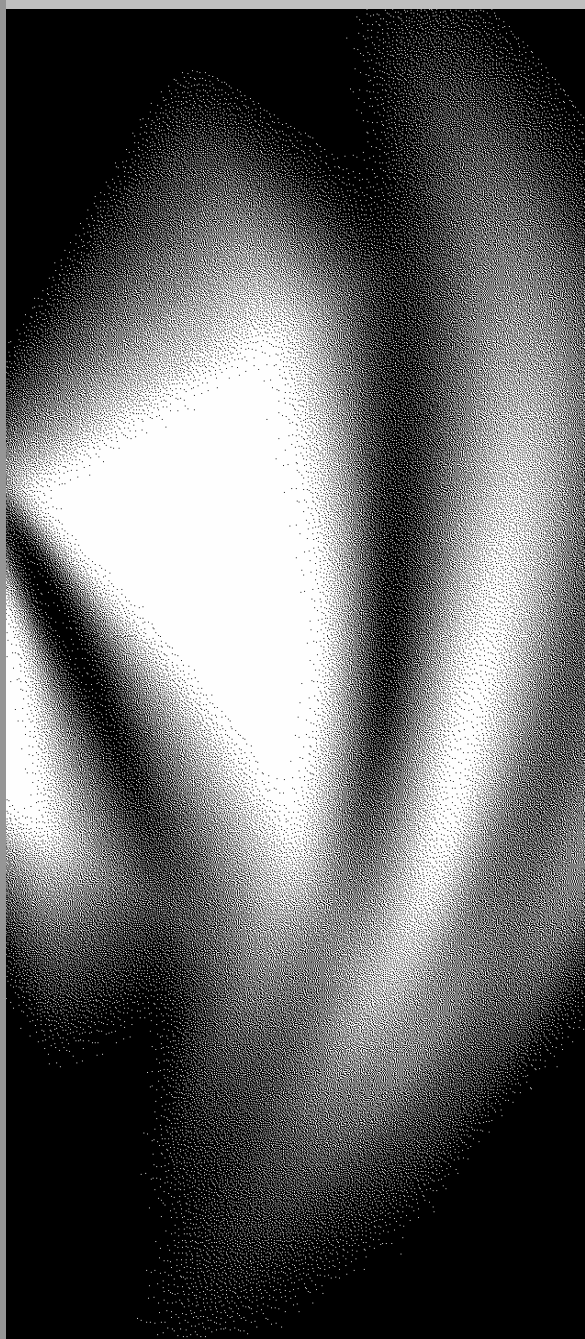
Australian Government
Productivity Commission

Performance Benchmarking of Australian Business Regulation

Productivity Commission Research Report

19 February 2007



ISBN 978 1 74037 223 7

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

Publications Inquiries:
Media and Publications
Productivity Commission
Locked Bag 2 Collins Street East
Melbourne VIC 8003

Tel: (03) 9653 2244
Fax: (03) 9653 2303
Email: maps@pc.gov.au

General Inquiries:
Tel: (03) 9653 2100 or (02) 6240 3200

An appropriate citation for this paper is:
Productivity Commission 2007, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne.

JEL code: A, B, C, D, H

The Productivity Commission

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

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

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

Terms of reference

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

Productivity Commission Act 1998

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

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

In undertaking this study, the Commission is to:

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

   In developing options, the Commission is to:

   - consider international approaches taken to measuring and comparing regulatory regimes across jurisdictions; and
   - report on any caveats that should apply to the use and interpretation of performance indicators and reporting frameworks, including the indicative benefits of the jurisdictions' regulatory regimes;

2. provide information on the availability of data and approximate costs of data collection, collation, indicator estimation and assessment;

3. present these options for the consideration of COAG. Stage 2 would commence, if considered feasible, following COAG considering a preferred set of indicators.

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

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

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

4. use the preferred set of indicators to compare jurisdictions' performance;

5. comment on areas where indicators need to be refined and recommend methods for doing this.

The Commission would:

- provide a draft report on Stage 2 for public scrutiny; and

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

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

- have appropriate regard to the objectives of Commonwealth, state and territory and local government regulatory systems to identify similarities and differences in outcomes sought;

- consult with business, the community and relevant government departments and regulatory agencies to determine the appropriate indicators.

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

The Commission's reports would be published.
PETER COSTELLO

11 August 2006

Contents

Abbreviations

ABA	Australian Bankers Association
ABCB	Australian Building Codes Board
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACPBR	Advisory Committee on Paperwork Burden Reduction (Canada)
AFGC	Australian Food and Grocery Council
AFMA	Australian Financial Markets Association
ALGA	Australian Local Government Association
ALRC	Australian Law Reform Commission
AMRA	Australian Mutual Recognition Agreement
ANZSIC	Australian and New Zealand Standard Industrial Classification
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASCC	Australian Safety and Compensation Council
AUCLA	Australian Uniform Consumer Credit Laws Agreement
BCA	Business Council of Australia
BCC	Business Cost Calculator
BLIS	Business Licence Information Service
BRE	Better Regulation Executive (United Kingdom)
CFIB	Canadian Federation of Independent Business
CIBE	Construction Industry Business Environment
COAG	Council of Australian Governments
CSES	Centre for Strategy and Evaluation Services

EIS	Environmental Impact Statement
EPBC	Environment Protection and Biodiversity Conservation (Act 1999)
EU	European Union
FBT	Fringe Benefits Tax
FICA	Finance Industry Council of Australia
GAO	General Accounting Office (United States)
GST	Goods and Services Tax
HIA	Housing Industry Association
HMRC	Her Majesty's Revenue and Customs (United Kingdom)
MCA	Minerals Council Australia
MCUCL	Ministerial Council for Uniform Credit Laws
NARGA	National Association of Retail Grocers of Australia
NCP	National Competition Policy
NRA	National Reform Agenda
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
OPPAGA	Office of Program Policy Analysis and Government Accountability (Florida, United States)
ORR	Office of Regulation Review
PAYG	Pay As You Go (withholdings)
PCA	Property Council of Australia
PPS	Personal Property Security
QIAS	Quality Improvement and Accreditation System
QRC	Queensland Resources Council
RAIA	Royal Australian Institute of Architecture
RBA	Reserve Bank of Australia
RCA	Restaurant and Catering Australia
RIS	Regulatory Impact Statement
RTO	Registered Training Organisation

SBDTF	Small Business Deregulation Task Force
SCAG	Standing Committee of Attorneys-General
SCH	Statistical Clearing House
SCM	Standard Cost Model
TFN	Tax File Number
TPA	Trade Practices Act
UCCC	Uniform Consumer Credit Code
UDIA	Urban Development Institute of Australia
VCEC	Victorian Competition and Efficiency Commission
VET	Vocational Education and Training

Glossary

Administrative compliance cost	Paperwork compliance costs and those non-paperwork costs directly associated with the paperwork activities.
Baseline	A specific standard, level or value at a point in time that serves as a basis for comparison or control.
Benchmark	A measure, or reference point, of performance used for goal setting or to compare performance between similar entities.
Capital holding cost	Types of cost associated with keeping and maintaining a stock of outputs in storage. Includes interest on money incurred on investment projects delayed by regulations.
Compliance cost	Costs incurred by business to meet the requirements imposed on them by regulation. Comprised of paperwork and non-paperwork compliance costs.
Incremental cost	The compliance costs avoided by a business if a regulation was withdrawn.
Informant surveys	Informant surveys are administered through a number of intermediaries who have the skills, relevant knowledge and experience to collect the data required for a particular study.
Meta-index	An aggregation of composite sub-indexes, each representing a measure of performance in a particular aspect.

Non-paperwork compliance cost	Investment and output modification costs, capital holding costs, and time spent in meeting regulatory requirements.
Normally efficient business	A business that conducts administrative tasks in a normal manner, which is no better or worse than expected. This concept is used by the Standard Cost Model (SCM) to assess regulatory compliance costs.
Notional business	A hypothetical business entity selected on the basis that information collected on regulatory burdens in informant surveys is comparable across jurisdictions.
Paperwork compliance cost	Compliance costs associated with filling out forms and providing information, and associated administrative costs, such as record-keeping and obtaining advice from external sources.
Performance benchmarking	A standardised method for collecting and reporting critical operational data in a way that enables relevant comparisons of performance among different entities. It can also involve comparing information over time.
Performance indicator	Individual statistical, or other, unit of information, or combination of units, which is considered to highlight performance in quantitative and qualitative terms.
Personal-interview surveys	Personal-interview surveys are conducted either face-to-face or by telephone. In the former, an interviewer visits each 'member' selected from the survey sampling frame.
Process benchmarking	A standardised method for collecting and reporting information that provides a comparison of practices and procedures across entities.

Quasi-regulation	Rules or arrangements used by governments to influence business conduct that do not involve the use of explicit ('black letter') laws. Examples include industry codes of practice, guidance notes, bi-part agreements with industry, and accreditation schemes.
Reference business	A real-world business entity selected on the basis that information collected on regulatory burdens in personal interview surveys is comparable across jurisdictions.
Regulation	A principle, rule or law designed to control or govern conduct. Regulation includes primary and subordinate legislation; orders and other rules issued by all levels of government and by bodies to which governments have delegated regulatory powers.
Self-enumeration surveys	Self-enumeration surveys require respondents to complete a survey questionnaire. Although these are primarily conducted as postal, or mail-out surveys, they can also include hand-delivered questionnaires and email and internet surveys.
Standards benchmarking	A standardised method for establishing best practice standards or targets that entities can aspire to as part of their planning and continuous improvement processes.
Subordinate legislation	Rules or instruments that have the force of law, but are made by an authority to which the Parliament has delegated part of its legislative power. Includes statutory rules, disallowable instruments, and other subordinate legislation not subject to parliamentary scrutiny.

OVERVIEW

Key points

- While much business regulation is essential, it can involve unnecessary compliance costs. Such burdens are compounded for firms operating across Australia.
- Benchmarking compliance burdens could help identify where costs could be reduced, and complement other regulatory reform initiatives.
- Such benchmarking is technically feasible and could yield significant benefits. However, there are methodological complexities and uncertainties about data, requiring a careful, staged approach to implementation.
  - Benchmarking across jurisdictions would need to be confined to areas of regulation with comparable objectives and benefits, and rely mainly on indirect indicators that would not be definitive about performance gaps.
- Benchmarking *compliance costs* of key regulatory areas should include the costs of:
  - *becoming and being* a business, arising from one-off activities such as licensing and ongoing activities such as meeting OHS standards;
  - the delays, uncertainties and compliance activities associated with obtaining government approvals in *doing business*; and
  - regulatory duplication and inconsistencies in doing business *interstate*.
- In addition, benchmarking the *quality and quantity* of regulation across jurisdictions and over time (including for specific business categories) would provide complementary insights into cumulative burdens and systemic problems.
- It would be desirable to follow a limited and targeted program over the first three years, that would allow 'learning by doing'.
  - The first year would focus on benchmarking the quantity and quality of regulation, as well as compliance costs for a single area of regulation, and developing data sets for other areas. Progressively more regulation would be benchmarked in subsequent years.
- Based on the likely significance of compliance burdens and other criteria, suggested priorities for inclusion in the initial three year program are OHS; land development assessments; environmental approvals; stamp duty and payroll tax; business registration; financial services regulation; and food safety.
- Data for many indicators is obtainable from published sources and governments, but face-to-face surveys of individual businesses would also be needed.
  - Survey costs, including for business, can be reduced by targeting 'reference businesses' with appropriate attributes.
- The cooperation and support of governments and business – in advising on indicators and supplying comparable data – would be crucial to the success of any regulatory benchmarking program. Advisory panels would facilitate necessary interaction.

Overview

Regulation is essential for the effective functioning of our society and economy. However, most regulation involves costs as well as benefits. In recent years, business groups have been increasingly vocal in their concerns about the costs of complying with regulation ('red tape'). This concern has not been mostly about the objectives of regulation, but about perceived unnecessary costs stemming from how regulation is designed and implemented.

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

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

Why benchmark regulatory regimes?

Compliance burdens are substantial

While difficult to estimate with any precision, evidence from the Regulation Taskforce and other sources indicates that business red tape burdens are substantial and have grown over time. Significant costs arise for businesses operating within individual jurisdictions, but costs are compounded for firms operating across jurisdictional boundaries.

Modelling work undertaken by the Productivity Commission for COAG suggests that the economic gains from reducing such compliance burdens could be large. For example, if regulatory reforms lowered compliance costs by one-fifth from

conservatively estimated levels, a cost saving of around $7 billion (and a greater resultant increase in GDP) could be achievable.

Red tape reduction programs overseas are also estimated to have yielded substantial benefits. The Ministry of Finance in the Netherlands, for example, estimated cumulative savings of €900 million (approximately A$1.5 billion) over 2003 and 2004 from reduced administrative burdens on business. In the United Kingdom, it is claimed that reductions to administrative burdens obtained through the use of the Standard Cost Model will potentially increase GDP by £16 billion (approximately A$35 billion).

Benchmarking would assist regulatory reform

Consistent with the maxim that *what is measured gets managed, and what is managed gets done*, a carefully designed and implemented benchmarking program could complement other regulatory reform efforts in pursuit of more cost-effective and efficient regulation.

There is evidence that significant differences in compliance cost levels exist across jurisdictions. For example, the Housing Industry Association claims that Occupational Health and Safety (OHS) regulation is more onerous in New South Wales than in any other Australian jurisdiction. And a survey by the Royal Australian Institute of Architects revealed considerable variation in average processing times for planning approvals across and within jurisdictions. Moreover, there is evidence of jurisdictional differences in areas of regulation where governments have already agreed that national consistency is desirable (such as building regulation).

Benchmarking could shed light on where and how such differences might be reduced. Differences in compliance costs across jurisdictions, where they are not the outcome of differences in regulatory objectives, would constitute *prima facie* evidence that unnecessary burdens are being imposed on businesses in those jurisdictions with relatively high costs.

The increased transparency afforded by benchmarking would also increase government accountability for the design, administration and enforcement of regulation. Indeed, it could help promote greater 'yardstick' competition among jurisdictions, whereby there is more careful assessment of regulation to ensure that it is efficient and does not disadvantage a jurisdiction's performance.

Participants in this review were generally strongly supportive of benchmarking and the role it could play in promoting the reduction of unnecessary compliance costs on business (box 1).

Box 1 **Business support for regulatory benchmarking**

The Business Council of Australia is strongly supportive of a benchmarking process that would identify the regulatory burdens on business. Such a process should provide better information about the regulatory burdens on business and would also demonstrate the effectiveness of regulatory reform over time. (BCA, sub. DR35, p. 1)

The costs to the Australian community and to industry of current regulatory inconsistencies among jurisdictions must be addressed. For the minerals industry alone, they amount to millions of dollars every year. Benchmarking is a fundamental tool for identifying these costs and setting the agenda for nationally consistent regulatory reform. … the Minerals Council of Australia strongly submits that your project should proceed to Stage 2. (MCA, sub. DR37, p. 2)

The Australian Bankers' Association believes that benchmarking regulatory burden and compliance cost potentially offers considerable net benefits for government, regulators and businesses. However, the costs of undertaking a benchmarking exercise would be significant. (ABA, sub. DR39, p. 5)

The Australian Financial Markets Association stated that the Commission's work on this project would be valuable and supported a prompt conclusion to enable the benchmarking process to begin in 2007. (sub. DR30, p. 1)

What are the framework options?

In principle, two types of regulatory benchmarking could be undertaken — namely, *performance* and *standards* benchmarking.

Performance benchmarking involves measuring and comparing indicators of compliance costs across jurisdictions and over time, without reference to any specific 'best practice' standard. Differences in cost-related indicators, for regulations with similar objectives, would signal the potential existence of unnecessary burdens in those jurisdictions for which the measures are significantly above the minimum.

This benchmarking technique could be used to identify potentially unnecessary burdens, and changes over time, associated with:

- administrative costs of *becoming a business*, arising at start-up from one-off activities such as entry licensing;
- administrative costs of *being a business*, arising from ongoing activities such as paying taxes and meeting OHS standards; and
- the time taken, degree of uncertainty and complexity of obtaining approvals for project-related business activity — that is, regulations that have to be met in *doing business*.

Such an approach could also be used to identify changes to the *quantity* of regulation over time, which could in turn be indicative of trends in overall levels of regulatory burden and changes to the forms of instruments being used.

Standards benchmarking involves the comparison of indicators against 'best practice' standards or policy targets. It can be used to identify:

- the extent and materiality of duplication and inconsistency in regulation that firms face when *doing business interstate*, particularly where governments have accepted the case for national consistency or mutual recognition; and
- the potential for unnecessary costs to arise by comparing indicators of regulatory design, administration and enforcement against accepted 'best regulatory practice'.

In each case, a variety of indicators can be used to reflect the resource needs, timeliness, predictability and other features of regulation that give rise to compliance costs. The main benchmarking options and broad indicator categories are set out in figure 1.

Choosing specific indicators

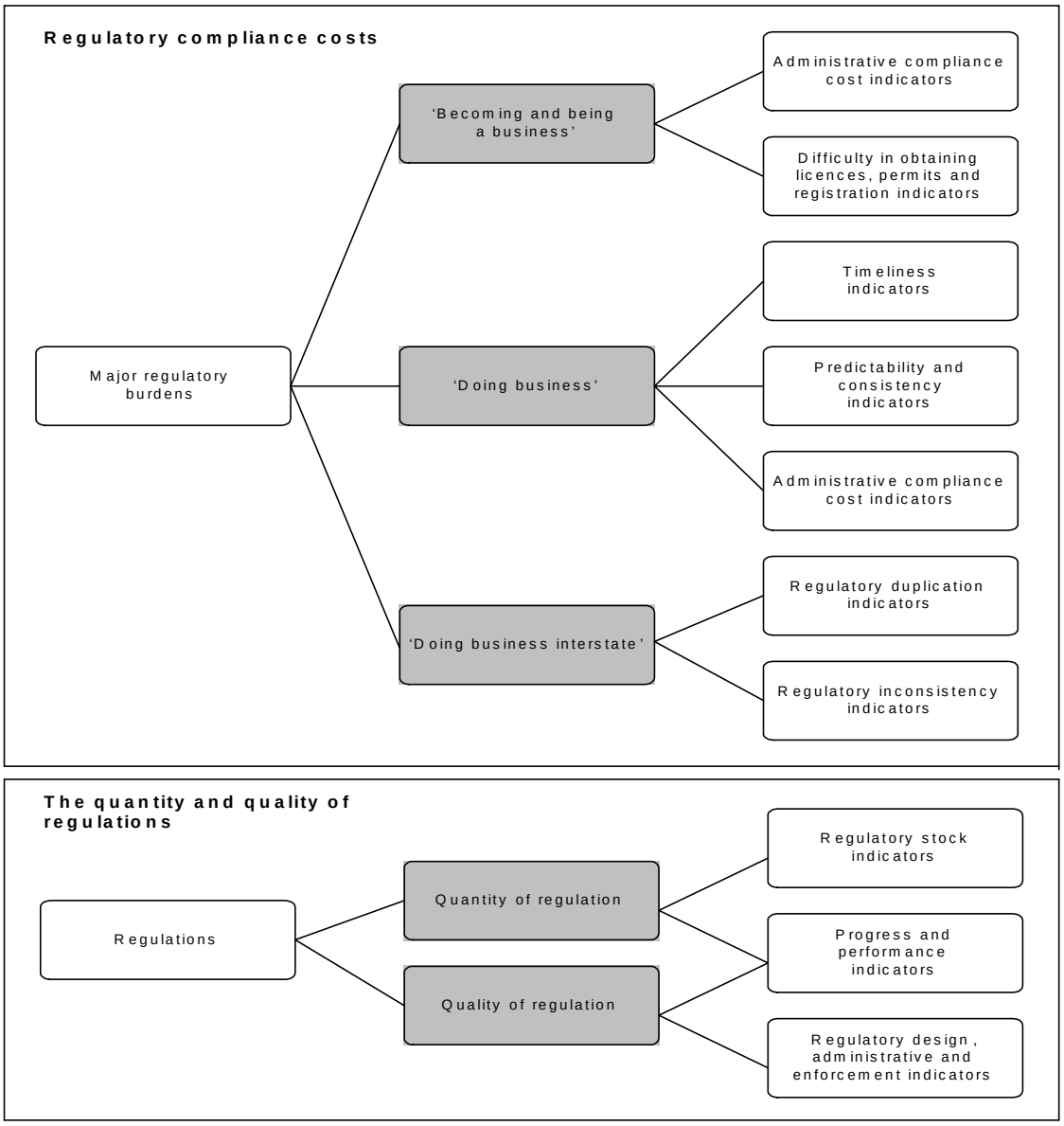
A sample of possible indicators for each of the identified benchmarking options is contained in box 2. These are drawn from a wider set of indictors outlined in this report based on their ability to reflect key aspects of potential compliance costs, while limiting data collection costs.

In practice, the final selection of specific indicators would need to be made in consultation with government and business whenever a regulation is to be benchmarked for the first time. The indicators would have to be well-defined so that they can be measured consistently. Similarly, criteria would have to be developed to assist those making subjective assessments in the case of qualitative indicators. It is also likely that indicators would have to be modified in different ways for each benchmarked regulation. Not all would be appropriate for each case and others might be needed. The aim is to identify the smallest possible number of indicators necessary to make reasonably robust comparisons.

How feasible?

There are no exact precedents internationally for a benchmarking exercise of the kind contemplated for Australia's federation. However, a range of studies are relevant, and provide useful insights and lessons about the feasibility and value of different approaches.

Figure 1 **A regulatory benchmarking framework**



Surveying business effectively is crucial

A critical determinant of the robustness of the results from such an exercise is the ability to obtain meaningful, reasonably accurate data from individual businesses. In the Commission's view, personal interview surveys, while significantly more expensive than self-enumeration surveys, would be essential for some indicators of compliance costs.

Box 2 **A sample of relevant indicators**

Becoming and being a business

- Estimated administrative compliance costs, obtained through business interviews.
- Number of licences, permits and registrations required for business; number of agencies involved; availability of online lodgement; existence of statutory time limits on processing.

Doing business

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

Doing business interstate

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

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

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

The quality of regulation

- Use of regulatory impact statement and/or business cost calculator (or equivalent) in developing regulation; complexity that requires expertise to comply; existence of a sunset clause or other review mechanism.
- Administrative reporting requirements; accessibility to appeals processes; separation between regulation setting and administration.
- Degree of enforcement; existence of risk-based enforcement strategies; publication of enforcement outcomes.

In order to limit the costs of this approach, it is proposed to benchmark selected *reference businesses* — for which the relevant characteristics would be carefully specified to enhance comparability (box 3). While the individual businesses involved would incur costs in responding to surveys, the impost on business generally would not be great.

Box 3 **What is a 'reference business'?**

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

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

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

In undertaking these interviews, the international Standard Cost Model framework and its Australian Government elaboration, the Business Cost Calculator, could be used for data collection. Further, the Business Cost Calculator, now the responsibility of the Office of Best Practice Regulation, would be a useful tool for storing data by administrative compliance activity.

Much information would come from government and published sources

Information could be collected for many indicators from government agencies, although this is likely to require efforts to improve data quality and align definitions in many areas. Experts with specific knowledge of regulatory requirements and their impact on business could also provide useful input. For example, in benchmarking the burdens facing businesses operating interstate, experts could examine regulations in each jurisdiction to identify inconsistencies and duplication, and then rate the materiality of these differences.

Much of the information for the proposed benchmarking of regulation against 'best practice' principles of regulatory design, administration and enforcement, could be obtained from government agencies and regulatory publications. It could be more difficult to obtain information in some jurisdictions on the extent to which regulations are enforced in accordance with the procedures outlined in regulations or guidelines.

There are some inherent limitations

Performance benchmarking would not, of itself, necessarily reveal 'best practice', or whether particular regulations are appropriate. All that can be measured are differences that point to unnecessary costs. To complement such indicators, therefore, it is important to identify potentially systemic problems in regulatory design, administration and enforcement by benchmarking the quality of regulation. Ultimately, more detailed investigation would generally be required, however, before any definitive findings could be made about reform needs.

Secondly, such benchmarking cannot account for the benefits of regulation. It is therefore necessary to limit the comparison of indicators of the paperwork and associated costs of compliance activities to regulations with similar *objectives*. In this case, large differences in indicators are more likely to be reflective of unnecessary burdens, rather than differences in desired regulatory outcomes. Where objectives differ only slightly, and their associated administrative compliance activities are separable, such costs may be able to be netted out before making inter-jurisdictional comparisons.

Generally, *indirect* measures have to be used as indicators of the additional or incremental compliance burdens related to specific regulations. It is not feasible to attempt to measure incremental compliance costs directly, because business accounting systems do not identify these separately. Also, the counterfactual situation of what would be done in the absence of regulation is usually very hard to determine. However, such shortcomings are inherent to all regulatory assessments and reviews.

Regulations that affect production costs, such as requirements to install safety equipment or construct pollution mitigation works, could not be benchmarked, even if they fell within the scope of the study. This also applies to the burdens imposed by regulators' requests for information on price and service quality oversight. The impacts of these burdens are typically specific to market circumstances and the activities of each business.

It is also not possible to construct a satisfactory 'meta' indicator of relative jurisdictional performance. There is insufficient information on business demographics and the reach of regulations to establish the weights necessary to construct a composite indicator of a set of regulations for each jurisdiction.

Case studies of each form of benchmarking proposed in this report were undertaken to get a preliminary sense of the scope for performance to be compared through different indicators (box 4). These studies were not entirely conclusive, because in the time available, it was necessary to rely on published data. However, the

outcomes provide evidence that benchmarking is technically feasible. Further, there were sufficient differences in the indicators across jurisdictions to suggest that benchmarking results would provide useful evidence of potentially unnecessary burdens.

Box 4 **Some case studies**

A preliminary application of some of the possible indicators suggested in this report was undertaken through brief case studies in the following areas. The aim of the case studies was to explore the feasibility of benchmarking and, in particular, to identify possible difficulties and challenges in measuring the suggested indicators.

Restaurant and cafe licensing

For 'becoming a business', it was found that measuring indicators of the difficulty in obtaining licences, permits and registrations is relatively straightforward. Further, differences in these indicators across the surveyed jurisdictions were apparent. In addition, it was possible to identify the administrative compliance activities involved in establishing a business. However, the associated administrative compliance costs could not be estimated because of time constraints.

Environmental approval processes

For 'doing business', it was confirmed that if the information available in some jurisdictions were available in all, it would be possible to construct comparable indicators with the cooperation of relevant government agencies. The case study trial highlighted the importance of consultation with relevant agencies and industry experts to develop indicators that are both robust and comparable before benchmarking commences.

Personal property security registration and regulation

For 'doing business interstate', it was possible to measure the suggested indicators of the extent of duplication and inconsistency. The next step would be for industry experts to rate the materiality of the identified additional compliance activities arising from having to operate or trade interstate.

Indicators of the 'quantity of regulation' were measured, displaying significant differences across jurisdictions. Similarly, the suggested 'quality of regulation' indicators were measured and assessed against generally accepted principles of best practice. Although a different set of indicators would be applicable for other areas of regulation, most of the suggested indicators appeared relatively robust.

Advantages of a staged approach

In the Commission's view, therefore, regulatory benchmarking, as raised by COAG, is feasible and would complement other government initiatives directed at achieving appropriate, cost-effective regulation. That said, there are a number of complexities

and challenges to achieving robust results, including uncertainties about data provision.

With these in mind, the best way forward, in the Commission's view, would be to adopt a staged approach, commencing in a first three year period with a limited number of regulatory areas and indicators. Benchmarking also should be sequenced such as to allow necessary development of methodologies and data collection in the initial phase. This would also enable learning by doing. Following an assessment at the end of such a three-year program, the extension and potential expansion of the exercise could be considered (see below).

Which regulations should be benchmarked first?

A range of regulatory areas has been identified in this report as potential candidates for benchmarking. These include areas of regulation identified by COAG as 'hotspots', as well as additional regulatory problem areas identified by the Regulation Taskforce (2006) and by participants in this study. However, it would not be possible to benchmark all of these regulatory areas in the initial phase, and some further prioritisation is necessary. The final choice of regulations was made on the basis of a number of criteria, including the likely extent of unnecessary burdens and the ability to collect data and to undertake comparisons without imposing undue costs on business and government.

On this basis, the Commission would propose benchmarking the following areas of regulation in the first three years of Stage 2 of the study:

- *Occupational health and safety* (Commonwealth, State and Territory) — performance benchmarking of administrative compliance costs (*becoming and being a business*) and standards benchmarking of consistency across jurisdictions (*doing business interstate*). This area of regulation was identified by many participants as imposing considerable burdens on a range of businesses, and has been identified as a priority for reform by COAG and the Regulation Taskforce.
- *Land development assessment* (local government) — performance benchmarking of approval processes (*doing business*). Land development approvals were widely seen by participants in this study as a major area of regulatory concern. They were also nominated by COAG as a 'hot spot'. They are likely to involve significant variations in compliance costs across jurisdictions.
- *Environmental approvals* (Commonwealth, State and Territory) — performance benchmarking of approval processes (*doing business*) and standards

benchmarking of consistency across jurisdictions (*doing business interstate*). Environmental approvals were identified by many participants as a priority for benchmarking, and COAG identified bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999* as a priority area for reform.

- *Stamp duty and payroll tax administration* (State and Territory) — performance benchmarking of ongoing administrative compliance costs (*becoming and being a business*). These taxes feature extensively in many business studies on regulatory burden and were identified as a priority for reform by the Regulation Taskforce and participants in this study.
- *Business registration* (Commonwealth, State and Territory) — performance benchmarking of start-up and ongoing administrative compliance costs (*becoming and being a business*). Registration processes affect nearly all businesses, and have been identified by COAG as a priority for regulatory improvement.
- *Financial services regulation* (Commonwealth, State and Territory) — performance benchmarking of administrative compliance costs (*becoming and being a business*). This area of regulation was identified as a priority for reform by the Regulation Taskforce and was identified by many participants as a significant area of regulatory burden.
- *Food safety* (Commonwealth, State, and Territory and local government) — performance benchmarking of approval processes (*doing business*) and standards benchmarking of consistency across jurisdictions (*doing business interstate*). Food safety regulations involve all tiers of government and affect a number of businesses. They were commonly cited by participants as an area requiring improvement and were identified by the Regulation Taskforce as a priority for reform.

A proposed program

The Commission is proposing a three-year program, in which each of the above areas would be benchmarked once in the first period. Follow-up benchmarking could then occur at intervals as appropriate. This would allow time for any changes to be detectable, and the process would be more cost-effective and manageable than attempting to benchmark the same areas of regulation every year.

It is envisaged that the first year of the proposed program would:

- focus primarily on benchmarking the quantity and quality of those regulations that have been identified as priorities;

- benchmark administrative compliance costs for one of the more straightforward areas of regulation, such as business registrations, in order to develop and test methodologies; and
- undertake preparatory work regarding other priority regulatory areas, to pave the way for subsequent benchmarking.

The program for the next two years could be confirmed after the results of the first year's work are assessed, following further consultations.

An indicative program that could meet these requirements is as follows:

- *Year 1:* Business registrations; quality and quantity/form of regulation.
- *Year 2:* OHS; stamp duty and payroll tax administration.
- *Year 3:* Environmental approvals; financial services; food safety; land development assessment.

Some flexibility would be appropriate to maintain complementarity with other regulatory reform initiatives. If major reforms emerge in any of the selected areas of regulation within the three-year time frame of the initial program, consideration could either be given to establishing a baseline to benchmark progress, or selecting another area of regulation to benchmark. For example, baselines for initiatives such as the Standard Business Reporting project, overseen by a committee of Australian and State Government officials, could be established.

Before commencing, the Commission would need to consult with governments and the affected business community to obtain broad agreement on the approach to be taken, including the indicators to be used, their measurement, and the supply of necessary data. In particular, government support would be required for the selection of indicators and in the provision of comparable data from their agencies and local government authorities. In some cases, this might involve reaching agreement on data standards and adjusting data collection activities accordingly.

Advisory panels would be established for this purpose and would be convened at strategic points to provide advice and support, as well as a mechanism for feedback on preliminary results. They would help ensure that benchmarking remains focussed over time on generally perceived priority areas.

In the longer term, the benchmarking program could potentially include New Zealand for some areas of regulation, given the similarity in institutional arrangements between the two countries and the emphasis placed on trans-Tasman harmonisation in recent years. This would facilitate greater benchmarking of regulation, including at the Commonwealth level.

The commitment of governments and business will be crucial

The program has been designed to encompass all the main forms of compliance cost, as well as indicators of regulatory quality and cumulative burden, in a way that would be manageable and cost-effective for governments and business. Nevertheless, significant resources would be needed both to administer the program and to support its data needs. Failure to adequately resource the project would seriously compromise its success.

Estimates are difficult to make in advance. However, based on other relevant studies and the Commission's own experience as secretariat to the Government Services Review, budgetary resources of some 2 to 3 million dollars per annum would be required to cover necessary staff and survey costs. In addition, costs would be incurred by participating government agencies and business.

The Commission's proposed program is summarised on the next page *(see over)*. The program necessarily entails a degree of flexibility, with scope for it to be modified in the light of experience. As noted, the Commission would ensure that governments and business were consulted closely as the exercise proceeds. Ultimately, the utility of such regulatory benchmarking will crucially depend on governments' own commitment to it and on the extent to which they utilise the results.

The Productivity Commission's key proposals

The Commission proposes for COAG consideration a benchmarking program comprising the following elements:

- ***In the first three years, compliance costs, and the quantity and quality of regulation, would be benchmarked across jurisdictions for a limited number of regulatory areas.***
- ***Compliance costs to be benchmarked would include those relating to establishing and running businesses within jurisdictions as well as across jurisdictions.***
- ***The regulatory areas proposed to be benchmarked and their possible sequencing are as follows:***

Year 1	*Year 2*	*Year 3*
Business registrations	*Occupational Health and Safety*	*Environmental approvals*
Quality of regulations	*Stamp duty and payroll tax administration*	*Financial services regulation*
Quantity and form of regulation		*Food safety regulation*
		Land development assessment

- ***The Commission would consult further on methodology and data availability in year 1 and before finalising the structure of the program in years 2 and 3.***
- ***The choice of specific indicators to use would be made in consultation with governments and relevant business groups, drawing from those identified in this report.***
- ***The Commission would establish specialist advisory panels to assist it in these activities, comprising representatives of governments and relevant businesses.***
- ***Preliminary results would be made available to governments to provide opportunities for scrutiny and comment. There could also be provision for each jurisdiction to include a commentary in the Commission's reports.***
- ***The first report would be provided 12 months after commencement of Stage 2.***
- ***At the completion of the initial three-year program, an evaluation report would be prepared for consideration by governments. It would include any suggestions for modifying the benchmarking, or extending it to additional areas of regulation or to other countries.***

1 What is this study about?

The terms of reference for this commissioned study were received from the Commonwealth Treasurer on 11 August 2006. The terms of reference specify that the Study be conducted in two stages. Its purpose is to assist the Council of Australian Governments (COAG) to implement an in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burdens on business.

In the first stage, the Productivity Commission is to develop performance indicators and framework options for benchmarking, measuring and reporting on the regulatory burden on business — essentially, to report on the feasibility of benchmarking. Subject to COAG endorsement, the benchmarking itself would be undertaken in the second stage of the Study.

This is a report on the first stage of the Study.

1.1 Background

Regulation is essential for the proper functioning of our society and economy. However, most regulation involves costs as well as benefits. In recent years, business groups have been increasingly vocal in their concerns about the costs of complying with regulation, or 'red tape'. Much of this concern has not been about the objectives of regulation, but about unnecessary costs stemming from how it is implemented and enforced, that is, practice. Where these costs arise, the performance of business and the wider economy can be adversely affected.

In response to such concerns, governments have introduced programs and are investigating other options to reduce regulatory burdens. Some examples of these initiatives are outlined in box 1.1.

The Regulation Taskforce (2006) concluded that benchmarking across jurisdictions would assist in improving regulatory regimes. Periodic benchmarking would increase transparency and incentives for government to reduce unnecessary regulation. Ensuring that regulation is efficient and that its objectives are met in a cost-effective way, can contribute significantly to Australia's economic performance and living standards.

Box 1.1 **Examples of recent regulatory reform initiatives**

A regulation taskforce was established by the Australian Government in October 2005 to identify actions to address areas of Australian regulation that are 'unnecessarily burdensome, complex, redundant, or duplicate regulations in other jurisdictions' (Howard and Costello 2005). The Government has agreed in full, or in part, to 158 of the Regulation Taskforce's 178 recommendations (Australian Government 2006).

The Australian Government, as part of its response, has established the Office of Best Practice Regulation to assist in delivering its new regulatory assessment requirements by providing assistance to departments and agencies, as well as monitoring their compliance.

State and Territory governments have committed to a range of initiatives including, undertaking reviews of regulatory and administrative burdens (New South Wales and Queensland), and setting of red tape reduction targets (Victoria and South Australia). State and Territory government initiatives are discussed in more detail in chapter 7.

At a national level, a committee of Australian and State government officials has been established to examine the case for the introduction of standard business reporting (Australian Government 2006).

At its meeting in February 2006, COAG agreed in-principle to the development of a common framework for benchmarking, measuring and reporting on the regulatory burden on business (COAG 2006a). This study is intended to assist COAG assess the feasibility of benchmarking by establishing such a framework and developing suitable indicators.

1.2 Scope of the study

COAG's overarching objective in seeking this study is to improve the efficiency of regulation by reducing regulatory burdens. Benchmarking can be used to identify unnecessary burdens.

Which burdens?

The regulatory burdens examined include those imposed by regulations contained in principal acts and subordinate legislation, those created by administrative decisions, and quasi-regulation established in licences and contractual arrangements (box 1.2). They include the cost of administrative compliance activities and delays — broadly defined as paperwork costs and associated operating expenses.

Box 1.2 **What is regulation?**

Regulation can be defined as a principle, rule or law designed to control or govern conduct. Alongside government expenditure and taxation, regulation is widely viewed as a fundamental government policy tool. Regulations can shape incentives and influence how people behave and interact, helping societies deal with a variety of problems.

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

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

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

Apart from these explicit forms of regulation, there are also codes and standards that governments use to influence behaviour, but which do not involve 'black letter' law — known as *quasi-regulation*. Some examples of quasi-regulation include industry codes of practice, guidance notes, industry-government agreements, and accreditation schemes. Quasi-regulation might also arise through licensing and government procurement requirements.

Forms of co-regulation, such as legislative support for rules developed and administered by industry, and other instruments such as international treaties, are also used to directly or indirectly influence conduct.

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

Other burdens imposed by specific regulatory requirements were not considered because their impacts are typically specific to market circumstances and the activities of each business. Excluded are the burdens imposed by economic regulations that affect production costs — such as those that arise from having to install safety equipment or construct pollution mitigation works. Also excluded are

the burdens of meeting a regulator's information requests for price and service quality oversight.

1.3 Approach to the study

The main purpose of benchmarking is to provide necessary information and promote incentives for continuous improvement. In the context of this study, this involves identifying and drawing attention to the possible existence, scale and source of unnecessary burdens. Regulatory burdens are the *incremental* cost imposed on a business by one or more regulations — that is, the cost that would be avoided if the regulation were to be removed. Unnecessary burdens are those incremental costs that could be eliminated by better regulatory design, administration and enforcement, without detracting from desired outcomes or policy objectives.

The stock of regulation is large and diverse. Consequently, the Productivity Commission has sought to develop a range of possible framework options and indicators that could be used to benchmark burdens in most areas of regulation, enabling a complete picture to be built up over time.

Costs will be incurred by those providing data. With this in mind, the benchmarking framework was developed to minimise the cost imposed on business and government.

Developing a benchmarking framework

In developing a benchmarking framework, there was no presumption of which regulations should be benchmarked in the implementation stage of the Study. Although this broadened the scope of this feasibility study, it increases flexibility to meet any priorities that governments place on benchmarking specific regulations. It also facilitates the ongoing development of a benchmarking program as more information comes to light on the size of unnecessary burdens and the benefits of the benchmarking.

Two broad ways of identifying unnecessary burdens were considered:

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

For regulatory compliance cost, four distinct types of regulatory compliance costs had to be considered in developing a benchmarking framework, namely:

- the administrative compliance costs borne by start-up businesses arising from one-off activities, such as entry licensing — *becoming a business*;
- administrative compliance costs borne by all growing or mature businesses arising from ongoing activities, such as paying taxes and meeting OHS standards — *being a business*;
- uncertainty and delays in gaining approvals when *doing business*; and
- the additional effort and cost of having to deal with inconsistent and duplicative regulation in *doing business interstate*.

The Study terms of reference direct the Commission to report any caveats that should apply to the use and interpretation of performance indicators, including the indicative benefits of the jurisdictions' regulatory regimes. Assessing regulatory burdens emanating from differences in objectives would be very difficult in the context of a benchmarking study. Consequently, the benchmarking proposed in this report is confined to regulations with similar objectives and, hence, similar benefits. As such, there will be no need to report indicative benefits to interpret benchmarking results.

For the regulatory environment, frameworks were developed to benchmark:

- the *stock* of regulation, in aggregate and as it affects a type of business; and
- the quality of the design, administration and enforcement against *accepted best practice principles*.

Benchmarking the stock of regulation enables 'baselines' to be established to measure changes over time and in the progress of burden reduction programs.

Selecting indicators

The Study terms of reference direct the Commission to develop a range of feasible quantitative and qualitative performance indicators. The Commission's approach was to identify a range of relevant indicators that could be drawn on to test their feasibility in case studies.

The detailed development of indicators was considered best left to the implementation stage. Indicators have to be tailored to the regulation being benchmarked and the nature of the burdens, taking into account the availability and cost of data required for their measurement. Further, indicators should be developed in cooperation with business and government. Without agreement on objectives,

indicators and their metrics, benchmarking results would not have broad support, compromising the usefulness of benchmarking.

As directed, both quantitative and qualitative indicators were considered. However, quantitative indicators were favoured because interval measures reveal the magnitude of relative differences, whereas qualitative indicators are typically ordinal measures and usually subjective in character. Further, criteria have to be developed to ensure qualitative assessments are reasonably consistent.

Indicators can either be *direct* measures — of the actual incremental cost of compliance attributable to a regulation — or *indirect* measures that provide guidance on the likely significance of incremental cost. At the outset of the Study, it was recognised that most indicators would have to be indirect because of the difficulty in measuring the incremental costs.

