

Mr Gary Banks  
Chairman  
Regulation Taskforce  
PO Box 282, Belconnen,  
ACT 2616

**Re: Submission to Regulation Taskforce**

Dear Mr Banks

**Holding Back the Red Tape Avalanche – A Regulatory Reform Agenda for Australia**

The Australian Chamber of Commerce and Industry (ACCI), launched a position paper on 9 November that outlines a plan to reduce the impact of the escalating volume of anti-business regulation. The paper is the Chamber's submission to the Taskforce and a copy is enclosed for your information.

The ACCI model for regulatory reform specifically deals with initiatives that should be carried out by the Commonwealth Government. However, the principles can and should be adopted at all levels of government.

Our model is built on achieving clear political accountability, making the system more transparent, and subjecting all proposed regulation to straightforward cost benefit assessments.

The ACCI proposal is a sensible and practical response not only in helping to stem the tide and reduce the amount of regulation but it also provides a system to improve the overall quality of regulation.

ACCI has also produced a number of other publications of which some detail is provided in our submission. These publications include *Taxation Reform Blueprint: A Strategy for the Australian Taxation System*, *Modern Workplace: Modern Future, A Blueprint for the Australian Workplace Relations System* and *Modern Workplace: Safer Workplace, An Australian Industry Blueprint for Improving Occupational Health and Safety*. These also form part of ACCI's submission to the Taskforce. Each of these publications deals with suggested approaches to reducing the regulatory burden faced by business.

ACCI would be pleased to discuss any aspect of our submission with the Taskforce members at its convenience.

Yours sincerely

Peter Hendy  
Chief Executive

22 November 2005



**HOLDING BACK THE  
RED TAPE AVALANCHE**

**A Regulatory Reform Agenda  
For Australia**

**Position Paper**

**November 2005**



# **Holding Back The Red Tape Avalanche**

## **A Regulatory Reform Agenda For Australia**

**Position Paper**

**November 2005**

# FOREWORD

Constant change, adaptation and flexibility underline economic growth. For several decades Australian policy makers from both sides of politics have successfully embraced these principles, stimulating a period of unprecedented economic expansion.

History has demonstrated that the benefits flowing from these principles are widespread. Recent reforms have provided Australians with higher productivity, wages, employment and living standards.

Yet Australia can still improve. The joint report of the World Bank and International Finance Corporation, *Doing Business in 2006*, ranks Australia sixth out of one hundred and fifty-five countries for ease of doing business. Australia ranks behind New Zealand, Singapore, the United States, Canada and Norway.

ACCI has consistently led the push for reform to regulations that impact upon business. Within the past two years, ACCI has released blueprints detailing workplace relations reform, occupational health and safety reform, taxation reform and size of government reform. Progressive reforms such as these are essential for improving the business regulatory environment in Australia.

However, consider if workplace relations, taxation and occupational health and safety legislation had been developed with proper consideration of the full regulatory impact and in direct consultation with business and other stakeholders.

If predictable, transparent regulatory processes previously existed, like those proposed in this paper, the ensuing regulation would have provided an operating environment more conducive to business. Governments would not need to assign significant resources to revising complicated systems.

Whilst reforms of these key areas should, and do progress, governments must now ensure that all future regulation impacting upon business is subject to stringent, consistent processes.

Maintaining the economic growth of past decades will prove impossible if policy makers do not substantially improve their current regulatory practices and processes.

ACCI demonstrates in this paper that good regulatory practices can be largely achieved within current frameworks. Governments have provided the structure to achieve effective regulation. Now is the time to ensure such structures work to optimal efficiency.

I would like to thank Peter Johnson, Nicolle Flint and Greg Evans for developing ACCI's position on regulatory reform and Jennifer Jay for the preparation of this document.



Peter Hendy Chief  
Executive

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# ACCI

## LEADING AUSTRALIAN BUSINESS

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations and can trace its history back 104 years to the time of Australian Federation.

ACCI is also the ongoing amalgamation of three federal business organisations, each of which has a continuous history stretching back to the time of Australian Federation. They were the Associated Chambers of Commerce in Australia (created in 1901), the Federal Council of the Chambers of Manufacturers of the Commonwealth of Australia (created in 1903) and the Central Council of Employers of Australia (created in 1904).

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

### OUR ACTIVITIES

ACCI takes a leading role in representing the views of Australian business to government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- representation and advocacy to governments, parliaments, tribunals and policy makers both domestically and internationally;
- business representation on a range of statutory and business boards, committees and other fora;
- representing business in national and international fora including the Australian Industrial Relations Commission, National Occupational Health and Safety Commission, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers;
- research and policy development on issues concerning Australian business;
- the publication of leading business surveys and other information products; and
- providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

## PUBLICATIONS

A range of publications are available from ACCI, with details of our activities and policies including:

- the *ACCI Review* a monthly analysis of major policy issues affecting the Australian economy and business;
- issue papers commenting on business' views of contemporary policy issues;
- *Policies of the Australian Chamber of Commerce and Industry* – the annual bound compendium of ACCI's policy platforms;
- the *Westpac-ACCI Survey of Industrial Trends* - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia;
- the *ACIL Tasman-ACCI Survey of Investor Confidence* – which gives an analysis of the direction of investment by business in Australia;
- the *St. George-ACCI Business Expectations Survey* - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories;
- the *St. George-ACCI Small Business Survey* – which is a survey of small business derived from the Business Expectations Survey data;
- workplace relations reports and discussion papers, including the *ACCI Modern Workplace: Modern Future 2002-2010 Policy Blueprint* and the *Functioning Federalism and the Case for a National Workplace Relations System* Issues Paper;
- occupational health and safety guides and updates, including the *National OHS Strategy and the Modern Workplace: Safer Workplace* Policy Blueprint;
- trade reports and discussion papers including the *Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World* Position Paper;
- education and training reports and discussion papers;
- the *ACCI Annual Report* providing a summary of major activities and achievements for the previous year; and
- the ACCI Taxation Reform Blueprint: *A Strategy for the Australian Taxation System 2004–2014*.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – [www.acci.asn.au](http://www.acci.asn.au).

# EXECUTIVE SUMMARY

## INTRODUCTION

Governments have provided various structures to attempt to achieve considered and careful regulation. However, these have not delivered a simple, standardised and manageable regulatory regime. Systemic processes to first streamline and then enforce these structures must be established.

Current institutional arrangements provide a solid basis for tempering the amount of new regulation. They also provide a basis for beginning the removal of existing regulation where it burdens or hampers business.

Process or systemic failures currently plaguing regulation making can be addressed without increasing the size of the public sector. In fact, reducing the size of government through appropriate expenditure restraint is an important element in containing the impact of regulation. ACCI has specifically outlined such a proposal in our recent paper by Mr Des Moore, *Commonwealth Spending (And Taxes) Can Be Cut – And Should Be*.

ACCI estimates regulation costs the Australian economy approximately \$86.0 billion per year or 10.2 per cent of GDP. While the estimate is inclusive of most types of regulation it is not exhaustive.

ACCI believes that the aim of improving regulation can be achieved and has developed the following plan, which addresses all regulation of economic significance affecting commerce and industry. Principles of good regulation policy are raised in this paper along with practical solutions. ACCI proposes the following key recommendations:<sup>1</sup>

## PART A: REGULATORY TRANSPARENCY AND ACCOUNTABILITY

### 1. Regulatory Budgeting

Given regulation acts as a tax on business and the community, just like taxation it is necessary to measure and disseminate this information. Each year the Prime Minister will present a regulatory budget that is a compendium of the cost and benefit analysis of regulations enacted by government and departments in the previous year. The regulatory budget would also

contain reference to government and departmental regulation agendas for the year ahead. Each Minister would be asked to certify their department's regulatory responsibilities and agenda, thereby contributing to the regulatory budget.

### 2. Tabling of Regulatory Budgets in Parliament

Regulatory budgets, once developed by departments and certified by the Minister, will be delivered to the Prime Minister prior to the first sitting of Parliament for the year. Then during the first sitting of Parliament, the Prime Minister will table all regulatory budgets.

### 3. Posting of Regulatory budgets on centralised website

In a process similar to that of the current budget, all regulatory budgets delivered by the Prime Minister will be placed on a centralised website. A centralised portal will also help to inform the public of the amount of regulation being created and will help to inform business of the amount of regulation it is required to comply with.

## PART B: ENFORCEMENT, STRINGENCY AND CONSISTENCY

### 1. Creation of the Prime Minister's Regulatory Review Unit (PMRRU)

The Office of Regulation Review (ORR) will be moved from the Productivity Commission (PC) preferably to the Department of Prime Minister and Cabinet. The new PMRRU will act as the 'gatekeeper' of good regulatory process.

### 2. Modelling Unit – improving regulatory response planning

Rigorous cost/benefit analysis of regulation is a fundamental component of the Regulatory Impact Statement (RIS) process. A specialised modelling unit located in the Productivity Commission will be created to develop a standardised costing tool to be applied to all new regulatory proposals. Line departments will be

required to apply this costing tool to objectively measure **PART D: SIMPLIFYING THE SYSTEM** the compliance costs of their regulatory bids.

### 3. PMRRU 'Proper Process' Test

Any regulation, as determined by the PMRRU, that does not pass the RIS process should not be allowed to proceed. This would give the PMRRU a stronger oversight or 'gatekeeper' role than the current ORR. The ORR's primary function would remain, to ensure that the processes of good regulation are followed while not commenting on the validity of the regulation.

Conflicting and overlapping regulation can to some extent

### 4. PMRRU website

As part of the process to increase the transparency and comprehensiveness of information, business requires a centralised website where all levels of government regulation are provided and which informs of the rights and responsibilities to which business is subject. The website should also act as a point of dialogue for businesses to provide feedback and suggestions on better and less onerous methods of regulation.

## PART C: DEALING WITH EXISTING REGULATION

### 1. Productivity Commission Review into legislation

For more complex regulation a degree of prioritisation is required. The Productivity Commission should undertake the process of grading the significance, to economic activity, of various reform programs. The areas regarded as economically significant would then provide the 'beachhead' with which to begin the larger reform process.

### 2. Simplifications and Harmonisation of State Regulation

Needless complexity has been added to regulation due to the states developing legislation in isolation from other jurisdictions, while businesses readily operate across such boundaries. The Federal Government should consider offering grant money to the States, similar to its Regulation Reduction Incentive Fund for local government, where improvements in the regulatory and compliance environment can be clearly demonstrated. This may facilitate simplification of ad hoc state regulations.

### 1. The Stock of Regulators

evolve when there are a large number of disjointed and quarantined regulatory bodies. A large number of regulators also increases the compliance cost to business by increasing the number of compliance activities required each year. To facilitate the simplification of regulations it is necessary to investigate the options for reducing not just the stock of regulations but the also the stock of regulators.

### 2. One-in-one-out

Before the consideration of new regulation, policy makers must subject proposals to a process of rigid cost benefit analysis and prioritisation. This involves significant cultural change in the public sector and among legislators. Specifically, policymakers need to ensure that prior to the introduction of new regulation redundant or superseded regulation is removed.

## INTRODUCTION

Despite the plethora of papers and commentary detailing the detrimental effects of excessive regulation and the deficiencies of the current regulatory system, little has been achieved to improve the system. A non-exhaustive list of major regulatory reviews is provided on page 17 of this report.

Regulation still needs to become more transparent, cost effective, responsive and accountable.<sup>2</sup>

Ideally, business-related regulation should be carefully developed, open to all stakeholders for consultation, elicit the least costly intervention from policy makers and include provisions for reviewing past regulation.

However, this is not always the case and this position paper provides ACCI's suggestions to improve the current regulatory system.

ACCI is not opposed to regulation. ACCI acknowledges that regulation is not fundamentally or inherently damaging to society or business. In fact regulation provides many benefits for business including competitive advantages through improving economic stability, operating and governance arrangements. Such regulations increase public and investor confidence and provide operational certainty.

However, increasingly governments are pressured to regulate business activities in response to high profile cases, relating to safety, natural disasters, corporate collapses and other significant events.

Faced with myriad possible outcomes and problems, governments must choose the appropriate response commensurate with the presented risk, which, more often than not, is regulation. Pressure to regulate is a direct result of increased wealth within western societies, which has exposed governments to greater demands from the populace for a risk free life. These demands often lead to market intervention and regulation before all available options have been considered.

This disproportionate approach to risk was recognised by the British Prime Minister Tony Blair during a speech to the Institute for Public Policy Research, where he noted:

It is what I call a sensible debate about risk in public policy making. In my view, we are in danger of having a wholly disproportionate attitude to the risks we should expect to run as a normal part of life. This is putting pressure on policymaking, not just in Government but in regulatory bodies, on local government, public services, in Europe and across parts of the private sector - to act to eliminate risk in a way that is out of all proportion to the potential damage. The result is a plethora of rules, guidelines, responses to 'scandals' of one nature or another that ends up having utterly perverse consequences.<sup>3</sup>

Regulation is also often not reviewed. Instead in many circumstances it continues to be applied, reducing business flexibility, decision-making ability, investment, innovation, competitiveness, and productivity. While ineffective and overly intrusive regulation is an obvious problem, initially good regulation, in a dynamic market economy, can also evolve into stifling regulation. Clearly all regulation must be reviewed on a regular basis.

