time as benchmarking techniques are refined.

Some participants have suggested that benchmarking should focus on a few indicators initially. For example, the Victorian Government stated:

To be effective in driving best practice regulation, it will be important to limit the number of indicators to a relatively small set of robust measures that can be readily identified and understood by policy makers and businesses alike and can endure through time. (sub. 21, p. 9)

Ultimately, the appropriate number of indicators would be determined by what is necessary to achieve the objectives of the benchmarking exercise.

Selecting and testing indicators

Proposed indicators should be tested for their robustness to ensure they measure what is intended. This could be done initially by assessing whether, in theory, they measure what they are pertaining to report. For some indicators, empirical studies could be undertaken to explore the relationship between an indicator and estimates of regulatory burden to ensure the robustness of such indicators. Empirical studies might have to occur periodically to ensure the relationship does not materially change over time and should be prioritised according to the likely net benefits.

Indicators should also be tested for how appropriately they would be interpreted. In particular, indicators would have to be assessed for any incentives they might create for perverse outcomes. Indicators that could materially distort regulatory policy responses and activities in ways which are undesirable from a community-wide perspective, should be avoided or carefully qualified. For example, regulatory activity could be distorted in adverse ways if policy makers address what is measured at the expense of other burdens that might be more important to address but are not measured.

It would also be prudent to *test run* some elements of the benchmarking before implementing the main program. This could involve collecting data for some indicators for a selected regulation (perhaps for only one or two jurisdictions). This should help highlight any unanticipated difficulties or costs in data collection. Case studies planned for the final report of Stage 1 of this study will go some way to identifying what might be required and the challenges involved.

Testing indicators should include an assessment of an indicator on its own, and as part of a suite of indicators (as an indicator might be potentially misleading on its own, but provide useful information if reported as part of a suite of indicators).

Business and government input is critical

It is important that business and governments are consulted further on indicators and their metrics before deciding which and how many are measured. This view was supported by several participants. For example, the Australian Financial Markets Association stated:

We suggest that further targeted consultation should be undertaken on the form of indicators that might be feasible and useful for an assessment of the regulatory burden generated by regulation specific to the financial sector. (sub. 10, p. 6)

The Australian Bankers' Association similarly noted:

The ABA believes that a range of reporting indicators could be used to benchmark performance of business regulation. However, identifying reporting indicators is not straightforward, and as previously stated, further consultation should be undertaken on the form of indicators that might be feasible and useful for an assessment of the regulatory burden generated by regulation specific to the banking and financial services sector. (sub. 16, pp. 9–10)

Developing data collection methods and standards

An important task before implementing benchmarking is to attain agreement across jurisdictions on the methods, standards and definitions for collecting, analysing and reporting information. Without such agreement, variations in reported results could reflect different definitions, methodologies or metrics for reporting data rather than actual differences in regulatory burden. This in turn would erode the value and credibility of benchmarking, limiting the insights to be gained and reducing the likelihood of resulting regulatory reform.

In particular, agreement would be desirable on how to define and measure indicators. In the case of building approvals, for example, it is important that measured delays can be reliably attributed to poor regulatory administration. It is also important that definitions of key terms are similar across jurisdictions, or else the results reported may vary due to different definitions rather than performances. Data collection methods should similarly be acceptable to stakeholders.

The appropriate data collection method would depend on what is being measured, the current availability of data sets and the resources available to collect additional data. For example:

- The Standard Cost Model and Business Cost Calculator frameworks could be used as a basis to measure administrative compliance costs drawing on information from reference businesses (chapter 4).

-
- Expert advice could be used to gather information on indicators of duplication and inconsistency (chapter 6).
 - Collecting information on indicators relevant to the quantity and quality of regulation would generally come from government agencies (chapter 7).

Investigating existing data sources would be an essential task, however, before collecting additional data. In addition to considering existing data sources, it would be necessary to consider ways to optimise the use of existing information infrastructure more broadly. This could include investigating existing data networks and systems.

A common data collection challenge would be the specification of reference businesses and the appropriate sampling frame from which to select such businesses. The reach of a regulation in terms of how many businesses it applies to, and the heterogeneity among affected businesses, would have to be considered. The greater the reach of regulation, and the more heterogeneous are businesses, the more likely it is that a larger number of reference businesses would be needed to satisfactorily benchmark compliance burdens.

Information on a regulation's reach and the heterogeneity of business is not always easily found. Further, obtaining this information is likely to add to the data collection costs. Additional work in this area appears necessary before benchmarking can be implemented. The involvement of the ABS would be helpful in this regard. There would also be benefits from pilot-testing such a data collection approach.

As noted in chapter 2, an advantage of using a reference business approach is that it involves the collection of detailed information from a relatively small number of businesses (to keep benchmarking costs on business as low as possible). It would also assist in maintaining 'like-with-like' comparisons.

This approach is consistent with the overarching goal of presenting a broad picture of regulatory burden and how it changes over time, rather than an account of the exact level of burden.

Another challenge is to manage problems of self-selection bias in the provision of data and information. Some businesses may be more willing than others to participate in interviews or other forms of data collection. This risk could be reduced by reimbursing businesses for their time in completing a survey. This issue also highlights the potential need for data validation tests and verification by independent experts.

It would be necessary to develop a data collection plan for each area of benchmarking to ensure efficiency and robustness in collection, and to gain acceptance from business and government agencies. Data collection methods should accord with generally agreed ‘good practice’.

Among other issues, the data collection plan would need to include consideration of the scope and coverage of the information collected. For example, whether data collected would be able to illustrate differences between small and large businesses, or between export and non-export businesses. The issues and questions that would have to be considered before implementing data collection activities are outlined in chapter 2.

