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Impacts of COAG Reforms: Business Regulation and VET

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

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

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au

Terms of reference

Impacts and benefits of COAG reforms

Productivity Commission Act 1998

I, Nick Sherry, Assistant Treasurer, pursuant of Parts 2 and 3 of the *Productivity Commission Act 1998* hereby request that the Productivity Commission undertake reporting on the impacts and benefits of COAG reforms.

Purpose of the study

The Council of Australian Governments (COAG) is committed to addressing the challenges of boosting productivity, increasing workforce participation and mobility and delivering better services for the community. This reform agenda will also contribute to the goals of improving social inclusion, closing the gap on Indigenous disadvantage and improving environmental sustainability.

At its March 2008 meeting, COAG agreed that, to assist the COAG Reform Council in its role of helping to enhance accountability and promote reform, and monitoring the progress of the COAG reform agenda, the Productivity Commission (the Commission) would be requested to report to COAG on the economic impacts and benefits of COAG's agreed reform agenda every two to three years. In doing so, the Commission should be guided by COAG reform objectives and goals identified in the Intergovernmental Agreement on Federal Financial Relations, COAG communiqués and related documents, particularly as they relate to addressing the challenges stated above.

The reporting will cover, as appropriate, the realised and prospective economic impacts and benefits of the different reform streams, including regulation, infrastructure and human capital issues of workforce productivity and participation. Each report to COAG will give priority to informing governments of the nature of reform impacts and benefits and the time scale over which benefits are likely to accrue, given COAG's reform framework and implementation plans. Where information about specific reform impacts or initiatives is limited, the Commission's reporting would produce broad or 'outer envelope' estimates of the potential benefits and costs of reform.

The reporting program should enable governments to have up-to-date information with which to evaluate what has been achieved through the reform agenda and provide an assessment of potential future gains.

Scope of reports

Each report should cover reform developments, impacts and benefits in each COAG reform area. At the commencement of each reporting cycle, the Assistant Treasurer will provide directions concerning particular reporting priorities to be addressed within this broad framework. Without limiting the scope of matters to be considered, determination of reporting priorities could take into account:

- the fiscal impact of reform on each level of government
- the availability of new material on COAG's reform agenda or implementation plans
- the implementation of a significant body of reform over a sufficient period to enable a meaningful review of the likely impacts and benefits of that reform

- any emerging concern about the potential impacts or benefits of a reform.

The Commission's reports to COAG should provide information on:

- the economic impacts and benefits of reform and outcome objectives, including estimates of the economy-wide, regional and distributional effects of change
- assessments, where practicable, of whether Australia's reform potential is being achieved and the opportunities for improvement. The analysis should recognise the different nature of sectoral productivity-based and human capital reforms and the likely time paths over which benefits are likely to accrue.

In preparation for its inaugural full report, the Commission should also provide a 'framework' report to COAG outlining its proposed approach to reporting on the impacts and benefits of COAG's reform agenda.

Methodology

The Commission will develop and maintain analytical frameworks appropriate for the quantification of the impacts and benefits of reform, and the provision to government and the community of assessments of the economy-wide, regional and distributional effects of COAG's reform agenda. The frameworks should be transparent, and subject to independent assessment. As far as practicable, the frameworks should be made available for wider use.

The Commission should provide an explanation of the methodology and assumptions used in its analysis. The Commission should also provide guidance concerning the sensitivity of results to the assumptions used and bring to COAG's attention informational limitations and weaknesses in approaches to reform evaluation. The scope for improvement should be identified.

Consultation and timing

In the course of preparing each report, the Commission should consult the COAG Reform Council, relevant Ministerial Councils, any relevant COAG working groups, Commonwealth Ministers, State and Territory Treasurers and more widely, as appropriate. While these consultations would inform the Commission's assessment, responsibility for the final report would rest with the Productivity Commission.

The Commission's framework report should be submitted to COAG by 31 December 2010. The Commission will then complete full reports at 2-3 year intervals dated from 1 January 2009, in accordance with directions for individual reports from the Assistant Treasurer.

Final reports will be submitted by the Productivity Commission to the Assistant Treasurer for conveyance to COAG. The Assistant Treasurer will advise the Commission of the timing for individual reports. The reports will be published.

Nick Sherry
Assistant Treasurer
[Received 18 June 2010]

Letter of direction

Dear Mr Banks

I am writing to you regarding priorities to be addressed in the Productivity Commission's first report on the Impacts and Benefits of COAG Reforms. I apologise for delay in providing these directions to you.

In December 2010, I received the Commission's framework report, which proposed that the first substantive report include a detailed analysis of the impacts of reform in the competition and regulation stream and the human capital stream.

For the first report, I agree that the Commission should examine areas of COAG's competition and regulation stream likely to have realised or prospective impacts. The COAG Reform Council assessed the progress of the deregulation and competition reforms as at 30 September 2010 in its National Partnership Agreement to Deliver a Seamless National Economy: Performance Report for 2009-10. I consider that the Commission's report should focus on the 14 completed deregulation reforms (pending COAG's agreement to the completion of the food reform), the Personal Property Securities and Occupational Health and Safety reforms which are scheduled to be operational by 1 January 2012, and the National Construction Code reform which is substantially complete (see Attachment A for a numbered list of these all of these reforms).

Taking into account the longer term nature of the implementation of many of the competition reforms, I agree with the Commission's proposal that these be considered in more depth in the second or later reports. I also consider that the remaining deregulation reforms should also be examined at this time.

Under the human capital stream, I endorse the Commission's proposal that the impact of education and training reforms be examined in detail in its first report. I ask that the Commission focus on the impacts of reforms to vocational education and training on productivity and workforce participation. Initiatives that support young people and disadvantaged groups in making a successful transition from school to further education, training or employment should also be examined by the Commission as part of this analysis.

I note that the Commission does not propose to provide an estimate of the realised and prospective economic impacts and benefits of all the different reform streams. While I appreciate the rationale for not doing so in this first report, this is an area that I would appreciate greater focus on in future reports.

The terms of reference that were provided in June 2010 asked the Commission to report to COAG on this matter by 31 December 2011. However, in view of the delays in providing these directions, I have extended the time for the Commission to provide COAG with its report from 31 December 2011 to the end of March 2012, with a discussion draft to be provided in December 2011.

This letter has been copied to the Prime Minister, the Deputy Prime Minister and Treasurer, the Minister for Finance and Deregulation, the Minister for Tertiary Education and the Minister for School Education.

Yours sincerely

BILL SHORTEN
[Received 22 August 2011]

Attachment A — Reforms to be focused on

14 completed deregulation reforms

- Health workforce (Deregulation reform stream 5 in the CRC report)
- Trade measurement (Reform stream 6)
- Trustee corporations (Reform stream 10)
- Standard business reporting (Reform stream 19)
- Wine labelling (Reform stream 25)
- Rail safety (Reform stream 19)
- Australian consumer law (Reform stream 8)
- Product safety (Reform stream 9)
- Phase 1 of Consumer credit (includes 3 separate reforms; reform streams 11, 12 and 13)
- Payroll tax (Reform stream 3)
- Development assessment (Reform stream 4)
- Food (Reform stream 20)

2 reforms scheduled to be operational by 1 January 2012

- Personal Property Securities (Reform stream 18)
- Occupational Health and Safety (Reform stream 1)

1 reform that is substantially complete

- National Construction Code (Reform stream 15)

Extension letter

Mr Gary Banks AO
Chairman
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Dear Mr Banks

Thank you for your letter dated 15 March 2012, seeking an extension to the reporting date for the Productivity Commission study Impacts of COAG reforms: Business Regulation and VET.

I note that further time is needed to enable consideration of late submissions and finalise detailed modelling of reform outcomes.

Accordingly, I agree to your request to extend the reporting date for the study from 31 March to 30 April 2012.

I have copied this letter to the Prime Minister.

I look forward to receiving the report in due course.

Yours sincerely

DAVID BRADBURY
[Received 23 March 2012]

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Preface

The Commission's report into the *Impacts of COAG Reforms: Business Regulation and VET* comprises three volumes:

- The first volume contains the Overview of the entire report, along with an introduction and three chapters which provide details on the economic context in which the reforms will play out, and the Commission's preliminary assessment of the overall impacts of the regulation and vocational education and training reforms examined, respectively.
- This volume contains chapters which assess the impacts of the 17 Seamless National Economy business regulation reforms examined.
- The third volume contains chapters which assess the impacts of the vocational education and training reforms examined.

All three volumes are available on the Commission's website via the study page (www.pc.gov.au/projects/study/coag-reporting).

The Commission will also be publishing a supplement to the report which will contain details of the economy-wide modelling used in the study.

Abbreviations and explanations

Abbreviations

ABA	Australian Bankers' Association
ABCB	Australian Building Codes Board
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACL	Australian Consumer Law
ACTPLA	ACT Planning and Land Authority
AFGC	Australian Food and Grocery Council
AGIMO	Australian Government Information Management Office
AHPRA	Australian Health Practitioner Regulation Authority
AHWMC	Australian Health Workforce Ministerial Council
AIG	Australian Industry Group
AIHW	Australian Institute of Health and Welfare
ANZFRMC	Australia New Zealand Food Regulation Ministerial Council
ANZFS	Australia and New Zealand Food Standards Code
ANZSIC	Australian and New Zealand Standard Industrial Classification
AQS	Average Quantity System
ASCC	Australian Safety and Compensation Council
ATO	Australian Taxation Office
ASIC	Australian Securities and Investments Commission
ATSB	Australian Transport Safety Bureau
BCA	Business Council of Australia
BCA	Building Code of Australia
BRCWG	Business Regulation and Competition Working Group
BTRE	Bureau of Transport and Regional Economics

CBA	Commonwealth Bank of Australia
CIS	Code Interpretation Service
COAG	Council Of Australian Governments
CRC	COAG Reform Council
DAF	Development Assessment Forum
eDA	Electronic Development Assessment
EDR	External Dispute Resolution
EHC	Electronic Housing Code
ELS	Electronic Lodgement Service
FRA	Food Regulation Agreement
FSANZ	Food Standards Australia New Zealand
FTA	Fair Trading Acts
GDP	Gross Domestic Product
GST	Goods and Services Tax
GVA	Gross Value Added
HIA	Housing Industry Association
HSC	Health and Safety Commission
IAC	Industries Assistance Commission
IC	Industry Commission
IGA	Inter-Governmental Agreement
ITSR	Independent Transport Safety Regulator
MCCA	Ministerial Council on Consumer Affairs
MFAA	Mortgage & Finance Association of Australia
MMRF	Monash Multi-Regional Forecasting (model)
NCC	National Construction Code
NCP	National Competition Policy
NMI	National Measurement Institute
NPV	Net Present Value
NRA	National Reform Agenda
NTC	National Transport Commission
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety

OSR	Office of State Revenue
PC	Productivity Commission
PPS	Personal Property Securities
PPSR	Personal Property Securities Register
RBA	Reserve Bank of Australia
RIS	Regulation Impact Statement
SBR	Standard Business Reporting
SLA	Service Level Agreements
TPA	Trade Practices Act
UCCC	Uniform Consumer Credit Code
UTML	Uniform Trade Measurement Legislation
VCEC	Victorian Competition and Efficiency Commission
WRMC	Workplace Relations Ministers' Council
XBRL	eXtensible Business Reporting Language

Explanations

Billion	The convention used for a billion is a thousand million (10^9).

1 Introduction and summary

1.1 The Seamless National Economy reforms

At its March 2008 meeting, the Council of Australian Governments (COAG) committed to the 'COAG reform agenda'. This agenda builds on the National Competition Policy (NCP) which had its emphasis on removing anti-competitive barriers to productivity and economic efficiency. The reform agenda includes reforms aimed at boosting productivity, increasing workforce participation and mobility and improving the quality of public services.

The reforms are wide ranging and cover three broad themes:

- a competition and regulation stream (consisting of reforms in the areas of: business regulation and competition; and infrastructure provision);
- a human capital stream (consisting of reforms in the areas of: education and training; health, ageing and disability; housing; and Indigenous reform); and
- an environment stream (consisting of reforms in the areas of water and climate change).

This volume examines reforms that lie within the competition and regulation stream, specifically focusing on a number of deregulations reforms that are covered by the *National Partnership Agreement to Deliver a Seamless National Economy.* This National Partnership was agreed between the Australian and State and Territory Governments in February 2009. Under the agreement, governments have undertaken to work together to progressively implement a coordinated national approach to regulation in order to:

> … deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy. (COAG 2009a, p. 3)

With a goal to reduce inconsistent regulation across jurisdictions, the accompanying implementation plans are common across all jurisdictions (in contrast to other national partnerships for which implementation plans may vary by jurisdiction).

The reforms embodied in the agreement aim to achieve beneficial outcomes for Australians through:

(a) creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions;

(b) enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and

(c) expanding Australia's productive capacity over the medium-term through competition reform, enabling stronger economic growth. (COAG 2009a, p. 4)

The reforms are primarily about reducing the regulatory burden imposed on firms that operate in multiple jurisdictions. They are intended to provide business with greater flexibility in shifting resources between jurisdictions, provide smaller firms with easier access to interstate markets and ultimately reduce the cost of doing business. If effective, the reforms should ultimately lower the costs of goods and services to producers and consumers. Some of the reforms also have social objectives, including improving workplace safety and consumer protection.

There are two broad areas within the Seamless National Economy reforms:

- business regulation and competition — including measures to establish national or harmonised regulatory systems and more effective regulatory review and evaluation processes, as well as the implementation of previously agreed changes to energy and transport regulation; and
- infrastructure — including the development of capital city strategic plans.

Overall, 27 reforms make up the deregulation component of the Seamless National Economy partnership. The reforms are diverse and cover a wide variety of economic activity and markets. The Australian Government has also committed to providing $550 million over five years to State and Territory governments, consisting of $100 million in facilitation payments in 2008-09, and, if the agreed milestones are met, reward payments of up to $200 million in 2011-12 (to date no payments have been made) and $250 million in 2012-13. The COAG Reform Council is responsible for reporting on progress with respect to the milestones.

The Commission has been asked to investigate 17 of the 27 reforms (box 1.1) as they represent reforms where the policy process is either complete or largely complete based on the COAG Reform Council's assessment.

Box 1.1 **Reforms examined in this report**

The Commission has been asked to examine the impacts of Seamless National Economy reforms in the following areas:

- Consumer law and product safety — the reforms seek to create a national consumer policy regime and a single national consumer law;
- Mortgage brokers, margin lending and non-deposit taking institutions ('consumer credit') — the reforms seek to create a single national approach to consumer protection regulation in relation to the use of credit;
- Personal properties securities — the reforms seek to create a national system for the regulation and registration of security interests in personal property;
- Trustee corporations — reforms seek to established a national approach to the regulation of trustee corporations
- Standard business reporting — the reforms seek to establish a multi-agency program to reduce the reporting burden on business by providing consistent and streamlined government financial reporting requirements;
- Payroll tax — the reforms seek to reduce the compliance costs to business and administrative costs to government arising from legislative and administrative differences in payroll tax across jurisdictions;
- Occupational health and safety — the reforms seek to establish a harmonised approach to occupational health and safety regulation;
- Rail safety — the reforms seek to reduce the burden on rail operators of complying with a number of different rail safety regimes within and between jurisdictions;
- Health workforce — the reforms seek to create a national health practitioner registration and accreditation system;
- Trade measurement — the reforms seek to ensure that nationally consistent and equitable practices and standards are used for all transactions based on measurement;
- Food regulation — the reforms seek to reduce the regulatory burden on businesses and not-for-profit organisations in relation to food regulation, without compromising public health;
- Wine labelling — the reforms seek to harmonise labelling requirements so that one common label (of the two usually found on wine bottles) could be used for both domestic and export markets;
- Development assessment — the reforms seek to improve processes for development assessment across Australia and reduce building costs; and
- National Construction Code — the reforms seek to achieve a nationally consistent approach to building and plumbing regulation in Australia.

Characterising reform impacts

The Seamless National Economy reforms will influence the activities and costs of businesses, governments and others in the economy in a number of ways. At a general level, the Seamless National Economy reforms are targeted towards developing harmonised regulatory approaches in a number of areas.

There are a number of methods governments can use to create a harmonised regulatory environment (box 1.2), many of which have been adopted in the Seamless National Economy reforms. For example, the:

- development assessment and standard business reporting reforms which harmonise subordinate regulation by standardising terminology (such as terms used by the Australian Taxation Office and the Australian Securities and Investments Commission);
- food regulation reform which includes the introduction of an 'opt-in', user pays, interpretative system to provide advice on the code of food standards;
- trade measurement reforms which involve transferring existing State and Territory government regulatory functions to a single national Australian Government regulator;
- rail safety reforms which involve the development of template legislation that will be applied in each jurisdiction;
- personal property securities reform which involve the referral of State powers to the Australian Government; and
- consumer credit reform which has been achieved through an extension of Australian Government powers under the Corporations Act.

The different legislative approaches to harmonisation will result in different impacts on governments. For example, where legislative powers are referred to the Australian Government, administration costs could be expected to fall as the main body of policy work and regulatory coordination is undertaken by a single jurisdiction rather than nine jurisdictions. But in the case where each jurisdiction enacts model legislation, administrative cost savings are likely to be less as all jurisdictions would maintain some policy and regulatory coordination role. Indeed, additional costs may be incurred to achieve effective coordination between jurisdictions.

While the approach to harmonisation varies from model laws to the referral of powers from State and Territory governments to the Australian Government, if done effectively and maintained over time, businesses should face the same regulatory regimes in each jurisdiction.

Box 1.2 Mechanisms for implementing national approaches

There are a number of methods that have been used by governments in Australia to implement national regulatory arrangements.

- *Referral of powers* — Under Section 51(xxxvii) of the Constitution, the Parliament of Australia has the power to make laws with respect to 'matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States'. If all jurisdictions refer their powers to the Australian Government, it becomes the sole legislator and regulator on that matter.
- *Template legislation* — also referred to as 'applied laws' legislation, involves one jurisdiction enacting a law that is then applied by other jurisdictions as their law.
- *Model legislation* — involves the drafting of a model document that each participating jurisdiction draws on in drafting its own legislative instruments.
- *Harmonising subordinate legislation* — involves adopting common approaches to subordinate legislation such as reference to national standards or codes of practice.
- *Mutual recognition* — involves each jurisdiction recognising particular regulations created and administered by other jurisdictions under their laws, even where such regulations vary from their own rules and regulations.
- *Implementing agreed principles* — involves governments agreeing on a set of principles that they then implement as they see fit.
- *Memorandums of understanding* — can set out agreed processes to assist with coordination between jurisdictions and between regulatory agencies (both within and between jurisdictions).
- *Service level agreements* — are contracts that establish the terms for cooperation between agencies on certain matters.
- *'Opt in' arrangements* — involves allowing parties subject to regulation to self-select (often subject to a certain criteria) between state-based or national (Australian Government) regulation. An example of such a scheme was the self-insurance against workers' compensation claims and later occupational health and safety regulation under the Australian Government's Comcare scheme.