Developing effective processes for introducing regulation will significantly reduce the overall cost of regulation to the Australian economy.

Implementing an agreed and transparent regulatory framework will ensure more considered and careful regulation. It will provide a barrier against knee jerk and reactionary legislation.

Action must also be taken to review, revise and reduce existing legislation.

One of the most effective ways to reduce regulation remains to reduce the size of government. ACCI published a discussion paper entitled *Commonwealth Spending (and Taxes) Can Be Cut – And Should Be Cut*, which proposes a reduction in the size of government by more than two per cent of GDP or \$19 billion.<sup>4</sup> ACCI encourages this to be achieved along-side the regulatory reform agenda.

This position paper describes how ACCI believes more careful, considered and successful regulation can be created and sustained.

# WHAT BUSINESS TELLS US

ACCI's 2004 Pre-Election Survey provides a qualitative gauge of the effect regulation has upon the business community. 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. This profile is regardless of the size of the firm (large or small) or whether they are engaged in exporting or not.

On an 'All Firms' basis, 75.7 per cent of Australian businesses expressed major or moderate concern at the complexity of government regulations, with 74.3 per cent complaining about the costs of compliance with government regulations.

Penalties for failure to comply with government regulations attracted criticism (major plus moderate concern) from 62.9 per cent of those polled, as did the burden of compliance with health and safety regulations (at 63.5 per cent).

Workplace occupational health and safety inspections were seen as a major or moderate problem by 50.8 per cent, followed by compliance with privacy requirements (47.4 per cent), compliance with environmental regulations (44.6 per cent), corporations law requirements (44.2 per cent), and administration of the competition law (33.8 per cent).

The 2004 Pre-Election Survey helps to clarify the distinction between the stock of regulation, that previously introduced, and the flow of regulation, regulation recently proposed. Taxation compliance is a particularly acute burden for smaller businesses with just over 81 per cent polled by the ACCI's Pre-Election Survey describing the frequency of

changes to tax laws and rules as either a major or moderate concern for their business. The figure for large firms was 76.3 per cent.

At the same time, almost 89 per cent of small firms said the overall complexity of the taxation system was of major or moderate impediment to their business. For large firms the figure was only slightly less, at 86.1 per cent.

Labour regulations and on-costs, rather than labour costs, dominate the concerns of Australian employers. The dominant issues of concern for all firms (that is small, medium and large combined) are workers compensation costs, unfair dismissals legislation and termination, change and redundancy regulations.<sup>5</sup>

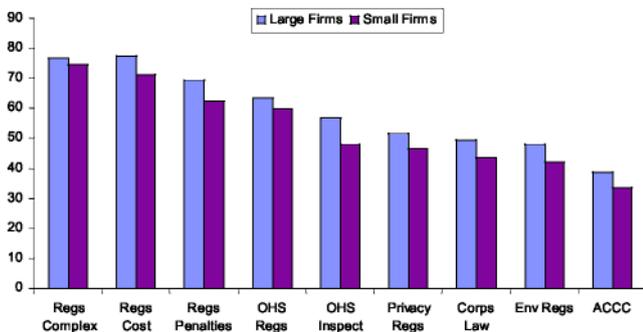
The full *ACCI 2004 Pre-Election Survey* can be downloaded from [www.acci.asn.au](http://www.acci.asn.au).

Government regulation, particularly federal and state, consistently rates in the *ACCI Survey of Investor Confidence* top ten, out of twenty major constraints to investment. Overall businesses are more likely to indicate that State government regulation is a major constraint on regulation followed by Federal and local government regulation, as demonstrated in Chart 2 below.

The *St. George-ACCI Small Business Survey* shows the regulatory burden of various regulations for each level of government. Charts 3, 4 and 5 (on page 14) indicate a degree of uniformity between different sized businesses in terms of regulation acting as a major constraint on investment.

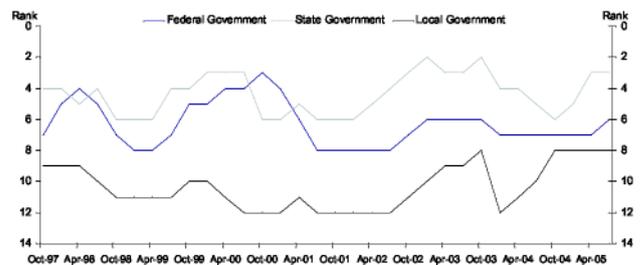
Federal and state regulations are generally identified as major constraints by larger firms with local regulations

**Chart 1**  
Government Regulation



Source: ACCI Pre-Election Survey, *ACCI Review*, June 2004.

**Chart 2**  
Regulation as a Major Constraint to Investment



Source: ACCI *Survey of Investor Confidence* trend data.

mostly consigned to outside the top ten. For medium-sized enterprises all levels of government appear to constrain investment although state government regulation is the most detrimental. Again for small-sized firms both federal and state regulations restrict investment, however, local government regulation as a constraint to investment has increased markedly over the past two years.

The *Red Tape Register 2004* survey undertaken by State Chamber of Commerce (NSW) is designed to quantify the hidden costs of regulation. The overall results are outlined below:

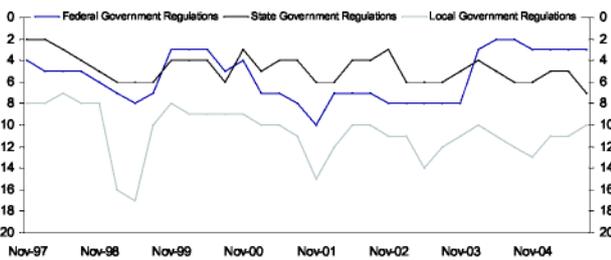
The 2004 Red Tape Register brings with it both good and bad news. The good news is that over the past twelve months there has been a significant improvement in the amount of time businesses are spending completing their Business Activity Statements (BAS) and the paperwork associated with payroll

The survey also indicates a significant number of small business owners dealing with their Human Resources issues and payroll tax issues.

Outsourcing areas that have been identified as overly complex, for example taxation, is becoming more common with 36 per cent of owners filing their company tax returns in 2004 compared with 40 per cent in 2003. Furthermore, 26 per cent outsourced to an accountant compared with 22 per cent outsourcing in 2003.

Occupational Health and Safety (OH&S) regulation represents a considerable drain on businesses time. The survey indicated that 25 per cent of respondents, up from 13 per cent the previous year, spend 5-15 hours per fortnight meeting legislative requirements.

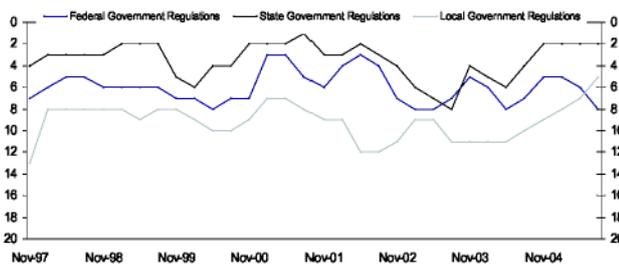
**Chart 3**  
Regulation by Large Firms as a Major Constraint to Investment



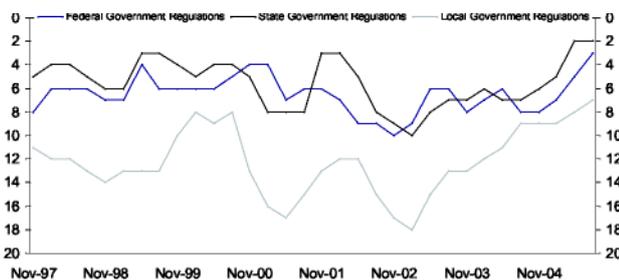
tax. The bad news is that it is taking business longer to deal with occupational health and safety regulations and the NSW industrial

Source: *St. George-ACCI Small Business Survey* trend data.

**Chart 4**  
Regulation by Medium Firms as a Major Constraint to Investment



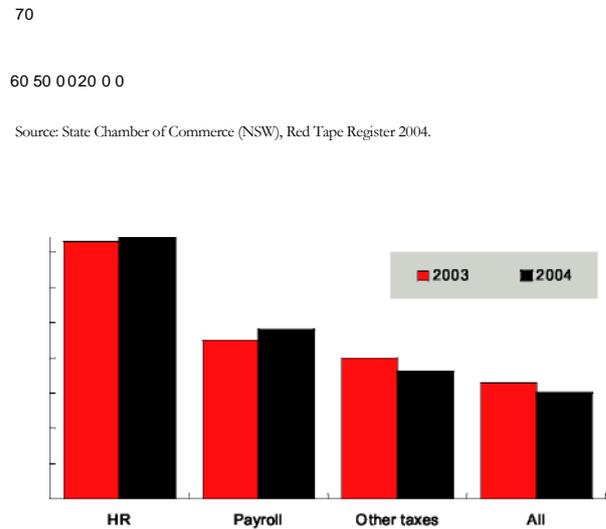
relations system.<sup>6</sup>



Source: *St. George-ACCI Small Business Survey* trend data.

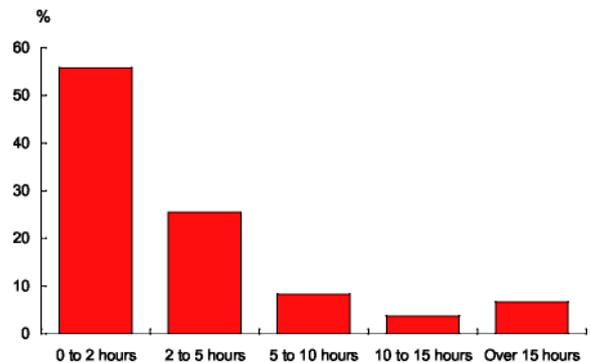
**Chart 5**  
Regulation by Small Firms as a Major Constraint to Investment

**Chart 6**  
Business Owners Dealing with HR, Payroll and Other Taxation Issues



Source: State Chamber of Commerce (NSW), *Red Tape Register 2004*.

**Chart 7**  
Time Spent Complying with OH&S Laws in the Past Two Weeks



Source: State Chamber of Commerce (NSW), Red Tape Register 2004.

Source: *StGeorge-ACCI Small Business Survey* trend data.

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# INTERNATIONAL STATISTICS

Internationally Australia compares favourably in many areas of regulation. This has been reflected in better economic outcomes in absolute terms and relative to other OECD countries. Over the past ten years Australia has moved up the ladder in terms of GDP per head and GDP per hour worked (see Chart 8 below). Widespread reforms in the 1980s and 1990s have propelled employment and living standards to heights not seen for many decades.

Australia's GDP per Capita incomes have grown quickly relative to other major economic economies. We are now ranked 8th after having been ranked 18th in 1989 and 1990. GDP per hour worked or productivity has not improved nearly as quickly as Australia's international ranking has only risen from 19th to 16th since 1996. Australia has been focused on its strong productivity growth over recent times but has failed to recognise the same trend in other countries.

Although Australia's recent good management has improved our competitiveness we still lag behind the productivity levels of many OECD countries since falling outside the top ten countries in the early seventies.

Australia ranks highly in other measures such as the World Bank's publication *Doing Business in 2006* (see Table 1).

But while Australia continues to remain a competitive country for doing business other countries have been moving forward improving their standing. There are also areas where Australia performs badly, such as the cost of property registration where we rank as the 34th cheapest country, as a proportion of property value.

show a high degree of competitiveness in certain areas of administration and communication of regulation (see Charts 9 and 10 on page 18).

While Australia remains well placed overall there are areas which need to be improved if Australia is to become more competitive. Furthermore, competitive areas need to improve to remain competitive. On some measures such as sub-domain regulatory and administrative opacity Australia does not provide world-class leadership, but has improved significantly (see Chart 11 on page 18).

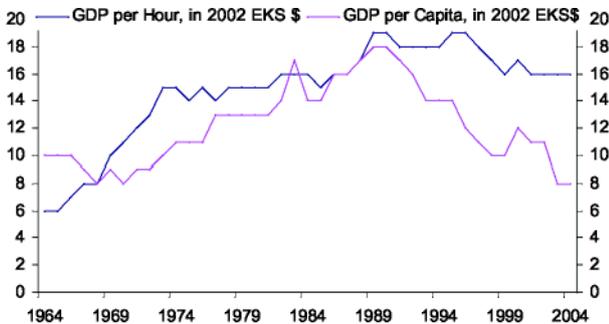
Given Australia's relatively good performance in 1998, the OECD noted a degree of convergence was occurring between the leading countries and more restrictive regimes:

In line with the convergence theme, countries that were estimated to be relatively liberal in 1998 -- the United Kingdom, the United States, Australia, New Zealand, Canada, Ireland, and Denmark -- have also tended to record relatively small improvement in product market regulation. With a few exceptions, the pattern of product market reform in these countries has tended to consist of small incremental improvements across the range of PMR indicators.<sup>7</sup>

Being at the forefront does not guarantee that in the longer term Australia will remain a leading country in which to invest or do business. In a race where other countries are developing and improving their regulatory frameworks standing still can only mean falling behind.

