



***Annual Review of Regulatory
Burdens on Business***

August 2011

The Voice of Leadership

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Executive Summary

The property industry faces an ever-increasing regulatory burden.

Much of this results from inadequate policy development and a poor regulatory review processes.

If regulation is developed properly, excessive burdens will not be created in the first place.

Currently, the industry is subject to regulations which are:

- inconsistent;
- costly;
- lacking transparency or poorly supported by evidence;
- duplicated and unnecessary;
- not subject to operational review; and
- inadequately assessed before implementation
- subject to poor governance processes.

In 2005, the Property Council made a submission to the Taskforce on Reducing Regulatory Burdens on Business outlining our recommendations to improve regulation.

But the subsequent high-level commitment by the Council of Australian Governments (COAG) to regulatory reform and removing administrative burdens on business has failed to filter down to regulators.

A complete rethink is needed about the way regulation is designed, assessed and reviewed.

The Productivity Commission, in collaboration with COAG and the Commonwealth Government, should take the opportunity to ensure that this is not another review without tangible results.

Streamlining the regulatory process will deliver tangible benefits to business and the community and create significant administrative savings for government.

It is time to take strong action to fix Australia's regulatory system, to ensure that the ongoing growth and productivity in the nation's economy is not stifled by unfair regulatory burdens.

Recommendations

1.0 Putting the brakes on an unsustainable regulatory cycle

The Property Council recommends the Federal Government, in association with COAG, formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.

2.0 Reform the RIS

The Property Council recommends the Federal Government:

- develop a leading practice regulation checklist, which can be completed during the process of preparing regulation. This must be signed off by the relevant minister, and include:
 - demonstrated evidence of market failure;
 - empirical research demonstrating why non-regulatory alternatives have not or could not achieve the same result;
 - consideration by regulatory authorities of the effectiveness and implications of existing regulation in a particular policy area before imposing new provisions; and
 - evidence of consultation between all relevant agencies where there is determined to be an overlap with other provisions.
- in association with COAG, formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.
- adopt the CRA International methodology to improve the quality of regulatory assessment and prevent poor legislation from being enacted.

3.0 A sane review mechanism

The Property Council recommends the Federal Government:

- task the Productivity Commission to conduct a comprehensive review into the possible consolidation of regulatory bodies in Australia.
- require departments to assess their regulatory regimes regularly and introduce improvements to reduce regulatory burdens.
- continue to expand the responsibilities of the Office of Best Practice Regulation to include:
 - the responsibility for commissioning and evaluating regulatory impact statements for all federal and COAG legislation; and,
 - the power to veto legislation where an RIS does not demonstrate that the benefits outweigh the costs.
- In association with COAG, introduce Competitiveness Councils in each jurisdiction tasked with:
 - meeting and reporting on annual red-tape reduction targets;
 - reviewing and streamlining the regulatory portfolio; and
 - harmonising local regulations with national standards where possible.

1.0 Putting the brakes on an unsustainable regulatory cycle

In 2005, the Taskforce on Reducing the Regulatory Burden on Business found that

'Australia has experienced a dramatic rise in the volume and reach of regulation, in response to a variety of social environmental and economic issues'¹.

It went on to say that

'Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life'².

Six years later, little has changed.

Regulation is often seen by Government as the quick fix solution to any perceived problem.

1.1 What's the problem?

The Property Council recognises that some regulation is necessary.

However, the system fails when regulation is introduced:

- across three spheres of government;
- without proper consultation or review; and
- in a form that does not meet its stated aims.

In an effective system, government would only introduce regulation where:

- there is clear evidence of market failure;
- other approaches to solving the problem have failed; and
- consultation is carried out to determine whether the regulation will have the intended effects on business behaviour.

In its report into regulatory reform in Australia, the OECD noted that "it is a continuing challenge to marry the stated aims for regulatory management with what occurs in practice at the level of regulators."³

For this reason, the Property Council welcomes the revised terms of reference for this phase of the Review of Regulatory Burdens on Business.

A focus on the mechanisms of regulation, rather than specific examples of regulation, will give this review a firmer grounding for ongoing change.

Government and industry agree that there is too much red tape and the regulatory system requires reform.

Overcoming the problems with regulation will require a first-principles approach to the way regulation is designed, implemented and reviewed.

¹ *Rethinking Regulation* (2005) – Taskforce on Reducing the Regulatory Burden on Business, p. i.

² *Ibid.*, p. i

³ *OECD Reviews Of Regulatory Reform: Government Capacity To Assure High-Quality Regulation In Australia* – p7

There are many symptoms that demonstrate the problems inherent in Australia's regulatory system (Figure 1), and action is needed at all levels of Government to fix the system.