Many of these have been used in the 17 Seamless National Economy reforms examined in this report, either as a means to achieve harmonisation under this round of reforms or which have been used previously. Evidence from these reform areas and others (such as chemicals and plastics regulation — see PC 2009) suggests that a 'one-size fits all' approach is unlikely to be successful. Instead, different methods will be more successful in some situations compared to others.

The harmonisation of common regulatory elements should remove unnecessary 'red-tape' costs imposed on multi-state businesses as a result of conducting separate compliance activities (such as reporting to multiple regulators) which achieve the same outcomes in each jurisdiction. Such outcomes can also be achieved within jurisdictions through the harmonisation of regulatory approaches and applications across local government areas — of particular relevance to the application of construction codes and development assessment procedures.

For a number of reforms, the Seamless National Economy process has offered governments opportunities to make changes to the regulatory approach — ranging from individual jurisdictions adopting the provisions of other jurisdictions, to all jurisdictions adopting new provisions. In some cases, the changes have been incremental as they represent relatively small changes to the current State-specific provisions — for example, the occupational health and safety reforms. In other areas, the reforms have been more substantial — for example, the consumer policy reforms. The changes adjust the way in which regulatory outcomes are achieved, and as a result, often require businesses to undertake new compliance activities.

Ultimately, reforms which reduce the costs to operate across jurisdictional borders (both between and within States) have the potential to increase competition in affected markets. Over time, lower 'border' costs may mean more businesses find it profitable to operate interstate, which could result in increased competition and greater incentives for innovation, and therefore enhanced productivity.

Each of these streams of effects could involve some transition costs. To achieve ongoing savings there are typically one-off upfront costs for businesses, governments and in some instances consumers associated with adjusting to the new regulatory arrangements.

In assessing these impacts, the Commission has followed the conceptual framework set out in its framework report (box 1.3). The direct and indirect (economy-wide) impacts of reforms fall into different categories based on the stage of their development and implementation, and the timeframes over which benefits are likely to accrue.

The effects of reforms can be broadly categorised as:

- *realised* — where reforms have been implemented and impacts are accruing;
- *prospective* — where reforms have been implemented (or at implementation), but impacts are yet to occur; and
- *potential* — where reforms have yet to be implemented, or there is scope for further reforms to deliver additional benefits.

For the Seamless National Economy reforms examined, despite much of the policy work being completed, the initiatives are either scheduled to start in the near future or have only recently become operational. Further, the reform will be taking effect in parallel to other regulatory, technological and broader economic changes (such as the resources boom and continued global financial uncertainty). For these reasons the realised impacts of reforms cannot be easily identified.

Box 1.3 **The analytical framework**

Reforms within the Seamless National Economy National Partnership will have a range of economic, social and environmental impacts. The conceptual framework that underpins the Commission's analysis, as set out in its framework report (PC 2010a), makes a distinction between *direct* and *economy-wide* impacts. Some reforms will, in the first instance, have direct impacts on:

- *productivity* — changes in the productivity of labour and other inputs, for example, from reductions in the unit cost of service provision;
- *prices* — changes in unit prices, for example, though increased competition, or changes in government charges or taxes;
- *workforce participation* — changes in the engagement of people in the workforce; and
- *population* — changes in life expectancy and other demographic variables.

For other reforms, direct economic impacts can arise through changes to human capital and natural resources. Changes, such as improvements in health or education, will typically increase individuals' potential to contribute to workforce productivity and participation.

Another stream of direct impacts is also possible. These relate to changes in social and environmental conditions that are not fully captured by market activities (such as improvements in environmental amenity). Given the nature of most reforms under review in this report, these impacts are unlikely to be significant.

The economy-wide impacts represent both the direct and the indirect effects, such as changes in productivity or prices in one sector and how these influence production activities in other sectors, allowing for the costs involved. The indirect 'feed-back' or flow-on effects include impacts on:

- resource reallocation — for example, as labour and capital move between productive uses;
- transition or adjustment costs — for example, down time as workers move to a new location, occupation or industry; and
- longer-term effects — for example, after adjustment of physical and human capital, and natural resource endowments.

Source: PC (2010a).

Assessments of reform impacts, therefore, rely heavily on *ex ante* studies of *prospective* impacts. For many reform areas, assessments of prospective impacts have drawn heavily on information contained in regulatory impact analysis and business cases. Information from these sources has been tempered with information obtained from the Commission's consultations, submissions received and available information on uptake of reform initiatives where applicable.

In the absence of other information, the preparation of this assessment of impacts has relied heavily on available *ex ante* studies of possible impacts. The approach, however, has limitations. Uncertainty remains over what will be the *actual* impacts of reform over the longer term and over how businesses, consumers and governments respond to the reform-induced changes. This is further complicated by uncertainty over how other changes in economic conditions (brought about by other regulatory, technological and broader economic changes) will interact with the reforms. As such, the estimates reported should be treated as indicative. A further problem is that quantitative *ex ante* assessments are not available for all reform areas, or in cases where they are available, many differ in scope or format to the information required for this study. The approach adopted by the Commission in this assessment is to report available information in the context of the originating analysis, and draw inferences on the likely impacts from that and other information made available for this study.

1.2 A broad snapshot of those affected by the reforms

The reforms in the Seamless National Economy agreement are primarily targeted towards businesses that operate across State and Territory boundaries and in some cases, those businesses that operate across local government jurisdictions. Despite this, given the breath of reforms, other groups are also likely to be affected. In particular, consumers will not only be affected by the new consumer policy regime, but also be indirectly affected by reforms which lower the costs of multi-state firms (through the prices they charge). Other reforms, such as those related to safety, will have broader reaching impacts on workers and society more generally.

In 2009, 1.7 per cent of all businesses in Australia were classified as multi-state firms — that is, firms with employees based in more than one State or Territory (table 1.1). Multi-state businesses are generally larger employers than single-state firms, which suggests that while they only represent a small proportion of the total number of businesses, they account for a much larger proportion of economic activity (in terms of employment and value added).

Data for 1998, while dated, showed that multi-state firms then accounted for 0.9 per cent of all businesses, they employed around 30 per cent of all employees. As the proportion of multi-state businesses has almost doubled (from 0.9 to 1.7 per cent of all firms), it is likely the proportion of workers employed by such businesses would have also increased substantially.

Table 1.1 **Single and multi-state businesses, June 2009**

	Single-state	*Single-state*	*Multi-state*	*Multi-state*
	no.	%	no.	%
Not Employing	1 211 078	98.4	19 204	1.6
1-200	800 364	98.3	14 176	1.7
200-300	1 762	74.6	601	25.4
300-400	728	68.2	339	31.8
400-500	394	63.1	230	36.9
500+	1 174	52.9	1 045	47.1
Total	**2 015 500**	**98.3**	**35 595**	**1.7**

Source: ABS (2011, unpublished).

The scale of interstate sales is also much larger than the proportion of multi-state firms would indicate. For example, although indicative, information based on statistical modelling of interstate trade suggests that one-tenth of the goods and services produced are traded across state boundaries.[1]

The Seamless National Economy reforms have a significant focus on consumers through the consumer policy and consumer credit reforms. A significant proportion of goods and services purchased in Australia are provided by firms that operate across jurisdictions — 48 per cent as measured by turnover in 2007 (PC 2008a). For the retail sector the share is even greater, around 53 per cent in 2007 (PC 2008a).

A number of reforms will have a broader set of impacts. Reforms relating to safety, for example, by preventing the incidence and severity of workplace injuries and disease, will have an impact on workers' families, health and other government services.

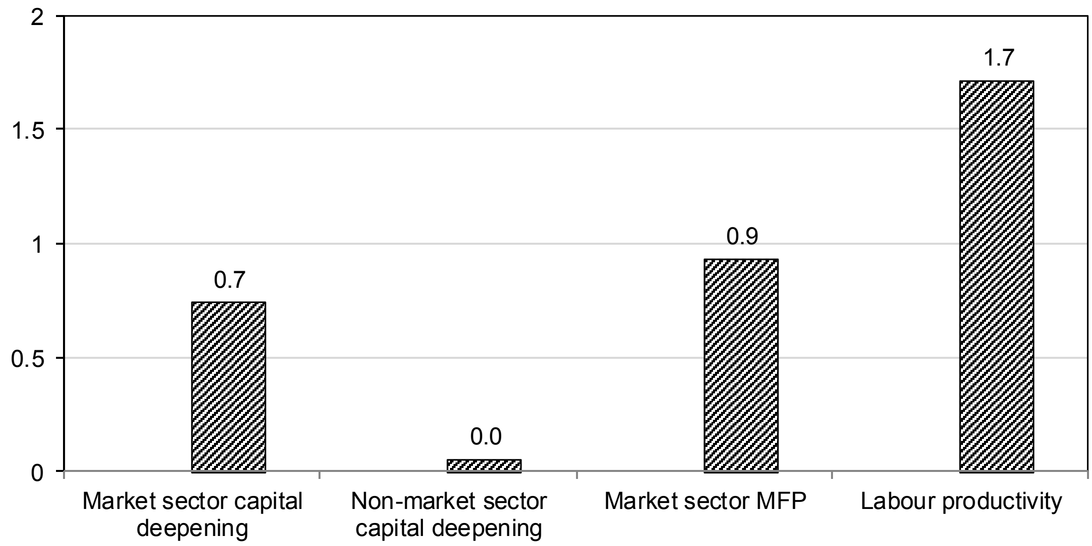
1 The estimates of interstate trade flows were sourced to the MMRF model database compiled by Centre of Policy Studies at Monash University. The estimates were derived using a gravity model approach, which assumes trade between regions is inversely related to the distance between them.

1.3 The economic environment in which reforms will be evaluated

The impacts of the Seamless National Economy reforms will be occurring against a backdrop of economic change. Broadly, economic growth can be considered in terms of population growth, participation of the population in employment and productivity of the workforce. Historically, Australia's population and changes in workforce participation has contributed to about half the growth in national output as measured by gross domestic product (GDP). Growth in labour productivity has contributed to the remainder. The improvement in labour productivity has been driven by a number of elements. Available estimates indicate that over the last 30 years or more, market sector multifactor productivity growth contributed over a half of estimated national labour productivity growth with capital deepening contributing the remainder (figure 1.1).

Figure 1.1 **Past sources of labour productivity growth, 1974-75 to 2009-10[a]**

Percentage points



[a] Labour productivity is defined as real gross value added excluding ownership of dwellings per hour worked.

Data source: Commission estimates based on ABS data.

While considerable uncertainty surrounds the sources of growth into the future, factors that reduce business costs, such as the Seamless National Economy reforms, will contribute to productivity growth. Such improvements will flow on to help Australia reach its productive potential and raise living standards above what may otherwise prevail.

1.4 Structure of this volume

The following chapters of this report focus on the reform areas evaluated. In some instances, reform areas have been grouped together due to similarities in the groups targeted and their impacts.

- Chapter 2 assesses the likely direct impacts of the new Australian Consumer Law encompassing the new consumer law and product safety reforms.
- Chapter 3 reviews the reforms related to consumer credit encompassing the national regulation of mortgage broking, margin lending and non-deposit lending institutions.
- Chapter 4 reviews the impact of the new arrangements governing personal property securities and their registration.
- Chapter 5 reviews the impacts of reforms that have created national laws governing trustee corporations.
- Chapter 6 reviews the impacts of reforms that have established the standard business reporting arrangements.
- Chapter 7 reviews the impacts of reforms surrounding the first stage of payroll tax harmonisation.
- Chapter 8 reviews the impacts of reforms that are intended to create a harmonised approach to occupational health and safety laws.
- Chapter 9 reviews the impacts of reforms related to rail safety.
- Chapter 10 reviews the impacts of reforms related to the creation of a system for the national registration of individuals who work in the health professions.
- Chapter 11 reviews the impacts of reforms that have created a national system for trade measurement.
- Chapter 12 reviews the impacts of reforms related to the regulation of food.
- Chapter 13 reviews the impacts of reforms related to consistent wine labelling.
- Chapter 14 reviews the impacts of reforms governing development assessment.
- Chapter 15 reviews the impacts of reforms that are intended to achieve a nationally consistent approach to building and plumbing regulation in Australia.

In each chapter, and summarised in table 1.2, the direct impacts of reform are delineated between those which are realised and those which are prospective in nature. These impacts represent those effects which may be expected to flow from the reforms as currently designed. Consideration is given to the timescale over which these impacts could occur and the associated transition costs of moving to the new regulatory approach. Some aspects of the Seamless National Economy reforms remain to be fully implemented. Where available, estimates of the potential effects that may be attributable from these reforms, once implemented, are also reported.

The direct impacts identified are used to inform the economy-wide analysis of the impact of the Seamless National Economy reforms. The results of the modelling untaken to assess the economy-wide impacts are reported in the overview volume to this report.

In some chapters, opportunities for further improvement in the areas covered by the Seamless National Economy reforms have also been identified. The possible effects of further improvements are not quantified but treated qualitatively in this report.

Table 1.2 **Estimated ongoing direct impacts and transition details of the 17 COAG business regulation reforms assessed**

$ million (2010-11)

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Consumer policy and product safety						
Lower precautionary savings by households due to increased consumer confidence	Increase in household demand for consumer products (goods & services)	..	170	170	..	Direct impacts occur over 10 years from 2012-13
Increased competition, innovation and specialisation driven by more confident and better informed consumers	Improvement in productivity for consumer-product suppliers	..	760	760	..	Direct impacts occur over 20 years from 2011-12
Harmonisation of common elements of consumer laws	Compliance cost reduction for consumer-product suppliers	60	60	120	..	Direct impacts occur over 2 years from 2010-11
Changes to the provisions in consumer laws, including unfair contracts, consumer guarantees and enhanced enforcement and redress	Compliance cost increase for consumer-product suppliers	(10)	..	(10)	..	Direct impacts occur from 2010-11. One-off transition costs of $30 million over 2 years from 2010-11
Altered governance arrangements and new enforcement powers	Administration cost increase to Australian Government	(15)	(15)	(30)	..	Direct impacts occur over 2 years from 2010-11
Consumer credit (mortgage brokers, margin lending and non-deposit taking institutions)						
Reduction in consumer detriment arising from the misuse of consumer credit through reduced incidence of household insolvency	Reduction in the cost of credit provision (that is, the provision of financial services)	..	35	35	..	Direct impacts occur from 2011-12

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

Nature of change	*Description of direct impact*	*Ongoing direct impacts* *Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Harmonisation of common elements of consumer credit laws	Compliance cost reduction for financial service providers	10	..	10	..	Direct impacts occur from 2009-10 One-off transition costs of $5 million occur in 2010-11.
Additional disclosure requirements	Compliance cost increase for financial service providers	(10)	..	(10)	..	Direct impacts occur from 2009-10.
New licences for some types of businesses involved in the provision of consumer credit	Compliance cost increase for financial service providers	(10)	..	(10)	..	Direct impacts occur from 2009-10
Altered governance arrangements and enforcement powers	Administration cost increase to Australian Government	..	..	..	..	One-off transition costs of $70 million over 4 years from 2008-09
Personal property securities						
Harmonisation of laws across states and establishment of a single register, reducing search and registration costs for businesses that hold security interests in personal property	Compliance cost reduction for financial service providers	..	70	70	..	Direct impacts occur from 2011-12. One-off transition costs to business of $150 million over 2 years from 2011-12
Referral of legislative powers and removal of multiple registers	Administration cost increase to Australian Government	..	(0.5)	(0.5)	..	Direct impacts occur from 2011-12. One-off transition costs of $55 million in 2011-12
	Administrative cost decrease to state governments	..	1.5	1.5	..	Direct impacts occur from 2011-12

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Trustee corporations						
Harmonisation of laws across jurisdictions	Compliance cost reduction for financial services providers	..	4	4	..	Direct impacts occur from 2011-12. One-off transition costs to business of $4 million in 2010-11
Referral of policy and legislative powers	Administration cost increase to Australian Government	(1)	..	(1)	..	Direct impacts occur from 2010 11. One-off transition costs of $2 million in 2010-11
	Administrative cost decrease to state governments	4	..	4	..	Direct impacts occur from 2010-11
Standard business reporting						
Standardisation of terms and definitions used in reporting to government, a single online authentication key and electronic lodgement of reports, compulsory use in superannuation	Compliance cost reduction for reporting businesses	2	58	60	..	Realised and prospective impacts occur over 7 years from 2010 11.
Government agencies increase the range and number of forms available in standard business reporting, changes in reporting channels and Australian Government promotion of standard business reporting to encourage demand		..	..	..	500	

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

Nature of change	*Description of direct impact*	*Ongoing direct impacts*				*Transition details*[d]
		Realised[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	
Standardisation of data, improved quality and timeliness of data management and reports	Administration cost decrease across Australian and state governments	1	4	5	10	Direct impacts occur over 5 years from 2010.-11. One-off potential transition costs of $40 million over 5 years from 2013-14
Maintenance and operation of standard business reporting channel, updates to taxonomy and provision of AusKEY authentication	Administration cost increase to Australian and state governments	(20)	..	(20)	..	One-off transition costs to government of $180 million over 8 years, beginning in 2007-08. Of this, $170 million in cost occur over the first 3 years and $10 million over the next 5 years.
Payroll tax						
Harmonisation of payroll tax provisions and interpretation	Net compliance cost reduction for business	20	10	30	..	Direct impacts occur over 8 years from 2007-08. One-off transition costs to business of $30 million over 4 years from 2007-08
Harmonisation of payroll tax arrangements (excluding tax rates and exemption thresholds) to improve administrative efficiency and reduce revenue rulings	Administrative cost reduction to state governments	..	5	5	..	Direct impacts occur over 2 years from 2011-12. One-off transition costs of $10 million over 4 years from 2007-08
Changes in provisions and associated exemptions leading to a net reduction in state payroll tax collection	Net reduced state payroll tax collections	(1)	(59)	(60)	..	Net realised reduction in payroll tax revenue collected reflects a reduction of $3 million in 2010-11 (NT) and a $2 million increase (Vic.). Prospective direct impacts of $59 million from 2012-13 (WA)