The Business Council of Australia (BCA) released a paper estimating that Australia's real wealth was \$83,000 per capita

**Chart 8**  
GDP Per Hour and GDP Per Capita



The OECD Product Market Regulation (PMR) indicators

1	New Zealand	11	Ireland
2	Singapore	12	Iceland
3	United States	13	Finland
4	Canada	14	Sweden
5	Norway	15	Lithuania
6	Australia	16	Estonia
7	Hong Kong, China	17	Switzerland
8	Denmark	18	Belgium
9	United Kingdom	19	Germany

**Table 1**  
Top 20 Economies on the Ease of Doing Business

10	Japan	20	Thailand
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Note: The ease of doing business measure is a simple average of the country's ranking in each of the 7 areas of business regulation and property right protection measured in *Doing Business in 2006*. Source: Doing Business database.

higher as a direct result of economic reforms. Economic reforms have lowered the number of unemployed persons by 315,000 compared with a 'no reform' alternative. By 2025 Australia's economy would be 40 per cent larger than if the process of reform were to stop.<sup>8</sup>

In 2000, the OECD released the report *The OECD Public Management Service Multi-Country Business Survey: Benchmarking Regulatory and Administrative Business Environments in Small and Medium-Sized Enterprises*. This report looked at tax, environment, and employment compliance costs (in isolation) in 11 different countries, including Australia. The report showed that the compliance cost of Australian business regulation in 1998 was \$40,380 per firm, or \$14,500 just for tax compliance costs.

The Dutch estimated that compliance costs for businesses were €16.4 billion or 3.6 per cent of GDP. In Belgium, the cost of administrative burdens for the economy was estimated

at €9 billion in 2002 approximately 3.4% of GDP. This was disaggregated in companies, €6.3bn or 2.4% of GDP, and the self-employed, €2.7bn or 1.0% of GDP. In the UK, the Government's Better Regulation Task Force recently evaluated that the cost of red tape for the British economy could represent up to £100 billion a year or about 10% of GDP, with a fourth of that amount (£25bn) spent enforcing rules.<sup>9</sup>

A report by the Small Business Administration in the US titled *The Impact of Regulatory Costs on Small Firms (Update)*, estimated the total cost of regulation to the US economy in 2004 at US\$1.1 trillion or 9.5 per cent of GDP. Overall the burden of regulation falls most heavily on small business (see Table 2 on page 19).

### SMALL BUSINESS STATISTICS

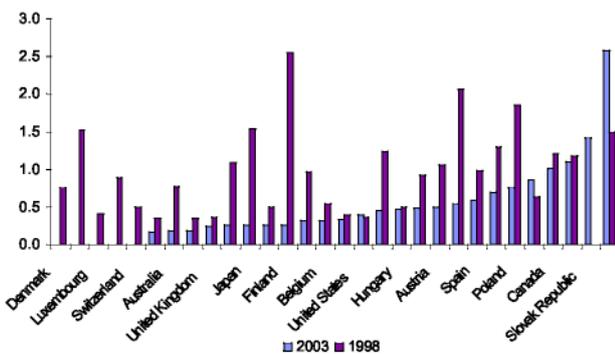
Small businesses are more likely to have difficulty meeting the costs of regulation, due to their lack of resources including time and money.

The OECD report entitled *Businesses' Views on Red Tape* noted the overall detrimental effect of regulation on business. "The cumulative effect of regulations from multiple institutions and jurisdictions is to slow down business responsiveness, divert resources away from productive investments, hamper entry into markets, reduce innovation and job creation, and generally discourage entrepreneurship."<sup>10</sup>

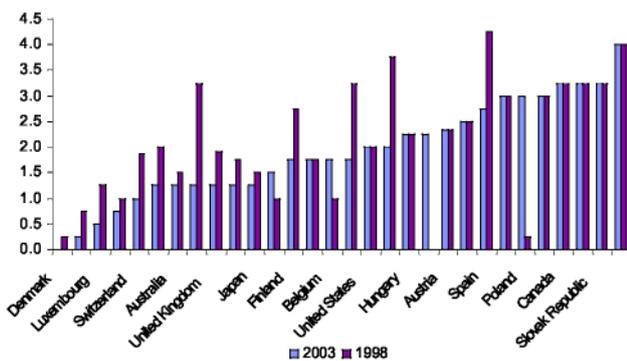
However, while regulations are throughout the economy there are specific reasons why small businesses suffer disproportionate regulatory costs. These include:

- regulatory cost makes up a large proportion of overhead cost and net margin. At the firm level it often implies a direct reduction in profitability and retained earnings. This may affect investments and the return to shareholders;
- the nature of the compliance cost. Administrative costs tend to be fixed, so that changes in sales have no effect on the costs in the short-run. In other words, if sales go down the cost is still the same meaning that the "break-even" point is raised; and
- diversion of entrepreneurial attention. In small companies the owner, senior manager or director has to deal with the paperwork while they instead could focus attention on business management.<sup>11</sup>

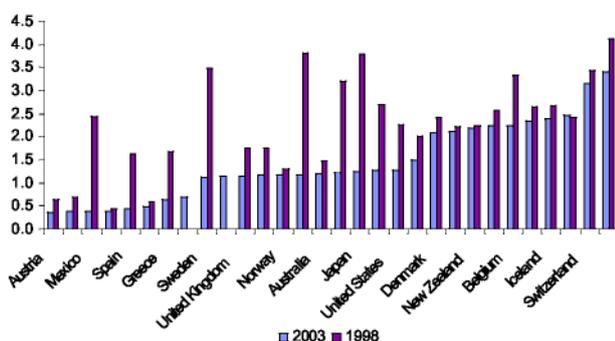
**Chart 9**  
GDP Per Hour and GDP Per Capita



**Chart 10**  
Administrative Burdens of Sole Proprietor Firms



**Chart 11**  
Sub-Domain: Regulatory and Administrative Opacity



**Table 2**  
**Annual Incidence of Federal Regulations by Firm Size in 2004 (Dollars)**

Type of Regulation	Cost per Employee for Firms with:			
	All Firms	<20 Employees	20-499 Employees	500+ Employees
All Federal Regulations	\$5,633	\$7,647	\$5,411	\$5,282
Economic	\$2,567	\$2,127	\$2,372	\$2,952
Workplace	\$922	\$920	\$1,051	\$841
Environmental	\$1,249	\$3,296	\$1,040	\$710
Tax	\$894	\$1,304	\$948	\$780
Compliance				

Note: These calculations use employment shares for the respective business sector to compute the weighted average cost per employee for all firms. The estimates are denominated in 2004 dollars.  
Source: Crain W Mark, *The Impact of Regulatory Costs on Small Firms (Update)*, Small Business Administration Office of Advocacy, September 2005.

The Small Business Deregulation Task Force (Bell Report) noted that its *Working Overtime* survey found that small business spent on average 16 hours per week on administration and compliance. The annual cost of both taxation and other compliance was approximately \$7,000. This costing only allowed for hours spent on paperwork and not the broader incentives effects. The taskforce noted that businesses may not wish to expand if regulatory requirements were too onerous or because of the uncertain regulatory environment.

The report went further by noting that ‘disincentives can stifle innovation and be a barrier to expansion and employment.’ Overlapping federal, state, territory and local government regulations present a significant burden. This illustrates that regulatory reform is not only the preserve of one tier of government. It also illustrates that, a cooperative approach between governments is necessary if Australia is to have a world leading regulation system and framework.

ACCI estimates regulation costs the Australian economy approximately \$86.0 billion or 10.2 per cent of GDP. ACCI adopted the methodology used by the United States Small Business Administration in the paper entitled *The Impact of Regulatory Costs on Small Firms (Update)*. The estimate was supplemented with survey data from OECD publications on the cost of compliance.

An OECD report found that small-sized enterprises had five times the administrative burden of firms with over fifty employees:

SMEs surveyed spend on average US\$27,500 per year complying with administrative requirements. This equates to an average cost of US\$4,100 per employee, or around 4% of the annual turnover of companies. And the smaller the firm is, the greater the hassle.

The smallest companies – those with less than 20 employees – endured more than five times the administrative burden per employee than larger firms did. Small SMEs spend an average of US\$4,600 per employee on paperwork, whereas SMEs with over 50 employees spend around US\$900.<sup>12</sup>

Given the regressive nature of regulation it is imperative that its effect on small business is taken into account. The Office of Regulation Review, in the *Guide to Regulation*, has been tasked with ensuring all departments explicitly state the effects of regulation on small business compliance costs in the RIS process.

## TYPES OF REGULATION

The rationale for the implementation of regulation can vary. The main justifications for business regulation include revenue raising, public order, health and safety, economic development and efficiency, protection of environment and natural resources and to redress unfairness and inequity. A regulatory approach tries to modify human behaviour by prescribing sanctions for transgressors. For example, in recent years hefty fines have been introduced into OH&S and environmental legislation.

Few genuine incentives are present in regulations. Advocates of regulation often refer to punitive regulations as providing ‘incentives’, a term which in reality means there will be an absence of punishment for those who comply.

### NO REGULATION

Not immediately responding to a call for greater regulation may not be the most instinctive approach for policy makers, particularly for risk adverse politicians, but it should be the starting point for any thorough policy investigation. Governments are there to respond to community concerns, to keep the general public safe and facilitate markets. This is the general expectation many have in the community. Governments are perceived as keystones of people’s safety:

Health and safety legislation is necessary to protect people at work. Food standards are necessary to protect people from harm. Protections are necessary for children from the danger of predatory adults. These are things against which, historically, the state has underwritten the risk. The pooling of such risks is still the fundamental basis of our case for publicly funded public services.<sup>13</sup>

The attitude that governments should control all risk and adverse outcomes often leaves little time for the contemplation of the real risks of market failures. Governments must consider whether a market failure has occurred at all. Intervention in a well functioning market is more harmful than helpful.

When regulation first enters into the public debate it generally revolves around the benefits of enacting legislation. The costs of any possible intervention are generally left until after the legislation has been passed. Well developed, transparent,

accountable and publicly agreed processes

provide governments with a release valve where regulation can be openly discussed over an appropriate amount of time.

The UK Better Regulation Task Force (BRTF) identified four possible situations when it may not be sensible to intervene in the market:

- when intervening in a market that is not operating perfectly seems likely to cause more problems than it solves;
- when the benefits, which are often difficult to quantify, look unlikely to justify the costs. In particular, when the costs of preventing a highly improbable event outweigh the estimated benefits;
- when any regulatory intervention would be difficult or impossible to enforce; and
- when the common law already exists in an area.<sup>14</sup>

In the above circumstances regulatory failure is likely to have a more detrimental effect on welfare than market failure. Rigorous cost-benefit analysis may help prevent ‘knee-jerk’ reactions to adverse situations. Cost-benefits analysis should be transparent allowing informed public debate on relevant issues to be considered while providing some surety that matters are being addressed in a manner that will lead to workable outcomes.

### INFORMATION

The provision of timely and relevant information can prove a less costly option than more deliberate regulatory alternatives. Increasing public information can provide three benefits over other forms of intervention. Firstly, it can be cheap to provide relative to other methods, in terms of compliance, administration and policy costs. Secondly it serves to enhance the decision-making process of businesses and consumers. Thirdly, it can enhance the working of the market without any associated ‘downstream’ complications.

Information can be provided by governments, businesses and consumers simultaneously each targeting their specific

demographic more efficiently than any other. Information can also be provided within a particular section of the community without burdening unintended or innocent parties.

**STANDARDS**

Standards as regulation provides businesses with an opportunity to develop a template which sets out specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs in the way it was intended.<sup>15</sup>

National standards and codes (including mirror and template regulation) are encouraged so that the regulation is ‘business neutral’ for all businesses regardless of location unless justified by differing conditions in different jurisdictions. Standards allow businesses to use the most efficient production, management and distribution techniques available as they are geared toward outcomes rather than inputs.

The number of standards introduced by business has steadily grown in number along with those of government. The bulk of widely recognised standards are those developed by Standards Australia, a non-government standards writing body. There are some 5700 Australian Standards. About half are referenced in legislation and regulations by government, whereby they become mandatory. Half are voluntary standards. Standards play an important informational and quality assurance role with regard to products and services.<sup>16</sup>

ACCI’s primary objective is to ensure that standards are developed with the aim of facilitating trade. Standards which are developed with the aim of providing safety and consumer protection are in essence developed to facilitate trade. Moreover, standards which are developed in nontechnical areas such as occupational health and safety, should not be developed unless it can be clearly demonstrated that there will be a trade and commerce benefit and no anti-competitive impact from the implementation of that standard.

ACCI believes that the competitive provision of high quality international standards plays a vital role in facilitating trade domestically and internationally. ACCI fully supports Standards Australia as an integrated mechanism for facilitating industry self-regulation.

**Self-regulation**

It is possible, by encouraging professions and industries to regulate their own activities, to avoid overly intrusive

legislation. Self-regulation ensures that regulation is sensitive to the needs of those being regulated, while cutting the cost to the taxpayer.<sup>17</sup> Self-regulation provides businesses with the flexibility to comply with objectives set down by government. They allow businesses and industries to manage in a way, which is more suited to their particular organisation. Self-regulation can be designed a number of ways depending on the circumstances facing the government, community and business.