This also means that it would be prudent to establish a range of indicators to provide a general picture of the extent to which performance gaps exist and their source.

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

It is not proposed to estimate average or aggregate burdens. Many businesses would have to be surveyed in order to build up a picture of average costs so that aggregate burdens could be estimated. In addition, the relationship between indirect indicators and incremental cost would have to be quantified in order to reliably estimate actual compliance costs. Even if actual incremental compliance costs could be estimated, it would be difficult to enumerate aggregate costs. Currently, there is a paucity of information on the demographics of business, and a lack of understanding of the reach of regulations, to estimate the number of businesses affected by unnecessary regulatory burdens and the costs they incur.

These data deficiencies highlight the importance of developing better information on compliance costs more generally. Indeed, without estimates of the aggregate cost of unnecessary burdens, priorities for reform could be incorrectly identified.

Finally, the Commission considered the feasibility of constructing a 'meta index' to rank the overall performance of each jurisdiction. However, it was found that a sufficiently robust composite index could not be constructed.

Implementing a program

In seeking which regulations may be the priorities for benchmarking, the Commission drew from those identified by COAG as regulatory 'hot spots', the Regulation Taskforce (2006) and by participants. Priorities were established having regard for the likely extent of unnecessary burdens and the ability to collect data and to undertake comparisons without imposing undue costs on business and government.

Having established priorities, an indicative program was developed for the first three years of the implementation stage of the Study for consideration by COAG. The resourcing requirements of the program were examined as required under the terms of reference, along with other implementation issues.

1.4 Conduct of the study

The Productivity Commission sought to facilitate broad community input to the Study and receive feedback on its findings. Interested parties were invited to register their interest in the Study and make submissions. An Issues Paper was circulated to all those who registered an interest and was posted, along with submissions, on the Commission's website. A list of the submissions received can be found in table A.1 of appendix A.

Advice was sought from businesses on their regulatory concerns to ensure that the proposed benchmarking and reporting options would be most relevant. All governments were consulted to gain an understanding of their expectations for the Study and their views about benchmarking. All those visited and consulted are listed in section A.2 of appendix A.

A Discussion Draft was publicly released on 28 November 2006. Interested parties were invited to provide feedback on the proposed options outlined in the Discussion Draft through submissions. The submissions received are listed in table A.1 with the prefix 'DR'. The Productivity Commission also held roundtable discussions with invited government, business and academic representatives to provide feedback on the proposals presented in the Discussion Draft. The organisations represented are listed in section A.3 of appendix A.

1.5 Report outline

In the following chapter, an overview of benchmarking processes and the potential application for the comparison of regulatory burdens is presented. It is supported by a technical discussion of index measures (appendix B).

The lessons to be learnt from similar studies in Australia and in other countries are reported in chapter 3. Specifically, the implications for the approach to collecting data on regulatory compliance costs are outlined.

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

Proposals for benchmarking the quantity and quality of the regulatory environment are described in chapter 7. A suggested basis for benchmarking the stock and flow (change in the quantity of regulation in a given year) of regulation, in aggregate (for an area of regulation) and as it affects specific businesses, is outlined. Indicators on the way regulations are designed, administered and enforced are suggested for comparison against standards of generally accepted 'best practice'.

Case studies were undertaken to explore the feasibility of each form of benchmarking described in chapters 4, 5, 6 and 7. The studies, reported in appendix C, D and E, were conducted to identify possible difficulties and challenges in applying the suggested indicators. See table 1.1 for further details on the area of regulation and the types of burden examined.

Table 1.1 **Case studies**

Appendix	*Areas of regulation*	*Burdens or potential burdens*
C	Licences, permits and approvals applying to the start-up of cafes and restaurants	Administrative compliance costs (chapter 4)
D	Gaining environmental approvals for mining projects	Administrative delays and consistency (chapter 5)
E	Personal property securities regulation[a]	The quantity and quality of regulation (chapter 7)
E	Personal property securities regulation relating to motor vehicle financing businesses	Burdens from inconsistent and duplicative regulation (chapter 6)

[a] In total and those specific to motor vehicles.

It was not possible in the time available for the case studies to survey the administrative compliance costs of regulations or engage experts to assist in the compilation of indicators. However, useful insights were gained into what would be involved in benchmarking and especially the limitations that could apply to comparisons.

Finally, the implications of the proposed benchmarking framework for the development of a benchmarking program are discussed in chapter 8. A proposed program for the first three years of benchmarking is also presented for consideration by COAG.

2 The benchmarking framework

Key points

- Benchmarking involves collecting and reporting information in a way that enables relevant performance comparisons across entities and over time.
- Benchmarking offers the prospect of a deeper understanding of potentially unnecessary regulatory burdens across jurisdictions. It might also provide benefits in terms of jurisdictional 'yardstick' competition and greater accountability in minimising unnecessary burdens.
- The key components of such benchmarking include:
  - objectives — clarifying the rationale and purpose for benchmarking regulatory burdens;
  - coverage — determining what areas of regulation and compliance burden should be covered;
  - performance indicators — choosing specific indicators to illustrate performance for each type of burden measured;
  - data management — devising protocols regarding collection, compilation and assessment procedures; and
  - reporting — deciding how the results should be presented and interpreted.
- There are cost-effectiveness issues that must be considered when developing a practical benchmarking program. These include the trade-offs between the cost of data collection and the robustness of benchmarking results.
- In benchmarking regulatory compliance costs, data collection burdens on business have to be considered. The use of 'reference' businesses would help alleviate these costs.

Benchmarking is used to identify differences in practice, to set improvement targets, and to measure progress against underlying objectives. It involves comparing information across entities, and over time. UNESCO defines benchmarking as:

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

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

Benchmarking regulatory burdens offers the prospect of identifying regulations that potentially impose *unnecessary* burdens on business. It can also assist governments in identifying sources of unnecessary burdens and ways of overcoming them.

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

2.1 Why benchmark regulatory burdens?

As outlined in chapter 1, regulation provides a host of potential benefits by shaping incentives and influencing how individuals behave and interact. Regulations underpin social and economic order and can help societies deal with otherwise intractable economic, social and environmental problems.

While regulation provides many benefits, it can also impose costs on business, government and the community more generally. Some such costs, including compliance costs, are inevitable in any regulatory regime. However, in practice, there are also costs associated with many regulations that are unnecessary and detract from the net benefits potentially available to society (see box 2.1).

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

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

Box 2.1 **What is an 'unnecessary' regulatory burden?**

In this study, the concept of unnecessary regulatory burden is defined to be the extent to which the compliance costs of regulation exceed what is necessary to achieve the policy objectives underlying the regulation. In other words, for a given regulation, unnecessary burdens could be eliminated without compromising the net benefits of the regulation.

The Regulation Taskforce (2006) identified a number of potential *sources* of unnecessary burden:

- Excessive coverage, including 'regulatory creep' — Regulations that appear to influence more activity than originally intended or warranted, or where the reach of regulation impacting on business, including smaller businesses, has become more extensive over time.
- Regulation that is redundant or not justified by policy intent — Some regulations could have become ineffective or unnecessary as circumstances have changed over time. Other poorly designed regulations might give rise to unintended or perverse outcomes.
- Excessive reporting or recording requirements — Companies face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary. These are rarely coordinated and often duplicative.
- Variation in definitions and reporting requirements — Regulatory variation of this nature can generate confusion and extra work for businesses than would otherwise be the case.
- Inconsistent and overlapping regulatory requirements — Regulatory requirements that are inconsistently applied, or overlap with other requirements, either within governments, or across jurisdictions. These sources of burden particularly affect businesses that operate on a national basis.

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

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

The Minerals Council of Australia views benchmarking as fundamental to the elimination of the cost to business of unnecessary burdens:

> Benchmarking is a fundamental tool for identifying these costs and setting the agenda for nationally consistent regulatory reform. … the MCA [Minerals Council of Australia] strongly submits that your project should proceed to Stage 2. (MCA, sub. DR37, p. 2)

Reporting performance potentially encourages ongoing improvement in the regulatory environment by promoting 'yardstick' competition across jurisdictions or levels of government. To the extent that gaps between better and current practices can be identified, benchmarking could also increase accountability through transparency. Increased accountability places incentives on policy makers to generate systemic improvements in their regulations that reduce unnecessary burdens on business.

Benchmarking would also strengthen the accountability of regulators by requiring them to demonstrate offsetting regulatory benefits where these are claimed. Moreover, benchmarking aspects of the quantity of regulation and the quality of regulations against good practice design, administration and enforcement principles would be beneficial regardless of differences in the objectives of a regulation. As the Business Council of Australia (BCA) pointed out:

> The BCA is strongly supportive of a benchmarking process that would identify the regulatory burdens on business. Such a process should provide better information about the regulatory burdens on business and would also demonstrate the effectiveness of regulatory reform over time. (Sub. DR35, p.1)

Benchmarking to monitor changes in regulatory burdens over time could also facilitate a process of continual improvement by jurisdictions to reduce these burdens. The purpose of benchmarking in this context is to identify the jurisdictions that have been the most successful in reducing unnecessary burdens on business through better regulatory design, administration and enforcement.

What are the likely benefits?

The benefits potentially available from benchmarking compliance costs across jurisdictions will depend on the existence of differences in regulatory burdens. Otherwise, there is no basis for assessing regulatory performance in any single jurisdiction (all might be doing equally well or poorly) and the scope for yardstick competition is clearly removed.

In practice, however, it appears that significant variations in regulatory burdens across jurisdictions do exist in many regulatory areas. For example, the Housing Industry Association claims that Occupational Health and Safety (OHS) regulation is more onerous in New South Wales than in any other Australian jurisdiction. And a survey by the Royal Australian Institute of Architects revealed considerable variation in average processing times for planning approvals across and within jurisdictions. Moreover, there is evidence of jurisdictional differences in areas of regulation where governments have already agreed that national consistency is desirable (such as building regulation).

The Regulation Taskforce emphasised that estimates of the costs of regulation in Australia have limitations. Nevertheless, it concluded on the evidence available that:

> Overall, the Taskforce has no doubt that there are considerable national benefits to be had from reducing unnecessary regulatory burdens on business. (2006, p. 13)

An indication of the potential benefits from eliminating unnecessary compliance burdens can be gained from the Productivity Commission's modelling of the likely benefits of implementing the National Reform Agenda (NRA) (PC 2006a). This suggests that the economic gains from further reform under the NRA could be large, with both competition-related and other reform areas making important contributions to potential benefits. For example, if reducing the regulatory burden lowered compliance costs by one-fifth from conservatively estimated levels, a cost saving of around $7 billion (and a larger consequent gain in GDP) would be achievable.

International estimates of the benefits from regulation reduction programs also suggest substantial benefits might be available. The Ministry of Finance in the Netherlands, for example, has claimed cumulative burden reductions of over €900 million (approximately A$1.5 billion) in 2003 and 2004 as a result of its program to reduce administrative burdens for business (Ministry of Finance et al. 2005). Significant gains have also been suggested in the United Kingdom. It has been estimated that the use of the Standard Cost Model to reduce administrative burdens would potentially increase GDP in the United Kingdom by £16 billion (approximately A$35 billion) (BRTF 2005).

Participants in this study highlighted the potential benefits in supporting the proposed benchmarking (Insurance Council of Australia, sub. DR40; Child Care New South Wales, sub. DR33; Australian Financial Markets Association, sub. DR30; BCA, sub. DR35; Australian Bankers' Association (ABA), sub. DR39). For example, the Insurance Council of Australia (ICA) stated:

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

Some participants highlighted that net benefits were likely from benchmarking even though the costs could be significant:

> The ABA [Australian Bankers' Association] believes that benchmarking regulatory burden and compliance cost potentially offers considerable net benefits for government, regulators and businesses. However, the costs of undertaking a benchmarking exercise would be significant. (ABA, sub. DR39, p. 5)

2.2 What benchmarking could be done?

There are two benchmarking techniques that could be used to identify regulatory burdens:

- *Performance benchmarking* — The comparison of performance across entities using a range of indicators. In the context of benchmarking regulatory burdens, performance benchmarking could help identify the extent of unnecessary burdens for similar regulation across jurisdictions. This form of benchmarking could also help assess whether regulatory improvement initiatives are increasing or decreasing the extent of unnecessary burdens over time.
- *Standards benchmarking* — The identification of 'best practice' standards or policy targets that entities can aspire to as part of their planning and continuous improvement processes. It could also be used to monitor the progress towards the achievement of burden reduction targets, such as Victoria's commitment to a 25 per cent reduction in red tape (Victorian Government 2006).

The appropriate form of benchmarking and what it could achieve is influenced by:

- The rationale and purpose for benchmarking regulatory burdens — *objectives*.
- Which regulatory burdens can be measured and compared — *coverage*.
- How performance for each type of burden to be benchmarked can be represented and measures — *performance indictors*.
- The availability of data and required protocols for its collection, compilation and assessment — *data management*.
- How the results should be presented and interpreted — *reporting*.

Objectives

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

An objective of benchmarking regulatory burdens is to compare the magnitude of the regulatory burdens imposed by regulations with similar objectives across jurisdictions. A significant performance gap between the jurisdiction with the lowest compliance costs and other jurisdictions would suggest potentially unnecessary burdens in the jurisdictions with higher compliance costs.

Another objective might be to measure the extent of regulatory duplication and inconsistency in areas of regulation where governments have agreed to nationally consistent legislation or mutual recognition. In this case, standards benchmarking could be used to examine the extent of 'unnecessary' burdens given the agreed 'standard'.

Yet another objective might be to benchmark the regulatory environment to identify systemic problems in the design, administration and enforcement of regulation. Each could be benchmarked against accepted standards of best practice. This form of benchmarking could also be used to undertake *retrospective* regulatory assessments by comparing regulatory burdens on business against the estimated burden in the *prospective* regulatory impact assessment.

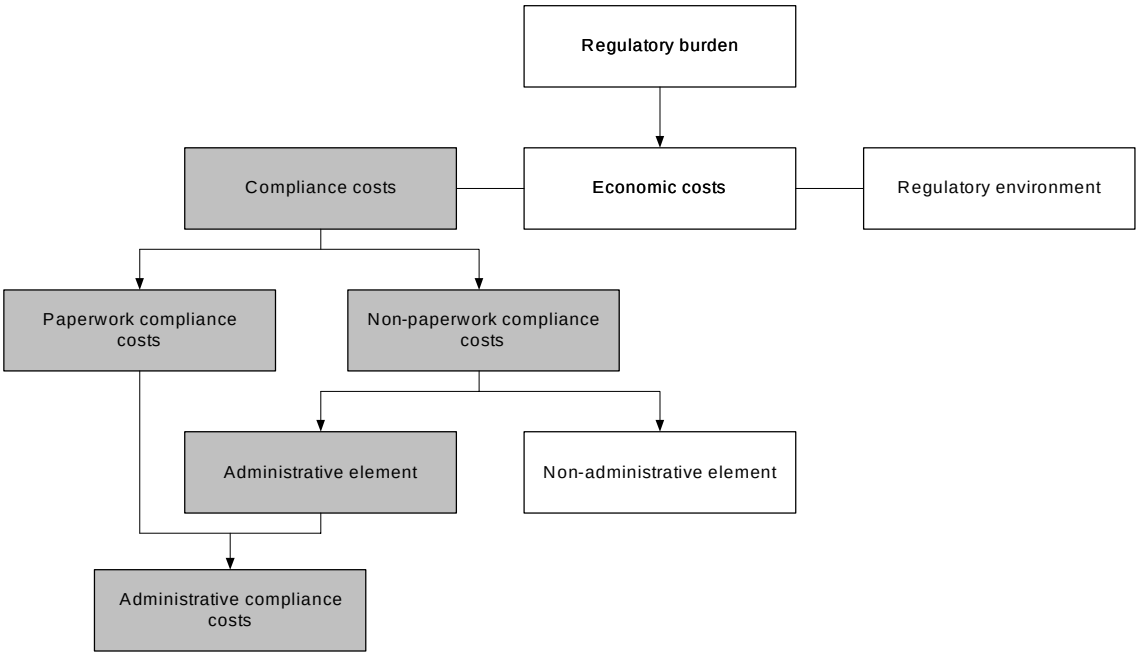
Benchmarking the regulatory environment in this way was supported by a number of participants, including the BCA (sub. 13), ABA (sub. 16), Finance Industry Council of Australia (sub. 17) and the ICA (sub. 18).

Coverage

A schematic taxonomy of compliance burdens is presented in figure 2.1. Not all regulatory burdens can be benchmarked. Some are more relevant than others and their choice has important implications for the types of performance indicators used, and the resources required to benchmark them.

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

Figure 2.1 **Schema of regulatory burdens**



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

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

Some non-paperwork compliance costs can have an impact on the administrative structures of a business. For example, an input modification requirement to install new computer software represents a sunk cost that is embedded into business administration costs. Non-paperwork compliance costs that impact on administrative costs, together with paperwork compliance costs, are defined for the purpose of this study as the *administrative compliance costs* attributable to regulation.

Apart from these administrative compliance costs, broader *economic costs* of regulation arise where regulation artificially distorts the use of resources within the

economy, with adverse effects on *allocative efficiency*. Regulations can also adversely affect the efficient use of resources over time, impacting on competitiveness, innovation and entrepreneurial activities (*dynamic efficiency*). However, these wider economic costs cannot be benchmarked because they are generally diffused throughout the economy and difficult to estimate (Gellman, Berardino and Tiffany 1979).

Performance indicators

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

Performance indicators can either be *quantitative* (statistical or empirical) or *qualitative* (descriptive). Quantitative indicators are preferable since interval measures can reveal the magnitude of relative differences in regulatory burden, whereas qualitative indicators are typically ordinal measures and subjective in nature.

Composite indicators of a number of these measures could be developed, using a relevant set of weights or by directly adding indicator measures, to provide an indicator of overall performance. Typically, there is often insufficient information on business demographics and the reach of regulations to construct composite indicators of the overall burden of a regulation (appendix B). Where data are available, large quantities would be required at a considerable cost to business and those collecting it.

Ideally, the regulatory burdens identified above should be measured in terms of the incremental cost imposed on a business by one or more regulations — that is, the cost avoided if the regulations were withdrawn. Incremental cost burdens, however, are not straightforward to measure after regulation has been introduced. Most businesses adapt to the burdens imposed by the new regulatory environment over time. Consequently, it is difficult to distinguish between new and ongoing requirements.

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

The choice of indirect performance indicators for benchmarking, should satisfy the following commonly accepted criteria:

- *Acceptability and ease of interpretation* — Indicators should be sufficiently simple to be interpreted by intended users. They should be unambiguous in what they are measuring, and have broad support.
- *Data availability and cost* — The information required for an indicator should be obtainable at a reasonable cost in relation to its value. Data gaps or limitations can erode the value of the information provided by the indicator.
- *Comparability* — The data collected should allow for meaningful comparisons between jurisdictions. Where data are not comparable across jurisdictions, benchmarking over time within jurisdictions would be particularly important.
- *Robustness* — The benchmarking should produce consistent results over time.
- *Significance and relevance* — An indicator should be significant in the sense that it represents an important aspect of business regulatory burden, and relevant to ensure that policy responses to improve results based on it can achieve the underlying objective of reducing unnecessary burdens.
- *Timeliness* — Indicators should provide information within reasonable time periods.

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

Data management

It is important to ensure that protocols are in place for the collection, collation and assessment of data needed to compile the performance indicators. Protocols are required to ensure indicators are measured consistently and, therefore, comparable across jurisdictions.

Data collection

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

A major concern is that data collection is not too onerous on business. One way of limiting the cost to business without compromising the usefulness of the benchmarking is to survey a limited number of *reference businesses* or activities

(box 2.2). The use of reference businesses can provide for consistent, 'like-with-like' comparisons of burden across jurisdictions. It also avoids biases attributable to differences in the inherent characteristics of individual businesses.

Box 2.2 **'Reference' business approach to data collection**

One approach to compare administrative compliance costs consistently across jurisdictions is to identify a number of businesses with similar underlying economic, financial and operational features (reference businesses), and to collect information from these entities on their administrative compliance costs.

The characteristics of the reference businesses would be specified to the minimum degree necessary to ensure that differences in measured administrative compliance costs represent unnecessary burdens, and not differences in underlying compliance activities and costs.

Some factors to be considered when choosing suitable reference businesses include the type of regulation to be examined, size of the affected business (by employment or turnover), or industry characteristics of the businesses covered by regulation (ABS, sub. DR34). Consequently, the selection of reference businesses and their characteristics would have to be informed by a combination of expert assessment, surveys, case studies, data from government departments and statistical agencies, and other sources.

This approach to data collection is designed to provide a basis for indicative and comparable compliance costs. These estimates should not be regarded as statistically representative, because of the limited sample size and the non-random, judgemental design of the measurement exercise. Further, the estimates of administrative compliance costs cannot be used to estimate aggregate differences in compliance costs across jurisdictions.

It could be expected that the reference business approach to data collection could yield cost savings relative to other methods aimed at establishing a representative business or large-scale population sampling, and lessen the cost to business of providing information.

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

- identifying how much data would have to be collected, the population from which the data would come, and the length of time over which to collect the data;
- ascertaining the types of comparisons that would be made with the data collected, and the calculation method;

- considering how the data might be presented (such as in textual form, or in tables, graphs and charts); and
- establishing an agreed approach to refining the data collection process, including establishing new and improved performance indicators, over time.

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

Data compilation

The compilation of data from disparate sources would be required. A key issue is whether the data collected should be processed through manual or automated systems, or a combination of both. An automated system for data compilation, such as a central database, is expected to be required.

Regardless of the choice between manual or automated compilation systems, there should be sufficient flexibility to respond to improvements, or changes, to data. Indeed, the Commission is required under its terms of reference to make suggestions for refinement and improvement, where appropriate, for consideration by COAG after three years of assessment. Further, the system should be accessible and user-friendly.

Data assessment

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

Reporting

The choice of reporting options has significant implications for the cost of the benchmarking and the capacity of stakeholders — governments, businesses and the general community — to evaluate, understand and use the benchmarking information according to their respective needs. It is critical that benchmarking results are conveyed in a way that allows stakeholders to get the greatest value possible out of the benchmarking exercise.

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

2.3 Getting the best value out of benchmarking

The amount of effort and resources required for benchmarking will be influenced by the purpose of the benchmarking, the forms and number of regulations covered and the rigour of the process.

There are a number of trade-offs that have to be considered in the development of a benchmarking program directed at regulatory burdens on business. For example, the analysis becomes more costly (whether assessed in dollar terms, or effort required) if additional burden measures and performance indicators, or greater accuracy for each indicator, are sought. These costs have to be carefully balanced against the broader benefits of collecting, collating, assessing and reporting additional information.

Data availability is expected to be a key consideration in selecting indicators, and would affect the cost-effectiveness of the benchmarking. A study by the US General Accounting Office (GAO 1996) revealed that there are challenges in obtaining business cooperation and in measuring incremental compliance costs (box 2.3). These challenges have also been recognised by the World Bank (2006a) and by the Regulation Taskforce (2006) in Australia.

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

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

In the context of regulatory burden benchmarking, the publication of available comparable data and information, even if imperfect, can still be useful with appropriate caveats. The experience gained in benchmarking can be expected to reveal ways of improving benchmarking methodology and the quality of indicators over time.

Costs are typically incurred by those providing as well as those collecting data and undertaking the benchmarking. Consequently, it is important that all costs are taken into account when assessing the cost effectiveness of the benchmarking.

Box 2.3 **General Accounting Office findings on measuring regulatory burden**

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

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

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

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

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

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

The GAO was unable to verify the incremental cost information provided because there was little documentation to support their estimates.

Source: GAO (1996).

Clearly it would not be cost-effective to acquire information from *all* enterprises comprising the business population affected by the regulations being benchmarked. The objectives of identifying unnecessary burdens can be achieved by comparing the compliance cost of a limited number of comparable businesses. Moreover, it should be possible to narrow the focus of the benchmarking to just those compliance activities that generate significant differences in compliance costs across jurisdictions.

3 What can be learnt from other studies?

Key points

- There are no exact precedents internationally for the sort of benchmarking that is being considered for Australian jurisdictions. Nevertheless, certain studies provide useful insights, especially in relation to survey approaches. These include the World Bank *Doing Business* reports, a European Commission benchmarking study of mandatory business registration procedures in 15 member countries and others using the Standard Cost Model.
- Australian studies have relied on survey techniques, mainly to collect information on which regulations are burdensome and their impact on costs.
- Each survey methodology involves different trade-offs between the cost of data collection and data quality.
  - Self-enumeration surveys are relatively inexpensive but have a low response rate and are subject to sampling and response biases.
  - Informant surveys provide subjective assessments that might not be sufficiently accurate.
  - Personal-interview surveys have higher response rates and are effective in collecting sensitive and complex data. However, they are relatively expensive.
- Personal-interview surveys appear to be the best approach for obtaining more complex or sensitive information from businesses on their compliance costs.
  - Although relatively costly, they are more likely than other approaches to provide data of sufficient accuracy to enable meaningful comparisons.
- Preparatory work would be required to identify all compliance activities because some businesses might not be fully aware of their obligations.
- There could be opportunities to supplement information from face-to-face interviews with information obtained from informant surveys utilising relevant experts.

The terms of reference for this study direct the Productivity Commission to consider international approaches for measuring and comparing regulatory compliance costs across jurisdictions. Australian initiatives to measure the regulatory burden on businesses were also investigated.

Identifying unnecessary burdens through *benchmarking* regulatory compliance costs for different regulatory areas across different jurisdictions, does not appear to have been attempted before in Australia or elsewhere. Nevertheless, a range of studies provide insights into the merits of different approaches to collecting and processing the information required to generate indicators of compliance costs.

Internationally, there have been a number of studies to estimate the cost of regulatory burden for the purpose of identifying regulations that constrain business investment, productivity and growth. In Australia, studies have taken the form of surveys on perceptions about the problems posed by regulatory burdens and, in some cases, the time and cost to the business.

Three broad approaches have been used to measure regulatory burdens — self-enumeration surveys, informant surveys and personal-interview surveys. The implications for obtaining information for benchmarking that can be drawn from studies using these approaches to data gathering are discussed in section 3.1 to 3.3 respectively. Some key lessons from the international and Australian studies are summarised in section 3.4.

3.1 Self-enumeration surveys

Self-enumeration surveys require respondents to complete a survey questionnaire. Although these are primarily conducted as postal, or mail-out surveys, they can also include hand-delivered questionnaires and email and internet surveys (ABS 1999).[1]

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

OECD's Red Tape Survey

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

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

The aims of the survey were to:

- measure and compare direct regulatory and administrative compliance costs across member countries, policy areas and businesses by using a standardised methodology;[2]
- assess business perceptions of the quality of regulations and the quality of regulatory administration; and
- evaluate aspects of indirect costs arising from employment-related regulation.

Survey methodology

The survey covered the impact of tax, employment and environmental protection regulations on businesses across all levels of government including local, regional, national and international. Three standardised questionnaires were prepared, one for each of the three regulatory areas chosen. Each business in the sample was sent only one type of questionnaire.

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

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

What are the implications?

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

- is a relatively inexpensive method of collecting data across countries vis-à-vis most other methods of data collection;
- allows respondents time to consider and complete the questionnaire; and

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

- can produce estimates of administrative compliance costs that are of the right 'order of magnitude'.

Nevertheless, this approach has some recognised limitations:

- It relies on estimates provided by respondents that cannot be validated as in the case of personal-interview surveys.
- The data collected reflect business perceptions that are not necessarily consistent with actual experience. The OECD questionnaires were constructed to guard against bias, but the possibility exists that businesses might erroneously report the costs — that is, they can either overstate or understate the costs for any number of reasons.
- The results of opinion surveys of businesses tend to vary with the business cycle. Responses might reflect either good or poor business performance.
- Multi-country surveys can reflect cultural factors that can influence the way in which respondents complete questionnaires (OECD 2001).

Statistics Canada's Survey of Regulatory Compliance Cost

A joint private–public sector Advisory Committee on Paperwork Burden Reduction (ACPBR) was established in March 2005. The aim was to 'gather objective and quantitative data on the resources allocated to compliance obligations to better inform government and its stakeholders regarding burden reduction decisions' (ACPBR 2005).[3]

In 2006, the ACPBR commissioned Statistics Canada to undertake a survey to measure the cost of compliance for small- and medium-sized businesses in meeting key regulatory requirements that are the responsibility of various levels of government.

Survey methodology

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

Statistics Canada's Business Register was used as the sampling frame for the target population of all private sector, for-profit establishments with fewer than

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

500 employees and gross revenue of between Can$30 000 and Can$50 million. The sampling frame contained 665 480 establishments.

The sample was stratified by region and business size, as defined by the number of employees in the establishment. A small business was defined as having fewer than 100 employees, and a medium-sized business was defined as having fewer than 500 employees (Statistics Canada 2005).[4]

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

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

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

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

What are the implications?

This survey was confined to the relatively straightforward task of obtaining estimates of the cost of providing information. Other business compliance costs faced by business that are of interest in this study were not measured.

Further, there was a low response rate, which is typical of mail-out surveys that are not mandatory. This can lead to potential problems with data quality and reliability unless a follow-up face-to-face survey is undertaken to validate the responses and to adjust for any non-response bias.

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

Australian studies

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

Some surveys like the NSW Red Tape Register (RTR) survey have been undertaken annually. Others, including the WA Red Tape Buster Service survey, the Australian Industry Group survey 2004**,** the SA Small Business survey 2006, and the MCA National Scorecard of Mining Project Approval Processes 2006 (as discussed in section 3.2), were one-off studies.

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

Red Tape Register survey

The aim of the RTR survey is to identify how much time and effort small- and medium-sized businesses spend in complying with selected regulations with a view to identifying areas with unnecessary burdens. It has been undertaken on an annual basis since 2003. It focuses on the time required by small- and medium-sized businesses to comply with State and Federal legislation relating to payroll tax, GST, company tax, workers compensation, occupational health and safety, superannuation, and industrial relations (SCC 2005).

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

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

What are the implications?

The annual RTR surveys provide valuable information on the time businesses spend complying with selected regulations. The surveys identify what regulations are of

the greatest concern to business and track what is happening year-to-year to ascertain if the regulatory burden is increasing or decreasing.

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

3.2 Informant surveys

Informant surveys are administered through a number of intermediaries who have the skills, relevant knowledge and experience to collect the data required for a particular study. This approach is used by the World Bank, the European Commission and by the Minerals Council of Australia (MCA).

World Bank's 'Doing Business' reports

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

The aim of these annual reports is to identify where within-country regulation might be hindering a country's competitiveness and relative attractiveness to foreign investment.

Survey methodology

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

Box 3.1 **Doing Business in 2007 — the World Bank indicators**

The indicators used by the World Bank cover:

- Starting a business — a measure of the time and cost of complying with all the procedures that are officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Indicators include number of procedures, time, cost and minimum capital.
- Dealing with licences — a measure of the time and cost of completing all procedures including all necessary licenses and permits, receiving all required inspections and completing all required notifications and submitting the relevant documents (for example, building plans and site maps) to the authorities. Indicators include number of procedures, time and cost.
- Employing workers — a measure of the regulation of employment, as it affects the hiring and firing of workers and the rigidity of working hours. Indicators include difficulty of hiring index, rigidity of hours index, difficulty of firing index, rigidity of employment index, hiring cost and firing cost.
- Registering property — a measure of the full sequence of procedures necessary when a business purchases land and a building. Indicators include number of procedures, time and cost.
- Getting credit — a measure of the legal rights of borrowers and lenders and the sharing of credit information. Indicators include strength of legal rights index, depth of credit information index, public registry coverage and private bureau coverage.
- Protecting investors — a measure of the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain. Indicators include extent of disclosure index, extent of director liability index, ease of shareholder suits index and strength of investor protection index.
- Paying taxes — a measure of the total tax burden borne by businesses. The measure includes all labour contributions paid by the employer (such as social security contributions) and excludes consumption taxes (such as sales tax or value added tax). Indicators include payments, time and total tax payable.
- Trading across borders — a measure of the cost associated with exporting and importing goods as well as the time and number of documents required. Indicators include number of documents, signatures and time (for exports and imports).
- Enforcing contracts — a measure that reflects a typical contractual dispute over the quality of goods rather than a simple debt default. Indicators include number of procedures, time and cost.
- Closing a business — a measure of the time, cost and outcomes of bankruptcy proceedings involving domestic entities. Indicators include time, cost and recovery rate.

Source: World Bank (2006c).

The indicators presented are measures of the cost of complying with government policy as well as the administrative compliance cost on small- and medium-sized businesses.[5] The indicators do not account for a country's proximity to large markets, macroeconomic conditions or the underlying strength of institutions, quality of infrastructure services (other than services relating to trading across borders), the security of property from theft and looting, and the transparency of government procurement (World Bank 2006b).

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

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

The World Bank claims that *Doing Business* has created pressures for reform (World Bank 2006a). The survey has prompted some 43 countries to reduce the regulatory burden for business start-up by simplifying procedures, lowering costs and reducing delays in 2005-06 (World Bank 2006b).

What are the implications?

The methodology demonstrates the effectiveness of using reference businesses and reference activities for benchmarking comparability. Standard businesses are defined for this purpose to ensure comparability.

The use of experts to make subjective assessments of the size or relative materiality of regulatory burdens is also proven. The obvious limitation of this approach is that because the data is synthetic, it may not accurately reflect the experience of actual businesses.

European Commission's Benchmarking the Administration of Business Start-ups

In 2002, a benchmarking study of the administration of business start-ups in 15 EU member countries was undertaken by the Centre for Strategy and Evaluation

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

Services (CSES) for the European Commission (CSES 2002). The purpose of the study was to assist member countries in improving their administrative processes for business start-ups. Specifically, the aim was to establish examples of best practice and headline indicators — measures of the time, cost and capital needed to complete mandatory registration procedures — and operational indicators — measures of the administrative process, such as the number of procedures, documents and forms to be completed.

Survey methodology

Businesses were categorised by legal form to ensure comparability across countries. The benchmarking covered the pre-registration and registration requirements that a prospective business would have to meet before commencing trading. Activities undertaken to identify mandatory requirements to establish a new business were excluded.

Ten indicators relating to the headline and operational indicators were developed to provide cross-country comparisons for each of these business entities (box 3.2). 'Typical' and 'minimum' (time and cost) data were collected for each of the headline and operational indicators based on the establishment of a straightforward, uncomplicated business entity through the most widely used process of registration, in each member country.

Experts in the field of business registration and start-up procedures, nominated by the member countries, were engaged to collect the necessary data. Data generated by this group were checked with representatives of the business community, principally through the main European business organisations.

The performance of the fourth most efficient country was chosen as the benchmark, as this was considered a realistic medium-term goal for most member countries.

What are the implications?

The European Commission's benchmarking study, although limited in its scope provides useful insights into the indicators that could be used to measure the cost of business start-ups. These involve data being collected both from businesses and government agencies.

Box 3.2 **European Commission's Benchmarking the Administration of Business Start-ups — headline and operational indicators**

Headline indicators

- Total time for the registration process — total elapsed time from the first mandatory pre-registration step to completion of the registration stage.
- Total time by stage — total elapsed time for completion of each of the two stages (pre-registration and registration).
- Total costs for the registration process — total costs from the first mandatory pre-registration step to completion of the registration stage. This includes all mandatory costs (such as notary fees, registration fees and taxes).
- Total cost by stage — total cost for each of the two stages (pre-registration and registration)
- Capital requirements — minimum paid-up capital required for formal registration. In the European Union, minimum capital requirements only apply for incorporated entities.

Operational indicators

- Procedures — the number of individual procedures that must be completed by a prospective business and by official bodies.
- Contact points — the number of different public and private bodies that a prospective business must contact.
- Paperwork — the number of official documents and supporting papers that must be submitted by a prospective business to public and private bodies.
- Licences, approvals and notifications — the number of official licences, approvals and confirmations of notifications that must be issued to prospective businesses by public and private bodies.
- Extent of government agency involvement in administration of start-ups — the number of different public and private bodies that must be consulted or informed, or that must provide authorisations during the pre-registration and registration stages.

Source: CSES (2002).

Minerals Council of Australia 'Scorecard'

In February 2006, URS Australia completed the *National Audit of Regulations Influencing Mining Exploration and Project Approval Processes* for the MCA. The aim of the audit was to 'document the regulatory processes involved in gaining exploration and mining project approvals in all Australian jurisdictions' and to 'analyse the scope for improvement' (URS 2006a, p. 1–3).

The consultants used recently completed reports and consultation with industry to identify the regulations applying to the mining industry. These regulations were analysed to determine the different compliance activities required in each Australian jurisdiction.

Following this report, a group of consultants with exploration and mining project approvals experience throughout Australia, including URS Australia, completed a further report titled *Scorecard of Mining Approval Processes* for the MCA. The purpose of this report was to 'define areas of concern to frequent users of the statutory approvals systems across Australia' (URS 2006b, p. ES–1).

Survey methodology

The *Scorecard of Mining Approval Processes* covered 17 issues that affect mining investment across Australian State and Territory jurisdictions (excluding Queensland). It covered environmental, mining specific, land access and water management issues.

A set of indicators was developed to measure:

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

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

What are the implications?

The study demonstrated that industry assessments of approval processes across jurisdictions could highlight meaningful differences. However, it is unclear to what extent the comparisons are robust.

URS noted that uncertainty arose where policy and regulations are undergoing change that affect the assessments:

> Uncertainty exists in some cases where policy and regulations are undergoing changes, or where changes have recently been made but are yet untested. (2006b, p. 2–4)

Further, they noted:

> In addition, some inconsistency in scoring may derive from the very different numbers of project approvals and project complexity which exist between the various jurisdictions. (2006b, p. 2–4)

This suggests the need for notional projects or approvals activities to ensure comparability.

3.3 Personal-interview surveys

Personal-interview surveys are conducted either face-to-face or by telephone. In the former, an interviewer visits each 'member' selected from the survey sampling frame (ABS 1999). This allows the interviewer to build rapport with the interviewee, boosting response rates and improving the quality of data collected, especially for complex or sensitive issues. However, such surveys are relatively costly to administer. Telephone surveys are less expensive but have lower response rates and are less effective for collecting more complicated information.

A number of countries have used personal-interview surveys to measure the cost of regulatory burdens on business. This has been the preferred survey approach for identifying compliance costs within the framework of the international Standard Cost Model (SCM). The US General Accounting Office (GAO) also used personal-interview surveys to investigate the regulatory burden of federal regulations on 15 businesses in the United States. These two examples are examined below.

The Standard Cost Model and the Business Cost Calculator

The SCM was initially developed by the Netherlands Government to measure the administrative compliance costs of regulation — that is, the cost of administrative activities that businesses are required to incur in order to comply with information obligations imposed through central government regulation.[6]

6 This is a narrower interpretation of administrative compliance costs than used in this study as it excludes certain non-paperwork compliance costs.

The SCM can be used to measure:

- anticipated administrative consequences of a draft law, draft executive order or other initiative before implementation (referred to as a prospective measurement).
- administrative costs that arise after a regulation has come into effect (either as a retrospective measurement or as a 'baseline' for future measurement of change).

The SCM is used as a tool for identifying and limiting administrative burdens stemming from new legislation and for reducing existing administrative burdens on business. It has been used or assessed in a number of countries (box 3.3).

The Business Cost Calculator (BCC) was developed by the Office of Small Business within the Australian Government Department of Industry, Tourism and Resources, with similar objectives to the SCM. The BCC is an IT-based extension of the SCM and is primarily used to assist policy makers measure and analyse the business compliance costs of policy options (box 3.4). Although designed for prospective evaluations, it can be used for retrospective evaluations.

Unlike the SCM, the BCC covers all compliance costs associated with a particular regulation or policy, of which administrative compliance costs are a subset. Use of the BCC has been mandated for regulatory impact assessments by the Australian Government, where compliance costs are non-trivial, and by the SA Government, where a new regulatory or other proposal is likely to have an impact on business (PC 2006d).

Survey methodology

In applying the SCM, personal interviews of businesses and experts are generally used to estimate the costs of regulatory compliance by business. The experts are drawn from:

- professional bodies and industrial organisations;
- professional practices (such as accountants); and
- government departments.

Under the SCM regulatory burdens are broken down into a number of manageable and measurable compliance activity components, consisting of information obligations, data requirements and administrative activities (box 3.5).

Box 3.3 Use of the Standard Cost Model

Netherlands

In 2002, the Dutch Cabinet committed to reducing regulatory compliance costs by 25 per cent. The Standard Cost Model (SCM) was developed to estimate a baseline measurement of administrative compliance costs for each ministry.

These measurements were used as the basis for compiling inventories of proposals to reduce the administrative burdens that result from the legislation and regulation within each ministry. The Government achieved its reduction target by 2007.

United Kingdom

In response to the release of *Regulation — Less is More*, the UK Government decided to adopt the Standard Cost Model (SCM) to measure the administrative burden. The adoption of the SCM was coordinated by the Better Regulation Executive (BRE) within the UK Cabinet Office and Her Majesty's Revenue and Customs (HMRC):

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

Other European countries

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

OECD

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

Australia

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

New Zealand

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

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

Box 3.4 **Use of the Business Cost Calculator**

The Business Cost Calculator (BCC) is based on the conceptual framework of the Standard Cost Model. The chief difference is that the BCC is an IT-based program designed to cover both paperwork and non-paperwork compliance costs.

The BCC provides a standardised process for documenting and costing policy development. It comprises six steps that assist users in assessing policy options and, for each option, estimating the compliance cost.

Activity-based costing is used to consistently estimate compliance costs. These costs are analysed by activities that are categorised under:

- *Notification* — reporting of activities. For example, businesses could be required to notify a public authority before they are permitted to sell food.
- *Education* — maintaining awareness of the requirements of relevant regulations, such as businesses understanding new regulation and communicating the requirements to staff.
- *Permission* — applying for and maintaining permission to conduct an activity, such as applying for permits and licences.
- *Purchase cost* — the compliance costs of all plant and equipment purchased and any fees payed. For example, businesses could be required to buy a fire extinguisher.
- *Record-keeping* — keeping statutory documents up-to-date. For example, businesses could be required to keep records of workplace accidents.
- *Enforcement* — cooperating with audits, inspections and enforcement activities. For example, businesses might have to bear the costs of supervising government inspectors on site during checks of compliance.
- *Publication and documentation* — producing documents with regard to particular activities, such as displaying warning signs around dangerous equipment.
- *Procedural* — the cost of doing non-paperwork tasks. For example, businesses could be required to conduct a fire safety drills.