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Occupational health and safety						
Harmonisation of common regulatory elements across jurisdictions and substantive changes in OHS laws	Compliance and operating costs reduction for multi-state businesses	..	480	480	..	Direct impacts occur from 2011-12. One-off transition costs to employers of $850 million in 2011-12
	Compliance and operating costs increase for single-state businesses	..	(110)	(110)	..	
Improved safety resulting in less injury and fewer people drawing on social security payments	Reduction in social security payments	..	55	55	..	Direct impacts occur from 2012-13
	Reduced medical expenses	..	25	25	..	Direct impacts occur over 5 years from 2011-12
Improved safety standards and increased injury prevention resulting in less people not in the labour force	Increased workforce participation	..	200 persons	200 persons	..	Direct impacts occur from 2012-13
Increased responsibility for regulators	Administration cost increase to Australian and state governments	..	(50)	(50)	..	Direct impacts occur from 2011-12. One-off transition costs of $25 million in 2011-12
Rail safety						
Reduction in operating and compliance costs to rail operators due to harmonisation	Compliance cost reduction for rail operators	5	3	8	..	Direct impacts occur over 6 years from 2007-08. One-off transition costs of $15 million over 5 years from 2007-08
Increase in operating and compliance costs to rail operators due to more stringent safety regulations	Compliance cost increase for rail operators	(2)	(2)	(4)	..	Realised direct impacts occur from 2007-08. Prospective direct impacts occur from 2012-13

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Reduced property loss from increased rail safety	Cost reduction for rail operators	4	4	8	..	Realised direct impacts occur from 2007-08. Prospective direct impacts occur from 2012-13
Increased workforce participation from fewer fatalities and serious injuries	Increase in workforce participation	3 persons	52 persons	55 persons	..	Direct impacts occur over 40 years from 2007-08
Fewer injuries as a result of improved safety	Reduced medical costs	0.2	0.1	0.3		Direct impacts occur over 6 years from 2007-08
Change in regulatory responsibility and safety requirements	Administrative cost increase to the Australian Government	..	..	..	..	One-off transition costs of $10 million over 3 years from 2010-11
	Administrative cost increase to State governments	..	..	..	..	One-off transition costs of $10 million over 2 years from 2008-09
Health workforce						
A national registration and accreditation scheme for health professions	Improve productivity of health service provision	..	160	160	..	Direct impacts occur over 20 years from 2012-13. One-off transition costs of $24 million in 2010-11
Establishing the new registration and accreditation scheme	Administrative cost increase to the Australian Government	..	..	..	..	One-off transition costs of $10 million over 2 years from 2008-09
	Administrative cost increase to state governments	..	..	..	..	One-off transition costs of $10 million over 2 years from 2008-09

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Trade measurement						
Harmonisation of regulatory requirements	Compliance cost reduction for business	5	..	5	..	Direct impacts occur from 2010-11
Reform of institutional and governance arrangements, including the establishment of a single, central regulator	Administration and enforcement cost increase to the Australian Government	(21)	..	(21)	..	Direct impacts occur from 2010-11. One-off transition costs of $9 million over 3 years from 2007-08
	Administration and enforcement cost reduction to state governments	21	..	21	..	Direct impacts occur from 2010-11
Food regulation						
A centralised service for the interpretation of food standards, reducing time and effort to obtain advice	Cost reduction for food manufacturers and retailers	..	0.5	0.5	..	Direct impacts occur from 2011-12
Businesses charged per service use of interpretative services	Compliance cost increase for food manufacturers and retailers	..	(0.2)	(0.2)	..	Direct impacts occurs from 2011-12
Establishing interpretative services	Administrative cost increase to the Australian Government	..	..	..	..	One-off transition costs of $4.3 million over 4 years from 2010-11. One-off cost of review of food labelling of $0.9 million in 2009-10 (split equally between Australian and state governments)

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

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Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
Wine labelling						
Harmonisation of labelling requirements between domestic and export markets	Cost reduction for wine producers	12	17	29	..	Direct impacts occur over 5 years from 2009-10
Development assessment						
Improved development assessment processes, including more streamlined and effective processes to reduce operating and compliance costs to business (builders, architects and developers) and individuals	Costs reduction on residential development assessments	25	75	100	..	Direct impacts occur over 6 years from 2010-11. One-off transition costs to builders of $3 million over 5 years from 2015-16
	Cost reduction on commercial and industrial development assessments	0	125	125	125	Direct impacts occur over 5 years from 2011-12. One-off transition costs to builders of $7 million over 5 years from 2015-16
Setting up and maintaining eDA and developing and maintaining templates for code assessments	Administrative cost increase to state governments	..	(30)	(30)	..	Direct impacts to occur over 5 years from 2010-11. One-off transition costs of $140 million over 5 years from 2009-10
Reduced cost associated with processing electronic development applications	Administrative cost decrease to state governments	..	50	50	..	Direct impacts occur over 5 years from 2010-11

.. zero or not estimated. Estimated direct impact after full adjustment. Estimates in brackets ( ) represent cost increases.

(continued next page)

Table 1.2 **(continued)**

		Ongoing direct impacts				
Nature of change	*Description of direct impact*	*Realised*[a]	*Prospective*[b]	*Realised and prospective*	*Potential*[c]	*Transition details*[d]
National construction code						
Harmonisation across building and plumbing codes	Costs saving on the construction of new dwellings	..	250	250	..	Direct impacts occur over 5 years from 2011-12. One-off transition costs to business of $18 million over 3 years from 2011-12
Harmonisation across building and plumbing codes and adoption of performance-based certification	Costs saving on the construction of new non-dwellings buildings	..	800	800	..	Direct impacts occur over 5 years from 2011-12. One-off transition costs to business of $12 million over 3 years from 2011-12
Harmonisation across building and plumbing codes and adoption of performance-based certification	Cost increases for purchasing the National Construction Code	..	(7)	(7)	..	Direct impacts occur over 5 years from 2011-12
Establishing the new National Construction Code	Administrative cost increase to Australian and state governments	..	..	..	..	One-off transition costs of $5 million over 2 years from 2010-11

.. zero or not estimated. Direct impact after full adjustment. Estimates in brackets ( ) represent cost increases. [a] Estimated realised ongoing direct impacts by the year 2010-11. [b] Estimated prospective impacts relate to measures implemented (or at implementation stage). [c] Estimated potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential (and prospective) direct impacts will require continued commitment and sustained effort. [d] Includes details of how ongoing direct impacts occur over the period of transition until longer-run full adjustment has occurred. Includes any transition impacts on business and government.

Source: Commission estimates.

2 Consumer law and product safety

Key points

- In 2009, COAG agreed to implement a national framework for consumer policy.
- The reforms, introduced under the Australian Consumer Law, increase consumer protections through additional safeguards and reduce business compliance costs by removing jurisdictional differences.
- The Australian Consumer Law commenced on 1 January 2011 under transitional arrangements that expired on 1 January 2012.
- Increased consumer protections and associated improved confidence in purchasing decisions are expected to:
  - reduce the need for precautionary savings and raise household demand — estimated at around $170 million per year to accrue progressively over a decade and be ongoing; and
  - increase competition and product innovation, raising business productivity — estimated at around $760 million per year to be achieved over a decade or more.
- Business compliance costs are expected to fall due to the harmonised regime by around $120 million per year after the reforms take full effect.
  - These business-cost savings, however, will be partly offset by increases in compliance costs due to the additional provisions of around $10 million per year.
  - Transitioning to the new system will also impose some adjustment costs on business — estimated at around $30 million in total in the first years of operation.
- Administration of the new arrangements is expected to raise Australian Government administration costs — estimated at around $30 million per year.
- Feedback from business groups, although disputed, has suggested some aspects of the new law are having some unintended adverse impacts — an *ex post* review of the law on the basis of experience in the law's application may be warranted.

Consumer policy and product safety laws were identified as priority areas for review by the National Competition Council under the legislative review program of National Competition Policy (NCP). In 2005, the Commission questioned the effectiveness of measures to protect consumers, noting inconsistencies in approaches to consumer protection across jurisdictions and duplication of effort (PC 2005). It recommended that the Australian Government, in consultation with the States and Territories, establish a national review of consumer protection policy and administration in Australia, to complete unfinished business from the NCP legislative review program. This recommendation was also included in *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (Regulation Taskforce 2006).

The Commission undertook a study on product safety in 2006 (PC 2006a) and an inquiry on consumer policy in 2008 (PC 2008a) and recommended a number of changes to increase the effectiveness and reduce the regulatory burden of consumer protections (including in the area of consumer credit — see chapter 4). Drawing on the Commission's recommendations, the Ministerial Council on Consumer Affairs proposed detailed reforms to product safety and consumer policy. The Australian and State and Territory governments signed an intergovernmental agreement to implement the reforms in 2009 as part of the *National Partnership Agreement to Deliver a Seamless National Economy*.

The Commission's assessment of the likely direct impacts of these reforms is presented in this chapter. As little quantitative information about the likely impacts of the reforms exists, this assessment is based on the *ex ante* experimental estimates in the Commission's *Review of Australia's Consumer Policy Framework* (PC 2008a).

The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

2.1 Reform objectives and changes

Under the 2009 *Intergovernmental Agreement for the Australian Consumer Law*, governments agreed to introduce a national consumer policy framework. This is made up of a national consumer protection law, a national product safety regime and new enforcement cooperation and information sharing arrangements between Australian, State and Territory agencies.

The overall objectives of the reforms are to:

> … improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly. (COAG 2009b, p. 4)

This is to be achieved through measures that seek to:

- ensure that consumers are sufficiently well informed to benefit from, and stimulate, effective competition;

- ensure that goods and services are safe and fit for the purposes for which they were sold;
- prevent practices that are unfair;
- meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- provide accessible and timely redress where consumer detriment has occurred; and
- promote proportionate enforcement (COAG 2009b).

The reforms represent efforts to reduce the risk to consumers of bearing unforseen costs when they participate in markets, such as replacing faulty goods or feeling exploited by a business.

Legislation was passed in all jurisdictions in 2010 to apply the Australian Consumer Law (ACL) as a law in each State and Territory. The ACL commenced on 1 January 2011 under transitional arrangements that are set to expire on 1 January 2012.

What was the nature and structure of the previous consumer policy framework?

Before the implementation of the national framework, there was a suite of Australian and State and Territory government policies that dealt with the purchase and use of consumer goods and services. These sought to directly promote better outcomes for consumers by creating a framework that:

- protected them from unconscionable or deceptive conduct, and from unsafe or defective goods and services;
- provided them with remedies when they suffer loss from such conduct or products; and
- assisted them in making better purchasing decisions through the provision of appropriate product information, or in some cases by changing the terms and conditions of transactions (such as cooling off periods).

The generic consumer provisions in the Trade Practices Act (TPA) and State and Territory Fair Trading Acts (FTAs) formed the basic framework for consumer policy in Australia. These provisions fell into three main categories:

- Prohibitions on certain types of conduct, including misleading or deceptive conduct and unconscionable conduct.

- Imposition of non-excludable conditions and warranties into consumer contracts, including that:
  - the supplier has the right to sell the good, and the consumer has the right to own the good outright;
  - goods will comply with their description or, if provided, their sample;
  - goods will be of merchantable quality (that is, meet a basic level of quality and performance) and be reasonably fit for purpose; and
  - manufacturers will take reasonable action to ensure that a good can be repaired and that spare parts are available.
- Provisions relating to product safety and product information.

Although the State and Territory laws generally paralleled the TPA, the provisions were not uniform. For example, inconsistencies arose in relation to:

- the definition of a 'consumer' and hence coverage of the statutes across jurisdictions;
- standards for what constitutes harassment or coercion and definitions of pyramid selling schemes;
- requirements for door-to-door selling and telemarketing activities;
- enforcement powers available to regulators; and
- redress mechanisms for consumers and fines and penalties for breaches of the law.

There were also variations in how intensively each jurisdiction applied consumer laws. For example, some States and Territories had consumer protection provisions in their FTAs that went beyond those in the TPA. For instance, in 2003 Victoria introduced unfair contract provisions into its FTA whereas the TPA relied on unconscionability provisions.

The Commission (2008a) found that in a number of respects the previous consumer policy framework was sound. The key elements of the framework, operating through the TPA and state FTAs, provided a broad platform for consumer protection for most products and services. However, input into the inquiry and the Commission's own assessment highlighted five key deficiencies in the previous system:

- a lack of clear objectives to guide policy development;
- an inappropriate delineation of responsibilities between the Australian and State and Territory governments;

- a lack of policy responsiveness to changing market circumstances;
- inadequate regulation evaluation processes; and
- missing or deficient policy instruments resulting in reduced effectiveness of the generic regime in protecting consumers.

What has changed with the development of the Australian Consumer Law?

The generic consumer provisions that existed in the TPA and State and Territory FTAs form the basic framework for consumer policy in the new ACL. The provisions in the new consumer law relate to:

- the existing consumer protection provisions of the TPA;
- new provisions based on assessed best practice in State and Territory consumer protection laws including new provisions relating to 'unfair contract terms';
- new enforcement and redress powers, including increased enforcement cooperation and information sharing arrangements between Australian, State and Territory agencies; and
- a new national product safety regulatory and enforcement regime (COAG 2009b).

In addition, the Commission recommended changes to consumer credit policy which have also been adopted (but not through the ACL). These changes are examined in chapter 3.

Several of the Commission's recommended changes to consumer policy made in its 2008 report were not adopted. These included recommendations to remove price regulations in telecommunications services and retail energy markets, improve mandatory disclosure requirements, and increase funding for consumer advocacy bodies.

Changes related to existing consumer protection provisions

New consumer guarantees have been included in the ACL. These replace the various implied statutory conditions and warranty provisions of the TPA and FTAs. They are designed to express in plain language the consumer entitlements conferred by the legislation with respect to the purchase of unsatisfactory goods or services. They also set out, for the first time, the remedies available to consumers when a guarantee is breached, rather than relying on common law remedies.

The new product safety regime consists of three main changes: the harmonisation of product bans; mandatory reporting of product-related incidents of serious injury or death; and changes to recall processes.

For product bans, States and Territories are no longer able to make permanent bans or mandatory safety standards. Despite this, they have retained the power to develop and implement interim product bans for 60 to 90 days within their respective jurisdictions. All Australian Government product bans and mandatory safety standards apply in each State and Territory.

Under the new mandatory reporting requirements, suppliers must report the death, serious injury or illness of any person where someone believes the injury was caused by the use of a consumer good or service provided by the supplier.

The new recall process requires consumer product suppliers to notify the Parliamentary Secretary to the Treasurer within two days of recalling a product and all recalls will be publically listed on the Australian Competition and Consumer Commission (ACCC) website.

Also included in the new consumer law is a national regime for unsolicited consumer agreements. This has replaced existing State and Territory laws on door-to-door sales and other direct marketing. However, the new provisions are much the same as the previous provisions. They prohibit telemarketers contacting potential customers on a Sunday or a public holiday, before 9 am or after 8 pm on a weekday, and before 9 am or after 5 pm on a Saturday. It is also unlawful for a salesperson to approach a consumer on a Sunday or a public holiday, before 9 am or after 6 pm on a weekday (previously 8 pm) and before 9 am or after 5 pm on a Saturday.

There have also been some changes to the cooling off periods for unsolicited sales. The new law applies a general cooling off period of ten working days. However, this is only a change for New South Wales and Victoria. In New South Wales, for example, the cooling off period was previously five working days. There is also a new prohibition on supplying products or services during the cooling off period (except for sales under $100 which has subsequently been raised to $500 from 1 January 2012 (sub. DR-R27)).

New provisions

The new consumer law bans ‘unfair contract terms’ in standard form business-to-consumer contracts (that is, it does not cover individually negotiated contracts). Previously, Victoria was the only jurisdiction to have included unfair contract terms in its FTA.

A term is considered 'unfair' if it causes a significant imbalance in the parties' rights and responsibilities and is not 'reasonably necessary' to protect the 'legitimate interests' of the supplier. Terms likely to be considered unfair include those where a supplier can vary any term without the consumer's consent or where a supplier can cancel a contract without a corresponding provision for the consumer. If a term is found to be unfair, it would be deemed to be void but the rest of the contract would remain in effect.

Enforcement and redress

The ACCC has been given new enforcement powers. These include the power to seek legal redress for consumers not party to action taken by the ACCC against traders and court orders for disqualifying a person from managing a corporation. The ACCC has also been given new powers to issue substantiation notices to anyone who has made a claim promoting the supply of goods; infringement notices where it has reasonable grounds to believe there has been a breach of certain provisions in the ACL; and public warning notices where a person is suspected of breaching general or specific protections.

2.2 Who will be affected by the reforms?

The ACL governs a wide range of transactions made between consumers and businesses. It will have a particular impact on the retail trade sector as this sector accounts for a significant proportion of the direct market interactions between consumers and businesses. A consumer is defined as any person who purchases a good or service ordinarily acquired for personal, domestic or household use (and who does not intend to resell or use it in further trade).

Consumers

The consumer law reforms are broadly targeted at improving consumer wellbeing. As discussed, this is to be achieved through a number of mechanisms that will support consumer confidence when purchasing goods and services in the market.

The broad scope of the reforms means that they have the potential to influence most Australians. The reforms seek to ameliorate, in part, those costs to consumers arising from faulty goods, misrepresentations or unfair conduct. Nevertheless, as most consumers operate in markets without issue, the reforms are targeted at a minority of transactions. According to the Australian Consumer Survey (2011), most consumers surveyed (91 per cent) reported that they experienced problems 'only occasionally, rarely or not at all'.

Over time, however, the influence of consumer laws is likely to be more pervasive. Despite a low incidence of problems, most consumers have faced issues with market transactions at some point. The Australian Consumer Survey (2011) reported that 73 per cent of consumers surveyed experienced 'a problem' with a product or service in the last two years.

The extent of the effect of the new consumer laws will, in part, be influenced by consumer awareness of sources of redress when a relevant problem arises. For pre-reform laws, although 90 per cent of consumers were aware that consumer protection laws existed, more than half of those were unable to recall any relevant laws or protections (Australian Consumer Survey 2011).