Companies have incentives to provide safe and quality products to consumers. They also have incentives to reassure investors about the financial and managerial expertise of the organisation. Therefore, the willingness to comply is often higher than if government instigates conditions arbitrarily. The Office of Fair Trading (OFT) in the UK has developed a set of core criteria for code sponsors:

- organisational criteria;
- preparation of code criteria;
- content of code criteria;
- complaints handling criteria;
- monitoring criteria;
- enforcement criteria; and
- publicity criteria.<sup>18</sup>

Self-regulation is one of the ways that regulatory outcomes can be achieved in a more flexible and non-interventionist manner than by government regulation. Self-regulatory approaches can achieve minimum effective regulation<sup>19</sup> or a best practice approach. The Office of Regulation Review (ORR) *Report of the Commonwealth Interdepartmental Committee on Quasi-regulation* adopted the following checklist for self-regulation:

- there is no strong public interest concern, in particular, no major public health and safety concern;
- the problem is a low risk event, of low impact/significance; and
- the problem can be fixed by the market itself, i.e. there is an incentive for individuals and groups to develop and comply with self-regulatory arrangements (industry survival, market advantage).<sup>20</sup>

In addition, for self-regulatory industry schemes, as opposed to individuals voluntarily opting for a particular standard, success factors include:

- presence of a viable industry association;
- adequate coverage of industry concerned;
- cohesive industry with like minded/motivated participants committed to achieve the goals;
- voluntary participation can work – effective sanctions and incentives can be applied, with low scope for the benefits being shared by non-participants; and
- cost advantages from tailor made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanism.<sup>21</sup>

Different types of self-regulation schemes include voluntary accreditation and adoption of voluntary standards. Self-regulation goals can range from minimum acceptable standard to best practice.

Encouraging business to take responsibility and to be accountable for their actions is ACCI's preferred approach for regulation. The benefits of self regulation include:

- allowing industry to respond to concerns raised by consumers and identify solutions to problems by utilising the resources and expertise that is unavailable to government;
- it empowers users, whether business or householders, through the market-mechanisms;
- ongoing management of a self regulatory mechanism is likely to be more flexible and responsive if industry members retain ownership of it. Ultimately this leads to a simpler and less costly scheme and one that has wide acceptance from the public; and
- greater flexibility and cost effective alternative to government regulation.

### Quasi-regulation or Co-regulation

Quasi-regulation can be defined as codes that are developed by industry or professional bodies with the help of government but are enforced by industry. The *Report of the Commonwealth Interdepartmental Committee on Quasi-regulation* refers to the range of rules, instruments and standards where government influences business to comply, but which does not form part of explicit government regulation.

Co-regulation may have statutory backing as well as government involvement in the development of codes; legislative backing enables governments to enforce codes.

### Legislation

Mandatory regulations are often imposed in response to instances where market failure has thought to occur. While

there are legitimate reasons for regulating market failures, their existence and the approach taken by government can place overly restrictive practices on business management, competition and innovation. Primary and secondary legislation passed by parliament are mandatory or legislative regulation. This type of regulation tells business and the broader community what and when do something. While mandatory regulation has the effect of changing behaviour in certain circumstances it may not be the least costly or most efficient form of regulation.

Legislated regulations often provide less flexibility reducing efficiency compared with voluntary agreements. Mandatory regulation in areas where innovative solutions are required to problems is not effective. For example, non-point sources of pollution are difficult to identify and monitor which makes compulsory regulation difficult and costly to implement.<sup>22</sup> The prescriptive nature of legislation does not and cannot account for all circumstances and eventualities.

The rigid nature of mandatory regulation tends to lead to greater regulation as more permutations arise over time. Closing 'loopholes' illustrates one form of regulatory creep whereby the original intent of the legislation no longer works effectively or has been circumvented and must be extended to maintain relevance in the market place. Descriptive legislated codes can be self-replicating in nature, once bad regulations are put into place more regulations are required to 'fix' the problem.

The law cannot unambiguously specify all potentially harmful actions.<sup>23</sup> Other forms of regulatory creep revolve around transparency<sup>24</sup> and extending self-regulation regimes into quasi and legislative regimes.<sup>25</sup>

Large stocks (past) and flows (new) of regulation increase the likelihood that people will fail to comply due to a lack of information regarding which regulations apply to them. Large volumes of regulation increase the monitoring and enforcement costs while simultaneously increasing compliance costs. This in turn requires a larger and perhaps more intrusive bureaucracy.

The level of compliance is a function of many factors including compliance costs, level of enforcement, difficulty in proving cases, likelihood of maximum fine and possibility of avoiding a fine.<sup>26</sup>

### Regulation Is Not Costless

Regulation imposes restrictions on businesses, individuals, volunteer groups and the community. While developing

and applying a single regulation can be reasonably costless, multiple and overlapping regulations and the impact of those regulations on economic behaviour and processes can be very expensive.

Regulations affect all facets of business including inputs, prices, output and volumes all of which constrain the ability of business to provide the best product at the lowest cost. Taxes and regulations distort the allocation of resources within firms, limit flexibility of inputs and provide disincentives to increase output. In dynamic economies, the negative effects of regulation on business performance may be even more detrimental— numerous changes to regulations (or the prospect of changes) might also adversely affect productivity and business performance.<sup>27</sup>

The regulation of all facets of business such as its exit, growth and entry of firms has detrimental effects on a number of macro-economic variables. “Once a firm is legally registered and allowed to operate, its decisions are conditioned by regulations on hiring and firing workers, taxes, safety standards, environmental regulations, interest rate controls, trade barriers, legal procedures, etc. Finally, a firm going out of business must again follow a sometimes costly and lengthy procedure.”<sup>28</sup>

Regulatory bodies may have little incentive to reduce costs where cost recovery principles apply to those they regulate. They may set higher standards than risk analysis would consider prudent and given a culture of avoiding blame many regulators become risk adverse. Regulators may adopt a culture or view that this is a ‘job for life’, rather than facilitating the market through a period of change.<sup>29</sup>

The consequences of regulatory failure include:

- Hindering efficient investment;
- Hindering efficient prices;
- Hindering efficient innovation;
- Encouraging anti-competitive conduct;
- Creating incentives for poor quality;
- Excessive compliance burdens; and
- Excessive regulatory resources and reach.<sup>30</sup>

Faced with federal, state, and local regulations, businesses reallocate production and investment decisions often to the detriment of workers and consumers. In other words, they can be forced to use their resources less efficiently. They operate in a less productive, more costly manner. The result is lower wages, higher prices, or both. In any case, the result is a decrease in the standard of living for workers and consumers.

Regulation, like taxation creates artificial incentives to production, investment and innovation. Regulation costs are nebulous having both a time and an economic cost, with the most obvious being administration compliance costs. Compliance costs include all the time and resources spent by owners, managers, staff or hired experts to understand regulations, collect, plan, process, report, retain data and fill in forms required by governments.<sup>31</sup> Internal compliance costs are incurred when staff within an organisation deal with paperwork and such while external costs are those incurred sourcing outside experts and opinion.<sup>32</sup>

# APPROACH TO REGULATION IN OTHER COUNTRIES

Numerous countries have developed new regulatory frameworks and principles in recent years. Just a few examples are:

## NETHERLANDS

The Netherlands's Slechte Committee, or the Committee for Reduction of Administrative Burdens on Enterprises, published its final report in 1999. Many of the recommendations were taken up by the Government, which subsequently introduced an Advisory Committee on the Testing of Administrative Burden (ACTAL). A key recommendation was that every six months ministerial departments have to present their initiatives for reducing the administrative burden on businesses.

## UNITED KINGDOM

The Better Regulation Task Force (BRTF) in the UK recently produced its *Regulation – Less is More* report where all its recommendations were accepted by the government. The report suggested the adoption of a standard cost model, setting targets for reducing the administrative burden, introducing simplification measures as an offset against major regulatory proposals and beginning the process of developing a methodology for assessing the total cumulative costs of regulatory proposals.

## UNITED STATES OF AMERICA

The USA has had a long tradition in reducing 'red tape' and administrative burdens. In 1942 the government enacted the Federal Reports Act, which allowed for the review of information requests by government departments. The US was the first to develop technology that allows businesses to search all government Websites from a central location. The US government has also implemented a central website where people can view and comment on proposed federal regulations. The objective of the website is set out below:

The eRulemaking Initiative is managed by the U.S. Environmental Protection Agency in conjunction with 12 Federal departments and agency partners. As the first milestone of the initiative, Regulations.gov, was officially launched in January 2003. This Web site provides an easy and consistent way for you to search, view, and comment on proposed federal regulations open for comment.<sup>33</sup>

## EUROPEAN UNION

The European Union has moved toward a wholesale review of its regulatory process under the auspice of the Lisbon Strategy. Further progress has been made in changing the attitude of European politicians to regulation underlining the importance for Australia of achieving similar understanding:

A business environment that strengthens incentives to produce, to establish enterprises, to innovate and to take risk contributes to growth of income and of job opportunities. On the other hand, burdensome regulations, inefficient markets and administrative obstacles, as well as negative attitudes to risktaking and to entrepreneurship hinder entrepreneurial dynamism and undermine the achievement of Europe's ambitions.<sup>34</sup>

Member states and the Commission developed a set of quantitative targets for reducing the regulatory and administrative burden which have generally garnered broad support. Table 3 (on page 26) outlines these targets.

## IRELAND

Ireland is another country that has developed proposals for reducing and improving regulation releasing a white paper entitled *Regulating Better*. The paper sets out core principles and a programme agenda giving effect to the principles. Actions include making wider use of Regulatory Impact Analysis (RIA), integrated with e-Cabinet projects. Systematic review of key areas and sectors will be carried out as well as updating pre-1922 legislation.

The paper also calls for developing proposals for improvements to the procedures for appealing regulatory decisions. The government will also publish Explanatory Guidelines alongside more primary legislation with significant impacts and improve the quality of the explanatory material that accompanies secondary legislation.

**Table 3**  
**Quantitative Targets in Enterprise Policy**

Member State	Indicator	Current Position (Year)	Target (Year)
Belgium	Administrative burden		Reduction by 25%
Denmark	Administrative burden		Reduction by 25% (2010)
Germany	Share of federal government services on-line		100% (2005)
Spain	Time to set up a company	84 days	Reduction by 50% = 42 days (2006)
Spain	Share of government services on-line		40% (2006)
Ireland	Impact assessment of primary legislation	0% (2001)	100% (2006)
Netherlands	Administrative burdens		Reduction by 25%
Portugal	Time to set up a company	10-25 days	Reduction by 50% (2003)
Portugal	Time to obtain an industry license	About 150 days	Reduction by 50% = 75 days (2003)
Portugal	Share of government services on-line		100% (2005)
Sweden	Impact assessment	100% (2001)	100% (2001-2010)
UK	Impact assessment		100% (2005)
UK	Share of government services on-line		100% (2005)

## REDUCE GOVERNMENT - REDUCE REGULATION<sup>35</sup>

In May 2005 ACCI released a discussion paper title *Commonwealth Spending (and Taxes) Can Be Cut – And Should Be Cut*. The paper by eminent economist Des Moore makes the following key points on reducing the size of government.

The report points out that, “although since the last year of the Labor government in 1995-96 there has been a reduction in total outlays as a proportion of GDP, that is (more than) entirely due to a reduction in interest costs and the relative size of discretionary spending has actually increased. It argues that a strong case exists on both economic and social grounds for reducing the size of government and identifies savings that would reduce Commonwealth expenditure/revenue concessions by over \$19 billion or more than 2 per cent of GDP in 2005-06. Of course, it is not practical at this stage in the formation of the Budget to expect proposals of this magnitude to all be implemented in 2005-06.

This proposal would involve a large reduction in the role of government, such an objection could hardly be sustained given that, as the report explains, the major effect of the changes would be on middle and higher income groups. Moreover, while there could be negative effects on the incomes of some in those groups, the majority would be “compensated” if a commensurate flattening in tax rates accompanied the proposed changes. Estimates by private sector economists, for example, suggest that the cost of reducing income tax rates to a maximum of 30 per cent would be in the \$13-15 billion range in 2005-06.

### OVERSEAS EXPERIENCE AND COMPARISONS

Opponents of reducing government expenditure sometimes ask why even contemplate such action when, among OECD countries, Australia already has one of the smallest government sectors when measured by taking the published proportion of GDP allocated to government spending. True, OECD figures for 2004 put total general government outlays (including for state and local governments) for Australia at 35.7 per cent of GDP, about 5 percentage points below the OECD average. And, of the 28 OECD countries surveyed, only Korea (27.9 per cent) and (heavily European-Community-subsidized) Ireland (33.9 per cent) have lower proportions, with the USA and Switzerland around the same proportion as Australia.

The OECD data shows that since 1996 Australia has decreased outlays by 2.2 percentage points of GDP compared with the OECD average reduction of 1.3 percentage points. Critics of our “small” government sector fail to take account of the fact that in Australia a higher proportion of services is provided through the private sector. Total Australian spending (that is, both government and private) on services such as education and health is broadly in line with total spending in other countries with comparable income levels.