As part of the Australian Government's new regulatory impact assessment process, compliance costs of regulatory proposals are assessed against these cost categories.

The BCC allows users to generate a number of reports to view and compare the compliance costs, such as cost category and supporting evidence reports.

Source: PC (2006b).

Box 3.5 **The measurable compliance activity components of the Standard Cost Model**

The SCM categorises compliance activity into the following components.

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

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

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

For each administrative activity, the cost parameters that have to be collected comprise:

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

Combining these cost parameters gives the basic SCM formula:

Administrative Activity Cost = Price x Time x Quantity

In addition, any purchased plant and equipment that are specifically required to enable compliance are included in calculations.

Source: SCMN (2005).

What are the implications?

Administrative compliance costs as discussed in the SCM are not necessarily incremental compliance costs — the cost avoided if the regulation were removed. Consequently, indicators based on data collected under the SCM or BCC frameworks are indirect measures of incremental costs.

The guidance material on these frameworks documents challenges in measuring the cost of each administrative activity. One such issue that is relevant to this study is ensuring that the administrative compliance cost is typical of a 'normally efficient' business. In benchmarking compliance costs, it is important that comparisons are not affected by differences in the efficiency of compliance by businesses.

Surveys of compliance costs using the SCM have been relatively costly. For example, the UK Better Regulation Task Force estimated that a baseline measurement of the administrative burden of all the regulation on United Kingdom businesses, charities and voluntary organisations would cost around £35 million over five years (BRTF 2005).

The UK National Audit Office claims that 'the SCM has the appearance of scientific objectivity and of (largely illusory) accuracy' (Humpherson 2006). Great care would have to be taken in using such models to compile compliance cost estimates. Further, differences in compliance costs would have to be significant before they could be interpreted as being suggestive of unnecessary burdens.

In relation to applying the SCM to measure the administrative impact of tax and duty regulations on business, Craig Richardson of Revenue and Customs (HMRC) made the following observations that have relevance for the benchmarking options canvassed in this report:

- experienced tax experts were able to ensure the estimates were consistent;
- it is not designed to be a statistically representative process (HMRC conducted around 1000 face-to-face interviews, which was insufficient for a statistically robust sample);
- although the administrative burden is a subset of the compliance cost, it is arguably the more measurable part; and
- it is a resource intensive exercise — around 80 000 calls were made to arrange the interviews (HMRC 2006).

That said, the SCM has proven to be a useful regulatory reform tool and some of the lessons learned will be applicable to benchmarking compliance costs.

United States General Accounting Office study

In the United States, systematic efforts to track and account for regulatory burdens on business are limited. One notable study was undertaken by the US GAO to investigate the cumulative impact of Federal regulations on a limited number of businesses (GAO 1996).

The GAO interviewed 15 businesses, asking them to:

- list regulations with which the business must comply;
- estimate the aggregate impact (cost and other) of all the regulations on the business;
- identify the regulations the business viewed as most problematic;
- suggest what government and business could do to correct or mitigate problematic regulations; and
- provide a statement on what they perceived to be the benefits of Federal regulations.

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

What are the implications?

Of the 15 businesses surveyed, none provided the GAO with a complete list of applicable Federal regulations. This lack of awareness affected their ability to provide comprehensive estimates of the cost of regulatory compliance. The GAO noted:

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

The implications of this finding is that businesses might not be fully complying with regulatory requirements and not incurring some compliance costs. To the extent that this is the case, self-enumeration surveys could be of doubtful value.

The businesses surveyed did not keep the information that allowed the *incremental* costs of compliance to be readily identified. This has implications for the effectiveness of some forms of compliance cost surveys and the ultimate directness of benchmarking indicators of administrative compliance costs. It provides support for the use of face-to-face interviews to verify that the business is undertaking relevant compliance activities and that reliable estimates can be obtained.

3.4 Summing up on lessons from other studies

The survey methodologies covered in this chapter — self-enumeration surveys, informant surveys and personal-interview surveys — involve different trade-offs

between the cost of data collection and data quality. The choice of survey methodology depends on the data collection costs as well as the accuracy and reliability of the data required to fulfil the objectives of the Study.

Benchmarking administrative compliance costs to identify differences that reveal the possible existence of unnecessary regulatory burdens would require a high degree of data accuracy to compile robust indicators. The advantages and disadvantages of the survey methodologies used in other studies are discussed below with this in mind.

Self-enumeration surveys

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

The disadvantage is that this form of survey has a lower response rate compared with face-to-face surveys (particularly when it is not mandatory for respondents to complete the survey). Where low response rates exist, substantial bias clearly result if businesses that do not respond have different characteristics from those who do respond. Response rates can be improved through various means, including incentives for the timely return of questionnaires and follow-up. However, these activities involve additional costs.

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

Informant surveys

The World Bank and the European Commission have both used informant surveys to obtain data for their studies. The use of informants or local experts poses questions of how they are to be chosen, and how their skills and knowledge are to be validated.

These studies demonstrate that this approach can be used to provide an estimate of compliance costs. It is highly reliant on the choice of informants and the depth of their understanding of the actual businesses compliance costs. This suggests that informant surveys could have some application in cases where accurate estimates of

actual costs are not required. For example, information obtained in this manner might be sufficiently reliable to provide an indication of the materiality of some compliance activities to provide a focus for more in-depth analysis of compliance cost differences.

Further, the data collected by informants or local experts might not be as accurate as those collected through face-to-face interviews. Although the World Bank *Doing Business* reports are suitable for looking at a 'league ladder' and identifying significant differences, it is unlikely that the survey approach is refined enough to identify differences in regulatory burdens between Australian jurisdictions, where differences in compliance costs could be relatively small.

Personal-interview surveys

The SCM approach involves the use of personal-interview surveys supplemented by other available data. This form of data collection is highly effective in terms of boosting response rates and data quality, and collecting sensitive and complex data, in comparison with other survey methodologies.

A disadvantage of personal interviews is their relatively high cost — in staff, time and money required to hire, train and manage interviewers, and in follow-up interviews. Such costs could be substantially reduced by surveying a limited number of business types. This would provide estimates suitable for benchmarking comparisons but not for enumerating the potentially unnecessary burdens incurred by all businesses affected by the regulations under examination.

In addition, personal-interview surveys can also be of limited value if businesses are unwilling to participate. For example only 15 of the 51 businesses approached by the GAO (1996) were willing to participate in their survey. Again, this can be addressed by surveying a limited number of reference businesses.

A further disadvantage is the possibility of bias being introduced by interviewers (ABS 1999). This has to be addressed by the development of comprehensive survey instructions and interviewer training.

Finally, the GAO (1996) could not obtain reliable estimates of the *incremental* costs of compliance with federal regulations from personal interviews. The surveyed businesses did not collect data on the costs that would have been incurred in the absence of the relevant regulations. However, this can be addressed in the context of benchmarking, by using indirect measures of compliance costs.

Despite the cost, the SCM framework could be used in the measurement and comparison of the administrative compliance costs of regulation across Australian

jurisdictions and over time. In particular, its main strength is that it provides detailed information on the compliance costs of individual activities that can be used to identify the sources of inter-jurisdictional differences and unnecessary burden.

It also has the flexibility to be used for prospective and retrospective measurements, and it allows policy makers to identify where there is potential burden, and help diagnose the problem.

4 Becoming and being a business

Key points

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

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

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

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

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

The selected regulatory compliance burdens are regularly raised by industry as being unnecessary, among other concerns (section 4.1). How potentially unnecessary compliance burdens can be identified is considered in section 4.2. An approach for developing performance indicators is provided in section 4.3. In section 4.4, issues associated with measuring indicators and the feasibility of benchmarking are considered. Finally, caveats that could apply to the benchmarking of administrative compliance costs are discussed in section 4.5.

4.1 Industry concerns — which regulations?

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

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

Specifically, the burden of compliance with OHS regulation, including OHS inspections, ranked high among business concerns. Further, the overall complexity of taxation systems was found to be a 'major or moderate' impediment to business.

Similarly, the State Chamber of Commerce of New South Wales (SCC 2005) highlighted small-business concerns (box 4.1) about the compliance burden of OHS regulation and payroll tax. Respondents claimed that these burdens were a considerable drain on businesses' time. Additionally, concerns about overly burdensome regulation related to Vocational Education and Training (VET) systems have been raised by business groups.

Box 4.1 **Small business concerns**

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

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

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

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

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

The strength of these concerns suggests that OHS and tax regulation, VET systems, PPS arrangements, privacy regulation, and financial and corporate regulation, should be considered for inclusion in the benchmarking program for Stage 2 (chapter 8).

Occupational health and safety regulation

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

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

Tax regulation

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

> The consistent message from business and tax practitioners is that tax complexity and compliance costs remain a significant concern. Business rated tax issues as being among their highest regulatory burdens. (2006, p. 107)

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

Vocational education and training

Concerns have been raised by business and Registered Training Organisations (RTOs) regarding the regulatory burdens associated with the VET system — that is, post Year 10 (high school) education and practical training programs. Specifically, the onerous registration and reporting processes, and record keeping requirements, are seen as giving rise to unnecessary compliance burdens.

For RTOs in New South Wales, the traineeship process is cited to involve a duplication of audits. For example, the Department of Education and Training provides RTOs funding only for training courses that meet national training standards (a form of quasi-regulation). Simultaneously, the Vocational Education and Training Accreditation Board also requires that training courses organised by RTOs are delivered in accordance with national training standards (ABL 2006).

Personal property securities

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

PPS registers in each jurisdiction identify the parties involved in securities transactions and the property to which the transaction relates. Given the policy

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

objectives, arrangements should minimise the associated compliance and transaction costs on business (SCAG 2006a).

Concerns about the regulatory burden of existing PPS arrangements include:

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

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

Privacy regulations

Privacy legislation is designed to give individuals greater control over the way their personal information is handled by government agencies and private sector organisations. In achieving this, the right of individuals to protect their privacy is balanced against a range of other community and business interests — such as the general desirability of a free flow of information and the right of business to achieve its objectives efficiently (Regulation Taskforce 2006).

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

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

The Australian Law Reform Commission (ALRC) is currently conducting an inquiry into the extent to which the *Privacy Act 1988*, and related laws, continues to provide an effective framework for the protection of privacy in Australia, including the desirability of minimising the regulatory burden on business in this area. In mid-2007, the ALRC will release a discussion paper setting out preliminary proposals for reform.

Financial and corporate regulation

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

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

In submissions to the Regulation Taskforce, industry stakeholders recognised the need for extensive data collection and regulatory reporting, but queried the need for the current level of information provided to government agencies. In particular, they suggested that APRA and ASIC might not be able to assess all the data and reports currently required. Stakeholders also considered that there are a number of overlaps in the information and reports provided to APRA and ASIC and other government agencies (Regulation Taskforce 2006).

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

> … there would be considerable merit in the government reviewing the data collection and regulatory reporting requirements imposed in the financial and corporate sectors. This review should be comprehensive and incorporate the obligations imposed by APRA, ASIC, the RBA, the ABS and other relevant government agencies. It should also consider the scope to establish an integrated data collection portal to avoid multiple reporting of the same information. (2006, p. 96)

4.2 Identifying *unnecessary* burdens

The objective of benchmarking administrative compliance costs associated with becoming and being a business is to reveal the possible existence of unnecessary burdens. Observed differences in indicators across jurisdictions and over time can provide evidence of this, including in relation to licences, permits and registrations, and tax and OHS regulation.

However, differences in observed indicators of administrative compliance costs can also arise because of disparate policy objectives that result in additional burdens in

some jurisdictions. Administrative compliance costs would not be comparable unless the impact of such differences is minimal or taken into account.

Licences, permits and registrations

Licences, permits and registrations are among the most pervasive instruments of business regulation. These instruments are created under government authority[2] and are used by governments in establishing the identity of a business. This enables governments to exercise their regulatory functions more effectively, and provides a 'gatekeeper' function for approved licence applicants to conduct their affairs within the context of the legal framework. Licences, permits and registrations can be applicable for general business operations as well as specific business activities.

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

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

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

- entity establishment — such as business names registration;
- employment — such as the Working With Children Check and registration for WorkCover;
- dangerous goods — such as dangerous goods bulk vehicle licence, and licences to manufacture explosives and security-sensitive dangerous substances;
- poisons, drugs, agricultural and veterinary chemicals — such as commercial operator licences and commercial pesticide business registration;

2 For example, by legislation, regulation, ministerial order, by-law or similar legal process.

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

Table 4.1 **Estimated number of licences, permits and registrations by area of control and jurisdiction**

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

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

Source: Stenning and Associates 2006 (unpublished).

In the case of licences, permits and registrations, administrative compliance costs would include the wage costs and time involved in: applying, gathering information, and filling out and submitting application forms; obtaining and filing the licence, permit or registration; any purchase of computer equipment or software to enable

the business to comply with information requirements; and maintaining the minimum administrative standards to conduct the activity.

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

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

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

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

Tax regulation

State and Territory tax regulations could be benchmarked across jurisdictions to reveal the possible existence of unnecessary burdens. Further, Commonwealth, State and Territory tax regulation[3] could be benchmarked over time to measure changes and monitor any improvement or deterioration in administrative compliance burdens. The administrative compliance costs would generally include:

- the monetary and time costs incurred in collecting and maintaining tax information;
- educating and training staff to meet regulatory requirements;
- maintaining and developing up-to-date reporting systems;

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

- completing tax forms and necessary disclosures, or preparing information for professional advisers to enable them to do this; and
- dealing with the relevant government agency collecting the tax.

Box 4.2 **Childcare business accreditation and licensing arrangements**

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

In particular, childcare businesses identified extensive duplication between requirements under quality assurance systems administered by the Australian Government and State and Territory licensing regulations. For example:

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

Indeed, in a submission to the Regulation Taskforce, the Institute of Early Childhood highlighted that the NSW Children's Services Regulation and the QIAS were perceived by childcare businesses to have excessive and repetitive documentation requirements that distracted staff away from their core responsibilities of teaching and caring for children.

Sources: Regulation Taskforce (2006); Institute of Early Childhood (2005).

State and Territory tax regulations that could be benchmarked across jurisdictions and over time include:

- *Land tax* — calculated on the basis of the combined unimproved value of taxable property. The laws across jurisdictions (except for the Northern Territory where no land tax exists) vary to some extent.
- *Payroll tax* — calculated on the amount of wages a business pays per month, above an exemption threshold (which varies across jurisdictions). Businesses must register for payroll tax with the respective Revenue Office in each jurisdiction.
- *Rates* — property taxes charged by local government on properties in their municipal area. The rate structure varies across jurisdictions on the basis of property value, method of valuation and timing of rate payments.

- *Stamp duty* — State and Territory governments impose taxes on a range of paper and electronic transactions. These taxes vary across jurisdictions and could include transactions such as:
  - motor vehicle registration and transfer;
  - insurance policies;
  - leases and mortgages;
  - hire purchase agreements; and
  - transfers of property, such as businesses or land.

The administrative compliance cost of Commonwealth tax regulations that could potentially be benchmarked over time include:

- *Capital gains tax* — tax paid on any capital gain, included as part of an annual income tax return.
- *Excise duty tax* — levied on certain types of goods produced or manufactured in Australia. For example, excisable goods include alcohol, petroleum and tobacco.
- *Fringe benefits tax (FBT)* — payable by employers for benefits paid to an employee or the employee's associate. FBT is separate from income tax and is based on the taxable value of the various benefits provided.
- *Goods and Services Tax (GST)* — a broad-based tax of 10 per cent on the sale of most goods and services in Australia.
- *Income tax for business* — levied on the taxable income of a business entity. It is calculated on assessable income less any allowable deductions.
- *International tax* — Australian businesses are liable based on worldwide income, and non-Australian businesses are liable only on income derived from Australian sources.
- *Pay As You Go (PAYG) withholding* — a legal requirement to withhold amounts for income tax purposes.

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

It might also be possible to benchmark the administrative compliance burdens of Commonwealth taxation on an international basis. However, this is beyond the scope of this study and is not considered in this chapter.

Occupational health and safety regulation

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

All OHS Acts provide for the making of regulations.[4] These set out in detail the carrying out of some aspects of the more general duties outlined in the Acts. They cover such matters as working in confined spaces, plant design and use, electrical hazards, manual handling, risk management, consultation, and training. Failure to comply is a breach of the relevant OHS Act and could result in a penalty being imposed (PC 2004a).

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

The administrative compliance costs for some businesses in following a prescriptive approach should be less than that for a performance-based approach, as compliance has been facilitated by government. Information gathering and other 'public good' costs are borne by governments to reduce the administrative compliance burdens of businesses. For other businesses, however, prescriptive regulation has the potential to limit innovative practices and increase their overall cost of compliance.[5]

Consequently, any benchmarking of administrative compliance costs would have to be undertaken separately for those businesses that follow a prescriptive approach, and those exercising their duty of care under the performance-based approach. Otherwise, the benchmarking would highlight differences in administrative

4 Many of the regulations are supported by codes of practice. These explain the processes that will achieve the outcomes required by the regulations, with practical examples and references to relevant Australian Standards. Compliance with codes and standards is not mandatory. If a business can show compliance with the duties under the relevant OHS Act, then compliance with the Code of Practice, and any standard referred to in the Code, is not required (PC 2004a).

5 Large business — with a greater capacity to understand OHS regulation — could prefer to follow a performance-based approach whereas small business generally prefer to follow a more certain, prescriptive-based approach.

compliance costs caused by the choices made by businesses on which approach to follow, as well as intrinsic differences in compliance costs.

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

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

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

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

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

Financial and corporate regulation

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

4.3 Measuring compliance burdens — possible indicators

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

Table 4.2 **Possible administrative compliance burden indicators — becoming and being a business**

Indicators	*Metrics*
Administrative compliance costs	
Cost of each activity	Dollar value
Difficulty for businesses of obtaining licences, permits and registrations	
Number of licences, permits and registrations required for business[a]	Count
Number of agencies in the process[b]	Count
Number of administrative compliance activities[c]	Count
Duplication of information requirements[d]	Yes/no
Availability of online lodgement[e]	Yes/no
Existence of statutory time limits on agency processing[f]	Yes/no

[a] The number of mandatory licences, permits and registrations, from all levels of government, that must be completed. [b] The number of government agencies, from different levels of government, that provide mandatory licence, permit and registration approvals. [c] The number of administrative compliance activities to be met by a business to attain mandatory licence, permit and registration approvals. [d] The repeated provision of administrative compliance activities for a number of licences, permits and registrations. [e] The existence of online licence, permit and registration application lodgement facilities available to the applicant. [f] The existence of government policy undertakings to process a licence, permit or registration application within a given timeframe.

Administrative compliance costs

Administrative compliance costs could be calculated by estimating the costs arising from various regulation induced activities in terms of:

- unit costs — wage costs (including for staff training and education) plus overheads for administrative compliance activities, or hourly costs for external service providers;
- time — hours required to complete administrative compliance activities (including time spent in undergoing audits and inspections of premises or processes);
- quantity — frequency that activities must be completed each year; and
- any plant and equipment (including computer software) that are purchased to enable the business to comply with a specific information obligation.

In addition, the administrative compliance costs associated with particular activities could be measured. For example, the costs of notifying, reporting, recording and investigating accidents in the workplace in accordance with OHS regulation could be quantified.

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

Administrative compliance cost indicators would be a measure of the costs businesses incur specifically to satisfy regulatory requirements, as well as those for activities that a business might continue if the particular regulation were removed. The *incremental costs* — that is, the costs avoided if the regulations were withdrawn — cannot be separately identified because of the inherent difficulties and assumptions in establishing the 'counterfactual'. Further, businesses financial systems are not geared to identify administrative compliance costs (GAO 1996).

Difficulty for businesses of obtaining licences, permits and registrations

The difficulty of becoming and being a business could be measured by indicators related to obtaining licences, permits and registrations (table 4.2).

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

4.4 Measuring indicators — is benchmarking feasible?

It is important to ensure that benchmarking is feasible by establishing that the necessary information is available and can be collected cost-effectively. Further, the data collected should be such that the indicators largely reflect compliance cost differences across jurisdictions.

Administrative compliance cost indicators

Businesses are generally best placed to understand the extent of the administrative compliance costs they bear through regulations.

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

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

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

In preparing to measure administrative compliance costs, consultation with key stakeholders, including government agencies and business and consumer groups, would be essential. Specifically, to ensure a cost-effective approach, advice on business activities that are likely to generate significant differences in administrative compliance burdens across jurisdictions could be obtained. This information could be used to identify where a more in-depth examination of administrative compliance activities is necessary to accurately quantify differences. For benchmarking administrative compliance costs that are common across jurisdictions, a lesser degree of accuracy could be more cost-effective.

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

business time. However, other approaches might be appropriate in some circumstances.[6]

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

The collection of data from appropriately selected *reference businesses* would provide a consistent basis for comparing administrative compliance costs across jurisdictions. The use of reference businesses would also reduce the expense to businesses (in aggregate) in providing the necessary data (box 2.2).

The businesses selected for interview should closely approximate the reference business in their characteristics. In the case of benchmarking regulations associated with becoming a business, it would be appropriate to select from businesses that have recently been established.

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

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

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

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

---

6 Alternative methods for surveying businesses are examined in the SCM manual, including telephone and focus group interviews. Telephone interviews with businesses are effective for collecting limited and basic information. Focus group interviews with a small number of businesses and relevant experts could be effective for collecting more complex information requirements — such as for identifying 'normally efficient' business activities (ABS 1999; SCMN 2005).

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

Case study evidence — restaurant and cafe licensing

The licences, permits and registrations associated with the Australian restaurant and cafe sector were examined in a case study (appendix C). The aim of the case study was to explore the feasibility of benchmarking licence-based administrative compliance burdens, and to identify possible difficulties and challenges in measuring the suggested indicators (table 4.2).

It was found that measuring indicators of the difficulty of obtaining licences, permits and registrations was relatively straightforward. Further, differences in these indicators across the surveyed jurisdictions were apparent (table C.1).

It was possible to identify the administrative compliance activities involved in establishing a business (table C.2). However, the associated administrative compliance costs could not be estimated because of time constraints. Therefore, the practicality of accurately calculating burdens across jurisdictions could not be assessed.

Quantifying the administrative compliance costs is expected to be a complicated and time consuming exercise, especially given the large number of administrative compliance activities and the preparation required to properly conduct business interviews. These difficulties arise because businesses do not separately record regulatory compliance costs.

For the purpose of this case study, a hypothetical reference business concept was employed, with the activities that would be undertaken by a new restaurant or cafe business specified (box 4.3). In benchmarking, reference businesses would be identified and information would be collected directly from businesses with similar characteristics.

The BLIS online information facility proved to be a valuable resource in identifying the core licences, permits and registrations, and administrative compliance activities, required to establish a restaurant or cafe business. However, it was not possible to source information for all relevant licences because of differences in the availability of online information.

Box 4.3 **Case study 1 — restaurant and cafe licensing**

The Australian restaurant and cafe sector is subject to a large number of regulations imposed by all levels of government. A number of the related licences, permits and registration requirements imposed by governments — and the associated administrative compliance burdens — are examined in appendix C.

For the purpose of this case study, a range of assumptions was used to explore the feasibility of measuring the indicators. In particular, the concept of a hypothetical reference business was employed in order to identify the administrative compliance activities that would have to be undertaken in order to start up a restaurant or cafe.

Information on licensing requirements was collected for a new restaurant or cafe business in two local government authorities located in each of two different States. The Business Licence Information Service (BLIS) system — maintained by State and Territory governments — was used to identify the relevant licences, permits and registrations that had to be obtained.

For indicators of the complexity of compliance, most licences, permits and registrations pertaining to the establishment of a restaurant or cafe were considered. The administrative compliance activities for a new restaurant or cafe obtaining a food business licence, outdoor eating permit, liquor licence and signage permit were also examined.

Estimates of the administrative compliance costs generated by these licensing activities would need survey evidence, for which there was not enough time in this study.

4.5 What are the main reporting caveats?

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

Indicators of administrative compliance costs are indirect measures. As discussed above, such indicators would measure other costs as well as the direct or incremental costs.

Indicators of the difficulty for businesses of obtaining licences, permits and registrations can provide some useful insights into the extent to which information obligations are imposed in different jurisdictions. However, if used as indicators they should not be interpreted in isolation. Differences across jurisdictions in a single indicator would not, by itself, strongly signify the possibility of greater

unnecessary burdens. The evidence is far stronger if differences are also present for the other indicators.

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

5 Doing business — approval processes

Key points

- Government approval processes can impose significant burdens on business — in the form of delay and uncertainty as well as administrative compliance burdens.
- The form of regulatory burden, which varies in part with the business activity and the legislative framework, will determine the aspects of an approval process that should be benchmarked and which indicators should be used.
- A range of indicators and contextual information could be used to benchmark the timeliness, consistency and administrative compliance burdens of approval processes. The outcomes could be used to identify opportunities to improve regulatory processes and to measure improvement over time.
- The benchmarking of approval processes would rely heavily on government agencies to provide information. However, it should be feasible to keep the burden on governments low by selecting indicators that can be compiled with data that is generally already collected, though it may need to be put in a consistent form.

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

Approval processes categorised under doing business, differ from the licensing, permits and registration processes considered as part of becoming and being a business (chapter 4) in a number of ways. First, the approval processes referred to in this chapter relate to one-off applications required to commence particular business activities or projects. Second, the business activity or project will usually involve a significant capital outlay. Finally, the approval process itself will generally be more complex and require a significant amount of time to both prepare and assess applications.

Benchmarking approval processes (to commence a business activity within a jurisdiction) can be undertaken for the purposes of intra- and inter-jurisdictional comparisons of performance. In both cases, the involvement of multiple agencies from different levels of government can give rise to administrative compliance burdens due to inconsistency and duplication. Benchmarking such burdens when business activities are undertaken in more than one jurisdiction is the subject of chapter 6.

Industry concerns associated with approval processes are outlined in the following section. How unnecessary burdens can be identified is considered in section 5.2. In section 5.3, possible performance indicators are discussed. Issues associated with measuring indicators and the feasibility of benchmarking are considered in section 5.4. Finally, in section 5.5, caveats that could apply to the benchmarking of approval processes are discussed.

5.1 Industry concerns — which regulations?

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

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

Business concerns vary depending on the approval process under consideration. For example, businesses commonly cite duplication within jurisdictions and across tiers of government as the primary concern associated with environmental approval processes (Regulation Taskforce 2006, URS 2006a). In contrast, property developers cite inconsistency and a lack of timeliness in decision making as the main concerns associated with planning approval processes (UDIA (Vic), pers. comm., 28 August 2006).

Planning approvals and environmental approval processes were selected for further consideration. Businesses have consistently raised their concerns regarding the burdens created by these forms of approval. Further, both have been identified by the Council of Australian Governments (COAG 2006a, 2006b) as ‘hot spot’ areas for reform.

Development approval processes

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

- the expanding coverage of planning approval requirements, along with the number of referral agencies and rigidity of planning systems (HIA 2003);
- the capacity for councillors to amend approvals due to political pressure (Yarrum Equities 2004); and
- the limited experience and training of those assessing planning applications (RAIA 2003).

The Royal Australian Institute of Architects contended that the difficulty and delays associated with obtaining planning approvals have been distorting land and property values (RAIA 2003).

In the 2004 *First Home Ownership*, Inquiry Report, the Productivity Commission noted that many industry participants believed that delays, compliance costs and uncertainty regarding outcomes had increased significantly in the years leading up to the report (PC 2004b). The Commission concluded that although the evidence did not clearly demonstrate that 'unwarranted' delays had increased, it was likely that there is scope to improve the decision-making process to enhance efficiency without compromising due process (PC 2004b).

Industry participants claim that inefficiencies in development approval processes continue to result in unnecessary delays and increased uncertainty (ALGA, pers. comm., 19 September 2006; PCA 2006; UDIA (Vic), sub. 15).

Environmental impact assessments

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

It is claimed that inconsistency and duplication within and across jurisdictions, in implementing and administering regulations, can result in increased uncertainty and delays. Canberra International Airport Proprietary Limited, for example, suggested that the introduction of the EPBC Act had made development approval processes

'more cumbersome' and 'no longer certain', with some major development plans taking up to a year to be approved (sub. 12, p. 2).

Moreover, critics have claimed that approval processes can be overly prescriptive and inflexible. They cite reporting requirements that are not commensurate with the associated environmental risks, resulting in significant costs to business and, in some cases, preventing investment.

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

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

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

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

Potential areas of benchmarking

Given the high levels of industry concern and the scope for potential benefits from improving the efficiency of both development and environmental approval processes, both should be considered for benchmarking in Stage 2 of the Study (see chapter 8).

Other approval processes warrant inclusion in the benchmarking program. The Regulation Taskforce (2006) noted industry concerns with the timeliness and complexity associated with developing or amending the food standards code. The Australian Food and Grocery Council contends that the current process for approving amendments to the food standards code was resulting in 'unacceptable delays that cost industry market access' (sub. 3, p. 6).

As amendments to the food standards code is managed by a single regulatory agency in Australia and New Zealand (Food Standards Australia New Zealand), benchmarking against agreed performance targets could be undertaken. Further, it would be useful to monitor performance over time to measure changes in regulatory burdens in cases such, where there is only one agency that can be assessed.

5.2 Identifying *unnecessary* burdens

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

- timeliness;
- consistency; and
- administrative compliance burdens.

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

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

As previously noted, some business activities trigger numerous approval processes and in some cases involve more than one regulatory agency. URS (2006b) noted that, although the overall efficiency of mining approval processes is similar across jurisdictions, performance varies significantly for selected regulatory processes. Consequently, determining the burden associated with 'doing' a particular type of business could require benchmarking a number of regulatory processes.

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

5.3 Measuring compliance burdens — possible indicators

Indicators can be developed to assess the timeliness, consistency and administrative compliance burdens of specific approval processes. However, it is unlikely that a uniform set of indicators of regulatory burden could be applied to all approval processes. Specifying a set of indicators and information requirements to benchmark a given approval process would need to be based on consultation with relevant government agencies and other stakeholders, if the benchmarking results are to be accepted.

A range of quantitative, indirect measures of the regulatory burden are suggested as performance indicators. In addition, it is suggested that contextual information should be collected to improve the interpretation of the quantitative indicators. Contextual information could either be provided as objective assessment or subjective assessments of different aspects of the process. Subjective assessments — such as ratings or scoring the effectiveness of different characteristics of the approval process — would have to be based on advice from independent experts.

In many cases, the indicators and contextual information could be collected for a *reference business activity* to ensure that the benchmarking is targeted and comparable across jurisdictions. This concept is similar to that of a reference business discussed in chapter 2.

Reference business *activities* are suggested rather than reference *businesses* because approval processes are triggered by the activities being assessed rather than by the type of business lodging the application. For example, the procedures for gaining a planning approval for a small industrial development could differ to those required for a large housing development, even though both applications could be lodged by the same property developer (or business).

Timeliness

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

Box 5.1 **Measuring the cost of delays**

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

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

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

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

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

The RAIA used the difference between the lengths of time to gain approval in 2003 and 2000 — with data drawn from survey responses — to estimate the unnecessary delay in 2003 compared to that in 2000. In contrast, the Brisbane City Council used an estimate of how much more quickly all approvals could be processed if a new system of assessing planning approvals for lower risk developments was implemented.

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

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

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

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

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

A measure of the proportion of applications assessed within prescribed (statutory or agreed) time frames, however, does not necessarily provide a complete picture of the efficiency of the approval process. An alternative metric, such as the average time taken to assess the application (measured in days or weeks), could yield more useful information about the timeliness of the approval process in some circumstances.

Measuring processing times would involve a range of factors being taken into account — including the quality and consistency of the available data. For benchmarks to be comparable, it will be important to collect data that is consistent across jurisdictions (or over time). To achieve this, it will be necessary to convince jurisdictions to collect data in a consistent way. It could also be facilitated by selecting representative projects or business activities.

It is important that total time measures are not considered in isolation of other performance indicators and contextual information. For example, short processing times are not necessarily an indication of a good approval process, particularly if it is achieved by sacrificing due process. Additional information would be required to identify the causes of unnecessary delays — these are outlined below.

Incentive structures

Business generally has clear financial incentives to expedite approval processes. In contrast, government agencies typically do not experience the same degree of incentive to process applications within prescribed timeframes.[1]

It is possible to assess government policies to ascertain whether there are incentives or mechanisms in place to promote the timely processing of applications. This could provide some indication of the likelihood that applications will be processed in a timely manner. Allowing proponents to electronically track the processing of their application through the approval process is an example of a mechanism that could promote timely processing. However, measuring the strength or effectiveness of

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

such mechanisms and other incentives faced by agencies would require expert, but nevertheless subjective, assessments.

Stakeholder engagement

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

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

Flexibility

Approval processes should have sufficient flexibility to ensure that assessment processes are aligned with the complexity and risks associated with the application. Flexibility is also important because it provides scope for applicants to amend applications if circumstances change.

Determining whether particular approval processes allow for different levels or 'tracks' of assessment can be determined from the relevant legislation. In addition, there may be scope for assessing whether jurisdictions using assessment 'tracks' have reduced processing times and costs.[2]

Appeals processes

Approval processes should generally provide sufficient scope for those adversely affected by decisions to object or appeal. However, appeals processes can also be a

2 The Development Assessment Forum has proposed that project applications be streamed into specific assessment tracks early in the development assessment process cycle. Each track would comprise a specific set of decision-making steps relevant to the project's complexity and impacts on the built and natural environments (DAF 2005). Similarly, some jurisdictions have different levels of assessment for their environmental approval processes (Independent Review Committee 2002).

source of delay and uncertainty. Indeed, appeals processes that result in court proceedings can be time consuming and costly for all stakeholders (PC 2004b).

Where appeals processes exist, indicators of the average time taken for appeals, and whether there are mechanisms — such as mediation — to expedite the process and to reduce the need for legal proceedings, would be useful in comparing performance.

Capability of agency

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

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

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

Consistency

Inconsistent administration of approval processes can create uncertainty and, therefore, risks to business. With increased uncertainty businesses are less able to make predictions about the likely timeframe for the assessment and its outcome.[3] Accordingly, URS (2006b) contends that approval processes should provide businesses with confidence that identical projects in the same jurisdiction will receive a 'similar approval journey'.

The level of appeals activity could be used as an indirect indicator of consistency within the approval process.[4] A greater number of challenges are likely to occur

3 Improving consistency in the administration of the approval process provides businesses with certainty about the *process*, but not certainty about the agency's determination.

4 Such an indicator is dependent on the form of appeals structure associated with the approvals process. It cannot be used if there is no mechanism for appeals. Further, its interpretation will

because inconsistent assessment processes will increase uncertainty about whether due process has been followed. Growth (or fluctuations) in the proportion of applications that are appealed, and the proportion of appeals that result in amendments or reversals, would suggest there is inconsistency in the approvals process.

Other contextual information that could assist in determining the consistency of how approval processes are administered includes the clarity of the policy objectives, discretion in decision making, agency coordination and the transparency of the decision-making process.

Clarity of policy objectives

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

Business concerns associated with unclear policy objectives include:

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

Assessing the clarity of stated policy objectives of a regulation — particularly where approval processes are affected by a number of regulations — would require qualitative, expert assessment. In undertaking this assessment, issues relating to the stock of regulation, and the degree to which regulations are based on principles of good regulatory practice, would also have to be considered. These issues are discussed in greater detail in chapter 7.

Discretion in decision making

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

be affected if the scope for appeals is limited (for example, heritage listing can only be appealed on technical aspects of the process rather the reasons for the determination (PC 2006c)), or the costs of lodging appeals is prohibitive.

Another concern raised in relation to environmental approval processes is the capacity of governments (referral agencies) to require businesses to address draft regulations or codes as part of the approval process. These regulatory requirements can become licence conditions which must be met if approval is to be granted. In some cases, the draft regulatory requirements might not subsequently be enacted (MCA, pers. comm., 11 December 2007).

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

Agency coordination

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

Where multiple agencies are involved in an approval process, a relevant item of contextual information is whether mechanisms exist to ensure that agencies are coordinated when setting assessment requirements, and imposing conditions for granting approvals. For example, contextual information could include assessing whether mechanisms are in place to ensure that approval requirements and determinations are made on a 'whole of government' basis for projects that require multiple approvals.

Transparency

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

It would be possible to measure whether or not mechanisms to facilitate greater transparency in approval process exist. However, the level of transparency for a

given process, or the relative variation in transparency between jurisdictions, would have to be assessed subjectively.

Administrative compliance burdens

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

There are two aspects to the burdens associated with administrative compliance. The first relates to the administrative complexity in gaining the approval(s) to undertake a given business activity.

The complexity of approval processes vary depending on the form of approval being sought and the characteristics of the project (such as its scale, scope and location). Some processes can be simple and quick, and only involve one regulatory agency, while others can involve multiple agencies and numerous approval processes. A method of measuring complexity is to assess the number of separate regulatory documents or approvals required for the business activity to be approved.

The second aspect of the administrative compliance burden is the cost associated with meeting information requirements for the approval processes across jurisdictions. These costs could be measured by generally applying the Standard Cost Model (SCM) framework (chapter 4). However, as with quantitative indicators of timeliness, differences in administrative compliance costs do not necessarily imply differences in the regulatory burdens that can be attributed to administrative compliance.

It would be necessary to select a reference business activity to ensure that there is some comparability in the quantitative indicators of both complexity and cost.

Contextual information that can be used to improve the interpretation of administrative compliance burdens, such as the level of prescription and duplication, could also be assessed.

Prescription

The provision of information from business is a necessary condition of any approval process. Consequently, clearly defined information requirements and collection processes can reduce administrative compliance burdens because businesses know

what information has to be provided, and agencies should be able to more quickly assess information that is provided uniformly and consistently.

In some cases, however, information requirements for the approval process are not aligned with the risks posed by the business activity (URS 2006a, QFF 2005). In effect, proponents have to provide information to meet the requirements of the approval process, which exceeds the level of information that would otherwise be sufficient for the agency to assess whether the business activity meets the requirements of the regulation.

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

Duplication

In some cases, businesses are required to submit similar information in different formats to separate agencies within a jurisdiction and across different tiers of government. Such duplication results in time being spent unnecessarily on making minor amendments to essentially the same information to manage multiple approvals.[5]

In Western Australia, for example, the information requirements for environmental impact assessment under the *Environmental Protection Act 1986* are similar to those of Notice of Intent required by the *Mining Act 1978*. However, the formatting requirements for the two documents are different, which results in unnecessary costs associated with reformatting what is essentially the same information (URS 2006a). Therefore, one measure of administrative compliance burdens could be whether the approval process in a jurisdiction requires proponents to submit the information that is the same, for all intents and purposes, in different formats to multiple agencies.

Determining the extent of unnecessary duplication because of overlapping information requirements across agencies would require experts to make qualitative

5 The burdens associated with duplication in this section relate to having to replicate information to meet the approval process requirements of different agencies to undertake a business activity in a single jurisdiction. However, the agencies could be from the same jurisdiction or from different tiers of government. Duplication is considered in the context of having to meet the regulatory requirements of different jurisdictions as part of doing business interstate (chapter 6).

assessments. Such assessments would be required because different agencies might request similar information for different reasons.

Further, it is possible that proponents might have undertaken similar approval processes with agencies from different tiers of government. A potential mechanism to reduce this duplication is for agencies to recognise determinations made by similar agencies. For example, most States and Territories have reached agreement with the Australian Government regarding enforcement of the EPBC Act (Regulation Taskforce 2006). Consequently, an assessment of whether such mutual recognition agreements are in place could be a possible indicator of reduced duplication (chapter 6).

Summary of possible indicators

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

Table 5.1 **Doing business — possible key indicators**

Indicators	*Metrics*
Timeliness	
Total time taken to process the application	Number of days (average/median); assessments completed within statutory timeframe (percentage)
Time taken to prepare applications	Number of days (survey based)
Consistency	
Use of appeals processes	Proportion of determinations appealed Number of appeals and the successful party
Administrative compliance burdens	
Cost of completing application process	Dollar value
Number of processes	Numbers of statutory documents or approvals required

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

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

Indicators	*Metrics*
Timeliness	
Incentive structures	
Mechanisms to promote timely processing – facilities to track processing of applications	Expert assessment
Stakeholder engagement	
Scope for pre-lodgement consultation to streamline approval process	Expert assessment
Use of pre-lodgement procedures	Proportion of applications
Flexibility	
Assessment processes commensurate with scope and scale of the project	Expert assessment
Appeals processes	
Clear guidelines for appeals/challenges	Yes/no
Scope for mediation	Yes/no
Speed of appeals processes	Number of days
Agency capability	
Appropriate staffing	Number of applications per assessor Number of applications sent to appeal
Consistency	
Clarity of purpose	
Key pieces of legislation	Expert assessment
Objectives clearly stated in legislation	Yes/no (expert assessment)
Objectives consistent across relevant legislation	Expert assessment
Clearly defined triggers for statutory referrals	Yes/no (expert assessment)
Discretion in decision making	
Assessment requirements subject to change during the approval process	Yes/no (expert assessment)
Independent dispute resolution mechanisms	Yes/no (expert assessment)
Agency coordination	
Number of agencies	Count
Capacity for concurrent assessments	Yes/no (expert assessment)
Mechanism for coordinating agency responses	Yes/no (expert assessment)
Transparency	
Documentation of decisions and reasons	Yes/no (expert assessment)
Administrative compliance burdens	
Prescription	
Level of prescription in regulatory requirements	Expert assessment
Duplication	
Level of duplication in regulatory requirements	Expert assessment
Use of mutual agreements to reduce duplication	Yes/no (expert assessment)

These lists are only intended as a guide to possible indicators and contextual information. The choice of actual indicators would ultimately depend on factors such as the approval process being benchmarked and the availability of relevant data.

5.4 Measuring indicators — is benchmarking feasible?

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

Some of the issues associated with gathering data and contextual information for development and environmental approval processes are discussed below. This discussion should provide some indication of the issues that bear on data availability and collection for other approval processes. However, the extent to which data are available and collectable will depend on the specific approval process being benchmarked.

Quantitative indicators

Good practices in the governance of approval processes would require that government agencies maintain data that can be used to construct quantitative measures of performance. However, the collection and quality of such data varies by agency and by approval process. Consequently, data are not collected consistently across jurisdictions (or, where relevant, by tiers of government).

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

- The ACT 2006-07 Budget Papers report on a range of 'accountability indicators' for the ACT Planning and Land Authority. Indicators include the percentage of development approvals processed within statutory timeframes, and the percentage of appeals that are determined in the Authority's favour (ACT Government 2006).
- The NSW Department of Local Government reports on four key performance indicators for planning and development services across local councils each year. Indicators include the number of development applications determined, mean and median times for determining applications, and legal expenses as a proportion of total planning and development costs (DLG 2005).