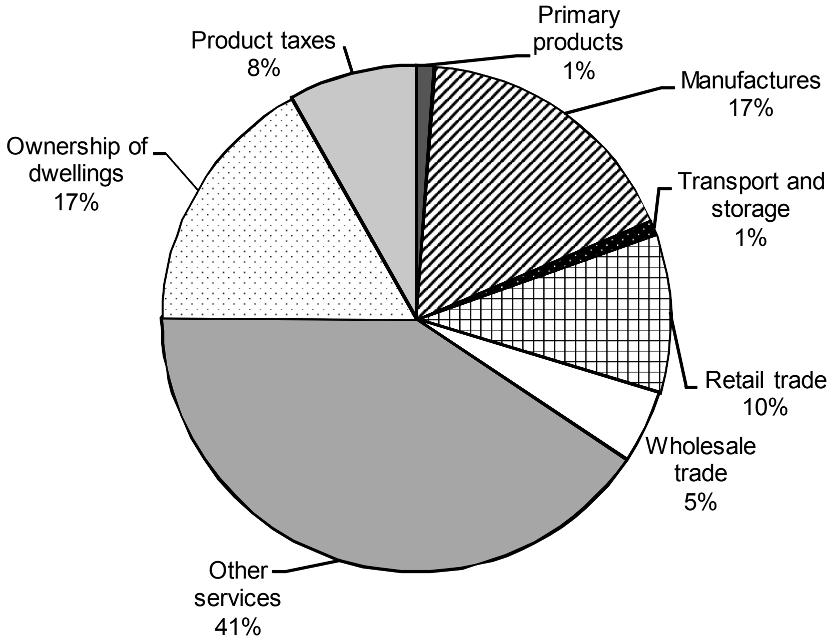
Businesses supplying goods and services to consumers

Consumer laws affect, to varying degrees, all businesses supplying goods and services to the public. Broadly, sales to consumers comprise the basic items of trade, whether it be a service or a primary or manufactured good, plus the cost of delivering those products to the market. Estimates available from Australian input-output tables for 2007-08 indicate that about 18 per cent of household consumption is comprised of primary and manufactured products with a further 1 per cent of consumption pertaining to the provision of transport and distribution services on those goods (figure 2.1). Retail trade accounts for around 10 per cent of household consumption but because retailers are at the interface between consumers and producers of primary and manufactured products they are likely to be particularly affected by consumer law.

The harmonisation of existing laws will affect firms that operate in multiple jurisdictions. In the retail sector, the majority of businesses (as in most sectors) have operations (defined as where employees are based) in only a single jurisdiction (table 2.1). In 2009, just over 1 per cent of retail businesses operated in multiple jurisdictions.

However, counts of businesses do not account for the number or scale of transactions and, therefore, the likely influence on businesses from new consumer laws. Other data collected by the ABS indicates that a sizeable share of goods and services is supplied by firms that operate across jurisdictions. In the retail trade sector, this proportion increased from 47 per cent to 53 per cent by turnover between 1998 and 2007 (PC 2008a).

Figure 2.1 **Household consumption expenditure by product group, 2007-08**[a]



[a] Evaluated at basic prices.

Data source: ABS (*Australian National Accounts: Input-Output Tables*, 2007-08, Cat. no. 5209.0.55.001, 2011).

Table 2.1 **Retail trade businesses by size, 2009**

	Single-state		*Multi-state*	
	no.	%	no.	%
Not employing	56 793	40.9	792	0.6
1-200	79 765	57.4	997	0.7
200-300	163	0.1	48	0.0
300-400	47	0.0	32	0.0
400-500	26	0.0	20	0.0
500+	81	0.1	122	0.1
Total	**136 875**	**98.6**	**2 011**	**1.4**

Source: ABS (2011, unpublished).

The introduction of new or amended provisions will have differing impacts on different business types. The introduction of unfair contract terms, for example, may affect some firms that rely on standard-form contracts, such as airlines, telecommunications providers and rental car providers. Such contracts have been prevalent in consumer markets for some time, with 99 per cent of contracts signed by all consumers estimated as standard form as early as 1971 (cited in Legal Aid Commission of NSW 2006). This provision is also likely to have differing impacts on businesses depending on where they operate. Prior to the introduction of the reform, Victoria was the only state to have specific unfair contract terms in its FTA (introduced in 2003). In all other States and Territories, sections 51AA and 51AB of the TPA provided the capacity to act, in some circumstances, against the use of unfair contract terms. However, these sections were time consuming to apply, expensive and there were uncertainties over their appropriate application.

Regulatory changes applying to door-to-door and other direct sellers are likely to have larger impacts on some sellers than other consumer policy reforms. Direct sellers have claimed that reducing selling hours from before 8 pm to before 6 pm on weekdays would cut sellers' peak sales times in half as most sales are conducted between 4 pm and 8 pm (Smith 2010). The prohibition on supplying products during the 10 working day cooling off period also reduces the convenience of direct selling compared to traditional retail sales where consumers usually receive their goods immediately.

2.3 Understanding the direct impacts of the reforms

The impacts of the introduction of the ACL fall into four main categories:

- the effects of harmonisation of common regulatory elements on business costs — reforms will influence the ongoing red tape costs imposed on multi-state firms;
- the effects of substantive changes to the provisions in consumer law — new and significantly altered regulations will alter the regulatory outcomes achieved and the costs of achieving these outcomes;
- changes in governance arrangements on government administration costs — reforms require effort by governments and regulators to develop, monitor and enforce the new regime; and
- the effects of removing impediments to the efficient operation of markets and locational or organisational change — more empowered and better informed consumers may lead to greater competition, with flow-on impacts on productivity.

In achieving these changes, businesses and governments may bear some one-off learning or other transition costs.

Harmonisation of common regulatory elements

The previous multi-jurisdictional consumer policy and product safety regimes imposed costs on those suppliers servicing the entire Australian market (or large parts of it). Even in the large majority of cases where the substance of the law was common, having to be aware of differences in regulatory interpretation, or in enforcement priorities, could have increased costs. The move to a nationally consistent ACL should ameliorate such effects.

The scale of actual cost changes will also depend on the extent of differences between the requirements of the new laws and business practices. In 2008, the Commission found that, anecdotally, many businesses complied with most of the generic consumer laws by simply adhering to accepted business standards. And where specific compliance measures were called for, meeting the most stringent provision would have avoided the need for differential strategies (PC 2008a).

Substantive changes to the provisions in consumer law

Several new regulatory features of the ACL are likely to have affected outcomes for consumers. These have the potential to benefit consumers by reducing both the risk, and the extent of detriment faced when they participate in markets. Consumer detriment consists of a number of components, including time and monetary costs from repairing or replacing a defective good or service, time spent seeking redress, and emotional impacts, such as annoyance, anxiety, frustration, stress and disappointment. On the latter, a Consumer Affairs Victoria survey found that in 70 per cent of cases where consumers received a defective good or service, they also stated that they experienced high or very high emotional impacts, suggesting that this effect is considerable (CAV 2006).

In addition, if risks associated with transactions are reduced, and product and service reliability are improved, the consumer policy reforms should act, at the margin, to reduce the private investments that consumers make to reduce the risks of detriment. Such investments may include time and money spent searching for and comparing products and resources used in intermediary services such as lawyers and agents.

The new national consumer guarantees regime is intended to clarify and strengthen consumers' entitlements and clearly outline the remedies available to them when they receive goods or services they believe to be unacceptable. If consumers' awareness of their entitlements increases, the new system may lead consumers to return a larger proportion of faulty products to retailers or manufacturers rather than repairing or replacing them themselves. Retailers, manufacturers and other suppliers may also adjust their processes to reduce the quantity of faulty products or poor services that are provided to consumers. If this occurs, consumers would benefit from reduced risk of receiving a faulty product, and reduced costs of resolving problems with purchases. Some of this benefit to consumers could consist of transfers from manufacturers and other suppliers to consumers, such as where the supplier accepts responsibility for repairs or replacements where previously consumers would have incurred the costs.

The introduction in the ACL of laws around 'unfair contract terms' intends to reduce the loss to consumers from unfair terms in standard form contracts. Consumers may benefit from the new law if it reduces the actual or potential use of unfair terms by businesses. For example, a consumer wishing reasonably to terminate a contract may not do so because of concern about excessively high termination charges.

Laws against unfair contract terms and more explicit guarantee arrangements may also improve the efficiency of risk bearing amongst firms and consumers (PC 2008a). Evidence from behavioural research suggests that consumers can be poor at estimating and understanding low probability risks. This could cause consumers to systematically overestimate or underestimate the default risk of suppliers, causing market inefficiencies such as sustained prevalence of 'bad' firms that act in poor faith and consistent distortions in consumers' demand for products with differing default rates. The ACL is intended to limit the ability of firms to shift an excessive level of risk of product defects and service disruptions on to consumers. In addition, the new regulations may mean that 'bad' firms' prices will rise as they bear the costs of product and service problems, revealing their lower effective efficiency levels and diverting consumers to 'better' forms.

The intention of the new national product safety regime is to reduce the number of deaths, serious injuries and illnesses associated with consumer products. For example, the new Product Safety Recalls Australia website could make it easier for consumers to identify products that have been recalled because they may be unsafe or likely to cause injury. This could increase the extent to which people return unsafe products, reducing the incidence of injury.

The new provisions are likely to place additional compliance costs on businesses. For example, the new unfair contract terms law may require some businesses to revise their standard form contracts. The new measures may also alter the contractual balance in a way that shifts more risk onto suppliers. Consequently, prices could rise for consumers as businesses seek to cover higher costs. However, prior to the introduction of the new law, competition may have already been restraining businesses' ability to exploit unfair terms, due to the desire to maintain their reputation and retain and attract customers. In such cases, the likelihood of significant shift in market risk towards suppliers because of the reforms should be low. In this regard, the Commission's consultations for the *Review of Australia's Consumer Policy Framework* (PC 2008a) suggested that for large companies the costs of negotiating and changing contracts would be negligible relative to their turnover. The costs relative to turnover may be more appreciable for smaller businesses since there is a fixed cost associated with any negotiation or change of contracts, but this would be ameliorated to the extent that they draw on contracts and extract terms adopted by larger businesses or industry associations.

The effectiveness of consumer laws could also be improved by the expansion in enforcement tools available to the ACCC and other regulatory agencies. The new remedies and powers given to the ACCC as part of the ACL may encourage businesses to improve their compliance with consumer laws. Likewise, the ability of the ACCC to publicly identify non-compliant businesses could assist consumers when choosing to purchase goods and services from competing suppliers.

Government administration costs

The main costs to government of the new national consumer policy are the one-off transitional costs from introducing the new law. These include developing and implementing the national law and negotiations by policymakers and ministers to achieve consensus.

There will also be additional monitoring and enforcement costs for the ACCC in implementing and enforcing the legislative changes.

Removing impediments to efficient market operation

The benefits from the introduction of the ACL could extend in aggregate to consumer markets if product information and consumer confidence in product and service quality is improved. Economic activity may be increased if risk-averse consumers are encouraged to participate in markets they now perceive to be less risky. In addition, if consumers reduce their reliance on established and well-known firms, specialisation, competition and the potential to sell novel products could be increased, supporting productivity growth. In this way, the ACL could create incentives to make market representations by firms more accurate and products more comparable, making the process of price discovery in markets more efficient. This could increase competition between suppliers and may have the potential to induce greater innovation and productivity gains.

Further, harmonisation of consumer laws may overcome instances where variations in requirements may have hampered product innovation and opportunities to realise economies of scale through centralising functions. In such cases, these costs would have been passed on to consumers in the form of higher prices or reduced product variety.

2.4 What are the direct benefits of the reforms?

In 2008, the Commission produced experimental estimates of the likely benefits (and costs, see following section) of its consumer policy recommendations. The recommendations covered a number of policy options, some of which were implemented with the introduction of the ACL. Other recommendations were not introduced or were not related to the introduction of the ACL. The Commission estimated that if the recommendations reduced consumer detriment by five per cent the net benefit to the economy and consumers could be in the order of between \$1.5 billion and \$4.5 billion per year (2006-07 prices).[1]

This benefit aggregated a number of market-segment effects related to the demand for goods and services (including a reduction in repair and replacement costs and reduced risks from transactions), supply effects (including reduced net business costs and gains from innovation and competition) and government administration costs. It also included estimates, expressed in dollars, of the gains consumers may have received from a reduction in the emotional impacts and time costs from adverse market transactions.

Apart from the Commission's 2008 report, little quantitative information about the likely impacts of the ACL exists. Further, given the presence of transitional arrangements, and that the reforms are in their infancy, it is too early to observe any impacts from the ACL through the use of *ex post* analysis. Consequently, this study adapts and further develops the Commission's previous *ex ante* work to approximate the potential direct effects of the introduction of the ACL. Given the uncertainties involved and the experimental nature of the 2008 estimates, for this study the lower bound of the potential benefits (\$1.5 billion) has been used as the basis for quantifying the possible direct effects of ACL reform.[2]

For this study, the Commission has focused on the 'direct' impacts of the ACL on business costs, productivity, household demand and the transition and ongoing costs

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1 In this study, the product-market indirect or flow-on effects of improved efficiency are assessed in the economy-wide modelling reported in chapter 3 of the overview volume.

2 The 2008 Commission estimates included gains at an aggregated level from all recommendations of which consumer credit reforms were part. As such, it is likely that some of the benefits arising from the consumer credit reforms discussed in chapter 3 of this volume are likely to be captured in the estimates of the impacts presented for the consumer policy reforms.

of the new policy to government. The flow on effects to households in terms of lower effective prices for consumer goods and services and other indirect effects are then evaluated using the Commission's economy-wide modelling (chapter 1). However, as the changes implemented by the introduction of the ACL did not include all of the Commission's recommendations, a conservative approach has been adopted by reducing some of the previously estimated direct impacts by 20 per cent.

Estimated benefits on business compliance costs from the harmonisation of common elements of consumer laws

The harmonisation of the varying consumer laws in Australia will particularly affect multi-state firms that previously had to operate across a number of differing consumer regimes.

The Commission (PC 2008a) estimated changes in compliance costs from harmonisation of consumer policy by combining:

- data on business size distribution in consumer industries and the extent to which such businesses trade interstate;
- assumptions about the relationship between compliance cost savings and firm size; and
- assumptions about the link between compliance cost savings and exposure to multiple consumer regimes.

The estimated net change to compliance costs from harmonisation was a saving of about $100 million per year in 2006-07 prices.

Estimated benefits from substantive changes to the provisions in consumer laws

The substantial changes to consumer laws outlined above will change the regulatory outcomes achieved.

Consumer demand

The Commission also estimated that the reforms would reduce the risk premium consumers add to the purchase price of goods and services. This effectively drives a wedge between the underlying value consumers place on a particular good or service and their observed willingness to pay. Based on the adoption of the Commission's recommendations, the amount that the reforms would reduce this premium was estimated to be around $185 million per year in 2006-07 prices.[3] In effect, this means consumers are likely to increase household demand (and lower precautionary savings) in any one period as a result of the reforms as the relative value of present consumption has increased. Given not all the Commission's recommendations were adopted, for this study it is assumed that the ACL achieves 80 per cent of this effect. It should also be noted that the new law should reduce the emotional costs and time costs borne by consumers when transacting in markets.

These effects, however, do not occur immediately after the introduction of the new law. Rather, they are a result of a gradual increase in confidence that comes from awareness of the new laws by product suppliers and consumers from repeated transactions in markets. Therefore, it is assessed that the new consumer policy framework will increase household demand gradually (a ten year period is assumed in this assessment) as consumer confidence slowly increases. Consumers may also alter the bundle of goods and services consumed as their assessment of the relative value of products changes.

Reduced impediments to efficient market operation

A significant flow-on impact from the new consumer policy framework will be its influence on the operation of consumer product markets. Over time, improvements in consumers' willingness to purchase 'new' products and trade with 'new' firms — underpinned by the provisions of the new laws — is expected to increase competition between suppliers. This should encourage product innovation and organisational change, above levels that would otherwise prevail, as producers respond to greater competition. Additional product innovation could also be encouraged as consumers reassess the relative value of different goods and services.

Such effects, coupled with reductions in the costs of operating across borders due to harmonised consumer laws are likely to reduce the effective cost of production, raising the productivity of businesses supplying goods and services to households. In 2008, the Commission (PC 2008a) estimated this effect could amount to close to $850 million (in 2006-07 prices) annually. Given not all of the Commission's recommendations were adopted, for this study, it is assumed that the ACL could achieve 80 per cent of that effect. As with reductions in consumer risks, the influence of the reforms on productivity is likely to evolve over time. Given this, it

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3 The Commission estimated that risk-based transaction costs would be reduced by $550 million in 2006-07 dollars. This report assumes that consumer's risk premium accounts for one third of risk-based transaction costs. Other transaction costs include costs of intermediary services, such as brokers and lawyers, and search costs, such as time and travel costs.

has been assumed that productivity improvement would gradually accrue over a 20 year period (from 2011 to 2031).

2.5 Indicative costs of achieving reform

Business compliance costs

Many of the substantial changes — such as the introduction of unfair contract terms and the new consumer guarantees regime — have increased the requirements that consumer policy imposes on business. These are likely to increase compliance costs for some businesses. In addition, enhanced enforcement and redress mechanisms may cause some firms to devote greater resources to train and monitor employees more carefully to ensure they act in accordance with the new law.

However, as noted above, most businesses are likely to already comply with the new provisions given their current business practices. Given this, the Commission estimated that the increase in compliance costs from the consumer policy reform would be small, at around $10 million per year in 2006-07 prices (PC 2008a).

However, despite arguments supporting the likelihood of low additional compliance costs, during consultations the Commission was informed that in some particular instances, unintended impacts had raised costs above expectations. For example, the restrictions on supply of goods and services by direct sellers during the cooling off period was limiting some fundraising activities conducted by charities. This change was not explicitly part of the Commission's recommendations (PC 2008a) and thus costs from this change would not have been taken into account. Despite these claims, Consumer Affairs Australia and New Zealand argued that with amendments surrounding the value thresholds, the new provisions could be considered less prescriptive than those which were replaced:

> As a general proposition, some may consider that the ACL provisions related to unsolicited consumer agreements are less prescriptive than the State and Territory laws that they replaced. (sub. DR-R27, p. 3)

They further noted that fundraising activities by charities are often not considered to be 'trade in commerce' and therefore are not covered by the Act. The Australian Government has also taken steps to review these provisions in relation to charities (as noted by Consumer Affairs Australia and New Zealand):

> The Australian Government recently released a discussion paper dealing with charitable fundraising. That paper considers the applicability of the unsolicited consumer agreement provisions of the ACL to charitable fundraising and seeks public

> comment on whether these provisions should continue to apply to charitable fundraising. (sub. DR-R27, p. 3)

Another example provided to the Commission was in the area of consumer guarantees. The Commission was informed that some firms had expressed concerns over what constituted grounds to seek a refund, particularly in instances where repair costs were small relative to the value of the product — such as replacement of a failed component of a motor vehicle. However, Consumer Affairs Australia and New Zealand also raised concerns about the accuracy of such claims as such an outcome would need to be subject to a product being unsafe or substantially unfit for purpose. Even if issues around 'acceptable quality' exist, any refunds would be subject to a 'reasonable consumer' test. As put by Consumer Affairs Australia and New Zealand:

> The main circumstances in which a car might be subject to rejection for a major failure relate to failure to satisfy the guarantees of acceptable quality, where it is not of acceptable quality because it is unsafe and where it is substantially unfit for purpose.
>
> The ability to reject a good as not being of acceptable quality or because it is unsafe is subject to a reasonable consumer test, either with the section 260(a) definition of 'major failure' or under the definition of 'acceptable quality' if a rejection is based on a good being 'not of acceptable quality because they are unsafe' under section 260(e) of the ACL. The ability to reject a good as unfit for purpose is subject to the failure with the goods not being capable of being remedied easily and within a reasonable time (under section 260(c)). (sub. DR-R27, p. 3)

Consumer Affairs Australia and New Zealand also stated that evidence to date has not supported the claims surrounding consumers seeking refunds on motor vehicles.