Our larger private sector is an advantage in that it reduces the adverse effects of taxation on productive effort and, importantly, also means that a more efficient and higher quality service tends to be provided. Far from ‘worrying’ about the small size of our government sector, we should be flaunting its benefits and looking for ways to reduce it further.

### SMALLER GOVERNMENT & LOWER TAXES = GOOD ECONOMICS & POLITICS

A program of reduced spending that was accompanied by a commensurate reduction in taxation would not only be on the right economic track: it should also be politically acceptable, particularly if the spending reductions are focussed on middle and higher income groups and those groups are themselves “compensated” through a flattening of tax rates. Moreover, the political case for lowering the tax burden is strengthened given that, between 1995-96 and 2003-04, there appears to have been an increase in the burden of Commonwealth taxation excluding either general sales taxes or (since its introduction in 2001) the Goods & Services Tax. As the Commonwealth levies 82 per cent of all taxes (69 percent if the GST is regarded as a State tax), any major lowering of taxation will have to be undertaken mainly by it and, hence, the chief driver in reducing expenditure has to be the Commonwealth too.

While the MYEFO estimates project cash surpluses equivalent to 0.5-0.7 per cent of GDP over the next three years, if substantial spending reductions are implemented with similar-sized tax cuts, this would in turn almost certainly increase the size of future surpluses. Accordingly, there may also be scope to cut taxation by a little more than any (commensurate) reduction in spending. However, care would need to be taken to avoid inflationary effects.

## SPECIFIC PROPOSALS FOR REDUCING EXPENDITURE

The paper illustrates the degree to which government policies can increase complexity, particularly in the area of taxation and welfare payments. Re-distributional objectives may be being achieved insofar as a large chunk of tax revenues is being channelled back to lower income groups, a significant part of the tax and social security system (sic) also consists simply of churning taxes back whence they came, that is, to higher income groups themselves.

Savings can mainly be achieved by reducing benefits to higher income groups but by compensating most of them through tax cuts. This is possible because those groups receive 30 percent of social security (including selected education and health) benefits and thus receive back nearly half the taxes they pay. Most of such “churning” is a useless product of a society that has become bureaucratised by political parties buying votes.

While the Coalition is (for example) rightly concerned to promote the role of the family, this ought not to now require assistance to families with children totalling over \$25 billion pa and extending to over 3 million people, including many in higher income households. Such treatment of the family (and of retirees) as political icons has surely been taken too far and has contributed to undermining the targeting of benefits.

At over \$30 billion in 2005-06 the means and asset-tested age pensions constitute the largest single item of expenditure (over 10 per cent) in the Budget. If existing arrangements continue unchanged age pension expenditure is expected to increase from 3.3 per cent of GDP to 4.6 per cent by 2050. The aim should be to effect a reduction.

Suggestions are currently being made that, despite the failure last year to take up the allocation of an additional 40,000 for “approved” child care places, a general “shortage” of such places has now emerged. However, large shortages are usually the product of regulatory arrangements that fail to adjust to changing circumstances. If existing regulatory arrangements were improved (including under workplace relations reforms and by changing approval criteria), the private child care industry should be able to provide additional places. Part of the problem here may be that the restrictions applying to “eligible” child care places inhibit private sector involvement. Note, however, that the private sector already provides quite extensive services on a competitive basis, including through several companies listed on the Stock Exchange, and pay rates for private

sector care workers have increased. Thus governments themselves – and certainly not the Commonwealth – should not fund additional public child care institutions but focus on improving regulatory/assistance arrangements to ensure a more competitive market.

The cuts of \$19.5 billion would represent a total percentage reduction of 8.2 per cent. The main potential for savings in expenditure comes from social security and welfare (\$7,278 million), health (\$2,844 million), education (\$1,689 million), housing (\$1,038 million) and industry assistance (\$457 million). This would be a percentage cut in expenditure of 8.1 per cent (including a 20 per cent cut in industry assistance). In addition it is proposed that total tax expenditures will be cut by \$2,993 million or 8.7 per cent.”

# PART A

## REGULATORY TRANSPARENCY & ACCOUNTABILITY

ACCI considers that regulation should be the last resort after all other options (education, publicity, moral suasion, competition, industry self-regulation and other approaches) have been assessed and determined to be ineffective. A regulator must consider all alternatives to intervening in the market and proceed from the point that regulation is not always the best option as discussed in ‘Types of Regulation’ (pages 21-24) previously.

However, ACCI recognises that regulation is necessary.

The problem is that traditionally, regulatory planning has been afforded minimal attention by Australian policy and regulation makers. ACCI considers that this has inhibited meaningful planning for regulation.

Currently, Departments are required to post an annual regulatory plan on their website. Prior to the 1998 federal election the government announced a policy entitled *A Small Business Agenda for the New Millennium*. The Agenda required each Department to provide a regulatory plan detailing changes made to regulation during the preceding financial year and to outline expected changes to regulation in the forthcoming financial year. This included primary legislation, subordinate legislation, quasi-regulation or treaties, which directly affect the business community, have a significant indirect effect on business, or restrict competition.<sup>36</sup> The policy states that:

Commonwealth Government Departments and Agencies will be required to publish annually what legislation and regulations have been introduced over the calendar year, what regulations have been repealed, and what future regulatory measures are contemplated.<sup>37</sup>

Regulatory plans are not a comprehensive source of past or potential changes to Australian Government business regulation:

Regulatory plans do not include information about all developments in Australian Government business regulation. Specifically, the following are not covered:

- regulations of a minor or machinery nature that do not substantially alter existing arrangements;
- regulations that involve consideration of specific

Government purchases;

- regulations of a state or self-governing territory that apply in a non-self governing territory; and
- anticipated activity about which it would be inappropriate to publish information on grounds of confidentiality

Regulatory plans do not include information about State, Territory or Local Government regulation.<sup>38</sup>

Were this requirement enforceable and a public, transparent process, the ‘problem’ of regulation may not have risen to such prominence. Furthermore, without a quantification of costs and an analysis of the impact upon business regulatory plans are of little benefit. There has been criticism that the regulatory planning process has proven to be fragmented, unaccountable and ultimately of little use to policy makers or to business.

Some countries have attempted to more carefully and precisely quantify and track the volume of regulation introduced per annum. The Office of Management and Budget (OMB) in the United States is one such example. The OMB reports annually on the costs and benefits of federal regulation enacted during the previous twelve months. The report includes:

- an estimate of the total costs and benefits (including quantifiable and non-quantifiable effects) of federal rules and paperwork, to the extent feasible: - in the aggregate; - by agency and agency programme; and - by major rule.
- an analysis of impacts of federal regulations on state, local and tribal government, small business, wages and economic growth; and
- recommendations for reform.<sup>39</sup>

Difficulties providing accurate information in this manner are acknowledged by the OMB. However, similar issues are common to all types of forecasting including economic growth and estimating implications from changes to taxation.

### Preparation of Regulatory Budgets

To increase regulatory transparency, ACCI proposes that all ‘regulation makers’, including Ministers, through their departments and other agencies, develop an annual

**Diagram 1  
Preparation of Regulatory Budgets**



regulatory budget, drawing from the OMB model.

The regulatory budget will clearly demonstrate and quantify the impact of regulation on business by preparing an annual regulatory budget detailing:

- **Historic Regulation**

- a list of all regulation impacting upon business passed in the preceding twelve month period, including the regulatory cost of each piece of legislation; and
- a list of all regulations that have been repealed

- **Proposed Regulation**

- a list of all proposed regulation impacting upon business for the forthcoming twelve-month period.<sup>40</sup>

These suggestions largely comprise the existing requirements upon departments to prepare an annual report on regulation as outlined above, yet include the additional requirement to quantify costs.

Providing a transparent record of all regulation introduced in the preceding twelve months, along with the estimated cost to business of such regulation may encourage regulation makers to more carefully consider the aggregate impact of all regulation upon business.<sup>41</sup>

Consistent and systematic reduction of regulation throughout the year, may also be encouraged, rather than addressing it in an ad hoc manner.

Encouraging best practice would be achieved by rewarding departmental heads and statutory body heads with possible performance bonuses according to best practice benchmarks.

### **Tabling of Regulatory Budgets in Parliament**

Regulatory budgets, once developed, will be delivered to the Prime Minister prior to the first sitting of Parliament

for the year.

During the first sitting of Parliament of each year, the Prime Minister will table all regulatory budgets.

### **Post Regulatory Budgets on central website**

All regulatory budgets, once tabled in Parliament, will be posted on a central website, administered by the Prime Minister’s Regulatory Review Unit (see page 32).<sup>42</sup> This will ensure absolute transparency and accessibility for policy makers and business alike.

A potential precedent for this system is provided by the AusTender website. Beginning 1 July 2005, Departments and statutory bodies have posted their annual procurement plans so that business may plan and prepare in advance for the procurement process.

## PART B

# ENFORCEMENT, STRINGENCY & CONSISTENCY

Combined with the proposals in Part A, C and D, implementing checks and balances in the regulatory process would ensure a more transparent, accountable, stringent and consistent system.

Currently, proposed regulation generally proceeds on the following basis:

### Phases in the Regulatory Impact Statement (RIS)

#### Process<sup>43</sup>

1. Regulatory Plan developed
2. Office of Regulation Review (ORR) consulted on proposals<sup>a,b</sup>
3. Discussion/issues paper prepared for initial community consultation (early RIS)
4. RIS prepared for community consultation<sup>b</sup>
5. RIS presented to decision makers<sup>b</sup>
6. RIS tabled in Parliament or otherwise made public<sup>a</sup>
7. RIS compliance information published in department's annual report

Inbuilt checks and balances are lacking in this process. Thus a rigorous systemic approach to regulation is not ensured and currently does not occur. However, the structure provided as outlined above, can be augmented to enshrine a systemic approach to regulation.

Currently, regulatory plans and the ensuing consultative and Regulatory Impact Statement (RIS) processes are not consistent within or between regulation makers. It is necessary at this stage to differentiate between 'Regulatory Impact Statements' and the complete regulatory process. The RIS refers to specific steps in the regulatory process. It comprises a discussion of the policy issue that needs to be addressed, options for addressing it, cost benefit analysis, consultation and finally reporting. A RIS forms the bulk of the regulatory process. The 'regulatory process' describes the entire process, from the identification of a policy issue, through to final resolution of the issue.

Ideally governments should use the RIS as a formalised process to define objectives, identify possible consequences of introducing regulation, and review the likely costs, benefits and uncertainties, of regulations. The expectation of the RIS process is to discover if the benefits of an action justify the costs or to ascertain which of the alternatives

would be the most cost-effective.

However, it is clear that the use of RISs has not been as widespread or as thorough as intended. A RIS must clearly indicate the costs to business of not only complying with the regulation, but also the costs in terms of industry funding the regulation, lost opportunities, reduced incentives and loss of competitiveness.

We note the Federal Government announced on 12 October its intention to improve the RIS process which may address many of the concerns raised.

The RIS process must precede, rather than follow, the consultation process so that the analysis used in balancing the costs and benefits can be adequately assessed by stakeholders. The effective use of RISs must be incorporated into a broader commitment of regulation that encompasses transparency, adequate consultation and responsiveness to the needs of the private sector as well as the community.

Currently, once a proposed policy or regulatory response has been established, the RIS is used as a justification for the policy rather than a process to carefully examine the proposed regulatory actions. The Productivity Commission has raised the timing issue of RISs:

A second deficiency lurking behind the published aggregate compliance numbers is in the timing of RISs. In many cases, the RIS is prepared too late in the policy development process to be of any real assistance to decision makers. In those circumstances, it effectively becomes little more than an ex-post justification for a policy decision already taken, subverting its role.<sup>44</sup>

RISs that do not inform the policymaking decision process are either started late or after the policy decisions have been made. As it operates today the RIS process is nothing more than obligation undertaken by a department rather than an essential part of the machinery. Draft RIS's fail to be made public in timeframes, which allow for broad, in-depth stakeholder comment from businesses.

Non-compliance with the RIS process stems from the opaque nature of the RIS process itself. Although the RIS process has outlined 'overarching' elements as key to good decision-making, it is the cost benefit analysis which is paramount to developing good regulation. A list of the

current elements for a good RIS are provided below:

- the problem or issues which give rise to the need for action
- the desired objective(s)
- the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)
- an assessment of the impact (costs and benefits) on consumers, business, government, the environment and the community of each option
- a consultation statement
- a recommendation statement
- strategy to implement and review the preferred option.<sup>45</sup>

The consistent and appropriate application of a RIS can contribute significantly to an effective and efficient regulatory framework.