Regard would have to be had for the central clearance process operated through the Statistical Clearing House (SCH) for business surveys conducted by the Australian Government (ABS 2006). The purpose of this process is to ensure that surveys are necessary, are well-designed and place minimum burden on business respondents. As such, all surveys that are directed to 50 or more businesses and that are conducted by or on behalf of any Australian Government agency, are subject to clearance by the SCH. The ABS administers the clearance process.

Reporting appropriate caveats

Reporting appropriate caveats would be important to ensure credibility in the benchmarking process (and therefore participation and subsequent use of reported information), and to avoid misinterpretation of the results.

Some of the main caveats that would need to be reported relate to:

- Differences in the objectives of legislation and regulations — if there are substantial differences in objectives, performance should not be compared. However, for small differences in objectives, comparisons of performance could be appropriate if accompanied by relevant caveats and supplementary information.
- The indirect nature of most indicators of regulatory burden — most indicators would not measure incremental cost.
- Data limitations including a possible lack of data or problems with the quality of data (these would vary depending on the indicators reported) — specific concerns could include the inadequate representativeness of identified differences in burden as indicative of unnecessary burdens, especially when the reach of regulation is wide (and often unknown) and businesses are heterogeneous.

As stated throughout this report, the suggested approach obviates having to benchmark the benefits of regulation. As such, the appropriateness of a regulation would not be considered. However, by identifying differences in burdens for regulations with the same objectives and systemic problems in regulation design, administration and enforcement, benchmarking could be useful in highlighting scope for improved regulation or the use of alternative policy instruments.

Developing useful data collection and reporting templates

The development of templates for inputting and reporting data would also form part of the implementation plan for benchmarking regulatory burdens. Such a template should:

- efficiently maintain a record of data as it is collected and in accordance with the collection methods and standards agreed (possibly involving automatic links between collection points and a central database);
- allow data verification and manipulation processes to be undertaken;
- present data and supporting information in a clear and meaningful manner (preferably with options to change the format or presentation of results);
- enable appropriate caveats to be included to ensure readers are informed of any weaknesses in the data or where special care is required in interpreting results; and
- be flexible and allow potential changes and improvements (especially if it is envisaged that benchmarking activities could expand in the future if seen as worthwhile).

Ensuring momentum and commitment

It is important that benchmarking efforts are maintained for at least the duration of a trial period (unless the benchmarking is clearly not proving worthwhile) and, if successful, beyond. This is because the benefits are likely to take some time to materialise, and because it may take some trial and error in the early stages of implementation to smooth out unforeseen difficulties.

In order to maintain momentum, it is suggested that:

- the benefits of benchmarking are clearly articulated and actions resulting from such activities are reported — this could involve the documentation of the actions governments take in response to benchmarking reports and resulting outcomes;

-
- ways of improving the benchmarking are continually sought to keep the process at ‘best practice’, especially in identifying data gaps;
 - interested parties are kept aware of methodological developments and are provided opportunities to input into the development of new approaches and indicators or other aspects of the benchmarking and reporting — this could include holding occasional workshops; and
 - the benchmarking is integrated into the policy making process wherever possible, while focusing on regulations that are considered to cause significant unnecessary regulatory burdens.

8.4 In summary

Achieving minimum effective regulation is an important policy goal. Carefully designed and implemented benchmarking of regulatory burdens on business could make a contribution to that goal, if coupled with a commitment from governments to action lessons learnt. Consequently, the benchmarking should be seen as a complement to other important regulatory reform initiatives.

In this discussion draft, the Productivity Commission has outlined an approach to benchmarking for the purpose of identifying unnecessary regulatory burdens on business. It would focus on all the main types of regulatory burdens, it can be applied across all forms of regulation and it demonstrates the different measurement methodologies required to benchmark regulatory burdens on business. It also provides two useful ways to gain insights into regulatory burdens by including indicators of both regulatory compliance costs and the quantity and quality of regulations.

Benchmarking the quantity and quality of regulation would also be useful in identifying possible causes of unnecessary regulatory burdens, and highlighting some of the systemic problems associated with regulation making, administration and enforcement.

It is suggested that a modest number of regulations be benchmarked initially. The regulatory ‘hot spots’ identified by COAG (2006a, 2006b) could be benchmarked first, with the focus shifting over time to wherever the expected unnecessary regulatory burdens are the greatest. Some regulations would be benchmarked periodically as part of this rolling program.

Implementation of the suggested benchmarking would involve many challenges, however. Selecting indicators and how to measure them, and developing data collection methods, for example, might not be straightforward. Prioritising which

regulations to benchmark, and when, would also be challenging. Moreover, identifying where regulatory burdens might be unnecessary is not a sufficient basis to reform a regulation — an assessment of the net benefits of a regulation and alternative approaches should also be undertaken before making changes.

Regardless of these challenges and the need to recognise the limitations of benchmarking activities, benchmarking regulatory burdens is feasible and offers the potential for considerable benefits.

The Productivity Commission is interested in feedback on this discussion draft. Feedback will be used to assist in the completion of the final report to be given to the Australian Government in February 2007.

A Public consultation

A.1 Submissions

<i>Participant</i>	<i>Submission number</i>
Atherton Advisory Pty Ltd	9*#
Australian Bankers' Association Inc.	16
Australian Financial Markets Association	10
Australian Food and Grocery Council	3
Australian Privacy Foundation	6
Business Council of Australia	13
Canberra International Airport	12*#
Child Care New South Wales	11
Communications Alliance Ltd	19
Confidential — identification withheld	23*
CRC Construction Innovation	27
David Price	2
Finance Industry Council of Australia (FICA)	17
Government of Western Australia	26
Institute of Body Corporate Managers (Victoria) Inc.	1
Insurance Council of Australia Limited	18#
National Association of Retail Grocers of Australia (NARGA)	22
National Bulk Commodities Group Inc.	4
Percat Group Pty Ltd	5#
Property Council of Australia	25*#
Real Estate Institute of Australia	8#
Securities & Derivatives Industry Association	7
Tasmanian Government	24
The Chamber of Minerals & Energy of Western Australia	20
The Pharmacy Guild of Australia	14
Urban Development Institute of Australia (Victoria)	15#
Victorian Government	21

* Indicates the submission contains confidential material not available to the public. # Indicates that the submission includes attachments.