The Housing Industry Association (HIA) claimed that for the housing industry, the introduction of unfair contract terms in the ACL has duplicated other state-based laws that apply to housing contracts. In its opinion, such a move was unnecessary and has added to the compliance burden:

> HIA's view is that the imposition of the unfair contract laws to a residential building industry that already had extensive regulation was unnecessary and has only served to add an additional compliance burden and cost for business. (sub. DR-G7, p. 2)

Moving to the new arrangements will require all firms to become familiar with the new regulatory approach, thereby imposing one-off transition costs on businesses. These were estimated to be around $20 million in 2006-07 prices (PC 2008a). However, while it appears many of the concerns above will not prove material, they are likely to have added to the costs to some businesses in transitioning to the new regime. Given this, the Commission has assumed that transition costs are likely to have been higher than previously estimated, at around $30 million.

Government administration costs

The altered governance arrangements and new enforcement powers given to the ACCC are likely to influence the costs of providing consumer policy regulatory services by the Australian governments. Previously, the Commission estimated that these costs to government were likely to be $25 million per year (in 2006-07 prices).

Despite some ongoing costs associated with the new enforcement provisions, Consumer Affairs Australia and New Zealand stated that possible costs savings for government existed under the new regime associated with co-operation and reduced duplication:

> … consideration should also be given to potential cost savings associated with co-operation and reduced duplication of effort between consumer agencies that has been made possible by the ACL. Three examples of cost savings involve the appointment of a 'lead agency' for national consumer issues (such as the Qantas and Tiger Airways groundings), co-operation on policy development and the development of national guidance and education materials.
>
> Over time enhanced co-ordination and co-operative arrangements have the potential to deliver significant cost savings that are not reflected in the draft. CAANZ officials consider that it is possible that the net effect of the reforms on government administration costs will be positive over the longer term. (sub. DR-R27, p. 4)

These costs savings, while possible, have not been quantified in this report.

2.6 Summary of effects

The direct prospective impacts of the consumer policy reforms are considered most likely to be in the form of changes to household demand, longer-run improvements in productivity, altered business compliance costs, and some increases in government outlays (table 2.2).

In the Commission's assessment, the consumer and productivity benefits of reform will be incremental and are likely to accrue over the medium to longer terms. Reflecting this broad assessment, it has been assumed that consumer benefits are likely to accrue over about one decade, with the productivity improvements accruing over around two decades. The ongoing cost savings are assumed to begin in 2010-11 and continue thereafter. The transition costs, compliance costs and cost savings are assumed to influence the value adding inputs of labour and fixed capital in the retail and manufacturing industries. Productivity increases apply to retail and manufacturing industries.

Table 2.2 **Summary of estimated impacts from consumer law and product safety reforms**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Increase in household demand for goods and services	..	170	170	..	..
Increase in productivity	..	760	760	..	..
Business compliance costs					
Reduction in costs from harmonisation	60	60	120	..	..
Increased costs from new requirements	(10)		(10)	..	(30)
Australian Government administration costs	(15)	(15)	(30)	..	..

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates.

2.7 Opportunities for improvement

During consultations the Commission was informed that some of the new provisions had created unintended impacts on some businesses. For example, some uncertainty existed over consumer guarantees in relation to the right to return products with minor safety faults which could be repaired relatively inexpensively. Although these concerns are disputed (see sub. DR-R27), an *ex post* review to determine whether the new laws have created any unintended consequences for producers or consumers could be worthwhile once experience has been gained in the operation of the new national framework.

3 Consumer credit

Key points

- State and Territory governments agreed in 2008 to refer their legislative powers in the areas of mortgage broking, margin lending and non-bank lenders to the Australian Government.
  - National regulation of these areas of consumer credit became operational in 2009.
- The reforms are intended to enhance consumer protections and reduce unnecessary regulatory burdens associated with multiple pieces of regulation across jurisdictions.
- National regulation has introduced new licensing requirements, greater information disclosure arrangements and placed additional obligations on credit providers. ASIC has been given a wider array of enforcement tools.
- Both consumers and credit providers will be directly affected by the reforms:
  - Consumer detriment associated with the use, or misuse, of consumer credit could be reduced — estimated to provide ongoing benefits of around $35 million per year.
  - The harmonisation of the credit code could also be beneficial, reducing business compliance costs — estimated at around $10 million per year.
- The additional consumer protection arrangements imposed on credit providers are likely to increase business costs by around $20 million per year.
- Transitioning to the new system also requires additional one-off costs — estimated at around $5 million for business and $70 million for government.
- Concern was expressed about the pace of overall regulatory changes in consumer credit markets and the interaction of reform with other changes affecting the sector. Consideration of the pace of reform and associated sectoral adjustments may be warranted.

The national regulation of consumer credit follows State initiatives to develop a uniform credit code in the early 1990s. The move to a national regulatory regime was first recommended by the House of Representatives Economics, Finance and Public Administration Committee in September 2007 following an inquiry into home lending practices (CRC 2009a). Similar recommendations were also made by the Commission as part of its broader inquiry into consumer policy (PC 2008a). The initiative was adopted by COAG as part of the Seamless National Economy reforms in 2008.

The Commission's assessment of the likely direct impacts from these reforms is presented in this chapter. This has required judgements to be made about the effects of the reforms and the timescale over which benefits may accrue. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

3.1 Reform objectives and changes

At its March 2008 meeting, COAG reached in-principle agreement that the Australian Government would assume regulatory responsibility in the areas of mortgage broking, margin lending and non-bank lenders. COAG agreed that the national regulation of other areas of consumer credit would also be investigated. It was agreed these reforms would be implemented in two phases (box 3.1).

Phase One of the reform package, which is the focus of this study, comprises three deregulation priorities, made up of the:

- national regulation of mortgage broking;
- national regulation of margin lending; and
- national regulation of non-deposit lending institutions.

Phase Two covers a fourth deregulation priority — the remaining areas of consumer credit. These have not yet been fully implemented, and although the Australian Government has already implemented some reforms beyond the Phase One deregulation priorities, assessment of these is outside of the scope of this study.

The broad objective of the reforms is to create a single national approach to consumer protection regulation in relation to the use of credit. The key changes are contained within the *National Consumer Credit Protection Act 2009*, which covers most of the changes from Phase One. The exception is margin lending, which has been dealt with by amendments to the *Corporations Act 2001* (Cwlth).

The Australian Government is responsible for the implementation of the new regime, with State and Territory governments referring power to enact and amend the new credit legislation and repealing their existing regulation.

Box 3.1 Elements of the two phase implementation plan

Key elements of Phase One

- Enacting the existing State legislation, the Uniform Consumer Credit Code (UCCC), into Commonwealth legislation.
- Establishing a national licensing regime for providers of consumer credit and credit-related brokering services and advice.
- Extending the powers of the Australian Securities and Investments Commission (ASIC) to be the national regulator of the new credit framework with enhanced enforcement powers.
- Requiring licensees to observe a number of general conduct requirements including 'responsible lending' practices.
- Requiring mandatory membership of an external dispute resolution (EDR) body by all providers of consumer credit and credit-related brokering services and advice.
- Extending the scope of credit products covered by the UCCC to regulate the provision of consumer mortgages over residential investment properties.
- Extending the operation of the Corporations Act to regulate margin lending.

Key elements of Phase Two

- Enhancements to specific conduct obligations to stem unfavourable lending practices, such as a review of credit card limit extension offers, and other fringe lending issues as they arise.
- Regulation of the provision of credit for small businesses.
- Regulation of investment loans other than margin loans and mortgages for residential investment properties.
- Reform of mandatory comparison rates and default notices.
- Enhancements to the regulation and tailored disclosure of reverse mortgages.
- Examination of remaining existing State and Territory reform projects.

Source: COAG (2009e).

In the course of developing the reforms, governments commissioned a number of analyses and provided stakeholders with opportunities for consultation. These included the:

- Commission's *Review of Australia's Consumer Policy Framework*,[1] released in April 2008 (PC 2008a);

1 While the impacts of consumer credit reforms were quantified as part of this study, they were aggregated with other consumer policy reforms and so cannot be separately identified. See chapter 2 for details.

- *Green Paper on Financial Services and Credit Reform: Improving, Simplifying and Standardising Financial Services and Credit Regulation* in June 2008;
- Regulatory Impact Statements (RISs) undertaken in 2008 and 2009 — both included in the explanatory memorandum for the National Consumer Protection Bill (Bowen 2009a); and
- *Green Paper on National Credit Reform* released in July 2010 as part of the implementation of Phase Two of the reforms.

What was the nature and structure of consumer credit laws pre-reform?

Before the reforms, consumer credit was regulated by State and Territory governments. State and Territory governments had previously agreed in 1993 to make consumer credit regulations nationally uniform. To this end, they entered the Uniform Credit Laws Agreement and developed the Uniform Consumer Credit Code (UCCC). The UCCC was template legislation that was enacted in each of the jurisdictions.

The key provisions of the UCCC included:

- provisions relating to the credit contract, including the form and content of the contract, how information about the contract is disclosed to the consumer, and how the contract may be changed;
- special provisions relating to circumstances where consumers are affected by hardship, including powers of a court to intervene in such circumstances;
- provisions relating to the enforcement of credit contracts, in particular what steps creditors must undertake before they can enforce a contract against a defaulting debtor;
- extensive provisions relating to civil penalties for breaches of the UCCC;
- special provisions regarding related sales and insurance contracts, as well as consumer leases; and
- provisions relating to the advertising of credit, including requirements for using a comparison rate (Bowen 2009a).

However, the UCCC was relatively narrow in scope and a number of problems relating to consumer credit were found to exist (box 3.2).

In addition to the UCCC, individual jurisdictions could also implement other regulation. For example, the regulation of mortgage brokers varied across jurisdictions. Western Australia — where a licensing scheme existed — had the most stringent requirements. In Victoria and the Australian Capital Territory, there was a registration scheme for lenders and intermediaries, while in New South Wales, there was a negative registration scheme.[2] The other jurisdictions had no licensing or registration schemes.

Box 3.2 **Concerns with the Uniform Consumer Credit Code**

The RIS conducted in 2008 identified a number of problems associated with the UCCC, including:

- amending the UCCC was difficult due to the need to get agreement between all jurisdictions, making it difficult to respond to market changes;
- the introduction of additional State-specific regulations created inconsistency across jurisdictions; and
- the UCCC did not apply when credit was obtained for investment or small business purposes, so protections for borrowers were more limited.

It was also suggested that:

- there was evidence that some consumers accessing credit through brokers were suffering detriment;
- similarly, there was evidence that some consumers experienced difficulties due to excessive levels of debt;
- some consumers were poorly informed about the features and risks of some credit products. The UCCC disclosure requirements did not sufficiently inform consumers of features and risks;
- consumers' access to dispute resolution mechanisms other than the Courts was limited, as under the UCCC providers were not required to be members of an EDR scheme; and
- penalty provisions in the UCCC were largely limited to civil remedies for breaches of legislation, with no scope for the regulator to intervene through administrative action.

Source: Bowen (2009a).

2 Under the scheme, brokers deemed to have engaged in unjust conduct could be prohibited from offering brokering services.

Margin lending was not subject to specific regulations. However, many operators, by virtue of their structure or other activities, are likely to have been subject to licensing by ASIC, or requirements under the banking code of practice.

What has changed under the national consumer credit laws?

The key changes from Phase One of the consumer credit reforms are:

- the change from the State-based UCCC to a new National Credit Code;
- the licensing of industry participants;
- changes to disclosure and lending obligations;
- the inclusion of lending for residential investment properties;
- changes in enforcement powers; and
- changes to the regulation of margin lending.

The new arrangements commenced on 1 July 2010. However, there was a phased introduction of some of the changes. For instance, those already engaged in credit activities who registered with ASIC prior to 1 July 2010, had until 31 December 2010 to apply for a credit licence. Also, the 'responsible lending obligations' applied to brokers from 1 July 2010, but not to authorised deposit taking institutions and registered finance companies until 1 January 2011.

The Australian Government made some further changes in the area of consumer credit in 2011. These were part of the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*, which included requirements to provide one-page key fact sheets to home loan consumers (from 1 January 2012), and changes aimed at increasing consumer protections with respect to credit cards (these are to commence mid-2012). In addition, the Australian Government introduced regulation banning mortgage exit fees. While these changes have similar objectives, they are not part of Phase One of the COAG consumer credit reforms, as outlined in the National Credit Law Agreement 2009 (COAG 2009e) that underpins the reforms. Accordingly, they do not fall within the COAG Reform Council's performance reporting for these reform areas and are not included in the assessment of impacts in this study.

National Credit Code

The consumer credit reforms have replaced the UCCC with a new, Australian Government administered, National Credit Code. While the new Code largely replicates the previous State-based UCCC, some changes were made. These were intended to both harmonise the Code, and to enhance the consumer protections that existed under the Code.

Licensing

The introduction of a national licensing regime is one of the most substantive changes from the reforms. Key elements of the licensing regime are that:

- those who engage in credit activities are required to, initially, be registered with ASIC, and to subsequently hold an Australian credit licence;
- there are entry standards for registration and licensing, and ASIC is able to refuse an application where the applicant does not meet those standards;
- licensees are required to meet ongoing standards of conduct when they engage in credit activities and to certify annually that they continue to meet the requirements set out in the legislation; and
- under the legislation, ASIC has the power to suspend or cancel a licence or registration, or to ban an individual from engaging in credit activities (Bowen 2009a).

Eligibility criteria for licensees include confirmation that they are a fit and proper person to be a licensee or a responsible manager for a licensee, as well as training requirements, professional indemnity insurance and membership of an external dispute resolution scheme.

Disclosure and lending obligations

Disclosure and lending obligations have been altered through the 'responsible lending conduct' provisions, which place a number of more stringent obligations on those licensed under the National Consumer Credit Protection Act — that is, those involved in the provision of credit to consumers. The key obligation is intended to ensure that credit licence holders do not provide, or in the case of intermediaries, suggest or assist with, credit contracts or consumer leases that are unsuitable for the consumer. In order to meet this obligation, licence holders are required to make reasonable inquiries to verify a consumer's financial circumstances to assess both the appropriateness of a contract or consumer lease and the capacity to make repayments. There is also an obligation on licensees not to make false or misleading representations. The provisions also stipulate a range of disclosures that licensees are required to make to consumers, including the likely commissions brokers will receive and costs to the consumer, as well as the availability of dispute resolution services.

Residential investment properties

The UCCC did not cover loans for the purchase of residential investment properties. Under the new national approach, the coverage of the Code has been extended so that these loans are covered in a similar manner to owner-occupied housing loans (except where the property is purchased by a company).

Enforcement powers

Under the new regime, there is an expanded range of enforcement options. ASIC is able to take a range of actions against licensees — including administrative actions/issuing of infringement notices — in dealing with compliance breaches.

Margin lending

The new margin lending regulations are broadly similar to those applying to the other areas of consumer credit. However, they have been implemented as amendments to the Corporations Act, rather than being incorporated into the new National Consumer Credit Protection Act.

The key changes relate to requirements placed on margin lenders such that:

- issuers and advisors of margin lending facilities must be licensed;
- lenders are to meet increased disclosure and lending requirements;
- consumers are to have access to external dispute resolution services; and
- greater clarity exists around the responsibility to notify clients of margin calls.

3.2 Who will be affected by the reforms?

There are two broad groups affected by the consumer credit reforms. These include credit advisors and providers, as well as consumers of the types of credit covered by the reforms.

Credit advisors and providers

There are several different types of industry participants affected by the reforms, with finance brokers and mortgage brokers accounting for around two thirds of license applicants (table 3.1).

Table 3.1 **Licence applicants by type**[a]

Type of applicant	*Number*
Aggregator	214
Assignee of debts	84
Bank	39
Credit union or building society	123
Finance broker	3 964
Financial planner/advisor	564
Lenders mortgage insurance providers	17
Lessor	182
Mortgage broker	4 560
Mortgage manager	699
Other lender	842
Property developer or real estate agent	184
Responsible entity of a managed investment scheme	80
Securitisation manager	53
Seller of goods by instalment	186
Seller of real property by instalment	193
Other	507
Total	**12 491**

[a] Applicants can cover more than one category.

Source: ASIC (2011).

In 2009, it was estimated around 10 000 businesses would be affected by the reforms. Since the enactment of the new laws, there have been around 6000 licences issued, from around 7000 applications. In addition, as at 30 June 2011, there were also about 24 000 authorised credit representatives (ASIC 2011). Authorised credit representatives can engage in credit activities on behalf of a licensee. Employees do not need to be authorised. A person can become a credit representative of more than one licensee (if both licensees consent), and a licensee can also be a credit representative for a different class of credit activity. Some of those who originally applied for a licence subsequently changed their business arrangements and became representatives of another licensee instead.

The nature of the reforms means that all industry participants are directly affected by some aspects of the reforms — notably the requirement to be licensed and the associated obligations under the licence such as training and insurance requirements. The impact of these requirements on participants will depend on the obligations faced by participants under the previous arrangements. To the extent that these obligations varied, the reforms may have a greater impact on some categories of participants than others.

The number of businesses involved in margin lending is somewhat smaller. In the RIS, it was estimated that there were between 1000 and 2000 financial planners involved with margin loans, as well as around 15 lenders (Bowen 2009b).