Politically sensitive regulations that have a significant impact on business are more likely not to have had their RIS adequately completed. In times where communities and businesses require informed debate, political expedience may elicit a response that circumvents or taints the credibility of the RIS process. At this point it is essential that the cost benefit analysis component of the RIS process be at arms length from the policy-making area of government. As noted by the Productivity Commission making regulation to order reduces the effectiveness of the process:

In particular, for much of this period, compliance has generally been markedly weaker for those regulatory proposals with the most significant impacts on business or the community. These have also tended to be among the politically most sensitive and urgent. In such cases, the Minister concerned or his/her department head may wish to circumvent or pre-empt the RIS process. They may even get central agency support. However it is precisely in such circumstances, where governments are under most pressure to act, the good process is needed to ensure that the potential costs as well as benefits are given adequate consideration.<sup>46</sup>

Addressing these problems begins with the Office of Regulation Review (ORR). Providing the ORR with additional power to prevent the progression of a RIS and thus proposed regulation will do much to improve the current system. The framework for an effective regulatory process already exists. Now effect must be given to the process.

## PRIME MINISTER'S REGULATORY REVIEW UNIT

Strengthening the role and power of the Office of Regulation Review is a consistent theme in contemporary contributions to reforming the existing regulatory process.

*More Time for Business*, a statement by the Prime Minister, the Hon John Howard MP, in response to the Bell Report, was released eight years ago.<sup>47</sup> The statement established the charter for the Office of Regulation Review, which provides the fundamental framework for the regulatory system.

### Charter

The role of the Office of Regulation Review is to promote the Australian Government's objective of effective and efficient legislation and regulations, and to do so from an economy-wide perspective. Its functions are to:

- advise the Government and its departments, regulatory agencies and statutory authorities on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations;
- examine Regulation Impact Statements (RISs) prepared by departments and agencies and advise on whether they meet the Government's requirements and whether they provide an adequate level of analysis;
- provide training and guidance to officials to assist them in meeting the requirements to justify regulatory proposals;
- report annually on compliance with the Government's Regulation Impact Statement guidelines, and on regulatory reform developments more generally;
- provide advice to Ministerial Councils and national standard setting bodies on COAG guidelines which apply when such bodies make regulations;
- lodge submissions and publish reports on regulatory issues having significant economic implications; and
- monitor regulatory reform developments in the states and territories, and in other countries, in order to assess their relevance to the Australian Government.

Whilst maintaining an economy-wide perspective, the ORR is to focus its efforts on regulations which restrict competition or which affect (directly or indirectly) businesses. The ORR is to ensure that particular effects on small businesses of proposed new and amended legislation and regulations are made explicit, and that full consideration is given to the Government's objective of minimising the paperwork and regulatory burden on small business.

The ORR (together with the Treasury) is to advise the Parliamentary Secretary in his role as being responsible for regulatory best practice.<sup>48</sup>

The Charter provides the essential elements of a good regulatory system. However, it does not provide for enforcement of this system. Whilst the specifics of tightening the current system are addressed later in this Part, there are several important macro changes that need to be made to the Office of Regulation Review or its successor to enable systemic changes to the process of developing regulation to occur.

Deciding on the location of the ORR within the bureaucratic framework is a difficult task. The minimalist option would be to revamp some of its powers and keep it within the Productivity Commission. There is no doubt the Productivity Commission has the rigour and capacity to effectively carry out the regulatory oversight function.

Alternatively, consideration should be given to shifting the Office to a central Commonwealth agency such as the Department of Prime Minister and Cabinet. This would make it more visible and possibly better able to exert influence in regulatory processes.

On balance ACCI prefers the latter approach, which would also involve renaming the ORR as the Prime Minister’s Regulatory Reform Unit (PMRRU).

Most essential to reforming current process is to provide the PMRRU with increased power and profile.

The PMRRU must be afforded status that reiterates its importance to all Departments. Appointing a Chief Executive, with a business background, will provide further status and direction to the PMRRU. The Chief Executive would have no direct powers, but would provide profile and

public transparency to the regulatory process by acting as PMRRU spokesperson.

Most importantly, the PMRRU will be provided with the power to prevent regulation from proceeding if the correct procedures have not been followed in the regulatory process.

### MODELLING UNIT – IMPROVING REGULATORY RESPONSE PLANNING

The first flaw in the current regulatory system stems from Phases one through to three in the Regulatory Impact Statement Process (see page 31).<sup>49</sup> Early examination of regulatory options by regulation makers needs to be more stringent and careful, particularly in the area of costing the impact of all options on business.

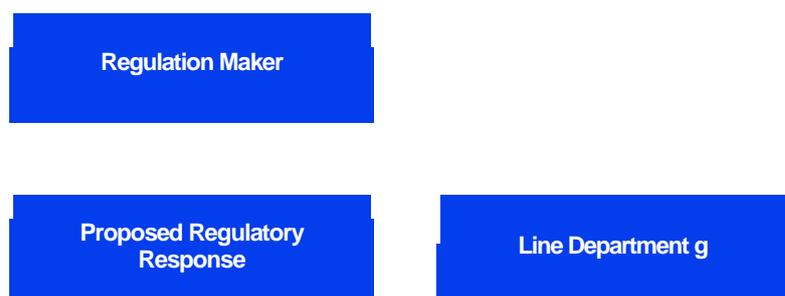
### COST BENEFIT MODELLING

To address this issue and to encourage due process and ensure the full costs and benefits of regulation are estimated and communicated to the public, ACCI recommends that the Productivity Commission develop models of the costs and benefits of regulations. The proposed modelling unit would undertake all model development work for cost benefit analyses (both administration and policy) and would be responsible for maintaining and training in the use of standard costing models.

Assumptions and data inputs would be the responsibility of each department. Each department would also maintain responsibility for implementing the reforms. The modelling units, after initial development of the models, would act as a source of training for each department.

**Diagram 2  
Modelling Unit - Improving Regulatory  
Response Planning**

Note: This Diagram links with Diagram 3.



A consultation process between the regulatory agency and the modelling unit would help to ensure a degree of uniformity across departments. The modelling unit would have input on a number of technical assumptions, such as discount rates, and a degree of latitude to perform its own costing analysis based on assumptions not used by the regulating department.

The PMRRU would have the ability to outsource the costing to the private sector or the PC where they were not satisfied the line department adequately costed the regulation proposal. Having the opportunity for the cost benefit analysis to be performed by an outside and independent observer will provide an additional degree of oversight in the RIS process.

A specialised modelling unit will provide for higher-level skills development in the costing of regulation. The modelling unit will initially develop standard administrative and economic costing models, which would be used by departments to cost their regulatory bids.

Using standard models provides the community with clear instructions on what can and cannot be modelled or costed effectively as well as what was taken into consideration in determining the overall net benefit.

There are two distinct types of cost benefit analyses that should be undertaken in a consistent manner in every cost benefit analysis: administrative and economic costs. Administrative costs of regulation include time taken to complete paperwork, compliance manuals and other similar requirements. The administration cost of regulation is thought to be approximately 30% of the total cost of regulation.<sup>50</sup> Economic costs of regulation are harder to consistently identify, but include distortions to prices, investment and production processes, that may result from regulation.

## CONSISTENT ADMINISTRATION COSTING METHODOLOGY

National, state and local level administrative costing models for regulation have been introduced by the Dutch government and were recommended by the UK Better Regulation Task Force in its paper *Regulation – Less is More*. The UK government has subsequently accepted the recommendation to develop a standard administration cost model. The European Union has also made similar calls for the introduction of a standard administration cost model.<sup>51</sup>

Applying standard cost models in co-operation with business consultation enhances information shared between

stakeholders. Increased information and cooperation is a necessary ingredient for good regulation. However, a standard administrative cost model would not give a complete picture of the impact regulations have on the economy and business. It may be used to give a relative indication of which regulations are the most intrusive and those most in need of simplification or removal.

Gary Banks noted the lack of quantification of compliance costs in a recent speech:

A more common deficiency is in the area of particular concern to small business; namely the assessment of compliance costs. In 2004, only 20 per cent of tabled RISs involved an attempt at quantifying compliance costs. Another 70 per cent gave some consideration to compliance costs implications, without seeking to measure them. In the remaining 10 per cent, compliance costs were not even considered.<sup>52</sup>

The Department of Industry, Tourism and Resources, AusIndustry and the Office of Small Business have developed a costing tool for local governments to use when estimating the administration costs of new regulation. The costing tool was used as part of the federal governments Regulation Reduction Initiative Fund (RRIF) for local governments. Local governments used the tool to calculate the cost of individual regulations to small businesses and were then encouraged to apply for funding to reduce such costs. The costing methodology adds transparency and an information dimension to regulation which has not previously been available in Australia. This simplified or stylised model will provide better communication and information between the business and the public sector.

Standard administrative cost models must also include costs incurred by government from monitoring and other systemic charges. These costs are generally paid for through tax levied on businesses and individuals. Explicitly estimating the different administrative costs to government of various programs and introducing accountability for these costs could provide tangible areas in which to curtail expenditure.

Overall, producing a standard administrative cost model will strengthen the current RIS and policy-making process particularly, in the discussion and community consultation phase of the process. A number of factors such as registering, crediting and licensing, permits, reporting and payments should also be considered as standard components of any model. Furthermore, discovery costs, developing

an understanding of the regulation and complying with the rules should be considered as extensions to the more tangible costs incurred by business.<sup>53</sup>

**CONSISTENT ECONOMIC COSTING MODEL OF REGULATION**

Economic costs of regulation are a more illustrative and nebulous measure than simply the direct and indirect administrative costs. Measuring the full impact including behavioural changes can be very complicated, however, they are just as, if not more, important than measuring the administrative component. One important concept captured by economic costing is the difference between the dynamic economic costs of regulation, distortions to prices, investment and production processes, which increase over time, and administrative costs that remain steady or fall.

In its recommendations to the UK government the BRTF proposed extending the administration-costing model by incorporating all of the quantifiable cost to regulation. The recommendation is noted below:

The taskforce recommends that the Government should start developing a methodology for assessing the total cumulative costs of regulatory proposals. We believe that it should be possible to have the fundamental elements of such a methodology within the next two years. At this point, the Government should reassess whether full regulatory budgets, taking into account the cumulative impact of regulation, should be introduced.<sup>54</sup>

The UK government subsequently accepted the recommendation.

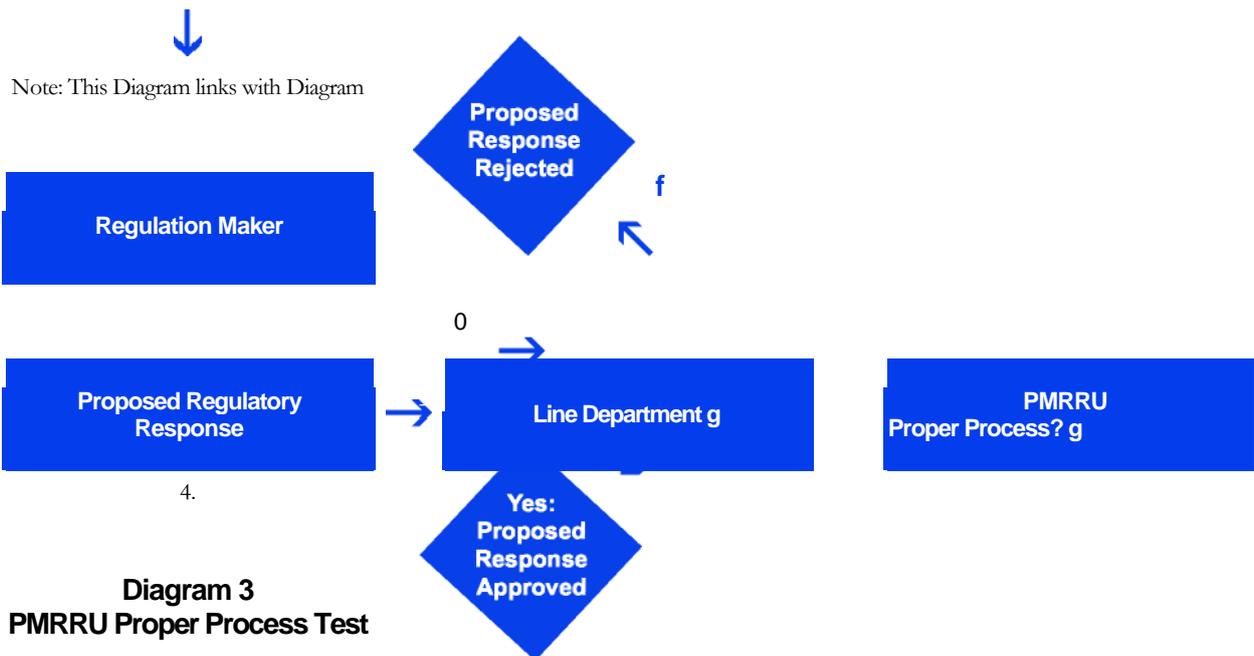
The development of full economic cost models and the implementation of a full regulatory budget are key components to furthering understanding and accountability in the development of regulation.

**PMRRU PROPER PROCESS TEST**

Strengthening the role and power of the PMRRU is fundamental to the reform of the regulatory process.

The ORR already acts as the third party determining the adequacy or otherwise of the RIS process. This arms length role is an important feature of good regulatory oversight. However, the ORR has no power to intervene in the process where inadequacies or blatant disregard is exhibited for the regulatory system.

As identified earlier, currently, once a proposed policy or regulatory response has been established, the RIS is used as a justification for the policy rather than a process to carefully examine the proposed regulatory actions.