- The Victorian Government reports on planning permit activity. Indicators include the number of planning permits separated by land use or development activity, and by planning scheme. Future reports are expected to also include information such as the time taken to determine applications and value of works (DSE 2006).
- In South Australia, schedule 25 of the Development Regulations 1993 requires all councils, referral agencies and the courts to provide the SA Government with a range of development approval data on a quarterly basis. Performance measures will be reported in the Annual Report on the administration of the *Development Act 1993*.

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

Some data are also publicly available for environmental approval processes. For example, the Department of Environment and Heritage, the WA Environment Protection Agency and NSW Department of Environment and Conservation provide information on a range of performance indicators in their annual reports, including the processing of environmental impact assessments (DEC 2005; DEH 2005; EPA 2006;).

The fact that jurisdictions collect data, and are in the process of improving its quality, suggests that there might be some scope to benchmark the timeliness and consistency of planning and environmental approval processes across jurisdictions.[6] However, a review of the data currently collected suggests that it would be necessary to work closely with relevant agencies to ensure that the data are consistent, so that indicators are comparable. Issues relating to the development of quantitative indicators of timeliness and consistency, particularly in relation to environmental approval processes, are discussed in appendix D of this report.

As previously noted, reference business activities should be used to measure quantitative indicators of administrative compliance burdens of approval processes. In many cases, there will be business activities that are suitably similar across all jurisdictions, so that data can be obtained from actual reference businesses. However, in some cases, it might be necessary to construct a 'notional' business activity.

6 Planning and some environmental approval processes could also potentially be benchmarked within jurisdictions, where local councils are the relevant referral authority.

Data could be collected by having experts assess the compliance requirements for gaining approval to undertake a hypothetical business activity in each relevant jurisdiction. For example, the administrative compliance requirements for environmental approvals are likely to be sensitive to the characteristics of the project being undertaken, such as the scope and scale of the potential environmental impacts. In addition, there might not be enough projects that are sufficiently common to all jurisdictions that could be used as the reference business activity. In such cases, experts could be asked to estimate the administrative compliance burdens of seeking approval for the same notional business activity in each jurisdiction.[7]

Some examples of how the cost of timeliness in planning approvals can be estimated for notional business activities are outlined in box 5.1. As discussed, these estimates provide some indication of the magnitude of the benefits from improving the timeliness of an approval process. However, sensitivity of estimates to differences in land values, interest rates and the estimation of delays limit their comparability and robustness for benchmarking purposes.

Contextual information

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

Some contextual information, based on expert assessments, could be used to develop qualitative indicators of the regulatory burden.

Objective information

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

7 Experts would also be asked to provide estimates of the expected administrative compliance costs for a notional business. Notional businesses and business activities are discussed further in chapter 6 and appendix D.

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

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

Subjective information

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

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

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

Case study evidence — environmental approval processes

A number of indicators outlined in this chapter were trialled in a case study of the environmental approval processes of three jurisdictions (box 5.2 and appendix D).[8]

8 Based on a review of the publicly available data, environmental assessment processes were selected for this case study. Development approvals could not be used for the case study because much of the data and related performance indicators are not yet publicly reported. However, data are expected to become available in the near future. As noted in this chapter, most jurisdictions are investigating and implementing extensive data collection systems so as to improve their capacity to monitor and report on the efficiency of development approval processes.

This case study was conducted to explore the feasibility of benchmarking the timeliness and consistency of approval processes, and to identify possible difficulties and challenges in applying the indicators proposed in this chapter.

Box 5.2 **Case study 2 — environmental approval processes**

In recent years, awareness and expectations about the protection of the natural environment have grown. Consequently, the amount of environmental regulation has increased. Business groups are concerned about the administration of environmental approval processes. Such approvals are required under State and Territory government legislation and, in some cases, Australian Government legislation, where a project is deemed to have a significant impact on the environment. The burdens associated with environmental approval processes of three jurisdictions are examined in appendix D.

For the purpose of the case study, publicly available data were used to construct indicators and contextual information associated with the timeliness and consistency of environmental approval processes.

The environmental approval processes of three jurisdictions were selected for the case study on the basis of the availability of data to prepare quantitative indicators of timeliness. In addition, quantitative indicators of consistency were constructed for one of the three jurisdictions. The information used to construct quantitative indicators was taken from the annual reports of the relevant agencies in each jurisdiction.

Contextual information was collected to assist with the interpretation of the indicators of timeliness and consistency. The selection of contextual information was tailored to assessing environmental approval processes. It was also obtained from publicly available sources, such as reviews of the legislation and other public reports.

Assessments of some indicators and contextual information, such as agency capacity and administrative compliance burdens, were not completed due to the limited time available.

The case study revealed that publicly available information is currently insufficient for the purposes of benchmarking environmental approval processes within and across jurisdictions, particularly in relation to constructing quantitative indicators. The case study also confirmed the importance of consultation with relevant agencies and industry experts to develop indicators that are both robust and comparable before benchmarking commences.

The main lessons drawn from the case study were:

- The importance of tailoring indicators and contextual information to the relevant approval process. This is demonstrated by the need to select and refine indicators and contextual information discussed in sections 5.3 (and summarised in tables 5.1 and 5.2) to assess environmental approval processes.

- Obtaining information to construct quantitative indicators that are comparable across jurisdictions would require the cooperation of relevant government agencies.
- Individual indicators have limited explanatory power and, as such, a suite of indicators and relevant contextual information would be required to compare burdens across jurisdictions.
- Finally, subjective assessments, such as ratings, might be more useful than objective assessments of contextual information. Objective assessments are sometimes limited as a means of highlighting differences in approval processes which stem from variation in the interpretation and implementation of similar legislative requirements.

5.5 What are the main reporting caveats?

Benchmarking approval processes relates to how effectively government agencies assess applications. Consequently, differences in policy objectives have less reliance than in other forms of benchmarking. Nevertheless differences in policy objectives and legislative frameworks must be considered when reporting on benchmarking results.

The suggested performance indicators proposed in this chapter are *indirect* measures of the burdens associated with approval processes. For example, differences in the total time taken to gain an approval are not a *direct* measure of the unnecessary burden, or the delay, that results from inefficiencies in the approval process. The availability of relevant contextual information is necessary for robust comparisons of performance indicators.

For benchmarking to be relevant, indicators must be developed using the most up-to-date data available. Reliance on publicly reported data, such as that provided in annual reports, could adversely affect the timeliness of the benchmarking study.

The comparability and robustness of indicators of administrative compliance burdens could be influenced by the selection of reference business activities, as well as the number of businesses sampled. Although increasing the sample size could improve comparability, it would also increase the cost of benchmarking. As noted in section 5.4, it would be necessary, in some cases, to use a notional reference business activity to achieve a suitable level of comparability.

Objective, qualitative information without suitable additional subjective information could be of limited value. For example, even though an agency could be required to publicly report the reasons for each determination, this information alone does not

indicate that the approval process is transparent. Such objective assessments have to be complemented with some subjective assessments, such as an assessment of the level and quality of the information that the agency reports.

Finally, subjective assessments have to be made using a clearly specified framework. Further, qualitative indicators — such as rankings or scores — require assessment criteria that are suitably rigorous to ensure that assessments are comparable across jurisdictions and robust over time.

6 Doing business interstate

Key points

- Businesses having to satisfy the regulations of multiple jurisdictions in operating or trading interstate can face duplicated and inconsistent regulation. There is no justification for these burdens where governments have agreed that there should be national consistency or mutual recognition.
- Standards benchmarking could be used to identify unnecessary burdens for areas of regulation where governments have agreed on national consistency or mutual recognition.
- The benchmarking would involve comparing the regulatory requirements of operating or trading interstate against the national standard or mutual recognition.
  - Pair-wise comparisons would be required where mutual recognition is involved.
- Notional businesses or business activities — hypothetical businesses with characteristics and activities that are typical of the actual businesses affected — would be used as the basis of the benchmarking comparisons. This would ensure like-with-like comparisons.
- Indicators of the materiality of any duplication and inconsistency could be used to assess the possible extent of unnecessary burdens. A panel of experts could be used to make such assessments. Businesses would be consulted but would not be required to provide cost information.

Business leaders have expressed concern about overlap and inconsistency in Commonwealth, State and Territory regulation. In a dynamic sense, regulatory differences can be a necessary precursor to identifying a best approach, even where regulatory objectives are essentially the same. However, there are a number of areas in which Australian jurisdictions have agreed that a system of mutual recognition or national consistency is appropriate. In such cases, there can be little justification for regulatory variation that needlessly adds to the compliance costs of businesses operating interstate.

The benchmarking examined in this chapter focuses on the compliance burdens of businesses operating or trading interstate — burdens that arise from duplicated or inconsistent regulation. These burdens can be deemed unnecessary in areas where governments have agreed on a system of mutual recognition or national consistency

— burdens that would not exist if government policy had been fully implemented. The benchmarking would make governments accountable for any identified inconsistencies or duplication and would provide pressure for their removal.

In this chapter, industry concerns and past studies about unnecessary compliance costs associated with operating and trading interstate are presented for areas of regulation that impose burdens on business from inconsistency and duplication (section 6.1). The identification of unnecessary burdens resulting from duplication and inconsistency is outlined in section 6.2. Possible indicators and methodological approaches are described in section 6.3. Finally, issues associated with measuring indicators and the feasibility of benchmarking are examined in section 6.4, and the associated caveats are presented in section 6.5.

6.1 Industry concerns — which regulations?

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

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

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

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

> The greatest concern was although jurisdictions had similar policy goals for licensees, the implementation of the goals through the license conditions in areas such as consumer protection and greenhouse gas issues varied significantly from jurisdiction to jurisdiction. Also, the type and nature of information provided to demonstrate compliance also varied across jurisdictions. Differences in similar license requirements meant that business systems that were in use in one jurisdiction were only partly functional in other jurisdictions. Significant investment in developing jurisdiction specific business systems is required. (Short 2003, p. 7)

Businesses in the mining sector expressed similar concerns:

> … inconsistencies in regulatory requirements between jurisdictions for the same issue create additional burdens for national (and international) businesses such as mining companies. Different state and territory regulatory requirements for dealing with essentially the same issue, prevent companies from having efficient nationally consistent monitoring, administrative and compliance systems. (MCA, sub. 37, p. 9)

These types of problems are not new. There has been broad agreement across jurisdictions that the objectives are not dissimilar in a number of regulatory areas, including OHS, building regulation, general insurance regulation and taxation, and consumer protection regulation. In light of this, governments have taken steps toward reducing unnecessary burdens associated with duplication and inconsistency, such as executing the Australian Mutual Recognition Agreement (AMRA) in 1992[1] and implementing uniform national standards, such as the Uniform Consumer Credit Code (UCCC).

Inconsistent regulation

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

Occupational health and safety regulation

Each Australian jurisdiction typically has multiple OHS regulations. The principal OHS Act in each jurisdiction codifies the Common Law duty of care on employers in providing a safe workplace. Each such Act also provides for the making of regulations and many are supported by codes of practice.

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

---

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

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

> The chief feature of Australia's OHS and workers compensation schemes is their inconsistency ... [F]or businesses that trade in single states the compliance issues are huge. For businesses that trade between states the compliance issues are arguably insurmountable. It is perfectly feasible to face OHS prosecution in one State and not another for identical occurrences. (IPA 2006, p. 14)

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

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

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

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

Building regulation

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

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

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

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

> There is a growing tendency for local government to use planning powers to address non-planning related issues, such as access, energy efficiency and sound installation. As well as representing an inappropriate use of powers such decisions create substantial problems of regulatory inconsistencies between local government areas and reduce predictability as to regulatory requirements. (HIA 2006b, p. 3)

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

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

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

In relation to building regulation, the Regulation Taskforce (2006) recommended:

- all governments commit to the new intergovernmental agreement for building regulation;
- State and Territory Governments refer all proposed changes to building regulations to the Australian Building Codes Board for consideration; and

- State and Territory Governments implement measures to ensure local Governments do not undermine the Building Code of Australia through planning approval processes, and report on their progress to COAG.

In response to these recommendations, COAG requested the Local Government and Planning Ministers' Council (LGPM) to report by the end of 2006 on the content and timetable for implementing further building reforms, including a nationally consistent Building Code. The LGPM in conjunction with the Building Ministers Forum has since reported to COAG and is awaiting their response (LGPM, pers. comm., 5 February 2007).

Duplicated regulation

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

General insurance regulation and taxation

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

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

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

FICA reiterated this concern to the current study:

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

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

the recommendation, although in some cases, the support had been expressed subject to conditions (Costello 2004).

State and Territory governments are involved in underwriting statutory classes of insurance in their jurisdictions, notably for workers' compensation insurance. In the event of failure of a private insurer underwriting in these classes, State and Territory governments would have to cover any liabilities (as was the case in New South Wales and Queensland after the failure of HIH).

Changes in the arrangements for failure management in the Australian financial system might soon obviate State and Territory nominal insurer arrangements. The Council of Financial Regulators recently recommended a model for a Financial Claims Compensation Scheme that would cover retail policyholders and depositors in the event of insurer or bank failure (CFR 2005).

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

Consumer protection

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

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

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

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

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

> There is emerging inconsistency about how the nine Australian Governments use fair trading legislation … to drive consumer protection initiatives. This leads to a national lack of uniformity in these laws and greater compliance burdens and costs for companies, such as banks that operate nationally. (ABA 2006, p. 22)
>
> … the issue of state/territory laws inconsistently dealing with property sales across borders creat[es] an uncertain business and consumer protection environment. (REIA 2006, p. 2)
>
> Vodafone holds that [t]he depth of replication of [consumer protection regulation] … is unnecessary and burdensome to business. (Vodafone 2006, p. 18)

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

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

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

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

The Productivity Commission is currently undertaking a 12 month public inquiry into Australia's consumer policy framework. The terms of reference, received in December 2006, direct the Commission to report on a range of issues, including areas of inconsistent and duplicated regulation. An issues paper was released in January 2007 (PC 2007).

Other areas of regulation

As discussed above, OHS, building regulation, general insurance regulation and taxation, and consumer protection regulation are areas of regulation that impose unnecessary burdens on businesses operating or trading interstate. Consequently, these areas should be considered for inclusion in the benchmarking program for Stage 2 (chapter 8).

Australian business representatives informed the Regulation Taskforce (2006) of numerous other cases of duplicated and inconsistent regulation (table 6.1). These regulatory areas might also be suitable for this form of benchmarking and could be considered for inclusion in the benchmarking program.

Table 6.1 **Other areas of regulation that generate additional regulatory burdens for businesses operating interstate**

Areas of regulatory inconsistency and duplication	*Jurisdictions primarily involved*
Australian food standards	Commonwealth, State, Territory and local governments are involved in enforcement
Regulation of chemicals and plastics	Commonwealth, State, Territory and local governments are involved in enforcement
Greenhouse gas emissions reporting	State and Territory
Privacy laws	Commonwealth, State and Territory
Personal property securities	State and Territory
Firearms	State and Territory
Certification and licensing of nursing staff	State and Territory
General insurance taxes and levies	State and Territory
Transport industries	State and Territory

Source: Regulation Taskforce (2006).

6.2 Identifying *unnecessary* burdens

The objective of this form of benchmarking is to identify inconsistent and duplicated requirements in each jurisdiction that pose burdens on interstate businesses, and to assess their materiality. This includes regulation that is nominally national but implemented or administered differently across jurisdictions.

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

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

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

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

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

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

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

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

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

There are a number of conceptual and practical advantages in identifying instances of regulatory duplication and inconsistency, rather than measuring the resulting regulatory burden. For example, in order to directly measure the unnecessary burden caused by a jurisdiction's regulatory arrangements, it would be necessary to separately identify the activities that would be undertaken in the absence of the overlap or inconsistency.

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

6.3 Measuring compliance burdens — possible indicators

Indicators of regulatory duplication and inconsistency would be prepared for each jurisdiction on the basis of detailed examinations of each jurisdiction's regulation. These would be combined with assessments of the compliance activities generated for varying categories of notional businesses or business activities.[3]

The number of unnecessary regulatory requirements the notional businesses are subject to in each jurisdiction would be determined on the basis of a common benchmark standard in the area of regulation being considered. A key methodological choice is the benchmark standard to be used — mutual recognition or national consistency.

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

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

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

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

- Decide on the area of regulation in which jurisdictions will be benchmarked, having regard for the expected extent and materiality of regulatory burden.
- Consult with interested parties on the benchmarking process and methodology, specifically:
  - the most appropriate benchmark (mutual recognition or national consistency) that each jurisdiction's regulations will be measured against; and
  - the notional businesses or business activities to use as the basis of the benchmarking comparisons.
- Engage industry experts and consult with government agencies to examine and assess the materiality of the burdens generated by inconsistent and duplicate regulatory requirements.
- Report indicators of duplication and inconsistency and their materiality.

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

Table 6.2 **Possible indicators — doing business interstate**

Indicators	*Metrics*
Benchmarking against mutual recognition	
Duplicate or inconsistent regulatory requirements that generate compliance activity	Number
Proportion of duplicate or inconsistent regulations that generate compliance costs out of total number of regulations that generate compliance costs	Per cent
Proportion of unnecessary compliance costs out of total compliance costs for notional interstate businesses	Per cent
Benchmarking against national consistency	
Inconsistent regulatory requirements that generate compliance activity	Number
Proportion of inconsistent regulations that generate compliance activity out of total number of regulations that generate compliance activity	Per cent
Proportion of unnecessary compliance costs out of total compliance costs for notional interstate businesses	Per cent

Benchmarking against mutual recognition

Pair-wise comparisons would be used as the basis for benchmarking against a system of mutual recognition. This would allow for consistent comparisons across jurisdictions and would avoid having to select one of the jurisdictions as the standard.

Under a system of mutual recognition, any compliance activities that do not apply in other jurisdictions are a source of unnecessary cost. Hence, the number of compliance activities in each jurisdiction that would be avoided under a system of mutual recognition could be used as an indicator of regulatory duplication and inconsistency.

Such an indicator would be measured from the perspective of a business operating or trading across two jurisdictions. It would be assumed that the business concerned had already fulfilled the requirements of one jurisdiction and these compliance activities would be compared with the requirements of another jurisdiction. This could be repeated for all or a set of combinations of Australian jurisdictions.

The total number of inconsistent and duplicated requirements for one jurisdiction compared to all other jurisdictions could be tabulated to facilitate comparisons between jurisdictions, as shown in table E.8 (appendix E). Averages of the pair-wise measures of the extent of duplication and inconsistency for each jurisdiction could also be compared.

This indicator would be measured for one or more notional businesses (section 6.4). Business and industry would be consulted to ensure that the notional businesses have the appropriate characteristics for the area of regulation under examination. In particular, information on businesses' experiences with expansion into the jurisdiction in question would be used where available

Benchmarking against national consistency

An alternative approach would be to benchmark the difference between the number of compliance requirements (in a jurisdiction) and the number under nationally consistent regulation, for each jurisdiction. This indicator would differ from benchmarking against mutual recognition because only the number *inconsistent* requirements would be counted for each jurisdiction. This approach differs from benchmarking against mutual recognition in the use of a single standard.

In a number of areas of regulation where businesses have identified inconsistency, there are templates for nationally consistent regulation that have been agreed to by

governments and can be used as benchmarks — such as the national Building Code and the UCCC. These templates would be used as the national standard against which the regulation of each jurisdiction is compared.

This approach would also reveal the extent of progress in areas of regulation where governments have agreed that national consistency would reduce regulatory burden.

Choice of benchmarks

The choice of benchmark should be made according to the area of regulation being considered. This choice is relatively straightforward where governments have agreed that a national approach would reduce regulatory burden. As mentioned above, in the past, agreed national approaches have taken the form of mutual recognition and nationally consistent regulation.

Where governments have not reached agreement on nationally consistent regulatory requirements, it would be appropriate to choose the benchmark according to the type of regulatory burden more closely associated with the area of regulation. Where the regulatory burden is largely the result of duplication, such as the prudential regulation of general insurance, it would be appropriate to benchmark each jurisdiction against the operation of mutual recognition, which is conceptually similar to a single set of regulations. Such an approach would also be appropriate for measuring duplication in the area of product safety.

In areas where a national approach has not been agreed by governments, pair-wise comparisons could be used. This is the approach taken for the case study (appendix E).

Cost indicators

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

These indicators would represent the administrative compliance costs of meeting the regulatory requirements identified for notional businesses in each jurisdiction using the methodology described above. Estimates would include the *paperwork* and (administrative elements of) *non-paperwork* compliance costs of meeting the requirements (as defined in chapter 2).

Where substantial, some other *non-paperwork* compliance costs could be included in determining the materiality of the overall burden prior to the benchmarking process — such as physical investments to reconfigure information systems. Including such costs would be beneficial in comparing the potential benefits of reducing or eliminating unnecessary burdens across different areas of regulation. These considerations would place additional emphasis on the qualitative assessment of compliance costs.

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

Industry expertise

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

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

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

6.4 Measuring indicators — is benchmarking feasible?

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

It would also be important to involve bodies currently promoting reform in the areas concerned — such as the ASCC — that would have a detailed understanding of duplication and inconsistency across jurisdictions in their areas of responsibility.

Available data

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

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

Stage 3 of the CIBE project will involve the analysis of specific policy areas — including OHS, environmental sustainability and builders licensing — in which a coordinated approach across all levels of government would benefit the construction industry. Once completed, the data produced could be useful for future benchmarking.

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

The information required to construct the suggested indicators of duplication and inconsistency and their materiality would be best obtained from industry experts and compliance practitioners. The benchmarking process should also draw on any information gathered by Ministerial Councils or other groups charged with harmonisation.

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

Constructing notional businesses

Measures of the suggested indicators would be hypothetical estimates, based on the compliance activities of a notional businesses. The notional businesses should have characteristics that are typical of the actual businesses affected, and data would be gathered from actual businesses.

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

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

The information required to identify the appropriate notional businesses could be gathered through consultation with business and government agencies.

Case study evidence — personal property security registrations

A case study was undertaken for the registration of motor vehicles under Personal Property Securities (PPS) regulation (section E.4 of appendix E). The aim of the case study was to examine how one of the indicators suggested would be populated and to discover the lessons to be learned through the process.

The regulation of PPS registrations of motor vehicles was chosen because information was readily available, making it amenable to a simple ‘desk’ study.

The case study methodology is outlined in box 6.2. PPS registrations of motor vehicles were benchmarked against a system of mutual recognition.

Box 6.2 **Case study 3 — personal property security registrations**

The case study corresponds to benchmarking against mutual recognition, as outlined in table 6.2.

The case study was performed as a 'desk' study, with data gathered from an analysis of each jurisdiction's legislation. Regulatory requirements were also identified from the websites of the authorities in each jurisdiction that have responsibility for maintaining registers of encumbered motor vehicles. This was supplemented by brief telephone enquiries made to register staff.

The first step involved counting the number of duplicate or inconsistent regulatory requirements for each jurisdiction by making pair-wise comparisons. For each jurisdiction the notional business was assumed to have already completed the administrative formalities listed in the jurisdiction being used as the benchmark. The duplicated and inconsistent requirements were then counted for the jurisdiction relative to the benchmark jurisdiction. The process was repeated for two jurisdictions.

The case study illustrated how a series of pair-wise comparisons would be completed with the results of each comparison being totalled for each jurisdiction. These totals form the indicators of duplication and inconsistency for each jurisdiction. These could be used to benchmark the jurisdictions' contribution to regulatory burden on businesses operating or trading interstate.

A key lesson from the case study is the necessity of obtaining additional data directly from industry and government to complete a full benchmarking exercise. In the absence of such information, there would be uncertainty about whether the regulatory requirements identified actually represent duplication or inconsistency. Such data are also needed to gauge the relative magnitude of potential burden in the course of identifying duplicated or inconsistent regulatory requirements.

It was also found that the involvement of industry and government would be necessary to establish an appropriate notional business and its characteristics. Not unexpectedly, the choice of notional business was found to affect the benchmarking results.

Overall, the case study revealed that it would be feasible to derive the suggested indicators.

6.5 Reporting caveats

As mentioned earlier, indicators of inconsistency and duplication could be based on an underlying similarity in policy aims of the regulation in each jurisdiction. Where

variation across jurisdictions materially affects the burden estimate, supplementary information might be needed to provide grounds for comparison.

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

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

7 Benchmarking the quantity and quality of regulation

Key points

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

As noted, regulation has significant proven benefits and the Australian economy could clearly not function well without it. However, the growing quantity of regulation can be a significant source of burden for many businesses — as can be the turnover, complexity and reach of regulation. Hence, tracking the quantity of regulation by form and over time could identify the potential for unnecessary cumulative burdens caused by regulatory growth (section 7.1).

For individual businesses, the burden is likely to be related both to the number of regulations that apply to them and to the requirements contained within those regulations. Performance indicators for benchmarking the burden of specific types of business are suggested in section 7.2.

Businesses are also likely to face unnecessary burdens where regulation is not designed, administered or enforced in keeping with best practice principles.

Benchmarking the quality of regulation and its implementation against principles of best practice regulation could also provide an indication of the potential for unnecessary burdens (section 7.3).

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

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

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

Issues associated with measuring indicators and the feasibility of benchmarking are discussed in section 7.5, and caveats for the benchmarking are discussed in section 7.6.

7.1 Benchmarking the total stock of regulation

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

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

Useful information could include the number of regulations that affect business and the turnover in new regulation. This would also provide useful contextual information for the other benchmarking options and generate pressure to make the stock of regulation more transparent.

The ABS was supportive of benchmarking the quantity of regulation, stating that '[a] comprehensive stock take of regulations is essential' (ABS, sub. DR34, p. 1).

The Business Council of Australia (BCA) (sub. DR35) and Child Care New South Wales (sub. DR33) also expressed support. This form of benchmarking could be done comprehensively for all business regulation, or over time by regulatory area, complementing other benchmarking undertaken in Stage 2.

Forms of regulation

There are many forms of regulation that impose compliance costs. These are implemented at all levels of government and can impose a significant burden on business. The different forms of regulation include:

- primary legislation, comprising Acts of Parliament;
- subordinate legislation, comprising all rules or instruments that have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power — including statutory rules and disallowable instruments, for example; and
- quasi-regulation, comprising industry codes of practice, industry standards, policy guidelines, guidance notes, industry–government agreements, accreditation schemes, licensing, and government procurement requirements.

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

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

The expected costs and benefits should be considered in deciding which forms of regulation to benchmark. However, omitting some forms of regulation could create incentives for perverse outcomes — such as biased preference towards introducing forms of regulation outside the scope of the Study.

Contextual information

Information collected on the general stock of regulation would help inform possible priority areas for the benchmarking options discussed in the earlier chapters.

Depending on the information collected, it could also be used to identify data sources and relevant government agencies.

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

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

VCEC also collate information on:

- the number of Victorian Acts, pages and net number of new pages each year;
- the number of Victorian regulations, pages, net number of new pages each year and sunset provisions; and
- a list of regulated activities.

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

The reach of regulation

Some regulations, such as those related to registering a business, apply to almost all businesses, while others, such as those relating to food safety, only apply to a subset of businesses. Identifying the reach of regulation in terms of how many businesses are affected and to what extent, would require detailed information on which regulations apply to which businesses, how each of the businesses are affected, and how the impact varies with business size, industry, organisational structure and business activity. Nonetheless, participants, including the ABS (sub. DR34), considered that defining the reach of regulation, in terms of the type of businesses affected, is essential.

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

Indicators of the total stock of regulation

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

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

Indicators	*Metrics*
Regulation affecting business	
Total number of pieces of regulation[a]	Count
Total number of pages of regulation[a]	Count
Total number of licences applying to all businesses	Count
Total number of permits applying to all businesses	Count
Turnover in regulation	
Net number of new pieces of regulation[a]	Count
Net number of new pages of regulation[a]	Count

[a] That apply to all businesses, including primary legislation, subordinate legislation and quasi-regulation, at all levels of government.

Other indicators could be used to identify the burden of regulation in aggregate. One example is an indicator on the number of regulatory requirements that impose a compliance burden on businesses. Such an indicator, applied to a single business type, would be easier to measure and interpret than if applied to all businesses in aggregate. Benchmarking the burden on a business type would also have the advantage of identifying impacts resulting from interactions between the different pieces of regulation that apply to a business.

7.2 Benchmarking the burden on a business type

Different businesses, as determined by their function, size, and life-cycle stage, are subject to different regulations, which have varying impacts. In general, the regulatory burden of a particular business is determined by:

- the number and turnover of regulations applying to the business; and
- the number of compliance activities associated with those regulations — including obtaining licences and permits, completing approval processes and complying with reporting requirements.

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

applying to that business. The exact definition of a 'business type' would have to be agreed between business and government in Stage 2.

Number and turnover of regulations

As observed by the Regulation Taskforce, '[t]he most effective relief from regulatory burdens is not to be covered by regulation in the first place' (2006, p. 178). Hence, the number of regulations applying to a particular business type could in itself be an indicator of the likely burden on that business type. The number of pages of regulation applying to a particular business could be a useful extension of this.

The volume of regulation is likely to influence the resulting burden in that those businesses subject to more regulation will generally require more resources — both to become knowledgeable about their obligations and to comply.

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

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

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

Regulatory requirements

Although the quantity of regulation applying to a business can be broadly indicative of the burden it bears, the actual burden will be more directly related to the specific requirements of each regulation. Some regulations might be lengthy in pages, for example, but if they contain few requirements the burden could be minor.

Common regulatory requirements include licences, permits, registrations, approval processes and reporting requirements. Burdens relating to licences, permits and

registrations are discussed in chapter 4, and those relating to approval processes are discussed in chapter 5.

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

For licences, permits and registrations, indicators could include the number required by a particular business, and the frequency of renewal. These measures would be representative of the burden in that the burden is likely to increase with the number of licences, permits and registrations, and the frequency of renewal.

Further, reporting requirements are likely to be burdensome if they require a large amount of information to be supplied by the business. Hence, the number of reported items might be a useful indicator of the regulatory burden. The frequency of reporting could also be a useful indicator. An indicator on the number of duplicate items that have to be reported would be a more direct measure of unnecessary burdens. Some suggested indicators are listed in table 7.2.

Table 7.2 **Possible indicators — potential burden for a particular business**

Indicators	*Metrics*
Number and turnover of regulations	
Total number of pieces of regulation[a]	Count
Total number of pages of regulation[a]	Count
Net number of new pieces of regulation[a]	Count
Net number of new pages of regulation[a]	Count
Regulatory requirements	
Number of licences, permits, registrations and approvals required	Count
Number of renewals each year for licences, permits, registrations and approvals[b]	Count
Number of reported items	Count
Number of reported items each year[b]	Count
Number of duplicate items reported	Count

[a] That apply to a business type, including primary legislation, subordinate regulation and quasi-regulation, at all levels of government. [b] As a proxy for the frequency of renewal or reporting.

7.3 Benchmarking the quality of regulatory design, administration and enforcement

Regulation that is designed, administered and enforced in a manner that is consistent with best practice principles is less likely to impose *unnecessary* burdens on business. This is consistent with the view of the Regulation Taskforce, which, in reference to its six principles of good regulatory practice[1] (box 7.2), stated:

> … if these principles had been consistently applied, less regulation would have been made or retained, and the implementation of the regulation that was made would have provided much less cause for complaint. (2006, p. 147)

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

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

Benchmarking against good practice principles was supported by a number of participants including the Australian Financial Markets Association (AFMA) (sub. 10, sub. DR30), the Victorian Department of Treasury and Finance (sub. DR42) and the BCA (sub. 13, sub. DR35). The Australian Bankers' Association stated 'benchmarking regulatory design and process is as important as identifying the costs of regulation' (sub. 16, p. 4).

The AFMA also stated:

> From our perspective, it is critical to prevent inferior regulation being added to the existing stock of regulation, so the Commission's proposal to benchmark the regulatory *process* (especially regulatory design) is welcome … we support the Commission's proposal in Chapter 7 to benchmark the regulatory process. (sub. DR30, p. 1)

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

On a related issue, some participants raised the 'culture' of regulatory agencies as a fundamental source of unnecessary regulatory burden. In light of this, indicators of the quality of regulation could be used as measures of the regulatory culture of jurisdictions as well as potentially revealing changes over time (box 7.1).

1 These principles of good regulatory practice have since been endorsed by the Australian Government (Australian Government 2006).

Box 7.1 **Concerns about regulatory culture**

A number of participants suggested that some unnecessary burdens are the result of a culture of poor policy making. Indeed, the Regulation Taskforce observed:

> … a 'regulate first, ask questions later' culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration. (2006, p. ii)

Child Care New South Wales similarly stated that regulatory burden has resulted from:

> … knee-jerk political responses, lack of analysis of costs and benefits, haphazard or limited consultation, and, a 'regulate first ask questions later' culture; a culture reinforced by a community perception that passing a new regulation always equates to solving the underlying problem. (sub. DR33, p. 3)

Although policy making guidelines and processes appear to be in place in all Australian jurisdictions, some participants observed that they have not always been followed by all government agencies. As stated by Child Care New South Wales:

> So far as we are aware, all jurisdictions claim to have rules of good rule-making expressed either in legislative or policy form. So far as we are aware, no jurisdiction complies properly with those principles of regulatory decision-making. (sub. 11, p. 7)

Most Australian jurisdictions have had a set of good regulatory practice principles for a number of decades. However, it is only within the last decade that any — such as completion of a Regulatory Impact Statement (RIS) — have been mandated. Further, for many Australian jurisdictions the penalty for failing to adhere to mandatory requirements has been minimal. The result has been that these requirements have sometimes been overlooked or completed after the decision making is already finalised.

In relation to consultation, for example, the National Association of Retail Grocers of Australia stated:

> … public consultation processes undertaken are not really used to address any flaws in policy or regulatory proposals, they are [simply] a step in the process that must be endured. (sub. DR38, p. 1)

However, recent government initiatives demonstrate that governments believe it is necessary to renew their commitment to improving the quality of regulation.

Indicators of the regulatory culture could include the proportion of new regulations for which best practice principles were followed. For example, the proportion of new regulations that underwent a RIS could be one indicator. The extent of regulatory review and the use of sunset clauses, in relation to the total stock of regulation, would also be indicative of a jurisdiction's relative regulatory culture. These and other indicators could be measured over time to reveal change. The consistent underperformance of a jurisdiction across a range of regulatory quality indicators would also be indicative of a poor regulatory culture in that jurisdiction.

General principles of good regulatory practice

There are many authoritative statements on principles of good regulatory practice. Two relevant Australian sources are the Regulation Taskforce's six principles of good regulatory practice (box 7.2) and the COAG-endorsed principles of regulatory design and administration (box 7.3). The principles in box 7.2 have since been endorsed by the Australian Government (Australian Government 2006).

Box 7.2 **Regulation Taskforce's principles of good regulatory practice**

- Governments should not act to address 'problems' until a case for action has been clearly established:
  - This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action.
- A range of feasible policy options — including self-regulatory and co-regulatory approaches — need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

Source: Regulation Taskforce (2006).

Box 7.3 **COAG principles of good regulatory design, administration and enforcement**

According to COAG, regulation should:

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

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

Further, proposed regulation should:

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

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

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

Source: COAG (2004).

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

Unnecessary burdens can potentially arise from poor regulatory practice in the areas of regulatory design, administration and enforcement.

The design of regulation

Regulatory design refers to the planning and creation of regulation to achieve a particular purpose or effect. Well-designed regulation should minimise the burden on business in achieving its objectives. As stated by the BCA, 'if regulation is poorly drafted, inefficient and fails to achieve the outcomes that are intended, then unnecessary compliance burdens are imposed on business and the economy as a whole' (sub. 13, p. 2).

Elements of good regulatory design, and related issues that are likely to influence compliance burdens, include:

- Clarity of objectives — A regulation with clearly stated objectives is more likely to achieve its purpose effectively and with less uncertainty, which would reduce unnecessary burdens.
- Complexity — More complex regulation is likely to require expertise to ensure business compliance. Expertise (whether sourced in-house or contracted in) comes at a higher cost which would increase the burden.
- How prescriptive the requirements are — More prescriptive requirements are likely to be more complex and onerous which would increase unnecessary burdens. However, in some instances prescriptive requirements are necessary and could help to clarify a requirement or aid compliance which would reduce unnecessary burdens.
- Whether subordinate legislation, other regulation or quasi-regulation is referred to in the primary legislation — Existence of these forms of regulation is likely to increase complexity which could increase unnecessary burdens.
- The translation of Commonwealth legislation into State and Territory legislation — Inconsistencies between jurisdictions are likely to increase complexity and uncertainty which would increase unnecessary burdens (chapter 6).
- Frequency of review — Periodic review is likely to improve regulation, which would reduce unnecessary burdens over time.

- Whether the review process included completion of a Regulatory Impact Statement (RIS) — Completion of a RIS in review is likely to improve the regulation and reduce unnecessary burdens (box 7.4).
- Inclusion of a sunset clause — A sunset clause is likely to trigger a review or termination of a regulation which would reduce unnecessary burdens.

Box 7.4 **Regulatory Impact Statements**

Regulatory Impact Statements (RISs) are used to inform decision making on whether to implement a particular regulation. They are prepared by the policy body that is developing the regulation to assess the likely impacts of the recommended regulation.

A RIS should canvas all objectives and options for a particular policy problem, using benefit–cost analysis to consider the social, environmental and economic impacts. It should also include a statement on consultation, a recommended approach, and a discussion of how the preferred approach should be implemented and reviewed.

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

Source: PC (2005).

The use of prospective assessment processes when regulation is being developed could also be measured, depending on data availability. Possible indicators could include:

- Whether a RIS was completed in the development of the regulation — A RIS is likely to inform the regulation making process which would improve the regulation and reduce unnecessary burdens (box 7.4). (For Australian Government regulation, whether the RIS was deemed adequate by the OBPR — or its predecessor, the ORR — could also be assessed.)
  - An indicator on the adequacy of the assessment undertaken for the completion of the RIS could also be developed. However, to do so would require jurisdictions to publish or provide copies of all relevant RISs and accompanying documents, where required.
- Whether other assessments were undertaken, such as a Small Business Impact Statement, a Business Impact Assessment or use of the Business Cost Calculator (BCC) (chapter 3) — Although these should not preclude or replace a RIS for new regulations that are thought to have a significant impact on business, other

assessments are likely to improve the regulation making process which would reduce unnecessary burdens.

  – The adequacy of any other assessments undertaken, including those with the BCC, could also be benchmarked.

- Whether consultation was undertaken in completing prospective processes — Consultation during the regulation making stage should improve the process and the resulting regulation, which would reduce regulatory burdens. The efficacy of consultation could also be measured. The Australian Government's whole-of-government policy on consultation requirements could be used to guide this assessment (OBPR 2006).
- Whether a whole-of-government approach was used in developing the regulation could also be assessed — A whole-of-government approach is likely to reduce duplication and inconsistency, which would reduce regulatory burden.

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

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

Another indicator could be whether the regulation has been designed in such a way that it is able to be enforced. Some participants suggested that not all regulation is easily enforceable because of its design. Such an indicator of the 'enforceability' would, however, be difficult and subjective to measure.

Suggested indicators of regulatory design are listed in table 7.3.

Table 7.3 **Possible indicators — regulatory design**

Indicators	*Metrics*
Use of RIS in designing regulation	Yes/no
Adequacy of the RIS, BCC (or equivalent tool)[a]	Adequate/inadequate
Other assessments in designing regulation	Yes/no
Consultation undertaken	Yes/no
Efficacy of consultation	Expert assessment
Use of a whole-of-government approach	Yes/no
Clarity of objectives	Expert assessment
Complexity — whether expertise is required	Yes/no (expert assessment)
Overly prescriptive requirements	Yes/no (expert assessment)
Subordinate legislation[b]	Count
Reliance on subordinate legislation[b]	Assessment of the reliance
Translation of national regulation[c]	Count
Time since last comprehensive review	Number of years
RIS undertaken in review	Yes/no
Existence of a sunset clause	Yes/no

[a] As determined by the relevant department or agency. For example, for Australian Government regulation the RIS is assessed by the OBPR (or its predecessor, the ORR). [b] The number of pieces of subordinate legislation that are referred to in the primary legislation. Applies only to primary legislation. [c] The number of differences between the national regulation and State and Territory regulation. This indicator applies for nationally agreed regulation that is translated into State and Territory regulation.

The administration of regulation

Some aspects of best practice regulation relate to the administration of a regulation. Regulatory administration refers to the ongoing management of regulation (by governments) to ensure their proper functioning. This includes the reporting requirements of a regulation and the associated administration, and administrative arrangements relating to approval processes.

Potential indicators of regulatory administration could include:

- Reporting requirements — Unnecessarily onerous, complex and duplicative reporting requirements are likely to make demonstrating compliance overly difficult, which could increase unnecessary burdens.
- Frequency of reporting — Frequent reporting is likely to increase the burden.
- Scope for discretionary reporting requirements — Discretionary reporting could increase flexibility, which would reduce unnecessary burdens, but could also increase uncertainty, which would increase unnecessary burdens.
- Availability of online reporting options — Online reporting is likely to be faster and could allow for easier record keeping, which would reduce unnecessary burdens.

- Coordination of government agencies — Increased coordination between administrating government agencies is likely to reduce unnecessary burdens. Where non-government agencies have a regulatory role (for example, the Australian Securities Exchange), an indicator on the coordination between government and non-government agencies could be used (AFMA, sub. DR30).
- Provision of supportive, consultative or informational channels — Such channels are likely to reduce the time and resources that businesses devote to compliance activities, which could reduce unnecessary burdens.
- Time limits on approval processes — Time limits are likely to decrease uncertainty and delays which could reduce unnecessary burdens.
- Existence of appeals processes — Appeals processes increase transparency and accountability which could reduce unnecessary burdens.
- Separation between regulation design and administration — Separation would reduce the potential for perverse outcomes given the different objectives of these roles.

Suggested indicators of regulatory administration are listed in table 7.4.

Table 7.4 **Possible indicators — regulatory administration**

Indicators	*Metrics*
Items of information reported	Count
Duplicate items reported	Count
Number of agencies information must be submitted to	Count
Frequency of reporting	Time period
Discretionary reporting requirements	Yes/no
Online facilities	Yes/no
Coordination of government or other agencies	Expert assessment
Support channels provided	Yes/no
Time limits (approvals)	Yes/no
Appeals processes	Yes/no
Separation between regulation design and administration	Yes/no

The enforcement of regulation

Regulatory enforcement refers to measures undertaken by government to achieve observance of, and adherence to, regulation by intended affected parties.