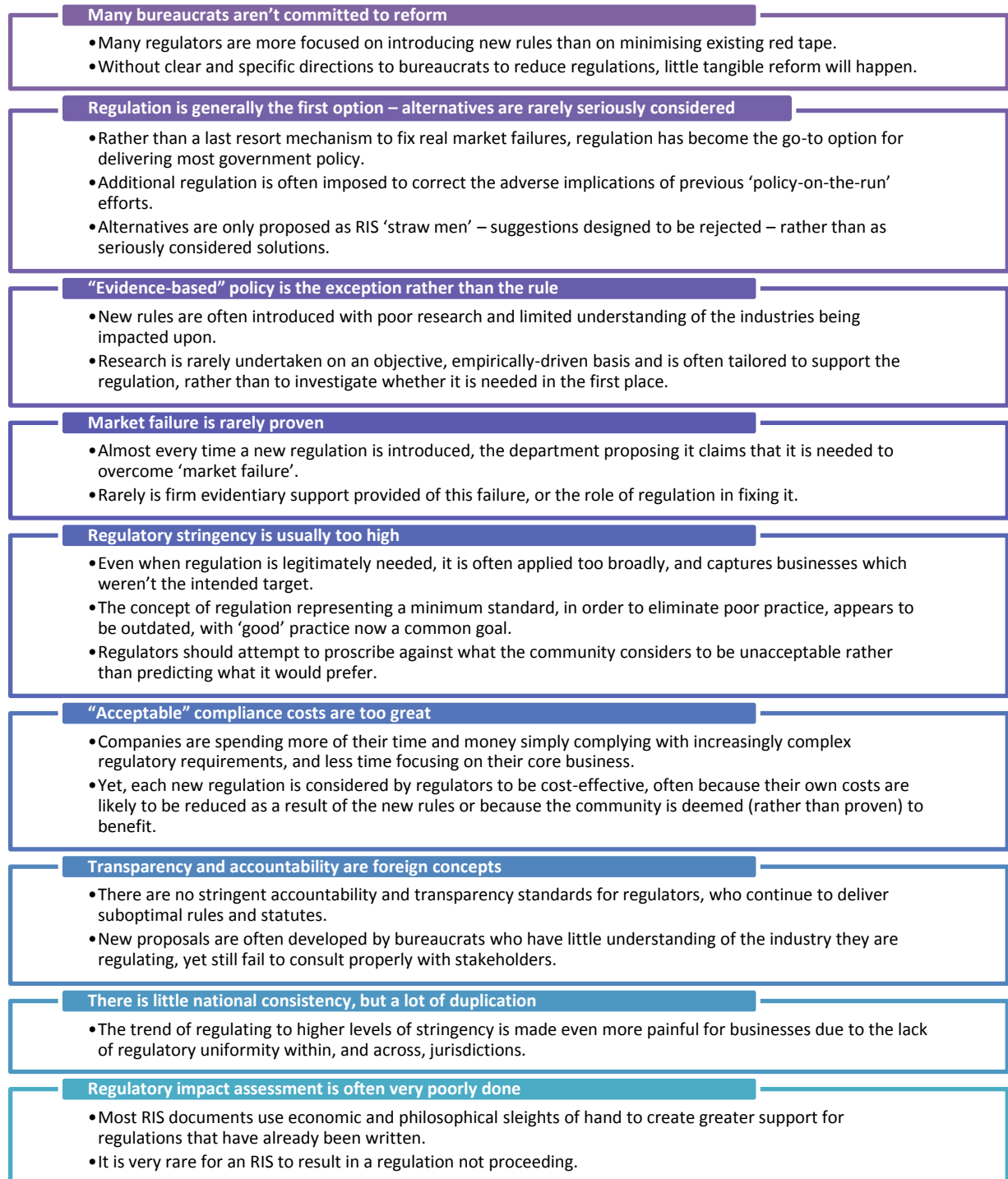


Figure 1: Problems with the Australian regulatory system

1.2 An effective regulatory system

In 2005, the Organisation for Economic Co-operation and development made recommendations on a leading practice approach to regulation.

The OECD’s Guiding Principles for Regulatory Quality and Performance (Figure 2) outline seven principles designed to ensure that regulatory systems are relevant, transparent and accountable.