Stopping regulation from reaching the decision making stage or being tabled due to an inadequate RIS process requires greater power be devolved to the PMRRU.

This suggestion is not unique, in fact, provisions for this role already exist:

- examine Regulation Impact Statements (RISs) prepared by departments and agencies and advise on whether they meet the Government’s requirements and whether they provide an adequate level of analysis.<sup>55</sup>

However, currently the ORR has no power to enforce a proper careful regulatory process. The guide to regulation currently states that regulation remains valid even through it has not passed the RIS process:

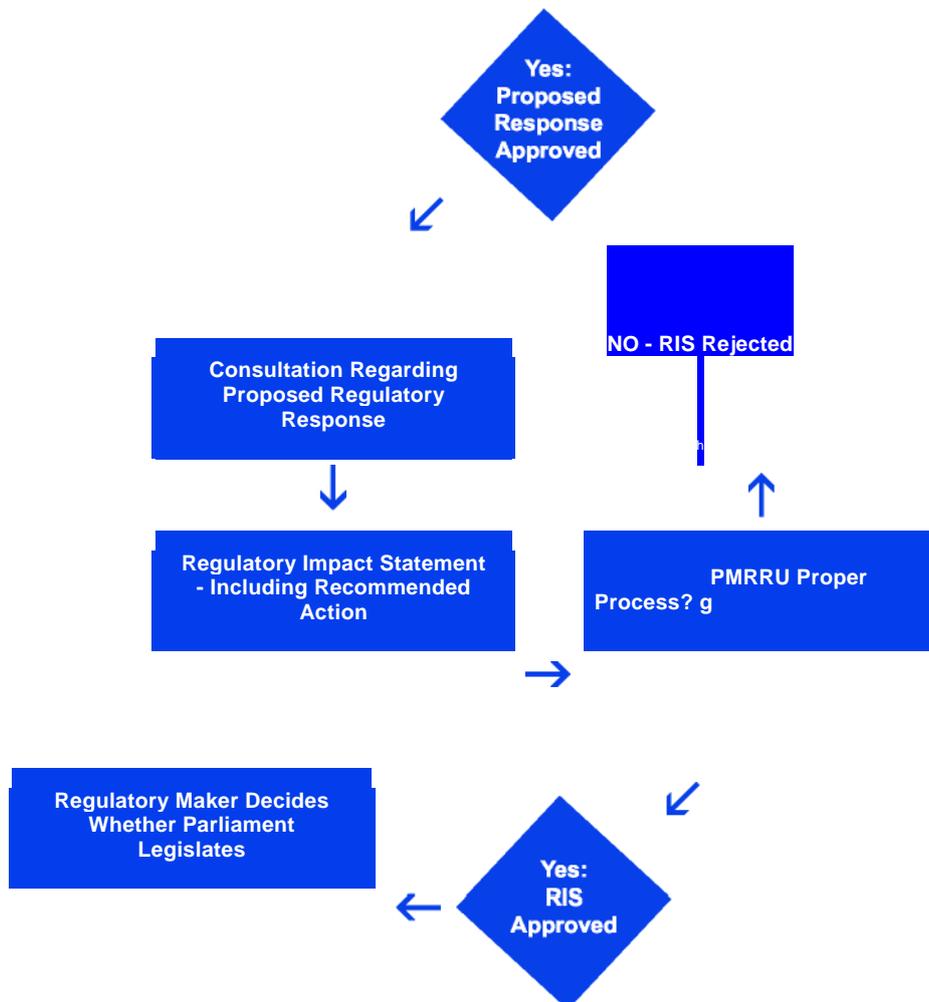
The absence of inadequacy of a RIS does not affect the validity of regulation. Where a RIS is required but has not been prepared or is inadequate, it is up to the Cabinet/Government to determine whether to dispense with the RIS requirements, postpone policy approval until a RIS is done or require the subsequent preparation of a RIS.<sup>56</sup>

Providing the PMRRU with the power to intervene in the regulatory process and provide ‘gate-keeping’ functions at crucial stages throughout the process would greatly improve the current system.

ACCI proposes that the PMRRU have a gate-keeping role at an early stage of the regulatory response process. Once a proposed regulatory response is developed and fully costed by the line department, it is sent to the PMRRU to be checked for ‘proper process’. This check would ensure that all regulatory responses are examined and addressed and that full costings of all responses has been carried out.

Importantly, the check is purely procedural. It does not examine the merits or otherwise of the proposed response, merely that the proper processes have been executed. Instead political processes will establish whether the proposed policy response should or should not proceed. Ultimate responsibility must remain with our elected representatives. In this regard the public scrutiny associated

**Diagram 4  
Second Stage PMRRU Proper Process Test**



Note: For an overall view of ACCI policy see Appendix A.

with exposing the cost of regulation through the tabling of regulatory budgets should act as a discipline on the unnecessary expansion of regulation.

If the proper processes have not been followed then the proposed regulatory response process cannot continue. Instead the PMRRU will have the power to order the regulation maker to address the deficiencies and then resubmit the information.

If the proposed regulatory response has been properly prepared and costed then further activities such as the full Regulatory Impact Statement process, consultations and recommendations can occur.

Once these steps have occurred the PMRRU will again check that proper process has been followed including elements such as following established timeframes for consultation, consultation with all stakeholders and other elements that are currently provided for, but not always adhered to.

Again, if these process have not been correctly followed, the PMRRU will have the power to prevent the regulatory response from proceeding, instead referring it back to the regulation maker for proper process.

## PMRRU WEBSITE

The use of websites for greater information flows between government and business has had some successes particularly for simplifying regulation. Some of the European experiences are outlined below:

Belgium and the Netherlands organised online consultations to enable citizens and businesses to report cases of unclear, contradictory or excessive regulation and bureaucratic complexity. In Belgium,<sup>57</sup> the reports of this consultation have helped the government to identify 119 simplification measures, 55 of which have already been implemented. In the Netherlands,<sup>58</sup> the results of the consultation have helped the government set up plans to reduce the total administrative burden on businesses by 25% by 2007.<sup>59</sup>

Regulations.gov launched by the US government in January 2003, provides a centralised website where businesses can comment on proposed federal regulations. This process is being expanded further to allow for searches of all regulatory material, such as rules and notices, supporting analysis and comments submitted by the public.<sup>60</sup>

Providing open and clear consultations with business is one of the best defenses governments have against

implementing unnecessarily intrusive and complex regulation. The amount of regulation at all levels of government with which business is expected to comply is presently unknown. Removing and simplifying regulation requires at the very minimum an accurate estimate of the current stock. In fact, a centralised point of access for regulation is necessary if businesses are to understand their obligations.

If the government is to maintain a regime of fines and sanctions, it is imperative that information is readily and easily available. A centralised portal will also help to inform the public of the amount of regulation being created and the amount of regulation it is required to comply with.

The federal government assented the Federal Register of Legislative Instruments Act on 17 December 2003, which commenced on 1 January 2005. The Act requires that all subordinate regulation be placed on a centralised register. The purpose of the *Legislative Instruments Act 2003* was to establish a regime to reform and manage procedures for the making, scrutiny and publication of Commonwealth legislative instruments by:

- establishing a Federal Register of Legislative Instruments
- encouraging rule-makers to undertake appropriate consultation
- encouraging high standards in drafting legislative instruments to promote their legal effectiveness, clarity and their intelligibility to users
- providing public access to legislative instruments
- establishing improved mechanisms for Parliamentary scrutiny of legislative instruments
- establishing 'sunsetting' mechanisms to ensure periodic review of legislative instruments and if they no longer have a continuing purpose, to repeal them.<sup>61</sup>

The introduction of the central repository for government regulation goes some way to providing business with information necessary for running a business.

## PART C

# DEALING WITH EXISTING REGULATION

Every year Australia introduces far more regulation than it removes. This situation cannot continue indefinitely. If Australia is to reduce the growing stock of regulation, consultation with business groups can facilitate a process of prioritisation. For example, removing redundant legislation may be appealing, however, in an economic sense this does little to address the actual problems.

As markets become more competitive it is necessary that regulations become less intrusive. The dynamics of Australia's market must be reflected in a dynamic regulation system. Australia currently suffers from a regulatory 'hangover' as regulations become antiquated or increasingly complex. A new approach to the stock of regulation is necessary if Australia wants to maintain the successes of the recent past.

### PRODUCTIVITY COMMISSION REVIEW INTO LEGISLATION

Having identified areas of most concern, the Productivity Commission would have primary carriage for pushing the reform process ahead and making recommendations to the government. This would initially involve measuring the stock of regulation and developing a central website or repository for all regulation federal, state and local.

Measuring the stock of regulation may initially involve measuring the cost of 'red' tape businesses face, rather than measuring the policy costs.

Areas of most concern would be developed through a consultation process with business. The short-listing of beachhead areas, as opposed to the 'big bang' approach to regulation reduction, allows a small number of large issues to be visible in the political and public sphere.

### SIMPLIFICATION AND HARMONISATION OF STATE REGULATION

Increasing mobility and flow of Australian businesses and workers has raised concerns about separate, overlapping and conflicting regulation between state jurisdictions. This ad hoc regime increases the costs of complying with regulation without any associated increase or change in economic activity.

Simplification measures include deregulation, consolidation (amalgamating different sets of regulations in more

manageable formats and simplifying texts); and rationalisation (resolving overlapping and inconsistent regulations). Stakeholder consultations should play a critical role in identifying regulations, which are candidates for simplification.

CoAG represents an important forum for reducing overlapping and inconsistent regulation in Australia. Simplifying regulation will go toward reducing the cumulative burden faced by business in terms of reducing overlapping and inconsistent requirements. State based regulation, which has the same objective yet different regulations should be investigated by the CoAG secretariat for possible alignment and simplification.

Ministerial Councils 'initiate, develop and monitor policy reform jointly in areas, and take joint action in the resolution of issues that arise between governments. In particular, Ministerial Councils develop policy reforms for consideration by COAG, and oversee the implementation of policy reforms agreed by COAG.'<sup>62</sup>

Policies introduced by Ministerial Council are subject to a RIS process, which is set out in the COAG Principles and Guidelines:

Under the 1995 COAG Principles and Guidelines, COAG and Ministerial Councils are required to prepare Regulatory Impact Statements (RISs) for all regulatory proposals which would affect business or impact on competition. The RIS obligations complement similar requirements at the Commonwealth and State/Territory levels and can be used to satisfy those obligations. Regulatory proposals must satisfy the principles for good regulatory practice and the guidelines for the preparation of RISs set out in the COAG Principles and Guidelines.<sup>63</sup>

Ministerial Councils are required to present a draft RIS to the Commonwealth Office of Regulation Review (ORR) for comment prior to finalisation. The ORR has an oversight role in the adequacy or otherwise of regulation originating from Ministerial Councils.

This edition of Regulation and its Review provides RIS compliance information in aggregate and for individual Australian Government departments and agencies, as well as

for individual Ministerial Councils and national standard-setting bodies.<sup>64</sup>

The ORR delivers an annual report on compliance with the COAG Principles and Guidelines. Any concerns it may have about particular regulatory proposals can be brought to the attention of Heads of Government through the COAG Committee on Regulatory Reform.

While the above guidelines are in place ACCI has had some concerns, especially in relation to the ministerial council dealing with environment and consumer affairs issues, that the RIS process has not always been rigorously followed. The process may have either been applied late in the evolution of regulation or the time allowed for consultation with business may have been shortened.

More widely, the operation of ministerial councils and the regulations they endorse appear to have had much less scrutiny applied to them. We continue to be concerned at the growth of regulations originating via ministerial councils and the consequent compliance costs which flow to business.

In some areas a more collaborative approach to regulation between state governments is the preferred option to one large 'super regulator'. The federal governments *Regulation Reduction Incentive Fund (RRIF)* program should be extended to include state government regulatory reform. For example, reforms to licensing, certification of buildings, environment and professional standards legislation.

The RRIF provides payments to local governments for demonstrating reductions in administrative burdens on small and home based businesses. The National Competition Policy (NCP) would also provide a workable template for regulation reduction. The federal government makes national competition payments to the states after meeting clearly defined and prescribed targets. The success of the NCP could also be used as template to further develop greater cohesion and synergies between state regulations. This sentiment was expressed by then Prime Minister Bob Hawke:

Our first task is to move by sensible, practicable steps to get better co-operation within the framework of the Federal Constitution as it stands.<sup>65</sup>

While consistency between federal, state and local governments is desired there are advantages to allowing state and local government to regulate issues differently. For example, if public values and preferences differ by

region, those differences can be reflected in varying state and local regulatory policies. In addition, state and local government regulation can serve as a testing ground for experimentation with alternative policies. Introducing an element of competition into regulation where one state can learn from another's experience while local jurisdictions may compete with each other to establish the best regulatory policies.<sup>66</sup>

## PART D

# SIMPLIFYING THE SYSTEM

Parallel with the improvements suggested in Parts A, B and C there are several other strategies that can be implemented to reduce the amount of regulation.