While excessively stringent enforcement can lead to unnecessary burdens, a lack of enforcement can undermine the regulation itself. The Institute of Body Corporate Managers (Victoria) noted:

> Without active enforcement, not only are some of the benefits from regulation foregone, but those businesses that do devote effort to comply are put at a competitive disadvantage to those that do not. (sub. 1, p. 9)

Risk-based enforcement strategies that target likely non-compliant businesses are likely to be less burdensome for businesses generally than either comprehensive or more random enforcement strategies (Hampton 2005). Publication of the chosen enforcement strategy would also aid business compliance and reduce uncertainty, thereby reducing unnecessary burdens.

Useful indicators relating to the enforcement of regulation could include:

- Whether there is explicit provision for the enforcement of the regulation.
- Whether multiple agencies are involved — If coordination is poor, the existence of more than one agency is likely to increase complexity and the potential for unnecessary burdens.
- Whether risk-based enforcement strategies are used.
- Whether the regulator publishes enforcement strategies and outcomes — Publishing enforcement strategies and outcomes is likely to decrease uncertainty and increase the accountability of enforcement agencies, which would reduce unnecessary burdens.

An indicator on the degree of separation between the enforcement of regulation and the collection of non-compliance fees could also be included. Where these are undertaken by the same body, conflicting incentives could result in perverse outcomes such as over-enforcement or revenue-based enforcement strategies (rather than outcome-based strategies). Separation of these activities is preferable.

Separation between enforcement and educative activities was raised as another potential indicator by some participants. They argued that businesses seeking information to comply with regulation would be discouraged if there was a risk of being penalised for non-compliance. However, this is likely to be a relatively weak indicator of unnecessary burden.

Suggested indicators of regulatory enforcement are listed in table 7.5.

Table 7.5 **Possible indicators — regulatory enforcement**

Indicators	*Metrics*
Provisions for the enforcement of the regulation	Yes/no
Risk of conflicting enforcement because multiple agencies are involved	Expert assessment
Risk-based strategies	Yes/no
Published enforcement strategies and outcomes	Yes/no
Separation of fee collection and enforcement	Yes/no

7.4 Government initiatives to reduce regulatory burden

In response to business concerns, the Australian, State and Territory governments have implemented a number of initiatives to reduce the regulatory burden on business. These include prospective initiatives, used to assess and minimise the potential burden of a new regulation before it is implemented, and retrospective initiatives, used to assess and minimise the burden after a regulation is in effect.

Prospective initiatives are primarily aimed at ensuring that the costs of new regulation do not exceed the benefits and that the best policy option is chosen. This includes an assessment of the likely burden on business from the regulation. Such initiatives include RISs and other assessment requirements for new regulation, noted in section 7.3.

Retrospective initiatives are more varied and can include regulatory reviews, annual reporting, specific burden-reduction policies and targets.

Some examples of current (prospective and retrospective) State government initiatives to reduce the business burden of regulation are presented in box 7.5. The Australian Government is also pursuing a number of burden reduction initiatives, many resulting from recommendations made by the Regulation Taskforce (2006). For example, the Australian Government has recently established the Office of Best Practice Regulation to assist in delivering its new best practice requirements by providing assistance to departments and agencies, as well as monitoring their compliance (Australian Government 2006; Banks 2006b).

Box 7.5 **Examples of State initiatives to reduce regulatory burden**

Victoria

In the 2006-07 Budget, the Victorian Government committed $42 million over four years to fund the *Reducing the Regulatory Burden* initiative. The initiative includes:

- a 15 per cent reduction in existing administrative burden over three years, and a 25 per cent reduction over five years;
- ensuring the administrative burden of any new regulation is met by an 'offsetting simplification' in the same area; and
- providing funds to undertake hot spot reviews in areas of undue compliance burden and to reward reduction of the burden.

New South Wales

On 17 January 2006, the New South Wales Premier announced a dedicated review of regulatory burden on small business to be undertaken by the Small Business Regulation Review Taskforce. This will be done through a rolling program of sector-by-sector reviews of the regulatory and administrative burdens faced by small business.

In October 2006, the Independent Pricing and Regulatory Tribunal released a report on the burden of regulation (and improving regulatory efficiency) in New South Wales.

South Australia

The SA Government recently established a target of reducing red tape by at least 25 per cent by July 2008. This is being supported by initiatives such as:

- mandated use of the *Business Cost Calculator* for all regulatory proposals that affect business (to be evaluated after 12 months);
- continuation of the sunset program, whereby all regulation except that detailed in section 16A of the *Subordinate Legislation Act 1978* expires on 1 September in the year following the tenth anniversary of their promulgation; and
- a range of projects to inform the process of regulatory planning, including a small business survey to identify and reduce red tape hot spots.

Queensland

The Queensland Government's *Red Tape Reduction Taskforce* provides advice on how to reduce the burden of regulation on Queensland businesses. The Taskforce completes annual Red Tape Reduction Stocktakes (since 2000-01) which include an estimate of the savings to business from regulatory improvements.

In addition to the annual Stocktake, the Taskforce is currently conducting a public review into hot spots for regulatory reform and is finalising industry specific reviews of the impact of regulation in the manufacturing, retail and tourism sectors.

Sources: DSD (2006); DSRD (2006); IPART (2006); PC (2006d); Victorian Government (2006).

Possible indicators

As discussed above, conducting a stocktake of existing regulation could provide a baseline from which to benchmark changes in the stock of regulation over time. It could also be used by governments to measure the effectiveness of regulation reduction initiatives over time. In relation to targeted reduction initiatives, specific indicators could be used to assess their effectiveness over time.

Governments could do this by tracking a set of particular indirect indicators relating to the stated goal of an initiative over time. An example is provided in box 7.6.

Box 7.6 Possible indicators for monitoring the progress of standardising business reporting

In response to recommendation 6.3 of the Regulation Taskforce (2006), the Treasurer established a committee of Australian and State government officials to examine the case for the introduction of standard business reporting. The aim of standard business reporting is to reduce reporting burdens for business by eliminating unnecessary or duplicative reporting, and to improve the interface between business and government.

In this case, indirect indicators of the reporting burden could include:

- the number of items of information that are reported;
- the number of items that fail to conform to whole-of-government standard definitions for these items;
- the number of businesses from which the data items are collected; and
- the number of agencies that businesses have to report to.

Measurement of these indicators over time, and comparison with baseline levels, could be indicative of the effectiveness of the initiative in terms of reducing reporting burdens.

Sources: The Treasury (Australian Government), pers. comm., 8 September 2006; The Treasury (2006).

Two other methods could be performance against commitments and performance against regulation reduction targets.

Performance against commitments

Benchmarking performance against key reform commitments could be used to reveal the effectiveness of government initiatives to reduce regulatory burdens. This could involve tracking progress on committed initiatives, actions or recommendations. For example, the Australian Government's agreement to 158 of the recommendations made by the Regulation Taskforce (2006) could be

benchmarked in this way (Lynch et al. 2006). The progress of this could be assessed against nominated completion dates as those dates arise.

Performance against regulation reduction targets

A number of jurisdictions have already set targets for reducing regulatory burden. However, it is (at present) difficult to measure performance against such targets, primarily because the current regulatory burden is unknown. Consequently, it is extremely difficult to make a rigorous assessment about whether the regulatory burden has changed.

Establishing a baseline for the stock of regulation (as proposed in section 7.1) could facilitate ongoing assessments of performance against their agreed regulation reduction targets. However, such assessments would still be subject to the caveat that proposed indicators are indirect measures only.

7.5 Measuring indicators — is benchmarking feasible?

The indicators identified in this chapter could be measured foremost through an analysis of the written regulation itself. Expert advice from legal professionals, government agencies and surveyed *reference businesses* could be drawn on in the process, where required (box 2.2).

It would be important to engage relevant government agencies in particular, as it is likely that they will already be reporting on some of the proposed indicators. Early consultation would reveal what information is already collected, and prevent any unnecessary duplication of effort.

In relation to benchmarking regulation reduction programs, it would be crucial to maintain communication and cooperation with the departments or agencies undertaking the initiative.

Available data

There are a number of Commonwealth, State and Territory data and information sources that could be relevant to the benchmarking exercise. At the Commonwealth level, the OBPR conducts an annual review of regulation in Australia, which covers a number of relevant metrics, including:

- the number of Commonwealth Acts of Parliament;
- the number of new regulations made by the Australian Government each year;

- the number of Australian Government regulators and national standard setting bodies involved in regulation making and administration;
- the number of Ministerial Councils involved in making regulation;
- regulation reduction initiatives across all jurisdictions (in detail for the Australian Government)
- compliance with RIS requirements for the Australian Government; and
- a summary of RIS requirements across the States and Territories.

Additionally, the Office of Small Business assesses nine regulatory performance indicators in its annual Review of Small Business Series (DITR 2006). Some of these could also be used as indicators of regulatory quality.

At the State and Territory level:

- The VCEC completes an annual assessment of the regulatory environment in Victoria (VCEC 2005, 2006b). The corresponding data spreadsheets summarise information that would be relevant to benchmarking the stock of regulation. The VCEC website also contains information on all Victorian RISs undertaken since 2004 (VCEC 2006a).
- The State Chamber of Commerce (New South Wales) conducts an annual *Red Tape Register* survey (SCC 2005).
- The Department of State Development (Queensland) has a Red Tape Reduction Taskforce which has undertaken a number of reviews and assessments.

A number of industry groups have also collated some relevant data. For example, the Australian Chamber of Commerce and Industry, and the Minerals Council of Australia, have undertaken a number of industry surveys and reviews (ACCI 2004, 2005; URS 2006a, 2006b).

Most of these data sources, however, do not include the detailed data or information required to complete the proposed benchmarking — this information would have to be attained through consultation with governments, legal experts and businesses, where required.

Assessing the regulation

As discussed above, many of the suggested indicators could be measured by assessing the written regulation itself. This could involve consultation with legal experts who have a background in complying with business regulation.

Data collection would primarily be undertaken by the Productivity Commission in consultation with legal experts and government agencies, and with input from affected businesses, where required. In this way, additional burdens on businesses providing data for the benchmarking exercise, could be kept to a minimum.

Case study evidence — personal property security regulation

The feasibility of measuring quantity and quality indicators was assessed by undertaking a case study on personal property security (PPS) regulation (box 7.7). Results from the case study are presented in appendix E.

Box 7.7 **Case study 3 — personal property security regulation**

Personal property security (PPS) regulations were chosen for a case study because:

- they are one of the 'hot spot' areas identified by COAG; and
- work done by the Standing Committee of Attorneys-General (2006) identified the relevant legislation, providing a useful starting point given the limited time available.

The total quantity of regulation

Suggested indicators from table 7.1 were applied to assess the total quantity of PPS legislation and the total quantity of PPS legislation specific to motor vehicles. The results and associated discussion are presented in appendix E (section E.2).

The quality of regulation

Suggested indicators from section 7.3 were applied to Part 5 of the Consumer Credit Code (a PPS regulation) for the purpose of testing their feasibility. The results from this exercise are presented in appendix E (section E.3).

Information was collated from the legislation itself, the accompanying *Consumer Credit (Queensland) Act 1994*, and the Explanatory Memoranda. The national Consumer Credit Code website also provided some information, as did State and Territory websites of the relevant government agencies. A number of government and independent reviews of the Code, or of PPS more generally, were also used.

For the purpose of completing the case study, indicators were measured using all information the Productivity Commission was able to access in the time available. The cooperation of relevant government agencies would be required in Stage 2 to access more information, especially if it is not publicly available. Strategies for obtaining information, without causing excessive burden, would have to be developed.

In undertaking the case study a range of data sources were needed to measure and assess suggested indicators of the quantity and quality of regulation. The case study also highlighted the importance of consultation with government agencies to ensure access to all relevant information.

The suggested indicators for assessing the quantity of regulation appeared feasible and revealed differences in the quantity of PPS regulation across jurisdictions. Similarly, the suggested indicators for assessing the quality of regulation were able to be measured and assessed and although a different set of indicators would be applicable for each regulation most of the indicators appear feasible.

The case study highlighted the need to develop a set of criteria in consultation with government and business. This would be used to guide assessments and to ensure consistency where indicators are qualitative and, hence, subjective.

In all cases, consultation with government agencies about the final specification of indicators and their measurement would be essential.

Required information

As stated above, existing data on business demographics are not detailed enough to identify the reach of regulation in terms of how many and what type of businesses are affected. The ABS submitted that they would be able to assist in:

- defining a business; and
- providing business demographic data.

This assistance would be essential in Stage 2.

7.6 What are the main reporting caveats?

The most important caveat for the benchmarking options discussed in this chapter is that only the *potential* for unnecessary burdens would be identified. Further, as in other chapters, the suggested indicators are *indirect* measures of unnecessary burden. As such, a suite of indicators would be required for robust benchmarking comparisons.

For indicators identified in sections 7.1 and 7.2, it is assumed that more regulation, or increased turnover in regulation, is likely to increase the unnecessary burden of regulation on business. However, in the case of increased turnover in regulation, for example, some new regulation might reduce the overall burden by replacing or consolidating older, more burdensome regulation.

An important caveat for benchmarking the quality of regulation is the assumption that agreed best practice principles for designing, administering and enforcing regulation, if followed, would actually improve regulation and reduce unnecessary burdens.

Several of the proposed indicators would require expert assessment. As such, they are inherently subjective. Moreover, indicators based on subjective assessments would only be robust if the regulation is administered and enforced in accordance with the prescribed regulation. Consultation with business could be undertaken to confirm whether expert assessments are in line with businesses experience in complying with the regulation under consideration.

If the effectiveness of initiatives to reduce regulatory burden were assessed, comparison across jurisdictions might not be overly useful because of the varying objectives of the initiatives. However, the success of initiatives in some jurisdictions compared with others could be evidenced by the benchmarking results over time. This could encourage competition across jurisdictions and inform the formulation of future initiatives to reduce regulatory burden.

8 A proposed benchmarking program

Key points

- It would be preferable to establish a limited, targeted benchmarking program initially, given the complexities and uncertainties. With 'learning-by-doing' the exercise could be refined and expanded over time.
- Benchmarking both regulatory compliance costs, and the quantity and quality of regulation, would provide complementary insights into the extent and sources of unnecessary regulatory burdens, including cumulative burdens.
- An initial three-year program is suggested, with the following areas of regulation proposed for benchmarking: OHS; land development assessments; environmental approvals; stamp duty and payroll tax; business registration; financial services regulation; and food safety.
  - Regulations would be re-benchmarked periodically as a cost-effective approach to assessing changes in performance.
- The budgetary costs of administering the proposed benchmarking program, including research and survey activities, would be around $2–3 million per year.
  - In addition, governments and businesses would need to devote resources to the provision of advice and data.
- The implementation of benchmarking would require detailed specification of indicators for each benchmarked area, as well as establishing data collection methods, reporting templates and appropriate caveats.
  - For this purpose, and for quality control of benchmarking results, advisory panels representing all governments and business would be established by the Commission.
- An ongoing commitment from all jurisdictions, especially in relation to the provision of comparable data, would be essential.

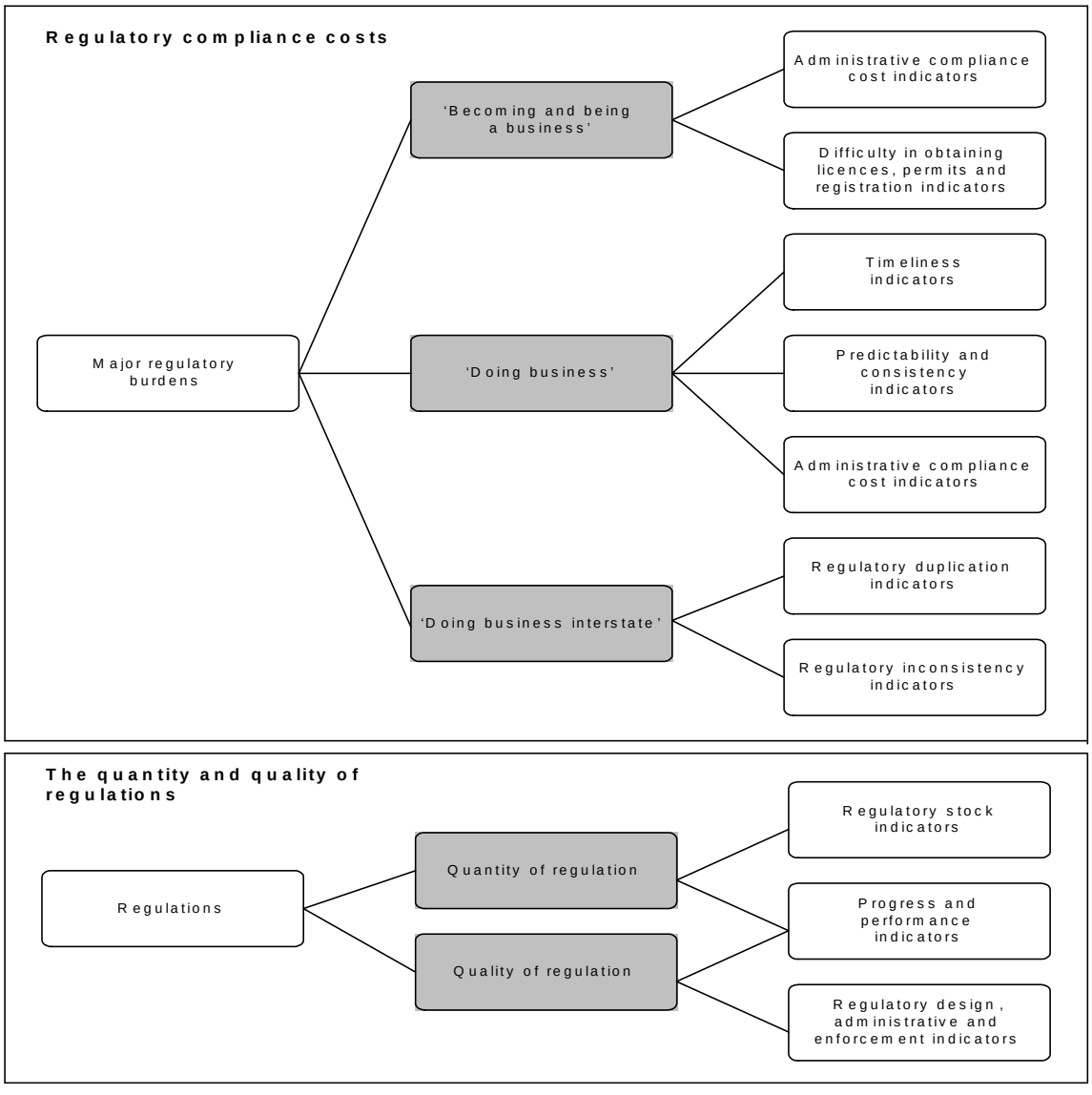
8.1 The benchmarking framework

Two broad approaches have been developed in preceding chapters — benchmarking regulatory compliance costs, and benchmarking aspects of the regulatory environment (including changes in the quantity and form of regulation over time and comparing regulations against agreed principles of good practice). Regulatory

compliance costs can be assessed in three areas: becoming and being a business; doing business; and doing business across jurisdictions.

For each area under the two approaches, a range of indicators has been identified (figure 8.1). This framework would enable comparisons over time for individual jurisdictions (including the Commonwealth), as well as comparisons across jurisdictions in a given year.

Figure 8.1 **The benchmarking framework**



This benchmarking framework offers the following advantages:

- It covers most types of regulatory compliance costs and, therefore, many of the concerns businesses have with regulation.
- It complements measures of compliance costs with comparisons of changes in the quantity and form of regulations, and the quality of regulatory design, administration and enforcement. This offers additional insights into possible sources of regulatory burdens, and the progress of reforms to reduce regulatory burdens over time.
- It encompasses all forms of regulation (primary and subordinate legislation, and quasi-regulation).

Although such benchmarking does not involve measuring the benefits of regulation, the need for this is avoided by confining it to regulations with similar objectives. Where objectives are materially different, with consequences for compliance burdens, comparisons would not be drawn. To the extent that there are minor differences in regulatory benefits (despite similar objectives), or where additional objectives are being pursued, any resulting compliance costs would need to be netted out before making inter-jurisdictional comparisons, or at least qualifications made clear to help users interpret the indicators.

This general approach, outlined in the Productivity Commission's Discussion Draft, received widespread support from industry groups. For example, the Real Estate Institute of Australia stated:

> The REIA supports the proposal in the discussion paper to model this breakdown on:
>
> a. becoming and being a business;
>
> b. doing business; and
>
> c. doing business interstate. (sub. DR31, p.3)

The value of benchmarking the quantity and quality of regulation was also generally strongly endorsed. For example, AFMA noted:

> From our perspective, it is critical to prevent inferior regulation being added to the existing stock of regulation, so the Commission's proposal to benchmark the regulatory process (especially regulatory design) is welcome. … Our experience is consistent with the Commission's observation that regulations that are designed, administered and enforced in a manner consistent with best practice principles are less likely to impose an unnecessary burden on business. (sub. DR30, p. 1)

Other participants supporting the Commission's approach, as outlined in the Discussion Draft, included MCA, sub. DR37; BCA, sub. DR35; and Child Care New South Wales, sub. DR33.

Implications for a program

Benchmarking involves a number of process components, including determining the coverage of the benchmarking activity and what to measure, the development of indicators, and the collection and reporting of data. These components are discussed in preceding chapters in relation to benchmarking different types of regulatory burden, and the quantity and quality of regulations.

The main options developed in these chapters are summarised in table 8.1. A preliminary application of some of the proposed indicators was undertaken through brief case studies of selected regulatory areas (appendices C, D and E).

The main issues and messages that emerge are:

- There is an enormous number of regulations that could be benchmarked. Consequently, prioritisation (including what to cover and in what order) is essential.
- There are several ways to benchmark regulatory burdens, and a number of possible indicators that could be measured. Indirect indicators have to be used because it is difficult (and, in most cases, impossible) to measure compliance costs directly. Consequently, a suite of indicators will usually be required to provide a broader picture and signal where significant unnecessary burdens might exist.
- Despite its appeal, it is not possible to produce a composite ('meta') index to gauge the overall levels of regulatory burden on business across jurisdictions, due to measurement and interpretation difficulties.
- Existing data are limited in many areas and additional data collection would be required. In the case of administrative compliance costs, data would have to be collected directly from businesses. In other cases, government agencies would have to be involved in providing information that is not publicly available.
- Data collection and management approaches will have to be tailored to the regulations benchmarked and the indicators being used.
- Consultation with government and business in designing, measuring and interpreting specific indicators would be essential, given their knowledge of the availability and limitations of data, and because their support is needed for the results to be seen as credible.

Table 8.1 **Summary of benchmarking options**

Key components of the benchmarking process	*'Becoming and being a business' (administrative compliance burdens)*	*'Doing business' (approval processes)*	*'Doing business interstate' (duplication and inconsistency)*	*The quantity and quality of regulation*
Objective	• Compare burdens associated with paperwork and administration formalities	• Compare delays and uncertainties in regulatory approvals and resulting costs to business	• Compare duplicated and inconsistent requirements	• Measure changes in the stock of regulation and compare regulatory design, administration and enforcement against principles of best practice
Coverage	• Regulations generating substantial administrative compliance costs (for example, licences, permits, registrations, and tax and OHS regulations)	• Regulations requiring administrative approval (for example, development approvals and environmental assessments)	• Regulations that impose inconsistent or duplicative burdens on businesses operating interstate (for example, OHS regulations, building regulations and consumer protection laws)	• Regulations in all or some industries, or in a particular area
Indicator categories	• Administrative compliance costs • Difficulty for businesses in obtaining licences, permits and registrations	• Timeliness • Predictability and consistency • Administrative compliance burdens	• Duplication • Inconsistency	• General stock (total and by business type) • Regulatory design • Regulatory administration • Regulatory enforcement • Reform progress
Data sources	• Primarily business interviews (face-to-face)	• Government agencies • Expert assessment • Business interviews	• Expert assessment	• Government agencies • Expert assessment
Main caveats	• Indirect indicators • A suite of indicators should be used to interpret difficulties of obtaining licences, permits and registrations	• Indirect indicators • Quantitative indicators need to be considered in conjunction with contextual information	• Indirect indicators • Would not necessarily identify which regulatory practices are preferred	• Indirect indicators • Indicators need to be considered in conjunction with contextual information

8.2 A proposed program

Benchmarking regulatory burdens offers potentially significant benefits, but there remain a number of complexities and uncertainties. There would be much to be gained from an approach that involves some learning by doing. As such, there is merit in adopting a limited and carefully sequenced benchmarking program initially that could potentially be expanded over time. This would enable unanticipated problems to be more easily detected and managed, and allow time for the provision of necessary data from jurisdictions where this is not currently available or not in a comparable form.

It is proposed that benchmarking be undertaken for three years initially, at which point the program would be reviewed under the terms of reference for this study. In the first year of the program, it is proposed that the Productivity Commission:

- Focus primarily on benchmarking the quantity and quality of regulations that have been identified as priorities. This would provide an overall regulatory context and baseline for comparing regulatory change. The quantity of regulation could be benchmarked on a larger scale after the first three years, as resources permit.
- Limit the measurement of compliance costs to a single area of regulation, desirably one for which data are more readily available, to test approaches and methodologies and build expertise.
- Undertake preparatory work regarding other priority regulatory areas, to pave the way for subsequent compliance cost benchmarking in years 2 and 3. Indeed, there would be advantages in preparatory work commencing as early as possible. For example, were the formal program to commence in June 2007, initial groundwork and team resourcing (see below) would have to have been underway in the preceding months.

It is likely to take longer to develop indicators and metrics for more complex regulatory areas. Consequently, it would be best to schedule the benchmarking accordingly to allow for lessons and experiences from earlier benchmarking and to build data sets.

A rolling program in which key areas of regulation are re-benchmarked periodically is likely to be more cost-effective than the annual reporting of all benchmarked regulation, as it would allow more regulations to be benchmarked for the same resources and because changes in burdens are likely to take some time to become apparent. A rolling program can also be used to monitor progress where changes have occurred and reforms have been introduced.

Which regulations?

Regulations should be selected for the initial three-year program on the basis of the benchmarking offering the greatest *potential* net benefit to the community. This depends on the extent of the potential unnecessary regulatory burden imposed by particular regulations and the capacity of benchmarking to identify them and their source, and the practicality and costs of the relevant benchmarking. Other initiatives with similar goals need to be considered with a view to maximising complementarities and minimising duplication. One such initiative is the Standard Business Reporting project overseen by a committee of Australian and State Government officials (section 7.4).

Several studies on regulatory burdens have been undertaken by business groups and government agencies. They include the Red Tape Register Survey in New South Wales (SCC 2005), URS studies for the Minerals Council of Australia (MCA) (URS 2006a, 2006b), and the Regulation Taskforce report on reducing regulatory burdens on business (Regulation Taskforce 2006).

In general, the areas of greatest concern identified in such studies are consistent with most of the regulatory reform 'hot spots' identified by COAG (2006a). 'Hot spot' areas include occupational health and safety (OHS), rail safety regulation, national trade measurement, chemicals and plastics, development assessment arrangements and building regulation. Other areas in which COAG has agreed to pursue further regulatory reform include business registration, bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999*, personal property security registrations and product safety regulation (COAG 2006b).

The Commission also received a number of submissions identifying regulations that participants considered to be of high priority (box 8.1). Regulations identified in submissions as being worthy of inclusion in the benchmarking program, but not included in COAG's 'hot spot' list, included food regulations, financial services regulations, telecommunication regulations, and regulations pertaining to the medical, vocational education and training, and childcare sectors.

Box 8.1 **Examples of participants' views on benchmarking priorities**

Australian Food and Grocery Council stated:

> Food Regulation which relies on adoption by States and Territories of a Model Food Act developed by the Commonwealth, for its enforcement would be a suitable benchmarking opportunity. (sub. 3, p. 3)

National Bulk Commodities Group noted:

> That a set of qualitative and quantitative performance indicators covering such disciplines as competition, investment, skills, business environment and technology should be developed to assist the Regulator understand the commercial activity, which it regulates. (sub. 4, p. 6)

The Australian Bankers' Association stated:

> The ABA considers that corporations regulation, banking regulation and financial services regulation should be given a high priority in the regulatory benchmarking process because:
>
> — Banks and other financial services providers must deal with an extremely high level of regulation, with many entities subject to multiple regulations and regulators.
>
> — A competitive, innovative and efficient financial system is critical to the performance of the entire economy. (sub. 16, p. 5)

Child Care New South Wales noted they:

> … would prefer that coverage should seek to be more narrowly focused rather than comprehensive. Benchmarking should seek to facilitate economic and social improvement in areas of strategic significance. (sub. 11, p. 5)

Real Estate Institute of Australia listed the following regulations for benchmarking:

> (a) professional licensing (real estate agent licensing);
>
> (b) building regulation;
>
> (c) development assessment arrangements;
>
> (d) property law (ownership and title including transfer);
>
> (e) property taxation (including stamp duties and land taxes);
>
> (f) the maintenance and operation of trust accounts;
>
> (g) privacy;
>
> (h) OH&S;
>
> (i) industrial relations;
>
> (j) special property disclosures (e.g. energy efficiency, water efficiency, presence of asbestos);
>
> (k) foreign investment guidelines; and
>
> (l) trade practices / fair trading. (sub. DR31, p. 4)

Victorian Department of Treasury and Finance highlighted:

> As stated in Victoria's original submission, Victoria does not support confining coverage to COAG Hotspots. … some of these Hotspots (e.g. rail) do not impose burdens on a significant number of businesses. Victoria suggests that it would be more valuable to benchmark administrative burdens in areas such as payroll tax, stamp duties or environmental regulation. (sub. DR42, p. 2)

In addition to this information related to perceived burdens, identifying which regulations to benchmark in the first three years has been guided by whether the regulatory area:

- interacts with other regulations within or across levels of government to increase the burden on business (including reporting burdens), or adds to the compliance costs of businesses operating in a number of jurisdictions;
- is likely to involve relatively clear-cut differences in regulatory burden across jurisdictions; and
- is amenable to necessary data collection without imposing undue costs on business and government.

Having regard for such factors, and the desirability of benchmarking different types of regulatory burden, the Commission proposes the following seven regulatory areas as preferred options for inclusion in the first three years of the benchmarking program:

- *Occupational health and safety* (Commonwealth, State and Territory) — performance benchmarking of administrative compliance costs (*becoming and being a business*) and standards benchmarking of consistency across jurisdictions (*doing business interstate*). This area of regulation was identified by many participants as imposing considerable burdens on a range of businesses, and has been identified as a priority for reform by COAG (2006a) and the Regulation Taskforce (2006).
- *Land development assessment* (local government) — performance benchmarking of approval processes (*doing business*). Land development approvals were widely seen by participants in this study as a major area of regulatory concern. They were also nominated by COAG (2006a) as a 'hot spot'. They are likely to involve significant variations in compliance costs across jurisdictions.
- *Environmental approvals* (Commonwealth, State and Territory) — performance benchmarking of approval processes (*doing business*) and standards benchmarking of consistency across jurisdictions (*doing business interstate*). Environmental approvals were identified by many participants as a priority for benchmarking, and COAG (2006b) identified bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999* as a priority area for reform.
- *Stamp duty and payroll tax administration* (State and Territory) — performance benchmarking of ongoing administrative compliance costs (*becoming and being a business*). These taxes feature extensively in many business studies on

regulatory burden (for example, SCC 2005), and were identified as a priority for reform by the Regulation Taskforce (2006) and participants in this study.

- *Business registration* (Commonwealth, State and Territory) — performance benchmarking of start-up and ongoing administrative compliance costs (*becoming and being a business*). Registration processes affect nearly all businesses, and have been identified by COAG (2006b) as a priority for regulatory improvement.
- *Financial services regulation* (Commonwealth, State and Territory) — performance benchmarking of administrative compliance costs (*becoming and being a business*). This area of regulation was identified as a priority for reform by the Regulation Taskforce (2006) and was identified by many participants as a significant area of regulatory burden.
- *Food safety* (Commonwealth, State, and Territory and local government) — performance benchmarking of approval processes (*doing business*) and standards benchmarking of consistency across jurisdictions (*doing business interstate*). Food safety regulations involve all tiers of government and affect a large number of businesses. They were commonly cited by participants as an area requiring improvement and were identified by the Regulatory Taskforce (2006) as a priority for reform.

Specific indicators would be adopted for each of these regulatory areas, drawn from those outlined in chapters 4 to 7. Further consultation with governments and business would be required, however, before making final choices (section 8.3).

An indicative program for the first three years

Based on these areas of regulation, an indicative benchmarking schedule for the first three years of the program is provided in table 8.2. Further consultation with business and government may reveal the need to adjust the timing for some regulatory areas due to data availability or other practical implementation issues.

Although initially limited in coverage, all the main types of regulatory burden are included, along with the benchmarking of the quantity and quality of regulations.

As noted, the first year would involve benchmarking the quantity and form of regulation, and regulatory quality, for those regulatory areas proposed for the program. The first year would also focus compliance cost benchmarking on a single regulatory area — business registrations — for which data are more readily available.

Table 8.2 **Indicative three-year benchmarking program**

Year 1	*Year 2*	*Year 3*
Business registrations	OHS	Environmental approvals
Quality of regulations[a]	Stamp duty and payroll tax administration	Financial services regulation
Quantity and form of regulation[a]		Food safety regulation
		Land development assessment

a Regulations to be benchmarked are those identified for inclusion in the three-year program.

If major reforms occurred within the program period, consideration would be given to establishing a baseline to benchmark the progress of these reforms or, if more appropriate, selecting another area of regulation to benchmark.

In addition to benchmarking the nominated regulatory areas, the Productivity Commission would also propose cataloguing the range of regulations applying to selected business categories. This would complement the main approach of benchmarking regulatory areas and provide additional insights into cumulative compliance costs.

Beyond the initial three-year program

Over time, experience and additional studies would yield further information on regulatory burdens such that priorities for future benchmarking could be identified. Benchmarking the quantity and quality of regulations would also provide useful insights for this purpose.

In the longer term, the coverage of the benchmarking could also be expanded to include the regulations of other countries. This would broaden the comparisons and the scope to identify best practice, which would be especially helpful in benchmarking those areas of Australian Government regulation for which there are no equivalents in other Australian jurisdictions.

There are strong grounds for New Zealand being the first country to be included, given that a number of regulatory regimes are already shared with that country, and because it has comparable regulatory objectives in many areas and operates within a similar legal framework. The Australia New Zealand Food Standards Code, for example, applies in both countries and several Ministerial Councils operating in Australia include New Zealand as a member (including the Ministerial Council of Attorneys-General and the Ministerial Council on Consumer Affairs). The Trans-Tasman Mutual Recognition Arrangement, which came into operation in 1998, is

also an example of the integration of regulatory systems in Australia and New Zealand.

In response to the Discussion Draft, the NZ Government signalled its interest in potentially becoming involved in the benchmarking study:

> The Ministry considers that the inclusion of New Zealand in aspects of any future benchmarking study would add a further dimension on which to compare the nature of and need for particular regulatory burdens, and would therefore add to the level of richness in the results of the study. We would therefore like to use this short submission to convey our interest in potentially becoming involved in any study. (Ministry of Economic Development New Zealand, sub. DR41, p.1–2).

8.3 Implementing the program

Implementing the program would involve the detailed specification of indicators, and the development of data collection methods and standards. Ongoing consultation with and cooperation from government and business, as well as the provision of adequate resources, would be essential to the success of the program.

Establishing consultative and advisory mechanisms

The involvement of business and government agencies throughout the benchmarking program would be critical not only because they will need to provide data, but also because of their knowledge of the regulatory areas and relevant compliance costs, as well as about what indicators to focus on and the caveats that apply.

In addition, consultation would be useful in maintaining business and government support for the benchmarking and engendering greater confidence in the results. This in turn would be important in encouraging governments to address the opportunities for improvements identified through the benchmarking.

To give effect to these requirements, and ensure the ongoing involvement of business and governments, the Commission would propose establishing specialist advisory panels. These panels would be convened periodically to advise on aspects of the benchmarking program, assist in coordination of data provision, assist with quality control and provide a channel to report back to those they represent. They would also help ensure that benchmarking remains focused over time on generally perceived priority areas.

In particular, advisory panels could assist in the design and implementation of benchmarking in specific regulatory areas. Such advisory panels would desirably involve people with expertise in the regulatory area being benchmarked.

The Commission would also consult with governments on any preliminary benchmarking results. This would provide an opportunity for jurisdictions to comment, enable supplementary information to be added to the benchmarking reports to assist interpretation, and reduce the likelihood of errors.

Detailed specification of indicators

As set out in chapters 4–6, the number of indicators of regulatory burden that could potentially be reported is extensive. Some key ones are listed in box 8.2.

In selecting which to use, the aim would be to report a sufficient number of indicators of sufficient quality to highlight differences in regulatory burden across jurisdictions or over time, with an acceptable degree of confidence. The selection of indicators would vary depending on the regulatory area being benchmarked, with the criteria in chapter 2 being used to assess appropriateness.

Expanding the number of indicators would obviously increase the costs of such benchmarking and place further burdens on the business community itself. However, it is not clear that a large number of indicators would necessarily improve significantly the benchmarking outputs or outcomes. The Victorian Government stated:

> To be effective in driving best practice regulation, it will be important to limit the number of indicators to a relatively small set of robust measures that can be readily identified and understood by policy makers and businesses alike and can endure through time. (sub. 21, p. 9)

The appropriate number of indicators should be the minimum necessary to achieve the objectives of the benchmarking exercise for any particular regulation, having regard to the costs and benefits of indicator measurement.

Selecting and testing indicators

Proposed indicators should be tested for their robustness to ensure they measure what is intended. This could be done at a conceptual level and through empirical studies.

Box 8.2 **A sample of relevant indicators**

Becoming and being a business

- Estimated administrative compliance costs, obtained through business interviews.
- Number of licences, permits and registrations required for business; number of agencies involved; availability of online lodgement; existence of statutory time limits on processing.

Doing business

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

Doing business interstate

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

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

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

The quality of regulation

- Use of regulatory impact statement and/or business cost calculator (or equivalent) in developing regulation; complexity that requires expertise to comply; existence of a sunset clause or other review mechanism.
- Administration reporting requirements; accessibility to appeals processes; separation between regulation setting and administration.
- Degree of enforcement; existence of risk-based enforcement strategies; publication of enforcement outcomes.

Indicators should also be assessed for any incentives they might create for perverse regulatory behaviour. For example, regulatory activity could be distorted if policy makers address what is measured at the expense of other burdens that might be more important to address but are not measured. Such testing of indicators should include an assessment of an indicator on its own, and as part of a suite of indicators. Although an indicator might be potentially misleading on its own, this might be overcome if reported with a range of other indicators that provide a context for interpretation.

The approach to benchmarking some areas of regulation might have to be test run or piloted to ensure that differences in regulatory burdens exist and are identifiable. This could involve benchmarking a limited number of jurisdictions in the first instance. The experience gained could be used to refine indicators and develop data recording templates.

The case studies undertaken for this report highlight the value of undertaking such 'test runs' (see appendixes C, D and E). The preliminary measurement of a sample of indicators in the case studies was considered to form a good foundation from which more comprehensive development could be undertaken.

It is expected that there will be scope to increase the robustness of indicators over time as benchmarking techniques are refined and experience accumulates. For example, greater understanding of the relationship between indicators and empirical estimates of unnecessary burdens should develop. This learning could be further enhanced by specific research studies.

Business and government input will be important

As noted, it is important that business and governments are consulted further on indicators and their metrics before settling on those to be used. This view was supported by several participants. For example, the Australian Financial Markets Association stated:

> We suggest that further targeted consultation should be undertaken on the form of indicators that might be feasible and useful for an assessment of the regulatory burden generated by regulation specific to the financial sector. (sub. 10, p. 6)

The Australian Bankers' Association similarly noted:

> The ABA believes that a range of reporting indicators could be used to benchmark performance of business regulation. However, identifying reporting indicators is not straightforward, and as previously stated, further consultation should be undertaken on the form of indicators that might be feasible and useful for an assessment of the regulatory burden generated by regulation specific to the banking and financial services sector. (sub. 16, pp. 9–10)

The importance of consulting with business and government in deciding which indicators to measure, and how to measure them, can be gauged from the case studies undertaken for this report. As noted, it would be desirable to establish advisory panels for this purpose.

Developing data collection methods and standards

A further important preliminary task will be to attain agreement across jurisdictions on the specific methods, standards and definitions for collecting, analysing and reporting information. Otherwise, variations in reported results could reflect different definitions or collection methodologies rather than actual differences in regulatory burden.

The appropriate data collection method will depend on what is being measured, the availability of data sets and the resources available to collect additional data. For example:

- The Standard Cost Model and Business Cost Calculator frameworks could be used as a basis to measure administrative compliance costs drawing on information from reference businesses (chapter 4).
- Expert advice could be used to gather information on indicators of duplication and inconsistency (chapter 6).
- Collecting information on indicators relevant to the quantity and quality of regulation would generally come from government agencies (chapter 7).

A further investigation of existing data sources will be needed before collecting additional data. It will also be necessary to consider ways to optimise the use of existing information collection systems.

A challenge common to a number of areas will be the specification of reference businesses and the selection of such businesses for data collection. The greater the reach of regulation, and the more heterogeneous the businesses affected, the larger the number of reference businesses that will be needed. Additional work in this area appears necessary and the Australian Bureau of Statistics (sub. DR34) has signalled its willingness to assist.

Another challenge will be to manage potential selection bias in the provision of data and information. Some businesses are likely to be more willing than others to participate in interviews or other forms of data collection, and their responses may not be representative. This highlights the potential need for data validation tests and verification by independent experts.

It would be necessary to develop a data collection plan for each regulatory area benchmarked to ensure efficiency and robustness in collection, and to gain acceptance from business and government agencies (chapter 2). Data collection methods should accord with generally agreed ‘good practice’. As in all surveys, this would include the pilot-testing of data collection.

Regard would have to be had for the central clearance process operated through the Statistical Clearing House for business surveys conducted by the Australian Government (ABS 2006). The purpose of this process is to ensure that surveys are necessary, well-designed and place minimum burden on business respondents. As such, all surveys that are directed to 50 or more businesses, and that are conducted by or on behalf of any Australian Government agency, are subject to clearance by the Statistical Clearing House. The ABS administers the clearance process.