A.2 Visits

New South Wales

ABL State Chamber

Australian Securities and Investment Commission (ASIC)

Property Council of Australia (PCA)

NSW Government — representatives from Cabinet Office — Intergovernmental & Regulatory Reform Branch, NSW Treasury, Department of Primary Industries, Department of State and Regional Development

Victoria

Business Council of Australia (BCA)

Department of Justice, Consumer Affairs Victoria

Minerals Council of Australia (MCA)

Urban Development Institute of Australia (UDIA)

Victorian Government — representatives from the Department of Premier and Cabinet, Department of Treasury and Finance

Queensland

Commerce Queensland

Queensland Resources Council (QRC)

Queensland Government — representatives from the Department of the Premier and Cabinet, Queensland Treasury, Department of State Development and Trade

Western Australia

Chamber of Commerce and Industry of Western Australia

Small Business Development Corporation

Western Australian Government — representatives from the Department of the Premier and Cabinet, Department of Treasury and Finance

South Australia

Business SA — representatives from the Australian Hotels Association (South Australia), Property Council of Australia (SA)

South Australian Government — representatives from the Department of the Premier and Cabinet, Department of Treasury and Finance, Department for Transport, Energy and Infrastructure, Department for Families and Communities, Department of Justice, Department of Trade and Economic Development, Department for Environment and Heritage, Planning SA

Tasmania

Human Solutions Pty Ltd

Tasmanian Chamber of Commerce and Industry

Tasmanian Government — representatives from the Department of Premier and Cabinet, Department of Treasury and Finance, Department of Economic Development, Department of Health and Human Services, Department of Primary Industries and Water

Australian Capital Territory

ACT Government — representatives from the Chief Minister's Department, Department of Treasury

Australian Chamber of Commerce and Industry (ACCI)

Australian Food and Grocery Council (AFGC)

Australian Local Government Association (ALGA)

Housing Industry Association (HIA)

Australian Government

Australian Government — representatives from the Department of Prime Minister and Cabinet, Department of Treasury, Department of Industry, Tourism and Resources — Office of Small Business

Department of Environment and Heritage

B Theory and practice of composite performance indexes

Key points

- In principle, composite performance indexes can provide a succinct account of performance in different aspects and are useful for communicating the bottom-line impact of performance improvement to a wide audience.
- In practice, no conventional composite index is perfect because the measurement of overall performance is likely to be affected by the choice of ways to transform and aggregate the original indicators.
- Prudent use of composite indexes requires an understanding of their strengths and weaknesses, as well as employing multivariate statistical methods to objectively combine indicators into a single index.
- There are numerous empirical and theoretical problems in an aggregation of the indicators proposed in this study. As such, it is inadvisable to produce a composite index to gauge the relative overall levels of compliance burden on business across the States and Territories in Australia.

Some study participants expressed interest in an index to compare regulatory performance across the States and Territories in Australia, similar to the annual Ease of Doing Business Index produced by the World Bank for ranking countries in terms of their performance in streamlining business regulation.

Indeed, aggregating performance indicators into composite indexes is a common way to summarise information on different performance aspects. For example, there are many cross-country indexes compiled by international organisations to gauge social, economic and environmental progresses. In these applications, an aggregative approach to cross-jurisdictional comparisons is used to produce ‘league tables’.

The theory and practice of composite performance indexes are explored in this appendix. An overview of the rationale and issues for using a single index to assess overall performance is presented in section B.1. The methodological foundation of composite indexes is discussed in section B.2. The feasibility of aggregating the proposed indicators into a single index is discussed in section B.3. A selection of

statistical methods applicable to an aggregation of performance indicators are presented in Attachment B.1.

B.1 Why aggregate indicators?

Benchmarking the burden of regulation compliance across jurisdictions involves measuring and comparing representative indicators of the major cost effects associated with business regulation (chapter 2). Using multiple indicators is typically required to describe broad performance profiles of regulatory regimes because:

- regulation practices affect compliance burden in different ways;
- legal reporting requirements include numerous cost and performance measures;
- reliance on existing data sources for practical reasons means that a variety of performance indicators reflecting different scopes and purposes of measurement are used; and
- difficulties in directly measuring compliance costs make it necessary to identify certain characteristics of regulatory regimes as surrogates for their effects on compliance burden.

Although many indicators are usually used for a comprehensive benchmarking exercise, they do not readily lend themselves to a simple convenient comparison of performance. Individual indicators do not necessarily have clear and observable relationships with the actual level of incremental compliance burden. Some of them are possibly measuring inherently similar performance attributes, while others can be contradictory.

Various sources of ‘noise’ in data can obscure the true ‘signal’ from a set of indicators. When this is the case, ambiguity and inconsistency, as opposed to a lack, of indicators would be the primary barrier to performance comparisons.

In principle, performance indicators can be made more useful by transforming them into ‘structured’ information to convey a precise and succinct account of performance, particularly from a decision-making perspective. To this end, a composite index is valued for the ability to distil essential information from multiple indicators by addressing the potential for duplicate, inconsistent and imprecise measurement of performance.

Composite indexes, if constructed appropriately, represent the synthesis of information using mathematical methods instead of a generic thought process. In essence, the use of composite indexes is based on the premise that summary

statistics capture the most critical information needed for analytical and decision-making purposes (Sharpe 2004).

A useful aspect of structured information is the ability to address potential measurement errors. Stochastic indexing techniques enable margins of error around individual indicators to be estimated. By adjusting for statistical errors, a composite index is potentially a more accurate measure of performance than any of its constituent indicators. It is also possible to determine the degree of confidence in estimates of comparative performance.