### THE STOCK OF REGULATORS

As the stock of regulations in Australia creates compliance and policy costs for businesses and the community, the large number of regulators can also lead to greater overlapping, inconsistent regulation and higher business compliance costs. The UK's Better Regulatory Task Force (BRTF) noted that:

Regulatory regimes that involve several bodies can become confused and lack clear direction. This can lead to regulatory creep as each body pursues different objectives and takes a different focus. Those being regulated find themselves responding to competing or confusing demands.<sup>67</sup>

Highly fragmented regimes can lead to conflicting advice for business while the duplication of government frameworks increases the administrative costs to taxpayers. Multiple regulators can increase the amount of paperwork having to be filed by business, as knowledge of business information already stored by other agencies is often unknown. Furthermore, this leads to the duplication of information requests by agencies and reduces the use of pre-populating forms.

Amalgamating the number of regulators in Australia may provide for a more centralised decision-making process and alleviate the possibility of institutions creating regulations in a vacuum. The Hampton Report in the UK recommended a review should be conducted on the feasibility of consolidating the number of regulators. The report recognised benefits may include:

- fewer business-regulator and regulator-regulator interfaces
- more complete risk assessment
- consolidation of forms and data
- fewer inspecting agencies, and hence fewer multiple inspections
- internalising conflicting regulations
- more strategic regulation
- more flexible regulations

Australia has recently centralised the regulation of the energy market by creating the Australian Energy Regulator (AER) and Australian Energy Market Commission (AEMC). Whilst the bodies are still evolving, the model may provide guidance for reform to areas such as OH&S, infrastructure, training and skills and taxation.

The BRTF report notes it is undesirable to have one super regulator, as there are benefits to having some degree of competition between regulators. However, what is currently lacking in Australia is the balance between the number of regulators and the effective introduction and review of regulation.

### ONE-IN ONE-OUT

The purpose of introducing a one-in one-out program for regulation is to make regulators accountable for adding to the existing stock of regulation. One-in oneout brings prioritisation into the regulatory process and helps to develop the culture of ownership and balance in regulation.<sup>68</sup>

This process increases the incentive to simplify regulation and maintain a balance between the new and existing stock of regulation. Providing a cost benefit analysis for both the current regulation (to be removed) and the new regulation will help to maintain public confidence in the regulatory process while at the same increasing transparency and accountability. Including a cost benefit analysis of past regulation in the one-in one-out process develops credibility and confidence in the regulatory process. Including assessments of old regulations also encourages regulators to continue to refine Australia's regulatory framework rather than viewing reducing the stock of regulation as a program with an end date.

Regulation does not have to be quarantined between departments, regulators or industry sectors. The one-in one-out framework should be designed to be as flexible as possible. In theory any regulation can be simplified or removed due to the expansion of current regulations. Removing old regulations should be done with the goal of providing Australia with a world best regulatory system. To achieve this those regulations that are the most economically inefficient and detrimental should be removed first.

The objective of introducing 'one-in one-out' is to reduce the overall compliance burden to business. The foundation for removing a piece of legislation is that it provides the most economically desirable result – the most desirable outcome is if the compliance and/or economic burden are lower when the two regulations have been substituted. Archaic regulation, that with little or not current economic consequences, should not be the primary source of reductions in regulation.

One-in one-out must include consultations with business for it to be effective and ultimately successful. Engaging stakeholders on the appropriate regulation to be removed allows for wide and assorted options, while increasing the sense of ownership business has over the process.

Introducing new regulation at the expenses of older regulation provides an incentive for all stakeholders to reevaluate the current stock of regulation.

## CONCLUSION

Australia's well-developed institutional framework provides a sound basis for improving the current regulatory structure. Institutional design plays a pivotal role in how well regulations are developed, implemented and progressed. Designing world leading regulatory institutions and processes in a manner that provides for efficient outcomes is paramount if Australia is to remain an attractive destination for investing by both domestic and international businesses.

ACCP's policies of regulatory budgeting and the development of a centralised website are designed to increase transparency. Access to information on the amount of regulation currently in stock and recently enacted allows businesses to keep up with new developments as well as play a role in the debate on past and recommended regulations. The OECD observations on transparency provide salient commentary:

The OECD recommends improvements to transparency in regulatory decisions and applications because it helps to cure many of the reasons for regulatory failures—capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability.<sup>69</sup>

Implementing consistent costing models introduces clear and robust estimates of the effect of regulation on the community and transfers a degree of accountability to both policy-makers and politicians. A robust RIS must form the basis for greater transparency in regulation through better information of causal relationships and possible alternatives. A clearly defined RIS process also acts as a buffer against political expedience in times when considered policy can be difficult to implement.

Undertaking a robust RIS is essential for gauging the degree of intervention and control governments assert in the economy. All regulatory options are available to policymakers; a process of cost/benefit analysis must be used objectively and openly determine the best policy approach. While there are numerous regulatory options such as tax, subsidy, tradable permits, and information these are not necessarily being investigated due to the lack of widespread application of the RIS process. The OECD has noted the importance of Regulatory Impact Statements:

To add structure, rigor, and transparency to regulatory review, regulatory impact analysis (RIA) is essential. RIA should be used to

assess benefits, costs and distributive impacts of regulations, alternative approaches, and proposals for reform; and disproportionate impacts on SMEs.<sup>70</sup>

Apart from adding intellectual rigour to the regulatory process a RIS also develops a culture of consultation between the various stakeholders. Giving the PMMRU a 'gatekeeper' function further develops a culture of good governance in the public sector. Furthermore, by requiring each Minister to sign off on the regulatory budget, the political sphere must also take greater responsibility and assume accountability for the development of new regulations and the reduction in current regulation.

It is imperative that politicians do not take the attitude that 'the regulation was not introduced by me therefore it is not my responsibility.'

Plainly identifying and disseminating information on the cost of introducing new regulation as well as the savings from removing old regulation facilitates government ownership in the economy.

Regulatory reviews undertaken by the Productivity Commission and CoAG are designed to address the current regulatory stock. There is a need for greater coordination across all levels of government - Commonwealth, state, territory, regional and local. Frequently the lack of coordination has led to duplication of policies, delivery systems, controls and the like, or, just as divisively, differences and clashes resulting in even worse outcomes. This whole area has been made more complicated by the delicate issue of State's rights.

The approach to regulation taken by government agencies is as critical as the regulatory framework itself. This is particularly the case for small and medium sized enterprises which bear a disproportionate burden of the costs of meeting regulatory obligations, primarily due to the differential impact of the costs involved with improvements and administrative requirements resulting from the fixedcost nature of compliance.

Implementing one-in one-out regulation is aimed at changing the regulatory culture of the public sector. Cultural change

is essential if the reform process is to promote efficiency and a business friendly environment while allowing for social objectives to be met.

This discussion paper is designed to change the process and remove redundant regulation in Australia. It is not designed to remove regulation which is deemed necessary to the efficient operation of a market.

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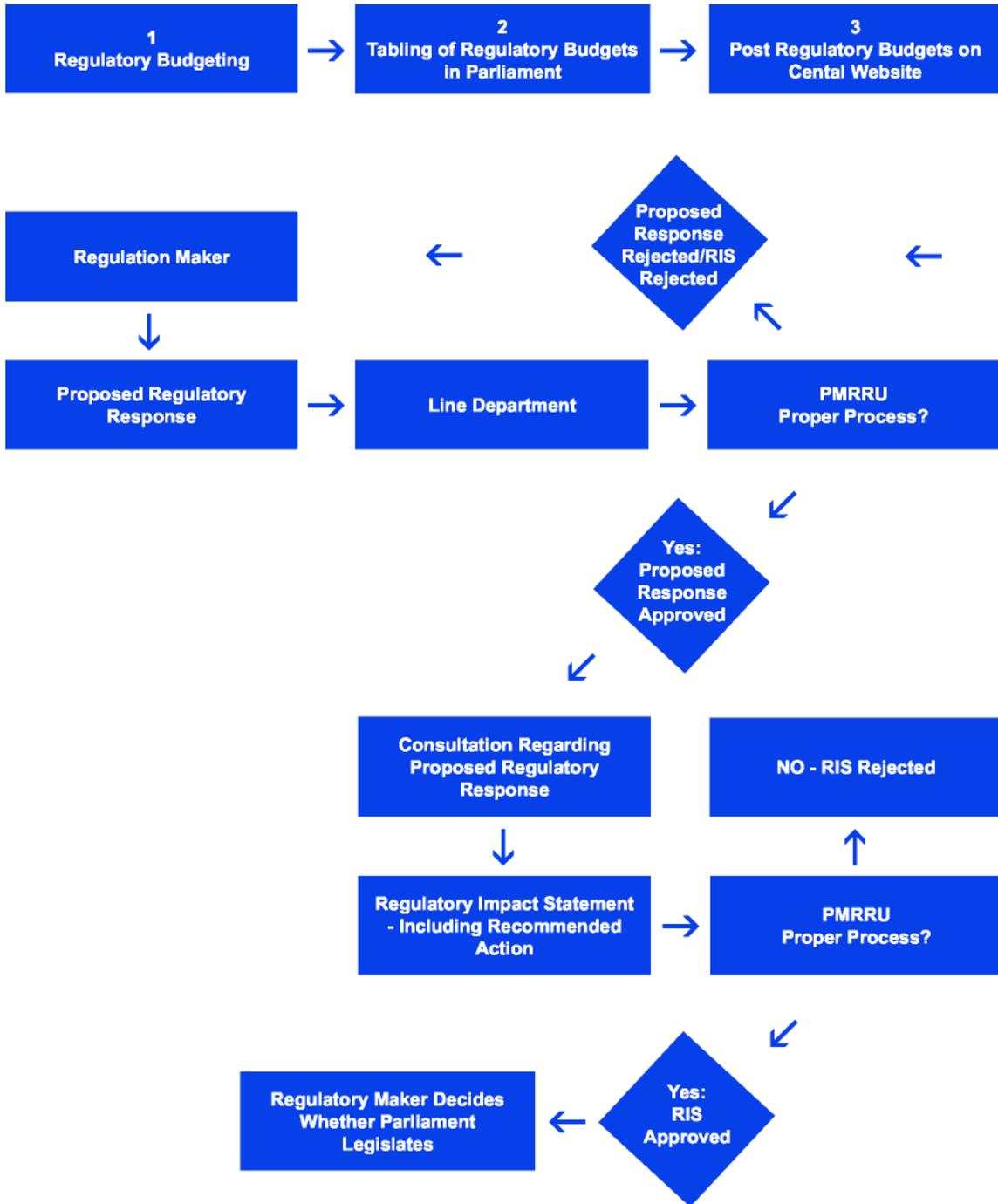
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# APPENDIX A: THE FULL PICTURE



All Processes Recorded on PMRRU website, freely accessible to all

- State, Territory and local Government Simplification and Alignment of State Regulation
- Reducing the Stock of Regulators
- Stocks Productivity Commission Review into Legislation
- One-In One-Out
- Sunsetting Clauses

## APPENDIX B: ACCI BLUEPRINT REGULATORY REFORM PROPOSALS

ACCI has already produced a number of papers proposing changes to Australia's regulatory system including:

- *Taxation Reform Blueprint: A Strategy for the Australian Taxation System;*
- *Modern Workplace: Modern Future – A Blueprint for the Australian Workplace Relations System;* and
- *Modern Workplace: Safer Workplace 2005-2015.*

The Taxation Reform Blueprint recommends that the Government should consider introducing a Tax Administration Impact Statement (the TAIS) to be administered by the Inspector General of Taxation. In introducing the TAIS:

- the Inspector General should undertake a survey of the time and money that business spends on complying with the Tax Act;
- the Inspector General in conjunction with the Australian Taxation Office (ATO) should introduce a range of initiatives to assist business to identify, understand and implement new and existing taxation requirements. Information programs for small business in particular should involve all components of the small business network;
- the Inspector General should include within the TAIS a requirement that quantitative estimates of compliance costs, based on detailed proposals for implementation and administration, be attached to any new tax proposal;
- there should also be regular reviews of the accuracy of compliance estimates in the TAIS for regulations with a major impact on business;
- the Inspector General in conjunction with the ATO should regularly review its taxation impact assessment arrangements to ensure that they meet best practice standards with regards to minimising the compliance burden on business. International best practice should be continuously introduced into Australia; and
- the Inspector General in conjunction with the ATO should develop a consistent methodology for measuring the tax compliance burdens imposed.

*Modern Workplace: Modern Future – A Blueprint for the Australian Workplace Relations System* recommends introducing a three-step mechanism of regulatory accountability. The Employment Regulation Standard (ERS) should be created

as a Charter of Mutual Regulatory Responsibility.

It should be adopted by policy makers and introduced to counteract the continuing ad-hoc build-up of employment regulation, and preferably reduce the level of employment regulation. The ERS involves:

- pre decision regulatory impact assessments;
- measures to counterbalance any regulatory impost; and
- reviews of regulatory impact and objectives after set periods.

*Modern Workplace: Safer Workplace 2005-2015* recommends changes to the current OH&S framework by arguing OHS regulation, particularly on key areas where national standards are set or in core concepts, should be nationally consistent. This requires a legislative framework which is consistent and straightforward, supported by useful and relevant standards, codes and guidance materials. These must be easily understood and accessible, especially for those employers without sophisticated resources to deal with OHS matters.

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