Consumers

A key objective of consumer credit reforms is to reduce the risk of consumers suffering a financial loss as a result of their use of credit. Broadly, this is achieved in two ways. The first is through aspects of the new regulations that improve information and access to lower cost dispute resolution. The second is the aspects of the new regulations that further restrict some consumers' access to credit, such as through more stringent lending obligations.

The consumer population potentially affected by the legislation is very broad, as most of the adult population either uses or is a potential user of credit. For example, in the case of housing loans alone, in the 12 months to May 2011 there were around 577 000 loans taken out.[3] However, evidence suggests that most consumers operate in credit markets without any substantive adverse effects. And, while applying some general safeguards for all consumer credit borrowers, the reforms are primarily targeted at a smaller group of vulnerable credit consumers. It is difficult to gauge the size of this vulnerable group, but one potential indicator of the at-risk population of credit users is the number of bankruptcies.

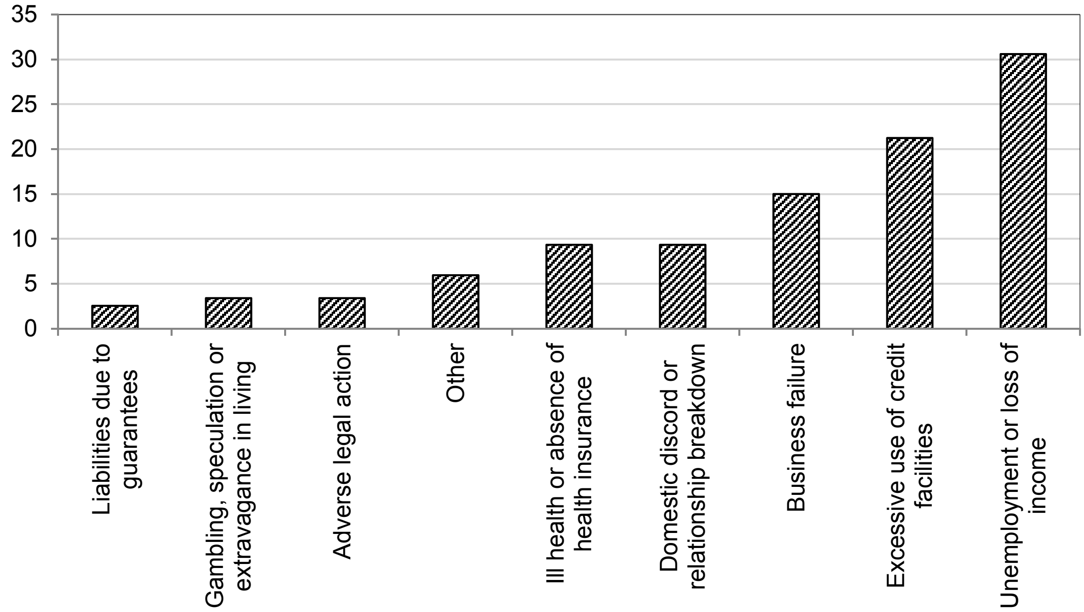
In 2009, 28 665 people filed for bankruptcy, while a further 8559 entered debt agreements and 642 entered personal insolvency agreements (ITSA 2010).[4] Not all insolvencies, however, arise from the misuse of consumer credit. In 2009, for example, the main causes of bankruptcy — around 45 per cent — were related to business failure, unemployment or other loss of income. In only approximately 20 per cent of cases was excessive use of credit cited as the primary cause (figure 3.1).

Overall, taking into account those who entered into debt agreements and personal insolvency agreements, the number of individuals who cited excessive use of credit as the primary cause of insolvency in 2009 was around 9000 people.

3 ABS 2011 *(Housing Finance Australia*, Cat. no. 5609.0).

4 Debt agreements are a simpler alternative to bankruptcy for an individual with low debts and income, while personal insolvency agreements are proposals that are voted on by creditors and become binding.

Figure 3.1 **Causes of bankruptcies, 2009**
Per cent



Data source: ITSA (2010).

Another potential indicator is the number of loans in arrears. However, this measure also suggests that those targeted by the new laws represent a relatively small share of the total consumer credit market. For example, in 2010-11, Commonwealth Bank home loans that are 30 plus days in arrears accounted for around 2 per cent of their outstanding loans, with those 90 plus days in arrears about 1 per cent (CBA 2011). Earlier studies have suggested even lower rates (RBA-APRA 2007). At any one time, the proportion of loans actually in arrears is likely to reflect the economic conditions of the time as well as lending and borrowing practices.

Most cases of loans in arrears are resolved without recourse to repossession. It is difficult to gauge the number of repossessions, but in 2006, there were around 5000 court applications for repossession orders in New South Wales. Notably, this was substantially higher than earlier years and around double that recorded in Victoria. Further, not all applications result in repossession, as cases may be resolved through, for instance, voluntary sale prior to court orders (RBA-APRA 2007).

While insolvency and repossession represent the extreme adverse consequences of use of credit, many borrowers report experiencing hardship or ‘mortgage stress’ as a result of their borrowing practices. For instance, in a recent survey of home loan borrowers, 25 per cent reported experiencing difficulties in meeting their mortgage repayments (Genworth 2011). However, as the survey also found, the majority of those experiencing mortgage stress still met their repayment obligations.

While elements of the new laws, such as increased disclosure obligations may have some impacts across a broad cross section of borrowers, the arrangements are mainly targeted at a smaller at-risk population of credit users. This smaller group is more likely to be represented by indicators of acute credit-related problems, such as bankruptcies, than it is by broader measures, such as mortgage stress.

3.3 Understanding the direct impacts of the reforms

The direct impacts of the consumer credit reforms on businesses, governments and society more generally can be separated into four components, made up of the effects of:

- harmonisation of common regulatory elements — such as the move from the UCCC to the National Credit Code — on the ongoing compliance costs faced by multi-state firms;
- substantial changes to consumer credit regulation — such as additional disclosure requirements and new licences — which will change the manner in which regulatory outcomes are achieved;
- altered governance arrangements on government administration costs — the referral of powers from State and Territory governments will potentially lead to cost savings in the provision of consumer credit regulatory services; and
- removing the impediments to the efficient operation of the market — over time, lower compliance costs of operating across State and Territory borders may alter incentives for businesses to operate in multiple jurisdictions and/or increase competition between businesses.

In achieving these changes, businesses and governments may incur some one-off learning or transition costs.

Harmonisation

While the objective of the national consumer credit laws is to establish a harmonised system across jurisdictions, the impacts from harmonisation are likely to be relatively limited because of minimal prior differences between jurisdictions under the UCCC.

Although the likely gains would be small, harmonisation of the UCCC to the National Credit Code could result in red tape cost savings to those industry participants that operate across multiple jurisdictions. Such firms no longer need to be aware of, and fulfil the different requirements due to any variation in, the Code.

For businesses previously licensed in Western Australia that operated across multiple jurisdictions, there may be some cost savings from only having to be aware of and keep up-to-date with one set of rules under the new arrangements.

Substantial changes to consumer credit regulations

The bulk of the impacts from the consumer credit reforms are likely to arise from changes intended to improve the effectiveness of regulations in protecting consumers from predatory lending practices or poor borrowing decisions. These effects could arise from changes to licensing, lending practices, enforcement options and expansion in regulatory coverage to include residential investment properties and margin lending. Such changes will have both costs and benefits.

Licensing

Licences to operate are commonly used to regulate the relationship between consumers and service providers where information asymmetries exist that make it difficult for consumers to evaluate the quality of service provision. Licensing arrangements are widespread in the financial services industry.

In the Commission's *Review of Australia's Consumer Policy Framework* (PC 2008a), it was noted that licensing was useful for targeting specific industry problems and could increase consumer confidence in the operation of the credit industry (PC 2008a). The Commission also noted that licensing can limit competition, impose compliance costs and raise prices for consumers. Overall, the Commission concluded that new licensing arrangements for those involved in credit provision to consumers were likely to confer net benefits as the potential consumer detriment from poor decision making is significant and information costs are high or quality is difficult to verify.

The benefits of credit licensing would accrue to consumers through a reduction in the chance of receiving improper advice that increases the risk of adverse borrowing outcomes. There are also benefits from the new remedies and protections, such as external dispute resolution provisions, available to consumers when a breach of the law occurs. For industry, the potential benefits could include increased consumer confidence leading to greater demand for credit.

The costs of the new regulatory arrangements fall predominately on business. These are in the form of additional compliance costs made up of licensing fees, as well as the costs to meet the eligibility criteria, such as insurance, external dispute resolution services and training.

Disclosure requirements

The increase in the use of intermediaries, such as brokers, and the development of low documentation loans has created a potential separation between credit providers and credit recipients. Further, intermediaries involved in issuing loans may face incentives to issue loans to at-risk borrowers given the presence of brokerage commissions. It has been argued that these factors have increased the risks of adverse outcomes from the use of credit for both borrowers and lenders (Treasury 2008).

Consumers defaulting on loans can suffer financial losses, such as a loss of equity or transaction costs associated with selling assets or refinancing. They are likely to also suffer non-financial losses, such as emotional trauma. More stringent lending obligations could have benefits to the extent that they reduce the risk of consumers suffering these losses. Consumers may also face lower costs in resolving issues with unsuitable credit contracts due to greater access to dispute resolution processes.

Reductions in adverse consumer outcomes could also create some benefits for credit providers and governments. For credit providers, the reduction in the frequency of defaults could reduce costs associated with managing default cases. For governments, lower rates of default may reduce social welfare expenditure and the costs of running court systems.

However, the implementation of more prescriptive lending conduct obligations is only likely to have benefits at the margins, due to the pre-existing standards applied in most lending transactions and external factors that cause most financial difficulties. As the Australian Bankers' Association (ABA) noted:

> The main causes of consumers falling into financial difficulties with their loans are unemployment, illness and family breakdown. Banks' lending standards are recognised as very high and were demonstrated during the course of the global financial crisis in 2007/2008, particularly when compared with overseas lending experiences. Default rates with bank lending are extremely low relative to nonbank lending in Australia and overseas. Also, banks have the major share of consumer lending in Australia. (sub. R9, p. 6)

The most immediate costs of more stringent lending obligations are the additional compliance burden on licensees. To some extent these costs are likely to be transferred to consumers, through higher fees.

There is also likely to be some restriction of financial transactions of both credit consumers and providers as a result of the obligations potentially limiting some beneficial credit transactions.

Enforcement powers

Inappropriate enforcement mechanisms can undermine or negate the achievement of regulatory objectives. The 2009 RIS suggested that the limited number of enforcement options under the UCCC, which relied on criminal sanctions as well as civil penalties that could be pursued by private parties through the courts, limited the enforceability of the Code in relation to minor breaches. Further, with only more severe penalties available in instances of breach, an overly cautious approach to compliance by business may result.

In contrast, the best-practice approach by regulators to business compliance employs a range of criminal, civil, administrative and educational tools, under what is referred to as an 'enforcement pyramid'. That is, there is a range of compliance measures and sanctions of increasing severity that can be applied, dependent on the nature and level of the breach (PC 2008a).

As part of the reforms of consumer credit there have been changes to the enforcement regime consistent with this pyramid approach. Providing ASIC with wider enforcement powers was considered to increase the likelihood that minor breaches would be addressed — creating more certainty for consumers when operating in credit markets, while for businesses, greater enforcement powers could reduce the costs of unintended breaches of the law.

The changes to the enforcement regime are difficult to quantify. The greater range of enforcement options should make it easier to enforce low level breaches. To this extent the regime should offer benefits to consumers, in terms of increased confidence, reducing their transactions costs. It should also lower the costs for businesses of unintentional breaches of the law.

However, given that there have been very few enforcement actions to date, the impacts of changes to the enforcement regime have not been quantified in this study. Despite this, it should be noted that:

- the new approach is consistent with best practice (as discussed above); and
- it would be presumed that there would be positive (albeit small) benefits from such an approach.

External dispute resolution

One of the changes under the reforms is the requirement for credit providers and intermediaries to be members of external dispute resolution (EDR) schemes. There are two authorised services to which businesses must belong — the Financial

Ombudsman Service or the Credit Ombudsmen Service. Under these schemes consumers are not charged to make a complaint. Instead, EDR services are funded by members through annual membership fees and additional fees charged to members when a complaint against them is lodged.

The general approach to complaint handling by EDR services is to first refer the complaint back to the member for resolution through their internal dispute resolution processes. There is also scope for agreement to be reached at any stage during the assessment process, but if a resolution is not reached by agreement between the parties, a determination can be made by the ombudsman. The majority of complaints are resolved by agreement. For example, in 2010-11, for all complaints closed by the Financial Ombudsman Service (this includes complaints outside the consumer credit area), 71 per cent were resolved by agreement. Only 10 per cent were resolved by a determination by the ombudsman, while the remainder were either discontinued or out of scope (FOS 2011).

The introduction of the consumer credit reforms has been accompanied by an increase in the number of complaints received by EDR services in relation to consumer credit disputes — these increased by around 50 per cent in 2010-11 (table 3.2).

Table 3.2 **Consumer credit complaints lodged with EDR providers**[a]

	2009-10	*2010-11*	*Change*
Financial Ombudsman Service	6 466	9 357	45%
– *financial difficulty*	*1 810*	*4 398*	*143%*
Credit Ombudsman Service	790	1 614	104%
– *financial difficulty*	*313*	*672*	*115%*
Total consumer credit disputes	**7 256**	**10 971**	**51%**
– ***Total financial difficulty***	***2 123***	***5 070***	***139%***

[a] Financial difficulty represents the number of complaints lodged that are related to disputes over hardship, such as where a customer is seeking a variation in payment arrangements. These numbers are approximate. The Financial Ombudsman numbers are derived from reported percentages, while the Credit Ombudsman numbers may include some hardship disputes not related to consumer credit.

Sources: COSL (2011); FOS (2011).

Overall, it appears that most of the increase in disputes can be attributed to complaints related to financial difficulty or hardship — that is, where consumers are seeking relief (through various types of payment variations) because they are in financial difficulty. The Financial Ombudsman Service attributes the increase to a combination of a rise in the number of people in financial difficulty, as well as the introduction of the new credit laws, in particular, the compulsory membership of EDR under the new regime and the requirement to include EDR contact details on default notices (FOS 2011).

Although difficult to quantify, as with the enforcement reforms more generally, EDR is likely to have an overall positive impact. EDR is a lower cost method of dealing with disputes. The majority of disputes are resolved by agreement, but it is likely that this is facilitated by the formal structure and transparency of the EDR process. In the absence of EDR, it is likely that these disputes would either be resolved through a much more expensive court process, or (perhaps more likely) not be resolved at all. Accordingly, EDR should reduce the transactions costs of resolving these disputes, increase consumer confidence and, possibly. improve the efficiency of the market. And, in resolving issues that would have otherwise been unresolved, it should reduce any consumer detriment associated with the use of credit (this impact is discussed below). There are some concerns that the provision of free (for consumers) EDR can encourage frivolous or vexatious complaints (MFAA, sub. DR-R22). However, most complaints are either resolved by mutual agreement or a determination is made in the complainant's favour suggesting this is not the case. Further, complaints classed as frivolous or vexatious by the ombudsman are deemed to be outside its terms of reference (FOS 2011).

Residential investment properties

Investment in residential property accounts for almost one third of borrowing for residential properties[5] and represents a significant area of investment for many households. However, unlike other areas of financial advice, property investment advice is not regulated by ASIC (PC 2008a).

The inclusion of lending for residential investment properties was intended to address concerns over the conduct of credit providers in relation to the purchase of residential investment properties (Treasury 2008). More specifically, concerns related to cases where consumers received unsolicited offers, were sold investment properties above market value or where there were misrepresentations about potential income streams and taxation arrangements. Further, where an individual's residence was used as security for investment properties, default could lead to the loss of both the investment property and their residence.

Because this aspect of reform simply expands the scope of other credit provisions to the financing of residential investment properties bought by individuals, the impacts of the expansion of the scope of the Code are similar to the impacts from the changes to lending conduct obligations and the licensing regime (discussed above).

5 ABS 2011, *(Housing Finance Australia*, Cat. no. 5609.0).

Margin lending

Some of the specific problems surrounding margin lending identified in the RIS include:

- concerns around consumers' understanding of how margin loans operate, particularly those who have taken out loans in the context of a strongly rising market;
- lack of awareness of risks by consumers;
- lack of understanding of how the loan to valuation ratio works; and
- concern that marketing of margin loans does not fully highlight downside risks (Bowen 2009b).

While margin lending is somewhat different from the other areas of credit covered under Phase One of the reforms, and it is not covered within the same legislation, the general features of the reform are the same. As in other areas, the reforms have imposed licensing and increased disclosure and lending conduct obligations on providers, as well as an expanded enforcement regime. The additional activities advisors and lenders have to undertake due to these new obligations are the main impact of the new regulation and are likely to impose some additional costs in the provision of margin loans.

Because the licensing for margin lending is being imposed as another class of Australian financial services licence, rather than within the new Australian credit licence, the effect on margin lending advisors and providers should be relatively small, as the majority of industry participants would already be licensed as a result of their other financial service activities.

Government administration costs

The reforms have resulted in the Australian Government assuming responsibility from the State and Territory governments for regulating consumer credit. This could potentially reduce government administration costs as the number of regulators and governments responsible for policy development has fallen from eight to one. However, because the scope of the regulation has been expanded, the administration costs incurred by the Australian Government may only be partially offset by reduced administration costs for State and Territory governments and licence fee revenue.

Removing impediments to efficient market operation

It is possible that the change to a national regulatory approach could have some effects on the efficiency of market operations. While the harmonisation benefits from the National Credit Code and the uniform licensing regime appear small, the removal of these slight differences could encourage more multi-state operators in the future. Further, the referral of powers also removes the opportunity for increasing regulatory divergence over time, which could impose additional costs on multi-state firms in the future.

Increased regulation could also increase the transparency and ease of comparison of individual credit suppliers, which could enhance competition and therefore provide incentives for innovation and productivity. For example, while competition could be reduced if operators are forced out of business as a result of licence conditions, by reducing information asymmetries, the reforms could increase competition by making it easier to compare businesses' offerings. This could also reduce barriers to entry as the 'goodwill' barrier is reduced.

3.4 What are the direct benefits of the reforms?

Phase One of the consumer credit reforms has been implemented. However, it is very early in the process with many of the direct impacts from the reform unlikely to have been realised. The impacts are therefore predominately *prospective* in nature.