Another key advantage of using a composite index is that it can communicate the bottom-line impact of performance improvement to a wide audience. Its aggregative nature simplifies the comparison of jurisdictions over different performance aspects. It is easier to interpret than to find a common thread in many separate indicators. Consequently, composite indexes can provide an effective means to garner media interest as well as attention of policy stakeholders and the community at large.

Notwithstanding their advantages, composite indexes can be misleading if poorly constructed and inappropriately interpreted. Information embodied in a set of performance indicators can be lost or distorted in a single index. A common objection to using composite indexes is related to what is seen by some as the arbitrary, value-laden weighting process by which separate indicators are combined. Indeed, numerous methodological and conceptual issues need to be addressed in order to develop consistent and meaningful composite performance indexes (box B.1).

On the appropriate use of composite indexes, the Organisation for Economic and Co-operation Development (OECD 2003b, p.3) cautions that:

At a minimum, all composite indicators should be as transparent as possible and provide detailed information on methodology and data sources. They should always be accompanied by explanations of their components, construction, weaknesses and interpretation.

Moreover, Nardo et al. (2005, p.7) make the point that:

... composite indicators should never be seen as a goal *per se*. They should be seen, instead, as a starting point for initiating discussion and attracting public interest and concern.

Box B.1 **Pros and cons of composite performance indexes**

Reflecting their strengths, composite performance indexes:

- cut through the complexity of multi-dimensional performance issues in support of decision making;
- lead to a reduced list of indicators by identifying duplicate measurement of specific performance attributes;
- enrich the information available from separate indicators by identifying the underlying data structure and interaction effects between them;
- provide a 'big picture' of various performance aspects;
- facilitate cross-jurisdictional and, to a lesser extent, over-time comparisons of performance; and
- help raise public interest in promoting performance improvement and accountability.

Reflecting their weaknesses, composite performance indexes:

- invite simplistic policy conclusions if used in isolation with the constituent indicators;
- send misleading messages if poorly constructed or misinterpreted; and
- can be biased — for example, through selecting indicators and weights in favour of a particular regulation practice — if they are not based on transparent compilation procedures and sound statistical principles.

Source: Nardo et al. (2005).

B.2 Methodological foundation

A conventional composite index applicable to combine a given set of n performance indicators can be expressed in mathematical terms as:

$$I = \sum_{i=1}^n \omega_i x_i, \quad (\text{B.1})$$

where:

x_i = normalised value of the indicator $i = 1, \dots, n$; and

ω_i = weight attached to x_i , with $\sum_{i=1}^n \omega_i = 1$.

Normalising indicators

If all indicators are measured in the same unit, they can readily be aggregated with equal weights (that is, $\omega_i = 1/n$). For example, with performance aspects all measured in dollar terms, the composite index would represent an aggregate of monetary costs or benefits.

In more general cases, individual indicators are likely to be measured in different units that are incommensurate with one another. They then have to be converted, or *normalised*, before aggregation.

Normalisation is a statistical procedure to remove the dependence of measurement on particular scale units and, thereby, provide a common basis for aggregation. In some cases, normalisation also facilitates controlling the effect of outlier data on comparative performance as well as correcting for data quality and randomness problems.

There are a number of techniques for normalising performance indicators (Booyesen 2002; OECD 2003b, 2005), including:

- standard deviation from mean: $\frac{\text{actual value} - \text{mean value}}{\text{standard deviation}}$;
- distance to best performance: $\frac{\text{actual value}}{\text{maximum value}}$;
- distance to average performance: $\frac{\text{actual value}}{\text{mean value}}$;
- distance to best and worst performance: $\frac{\text{actual value} - \text{minimum value}}{\text{maximum value} - \text{minimum value}}$;
- categorical scaling by numerical, percentile or qualitative classes; and
- ranking by actual value.

The above techniques involve converting raw indicators into unit-free measures. They also reduce the variance in performance measured by each indicator after normalisation. Apart from these common features, each technique has its own advantages and disadvantages.

With the standard deviation technique, all normalised indicators have a zero mean and a unitary standard deviation. This helps minimise sensitivity of the composite index to the mean values of individual indicators. However, for indicators with a skewed distribution of values, any presence of outlier data could artificially increase the significance of such indicators (independent of the weights ω_i) in the composite index.

The distance-based techniques are computationally simpler because they do not require calculating standard deviations. This makes the techniques suitable for small samples. However, they are mostly based on range values (minimums and maximums) which could be unreliable outliers.

Where indicators are normalised in relation to their maximum and minimum values, the range of values within the data acts as an implicit weight, adding to and, hence, potentially distorting the explicit weight ω_i . The wider the minimum and maximum are apart, the greater is the implicit weighting of a particular indicator and vice versa. For widely dispersed data, it may therefore be advantageous to employ only maximum values or, better still, mean values as the basis of normalisation. Nevertheless, the indicators would then lose the advantage of being scaled in relation to a measure of data dispersion.

The categorical scaling technique converts indicators to suit perception-based ratings of performance, or to smooth data variations that are considered immaterial for comparative performance. This technique is characterised by a high degree of subjectivity as the scales and the thresholds are by and large arbitrary. It also omits information on the variance of performance across comparators.

Categorical scaling by percentile classes forces unequal class intervals onto data that show little variation. As a consequence, comparators rated in the bottom or the top of the range would be less comparable than those rated in the middle range in regard of particular performance aspects.

Ranking is probably the simplest and most used normalisation technique. It is not affected by outliers. However, with this technique, performance cannot be evaluated in absolute terms as information on levels is lost after normalisation.

Assigning weights

The objective of weighting indicators is to ensure that the composite index has the strongest possible relationship with the broader outcome of improving performance. Under the conventional aggregation approach, the weights should reflect the relative significance of respective indicators in comparative performance. Several options for weighting are possible:

- equal weights;
- judgemental weights; and
- statistical weights.