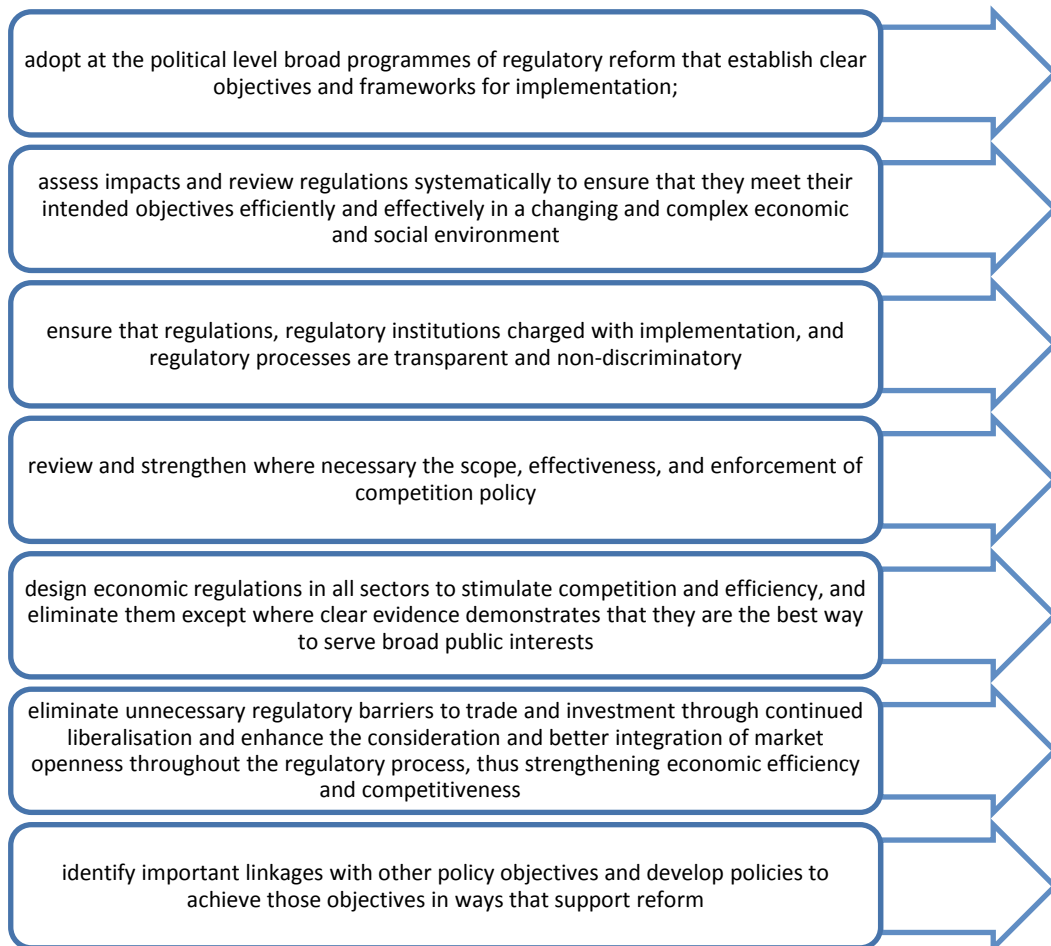


Figure 2: OECD Guiding Principles for Regulatory Quality (2005)

The report also outlines a number of key features for the development of regulation.

These identify that good regulation should⁴:

- serve clearly identified policy goals, and be effective in achieving those goals;
- have a sound legal and empirical basis;
- produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
- minimise costs and market distortions;

⁴ Ibid, p. 3

- promote innovation through market incentives and goal-based approaches;
- be clear, simple, and practical for users;
- be consistent with other regulations and policies; and
- be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

The OECD has identified Australia as a “role model” in its commitment to regulatory reform, but identifies that announcing reform is only part of the package - implementing reform is a harder task⁵.

If the Office of Best Practice Regulation is given real responsibilities and a mandate to implement strategies to reduce the regulatory burden, this saving could be replicated to benefit Australian governments, businesses, and communities.

1.3 Recommendation

The Property Council recommends the Federal Government, in association with COAG, formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.

⁵ *OECD Reviews of Regulatory Reform: Australia 2010* (2010), p. 19

2.0 Reform the RIS

2.1 Regulatory Assessment is Broken

In an effort to improve the overall quality of regulation, COAG established a set of regulatory principles in October, 2007.⁶

These are meant to guide the development of good regulation and ensure that outcomes are fair, well considered, and commensurate with the perceived problems.

With any new regulation, all governments agreed to the following steps:

1. *establishing a case for action before addressing a problem;*
2. *a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;*
3. *adopting the option that generates the greatest net benefit for the community;*
4. *in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-*
 - a. *the benefits of the restrictions to the community as a whole outweigh the costs, and*
 - b. *the objectives of the regulation can only be achieved by restricting competition;*
5. *providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;*
6. *ensuring that regulation remains relevant and effective over time;*
7. *consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and*
8. *government action should be effective and proportional to the issue being addressed.*

The Property Council supports these principles and urges all governments, and their departments, to abide by them.