As noted in the previous section, many of the direct impacts are difficult to quantify. For this reason, quantification of the direct benefits from the reforms in this chapter is limited to an estimate of the harmonisation benefits to business from the implementation of the National Credit Code and a partial estimate of the consumer impacts, focussing on consumer detriment. Some elements of the increases in costs to businesses and government to achieve the implementation of the consumer credit reforms are also quantified (see next section).

However, there is likely to be a much broader range of effects from the changes to consumer credit laws than those detailed in this section. In the Commission's *Review of Australia's Consumer Policy Framework* (PC 2008a), quantitative estimates were made of a broad aggregate of consumer policy reforms, including in relation to consumer credit — these are used as the basis for analysis in chapter 2 of this volume. Accordingly, some of the broader potential impacts from consumer credit reforms may be reflected in the estimates provided in chapter 2.

Harmonisation

The impacts from the creation of the National Credit Code are likely to be small, as there were only minor differences between the previous jurisdictional arrangements. Further, it is likely that a substantial proportion of industry participants, particularly those who identify as finance or mortgage brokers, operate only within one jurisdiction, and hence will not benefit from harmonisation of these common regulatory elements.

Nevertheless, there are likely to be some benefits to industry from ensuring there are no regulatory variations across jurisdictions as a result of the change from the UCCC to the National Credit Code. An indication of the compliance costs under the UCCC was made by the ABA (2008) in a submission to the *Financial Services and Credit Reform Green Paper*, where it submitted that the introduction of the UCCC had imposed ongoing compliance costs on banks in the order of $50 million per year in the mid-1990s. Using this estimate as a guide, the UCCC could be considered to impose ongoing compliance costs equivalent to approximately $80 million per year in 2010-11 dollars. As banks dominate credit provision in Australia, these costs are likely to represent the bulk of the compliance costs for the consumer credit industry.

While there has been no feedback in this study to indicate how much compliance costs have changed under the new laws, for illustrative purposes, if it is assumed that compliance costs under the National Credit Code are 10 per cent lower than under the UCCC, then compliance costs savings in the order of about $10 million in 2010-11 dollars per year would be achievable.

Consumer detriment

Extreme cases of detriment can be reduced in two broad ways — either through additional safeguards for borrowers who suffer financial difficulty or through lending restrictions which save consumers from making borrowing commitments that they might not have the capacity to service.

With respect to borrowers who suffer financial difficulty, there were an additional 3000 consumers who sought a resolution of their concerns over a lender's decision surrounding financial hardship through EDR services in the first year of the new reforms (table 3.2). In some of these cases, it is likely that consumers would have benefitted through avoiding foreclosure. Although estimating the benefits from this is difficult, one approach is to consider possible avoided transaction costs. If avoidable costs amounted to 10 per cent of the value of a loan, then for an average mortgage of $300 000[6] they would be about $30 000. If a quarter of the additional financial hardship complainants were able to avoid foreclosure and its costs, the reduction in consumer detriment would be over $20 million. Such savings could accrue to consumers through lower financial service charges.

There could also be reductions in consumer detriment if people are saved from borrowing decisions that they cannot service. As indicated earlier, there were around 9000 cases of insolvency in 2009 where excessive use of credit was cited as the main cause. If 5 per cent of these insolvencies could be avoided through more stringent lending conditions (and $30 000 in financial services changes could be avoided in each case), then a further reduction in consumer detriment of around $15 million could be achieved. Overall, the total benefits from the consumer credit reforms through reduction in the cost of severe financial stress could be in the order of $35 million per year.

The estimates of reductions in consumer detriment are illustrative and focus on the extreme outcomes from the misuse of credit. It should also be noted that the laws are likely to have impacts on a wider range of consumers by reducing the number of people who experience financial stress as a result of borrowing. While such benefits have not been quantified in this study, they are likely to be significant.

3.5 Indicative costs of achieving reform

Implementing Phase One of the consumer credit reforms has entailed a range of costs. While available quantitative evidence on the likely costs is limited (as with the benefits), some indication of the possible magnitude of the business compliance costs can be estimated, using certain assumptions. The costs can be broadly categorised as either the compliance costs faced by businesses in adapting to reforms or the administration costs incurred by governments from regulatory changes.

The lack of available data means that the assumptions underpinning these estimates of the prospective impacts should be considered illustrative and treated with caution.

[6] The average loan for housing finance in May 2011 was $287 200 (ABS 2011, *Housing Finance Australia*, Cat. no. 5609.0).

Business compliance costs

Licensing costs

One of the most immediate costs of the new consumer credit regime is the cost to businesses associated with licensing. These costs include licence fees, as well as other costs incurred in meeting the licence conditions, such as required insurance, dispute resolution services and training.

The annual cost of licence fees is estimated to be approximately $6 million. This was derived by multiplying the number of licensees in each category by the relevant fee (table 3.3). As licensees pay a fee to lodge their annual compliance certificate each year, which is calculated in the same way as the licence fee, this represents the ongoing annual costs faced by businesses.

Table 3.3 **Licensees by size of credit dealings**

Size ($m)	*Applicants*	*Licensees*[a]	*Fee ($)*[b]	*Licence cost ($m)*
Less than 100	6 808	5 693	750	4.3
100-200	215	215	1 033	0.2
200-600	87	87	4 133	0.4
600-1 000	31	31	8 267	0.3
1 000-1 400	15	15	12 400	0.2
1 400-1 800	4	4	16 533	0.1
1 800-2 100	3	3	20 667	0.1
2 100 million +	33	33	21 700	0.7
Total	**7 196**	**6 081**		**6.1**

[a] It was assumed that all rejected applications were in the less than $100 million category. [b] Fees in the less than $100 million category are either $465 or $1033 — the Commission has assumed an average of $750. Also, fees are slightly higher for paper lodgement.

Sources: ASIC (2011); Commission estimates.

There are also other ongoing compliance costs, including filling out forms as well as subscribing to mandatory insurance and external dispute resolution services, although businesses may have previously incurred these costs to some extent regardless of licence obligations.

There will also be one-off additional costs associated with becoming licensed for the first time, including training requirements (for instance, mortgage brokers are required to complete or upgrade to a Certificate IV in Finance and Mortgage Broking).

It is difficult to assess the magnitude of the additional compliance costs relative to the licence fees. In its study on performance benchmarking of Australian business regulation, the Commission examined the cost of business registrations (PC 2008b). The total cost of compliance was determined as the fees and charges plus the time costs associated with undertaking registrations. The study examined the costs of some generic business registrations, such as registering for a company and registering a business name, as well as some industry specific examples, such as for builders, real estate agents and wineries. For these case studies, the Commission concluded that the time, or paperwork costs were generally low relative to fees and charges. For example, in the case of company registration, the time cost equated to an additional 5 per cent on top of the fee. However, the Commission noted that this cost could significantly increase if there were ongoing compliance requirements (such as those involved for the new credit licences).

During consultations, the Commission received evidence about the response of some industry participants to the new licensing system that suggested the costs were significant. While it is difficult to isolate the impact of licensing from other market factors, a significant number of brokers who initially registered for a licence decided instead to operate as an authorised credit representative of another licensee. This grouping together of brokers to minimise the individual costs of licensing anecdotally suggests the costs of the additional requirements could be significantly greater than the Commission's previous estimate.

Further, the MFAA provided an example of licensing costs for one broker aggregation group:

> … in terms of a dollar figure all up it costs us as a Licensee, $150,000 per annum. This includes the cost to hold a licence, have in place a group PI policy covering 85 Credit Reps and employ a Credit Representative Compliance Manager to ensure our representatives are complying with their obligations. (sub. DR-R22, p. 2)

This indicates that there are potentially high compliance costs associated with licensing. While it is difficult to extrapolate from one example to the aggregate effect on the industry, some illustrative estimates can be made using the following assumptions:

- the compliance costs that businesses will incur in meeting licensing obligations are significant, and could be at least as much as the cost of the licence fee; and
- there will be additional transition costs in the first year of operation associated with businesses becoming familiar with the new arrangements, which could also be at least as much as the licence fee.

For businesses in Western Australia, the pre-existing licensing and additional compliance burdens on businesses were broadly similar to the new arrangements, suggesting that the new arrangements will not have imposed significant costs on these businesses.

Under these assumptions, the total cost of licensing on businesses is estimated to be approximately $17 million in the first year, while in subsequent years the cost will be approximately $12 million. Given 13 per cent of licensees are from Western Australia (ASIC 2011), the additional costs of the reform to businesses from licensing is estimated to be approximately $15 million in the first year and $10 million in subsequent years.

Impact of licensing on competition

Licensing is also likely to have some effect on competition, although this effect is difficult to identify due to a number of confounding factors. Considerable change has occurred within the sector independent of the regulatory changes under consideration. In recent decades, there has been a substantial expansion of access to consumer credit in Australia, in part as a result of the expansion of non-bank lending. However, more recently the global financial crisis has curtailed some of these developments. As the Reserve Bank recently noted in its submission to the Senate Economics References Committee Inquiry into Competition within the Australian Banking Sector:

> Over the past 25 years, Australian borrowers have enjoyed ready access to credit. There has been a continual expansion in the products available to both depositors and borrowers. Competitive forces have compressed the margin between lending rates and funding costs. These factors, combined with the lower interest rate environment associated with lower inflation and a gradual easing in lending standards, have provided a growing number of Australian households and businesses with access to credit that they would not have been able to obtain previously.
>
> Throughout most of this period, funds were readily available to financial institutions and competition was mainly focussed on lending money. The global financial turmoil has reduced the availability and increased the cost of funds to financial institutions. Some business models, such as those based on securitisation, which benefitted greatly during the period when funds were readily available, are now facing a particularly difficult environment. There has been some lessening in the degree of competition on the lending side but competition to attract funds has increased. (RBA 2010, p. 1)

Likewise, the Mortgage & Finance Association of Australia (MFAA) noted that the financial crisis has affected non-bank lenders and mortgage brokers:

> The rise of the non-banking sector in the early 1990s played a significant role in enhancing competition particularly in the mortgage industry. The non-bank lenders introduced innovations such as internet and phone banking and mobile lenders. This put pressure on the banks resulting in greater competition, tighter margins and lower interest rates. …

> The non-banking sector opened the way for 'mortgage brokers' to enter the market. Brokers acted as a 'one stop shop' for consumers by providing advice on the numerous home loans available. …
>
> Prior to the commencement of the credit crisis, the non-bank sector sourced their funds primarily from securitisation ('bundling' individual loans and selling them in financial markets). …
>
> In the last 12 months the global securitisation market has all but dried up and as a consequence the non-banking sector's market share 'has fallen from around 12 per cent in 2006 to 5 per cent.' …
>
> The lack of available funding has forced some providers and brokers out of the market. Less providers within a market would normally result in a fall in competition. (MFAA 2010, p. 2)

Because of the pervasiveness of these events on the operations and structure of the industry, it is difficult to quantify the likely additional impacts on competition of the licensing regime. Further, industry organisations, such as the MFAA, were also moving to a system of self-regulation though an industry code of practice (MFAA 2011). This move was driven, in part, by lenders only seeking to sell their products through licensed brokers. These factors suggest that many of the potential impacts on competition may have occurred irrespective of the reforms, further complicating any attempt to estimate the competition impacts of the consumer credit reforms.

Increased disclosure and lending obligations

Increased information disclosure requirements — aimed at ensuring people can service their loan commitments — are an additional source of compliance costs from the reform.

In estimating the direct effects of these changes, there are several points to consider. First, they create a burden on both industry and consumers as a result of the requirements to seek and provide additional information about the financial position of customers. However, the impacts are likely to be small, because most disclosure is commercially driven. As noted above, the ABA reported that Australian banks, who account for the majority of consumer lending, already had high lending standards which had the effect of avoiding significant consumer detriment (sub. R9).

As such, the new regulations are more likely to have an impact on the form of disclosure, rather than the level or quantity of disclosure.

Accordingly, the additional requirements will likely result in a slight increase in the costs of establishing loans. To this end, loan establishment fees are one indicator of the costs to businesses of establishing a new loan.

As an example, for the Commonwealth Bank, these fees appear to range from $150 for personal loans to $600 for home loans. Using these as a guide, if the additional regulatory requirements increased fees by say $10 per loan, then in the case of housing loans alone (of which there were 577 000 loans established in the year to May) the additional costs would be almost $6 million per year. Non-housing loan establishment, including margin loans, also needs to be accounted for and could possibly double these figures. If this were the case the cost could be around $10 million each year.

Government administration costs

There are also substantial costs incurred by government in implementing the reforms. In the 2008-09 mid-year economic and fiscal outlook, the Australian Government allocated $70.2 million over four years to implement the consumer credit reforms. This will support the national regulation of mortgages, margin lending, personal loans, credit cards and pay day lending (the latter three items refer to the remaining areas of consumer credit that will be covered in Phase Two of the reforms).

There will also be ongoing government costs in administering the new system. Some of these costs will be recovered through the collection of licence fees. In the absence of further information, it is assumed that any additional administration costs incurred by the Australian Government will be offset by a reduction in State and Territory government expenditure.

3.6 Summary of effects

Overall, the estimated components of the consumer credit reforms indicate that they will deliver a small but positive net benefit to the economy. The greatest impact is on the target group — consumers (table 3.4). However, it should be noted that along with the quantified benefits to consumers, the reforms will also have other important impacts on this group related to reduced emotional costs from adverse borrowing outcomes. If the reforms also reduce the instances of households in financial stress, such impacts would be non-trivial.

Table 3.4 **Summary of estimated impacts from consumer credit reforms**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in consumer detriment	..	35	35	..	..
Business compliance costs					
Reduction in costs from harmonisation	10		10		(5)
Increased costs from new licensing	(10)	..	(10)	..	
Increased costs with additional disclosure requirements	(10)	..	(10)	..	..
Total business costs	..	..	(10)	..	..
Government administration costs[b]	..	..	..	..	(70)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. [b] Costs incurred over four years beginning in 2008-09. Additional budgeted expenditure comprises $2.6 million in 2008-09 (plus an additional $0.8 million in capital funding), $13.8 million in 2009-10, $26.4 million in 2010-11 and $26.6 million in 2011-12.

Source: Commission estimates.

The transition costs for businesses are assumed to occur in the first year of operation (that is, 2010-11). Both the transition and compliance cost savings are assumed to influence the value-adding inputs of labour and fixed capital along with the intermediate input of business and professional services.

3.7 Opportunities for improvement

The regulatory changes considered in this chapter comprise Phase One of the consumer credit reforms, that is, they are part of a larger range of regulatory changes being implemented in the financial services sector. Phase Two covers areas such as: credit for small business; other types of investment lending; and reverse mortgages. Some changes have already been made to the National Consumer Credit Protection Act. It has recently been amended to introduce further compliance obligations on lenders with respect to home loans and credit cards. The changes related to home loan key facts sheets commenced 1 January 2012, while the changes related to credit cards are scheduled to begin in mid-2012.

The scope of Phase Two of the reforms is not entirely clear. In its most recent assessment, the COAG Reform Council made the following recommendation:

> The council recommends that COAG develop new milestones to clarify the intent and scope of Phase Two of the reforms, relating to the remaining areas of consumer credit, particularly in relation to Part Two. The council further recommends that COAG clarify the extent to which States and Territories are bound to adopt Part Two of Phase Two of these reforms. (CRC 2012, p. 85)

In the course of this study, concerns have also been raised about the related topic of recent changes banning home loan exit fees. The MFAA submitted:

> The ban on exit fees, which was introduced by the Government to increase competition, has a significant negative impact on competition … The removal of exit fees creates significant bias in favour of large lenders who can 'take the punt' across a large portfolio that the average life of loans will be acceptable. Smaller lenders cannot take this risk. Historically it has been the smaller lenders which have been the drivers of competitive pricing for mortgages. (sub. DR-R22, p. 3)

The approach to regulatory changes has also generated concerns over the pace at which reforms are being implemented. The ABA submitted:

> The reforms are moving at a pace that is at odds with the significant regulatory burdens they impose on industry. In the ABA's view, the pace of the reform program fails to take sufficient account of industry's need to implement these reforms in planned, orderly and workable timeframes. (sub. R9, p. 4)

In a similar vein, the MFAA in its submission to the Senate Inquiry into *Competition Within the Australian Banking Sector* commented:

> MFAA has been a strong supporter of enhanced regulation in the credit sector, but it is essential that the rate of change to regulation is now slowed to allow the market to have commercial certainty and for new businesses to plant green shoots. (MFAA 2010, p. 10)

The Commission recognises that rapid changes in regulatory arrangements and the time available for consultation rounds can increase the transition costs of regulatory reform. The Commission also recognises that the implementation of consumer credit reforms coincided with broader regulatory and other changes affecting financial markets, including those associated with the Global Financial Crisis and its aftermath.

In future Seamless National Economy reforms affecting financial and other markets, taking into account overall adjustment pressures facing the sector could moderate short-term disruption associated with regulatory change and lower adjustment costs.

4 Personal property securities

Key points

- In 2008, State and Territory governments agreed to refer their legislative powers over personal property securities (PPS) to the Australian Government to establish a national regulatory system for security interests in personal property.
- Despite some delays in implementation, the new laws and register of security interests became operational on 30 January 2012.
- The reforms are likely to lower ongoing compliance and transactions costs faced by businesses in providing, registering and searching PPS by around $70 million per year.
- The referral of powers is also likely to yield net cost savings to governments in the order of $1 million per year.
  – It is expected these benefits would be realised progressively over the next one to two years and then be ongoing.
- Transitioning to the new system is estimated to be imposing some one-off costs on businesses in the order of $150 million.
  – These costs are expected to be mainly incurred in the first year of operation.
- The PPS reforms afford the opportunity for the development of new financial products, potentially providing businesses with greater access to secured credit and lowering borrowing costs.

Personal property securities reforms under the *National Partnership to Deliver a Seamless National Economy* represent a progression of initiatives that have been ongoing since the early 1990s. Previous initiatives have ranged from reform discussion papers to legislative proposals from the Australian Law Reform Commission (Attorney-General's Department 2011a).

The Commission's assessment of the likely direct impacts from the latest reforms is presented in this chapter. This assessment has required judgements to be made about the effects of reforms that have recently been implemented. Judgements have also been required to assess the timescale over which the benefits of these reforms may accrue. Therefore, the results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

4.1 Reform objectives and changes

In October 2008, COAG formalised a previous in-principle agreement to establish a national system for the registration of personal property securities (PPS) through the signing of the *Personal Property Securities Law Agreement*. The national system was to be achieved through legislative changes and the establishment of the Personal Property Securities Register (PPSR). Personal property, the subject of the reforms, is any form of property other than land.