Equal weights are used often for the sake of simplicity rather than theoretical or empirical reasoning. It is sometimes assumed that individual indicators have the same degree of significance and equal weights are applicable. A drawback of equal-weighting is the risk that certain performance aspects are over-weighted (hence, with certain other aspects under-weighted) due to duplicate measurement by two or more indicators.

Alternatively, without weighting, the composite index is calculated as a simple sum of the indicators. Nevertheless, this approach is equivalent to equal-weighting.

Judgemental weights can be assigned on the basis of expert opinions, policy priorities, or stakeholder interests. Sources of such weighting information include opinion surveys, policy statements and performance agreements. To some extent, judgemental weights are useful for aligning the composite index with the relative desirability of particular performance outcomes. However, they are open to ‘gaming’ and political interference in performance comparisons.

Multivariate statistical methods present an empirical, relatively objective and theoretically tenable option for weight selection. Some of these methods allow judgemental weights to be incorporated through the imposition of parameter restrictions. Broadly, statistical weighting methods fall into four groups applicable to identify, respectively:

- the statistical correlations between the indicators;
- the statistical errors in indicator values;
- the causal effects of individual indicators on the composite index; and
- the specific performance benchmarks for individual comparators.

For the first group, the main task is to maximise the independence of information represented in the composite index. Strongly (weakly) correlated indicators are conceived as conveying overlapping (distinctive) information and, accordingly, each assigned a low (high) weight. Alternatively, the indicators can be consolidated into a smaller set of components that capture a majority of the variations in the original indicators. Examples of this approach include *principal components analysis* and *factor analysis* (attachment B.1).

The reliability of a composite index can be improved by giving greater (smaller) weights to indicators measured with data of a higher (lower) degree of quality or availability. Data quality is affected by measurement errors, perception ambiguity and judgement inaccuracy in data sources. Missing indicator values affect data availability, necessitating the use of *ad hoc* or model-based imputation methods to

complete the data set. *Unobserved components analysis* is a typical example of this approach of relating indicator weights to data reliability (attachment B.1).

With the aid of an explicit theory on performance drivers or a reference sample of performance data, it is possible to identify and estimate a causal relationship between the indicators and an independent variable on performance. Under this approach, statistically significant (insignificant) indicators are conceived as strongly (weakly) contributory to the composite index and weighted accordingly. For example, Cartwright, Mussio and Boughton (2006) have applied *structural equation modelling* techniques to produce aggregation weights in a composite index.

The same set of weights can be assigned to individual indicators for all the comparators included for performance benchmarking. This is the case in the first three groups of weighting methods listed above, which assume that a single performance benchmark is relevant to comparative performance. Some other statistical methods are more flexible about weighting assumptions as they let the data decide on the most favourable weights for each comparator.

Composite indexes can be constructed using jurisdiction-specific weights to take into account the effects of peer characteristics on performance, rather than dictated by a universal benchmark. Under this approach, performance comparisons are guided by the ‘benefit of doubt’ principle. Comparators are grouped based on the similarity of their measurements on particular indicators. This approach is exemplified by *data envelopment analysis* (attachment B.1).

Aggregating weighted indicators

A variety of aggregation methods are applicable. Linear aggregation (as expressed in equation B.1) is common, but other more sophisticated index functions have also been used, such as geometric aggregation:

$$I = \prod_{i=1}^n x_i^{\omega_i} . \tag{B.2}$$

Generally, aggregation is based on the assumption of no interaction effect — synergy or conflict — among the indicators (Munda and Nardo 2003). That is, the relative contributory effects between any two indicators on the composite index are independent of all the other indicators. Providing that the indicators are mutually preferentially independent, there exists an underlying pattern of performance tradeoffs. Accordingly, a shortcoming in one performance indicator can be compensated by an advantage in another (box B.2).

Box B.2 Combining non-compensatory performance indicators

The aggregative approach to composite indexing relies on a compensatory logic that is contrary to the basic idea of assigning 'weights' as measures of *importance*. Indeed, an indicator might hardly seem to be important if it can be infinitely offset by some other indicator(s).

If a set of indicators are considered important for comparative performance, they should be combined using a multi-criteria framework to preclude compensability. This is usually the case when contextually different aspects are to be summarised by means of a composite index.

To combine non-compensatory indicators, a feasible mathematical ranking approach would include the following steps:

- make pair-wise assessment of relative performance between comparators on each of the indicators;
- for each pair of comparators, obtain a weighted measure of performance superiority based on the greatest number of indicators by which a particular comparator outperforms the other;
- for each possible rank order list of the comparators, add up their pertinent measures of performance superiority to form a rank score; and
- equate the final rankings of the comparators to the rank order list that has the highest rank score.

This approach permits indicators to have different ordinal (ranking) measurement units. As such, the indicators do not have to be normalised and their weights reflect 'importance coefficients' (as opposed to tradeoff rates). A drawback though is that quantitative information on the magnitude of performance differences is only partially used.

Sources: Munda and Nardo (2003); OECD (2005).

For performance differences to be quantifiable, indicators must be calibrated to reflect the *magnitude* — not just ordering — of performance. With such quantitative indicators, the weights express the tradeoff rates between various substitutable performance aspects. The tradeoff rates are constant in linear aggregation and vary with indicator values in other aggregation forms. Further, they can be assigned to be uniform or differing across comparators.

Impossibility of perfect composite indexes

For a composite index to be entirely consistent and reliable, the calibrations and rankings of comparative performance must be unaffected by the choice of ways to express and transform the original data. In principle, this requires compatible

normalisation and aggregation methods to be used for particular types of performance data.

Unfortunately, no conventional indexing technique is perfect for combining performance aspects measured in different incommensurable units (Ebert and Welsch 2004). In particular, linear aggregation does not yield entirely valid composite indexes in most cases.