Developing data collection and reporting templates

The development of templates for inputting and reporting data for each regulatory area would also be necessary in order to:

- maintain a record of data as it is collected and in accordance with the collection methods and standards agreed (possibly involving automatic links between collection points and a central database);
- allow data verification and manipulation processes to be undertaken;
- present data and supporting information in a clear and meaningful manner (preferably with options to change the format or presentation of results); and
- enable appropriate caveats to be included to ensure readers are informed of any weaknesses in the data or where special care is required in interpreting results.

Ideally, such templates should be flexible enough to accommodate potential changes and improvements over time (especially if it is envisaged that benchmarking activities could expand in the future).

Resourcing

It emerges that even this limited program will require significant resources, both to administer the exercise and to conduct research and surveys. The Terms of Reference ask the Commission to report on the approximate costs of the activities involved in such benchmarking.

Information available from related exercises overseas and within Australia reveal a wide range of budgetary costs (table 8.3). Compared to the relatively expensive UK and Dutch programs, however, the one proposed by the Commission would involve much lower costs.

Table 8.3 **Costs of studies measuring regulatory burdens**

Study	*Key features*	*Approximate cost*
SCM (Netherlands)	• Measured administrative compliance costs only • Covered regulations managed by five regulatory departments	• €10 million (approximately A$15 million) for creating a regulatory list and measuring burdens for existing regulation (measurement required 15 consultants working for six months on each of the main regulatory departments) • €5 million (approximately A$8.4 million) per annum for ongoing measurement over five years
SCM (United Kingdom)	• Measured administrative compliance costs only • Covered regulations managed by 20 departments and other independent regulatory agencies	• £15 million (approximately A$35 million) for creating a regulatory list and measuring burdens for existing regulations • £4 million (approximately A$10 million) per annum for ongoing measurement over five years
Reporting on planning permit activities (Department of Sustainability and Environment, Victoria)	• Generated reports on reference types of planning activities across Victoria • Indicators included number of applications and time taken in processing	• A$1.5 million budgeted over three years (for development of strategy, software changes to council systems, reporting system and staff costs) • A$300 000 per annum as ongoing costs
General Accounting Office (United States)	• Estimated the cumulative cost to business of US federal regulations • Face-to-face interviews with 15 businesses over 1994–96	• US$300 000–400 000 (approximately A$390 000–520 000)
The Victorian Regulatory System (Victorian Competition and Efficiency Commission, Victoria)	• Assessed Victoria's regulatory environment • Information included number of licences, number of Acts and regulations, key performance indicators of regulators and enforcement strategies	• A$100 000

Sources: BRTF 2005; GAO 1996; DSE 2006; VCEC 2005; VCEC pers. comm., 14 November 2006. See also chapters 3, 5 and 7.

Unlike studies of regulatory burden in the Netherlands and the United Kingdom the benchmarking of administrative compliance costs suggested in this report only covers a small number of key regulatory areas over a period of three years. In

addition, the intention is not to identify the aggregate administrative compliance costs for all businesses across the jurisdictions.

That said, the proposed benchmarking covers several types of regulatory burden (not solely administrative compliance costs as in the Netherlands and the United Kingdom), and encompasses three tiers of government. These differences would have the effect of increasing some costs for the suggested benchmarking compared with the overseas studies. Nevertheless, the cost implications of these differences would be small compared to the additional costs associated with the more extensive measuring of administrative compliance costs undertaken in the overseas studies.

Insights on the possible costs of benchmarking can also be gained from the Productivity Commission's work as secretariat to the Steering Committee for the Review of Government Service Provision. Although not strictly a benchmarking exercise, the Review reports performance indicators for key services delivered by governments in Australia. Approximately 14 areas are reviewed (including school education, public hospitals, community services and court administration) with approximately 20 indicators developed for each area (on average). The Productivity Commission's costs (largely staff- related) were approximately $2 million in 2006.

The benchmarking program proposed here is less extensive, but it is technically challenging, and would involve a process of identifying objectives, determining accurate and reliable indicators, identifying compliance activities, and collecting information (including new survey-based data) and reporting results that are robust and appropriately qualified. As noted, extensive consultation with government agencies and businesses would be required.

Having consideration for what is involved, and drawing on the costs of other studies and the Productivity Commission's experiences in undertaking case studies, it is estimated that the proposed benchmarking program would require a team of approximately 10 staff at a cost of around $1.5 million per year (including on-costs).

Survey costs are expected to be significant because collecting data on administrative compliance costs through direct interviews with reference business is relatively expensive per respondent, even though the number of firms would be contained. This component of the costs of running the program is difficult to estimate in advance. Interviews are likely to be relatively complex and each are expected to take approximately two to three hours to complete. Allowances also have to be made for preparation work, travel expenses, editing and possible follow-up. The Commission's preliminary estimate is that survey and related costs could amount to over $1 million annually.

Although experience will reveal more precisely the costs, it is therefore anticipated that a total budget of $2–3 million per annum would be necessary to administer the proposed benchmarking program.

These estimates do not include the resource requirements on governments to assist the process through consultations, and data collection and provision. These costs could be significant for some benchmarking, such as collecting data on approvals processes. There would also be costs for those businesses and business associations participating in consultations and surveys. Adequate resources and commitment from all parties involved would be essential if the benchmarking exercise is to be successful.

8.4 The Commission's proposals in brief

In sum, the Productivity Commission concludes that the benchmarking of regulatory burdens across jurisdictions, although presenting significant challenges, is feasible and would complement other current initiatives to monitor and reform regulations. Indeed, it would help governments and the community to evaluate existing reform efforts and identify where additional reforms are needed. Therefore, although such benchmarking can only be indicative, it should provide a useful basis for more in-depth investigations.

Drawing on its own analysis, together with helpful input and feedback from government, business and other participants, the Commission is proposing for COAG consideration a benchmarking program comprising the following key elements:

- In the first three years, compliance costs, and the quantity and quality of regulation, would be benchmarked across jurisdictions for a limited number of regulatory areas.
- Compliance costs to be benchmarked would include those relating to establishing and running businesses *within* jurisdictions as well as *across* jurisdictions.

- The regulatory areas proposed to be benchmarked and their possible sequencing are as follows:

Year 1	*Year 2*	*Year 3*
Business registrations	Occupational Health and Safety	Environmental approvals
Quality of regulations	Stamp duty and payroll tax administration	Financial services regulation
Quantity and form of regulation		Food safety regulation
		Land development assessment

- The Commission would consult further on methodology and data availability in year 1 and before finalising the structure of the program in years 2 and 3.
- The choice of specific indicators to use would be made in consultation with governments and relevant business groups, drawing from those identified in this report.
- The Commission would establish specialist advisory panels to assist it in these activities, comprising representatives of governments and relevant businesses.
- Preliminary results would be made available to governments to provide opportunities for scrutiny and comment. There could also be provision for each jurisdictions to include a commentary in the Commission's reports.
- The first report would be provided 12 months after commencement of Stage 2.
- At the completion of the initial three-year program, an evaluation report would be prepared for consideration by governments. It would include any suggestions for modifying the benchmarking, or extending it to additional areas of regulation or to other countries.

This package necessarily entails a degree of flexibility, with scope for it to be modified in the light of experience. The Commission would ensure that governments and business were consulted closely through its advisory panels as the exercise proceeds. Ultimately, however, the utility of regulatory benchmarking will crucially depend on governments' commitment to it and on the extent to which they utilise the results.

A Public consultation

A.1 Submissions

Participant	*Submission number*
Atherton Advisory Pty Ltd	9 *#
Australian Bankers' Association Inc.	16, DR39
Australian Bureau of Statistics	DR34
Australian Financial Markets Association (AFMA)	10, DR30 #
Australian Food and Grocery Council	3
Australian Privacy Foundation	6
Business Council of Australia	13, DR35
Canberra International Airport	12 *#
Child Care New South Wales	11, DR33
Communications Alliance Ltd	19, DR32
Confidential — identification withheld	23 *
CRC Construction Innovation	27
Dr George Gilligan	DR36
Finance Industry Council of Australia (FICA)	17
Government of Western Australia	26
Institute of Body Corporate Managers (Victoria) Inc.	1
Insurance Council of Australia Limited	18 #, DR40
Medical Industry Association of Australia	DR29
Minerals Council of Australia	28, DR37
Ministry of Economic Development NZ	DR41
Mr David Price	2
Mr Steve Hyam	DR43
National Association of Retail Grocers of Australia (NARGA)	22, DR38 #
National Bulk Commodities Group Inc.	4
Percat Group Pty Ltd	5 #
Property Council of Australia	25 *#
Real Estate Institute of Australia	8 #, DR31
Securities & Derivatives Industry Association	7
Tasmanian Government	24
The Chamber of Minerals & Energy of Western Australia	20
The Pharmacy Guild of Australia	14
Urban Development Institute of Australia (Victoria)	15 #
Victorian Department of Treasury and Finance	21, DR42

* Indicates the submission contains confidential material not available to the public. # Indicates that the submission includes attachments.

A.2 Visits

New South Wales

ABL State Chamber

Australian Securities and Investment Commission (ASIC)

Property Council of Australia (PCA)

NSW Government — representatives from the Cabinet Office — Intergovernmental & Regulatory Reform Branch, NSW Treasury, Department of Primary Industries, Department of State and Regional Development

Victoria

Business Council of Australia (BCA)

Department of Justice, Consumer Affairs Victoria

Minerals Council of Australia (MCA)

Stenning & Associates Pty Ltd

Urban Development Institute of Australia (UDIA)

Victorian Government — representatives from the Department of Premier and Cabinet, Department of Treasury and Finance

Queensland

Commerce Queensland

Queensland Resources Council (QRC)

Queensland Government — representatives from the Department of the Premier and Cabinet, Queensland Treasury, Department of State Development and Trade

Western Australia

Chamber of Commerce and Industry of Western Australia

Small Business Development Corporation

Western Australian Government — representatives from the Department of the Premier and Cabinet, Department of Treasury and Finance

South Australia

Business SA — representatives from the Australian Hotels Association (South Australia), Property Council of Australia (SA)

South Australian Government — representatives from the Department of the Premier and Cabinet, Department of Treasury and Finance, Department for Transport, Energy and Infrastructure, Department for Families and Communities, Department of Justice, Department of Trade and Economic Development, Department for Environment and Heritage, Planning SA

Tasmania

Human Solutions Pty Ltd

Tasmanian Chamber of Commerce and Industry

Tasmanian Government — representatives from the Department of Premier and Cabinet, Department of Treasury and Finance, Department of Economic Development, Department of Health and Human Services, Department of Primary Industries and Water

Australian Capital Territory

ACT Government — representatives from the Chief Minister's Department, Department of Treasury

Australian Chamber of Commerce and Industry (ACCI)

Australian Food and Grocery Council (AFGC)

Australian Local Government Association (ALGA)

Housing Industry Association (HIA)

Australian Government

Australian Bureau of Statistics (ABS)

Australian Government — representatives from the Department of Prime Minister and Cabinet, Department of Treasury, Department of Industry, Tourism and Resources — Office of Small Business

Department of Environment and Heritage

A.3 Roundtables on the Discussion Draft

Private sector (11 December 2006, Melbourne)

Australian Chamber of Commerce and Industry

Australian Financial Markets Association (AFMA)

Business Council of Australia

Child Care New South Wales

CRC Construction Innovation

Institute of Body Corporate Managers (Victoria) Inc.

Minerals Council of Australia

National Association of Retail Grocers of Australia (NARGA)

Property Council of Australia

Real Estate Institute of Australia

Stenning & Associates Pty Ltd

Public sector (12 December 2006, Melbourne)

Australian Bureau of Statistics

Australian Local Government Association (ALGA)

Australian Securities and Investment Commission (ASIC)

Australian Taxation Office

Cabinet Office NSW

Department of Industry, Tourism and Resources (Australian Government)

Department of Premier and Cabinet (Vic)

Department of Prime Minister & Cabinet

Department of State Development and Trade (Qld)

Department of Trade and Economic Development (SA)

Department of Treasury (ACT)

Department of Treasury and Finance (Vic)

Victorian Competition and Efficiency Commission (VCEC)

B Theory and practice of composite performance indexes

Key points

- In principle, composite performance indexes can provide a succinct account of performance in different aspects and are useful for communicating the bottom-line impact of performance improvement to a wide audience.
- In practice, no conventional composite index is perfect because the measurement of overall performance is likely to be affected by the choice of ways to transform and aggregate the original indicators.
- Prudent use of composite indexes requires an understanding of their strengths and weaknesses, as well as employing multivariate statistical methods to objectively combine indicators into a single index.
- There are numerous empirical and theoretical problems in an aggregation of the indicators proposed in this study. As such, it is inadvisable to produce a composite index to gauge the relative overall levels of compliance burden on business across the States and Territories in Australia.

Some study participants expressed interest in an index to compare regulatory performance across the States and Territories in Australia, similar to the annual Ease of Doing Business Index produced by the World Bank for ranking countries in terms of their performance in streamlining business regulation.

Indeed, aggregating performance indicators into composite indexes is a common way to summarise information on different performance aspects. For example, there are many cross-country indexes compiled by international organisations to gauge social, economic and environmental progresses. In these applications, an aggregative approach to cross-jurisdictional comparisons is used to produce 'league tables'.

The theory and practice of composite performance indexes are explored in this appendix. An overview of the rationale and issues for using a single index to assess overall performance is presented in section B.1. The methodological foundation of composite indexes is discussed in section B.2. The feasibility of aggregating the proposed indicators into a single index is discussed in section B.3.

B.1 Why aggregate indicators?

Benchmarking the burden of regulation compliance across jurisdictions involves measuring and comparing representative indicators of the major cost effects associated with business regulation (chapter 2). Using multiple indicators is typically required to describe broad performance profiles of regulatory regimes because:

- regulation practices affect compliance burden in different ways;
- legal reporting requirements include numerous cost and performance measures;
- reliance on existing data sources for practical reasons means that a variety of performance indicators reflecting different scopes and purposes of measurement are used; and
- difficulties in directly measuring compliance costs make it necessary to identify certain characteristics of regulatory regimes as surrogates for their effects on compliance burden.

Although many indicators are usually used for a comprehensive benchmarking exercise, they do not readily lend themselves to a simple convenient comparison of performance. Individual indicators do not necessarily have clear and observable relationships with the actual level of incremental compliance burden. Some of them are possibly measuring inherently similar performance attributes, while others can be contradictory.

Various sources of 'noise' in data can obscure the true 'signal' from a set of indicators. When this is the case, ambiguity and inconsistency, as opposed to a lack, of indicators would be the primary barrier to performance comparisons.

In principle, performance indicators can be made more useful by transforming them into 'structured' information to convey a precise and succinct account of performance, particularly from a decision-making perspective. To this end, a composite index is valued for the ability to distil essential information from multiple indicators by addressing the potential for duplicate, inconsistent and imprecise measurement of performance.

Composite indexes, if constructed appropriately, represent the synthesis of information using mathematical methods instead of a generic thought process. In essence, the use of composite indexes is based on the premise that summary statistics capture the most critical information needed for analytical and decision-making purposes (Sharpe 2004).

A useful aspect of structured information is the ability to address potential measurement errors. Stochastic indexing techniques enable margins of error around individual indicators to be estimated. By adjusting for statistical errors, a composite index is potentially a more accurate measure of performance than any of its constituent indicators. It is also possible to determine the degree of confidence in estimates of comparative performance.

Another key advantage of using a composite index is that it can communicate the bottom-line impact of performance improvement to a wide audience. Its aggregative nature simplifies the comparison of jurisdictions over different performance aspects. It may be easier to interpret a single index than to find a common thread in many separate indicators. Consequently, composite indexes can provide an effective means to garner media interest as well as attention of policy stakeholders and the community at large.

Notwithstanding their advantages, composite indexes can be misleading if poorly constructed and inappropriately interpreted. Information embodied in a set of performance indicators can be lost or distorted in a single index. A common objection to using composite indexes is related to what is seen by some as the arbitrary, value-laden weighting process by which separate indicators are combined. Indeed, numerous methodological and conceptual issues need to be addressed in order to develop consistent and meaningful composite performance indexes (box B.1).

On the appropriate use of composite indexes, the Organisation for Economic and Co-operation Development (OECD 2003b, p.3) cautions that:

> At a minimum, all composite indicators should be as transparent as possible and provide detailed information on methodology and data sources. They should always be accompanied by explanations of their components, construction, weaknesses and interpretation.

Moreover, Nardo et al. (2005, p.7) make the point that:

> … composite indicators should never be seen as a goal *per se*. They should be seen, instead, as a starting point for initiating discussion and attracting public interest and concern.

Box B.1 **Pros and cons of composite performance indexes**

Reflecting their strengths, composite performance indexes:

- cut through the complexity of multi-dimensional performance issues in support of decision making;
- lead to a reduced list of indicators by identifying duplicate measurement of specific performance attributes;
- enrich the information available from separate indicators by identifying the underlying data structure and interaction effects between them;
- provide a 'big picture' of various performance aspects;
- facilitate cross-jurisdictional and, to a lesser extent, over-time comparisons of performance; and
- help raise public interest in promoting performance improvement and accountability.

Reflecting their weaknesses, composite performance indexes:

- invite simplistic policy conclusions if used in isolation with the constituent indicators;
- send misleading messages if poorly constructed or misinterpreted; and
- can be biased — for example, through selecting indicators and weights in favour of a particular regulation practice — if they are not based on transparent compilation procedures and sound statistical principles.

Source: Nardo et al. (2005).

B.2 Methodological foundation

A conventional composite index applicable to combine a given set of *n* performance indicators can be expressed in mathematical terms as:

$$I = \sum_{i=1}^{n} \omega_i x_i, \qquad \text{(B.1)}$$

where:

x_i = normalised value of the indicator $i = 1, ..., n$; and

ω_i = weight attached to x_i, with $\sum_{i=1}^{n} \omega_i = 1$.

Normalising indicators

If all indicators are measured in the same unit, they can readily be aggregated with equal weights (that is, $\omega_i = 1/n$). For example, with performance aspects all measured in dollar terms, the composite index would represent an aggregate of monetary costs or benefits.

In more general cases, individual indicators are likely to be measured in different units that are incommensurate with one another. They then have to be converted, or *normalised*, before aggregation.

Normalisation is a statistical procedure to remove the dependence of measurement on particular scale units and, thereby, provide a common basis for aggregation. In some cases, normalisation also facilitates controlling the effect of outlier data on comparative performance as well as correcting for data quality and randomness problems.

There are a number of techniques for normalising performance indicators (Booysen 2002; OECD 2003b, 2005), including:

- standard deviation from mean: $\frac{\text{actual value - mean value}}{\text{standard deviation}}$;
- distance to best performance: $\frac{\text{actual value}}{\text{maximum value}}$;
- distance to average performance: $\frac{\text{actual value}}{\text{mean value}}$;
- distance to best and worst performance: $\frac{\text{actual value - minimum value}}{\text{maximum value - minimum value}}$;
- categorical scaling by numerical, percentile or qualitative classes; and
- ranking by actual value.

The above techniques involve converting raw indicators into unit-free measures. They also reduce the variance in performance measured by each indicator after normalisation. Apart from these common features, each technique has its own advantages and disadvantages.

With the standard deviation technique, all normalised indicators have a zero mean and a unitary standard deviation. This helps minimise sensitivity of the composite index to the mean values of individual indicators. However, for indicators with a skewed distribution of values, any presence of outlier data could artificially increase the significance of such indicators (independent of the weights ω_i) in the composite index.

The distance-based techniques are computationally simpler because they do not require calculating standard deviations. This makes the techniques suitable for small samples. However, they are mostly based on range values (minimums and maximums) which could be unreliable outliers.

Where indicators are normalised in relation to their maximum and minimum values, the range of values within the data acts as an implicit weight, adding to and, hence, potentially distorting the explicit weight ω_i . The wider the minimum and maximum are apart, the greater is the implicit weighting of a particular indicator and vice versa. For widely dispersed data, it may therefore be advantageous to employ only maximum values or, better still, mean values as the basis of normalisation. Nevertheless, the indicators would then lose the advantage of being scaled in relation to a measure of data dispersion.

The categorical scaling technique converts indicators to suit perception-based ratings of performance, or to smooth data variations that are considered immaterial for comparative performance. This technique is characterised by a high degree of subjectivity as the scales and the thresholds are by and large arbitrary. It also omits information on the variance of performance across comparators.

Categorical scaling by percentile classes forces unequal class intervals onto data that show little variation. As a consequence, comparators rated in the bottom or the top of the range would be less comparable than those rated in the middle range in regard of particular performance aspects.

Ranking is probably the simplest and most used normalisation technique. It is not affected by outliers. However, with this technique, performance cannot be evaluated in absolute terms as information on levels is lost after normalisation.

Assigning weights

The objective of weighting indicators is to ensure that the composite index has the strongest possible relationship with the broader outcome of improving performance. Under the conventional aggregation approach, the weights should reflect the relative significance of respective indicators in comparative performance. Several options for weighting are possible:

- equal weights;
- judgemental weights; and
- statistical weights.

Equal weights are used often for the sake of simplicity rather than theoretical or empirical reasoning. It is sometimes assumed that individual indicators have the same degree of significance and equal weights are applicable. A drawback of equal-weighting is the risk that certain performance aspects are over-weighted (hence, with certain other aspects under-weighted) due to duplicate measurement by two or more indicators.

Alternatively, without weighting, the composite index is calculated as a simple sum of the indicators. Nevertheless, this approach is equivalent to equal-weighting.

Judgemental weights can be assigned on the basis of expert opinions, policy priorities, or stakeholder interests. Sources of such weighting information include opinion surveys, policy statements and performance agreements. To some extent, judgemental weights are useful for aligning the composite index with the relative desirability of particular performance outcomes. However, they are open to 'gaming' and political interference in performance comparisons.

Multivariate statistical methods present an empirical, relatively objective and theoretically tenable option for weight selection. Some of these methods allow judgemental weights to be incorporated through the imposition of parameter restrictions. Broadly, statistical weighting methods fall into four groups applicable to identify, respectively:

- the statistical correlations between the indicators;
- the statistical errors in indicator values;
- the causal effects of individual indicators on the composite index; and
- the specific performance benchmarks for individual comparators.

For the first group, the main task is to maximise the independence of information represented in the composite index. Strongly (weakly) correlated indicators are conceived as conveying overlapping (distinctive) information and, accordingly, each assigned a low (high) weight. Alternatively, the indicators can be consolidated into a smaller set of components that capture a majority of the variations in the original indicators. Examples of this approach include *principal components analysis* and *factor analysis*.

The reliability of a composite index can be improved by giving greater (smaller) weights to indicators measured with data of a higher (lower) degree of quality or availability. Data quality is affected by measurement errors, perception ambiguity and judgement inaccuracy in data sources. Missing indicator values affect data availability, necessitating the use of *ad hoc* or model-based imputation methods to

complete the data set. *Unobserved components analysis* is a typical example of this approach of relating indicator weights to data reliability.

With the aid of an explicit theory on performance drivers or a reference sample of performance data, it is possible to identify and estimate a causal relationship between the indicators and an independent variable on performance. Under this approach, statistically significant (insignificant) indicators are conceived as strongly (weakly) contributory to the composite index and weighted accordingly. For example, Cartwright, Mussio and Boughton (2006) have applied *structural equation modelling* techniques to produce aggregation weights in a composite index.

The same set of weights can be assigned to individual indicators for all the comparators included for performance benchmarking. This is the case in the first three groups of weighting methods listed above, which assume that a single performance benchmark is relevant to comparative performance. Some other statistical methods are more flexible about weighting assumptions as they let the data decide on the most favourable weights for each comparator.

Composite indexes can be constructed using jurisdiction-specific weights to take into account the effects of peer characteristics on performance, rather than dictated by a universal benchmark. Under this approach, performance comparisons are guided by the 'benefit of doubt' principle. Comparators are grouped based on the similarity of their measurements on particular indicators. This approach is exemplified by *data envelopment analysis*.

Aggregating weighted indicators

A variety of aggregation methods are applicable. Linear aggregation (as expressed in equation B.1) is common, but other more sophisticated index functions have also been used, such as geometric aggregation:

$$I = \prod_{i=1}^{n} x_i^{\omega_i} . \qquad \text{(B.2)}$$

Generally, aggregation is based on the assumption of no interaction effect — synergy or conflict — among the indicators (Munda and Nardo 2003). That is, the relative contributory effects between any two indicators on the composite index are independent of all the other indicators. Providing that the indicators are mutually preferentially independent, there exists an underlying pattern of performance tradeoffs. Accordingly, a shortcoming in one performance indicator can be compensated by an advantage in another (box B.2).

Box B.2 **Combining non-compensatory performance indicators**

The aggregative approach to composite indexing relies on a compensatory logic that is contrary to the basic idea of assigning 'weights' as measures of *importance*. Indeed, an indicator might hardly seem to be important if it can be infinitely offset by some other indicator(s).

If a set of indicators are considered important for comparative performance, they should be combined using a multi-criteria framework to preclude compensability. This is usually the case when contextually different aspects are to be summarised by means of a composite index.

To combine non-compensatory indicators, a feasible mathematical ranking approach would include the following steps:

- make pair-wise assessment of relative performance between comparators on each of the indicators;
- for each pair of comparators, obtain a weighted measure of performance superiority based on the greatest number of indicators by which a particular comparator outperforms the other;
- for each possible rank order list of the comparators, add up their pertinent measures of performance superiority to form a rank score; and
- equate the final rankings of the comparators to the rank order list that has the highest rank score.

This approach permits indicators to have different ordinal (ranking) measurement units. As such, the indicators do not have to be normalised and their weights reflect 'importance coefficients' (as opposed to tradeoff rates). A drawback though is that quantitative information on the magnitude of performance differences is only partially used.

Sources: Munda and Nardo (2003); OECD (2005).

For performance differences to be quantifiable, indicators must be calibrated to reflect the *magnitude* — not just ordering — of performance. With such quantitative indicators, the weights express the tradeoff rates between various substitutable performance aspects. The tradeoff rates are constant in linear aggregation and vary with indicator values in other aggregation forms. Further, they can be assigned to be uniform or differing across comparators.

Impossibility of perfect composite indexes

For a composite index to be entirely consistent and reliable, the calibrations and rankings of comparative performance must be unaffected by the choice of ways to express and transform the original data. In principle, this requires compatible

normalisation and aggregation methods to be used for particular types of performance data.

Unfortunately, no conventional indexing technique is perfect for combining performance aspects measured in different incommensurable units (Ebert and Welsch 2004). In particular, linear aggregation does not yield entirely valid composite indexes in most cases.

Performance data measured in ratio-scaled units — which provide meaningful interpretations for both differences and ratios between any two unit values, such as dollar cost and elapsed time — can be coherently aggregated only by using a geometric function. In addition, to preserve relativity of ratio-scaled values, the indicators must be normalised by multiplicative functions defined as:

$$x_i = \alpha_i X_i \,, \tag{B.3}$$

where for the indicator $i = 1, ..., n$, X_i denotes original values, x_i normalised values, and α_i a positive parameter.

Among the aforementioned normalisation methods, 'distance to best performance' and 'distance to average performance' are the only transformations capable of removing the scale effect from ratio-scaled data without distorting the composite index.

For qualitative indicators including those normalised by a categorical scaling or ranking method, Arrow's (1963) impossibility theorem suggests that there is no perfect design to guarantee an entirely consistent and meaningful composite index, regardless of whether or not the indicators are compensatory.

In sum, composite indexes can have significant weaknesses reflecting the violation of some desirable mathematical properties in an aggregative approach to benchmarking performance.

B.3 Feasibility of aggregating the proposed indicators

The indicators proposed in this study are aimed at providing a broad view of diverse sources of compliance burden imposed by regulators on business (chapters 4 to 7). To assess whether or not these indicators can feasibly be combined into a composite index representing the state of regulatory burden, an evaluation of their structural relationships was undertaken.

As summarised in chapter 8, it is proposed to benchmark regulatory burden in five different ways, namely measuring:

- three types of burden — becoming and being a business, doing business, and operating across jurisdictions; and
- two attributes of potential regulatory capacity — quantity and quality.

Each of these tasks involves using multiple indicators which could potentially be aggregated into a sub-index:

- For particular types of burden, sets of indicators are used to represent performance metrics that are influenced by or correlated with businesses' efforts to comply with specific regulations. These indicators directly gauge the outcome of streamlining business regulation.
- For particular attributes of regulatory capacity, sets of indicators are used to represent potential determinants of compliance burden. These indicators are based on specific principles of best-practice regulation and strategic approaches to regulatory reform. They do not necessarily have a direct relationship with compliance burden. For example, a new regulation may not bring additional compliance burden if it is enacted with sufficient improvement in the design and enforcement processes.

The construction of an overall index involves an intermediate step in which the results from various types of benchmarking are combined. In this context, the composite index represents an aggregation of sub-indexes and is typically referred to as a 'meta' index.

There are a chain of relationships that link an empirical aggregate index measure to the underlying level of regulatory burden in a particular State or Territory. These relationships hold the key to whether a meta index will provide consistent and meaningful measurements of regulatory burden across jurisdictions and over time.

Specifically, the feasibility of constructing a useful composite index depends on:

- the causal effect between the level of regulatory burden and each type of benchmarking;
- the empirical association between each type of benchmarking and the pertinent indicators; and
- the methodological basis of aggregating component indicators or sub-indexes.

The types of benchmarking were identified to reflect both a business and a policy perspective on the significance of compliance burden. They are strongly supported by survey evidence and industry feedback on the substantial cost implications of compliance with particular regulations. Further, they cover core aspects of activity that are fairly typical of the business sector as a whole. As such, they could theoretically provide a comprehensive platform for developing relevant and

representative measures of compliance burden. Consequently, it is reasonable to conclude that the types of benchmarking proposed in this study are coherently linked to the goal of identifying compliance burden differences that are indicative of the levels of unnecessary burden across jurisdictions.

The selection of feasible indicators for each type of benchmarking crucially affects how well the causal effect is empirically measured. Without careful selection and measurement of component indicators, the composite index will lack relevance and reliability, even if it has a sound methodological basis.

An important distinction needs to be drawn between a particular set of indicators and the type of benchmarking that they are intended to represent. Ideally, each indicator should be well defined, accurately measured and consistently related to compliance burden. Nevertheless, measurement and other data errors could lead to imprecise empirical relationships between a type of benchmarking and its pertinent indicators. Moreover, a lack of systematic evidence on such relationships could increase the chance of selecting 'weak' or irrelevant indicators, particularly when anecdotal measures are used.

In this study, the selection of indicators reflects a compromise between certain selection criteria as discussed in chapter 2 and the availability of data from cost-effective sources. This facilitates the prudent strategy of initially adopting a modest benchmarking program with the use of many readily available indicators, which are mostly indirect measures of compliance burden. However, the current state of data availability is characterised by fragmented sources and inconsistent definitions. Therefore, standardisation of data is necessary to ensure quality, coherence and comparability of the indicators proposed.

As part of a broader strategy for developing the benchmarking program, studies should subsequently be undertaken to improve the indicators in respect of their metric design, data collection, and empirical linkage to compliance burden. Further studies could also provide guidance for identifying and removing redundant and *ad hoc* indicators. Before such improvements become possible, the indicators currently proposed and their associated data sources are unlikely to offer an adequate basis for constructing a sound index of regulatory burden.

With a given set of feasible indicators, appropriate weighting is essential for a meaningful and interpretable aggregation of them. As discussed in section B.2, weights should be assigned to individual indicators in accordance with their statistical accuracy, strength of linkage to compliance burden, and preference value to stakeholders.

There are numerous barriers to meaningfully aggregating the indicators proposed:

- There is a lack of information on business demographics, particularly coverage and cost impacts of specific regulations. Such information is required for evaluating the relative significance of individual indicators and, hence, their weights in the composite index.
- There is a limited number of observations, particularly longitudinal data, hindering any application of rigorous statistical weighting techniques.
- There is no consensual basis for aggregating perception-based qualitative indicators. For example, regulatory quality has a normative dimension that is contingent upon differing regulatory options and reform principles in individual jurisdictions.
- The current state of data availability does not fully support a systematic measurement of compliance requirements *across all jurisdictions* because of data inconsistency and incompleteness.
- The diversity of data sources and collection methods renders it difficult to compare statistical property *across all indicators*. For example, information collected from specific reference businesses tends to be less representative of the business sector compared with that obtained through a more costly means of statistical sampling. There is no sound statistical basis for combining such diverse sources of information.
- The many indicators proposed for each type of benchmarking mean that the composite index could contain too many components for a useful interpretation. For example, an index that allows for tradeoffs between indicators can be insensitive to data measurement given a proportionately small weight assigned to each indicator. On the other hand, an index built on the 'benefit of doubt' principle can have low discriminatory power because any jurisdiction can match the best overall performance in some aspects by out-performing other jurisdictions in one or a few indicators (section B.2).

Given numerous problems associated with the development of feasible indicators and composite weights, no single index of regulatory burden can provide a reliable and useful 'pointer' — that is, indicating levels of compliance burden and what needs to be done to improve regulatory performance.

That said, some aggregation problems might be mitigated through a rolling program as proposed in this study to progressively validate, improve and consolidate indicators. Until such improvements are possible, it is inadvisable to produce a composite index for comparing regulatory environments between the States and Territories in Australia.

C Case study 1 — restaurant and cafe licensing

Starting a restaurant or cafe was used as a case study to investigate the feasibility of benchmarking administrative compliance burdens associated with becoming a business (chapter 4). The registration of restaurants and cafes in Australia is briefly described in section C.1. The benchmarking approach adopted for the case study is outlined in section C.2. The case study results are presented in section C.3, with lessons learnt summarised in section C.4.

C.1 Background

The Australian restaurant and cafe sector is subject to a wide range of regulations imposed by all levels of government. For example, prospective owners have to obtain a large number of licences, permits and registrations to set up a restaurant or cafe. Restaurants and cafes are also subject to regulations that apply to businesses more generally, including in the areas of taxation, employment and environmental amenity.

Licences, permits and registrations are key instruments used by governments to ensure compliance by businesses with regulatory objectives. Some of these instruments applying to the establishment of a restaurant or cafe business are examined in this appendix.

C.2 Benchmarking approach

Indicators of the number of administrative compliance activities and the difficulty for businesses of obtaining licences, permits and registrations were measured for two local government authorities (jurisdictions A and B) located in different States. It was not possible to undertake personal interviews to measure administrative compliance costs in the time available.

The identification of administrative compliance activities is a prerequisite to conducting face-to-face interviews with businesses that have the characteristics of

the chosen reference business. As such, the case study provides a basis for investigating all but the quantification of administrative compliance costs.

Data availability and collection

The Business Licence Information Service (BLIS) online licensing information facility was used to identify licences required to establish a new restaurant or cafe in a given geographic location.

It is necessary to identify the administrative compliance activities that would be undertaken by a new restaurant or cafe business prior to any benchmarking. The BLIS system can be used to identify these for a business with particular characteristics.

The typical characteristics of a business in the restaurant and cafe sector (box C.1) were examined to establish a hypothetical reference business. The business was assumed to:

- operate as a company;
- lease their premises, and reconfigure it to suit their requirements;
- pay relevant taxes, duties and levies;
- employ staff, including apprentices and trainees;
- sell, store and serve liquor;
- generate trade waste;
- provide outdoor dining facilities for customers;
- erect signs, advertise or conduct promotions in order to attract customers; and
- have background music played on the premises during opening hours.

Having identified the characteristics of a new restaurant or cafe, data and information necessary to compare the results of relevant indicators were obtained. Licence application forms and associated policy guidelines were sourced from various government agency websites, including the BLIS system. These sources were used to determine the requirements and activities likely to generate administrative compliance costs.

For the indicators relating to the difficulty for businesses of obtaining licences, permits and registrations, it was possible to obtain information from licence application forms, as well as relevant legislation and agency websites.

Box C.1 **Key characteristics of businesses in the restaurant and cafe sector**

According to the Australian Bureau of Statistics (ABS), at the end of the 2004 financial year there were roughly 13 300 restaurant and cafe businesses operating in Australia (ABS 2004). Three-quarters of these businesses (including caterers) were located in metropolitan areas.

According to survey data provided by Restaurant and Catering Australia (RCA), about 51 per cent of businesses are private companies (RCA 2006). Around one-third of restaurant and catering businesses are operated by sole traders or partnerships.

The restaurant and cafe sector is populated predominantly by small businesses. ABS statistics reveal that the majority (around 63 per cent) of restaurants, cafes and caterers employed less than ten persons. Similarly, according to the RCA, 91 per cent of all restaurants and cafes employ less than 20 staff.

The sector is also comprised of a large casual workforce, accounting for over half (about 53 per cent) of all employment in the sector (ABS 2004).

Caveats

It is important to consider a number of caveats in the derivation and interpretation of the reported results:

- It is assumed that, for each given licence, the policy objectives of regulation underpinning licence conditions are similar across jurisdictions.
- For licensing process indicators, it was assumed that there is a positive relationship between the number and duplication of licence provisions and the administrative compliance burdens imposed on business.
- It was not possible to present data and information for all relevant licences in the surveyed jurisdictions because of a lack of readily available information for some administrative compliance activities. However, it is expected that such information could be obtained.
- The results are of an indicative nature, and should not be construed as being representative of the administrative compliance activities that are faced by businesses in the restaurant and cafe sector.
- Occupational health and safety and workers' compensation requirements were excluded from this analysis.

C.3 Results

Indicators of the difficulty for businesses of obtaining licences, registrations and permits, as listed in table 4.2, were measured. The results for the two jurisdictions are presented in table C.1. All licences, permits and registrations pertaining to establishing a restaurant or cafe were considered.

Table C.1 **Indicators of the difficulty for businesses of obtaining licences, permits and registrations — Restaurant and cafe sector**

Indicator	*Jurisdiction A*[a]	*Jurisdiction B*[a]
Number of licences, permits and registrations required for business[c]	18	14
Number of agencies in the process[d]	8	8
Number of administrative compliance activities[e]	71	67
Duplication of information requirements[f]	Yes	Yes
Availability of online lodgement[g]	Yes[b]	Yes[b]
Existence of statutory time limits on agency processing[h]	No	No

[a] Includes Commonwealth, State and local government agencies, and non-government organisations, involved in provision of all licences, permits and registrations for a start-up restaurant or cafe. Excludes multiple copies of application forms that are required to be sent to relevant authorities. [b] Online lodgement is unavailable for some licence categories. [c] The number of mandatory licences, permits and registrations, from all levels of government, that must be completed. [d] The number of government agencies, from different levels of government, that provide mandatory licence, permit and registration approvals. [e] The number of administrative compliance activities to be met by a business to attain mandatory licence, permit and registration approvals. [f] The repeated provision of administrative compliance activities for a number of licences, permits and registrations. [g] The existence of online licence, permit and registration application lodgement facilities available to the applicant. [h] The existence of government policy undertakings to process a licence, permit or registration application within a given timeframe.

The difficulty for businesses of obtaining licences, permits and registrations appears to differ slightly across the surveyed jurisdictions, as reflected in the variability of results for the indicators. The greater number of licences, permits and registrations in the process suggests that the complexity of compliance — as a proxy for cost — is somewhat higher in jurisdiction A than in jurisdiction B.

In the time available to prepare this case study, the administrative compliance activities of only four licence categories that are common to both jurisdictions were analysed (table C.2). These are:

- Food business licence (local government) — this licence is required for the establishment and maintenance of a premise in which meals are prepared for service, or are served, to the general public.
- Outdoor eating permit (local government) — this permit is required to operate an outdoor eating area in a street (including footpath) or public place. This is in addition to the premises in which meals are prepared.

- Liquor licence (State government) — this licence allows the licensee (a person or business) to sell liquor. Special licences or conditions might apply to a restaurant or cafe business.
- Signage permit (local government) — this permit is required to erect or maintain an advertising sign in a street, public place or on private land.

Other categories of licensing, such as building and planning licences, permits for trade-waste disposal, and business name and tax registrations, were not considered in this section.

For the four licences examined, the administrative compliance activities faced by a new restaurant or cafe owner appear to be broadly similar across the surveyed jurisdictions. However, there are additional requirements in jurisdiction A for an outdoor eating permit. There also appear to be differences in food safety training and management plan requirements for a general food business licence.

As noted above, the administrative compliance costs arising from these licences and other requirements identified were not calculated.

Table C.2 **Summary of administrative compliance activities — Food business licence, outdoor eating permit, liquor licence, and signage permit**

Licence	*Jurisdiction A*	*Jurisdiction B*
Food business licence	Application forms	Application form
	Floor plan	Floor and site plan
	Specification of premises	Section and elevation plan
	Information on number of persons involved in food preparation and serving	Mechanical exhaust ventilation plan
		Council inspection of premises
		Information on approved food safety supervisor
		Details of food safety program
Outdoor eating permit	Application form	Application form
	Plans and specifications of outdoor eating area, including in relation to surrounding land uses	Plans and specifications of outdoor eating area, including in relation to surrounding land uses
	Photographs of proposed outdoor eating area and furnishings	Photographs of proposed outdoor eating area and furnishings
	Details of public liability insurance	Details of public liability insurance
	Statement of how food, drink and eating accessories are to be conveyed to, and protected from contamination within, outdoor eating area	Site plan
	Statements from owners/occupiers of adjacent premises consenting to outdoor eating area	

(Continued next page)

Table C.2 **continued**

Licence	*Jurisdiction A*	*Jurisdiction B*
Liquor licence	Application forms	Application forms
	Floor and site plans	Layout plan of premises
	Section and elevation plans	Location plan/sketch
	Construction and finishing specifications	Evidence of town planning consent
	Locality plan/map	Public interest submission
	Compliance with responsible liquor serving protocols	Compliance with responsible liquor serving protocols
	Compliance with alcohol harm minimisation guidelines	
Signage permit	Application form	Application form
	Sign specification details	Sign specification details
	Site and elevation plans	Site and location plans
	Structural soundness certification	Structural soundness certification
		Site photographs

Note The categories of licences presented in this table are a subset of the total licences, permits and registrations identified in table C.1. Administrative compliance activities exclude: multiple copies of application forms that are required to be sent to relevant authorities; prerequisite licence, permit and registration approvals attained by a business; and inspections, audits and appointments with regulatory agencies.

C.4 Lessons

The preparatory work in measuring indicators of the difficulty for businesses of obtaining licences, permits and registrations for the establishment of a restaurant and cafe was relatively straightforward. It was possible to compare these indicators across a limited number of surveyed jurisdictions.