However, there are countless examples of regulations which could not even tick off the first step on the list.

Governments need to step back to the first principles and do a better job determining whether or not regulation is needed, and the best regulatory options to choose.

⁶ Ibid. p. 310.

2.2 A better way to write a RIS

Before regulators ever get to the stage of drafting regulations, some discipline is needed.

The Property Council has been advocating changes to the regulatory assessment process for several years.

We commissioned the CRA International report *Making Regulatory Impact Statements More Effective* (Appendix 2).

This report presents a leading practice model for regulatory assessment, where review is independent and rigorous, and introduces accountability at every level of the regulatory process.

Key recommendations of the report are listed in figure 2.

2.3 Recommendations

The Property Council recommends the Federal Government:

- develop a leading practice regulation checklist, which can be completed during the process of preparing regulation. This must be signed off by the relevant minister, and include:
 - demonstrated evidence of market failure;
 - empirical research demonstrating why non-regulatory alternatives have not or could not achieve the same result;
 - consideration by regulatory authorities of the effectiveness and implications of existing regulation in a particular policy area before imposing new provisions; and
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- in association with COAG, formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.
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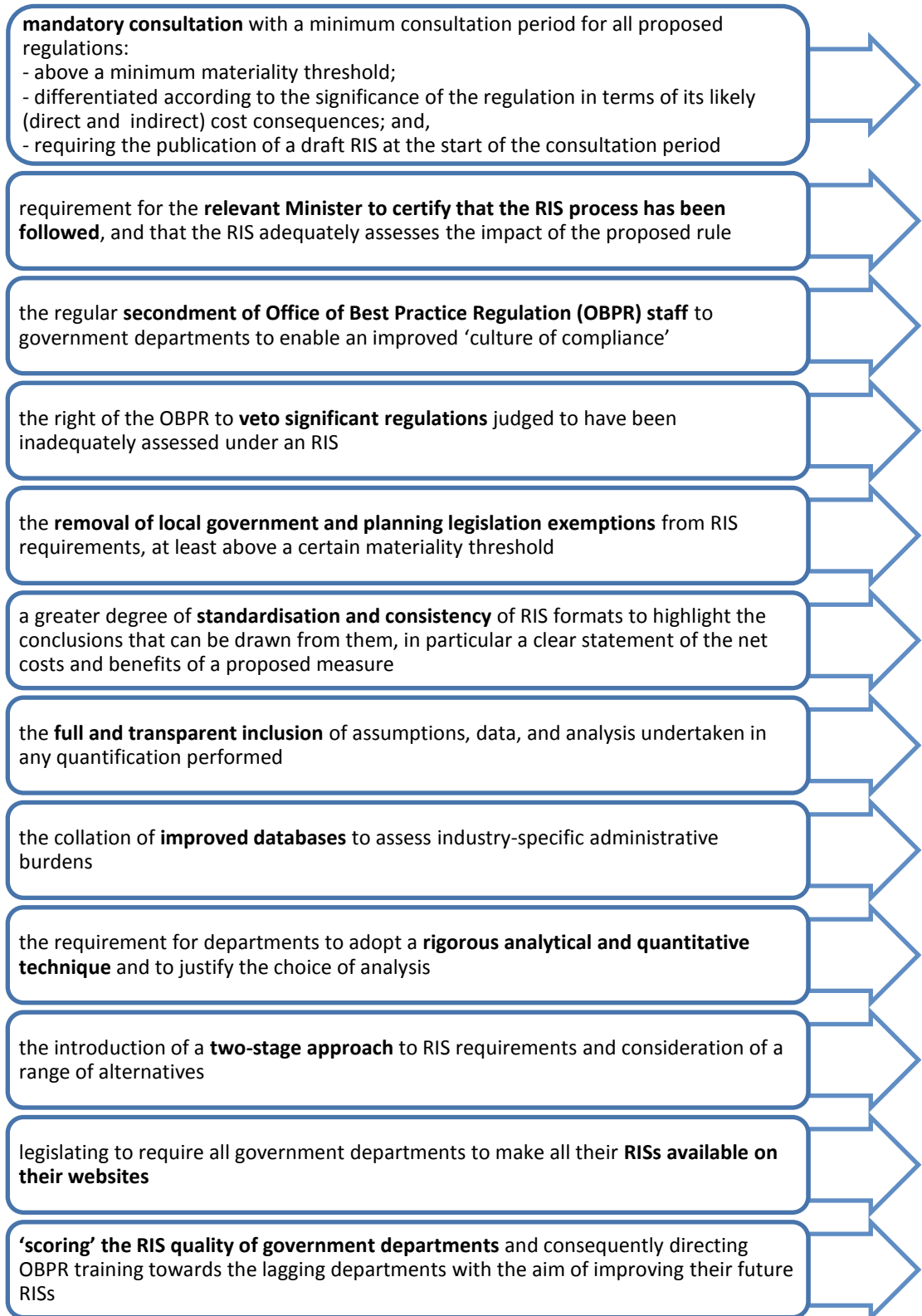