Performance data measured in ratio-scaled units — which provide meaningful interpretations for both differences and ratios between any two unit values, such as dollar cost and elapsed time — can be coherently aggregated only by using a geometric function. In addition, to preserve relativity of ratio-scaled values, the indicators must be normalised by multiplicative functions defined as:

$$x_i = \alpha_i X_i, \tag{B.3}$$

where for the indicator $i=1, \dots, n$, X_i denotes original values, x_i normalised values, and α_i a positive parameter.

Among the aforementioned normalisation methods, ‘distance to best performance’ and ‘distance to average performance’ are the only transformations capable of removing the scale effect from ratio-scaled data without distorting the composite index.

For qualitative indicators including those normalised by a categorical scaling or ranking method, Arrow’s (1963) impossibility theorem suggests that there is no perfect design to guarantee an entirely consistent and meaningful composite index, regardless of whether or not the indicators are compensatory.

In sum, composite indexes can have significant weaknesses reflecting the violation of some desirable mathematical properties in an aggregative approach to benchmarking performance.

B.3 Feasibility of aggregating the proposed indicators

The indicators proposed in this study are aimed at providing a broad view of diverse sources of compliance burden imposed by regulators on business (chapters 4 to 7). To assess whether or not these indicators can feasibly be combined into a composite index representing the state of regulatory burden, an evaluation of their structural relationships was undertaken.

As summarised in chapter 8, it is proposed to benchmark regulatory burden in five different ways, namely measuring:

-
- three types of burden — becoming and being a business, doing business, and operating across jurisdictions; and
 - two attributes of potential regulatory capacity — quantity and quality.

Each of these tasks involves using multiple indicators which could potentially be aggregated into a sub-index:

- For particular types of burden, sets of indicators are used to represent performance metrics that are influenced by or correlated with businesses' efforts to comply with specific regulations. These indicators directly gauge the outcome of streamlining business regulation.
- For particular attributes of regulatory capacity, sets of indicators are used to represent potential determinants of compliance burden. These indicators are based on specific principles of best-practice regulation and strategic approaches to regulatory reform. They do not necessarily have a direct relationship with compliance burden. For example, a new regulation may not bring additional compliance burden if it is enacted with sufficient improvement in the design and enforcement processes.

The construction of an overall index involves an intermediate step in which the results from various types of benchmarking are combined. In this context, the composite index represents an aggregation of sub-indexes and is typically referred to as a 'meta' index.

There are a chain of relationships that link an empirical aggregate index measure to the underlying level of regulatory burden in a particular State or Territory. These relationships hold the key to whether a meta index will provide consistent and meaningful measurements of regulatory burden across jurisdictions and over time.

Specifically, the feasibility of constructing a useful composite index depends on:

- the causal effect between the level of regulatory burden and each type of benchmarking;
- the empirical association between each type of benchmarking and the pertinent indicators; and
- the methodological basis of aggregating component indicators or sub-indexes.

The types of benchmarking were identified to reflect both a business and a policy perspective on the significance of compliance burden. They are strongly supported by survey evidence and industry feedback on the substantial cost implications of compliance with particular regulations. Further, they cover core aspects of activity that are fairly typical of the business sector as a whole. As such, they could theoretically provide a comprehensive platform for developing relevant and

representative measures of compliance burden. Consequently, it is reasonable to conclude that the types of benchmarking proposed in this study are coherently linked to the goal of identifying compliance burden differences that are indicative of the levels of unnecessary burden across jurisdictions.

The selection of feasible indicators for each type of benchmarking crucially affects how well the causal effect is empirically measured. Without careful selection and measurement of component indicators, the composite index will lack relevance and reliability, even if it has a sound methodological basis.

An important distinction needs to be drawn between a particular set of indicators and the type of benchmarking that they are intended to represent. Ideally, each indicator should be well defined, accurately measured and consistently related to compliance burden. Nevertheless, measurement and other data errors could lead to imprecise empirical relationships between a type of benchmarking and its pertinent indicators. Moreover, a lack of systematic evidence on such relationships could increase the chance of selecting ‘weak’ or irrelevant indicators, particularly when anecdotal measures are used.

In this study, the selection of indicators reflects a compromise between certain selection criteria as discussed in chapter 2 and the availability of data from cost-effective sources. This facilitates the prudent strategy of initially adopting a modest benchmarking program with the use of many readily available indicators, which are mostly indirect measures of compliance burden. However, the current state of data availability is characterised by fragmented sources and inconsistent definitions. Therefore, standardisation of data is necessary to ensure quality, coherence and comparability of the indicators proposed.

As part of a broader strategy for developing the benchmarking program, studies should subsequently be undertaken to improve the indicators in respect of their metric design, data collection, and empirical linkage to compliance burden. Further studies could also provide guidance for identifying and removing redundant and *ad hoc* indicators. Before such improvements become possible, the indicators currently proposed and their associated data sources are unlikely to offer an adequate basis for constructing a sound index of regulatory burden.

With a given set of feasible indicators, appropriate weighting is essential for a meaningful and interpretable aggregation of them. As discussed in section B.2, weights should be assigned to individual indicators in accordance with their statistical accuracy, strength of linkage to compliance burden, and preference value to stakeholders.

There are numerous barriers to meaningfully aggregating the indicators proposed:

- There is a lack of information on business demographics, particularly coverage and cost impacts of specific regulations. Such information is required for evaluating the relative significance of individual indicators and, hence, their weights in the composite index.
- There is a limited number of observations, particularly longitudinal data, which hinder any application of rigorous statistical weighting techniques.
- There is no consensual basis for aggregating perception-based qualitative indicators. For example, regulatory quality has a normative dimension that is contingent upon differing regulatory options and reform principles in individual jurisdictions.
- The current state of data availability does not fully support a systematic measurement of compliance requirements *across all jurisdictions* because of data inconsistency and incompleteness.
- The diversity of data sources and collection methods renders it difficult to compare statistical property *across all indicators*. For example, information collected from specific reference businesses tends to be less representative of the business sector compared with that obtained through a more costly means of statistical sampling. There is no sound statistical basis for combining such diverse sources of information.
- The many indicators proposed for each type of benchmarking mean that the composite index could contain too many components for a useful interpretation. For example, an index that allows for tradeoffs between indicators can be insensitive to data measurement given a proportionately small weight assigned to each indicator. On the other hand, an index built on the ‘benefit of doubt’ principle can have low discriminatory power because any jurisdiction can match the best overall performance in some aspects by out-performing other jurisdictions in one or a few indicators (section B.2).