The BLIS system provided by State and Territory governments proved to be a valuable resource in identifying the core licences, permits and registrations required. It is anticipated that this tool could be used to identify licensing requirements for other sectors of the economy if it is comprehensive and maintained.

Additional information on licences imposed by the surveyed jurisdictions were sourced from various government agencies and other websites. However, it was not possible to source information for all relevant licences because of a lack of readily available online information. It is anticipated that the additional time available for benchmarking in Stage 2 would enable necessary additional licensing information to be obtained.

The administrative compliance activities associated with a selected number of licences for a restaurant or cafe business were readily identified. However, quantifying administrative compliance cost burdens associated with them would prove time consuming given their large number. This would need to be factored into the benchmarking in Stage 2 of this study.

The concept of a hypothetical reference business was employed in order to identify those business activities subject to licensing requirements. It is envisaged that future benchmarking in this area would involve the establishment of normally efficient reference businesses, drawing data and information directly from industry and government where appropriate. Businesses that have the same or similar characteristics to the reference businesses would be surveyed to obtain data to compare administrative compliance costs.

D Case study 2 – environmental approvals

The case study reported in this appendix was undertaken to assess the feasibility of the benchmarking approach suggested in chapter 5 — doing business. Specifically, indicators discussed in section 5.3 are applied to environmental approval processes.

The benchmarking of approval processes requires data to construct quantitative indicators that are comparable across jurisdictions. As noted in chapter 5, such data are best sourced from the relevant government agencies. Given the time available for conducting this case study, it was necessary instead to use publicly available data. Based on a review of the publicly available data, environmental assessment processes were selected for this case study.[1] The limitations associated with using publicly available data are outlined in section D.2.

In Stage 2 of this study, it would be necessary to work with the relevant agencies in the each jurisdiction to assess the data that would be required, and to arrange for its collection.

In section D.1, an introduction to environmental approval processes is provided. The case study methodology is then outlined in section D.2. In section D.3, the indicators and contextual information outlined in chapter 5 are applied to the environmental approval processes of three jurisdictions. Finally, the lessons learned from conducting this case study are discussed in section D.4.

D.1 Background

In recent years, awareness and expectations about the protection of the natural environment have grown. Consequently, the amount of environmental regulation has increased (Regulation Taskforce 2006).

[1] Development approvals could not be examined in the case study because much of the data and related performance indicators are not yet publicly reported. However, data are expected to become available in the near future.

As discussed in chapter 5, a particular area of concern for business is the application of environmental approval processes required where a project is deemed to have a significant impact on the environment.

The way in which environmental approvals are managed varies across jurisdictions and by project. However, there are some broad elements that are common to most processes:

- a level of assessment is determined following some interaction between the proponent and the relevant environmental authority — where the environmental authority determines that an assessment is necessary, the proponent of the project prepares a public report;
- the environmental authority then assesses the report and makes recommendations; and
- the relevant Minister makes a determination, either granting the approval and setting the conditions, or denying approval (Independent Review Committee 2002).

The relevant pieces of legislation for these processes are listed in table D.1.

D.2 Benchmarking approach

The feasibility of the benchmarking approach suggested in chapter 5 was examined by:

- identifying publicly available information on environmental assessment processes that can be used to construct quantitative performance indicators;
- assessing whether quantitative indicators and contextual information can be used to draw comparisons regarding regulatory burdens associated with environmental approval processes within and across jurisdictions;
- noting the caveats that could be associated with the comparability of publicly available data; and
- identifying potential refinements to the methodology for benchmarking approval processes.

Table D.1 **Environmental approvals — primary legislation**

Jurisdiction	*Relevant Acts*	*Other key legislation, guidelines and codes of practice*
Australian Government	*Environmental Protection and Biodiversity Conservation Act 1999*	Environmental Protection and Biodiversity Conservation Regulations 2000
New South Wales	*Protection of the Environmental Operations Act 1997* *Environmental Planning and Assessment Act 1979*	Protection of the Environmental Operations Regulation 1998
Victoria	*Environment Protection Act 1970* *Environment Effects Act 1978*	State environment protection policies (for example. ambient air quality, control of noise, water quality, greenhouse)
Queensland	*Environment Protection Act 1994*	Environment Protection Regulations 1998
Western Australia	*Environment Protection Act 1986*	Environment Protection Regulations 1987
South Australia	*Environment Protection Act 1993*	Environment Protection Regulations 1994
Tasmania	*Environmental Management and Pollution Control Act 1994*	Environmental Management and Pollution Control Regulations (various)
Northern Territory	*Environment Assessment Act 1994*	Environmental Assessment Administrative Procedures 2003

Source: URS (2006a).

Ideally, quantitative indicators used to benchmark any approval processes across jurisdictions would be measured using comparable data. However, as assessment requirements and processes for environmental approvals vary depending on the characteristics of the project being undertaken, it can be difficult to obtain such data.

For example, an open cut mining project would have different environmental impacts to an underground mining project. Similarly, a large housing development might have little impact on the environment compared to a much smaller housing development in an area with remnant native vegetation.

Projects with similar characteristics could be reasonably benchmarked, namely:

- environmental impacts — for example, projects that entail the clearing of land with similar levels of biodiversity;
- scale — for example, major projects in all jurisdictions; and
- purpose — for example, mining projects or property developments.

For the purposes of this case study, however, it was not possible to obtain data relating to environmental approvals for comparable activities because data had to be

collected from publicly available sources, such as departmental and agency annual reports. This resulted in the use of different types of data being used to measure quantitative indicators for the jurisdictions examined in this case study.

In one jurisdiction, for example, aggregate data on approvals were used. In another jurisdiction, data were provided for projects that followed a similar approval process (integrated approvals), and in the other jurisdiction data on environmental approvals for projects of a similar scale (major projects) were reported.

Contextual information was collated using publicly available sources such as relevant legislation, information sheets and published reports. That said, some limited consultation regarding the selection of indicators and metrics was also undertaken.[2]

Indicators and contextual information

Indicators and contextual information for the timeliness and consistency of environmental approval processes were measured for three jurisdictions. These jurisdictions were selected because of the availability of data to report quantitative indicators of timeliness. However, only one of the three selected jurisdictions reports data that can be used to construct quantitative indicators of consistency (based on appeals activity).

As anticipated in chapter 5, it was necessary to tailor some of the indicators and contextual information outlined in section 5.3 for the purposes of assessing environmental approval processes. Consequently, the indicators specified in tables D.2 and D.3 do not correspond precisely to those listed in tables 5.1 and 5.2.

In addition, background information, such as number of applications assessed (where available), has been included in table D.2. This contextual information was provided to assist with the interpretation of the quantitative indicators.

Due to time constraints, some indicators and contextual information were not collected or assessed. In particular, administrative compliance burdens were not measured as part of this case study. However, a brief discussion of how such information would be collected is provided in box D.1.

2 Guy Hamilton (Enesar Consulting) reviewed the proposed indicators and contextual information.

Box D.1 **Measuring administrative compliance burdens**

The burdens that result from administrative compliance can contribute to the delays, uncertainty and costs associated with an approval process. As such, it is necessary to consider administrative compliance burdens in any benchmarking study of regulatory burdens.

To assess the administrative burdens associated with any approval process, it is necessary to specify a reference business activity. Where data are available on similar projects across jurisdictions, it could be possible to construct administrative compliance indicators, as well as indicators of timeliness and consistency, for actual reference business activities.

In relation to environmental approval processes, however, it might be necessary to construct a 'notional' business activity to examine the administrative compliance burdens. As noted, environmental approval processes vary depending on the characteristics of the project being assessed and, as such, it might be difficult to obtain data on projects that are similar across jurisdictions. Using experts to determine the administrative compliance burden from environmental approval processes for a notional business activity allows for greater comparability across jurisdictions because it standardises the characteristic of projects being assessed.

It could also be possible to have experts estimate the administrative compliance costs to complete the approval process for the notional business activity.

Caveats

Some of the limitations of the case study that arise because of the reliance on publicly available data include:

- not all jurisdictions could be benchmarked;
- some of the indicators suggested in chapter 5 could not be reported — for example, administrative compliance burdens from environmental approval processes were not examined;
- data used are not for comparable projects — for example, jurisdiction A reported aggregated data for all referrals received by the department, whereas in jurisdictions B and C data are only reported for subsets of projects that required environmental approvals; and
- some indicators are not measured consistently — for example, jurisdictions can have different methods of determining the percentage of projects completed within statutory timeframes.

Finally, the results reported do not provide a robust assessment of the burdens in obtaining environmental approvals in the selected jurisdictions. However, this does

not detract from the insights that the case study provides on the general benchmarking approach and its feasibility.

D.3 Results

The results of measuring the selected indicators in the surveyed jurisdictions are presented in this section. The results are presented in three parts. In the first part, the data and quantitative measures of *timeliness* provided by each of the selected jurisdictions are discussed, with the results summarised in table D.2. In the second part, a brief discussion of how jurisdictions report measures of *consistency* is provided — the indicators are presented in table D.3. In the final section, the qualitative indicators and contextual information are assessed.

Selected results from the *Scorecard of Mining Project Approval Processes* (URS 2006b) are reported in tables D.2 and D.3 to assist with the assessment of the indicators used in this case study. This allows for some comparison as to whether the proposed indicators are consistent with the experiences of those experts that work with environmental approvals.

Timeliness

All of the jurisdictions considered in this case study provided some measures on the timeliness of their approval processes. However, the manner in which this information is provided varies. A brief discussion as to how each of the selected jurisdictions reports timeliness measures is provided below, with a summary of the indicators provided in table D.2.

Jurisdiction A

Under the legislation for environmental assessment processes, jurisdiction A is required to prepare a report on the operation of the relevant Act each year.

In 2004-05, it was reported that the department responsible for administering environmental approval processes received 360 referrals (applications in the manner prescribed by the regulations) and made decisions on 346 referrals during the year. The department determined that:

- 63 actions were *controlled actions* therefore requiring further assessment and approval;
- 44 actions could proceed without approval if the actions were undertaken in a particular manner; and

- 239 referrals required no approval or conditions placed on the actions.

In relation to controlled actions, decisions on the level of assessment required were made on 38 referrals, and 28 assessments were completed during the year.

Under the relevant Act, the department is required to report on the number of referrals for which the timeframes specified in the Act and associated regulations were not met and reasons for being late.

In table D.2, the timeliness of selected decisions and actions required under the Act are reported. These actions and their statutory timeframes are:

- Decisions on referrals — the Minister must decide whether an action is a controlled action within 20 working days, or 10 working days if the proponent states that they think that the action will be a controlled action.
- Approval decisions — the Minister must decide whether or not to allow the undertaking of a controlled action within 30 working days if the action is subject to an assessment report, or 40 working days if a commission has conducted an inquiry relating to the action.

For comparative purposes it is important to note that the Act allows the Minister to amend the statutory timeframes, and that the count of days be suspended where further information is sought or by agreement with the proponent.

Jurisdiction B

The relevant department, in its Annual Report, reports on the timeliness of issuing environmental protection licences for projects that also require development consent.

Under legislation in jurisdiction B, businesses are required to obtain licences before undertaking certain scheduled activities and other non-scheduled activities that are likely to have a significant adverse impact on the environment.

In some cases, proponents can also be required to obtain a development consent from the relevant local council (or the department with oversight for planning approvals) before it can commence the activity. In such cases, the development consent must be approved before the environmental licences can be issued. However, where applicable, the approval process can be streamlined.

As part of the integrated procedures, environmental impact statements would be prepared prior to the development consent being granted by the consent authority. The environment protection agency then assesses both the development application

and the environmental impact statement, and either issues terms under which the environmental licence(s) could be granted or refuses approval.

The environment protection agency has 60 days to assess an application from the date that the 'completed application' is received. A completed application includes all required information and payment of the assessment fee. There are provisions to 'stop the clock' should the agency require additional information from the proponent.

Jurisdiction C

The environment protection agency in jurisdiction C reports on the indicators of the number of environmental impact assessments referrals received and number of formal assessments completed each year, in its Annual Report. Further, it provides information regarding the timeliness of assessing applications pertaining to major projects.

The agency reported that 40 formal assessments were completed during 2004-05. It is not clear from the report what proportion of these assessments were for major projects.

For major projects, the environmental protection agency in jurisdiction C reports on the average number of weeks taken to complete each stage of the environmental assessment process, as well as the greatest and shortest number of weeks for each stage.

In 2004-05, the environmental protection agency reported that the average total time taken for the approval process of major projects — that is, from the time that the level of assessment is set to the time that the agency released its final report — was 103 weeks. The shortest amount of time taken for this process was 25 weeks and the longest was 273 weeks.

It is claimed that the majority of the time taken for the approval process (90 weeks on average) is 'largely under the proponents' control'. This includes the time taken by the proponent to prepare their environmental impact assessment report and to respond to public comments. However, the environmental protection agency is involved in the development of the proponent's report and, therefore, does have some influence on the timeliness of the approval process.

Table D.2 **Measures of timeliness — 2004-05**

Indicators	*Jurisdiction A*[a]	*Jurisdiction B*[b]	*Jurisdiction C*[c]
Quantitative measures			
Proportion of decisions on referrals within statutory timeframe — total (per cent)	89	n.r.	n.r.
Proportion of controlled action/general terms of approval within statutory timeframes (per cent)	57	92	n.r.
Mean number of weeks from setting level of assessment to EPA report	n.r.	n.r.	103
Mean number of weeks to complete EPA report	n.r.	n.r.	7
Contextual information			
Background information			
Number of applications	360	n.r.	468
Number of decisions made	346	n.r.	n.r.
Number requiring assessment	63	n.r.	47
Number of assessments completed in the year	28	96	40
Incentive structures			
Legislated timeframe for assessments	Yes	Yes	Yes
Government stated goals regarding timeliness	No	Yes	Yes
Capacity to 'stop the clock'	Yes	Yes	Yes
Proponents can track progress in the processing of applications electronically	No	No	No
Stakeholder engagement			
Engagement between authority and proponent	Yes	Yes	Yes
Coordinated in setting assessment requirements across whole of government (agency)	Yes	Yes	Yes
Assistance with public consultation	No	No	Yes
Flexibility			
Assessment options commensurate with scale and scope of the project		Yes	Yes
Appeals processes			
Clear guidelines for appeals/challenges	Yes	No	No
Appeals mechanisms incorporated into approvals process	No	No	No
Indicators taken from expert assessment[d]			
Timeliness	4	4	2
Stakeholder input and appeals	1	4	4
Government agency capacity	1	4	3

[a] Jurisdiction B reports on all referrals received under the relevant environmental protection legislation. [b] Jurisdiction B reports on environmental approvals provided as part of a streamlined planning approval process. [c] Jurisdiction C reports quantitative data on the timeliness of environmental approvals for major projects. [d] Expert assessments were taken from *Scorecard of Mining Project Approval Processes* (URS 2006b). The numbers represent ratings out of five. A score of '1' reflects that jurisdiction is 'poor' against the assessment criteria, and a score of '5' essentially reflects 'best practice'. **n.r.** not reported.

Consistency

Two of the three jurisdictions report data relating to appeals activity. However, quantitative indicators of consistency relevant to environmental approval processes can only be reported for one jurisdiction (table D.3). Contextual information and relevant expert assessments reported by URS (2006b) were reported for all three case study jurisdictions.

Jurisdiction A

The department with responsibility for assessing environmental approvals reports on the number of decisions reconsidered during the year through appeals. In addition, the department provides data regarding whether the reconsideration process resulted in amendments to the referral and what types of amendments were made.

Specifically, in 2004-05, the department reported that of the six decisions amended:

- two referrals were amended from being controlled actions, to 'not controlled' actions;
- two referrals were amended from being controlled actions to actions undertaken in a particular manner; and
- two referrals were amended from being 'not controlled actions' to actions undertaken in a particular manner.

Jurisdiction B

In jurisdiction B, appeals are administered through an independent court. This court is dedicated to administering appeals relating to both planning and environmental approval processes. Each year, the court provides performance indicators of the number and timeliness of assessing appeals in its Annual Review.

Quantitative indicators of consistency have not been reported for jurisdiction B in table D.3, as court reports merit based challenges of both planning and environmental consents in the same class in its Annual Review. Therefore, it is necessary to review each judgement to determine whether the licence conditions, set by the department responsible for environmental protection, are being challenged.

Based on a preliminary review of court judgements in 2004-05, licence conditions set by the department were not challenged. However, there were numerous challenges of planning consents where the basis of appeal related to environmental impact assessments made by local councils.

Table D.3 **Measures of consistency (2004-05)**

Indicators	*Jurisdiction A*[a]	*Jurisdiction B*[b]	*Jurisdiction C*[c]
Quantitative measures			
Number appealed (reconsideration requests considered in 2004-05)	11[d]	n.r.	n.r.
Proportion of decisions appealed (per cent)	3	n.r.	n.r.
Number of decisions amended	6	n.r.	n.r.
Contextual information			
Clarity of purpose			
Objectives clearly stated in legislation	Yes	Yes	Yes
Discretion in decision making			
Capacity to amend information/assessment requirements during the approval process	Yes	Yes	Yes
Dispute resolution mechanisms	Minister	Dedicated court	Minister
Public appeals to approval decision allowed	No[e]	No[e]	Yes[f]
Independent dispute resolution mechanisms	No[g]	Yes	No[g]
Agency coordination			
Capacity for concurrent assessments	Yes	Yes	Yes
Mechanism for coordinating single agency (or whole of government) response	Yes	Yes	Yes
Transparency			
Public documentation of decisions and reasons	Yes	Yes	Yes
Indicators taken from expert assessment[i]			
Clarity of policy objectives	3	4	4
Predictability and certainty	2	3	3
Transparency	2	5	4
Institutional framework	5	5	3

[a] Jurisdiction A reports on reconsiderations of decision on the level of assessment. [b] Jurisdiction B reports aggregated data on appeals activity for environmental and planning approvals processes, therefore, quantitative indicators have not been presented in the table. [c] Jurisdiction C does not publicly report appeals activity. [d] Reconsideration requests considered during 2004-05 includes one reconsideration being processed at 1 July 2004. [e] The concerns of the public are incorporated into the assessment process. [f] Public concerns are made in writing to the Minister. [g] Appeals are administered by the Minister. [h] The Minister will make determinations or remit the proposal to the Authority. [i] Expert assessments were taken from *Scorecard of Mining Project Approval Processes* (URS 2006b). The numbers represent ratings out of five. A score of score of '1' reflects that jurisdiction is 'poor' against the assessment criteria, and a score of '5' essentially reflects 'best practice'. **n.r.** Not reported.

Assessment of indicators and contextual information

Based on the experience from conducting this case study, some conclusions regarding quantitative indicators and the contextual information are outlined below.

Quantitative indicators of timeliness and consistency

Using publicly available information to construct the quantitative indicators selected for this case study, it was not feasible to form conclusions regarding timeliness or consistency of environmental approval processes within or across jurisdictions.

As noted in chapter 5, assessing quantitative indicators of timeliness and consistency requires some basis of comparison — either across jurisdictions or over time — to determine what constitutes an appropriate timeframe to gain approval (or level of appeal activity). The reliance on publicly available data and variability in the metrics used to report quantitative measures of timeliness and consistency have made comparisons across jurisdictions invalid.[3]

A positive outcome of the variation in metrics is that it allows for some assessment of the merits of using different types of metrics to construct indicators for benchmarking purposes. In relation to timeliness measures, it appears that the metric adopted by jurisdiction C, of reporting the average, greatest and shortest number of weeks for different stages of the approval process, can potentially provide a better measure of timeliness for comparative purposes than the metric used in the other two jurisdictions — that is the proportion of approvals within prescribed timeframes.

In relation to environmental approval processes, reporting timeliness as mean total time taken for the assessment allows for more direct comparisons across jurisdictions for a number of reasons. First, it is not affected by differences in prescribed timeframes. Second, it captures the difference in the amount of time for assessments to be completed. Finally, it should not be affected by differences in how jurisdictions apply 'stop the clock mechanisms' in assessing application.

In the *Scorecard of Mining Approval Processes*, URS (2006b) rated the timeliness of different approval processes. These ratings were based on the opinions of experts who have experience with the environmental approval processes across jurisdictions. Hence, these ratings were subjective. It is not possible to either support or contradict these rating using the quantitative indicators of timeliness and consistency reported in tables D.2 and D.3.

3 Most jurisdictions provide some information on performance indicators over a five-year period. However, a better understanding of the environmental approval processes in those jurisdictions and the data underlying the calculations of the performance indicators would be required before any conclusions on performance could be reached.

Assessment of contextual information

The objective of providing contextual information is to improve the interpretation of quantitative indicators by identifying the underlying drivers of the regulatory burden. From the contextual information reported in tables D.2 and D.3, it is evident that there is some variation in the environmental approval processes of the three jurisdictions.

It is not possible to use this information, however, to assist in the interpretation of quantitative indicators or to confirm the assessments of timeliness and consistency reported by URS (2006b). This reflects, in part, the limitations of the quantitative indicators (outlined above). It also reflects limitations in the specification, collection and reporting of this information.

As discussed in chapter 5, it is necessary to tailor quantitative indicators and contextual information to the approval process being benchmarked. However, the complexity of approval processes and the potential for approval processes to be dependent on the characteristics of the business activity (project) being assessed, mean that knowing what contextual information should be collected requires an intimate understanding of the specific approval process. Based on the time available to the Productivity Commission, it was not possible to gain such an understanding of environmental approval processes.

A further limitation of using the contextual information to interpret the quantitative indicators is that it has been assessed objectively in this case study — that is, the contextual information is reported based on an assessment of requirements in the legislation. The advantage of objective assessments is that factual differences in the processes of each jurisdiction are identified. However, subjective assessments might provide greater insights into why quantitative indicators vary across jurisdictions.

Subjective assessments, such as ratings, allow for some assessment of how the requirements in the legislation are interpreted and applied in practice — which is likely to vary across jurisdictions even if the legislation is similar. For example, from table D.3 it can be observed that in two jurisdictions the Minister is responsible for administering the appeals process. However, in its current form, it is not possible to determine whether there are differences in the efficiency with which appeals are administered by these jurisdictions.

The explanatory power of contextual information could be improved by:

- refining the information that is collected (following greater consultation with stakeholders);

- elaborating on the contextual information to provide more information about the differences in the approval processes, which are not currently identified by the simple assessments provided above; or
- using subjective assessments that rate or rank the way in which jurisdictions are assessed against the contextual information.

D.4 Lessons

Some of the main lessons from this case study are outlined below. These reflect the subtle nature of the factors driving the differences in burdens associated with environmental approval processes.

Indicators and contextual information should be 'fit for purpose'

In this case study, the quantitative indicators and metrics — proposed in chapter 5 — were subtly refined to make them relevant for benchmarking environmental approval processes. The metric used for environmental approvals might not be relevant to other approval processes.

Further refinement of the indicators and contextual information, however, would be required should environmental approval processes be benchmarked. For example, indicators and contextual information specified in tables D.2 and D.3 provided little capacity to draw conclusions about variations in the timeliness and consistency of environmental approval processes across jurisdictions. In particular, comparable quantitative indicators are necessary for benchmarking.

Given the complexity of environmental approval processes, it is evident that constructing indicators with the necessary explanatory power for benchmarking such processes would require broader consultation with governments and industry experts.

Comparability of indicators

It was noted in chapter 5 that it might be possible to use publicly available data to commence benchmarking regulatory burdens associated with different approval processes. This case study demonstrated that, although some jurisdictions maintain data and report relevant performance indicators for their environmental approval processes, it is not possible to make comparisons across jurisdictions using this information.

Efforts to improve the quality of record keeping on environmental approval processes, and the extent to which performance indicators are publicly reported, would potentially assist in improving the accountability of regulatory processes in this area.

The fact that such comparisons cannot be made using publicly available data does not imply that environmental approval processes cannot be benchmarked. By working with the relevant government agencies it should be possible to obtain information that could be used to construct comparable indicators, or improve the comparisons when there are differences in the way in which indicators are calculated.

In some cases, however, it will not be feasible to construct indicators that are directly comparable across jurisdictions, such as when the types of projects being undertaken in different jurisdictions vary significantly in their scale and the scope of their environmental impacts. Nevertheless, there are strategies that could be employed to overcome these limitations including:

- Providing additional information about the value of projects being assessed — this can be important contextual information because it provides a means of comparing the magnitude of the potential burden to business of delays and uncertainty. However, in relation to environmental approval processes, the value of a project is not necessary correlated with its potential to impact on the environment.
- Using multiple metrics for some quantitative indicators — for example, if the scale and complexity of projects vary across jurisdictions, measuring differences in total time (average, highest and lowest number of weeks) might not be as valid for comparative purposes as the proportion of approvals processed within the prescribed timeframes. However, reporting both metrics would allow for a better assessment of the efficiency of the given approval process, particularly over time.
- Focusing on aspects of the approval process that can be compared — for example, constructing indicators that only assess those aspects of the approval process that are predominantly in the control of as the referral agency (government) rather than the proponent of the project.

It is also evident from this case study that constructing comparable quantitative indicators would require the cooperation of the relevant referral agencies to provide data. If all relevant agencies collected similar levels of data to that publicly reported by jurisdictions A and C, it should be possible to measure indicators that are comparable across jurisdictions.

It would be necessary to work with agencies to determine what data are available and their agreement to ensure that it is reported in a consistent manner across jurisdictions. Some consideration of the costs entailed in collecting and providing data should be taken into account when determining the desired level of comparability.

Quantitative indicators alone will not be sufficient for benchmarking

As anticipated in chapter 5, quantitative indicators in isolation of each other and the contextual information, will not provide sufficient information to assess regulatory burdens associated with approval processes.

The results reported in section D.3 demonstrate that quantitative indicators do not provide a basis for determining the unnecessary burdens associated with environmental approval processes. For example, having estimates of the number of weeks taken to gain approval is not sufficient for determining whether the time reported constitutes a delay. Other information — such as whether assessment requirements are determined through a whole-of-government or piecemeal approach — would be required to assess whether there are aspects of the process that result in inefficiencies and add to the time required to assess the application.

Although not demonstrated by the results presented in section D.3, this case study underscores the importance of considering a suite of indicators when assessing regulatory burden. For example, it is possible that some characteristics of an approval process will result in tradeoffs between timeliness and consistency. Having an external court (or tribunal) determine appeals might improve the consistency of how appeals are managed, and therefore how approval processes are administered, but it might take much longer than an appeals mechanism that is administered by the relevant Minister. The benefit of benchmarking is that it can provide a basis for identifying such tradeoffs.

Use of subjective assessments

Another lesson from this case study is that there can be some circumstances where objective assessments of the contextual information might not be sufficient to draw out the subtle differences in the approval processes of different jurisdictions. As apparent in tables D.2 and D.3, similarities in the legislation or characteristics of the approval processes across jurisdictions can result in there being little differentiation in the objective assessments. However, the burdens associated with that legislation might be a result of variation in how the legislation is interpreted and administered.

In one jurisdiction appeals are administered by an independent court, whereas in the other two the Ministers are responsible for administering appeals. Where a Minister is responsible for appeals, an objective assessment would not be able to distinguish whether the appeals process was subject to other influences — such as political lobbying. In such cases, a subjective assessment — for example, rating the independence from political influence — might provide a more meaningful insight as to the differences in the burdens associated with the two processes.

As noted in chapter 5, subjective assessments must be based on a clearly specified framework with assessment criteria to ensure that they are suitably rigorous to be comparable across jurisdictions and robust over time.

E Case study 3 – personal property security regulation

This case study was conducted to assess the feasibility of the benchmarking options discussed in chapters 6 and 7, and to identify lessons that might assist any future benchmarking. Specifically, indicators from sections 7.1, 7.3 and 6.3 of these chapters are applied to areas of personal property security (PPS) regulation.

An introduction to PPS and its regulation, PPS registers, and key concerns relating to PPS regulation is presented in section E.1. The total quantity of PPS legislation is then analysed in section E.2, using indicators from table 7.1. This is also done for the subset of PPS legislation specific to motor vehicles. Data availability and collection, caveats, and lessons for benchmarking the quantity of regulation, are also discussed.

In section E.3, one piece of PPS legislation is assessed against indicators of regulatory quality from section 7.3. This is accompanied by a discussion of data availability and collection, caveats, and lessons for benchmarking regulatory quality.

In section E.4, indicators of duplication and inconsistency, as proposed in section 6.3, are applied to PPS registrations of motor vehicles, for two jurisdictions. The section also includes a discussion of the methodology used, data management issues, caveats and lessons.

E.1 Background

Personal property can be used as an asset or collateral to obtain a loan from a credit provider such as a bank or finance company. Where such collateral is used by an individual or business to secure a loan, the creditor secures an interest over the personal property. In effect, a personal property security interest gives a creditor the right to take or keep possession of the asset in the event of default and sell or otherwise dispose of the collateral.

Personal property that can be offered as security for a loan includes both tangible property (for example, cars, boats, machinery and crops) and intangible property

(for example, shares, intellectual property, receivables and contract rights). PPS legislation does not cover real estate — that is, land or buildings and fixtures which are legally treated as forming part of land.

Security over personal property can be in the form of a mortgage, charge, lien or pledge. The key difference between these securities is the way possession or ownership rights are transferred. As noted by the Standing Committee of Attorneys-General (SCAG) (2006a):

- A *mortgage* involves transferring ownership of the collateral to the lender, with contractual provision for transfer back to the owner upon satisfaction of the obligations secured by the mortgage.
- A *charge* was originally used as a device that allowed the court to authorise a person to take possession of and sell property owned by another person when it would be equitable to do so. Creditors adopted the device by including provisions in contracts to the effect that the collateral was subject to a charge. This allowed the creditor to take possession of the collateral and sell it upon default of the secured obligations.
- A *possessory lien* is a legal right to retain possession of a chattel (asset) until a claim is satisfied or obligation performed. It arises by operation of common law or by statute. The lien does not involve any change in the ownership of the chattel, nor does it provide any right to sell the chattels in question, unless this is authorised by legislation. The statutes include warehoused goods, crops, wool, sugar cane, fruit and stock.
- A *pledge* (or *pawn*) is characterised by a transfer of possession from the debtor to the creditor, while the debtor retains full ownership of the pledged goods. Unlike a possessory lien, the creditor may sell the property upon default of the secured obligation.

PPS registers

All PPS interests must be registered by the borrower. The register contains details of the lender and borrower together with identifying information about the collateral. The register might be searched by, for example, prospective lenders or purchasers, including members of the public, to determine whether a particular item of personal property is being used as collateral for a loan.

There are a number of registers for specific types of personal property. For example:

- Motor vehicle security interests are registered in the Registers of Encumbered Vehicles (REVs) maintained by each State and Territory.

- Each State and Territory has a special register for liens. In New South Wales, Tasmania and South Australia, there are special registers for interests in growing crops, wool and stock. In contrast, Queensland has a special register for interests in sugar cane crops and South Australia has one for fruit crops.
- Under Corporations Law a company must register specified kinds of legal or equitable charges that it creates over its property. Charges can include a mortgage and an agreement to give or execute a charge or mortgage. These charges must be registered with the Australian Securities Commission on the Australian Register of Company Charges.

In general, the registration of security interests in personal property reduces uncertainty for security holders (lenders), purchasers and consumers. Registration of interests protects security holders against loss or subordination of their interest to potential purchasers, lessees or other lenders. Potential purchasers are also protected, by providing them with the ability to search registers for property that might be subject to a security interest.

Key concerns

There are more than 70 separate Acts governing PPS in Australia, administered by at least 30 separate Commonwealth, State and Territory government departments and agencies.

A number of concerns have been identified about the existing arrangements, including:

- Some classes of property (such as inventories, receivables and internet domain names) cannot be registered as security for a loan, and the classes of property over which a security might be registered varies from jurisdiction to jurisdiction.
- Businesses with capital invested in unregistrable property face a higher cost of capital and are at a competitive disadvantage relative to other businesses. This can distort investment decisions towards registrable property.
- As new categories of property are devised they fall into a 'black hole' in terms of the registration and priority of securities. This can result in greater reliance on shareholder equity to finance business activities.
- Differences in registration arrangements across jurisdictions impose additional compliance costs on businesses operating in more than one jurisdiction. Such businesses include finance companies, banks and motor dealers.
- Mandatory and cumbersome registration procedures can impose unnecessary compliance and transaction costs.

- The reliance on hard copy registration over electronic lodgment delays the registration of securities and deprives businesses of the savings potentially available through electronic lodgment.
- The absence of comprehensive electronic search facilities can make it difficult for a consumer to check to see whether something they are buying, such as a car, boat or farming equipment, is already part owned by someone else (SCAG 2006a).

In 2006, the Council of Australian Governments (COAG) identified PPS as one of 10 areas for cross-jurisdictional regulatory reform. It endorsed the development by SCAG of an efficient and effective national personal properties registration system for security transactions.

The SCAG released a Discussion Paper on *Registration and Search Issues* in November 2006 for comment by no later than 9 February 2007.

E.2 The total quantity of regulation

In this section the feasibility of measuring indicators of the total quantity of regulation is tested (section 7.1). Indicators have been taken from table 7.1.

In the following sub-section, data availability and collection methods for the measurement of quantity indicators are discussed. Indicators of the total quantity are then applied to the stock of PPS regulation. This is followed by an analysis of the subset of PPS regulation applying to motor vehicles. Finally, the associated caveats and lessons are presented.

Data availability and collection

The SCAG completed a *Review of the Law on Personal Property Securities* in April 2006 (SCAG 2006a). Contained in Attachment D of this Review is a table of all Australian PPS legislation in force as at March 2006, listed by jurisdiction. The list of legislation relating to motor vehicles has been taken from Attachment C of the same report. These lists were used as the basis for assessing the total quantity of PPS legislations and PPS legislation for motor vehicles.

Although it would be preferable to include all forms of regulation (for the reasons detailed in chapter 7), the case study was limited to primary legislation given the information and time available.

All pieces of legislation listed in Attachment D were downloadable from either a national, State or Territory legislation website. Some websites and downloadable formats were more user friendly than others. For example, in one jurisdiction legislation could not be downloaded in full and needed to be printed or read one part at a time. In another jurisdiction, its legislation could be downloaded into a formatted pdf document.

Analysis and results — PPS regulation

Counts of the number of pages, licences, permits and new pages of legislation were based on the downloadable (or collated printed) legislation. Any PPS legislation introduced in 2006 was counted as new legislation with the number of pages in each being counted as new pages.

In counting the number of pages of legislation, each piece of legislation was counted either in whole or in part, as determined by the specification in attachment D to the report prepared by SCAG (2006a). For example, some PPS related requirements were only contained in one section of legislation and hence, the number of pages was only counted as the number of pages in that section. Where attachment D sited a complete legislation, all pages (including title pages and tables of contents, where applicable) were included.

Annual net turnover of pages (new pages) resulting from amendments, sections inserted and sections repealed, proved difficult to measure. Although this information might have been available from those agencies responsible for PPS legislation, it was not possible in the time available to contact all the relevant agencies to check whether all legislative changes had been identified.

Quantity indicators and their associated metrics for the quantity of PPS legislation are summarised in table E.1. As the main purpose of the case study is to test the feasibility of indicators, the jurisdictions have not been identified.

Table E.1 **Quantity indicators for PPS legislations**

	A	*B*	*C*	*D*	*E*	*F*	*G*	*H*	*I*
Pieces of legislation	7	11	10	7	6	7	7	6	10
Pages of legislation	76	143	143	71	757	213	113	249	407
Licences	0	0	0	0	3	0	0	2	0
Permits	0	0	0	0	0	0	0	0	0
New legislation[a]	0	0	0	0	0	0	0	0	0
New pages[a]	0	0	0	0	18	0	0	0	0

[a] Introduced in 2006.

The indicators presented in table E.1 reveal there are differences in the quantity of PPS legislation across jurisdictions. Specifically, there are differences in the number of pieces of legislation, pages of legislation, licences and new pages of legislation introduced in 2006.

Analysis and results — PPS regulation for motor vehicles

PPS legislation specific to motor vehicles was chosen for further analysis to complement section E.4. Indicators of the total quantity of legislation on PPS for motor vehicles, and their associated metrics, are summarised in table E.2. Again, jurisdictions are not identified.

Table E.2 **Quantity indicators for motor vehicle security regulation**

	A	*B*	*C*	*D*	*E*	*F*	*G*	*H*	*I*
Pieces of legislation	2	2	2	2	-	2	2	2	2
Pages of legislation	33	34	39	22	-	53	38	145	55
Licences	0	0	0	0	-	0	0	2	0
Permits	0	0	0	0	-	0	0	0	0
New legislation[a]	0	0	0	0	-	0	0	0	0
New pages[a]	0	0	0	0	-	0	0	0	0

[a] Introduced in 2006.

It appears that there is some variation in the quantity of PPS legislation for motor vehicles across jurisdictions, as indicated by variance in the number of pages of legislation, and licensing requirements in one jurisdiction.

Caveats

Some of the caveats discussed in chapter 7 are applicable to this case study, namely:

- indicators are indirect measures of the unnecessary burden; and
- indicators should be interpreted as a suite rather than in isolation.

A number of caveats, additional to those discussed in chapter 7, apply to this case study. First, as the list provided in the SCAG (2006a) review included only PPS *legislation* (in force at April 2006), it might not be a complete list of all forms of PPS *regulation*.

Second, many of the jurisdictions presented their legislation in different downloadable formats. For example, some legislation included a title page, others included a table of contents, and the spacing between paragraphs varies between

jurisdictions and pieces of legislation. Hence, counts of the number of pages in a legislation might vary somewhat based on the format of the legislation. In general:

- In three jurisdictions, legislation included a title sheet and table of contents and spacing between paragraphs and sections.
- In another three jurisdictions, legislation included a table of contents and spacing between the paragraphs and sections but no title page.
- For one jurisdiction, most of the legislation included a table of contents but no title page, with no spacing between most paragraphs.
- For another jurisdiction, the legislation did not include a title sheet or a table of contents but did have spacing between the paragraphs and sections.
- For another jurisdiction, legislation did not include a title sheet or a table of contents and there was no spacing between most paragraphs.

These differences could account for some of the variation between jurisdictions. A word count (though potentially more difficult to measure) could overcome some of these formatting issues.

Thirdly, as there has been limited time available to complete the case study, there has not been time for government input and validation. Further consultation with government agencies about the specification of the indicators, and their measurement, would be vital in Stage 2.

Lessons

A number of lessons emerged while undertaking the case study. Although the benchmarking proved feasible, it became apparent that if the information provided by the SCAG review had not been readily available, it would have taken significant resources to identify which pieces of regulation contain PPS requirements. Further, outsourcing of the task might have been necessary to obtain the relevant skills and expertise required to identify the legislations governing PPS.

It was also particularly difficult to determine and measure the annual net turnover in pages of legislation (the metric associated with 'new pages'). Given the short time frame, it was not possible to find out what information each of the relevant government agencies could have provided to assist in this regard. Consultation with government agencies would be required to ensure that existing information is utilised and that the net number of new pages is measured consistently.

Care is needed in the interpretation of quantity indicators. In particular, although there were substantial differences in the number of pages of legislation, this is only

an indirect indicator of unnecessary burden. Further, as mentioned above, quantity indicators should not be interpreted in isolation of one another. No single indicator should be given undue attention as the overall potential for unnecessary burden is best revealed when indicators are assessed together.

E.3 The quality of regulation

The feasibility of measuring indicators of regulatory design, administration and enforcement is assessed in this section. Specifically, these indicators — as suggested in section 7.3 — will be applied to Part 5 of the Uniform Consumer Credit Code (UCCC). This is accompanied by a discussion of data availability and collection, caveats and lessons learned.

The UCCC was chosen for further analysis because of its applicability to PPS in all States and Territories. Part 5 of the UCCC is identical in all jurisdictions (it is the appendix to the *Consumer Credit (Queensland) Act 1994*). The UCCC constitutes one of the two pieces of regulation for PPS of motor vehicles in each State and Territory.

The UCCC is based upon a template scheme. The template legislation was passed in Queensland (the *Consumer Credit (Queensland) Act 1994* and the Consumer Credit Regulation (Queensland) 1995). Under the Uniform Consumer Credit Laws Agreement (AUCLA) 1993, all States and Territories have passed enabling legislation which adopts the template legislation.

The UCCC relates to motor vehicles in that Part 5 refers to 'goods' which, by definition, incorporates ships, aircraft and other vehicles. Part 5 of the UCCC deals with ending and enforcing credit contracts, mortgages and guarantees, in particular:

- ending of a credit contract by a debtor through, for example, the early payout of the contract;
- enforcement procedures following a default relating to a credit contract, mortgage or guarantee;
- a debtor's right to negotiate with the credit provider for a postponement of enforcement proceedings, or to apply to the Courts for a postponement;
- procedures for repossession of mortgaged goods; and
- treatment of enforcement expenses.

Data availability and collection

The first source of information used was the UCCC legislation itself. Other sources of information included the *Consumer Credit (Queensland) Act 1994* and the accompanying Explanatory Notes. The national website was also the source of some information, as was the State and Territory websites for relevant government agencies. The SCAG (2006a) review also added some insights, as did the Post Implementation Review undertaken by the Ministerial Council on Consumer Affairs (MCCA 1999) and the National Competition Policy (NCP) review completed by KPMG (2000).

The Office of Fair Trading (Queensland) was also contacted and provided some information but was unable to be called upon to verify the Productivity Commission's analysis, given time constraints. Relevant government agencies would need to be involved in Stage 2.

Analysis and results — the regulatory quality of the UCCC

Although only Part 5 of the UCCC applies to PPS (for motor vehicles), many of the quality indicators discussed in section 7.3 relate to the complete regulation. Hence, in some instances indicators will refer to the UCCC in totality rather than to Part 5 alone.

Indicators relating to the design of the regulation are discussed below and summarised in table E.3. Following this is a discussion of regulatory administration indicators, summarised in table E.4. Finally, there is a discussion of the enforcement of the regulation, with corresponding indicators summarised in table E.5.

Regulatory design indicators

The indicators measured below are taken from table 7.3 of this study.

Use of a regulatory impact statement and its adequacy: A regulatory impact statement (RIS) was not undertaken for the UCCC, nor for the *Consumer Credit (Queensland) Act 1994* (of which the UCCC is an appendix).

As the UCCC is a uniform 'national' regulation, it is subject to the COAG regulatory processes. However, the UCCC predates the mandated COAG RIS process (which commenced in 1998).