Figure 3: Making Regulatory Impact Statements More Effective

3.0 A sane review mechanism

3.1 Streamline regulatory authorities

As the number of regulatory authorities in Australia continues to grow, it is unsurprising that new regulations often overlap or contradict existing rules.

While improving the regulatory development and assessment process is one piece of the puzzle, reducing the number of regulators needs to be part of the solution.

The Australian Government should task the Productivity Commission to undertake a comprehensive review into the possibility of reforming the system with the aim of significantly reducing the number of authorities in Australia.

A more sensible and streamlined approach to organising compliance would help to give regulators greater awareness of the broader regulatory environment.

3.2 Assign responsibility

Australia has a multitude of regulators, but no one is responsible for keeping regulations under control.

There will always be a tension between the need for regulation and the benefits of regulatory reform.

Government must assign clear champions for slashing red tape and streamlining regulation.

The Office of Best Practice Regulation should be central to this process.

The power should be extended to monitoring the development and review of regulations and taking over responsibility for regulatory assessment, removing it from the realm of departments who draft the legislation.

The Office should also be given responsibility to analyse RIS documents against agreed standards, with the power to veto legislation where:

- the RIS has not been carried out adequately; or
- the costs of the legislation outweigh the benefits.

Until the RIS process ensures the rigorous, independent assessment of new legislation, these documents will continue to be ineffectual marketing tools that fail to critically review regulation.

It should not be the job of business or industry associations to assess the true costs of regulation, in order to compensate for inadequate RISs.

3.3 Keeping up with competition

In addition to a turbocharged OBPR, the Property Council also proposes the introduction of a Competitiveness Council in each jurisdiction.

These Councils would be independent statutory bodies, charged with rationalising red tape across the country.

An annual regulation reduction target for each jurisdiction would boost the failing COAG process and provide a hub for the review, removal and streamlining of existing legislative stock.

Centralising this activity has the additional advantage of providing clear, coordinated contact with business and the community, minimising the impact of the 'review fatigue' already felt by many stakeholders.

3.4 Recommendations

The Property Council recommends the Federal Government:

- task the Productivity Commission to conduct a comprehensive review into the possible consolidation of regulatory bodies in Australia.
- require departments to assess their regulatory regimes regularly and introduce improvements to reduce regulatory burdens.
- continue to expand the responsibilities of the Office of Best Practice Regulation to include:
 - the responsibility for commissioning and evaluating regulatory impact statements for all federal and COAG legislation; and,
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 - meeting and reporting on annual red-tape reduction targets;
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Appendix 1 – The Property Council of Australia

The Property Council represents the property investment sector in Australia.

Its members include **every** major property investor in the country.

Members are engaged in the entire property investment universe, which includes all:

- dimensions of property activity (financing, funds management, development, ownership, asset management, transaction and leasing);
- major property types (offices, shopping centres, residential development, industrial, tourism, leisure, aged care, retirement and infrastructure);
- major regions of Australia and international markets; and,
- the four quadrants of investment – public, private, equity and debt.

Some key statistics:

- the market value of all land and buildings in Australia is \$4.3 trillion;
- the value of investment grade stock under management is \$340 billion;
- more than 11.6 million Australians collectively own major segments of the nation's most valuable commercial property assets;
- total construction spending in F2012 is forecast to be \$117 billion in buildings and \$87 billion in infrastructure (total: \$204 billion);
- listed property is currently 5.34% of the capitalised value of the ASX;
- 39% of investment grade stock is listed;
- the market value of foreign assets owned by Australians is \$50 billion;
- \$113 million flows in to the property sector from super funds in an average week; and
- \$28 billion in property specific taxes are paid annually.

Appendix 2 – Making Regulation Impact Statements More Effective

The CRA International report *Making Regulatory Impact Statements More Effective* is attached separately.

Appendix 3 – Contacts

Taskforce members are encouraged to contact the following Property Council staff, should they require further information.

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