Given numerous problems associated with the development of feasible indicators and composite weights, no single index of regulatory burden can provide a reliable and useful ‘pointer’ — that is, indicating levels of compliance burden and what needs to be done to improve regulatory performance.

That said, some aggregation problems might be mitigated through a rolling program as proposed in this study to progressively validate, improve and consolidate indicators. Until such improvements are possible, it is inadvisable to produce a composite index for comparing regulatory environments between the States and Territories in Australia.

Attachment B.1 Statistical weighting methods

Determining appropriate weights for various indicators is a major challenge in constructing composite performance indexes. Multivariate methods provide a means to estimate weights on the basis of data structures and indicator characteristics. A comprehensive list of these methods and their details can be found in Nardo et al. (2005), OECD (2005), and Saisana and Tarantola (2002).

A précis of four common statistical weighting methods is presented in this attachment, namely:

- principal components analysis;
- factor analysis;
- unobserved components analysis; and
- data envelopment analysis.

Principal components analysis

The objective of principal components analysis is to combine various indicators x_i in a linear fashion to produce a new set of indicators called *principal components*:

$$z_i = \sum_{j=1}^n \beta_{ji} x_j, \quad (\text{B.4})$$

where for $i = 1, \dots, n$ and $j = 1, \dots, n$, β_{ji} denotes weighting parameters to be so estimated that:

- z_i 's are uncorrelated;
- z_i 's are sorted in descending order of their variance contributions — with z_1 accounting for the maximum proportion of variance in the data, z_2 accounting for the maximum proportion of the remaining variance, and so on until z_n absorbs the proportion of variance not accounted for by the preceding components; and
- $\sum_{i=1}^n \beta_{ji} = 1$.

The estimation of weights β_{ji} involves finding the eigenvalues λ_i of the sample covariance matrix:

$$C = \begin{bmatrix} c_{11} & c_{12} & \cdots & c_{1n} \\ c_{21} & c_{22} & \cdots & c_{2n} \\ \vdots & \vdots & \ddots & \vdots \\ c_{n1} & c_{n2} & \cdots & c_{nn} \end{bmatrix},$$

where the element c_{ji} is the (co)variance of x_i and x_j .

The eigenvalue λ_i is the variance of the principal component z_i . These eigenvalues add up to the sum of the diagonal elements of C :

$$\sum_{i=1}^n \lambda_i = \sum_{i=1}^n c_{ii}. \quad (\text{B.5})$$

Accordingly, the sum of the variances of individual principal components is equal to the sum of the variances of the original indicators. Provided that the original indicators are sufficiently correlated, most of their variations in aggregate would be captured by a smaller number of principal components.

The first principal component should ideally capture sufficient data variation (say, 80 per cent of the total variance) to represent the original indicators. If this is the case, it would suffice to combine the indicators with the corresponding weights β_{j1} ($j=1, \dots, n$) into an index value z_1 . Whereas the first principal component alone does not explain sufficient data variation, several principal components would need to be combined to derive composite weights.

Factor analysis

Factor analysis is based on the idea that each indicator can be decomposed into a small number of common influences on performance. Such common influences, called *factors*, are statistical constructs rather than empirical measures of specific performance drivers. Formally, the following decomposition model is assumed:

$$x_i = \sum_{j=1}^m \theta_{ij} f_j + e_i, \quad (\text{B.6})$$

where for $i=1, \dots, n$ and $j=1, \dots, m < n$,

x_i = normalised indicator i with a zero mean and a unitary variance;

θ_{ij} = loading parameter to be estimated;

f_j = uncorrelated common factor j with a zero mean and a unitary variance; and

e_i = component of x_i not accounted for by any common factor, assumed to be independently and identically distributed with zero mean.

There are several approaches to estimating common factors from the original indicators. One way is to extract the first few principal components and use them as factors for inclusion in equation B.6. Different extraction methods could yield different values for the common factors and the loading parameters, leading to different measurements of the composite index.

The parameters θ_{ij} are estimated by finding linear combinations of the factors to maximise the contributory effects of individual factors on different indicators. As a consequence, each indicator would have a statistically significant association with just one or a few factors.

Equation B.6 is used to identify the aggregate effects of the factors on each indicator by deriving the variance of x_i as:

$$\begin{aligned}
 \text{var}(x_i) &= \text{var}\left(\sum_{j=1}^m \theta_{ij} f_j + e_i\right) \\
 &= \text{var}\left(\sum_{j=1}^m \theta_{ij} f_j\right) + \text{var}(e_i) \\
 &= \sum_{j=1}^m \theta_{ij}^2 \text{var}(f_j) + \text{var}(e_i) \\
 &= \sum_{j=1}^m \theta_{ij}^2 + \text{var}(e_i), \tag{B.7}
 \end{aligned}$$

since θ_{ij} is a constant, f_j and e_i are independent, and the variance of f_j is one.

Accordingly, the unitary variance of x_i is divided in two parts:

- $\sum_{j=1}^m \theta_{ij}^2$ is called the *communality* of indicator i , reflecting the part of aggregate data variation explained by the common factors.
- $\text{var}(e_i)$ is called the *specificity* of the indicator i , reflecting data variation independent of the common factors.