As a RIS was not undertaken, its adequacy cannot be measured. If a RIS had been undertaken, the Office of Regulation and Review (ORR) (now the Office of Best Practice Regulation (OBPR)) would have been responsible for its review.

Other assessments undertaken in designing the regulation: From reading the UCCC, its associated Act, and the accompanying Explanatory Notes, it does not appear that any other assessments were undertaken when designing the regulation.

Consultation undertaken and efficacy of consultation: The Explanatory Notes for the Act stated that a draft Bill was widely circulated in 1993, with a summary of changes circulated in January 1994 and consultation continuing throughout the redrafting. According to the Explanatory Notes, more than 12 organisations were consulted during the process.

The Australian Government has adopted a whole-of-government policy on consultation. This policy contains seven principles for best practice consultation — continuity, targeting, appropriate timeliness, accessibility, transparency, consistency and flexibility, and evaluation and review (OBPR 2006).

Although consultation was undertaken, there is little detail on its scope and, hence, it is difficult to assess its efficacy against the above principles. However, given the Explanatory Notes suggested both business and consumer groups were consulted on an ongoing basis, it appears likely that the consultation was satisfactory.

Use of a whole-of-government approach: Neither the Act, the UCCC nor any supporting material suggest that a whole-of-government approach was undertaken in designing the UCCC.

Clarity of objectives: No purpose or objective can be clearly identified from reading Part 5 of the UCCC. Further, no clear purpose or objective was apparent from reading the preliminary sections of the UCCC or the associated *Consumer Credit (Queensland) Act 1994*. In summary, neither the UCCC nor the Act appears to have a clear statement of purpose or objective.

The objectives of the UCCC were, however, clearly stated in the Explanatory Notes of the Queensland Act. However, without experience in dealing with legislation, it is unlikely that a business would know to refer to the Explanatory Notes for the objectives (or even where to find the Explanatory Notes).

Complexity — whether expertise is required: Part 5 of the UCCC does not appear overly complex — it is able to be read and understood by a person with no legal expertise and no experience with PPS regulation. Hence, it is reasonable to conclude that expertise would not be required for the majority of businesses complying with this piece of legislation.

Overly prescriptive requirements: Many of the requirements in Part 5 are quite prescriptive. However, as the UCCC would apply to a broad range of businesses and individuals, in a variety of different situations, it is likely that the prescription facilitates compliance rather than making it more burdensome. Further, the prescriptive requirements would make any resulting legal decisions easier to administer. For these reasons, the requirements contained within Part 5 do not seem *overly* prescriptive.

Reliance on subordinate legislation: There is no explicit reference to any subordinate legislation referred to in Part 5 of the UCCC.

In 1998, the Standing Committee of Officials of Consumer Affairs endorsed a general framework for the consideration and development of guidelines under the UCCC. The UCCC Management Committee is continuing to develop these guidelines in consultation with industry (MCCA 2006b). Although these would not strictly be classified as subordinate legislation, they could create additional burden on business. On the other hand, as their aim is to make the UCCC easier, they might facilitate compliance and reduce the burden created from uncertainty and complexity.

Translation of national regulation: As Part 5 of the UCCC is the same for all States and Territories, this indicator is not applicable.

Time since last comprehensive review and RIS undertaken in review: A Post Implementation Review of the UCCC was completed by the MCCA in December 1999. KPMG also completed a NCP review of the UCCC in 2000. It does not appear that a RIS (or another form of assessment) was undertaken in either of these reviews.

The ORR (now the OBPR) has dealt with a number of queries about changes and amendments that have been made to the UCCC. A number of exemptions have been granted to changes under the UCCC, predominantly related to the classification of particular cooperative societies (ORR, pers. comm., 19 December 2006). A RIS has not been undertaken for any change or amendment to Part 5 of the UCCC.

Existence of a sunset clause: There is no sunset clause contained in the Act or the UCCC.

Summary of indicators of regulatory design

Indicators from this section are summarised below in table E.3. It appears that all relevant design indicators were able to be measured or assessed for the UCCC.

Hence, although some refinements and checking would be required (see caveats and lessons below), use of these indicators appears feasible.

Table E.3 **UCCC (Part 5) — regulatory design**

Indicators	*Metrics*
Use of RIS in designing regulation	No
Adequacy of the RIS	na
Other assessments in designing regulation	No
Consultation undertaken	Yes
Efficacy of consultation	Satisfactory[a]
Use of a whole-of-government approach	No
Clarity of objectives	No objectives stated
Complexity — whether expertise is required	No
Overly prescriptive requirements	No
Subordinate legislation[b]	0
Reliance on subordinate legislation	0 per cent
Translation of national regulation	na
Time since last comprehensive review	7 years
RIS undertaken in review	No
Existence of a sunset clause	No

a Based on an initial preliminary assessment. **b** The number of subordinate legislations referred to in the primary legislation. Applies only to primary legislation. **na** Denotes not applicable.

Regulatory administration indicators

The indicators measured below are taken from table 7.4 of this study.

Reporting requirements: There are no explicit one-off or ongoing reporting requirements referred to in Part 5 of the UCCC. Hence, the first six indicators in table E.4 are not applicable.

Coordination of government or other agencies: It appears that there is only one government agency responsible for the administration of the UCCC in each jurisdiction. Hence, this indicator is not applicable.

Support channels provided: There is a national website for the UCCC (MCCA 2006c). This website provides information on the UCCC for both individuals and businesses. The site also provides a link to each of the websites for the State and Territory Government agencies that are responsible for the administration of the UCCC. Most of these websites contain limited information on the UCCC but, as a minimum, provide general contact information including phone numbers, email addresses and office locations.

Time limits on governments for administering approvals: As there are no approvals contained in Part 5 of the UCCC, this indicator is not applicable.

Appeals processes: Part 5 of the UCCC does not include any approvals processes. Hence, this indicator is not applicable. However, a credit provider, debtor or guarantor (as covered by the UCCC) is able to apply to the Courts where another party is in breach of the UCCC.

Separation between regulation design and administration: Under the AUCLA, the Ministerial Council for Uniform Credit Laws (MCUCL) (an offshoot of the MCCA) has to agree to amendments to the UCCC by a two-thirds majority (MCCA 2006a). Hence, the design of the UCCC is the responsibility of the MCUCL.

The administration of the UCCC, however, is the responsibility of each State and Territory. Consequently, the design and administration of the UCCC appear to be undertaken by separate government bodies.

Summary of indicators of regulatory administration

Indicators of regulatory administration are summarised below in table E.4. As all relevant indicators were able to be measured or assessed, use of these indicators appears feasible.

Table E.4 **UCCC (Part 5) — regulatory administration**

Indicators	*Metrics*
Items of information reported	0
Duplicate items reported	0
Number of agencies information must be submitted to	0
Frequency of reporting	na
Discretionary reporting requirements	na
Online facilities	na
Coordination of government or other agencies	na
Support channels provided[a]	Yes
Time limits (approvals)	na
Appeals processes[b]	Yes
Separation between regulation design and administration	Yes

a Support channels vary between jurisdictions but all jurisdictions have a website and contact details are publicly available. **b** Appeals processes are not strictly available, however, applications can be made to the Court for breaches of the UCCC. **na** Denotes not applicable.

Regulatory enforcement indicators

The indicators measured below are taken from table 7.5 in this study.

Provisions for the enforcement of the regulation: The UCCC provides for maximum penalties of 30, 50 or 100 penalty units if a credit provider, debtor or guarantor is found to be in breach of Part 5 of the UCCC.

However, the enforcement of contracts made under the UCCC is primarily the responsibility of the credit provider. The UCCC outlines the actions a credit provider must undertake before proceeding with enforcement measures.

A debtor, mortgagor or guarantor can negotiate with the credit provider for a postponement of enforcement proceedings. If that is unsuccessful and the amount of the loan is under a specified threshold, they can apply to the Credit Tribunal or Court for a postponement.

If one party is in breach of the UCCC, it is likely that those affected will seek redress directly with the Credit Tribunal or Court. Hence, Part 5 of the UCCC appears to be primarily self-enforcing.

Risk of conflicting enforcement because multiple agencies are involved: As the UCCC is primarily self-enforcing, the number of agencies involved in enforcement activities is not applicable.

Risk-based strategies: As the UCCC is primarily self-enforcing, the use of risk-based enforcement strategies is not applicable.

Published enforcement strategies and outcomes: Most of the annual reports of the relevant government agencies mention enforcement activities, revenue and outcomes generally but none of these are linked specifically to the UCCC. Further, there do not appear to be any documents or websites detailing the relevant enforcement strategies and outcomes for any of the jurisdictions investigated. However, as the UCCC appears to be primarily self-enforcing, this indicator might be less relevant.

Separation of fee collection and enforcement: Breaches of the UCCC can result in monetary penalties plus any compensation granted. It is unclear which government agency retains the penalties paid, though it does appear that the fines are retained by the notional enforcement agency.

Summary of indicators of regulatory enforcement

Indicators of regulatory enforcement are summarised below in table E.5. As all relevant indicators were able to be measured or assessed, use of these indicators appears feasible. However, some developments would still be required (see caveats and lessons below).

Table E.5 **UCCC (Part 5) — regulatory enforcement**

Indicators	*Metrics*
Provisions for the enforcement of the regulation	No
Risk of conflicting enforcement because multiple agencies are involved	na
Risk-based strategies	na
Published enforcement strategies and outcomes	No
Separation of fee collector and enforcer	Unclear[a]

a It appears that the enforcement agency collects the penalty paid. **na** Denotes not applicable.

Caveats

Two general caveats are applicable to the interpretation of the quality indicators presented in this case study. Namely, indicators are indirect measures of the unnecessary burden, and indicators should be interpreted as a suite rather than in isolation.

Undertaking the case study highlighted a number of additional caveats. First, many of the indicators are qualitative and, hence, subjective. In particular, a number of indicators required an assessment of 'yes' or 'no' even though they could be assessed on a continuous scale. This meant that some judgement was required. A set of criteria would be required to guide such assessments and to ensure consistency.

For the purpose of completing the case study, indicators were measured using all information the Productivity Commission was able to access in the time available. The cooperation of relevant government agencies would be required in Stage 2 to access more information, especially where information is not publicly available.

Lessons

Overall, most of the indicators of regulatory design, administration and enforcement were measurable for Part 5 of the UCCC. Moreover, the use of these indicators appears feasible, and the results appear to be indicative of the potential for unnecessary burden.

A number of developments would be required in Stage 2. First, criteria would have to be developed for a number of the qualitative indicators. This should be done in consultation with government and business.

Second, government agencies would have to be involved in providing information that might not be publicly available. Strategies for obtaining information without causing excessive burden would have to be developed.

Finally, business or industry experts would need to be consulted on the choice and definition of indicators to ensure consistency between their experience with regulatory burden and the independent assessments of burden.

More specifically, indicators that could require additional development include:

- *Clarity of purpose* — criteria would have to be developed to guide what is needed for a regulation to be assessed as having a clearly stated purpose. Also, whether the purpose needs to be in the regulation itself, or whether a purpose stated in an accompanying document (such as the Explanatory Notes) is sufficient, would have to be decided.
- *Complexity* — criteria would have to be developed to ensure this is measured consistently.
- *Overly prescriptive requirements* — this assessment would benefit from consultation with business or industry experts.
- *Efficacy of consultation* — criteria would have to be developed to ensure this is measured consistently. The Australian Government's consultation policy could be used to inform the criteria.
- *Whether support channels are provided* — criteria would have to be developed to guide this indicator. For example, although most government agencies have a website and contact details, whether this satisfies provision of support channels would need to be determined.
- *Separation of regulation setting and administration* — this indicator is difficult to assess without information from the relevant government agency.
- *Whether a regulation is enforced* — criteria would have to be developed to guide the measurement of this indicator. For example, whether a self-enforced regulation is counted as being enforced would have to be determined.
- *Use of risk-based enforcement strategies* — criteria would have to be developed to ensure that risk-based enforcement strategies are clearly defined and identifiable. Measurement of this indicator might also benefit from business or industry input.
- *Publishing of enforcement strategies and outcome* — criteria could be developed to stipulate where these should be published.
- *Separation of enforcement and fee collection* — this indicator is difficult to assess without information from the relevant government agency (or agencies).

E.4 Duplication and inconsistency

The feasibility of benchmarking the burden of inconsistent and duplicated regulatory requirements against that of mutual recognition (as outlined in section 6.3) is explored in this section. Specifically, the aim of this part of the case study was to examine how one of the indicators proposed in chapter 6 would be populated, and to present some of the lessons learned in the process.

The regulation of PPS registrations for motor vehicles was chosen for the case study because sources of information were readily available, making it amenable to a 'desk' case study.[1] The administrative requirements involved also represent a relatively simple example for illustrating the methodology proposed.

This case study was intended to be illustrative only, highlighting some of the benchmarking issues and challenges that could arise.

Benchmarking approach

A key reform proposed by the SCAG is to replace the current system of multiple PPS registers with a single register accessible from all jurisdictions. However, the precise design and administrative arrangements of such a register remains the subject of community consultation (SCAG 2006b). In the absence of a detailed national framework, benchmarking against mutual recognition was chosen for this case study.

The results of a single pair-wise comparison between two jurisdictions are presented, along with a description of how the results for other jurisdictions could be included.

Notional business

There are a number of types of businesses that operate or trade interstate that are required to use multiple PPS registers in order to check and register securities. These include finance companies that lend to motor vehicle buyers, and motor trading businesses that buy and sell motor vehicles.

A finance company was chosen as the notional business for the following reasons:

1 Access Economics (2006) notes that PPS reforms would actually be more likely to reduce transactions costs for non-standard securities, such as stock and ship mortgages, rather than for standard securities, such as motor vehicles.

- finance companies are typical of businesses that have the potential to benefit from a reduction in unnecessary regulatory burden in relation to PPS registrations;
- the reach of the regulation specific to motor vehicles does not generally vary among lenders, so benchmarking does not require the use of multiple notional businesses; and
- lenders operating in each of the States and Territories generally do so on similar scales and under similar market conditions, so it is likely that the indicator of unnecessary burden will not be affected by the choice of notional business.

Data availability and collection

Data were obtained from an analysis of each jurisdiction's legislation. This legislation was identified by SCAG (2006a). Regulatory requirements were also identified from the websites of the authorities in each jurisdiction that have responsibility for maintaining the registers.

The numbers of inconsistent and duplicate requirements were identified from an analysis of the information gathered. This was supplemented by brief telephone enquiries with register staff.

Results

The following tables summarise the number of duplicate or inconsistent regulatory requirements for each jurisdiction. In each case, the notional business was assumed to have already completed the administrative formalities listed in the jurisdiction selected as a benchmark. The duplicated and inconsistent requirements were then counted for the second jurisdiction, relative to the benchmark jurisdiction.

The results for jurisdiction B are presented in table E.6. The comparison was made for a notional business based in jurisdiction A (the benchmark jurisdiction) which is assumed to have already completed the administrative formalities in that jurisdiction. The duplicate or inconsistent requirements that are associated with also doing business in jurisdiction B were then counted.

Table E.6 **Pair-wise comparison for jurisdiction B**

Regulatory requirements and processes	*Jurisdiction A (benchmark)*	*Jurisdiction B*	*Result for jurisdiction B*
Duplication			
Registering a security interest			
Second search to confirm clear title		Yes	Duplication
Second registration of security required		Yes	Duplication
Inconsistencies			
Registering a security interest			
Types of registration available (paper based, online)	Paper based	Paper based and online	Consistent[a]
Information required in registering security		Content differs	Inconsistent
Types of motor vehicles registrable		Coverage differs	Inconsistent
Registration processing time frame	Midnight next business day	Same business day	Consistent
Cancelling registration			
Time limit for security holder to cancel registration after interest extinguished	Within 14 days	7 days	Inconsistent
Request by registrar for security holder to prove assets are encumbered[b]	Yes, within 14 days	Yes, within 14 days	Consistent

a The ability to register security interests both online and using paper-based procedures in jurisdiction B would not represent an additional compliance cost for a notional business in jurisdiction A that must already use paper-based systems. The format of paper-based registrations can differ however. This is captured under consistency of information required. **b** The registrars can request a registered security holder to show cause why the registration should not be cancelled if it becomes apparent to the registrar that the particulars of a registration have changed. For example, if it appears the person registered was not in fact the holder of the security interest when the application was made, or if the security interest appears to have been discharged.

Source: Additional information was sourced from the websites of authorities responsible for registers.

For administrative requirements associated with registering security interests, there were two requirements in jurisdiction B that are duplicated and two that were inconsistent, relative to jurisdiction A. For cancelling a security registration, one inconsistent requirement was counted for jurisdiction B.

The results for doing business in jurisdiction A are summarised in table E.7. These relate to a business based in jurisdiction B, using the requirements in that jurisdiction as the benchmark.

Table E.7 **Pair-wise comparison for jurisdiction A**

Regulatory requirements and processes	*Jurisdiction B (benchmark)*	*Jurisdiction A*	*Result for jurisdiction A*
Duplication			
Registering a security interest			
Second search to confirm clear title		Yes	Duplicate
Second registration of security required		Yes	Duplicate
Inconsistencies			
Registering a security interest			
Types of registration available (paper based, online)	Paper based and Online	Paper based	Inconsistent[a]
Information required in registering security		Content differs	Inconsistent
Types of motor vehicles registrable		Coverage differs	Inconsistent
Registration processing time frame	Same business day	Midnight next business day	Inconsistent[b]
Cancelling registration			
Time limit for security holder to cancel registration after interest extinguished	Within 7 days	14 days	Consistent[c]
Request by registrar for security holder to prove assets are encumbered[d]	Yes, within 14 days	Yes, within 14 days	Consistent

a Whether this requirement is inconsistent with jurisdiction B depends on whether the notional business based in jurisdiction B used online or paper-based registration. It is possible that a business based in jurisdiction B might have been utilising paper-based systems and so jurisdiction A's requirements would not be inconsistent. For illustrative purposes, the notional business has been assumed to have utilised online systems. **b** This requirement represents an inconsistency for jurisdiction A because compliance costs for a business based in jurisdiction B have been assumed to be higher as a result of the longer timeframe in jurisdiction A. Differences can affect compliance costs, including additional administrative measures to deal with increased uncertainty, such as longer monitoring of possession of motor vehicles before the security is registered. **c** This requirement is judged consistent in this comparison (and not in the previous) because a longer time limit to cancel a registration in jurisdiction A would not create an additional compliance costs for a business based in jurisdiction B. Such a business must already have systems designed to comply within the shorter time limit. **d** The registrars may request a registered security holder to show cause why the registration should not be cancelled if it becomes apparent to the registrar that the particulars of a registration have changed. For example, if it appears the person registered was not in fact the holder of the security interest when the application was made, or if the security interest appears to have been discharged.

Source: Additional information was sourced from the websites of authorities responsible for registers.

For a business based in jurisdiction B doing business in jurisdiction A, two duplicate requirements were counted.[2] Four inconsistencies were counted in relation to the registration of security interests for jurisdiction A (compared to two for jurisdiction B) and none in relation to cancelling registrations.

2 Although this is the same number as previously counted for jurisdiction B, it should be noted that if a greater number of jurisdictions were included this number would not be the same among all jurisdictions. For example, in some jurisdictions, registers include securities that have been registered in other jurisdictions, so an additional search of another register would not be required.

The total number of duplicate and inconsistent requirements counted for jurisdictions B and A is presented in table E.8. Additional letters have been included in the table to illustrate how the results from additional pair-wise comparisons for other jurisdictions would be included in a more comprehensive benchmarking exercise.

The total for each jurisdiction forms an indicator of regulatory duplication and inconsistency. As described in chapter 6, these indicators could be used to benchmark jurisdictions' contributions to regulatory burdens on businesses operating or trading interstate.

Table E.8 **Indicator totals**

Jurisdiction	*Benchmark jurisdiction*	*Score (duplication + inconsistency)*	*Jurisdiction*	*Benchmark jurisdiction*	*Score (duplication + inconsistency)*
B	A	2+3	A	B	2+4
	C	j		C	l
	D	k		D	m
Total		5+j+k			6+l+m

Caveats

As mentioned above, this case study presents the results of a limited desk study, with little industry or government consultation.

Importantly, supplementary data from industry were not available on the materiality of the costs of the regulatory requirements identified. Such data would help to ensure that the regulatory requirements identified have a material bearing on overall business costs. For example, for differences in time taken to complete registrations (note b of table E.7), the materiality of the additional business costs created would be important in the context of inter-jurisdictional comparisons.

Consultation with business could also potentially assist in the identification of other instances of regulatory duplication or inconsistency that create unnecessary burdens that are less obvious from a direct analysis of the regulation.

Nevertheless, the analysis conducted shows that it is feasible to derive the proposed indicators.

Lessons

With more time, additional data could be obtained directly from industry and government which would facilitate the measurement and interpretation of indicators

in this section. The absence of such consultation in completing the case study has meant that important dimensions of the assessment are likely to be missing.

Industry and government consultation would also facilitate greater understanding of the *likely practices* of the notional business, which can affect the results attained. For example, the assumption that the notional business used online registration arrangements (note a, table E.7) affected the number of inconsistencies counted for the case study.

The *characteristics* of the notional business also had an effect on the benchmarking results. For example, if the notional business did not have a registered business name, there would be one additional inconsistent requirement between the two jurisdictions under consideration.[3] To this end, consultation with industry and government would be necessary to ensure the characteristics and likely practices of the notional business are appropriate.

[3] In jurisdiction B a signed copy of the financial contract that created the security interest is required unless the security holder is a registered business. This is not required in jurisdiction A, regardless of whether the security holder is a registered business.

References

ABA (Australian Bankers' Association) 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business*, http://www.regulationtaskforce.gov.au/submissions/sub061.pdf (accessed 14 November 2006).

ABL (Australian Business Limited) 2006, *Submission to the Independent Pricing and Regulatory Tribunal Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency*, February.

ABS (Australian Bureau of Statistics) 1999, *An Introduction to Sample Surveys: A User's Guide*, Cat. no. 1299.0, Canberra.

—— 2004, *Cafes and Restaurants Australia 2003-04*, Cat. no. 8655.0, Canberra.

—— 2006, *Annual Report 2005–06*, ABS, Canberra.

Access Economics 2006, *The Costs and Benefits of Personal Property Securities (PPS) Reform*, A Report by Access Economics for the Australian Attorney-General's Department, July.

ACCI (Australian Chamber of Commerce and Industry) 2004, *ACCI Submission to the Office of the Federal Privacy Commissioner*, December.

—— 2005, *Holding Back the Red Tape Avalanche: A Regulatory Reform Agenda for Australia*, Position Paper, November.

ACPBR (Advisory Committee on Paperwork Burden Reduction, Canada) 2005, *Survey of Regulatory Compliance Costs*, http://www.reducingpaperburden.gc.ca/epic/internet/inpbri-iafp.nsf/en/h_sx00028e.html (accessed 30 October 2006).

—— 2006, *Reducing Paper Burden: Frequently Asked Questions*, http://www.reducingpaperburden.gc.ca/epic/internet/inpbri-iafp.nsf/en/sx00007e.html (accessed 30 October 2006).

ACT Government 2006, *2006-07 Budget Paper No. 4*, Canberra.

ALRC (Australian Law Reform Commission) 2006, *Review of Privacy Act 1988*, Issues Paper no. 31, Canprint Communications Pty Ltd.

Argy, S. and Johnson, M. 2003, *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, July.

Arrow, K.J. 1963, *Social Choice and Individual Values*, 2nd edn, Wiley, New York.

Australian Government 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business - Final Government Response*, August.

Banks, G. (Chairman, Productivity Commission) 1999, Towards best practice regulation: the national 'standard', Address to ESAA Conference 'Best Practice Regulation for Electricity Supply Businesses', Melbourne, 23 February.

—— 2001, Challenges for Australia in regulatory reform, Address to the Regulation Reform Management and Scrutiny of Legislation Conference, NSW State Parliament, Sydney, 10 July.

—— 2003a, Reducing the business costs of regulation, Address to the Small Business Coalition, Canberra, 20 March.

—— 2003b, The good, the bad and the ugly: economic perspectives on regulation in Australia, Address to the Conference of Economists 2003, Business Symposium, Canberra, 2 October.

—— 2005, Regulation-making in Australia: Is it broke? How do we fix it?, Public Lecture Series of the Australian Centre of Regulatory Economics (ACORE) and the Faculty of Economics and Commerce, ANU, Canberra, 7 July.

—— 2006a, Reducing the regulatory burden: the way forward, Inaugural Public Lecture, Monash Centre for Regulatory Studies, University Law Chambers, Melbourne, 17 May.

—— 2006b, Tackling the underlying causes of over-regulation: an update, Speaking notes for a presentation to the Conference, Australian Regulatory Reform Evolution, 24-25 October, Canberra.

Berg, S. 1999, Developments in best-practice regulation: principles, processes, and performance, Paper presented at the Australian Competition and Consumer Commission Conference 'Incentive Regulation and Overseas Developments', Sydney, November.

BIE (Bureau of Industry Economics) 1996, *International Benchmarking — Business Licences*, AGPS, Canberra.

Booysen, F. 2002, 'An overview and evaluation of composite indices of development', *Social Indicators Research*, vol. 59, pp. 115–51.

BRE (Better Regulation Executive) 2005, *Measuring Administrative Costs: UK Standard Cost Model Manual*, September.

BRTF (Better Regulation Task Force) 2005, *Regulation – Less is More, Reducing Burdens, Improving Outcomes*, Report to the Prime Minister, March.

Cartwright, F., Mussio, J. and Boughton, C. 2006, *Developing the Composite Learning Index*, Canadian Council on Learning.

CFR (Council of Financial Regulators) 2005, *Failure and Crisis Management in the Australian Financial System*, November.

COAG (Council of Australian Governments) 2004, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, http://www.coag.gov.au/meetings/250604/coagpg04.pdf (accessed 29 September 2006).

—— 2006a, Council of Australian Governments' Meeting Outcomes 10 February, Canberra.

—— 2006b, Council of Australian Governments' Meeting Outcomes 14 July, Canberra.

Commonwealth of Australia 1997, *Grey-Letter Law: Report of the Commonwealth Interdepartmental Committee on Quasi-Regulation*, Canberra, December.

Costello, P. (Treasurer) 2004, *Government progress in implementing the HIH Royal Commission recommendations*, Press release no. 042, 27 May, http://www.treasurer.gov.au/tsr/content/pressreleases/2004/042.asp (accessed 14 November 2006).

CSES (Centre for Strategy and Evaluation Services) 2002, *Benchmarking the Administration of Business Start-ups*, Report prepared for the European Commission Enterprise Directorate General, January.

DAF (Development Assessment Forum) 2005, *A Leading Practice Model for Development Assessment in Australia*, March, Canberra.

DEC (Department of Environment and Conservation, New South Wales) 2005, *Annual Report 2004-05,* http://www.environment.nsw.gov.au/resources/decar05fullreport05428.pdf (accessed 1 November 2006).

DEH (Department of Environment and Heritage) 2005, *Legislation Annual Reports 2004-05,* http://www.deh.gov.au/about/publications/annual-report/04-05/pubs/deh-legislation-annualreport0405.pdf (accessed 4 January 2007).

DITR (Department of Industry, Tourism and Resources, Australian Government) 2006, *Annual Review of Small Business Series*, http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectID=FBA565C3-65BF-4956-B5329EC9717E125D (accessed 24 January 2007).

DLG (Department of Local Government, New South Wales) 2005, *NSW Local Government Councils Comparative Information 2003/2004*, http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Comparatives/Comparatives%202003-04.pdf (accessed 26 October 2006).

DSD (Department of State Development, Queensland) 2006, *Red Tape Reduction Stocktake*, http://www.sdi.qld.gov.au/dsdweb/v3/guis/templates/content/gui_cue_cntnhtml.cfm?id=44982 (accessed 27 September 2006).

DSE (Department of Sustainability and Environment, Victoria) 2006, *Planning Activity Report 2004-05,* Melbourne, January.

DSRD (Department of State and Regional Development, New South Wales) 2006, *Small Business Regulation Review*, http://www.smallbiz.nsw.gov.au/smallbusiness/Government+Programs/Small+Business+Regulation+Review/ (accessed 13 November 2006).

Ebert, U. and Welsch, H. 2004, 'Meaningful environmental indices: a social choice approach', *Journal of Environmental Economics and Management*, vol. 47, pp. 270–83.

EPA (Environmental Protection Agency, Western Australia) 2006, *Annual Report 2005-2006*, http://www.epa.wa.gov.au/docs/2326_EPA_AnnualReport_0506.pdf (accessed 6 November 2006).

Everton-Moore, K., Ardill, A., Guilding, C. and Warnken, J. 2006, 'The law of strata title in Australia: a jurisdictional stocktake', *Australian Property Law Journal*, vol. 13, no. 1, pp. 1–35.

Fraser Institute 2006, *Fraser Institute Annual Survey of Mining Companies 2005/2006*, Vancouver, http://www.fraserinstitute.ca/admin/books/files/Mining20052006.pdf (accessed 14 October 2006).

Fronsko, A.L. 1999, 'A Perspective on Benchmarking Theory', mimeo.

GAO (General Accounting Office, United States) 1996, *Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies*, Report to Congressional Requestors, Washington D.C., November.

Gellman, A.J., Berardino, F.J. and Tiffany, F.G. 1979, 'On Measuring the Costs of Regulation', in MacAvoy, P. ed., *Government Regulation of Business: Its Growth, Impact and Future*, Chamber of Commerce of the United States of America, Washington D.C.

Goldberger, A.S. 1972, 'Maximum-likelihood estimation of regressions containing unobservable independent variables', *International Economic Review*, vol. 13, no. 1, pp. 1–15.

Hampton, P. 2005, *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Her Majesty's Treasury, http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf (accessed 8 November 2006).

HIA (Housing Industry Association) 2003, *Submission to the Productivity Commission Inquiry on First Home Ownership*, http://www.pc.gov.au/inquiry/housing/subs/sub177.pdf (accessed 12 October 2006).

—— 2006a, *Submission to the Independent Pricing and Regulatory Tribunal Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency*, http://www.ipart.nsw.gov.au/files/Submission%20-%20Section%209%20Regulation%20Review%20-%20Housing%20Industry%20Association%20-%20website%20document.PDF (accessed 13 November 2006).

—— 2006b, *Submission to the Taskforce on Reducing Regulatory Burdens on Business*, http://www.regulationtaskforce.gov.au/submissions/sub048.pdf (accessed 14 November 2006).

HIH Royal Commission 2003, *The Failure of HIH*, Canberra, http://www.hihroyalcom.gov.au/finalreport/index.htm (accessed 14 November 2006).

HMRC (Her Majesty's Revenue and Customs, United Kingdom) 2006, *The Standard Cost Model*, http://www.hmrc.gov.uk/research/richardson.pdf (accessed 2 October 2006).

Howard J. (Prime Minister of Australia) & Costello P. (Treasurer) 2005, 'Taskforce on reducing the regulatory burden on business' Joint Media Release, 12 October 2005.

Humpherson, E. 2006, *All About the Numbers?*, http://www.administrative-burdens.com/default.asp?page=1&article=73 (accessed 2 October 2006).

IC (Industry Commission) 1997, *Performance Indicators for Councils: Improving Local Government Performance Indicators*, AGPS, Melbourne, October.

ICA (Insurance Council of Australia) 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business,* http://www.regulationtaskforce.gov.au/submissions/sub098main.pdf (accessed 14 November 2006).

Independent Review Committee 2002, *Review of the Project Development Approval System — Final Report*, http://www.doir.wa.gov.au/documents/investment/PremiersProjectApprovalsFinalReport.pdf (accessed 3 January 2007).

Institute of Early Childhood 2005, *Submission to the Taskforce on Reducing Regulatory Burdens on Business*, http://www.regulationtaskforce.gov.au/submissions/sub026.pdf (accessed 30 October 2006).

IPA (Institute of Public Affairs, New South Wales) 2003, *Submission to the Productivity Commission Inquiry on Impacts of Native Vegetation and Biodiversity Regulations*, http://www.pc.gov.au/inquiry/nativevegetation/subs/sub135.pdf (accessed 30 October 2006).

—— 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business,* http://www.regulationtaskforce.gov.au/submissions/sub127.pdf (accessed 14 November 2006).

IPART (Independent Pricing and Regulatory Tribunal of New South Wales) 2006, *Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency*, Final Report, October.

Kaufmann, D., Kraay, A. and Mastruzzi, M. 2003, *Governance Matters III, Governance Indicators for 1996–2002*, World Bank Policy Research Working Paper no. 3106, World Bank, Washington D.C.

KPMG 2000, *NCP Review of the Consumer Credit Code*, Final Report, December, http://www.creditcode.gov.au/content/downloads/final.pdf (accessed 10 January 2007).

—— 2006, *Administrative Burdens — HMRC Measurement Project*, http://www.hmrc.gov.uk/better-regulation/kpmg.htm (accessed 2 October 2006).

Lattimore, R., Madge, A., Martin, B. and Mills, J. 1998, *Design Principles for Small Business Programs and Regulations*, Productivity Commission Staff Research Paper, AusInfo, Canberra, August.

Lynch, D., Symonds, A. and Breusch, J. 2006, 'Red tape keeps on sticking', *The Australian Financial Review*, 10 October.

MCCA (Ministerial Council on Consumer Affairs) 1999, *Uniform Consumer Credit Code: Post Implementation Review*, Final Report, http://www.creditcode.gov.au/content/downloads/PIR_Credit_Code_Final_Report.pdf (accessed 10 January 2007).

—— 2006a, *Code Principles and Administration*, http://www.creditcode.gov.au/display.asp?file=/content/code_principles.htm (accessed 10 January 2007).

—— 2006b, *Purpose and Role of Guidelines,* http://www.creditcode.gov.au/display.asp?file=/content/purpose_and_role_of_guidelines.htm (accessed 10 January 2007).

—— 2006c, *The Consumer Credit Code Web site*, http://www.creditcode.gov.au (accessed 10 January 2007).

Ministry of Finance, the Netherlands, Danish Commerce and Companies Agency, Ministry of Trade and Industry, Norway and Swedish Business Development Agency 2005, http://www.amvab.dk/graphics/UK/AMVAB%20rapporter/Report Internationalcomparison.doc (accessed 23 October 2006).

Munda, G. and Nardo, M. 2003, On the methodological foundation of composite indicators used for ranking countries, Paper presented at the Organisation for Economic and Co-operation Development–European Commission Joint

Research Centre Workshop on Composite Indicators of Country Performance, Ispra, Italy, 12 May.

Nardo, M., Saisana, M., Saltelli, A. and Tarantola, S. 2005, *Tools for Composite Indicators Building*, European Commission Joint Research Centre, Italy.

OBPR (Office of Best Practice Regulation) 2006, *Consultation*, http://www.obpr.gov.au/consultation.html (accessed 12 January 2007).

OECD (Organisation for Economic Co-operation and Development) 1995, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OECD, Paris.

—— 2001, *Businesses' Views on Red Tape: Administrative and Regulatory Burdens on Small and Medium-Sized Enterprises*, OECD, Paris.

—— 2003a, *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries*, OECD, Paris.

—— 2003b, *Composite Indicators of Country Performance: A Critical Assessment*, OECD, Paris.

—— 2005, *Handbook on Constructing Composite Indicators: Methodology and User Guide*, OECD, Paris.

—— 2006a, *Glossary of Statistical Terms – Quantitative Data*, http://stats.oecd.org/glossary/ (accessed 9 November 2006).

—— 2006b, *Measuring Administrative Burdens: The OECD Red Tape Scoreboard,* http://www.oecd.org/document/3/0,2340,en_2649_34141_34061123_1_1_1_1,00.html#Measuring_Admin (accessed 1 August 2006).

OPPAGA (Office of Program Policy Analysis and Government Accountability) 1999, *Estimating the Cost of State Regulatory Programs and Activities: Possible Approaches*, Report 98-78, April.

ORR (Office of Regulation Review) 1998, *A Guide to Regulation (second edition)*, AusInfo, Canberra, http://www.pc.gov.au/orr/reports/guide/reguide2/reguide2.pdf (accessed 2 October 2006).

P&A Walsh Consulting Pty Ltd and UTS Centre for Local Government 2002, *Comparative Performance Measurement and Benchmarking of Planning and Development Assessment Systems*, A National Study for the Development Assessment Forum, November.

PC (Productivity Commission) 2004a, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Inquiry Report no. 27, Canberra, March.

—— 2004b, *First Home Ownership*, Inquiry report no. 28, Melbourne, March.

—— 2004c, *Reform of Building Regulation,* Research Report, Canberra, November.

—— 2005, *Regulation and its Review 2004-05*, Annual Report Series, Productivity Commission, Canberra.

—— 2006a, *Annual Report 2005-06*, Annual Report Series, Productivity Commission, Canberra.

—— 2006b, *Business Cost Calculator*, User Guide, Office of Best Practice Regulation, Canberra, October.

—— 2006c, *Conservation of Australia's Historic Heritage Places*, Inquiry Report no. 37, Canberra, April.

—— 2006d, *Regulation and its Review 2005-06,* Annual Report Series, Productivity Commission, Canberra.

—— 2006e, *Review of the Australian Consumer Product Safety System*, Research Report, Canberra, January.

—— 2007, *Consumer Policy Framework*, Productivity Commission Issues Paper, Canberra, January.

PCA (Property Council of Australia) 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business,* http://www.regulationtaskforce.gov.au/submissions/sub122.pdf (accessed 14 November 2006).

RAIA (Royal Australian Institute of Architects) 2003, *Submission to the Productivity Commission Inquiry on First Home Ownership*, http://www.pc.gov.au/inquiry/housing/subs/sub148.pdf (accessed 1 September 2006).

RBA (Reserve Bank of Australia) 2006, *Financial System Stability Review,* September, http://www.rba.gov.au/PublicationsAndResearch/FinancialStabilityReview/Sep2006/Pdf/financial_stability_review_0906.pdf (accessed 14 November 2006).

RCA (Restaurant and Catering Australia) 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business*, http://www.regulationtaskforce.gov.au/submissions/sub070.pdf (accessed 21 December 2006).

REIA (Real Estate Institute of Australia) 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business,* http://www.regulationtaskforce.gov.au/submissions/sub016.pdf (accessed 14 November 2006).

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

Saisana, M. and Tarantola, S. 2002, *State-of-the-art Report on Current Methodologies and Practices for Composite Indicator Development*, European Commission Joint Research Centre, Italy.

SBDTF (Small Business Deregulation Task Force) 1996, *Time for Business,* AGPS, Canberra.

SCAG (Standing Committee of Attorneys-General) 2006a, *Review of the Law on Personal Properties Securities*, Options Paper, April.

—— 2006b, *Review of the law on Personal Property Securities,* Discussion Paper: Registration and Search Issues, November.

SCC (State Chamber of Commerce, New South Wales) 2005, *Red Tape Register*, September.

SCMN (Standard Cost Model Network) 2005, *International Standard Cost Model Manual*, http//www.administrative-burdens.com (accessed 2 August 2006).

SCRGSP (Steering Committee for the Review of Government Service Provision) 2006a, *Report on Government Services 2006*, Productivity Commission, Canberra.

—— 2006b, *Report on Government Services 2006 – Indigenous Compendium*, Productivity Commission, Canberra.

Sharpe, A. 2004, *Literature Review of Frameworks for Macro-indicators*, Centre for the Study of Living Standards, Research Report no. 2004-03, Ottawa.

Short, C. 2003, *Electricity License Harmonisation Survey*, ABARE Report to the Department of Industry, Tourism and Resources, Canberra, March.

SKM (Sinclair Knight Merz) Consulting 2005, *Introducing Regular Planning Permit Reporting in Victoria*, Report prepared for the Victorian Department of Sustainability and Environment, April.

Statistics Canada 2005, *Survey of Regulatory Compliance Cost*, http://www.statcan.ca/cgibin/imdb/p2SV.pl?Function=getSurvey&SDDS=5093&lang=en&db=IMDB&dbg=f&adm=8&dis=2 (accessed 30 October 2006).

Stenning and Associates Pty Ltd 2006, Licence Research Paper, Hobart, November, unpublished.

The Treasury (Australian Government) 2006, *Standard Business Reporting - Supporting Documents*, http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1165 (accessed 20 November 2006).

UDIA (Urban Development Institute of Australia, Queensland) 2006, *UDIA questions LGAQ survey claims*, Media release, Brisbane, 14 March.

UK Cabinet Office 2005, *Cabinet Office Kicks Off Project to Measure and Cut Red Tape on Business*, http://www.cabinetoffice.gov.uk/newsroom/news_releases /2005/050915_betterreg.asp?ID=100 (accessed 13 October 2006).

URS 2006a, *National Audit of Regulations Influencing Mining Exploration and Project Approval Process*, Final report prepared for Minerals Council of Australia, February.

—— 2006b, *Scorecard of Mining Project Approval Processes*, Final report prepared for Minerals Council of Australia, May.

VCEC (Victorian Competition and Efficiency Commission) 2005, *The Victorian Regulatory System*, Victorian Government, Melbourne.

—— 2006a *Regulatory Impact Statements 2004 — Present*, http://www.vcec.vic.gov.au/CA256EAF001C7B21/0/8EC98DC03CC3F798CA256F8B0076A015?OpenDocument (accessed 26 October 2006).

—— 2006b, *The Victorian Regulatory System*, March.

Victorian Government 2006, *2006-07 Budget Paper No. 3 Service Delivery*, May.

Vlăsceanu, L., Grünberg, L. and Pârlea, D. 2004, *Quality Assurance and Accreditation: A Glossary of Basic Terms and Definitions*, UNESCO Papers on Higher Education.

Vodafone 2006, *Submission to the Taskforce on Reducing Regulatory Burdens on Business,* http://www.regulationtaskforce.gov.au/submissions/sub097.pdf (accessed 14 November 2006).

World Bank 2006a, *Doing Business in 2006: Creating Jobs*, Washington D.C.

—— 2006b, *Doing Business 2007: How to Reform*, http://www.doingbusiness.org/documents/DoingBusiness2007_Overview.pdf (accessed 2 October 2006).

—— 2006c, *Methodology and Surveys*, http://www.doingbusiness.org/MethodologySurveys/ (accessed 2 October 2006).

WRMC (Workplace Relations Ministers' Council) 2006, *Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand*, 4th edn, Canberra, September.

Yarrum Equities 2004, *Submission to the Productivity Commission Inquiry on First Home Ownership*, http://www.pc.gov.au/inquiry/housing/subs/subdr251.pdf (accessed 12 October 2006).