To derive a composite index, weights are assigned in direct proportion to the specificity measures of individual indicators. High specificity means that the indicator contains distinct information about performance that is largely not captured by the other indicators, justifying a large weight. Conversely, indicators showing low specificity are likely to convey overlapping information and should each receive a proportionately small weight.

Unobserved components analysis

Unobserved components analysis is based on the idea that each indicator variably approximates the true level of performance due to the presence of data measurement and sampling errors. Following Kaufmann, Kraay and Mastruzzi (2003), the observed values of an indicator can be modelled as a linear function of a performance index (called *unobserved component*) and an error term:

$$x_{ik} = \pi_i + \varphi_i \cdot (p_k + \varepsilon_{ik}), \quad (\text{B.8})$$

where:

x_{ik} = observed value of indicator $i = 1, \dots, N_k$ for comparator $k = 1, \dots, K$;

π_i, φ_i = structural parameters to be estimated;

p_k = unobserved performance index for comparator k , normalised to have a zero mean and a unitary variance;

ε_{ik} = error term with a zero mean and a variance that differs across indicators but remains constant across comparators — that is, $\text{var}(\varepsilon_{ik}) = \sigma_i^2$; and

N_k = number of indicators measured for comparator k .

The error term ε_{ik} is formulated to capture two types of uncertainty in performance measurement. First, indicators are imprecisely measured. Second, they do not reflect a consistent relationship with comparative performance across comparators, even when they are precisely measured.

To simplify modelling, it is often assumed that the indicators have independent data errors — that is, $\text{cov}_{i \neq j}(\varepsilon_{ik}, \varepsilon_{jk}) = 0$. Under this assumption, the only reason why two indicators might be correlated is that they are both related to comparative performance.

The parameters π_i and φ_i define the underlying linear relationship between individual indicators and the performance index. Along with σ_i^2 , they need to be econometrically estimated such as by using a maximum likelihood or two-stage method (Goldberger 1972). Given these parameter estimates, it is possible to compute composite index values as well as statistical measures of their reliability.

Specifically, the composite index for comparator k is equal to the mean estimate of p_k conditional on the observed indicators $i = 1, \dots, N_k$:

$$I_k = E(p_k | x_{1k}, \dots, x_{N_k k})$$

$$= \sum_{i=1}^{N_k} \omega_i \cdot \frac{x_{ik} - \pi_i}{\varphi_i}, \quad (\text{B.9})$$

$$\text{where } \omega_i = \frac{\sigma_i^{-2}}{1 + \sum_{i=1}^{N_k} \sigma_i^{-2}}.$$

Equation B.9 expresses the composite index as a linear aggregation of the observed indicators. Each indicator is weighted according to its degree of reliability measured in reverse proportion to the variance of the error term σ_i^2 .

The reliability of index values can be estimated in the following form:

$$\text{var}(I_k) = \left(1 + \sum_{i=1}^{N_k} \sigma_i^{-2} \right)^{-1}. \quad (\text{B.10})$$

The index variance is essentially an aggregate of the data variations in individual indicators. Further, it decreases with an increased number of indicators included for a particular comparator. This underlines an advantage of not requiring all comparators to have the same number of indicators measured, permitting comparisons across a larger sample than would be possible by using any single indicator. In doing so, the effect of missing data is adjusted for through the estimates of indicator weights (equation B.9) and index variances (equation B.10).

Data envelopment analysis

Data envelopment analysis is based on the idea that various performance indicators can be taken together to identify the performance possibilities for individual comparators. This involves using linear programming techniques to estimate a performance *frontier* and the *distance* of observed performance from that frontier. In effect, the comparators are assessed against some hypothetical performance benchmarks — which may not exist in the sample but are assumed to be feasible through a combination of the best performance observed on different indicators.

The programming problem to aggregate a set of indicators can be specified as follows:

$$\begin{aligned} \text{Maximise: } & S_k \geq 1 & k = 1, \dots, K \\ & S_k, \lambda_1, \dots, \lambda_K \\ \text{Subject to: } & S_k \cdot x_{ik} \leq \sum_{h=1}^K \lambda_h \cdot x_{ih} & i = 1, \dots, N \\ & \lambda_h \geq 0 & h = 1, \dots, K \end{aligned} \quad (\text{B.11})$$

where for $i = 1, \dots, N$ and $k, h = 1, \dots, K$:

S_k = distance to benchmark on frontier for comparator k ;

x_{ik} = observed value of indicator i for comparator k ; and

λ_h = weights associated with comparator h in a performance benchmark.

For each comparator, the above model solves for the parameters λ_h to form a linear combination of the other comparators and possibly itself so that their weighted average performance in respect of each indicator is at least as good as S_k times the indicator value measured for this comparator. The distance measure S_k will equal one if the comparator attains the maximum value on one or more indicators. The larger the distance to the benchmark, the wider is the gap of performance between this comparator and the others.

The composite index is equated to the inverse of S_k — that is, $I_k = S_k^{-1}$. This expression enables overall performance to be calibrated on an ascending scale within the interval from zero to one, which represents the benchmark performance.

To provide a better understanding of the composite index, equation B.11 can be rearranged as follows:

$$I_k = \max\left(\frac{x_{1k}}{\bar{x}_1}, \dots, \frac{x_{Nk}}{\bar{x}_N}\right), \quad (\text{B.12})$$

$$\text{where } \bar{x}_i = \sum_{h=1}^K \lambda_h \cdot x_{ih} \text{ for } i = 1, \dots, N.$$

Accordingly, the composite index reflects the shortest ‘distance to best performance’ measured across the indicators where ‘best performance’ \bar{x}_i is based on specific benchmarks identified for individual comparators. Although various indicators are all included in the index formula, a particular one that shows the most favourable partial comparison of the comparator could dominate the other indicators in measuring overall performance. Consequently, data envelopment analysis differs from many other statistical weighting methods in that it produces composite indexes that are not averaging measures of various partial performance indicators.

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