The reforms are intended to:

> … lead to significant cost savings for business through reduced compliance costs and greater choice and certainty for consumers and businesses who borrow money against secured personal property. (COAG 2008a, p. 2)

The Business Regulation and Competition Working Group said that the reform, through the establishment of the PPS Law and PPSR, will:

> … increase certainty for those creating, dealing with and enforcing secured lending arrangements; increase competition among secured finance providers; and assist business to secure finance against property. (COAG 2011a, p. 4)

The COAG Reform Council, in assessing the progress of the PPS reforms (CRC 2010), identified that legislative delays by some jurisdictions (in enacting referral legislation) were likely to mean that the reform would become operational later than intended (May 2011). The start date was subsequently revised to October 2011, for which the COAG Reform Council's latest assessment report (CRC 2012) also raised concerns over the ability for governments to meet. However, all States enacted referral legislation in 2011 (PPSR 2011b) and the PPSR became operational on 30 January 2012.

What was the nature and structure of personal property securities regulation?

Prior to the reforms, the Australian, State and Territory governments were all responsible for regulating security interests in personal property. This was done through an array of complex and often inconsistent Acts and registers (McClelland 2009a). In total, there were 70 different Acts covering PPS in 2009.

To register security interests in private property, each jurisdiction had a number of different registers. These were a mix of paper and electronic registers with some not having changed format since the 1920s and 1930s (McClelland 2009a).

The variety of regulations and registration arrangements that existed prior to the reforms resulted in a situation where it was difficult, in some instances, to determine rights over personal property which had several sources of security interest.

What has changed under the reforms?

Under the personal property securities agreement State governments have agreed to refer their legislative powers to the Australian Government such that it assumes legislative responsibility for PPS. This has created a national approach to the regulation of PPS under the *Personal Property Securities Act 2009*.

The *Personal Property Securities Act 2009* establishes the PPSR. The register represents a register of personal property security interests, which the Act defines as:

> … an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property) (s. 12(1)).

This could include a fixed or floating charge, chattel mortgage, conditional sale agreement, hire purchase agreement, pledge, consignment, lease or other instrument.

The new Act provides for priority between security interests through the creation of a 'perfected' security interest. A security interest is enforceable against third parties if a security interest has been attached to the collateral and a security agreement is evidenced in writing. Perfection requires the previous steps to make the interest enforceable with the additional step of registration in order to maximise priority against competing security interests.

The Act, in providing direction for the resolution of competing claims by different security interests, directs the court(s) to give priority to perfected security interests over unperfected interests, for example, where a perfected security interest is one that is on the register established by the Act. The Act also provides rules for the determination of priority disputes where there are two 'perfect' security interests in the same property.

The Act has drawn on elements from North American and New Zealand law and represents a significant change in the approach to regulating PPS. In particular, elements drawn from North American law are of a somewhat different nature from laws made within common law systems.[1] The changes also mean that a wider range of contracting arrangements now fall under PPS law, meaning the way in which some contracts are written will have to be updated.

The PPSR has replaced a number of Australian Government and State and Territory based registers ranging from the Australian Register of Ships to the South Australian liens on fruit register (see box 4.1 for a full list).

Box 4.1 **Registers migrated to the PPSR**

The following registers were migrated to the PPSR.

- Australian Government
  - Australian Register of Ships (mortgages only)
  - ASIC Register of Company Charges (including provisional charges)
  - Fisheries Register
- New South Wales
  - Register of Encumbered Vehicles
  - Security Interest of Goods Register (including stock mortgages originally registered under the *Liens on Crops and Wool and Stock Mortgages Act 1989* (NSW); Bills of Sale from 1 January 2000; and current crop mortgages and all other interests registered under the *Security Interests in Goods Act 2005* (NSW))
  - Register of Co-operative Charges
- Queensland
  - Register of Encumbered Vehicles
  - Bills of Sale Register (including Register of Liens on Crops of Sugar Cane)
  - Register of Co-operative Charges
- South Australia
  - Vehicle Securities Register
  - Bills of Sale Register
  - Stock Mortgages and Wool Liens Register
  - Liens on Fruit Register
  - Register of Co-operative Charges

(continued next page)

1 While both Canada and the United States are considered to have common law legal systems, the legal approach in PPS law, particularly in the United States, has a more 'mercantile' (or merchant-driven) legal origin. Such a system is more prescriptive and codified — and less reliant on court-based interpretation and prescription through precedence — than the English common law system from which Australia's previous PPS system derives.

Box 4.1 **(continued)**

- Tasmania
  - Register of Vehicle Security Interests
  - Register of Bills of Sale, Stock, Wool and Crop Mortgages and Co-operative Charges
- Victoria
  - Vehicle Securities Register
  - Register of Liens on Wool and Stock Mortgages (stock mortgages only)
  - Register of Co-operative Charges
- Western Australia
  - Register of Encumbered Vehicles
  - Bills of Sale Register
- Australian Capital Territory
  - Register of Encumbered Vehicles
  - General Register of Deeds and Instruments
  - Register of Co-operative Charges
- Northern Territory
  - Register of Interests in Motor Vehicles and Other Goods
  - Lands Titles Registration and General Registry Office (Bills of Sale and stock mortgages)

Source: PPSR (2011a).

4.2 Who will be affected by the reforms?

There are five main groups that are likely to be affected by the PPS reforms:

- users of unsecured and personal property secured credit;
- suppliers of personal property secured credit;
- holders of interests in personal property;
- information brokers; and
- consumers of second hand personal property.

The first two groups identified are the focus of the reforms.

Users of secured and unsecured credit

The reforms are targeted towards small and medium business users of credit — both personal property secured and unsecured — but will influence all involved in PPS. The reforms are intended to make it easier for businesses to make use of personal property in securing credit for their businesses.

Small and medium sized businesses tend to use debt financing compared to equity to a greater degree than larger sized businesses (RBA 2011). While differentiating smaller and larger businesses is complicated by varying definitions, the RBA (2011) suggests that possible indicators of credit transactions involving 'small businesses' are lending to unincorporated enterprises and business loans of less than $2 million. These measures suggest that smaller businesses made use of between $100 and $200 billion in borrowings in 2010 — 30 per cent of total bank business lending. Over time, the level of borrowings by smaller businesses has been steadily increasing in absolute terms and relative to borrowings of larger businesses.

While the majority of credit provided to small businesses is secured against residential property (RBA 2011), the Australian Chamber of Commerce and Industry has suggested that small businesses are increasingly making use of more expensive unsecured credit, such as that provided through credit cards:

> Heavy reliance on credit card finance also means that business owners are paying more than double the interest rate charges for credit card finance than a residentially-secured business loan, which puts significant pressure on small business. (ACCI 2011, p. 10)

It has been suggested that this trend has been driven by greater difficulties in obtaining secured credit for small business activities due to altered lending practices post the Global Financial Crisis (ACCI 2011). However, the Australian Bankers Association (2011) noted that while increases in the use of revolving credit (including overdrafts and credit cards) occurred during the Global Financial Crisis, this tendency has subsequently eased.

Suppliers of personal property secured credit

As discussed in chapter 3, there is a variety of credit providers ranging from banks and finance brokers, to other smaller finance industry participants. While the number of businesses that will be affected by the PPS reforms is difficult to determine, some indication of their distribution can be gained by examining the size and activities of all firms in the financial and insurance sector (table 4.1).

As with businesses in other sectors, only a small proportion of financial and insurances services sector businesses operate across State borders (2.5 per cent).

However, for medium to large sized businesses, the proportion of these firms is significantly higher with close to 50 per cent operating across State borders. It is unknown how many single-state firms offer products and services to customers in States where they do not have employees based, potentially making the number of firms affected by jurisdictional differences in regulation greater.

Table 4.1 **Financial and insurance services firms, June 2009**

Number of employees	*Single-state*		*Multi-state*	
	no.	%	no.	%
Not Employing	110 689	97.9	2 397	2.1
1-199	34602	96.6	1 200	3.4
200-299	53	57.0	40	43.0
300-399	17	42.5	23	57.5
400-499	19	55.9	15	44.1
500+	85	51.8	79	48.2
Total	**145 465**	**97.5**	**3 754**	**2.5**

Source: ABS (2011, unpublished).

CPA Australia (2011), in a survey of small businesses, found that bank lending was the major source of required additional funds for small businesses (figure 4.1). This was followed by the use of their own resources and those of family and friends. Given the dominance of large banks in Australia, this indicates that the majority of suppliers of credit to small businesses in Australia are financial enterprises that operate across State and Territory borders.

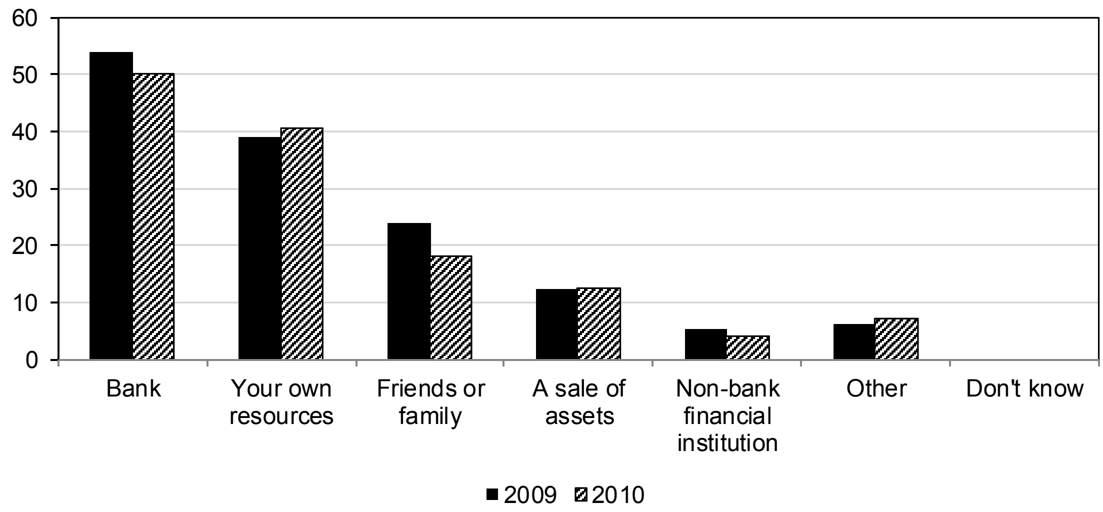
Holders of other interests in personal property

The PPS reforms will also have the potential to influence the activities of other businesses that maintain an interest in personal property (South Australian Farmers' Federation, sub. DR-R18). The new laws will cover a wider range of transactions as they define a security interest in personal property in broader terms.

Allens Arthur Robinson (2010) noted that the broad definition will mean that some interests that were not previously defined as security interests will now be so. These include provisions in contracts such as the retention of title arrangements and consignments, operating leases, assignments of receivables and arrangements where equipment is provided as part of a service. In such instances, businesses would need to assess whether it was worthwhile registering their interests and may be required to redraft their contract terms.

Figure 4.1 **Small business sources of required additional funds, 2009 and 2010**

Per cent



Data source: CPA Australia (2011).

Information brokers

Prior to the establishment of the PPSR, a range of information brokers acted as intermediaries between information users and the multiple Australian Government, State and Territory PPS registers (sub. DR-R14). For some registers, information brokers had established direct online interfaces under licensing arrangements, providing them with cheaper and faster access to records compared to that available to the general public (which typically only had over-the-counter access to the registers). The Information Brokers and Law Stationers Association (IBLSA) stated that there were a number of brokers with licences to access Australian Securities and Investment Commission registers and those of State Offices of Fair Trading, Registers of Encumbered Vehicles (REVS) and State land registries (sub. DR-R14).

The PPSR is intended to be more accessible to information users, allowing them to directly search records online. Further, by making use of new technology, the PPSR is likely to be cheaper to operate than existing registers, causing search and registration costs to fall. Given this, the IBLSA (sub. DR-R14) is concerned that information users could use the new online search facility in preference to services provided by brokers to reduce their costs.

Purchasers of second hand personal property

Under the reforms, purchasers of second hand personal property may have greater surety over ownership as the costs of determining whether a security interest exists are likely to fall. However, Access Economics (2006) noted that legal disputes associated with security claims in personal property are rare. While not a precise measure, this might suggest that the impact on purchasers of second hand personal property is likely to be small. This group has not been identified as a target group for the reforms (or one that would be affected by the reforms in the initial analysis conducted by Access Economics (2006) for the Attorney-General's Department).

4.3 Understanding the direct impacts of the reforms

The direct impacts of the PPS reforms on businesses and households more generally can be separated into four components, made up of the effects of:

- harmonisation of common regulatory elements on business costs — ongoing changes to red tape for multi-state firms;
- substantial changes to regulatory provisions — these change the manner in which regulatory outcomes are achieved, such as the creation of a broad definition of security interest;
- altered governance arrangements on government administration costs — there may be ongoing cost savings from having a centralised policy development organisation; and
- removing impediments to the efficient operation of markets and location or organisational change — over time, reduced compliance costs and greater surety over lending on personal property may lead to the development of new financial instruments yielding productivity improvements and lowering the effective cost of capital of small businesses.

In achieving these changes businesses and governments may incur some one-off learning or transition costs.

Access Economics (2006) noted that the PPS reforms are targeted towards economic and legal barriers to the use of personal property as security. The former relates to the transactions costs of using personal property as security, the latter relates to the legality of doing so.

Harmonisation of common regulatory elements

The rationalisation of the number of PPS registers to one, and the bringing together of the regulation of PPS under one national law should, in the first instance, reduce the compliance costs faced by credit suppliers and users who operate across multiple jurisdictions. These cost savings are likely to be in the form of:

- reduced security registration costs from a reduction in the number of registrations that were previously done in multiple jurisdictions;
- reduced security search costs from a reduction in the need to search multiple registers; and
- reduced costs of being aware of, and complying with, multiple regulatory regimes.

Such costs savings for multi-state businesses, however, come at a one-off transition cost imposed on all businesses. Given the broader scope of the new PPS regulation, transition costs are likely to extend beyond those businesses who have made use of PPS under existing laws.

Substantial changes to the regulation of PPS

The PPS reforms have made a number of changes to existing regulation. The two main changes are those which relate to the perfection of securities and the development of the PPSR.

The perfection of securities has created legal certainty over security interests in personal property. It should mean that security interests are more transparent and easier to enforce when compared to the previous system. This will reduce any expected costs of defaults on borrowings made on property, placing downward pressure on supply costs. However, while the costs of legal disputes surrounding security interests in personal property are high, they occur relatively infrequently (Access Economics 2006). This suggests that for any one loan, the lending premium to account for the costs of default could be low.

The development of the PPSR is intended to make use of new technology, which will reduce the operational cost of the registry. This is intended to lower search and registration costs for users compared to previous systems (the PPSR will operate under the Australian Government's Cost Recovery Guidelines). On the PPSR, the average prices are $3.76 per search and around $16.40 per registration.[2] This compares favourably to costs under the State and Territory registers as identified by Access Economics

> To give a rough idea of the possible reduction in registration costs, it currently costs between $12 and $15 to register a security interest on the Register for Encumbered Vehicles (REVS) depending on the State of registration. While to register a charge with the Australian Securities and Investment Commission currently costs $135.80. Moreover, the current law may demand multiple registrations of the same asset. (Access Economics 2006, p. 16)

Reductions in search costs are harder to identify, given many businesses undertake these activities in-house. Nevertheless, to the extent that search costs are reduced and registration costs are lowered, the PPSR would reduce costs to PPS providers.

Government administration costs

The reforms have resulted in State and Territory governments referring their powers to regulate PPS to the Australian Government. This has the potential to reduce the overall cost to governments of delivering PPS regulatory services as, instead of having nine jurisdictions doing this work with multiple management and legislative support structures, it will be done by one.

Removing impediments to efficient market operation

By removing legal barriers to the use of certain types of personal property as collateral for credit, and reducing the transaction costs of doing so, PPS reforms have the potential to create opportunities for the development of new financial products. Given these new products will secure credit against some form of personal property, they are likely to be offered at a lower cost than unsecured credit.

However, the achievement of productivity improvements and the development of new products is only likely to occur in the longer term, with the extent of any change uncertain at this time. In its 2006 review, Access Economics noted that based on PPS reform in New Zealand, Australia's reforms might, in the longer term lead to:

> … the potential for the debt market to expand further if the changes see more debt being securitised. (Access Economic 2006, p. 2)

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2 Search and registration costs are based on a weighted average of the expected volumes of different search and registration types and their expected cost as set out on pages 19 and 20 of the *Personal Property Securities Program Cost Recovery Impact Statement January 2012-June 2013 Final* (Attorney-General's Department 2011b). Registrations includes amendments.

Reform induced reductions in transaction costs by themselves, in the absence of new financial products being created, can also provide greater opportunities for businesses to source secured credit. Lower transaction costs in establishing and enforcing security interests in personal property as a result of the reform may lower the cost and increase the supply of secured credit. As noted by Access Economics in its review, such impacts occurred in New Zealand following its reforms:

> … the experiences of bankers in New Zealand suggest that the volume of financing they provide has probably not increased significantly (although, it could still be too early for the full effects to be realised). Rather, there has been an increase in the willingness of bankers to accept some forms of property as collateral that prior to their 2002 reform were not usually used (e.g. crop mortgages have become more valuable in New Zealand post reform). (Access Economics 2006, p. 13)

This, in turn, may lead to a substitution between the use of secured and unsecured credit by small business (through the use of existing financial instruments) with a financial cost saving to users.

4.4 What are the direct benefits of the reforms?

To date, the PPS reforms have not been the subject of regulatory impact analysis or quantitative cost-benefit analysis. Access Economics (2006), however, was commissioned to conduct a *qualitative* cost-benefit analysis and concluded that the reforms were likely to yield net benefits. Given this, there is little available quantitative information on which to base estimates of the direct impacts of reform.

In light of this information gap, the Commission has developed some indicative 'exploratory' estimates of the prospective benefits of PPS reform. The estimates have been developed by making use of information on the expected number of searches and registrations and costs contained in the *Personal Property Securities Program Consultation Draft Cost Recovery Arrangements* (Attorney-General's Department 2010), the *Cost Recovery Impact Statement January 2012-June 2013 Final* (Attorney-General's Department 2010) and assumptions around the possible impacts of the reform. These estimates do not include any benefits that may flow from reduced credit costs for small business (those associated with removing impediments to efficient market operation) due to difficulties in determining the size and additional cost of unsecured versus secured credit in small business and a lack of information on possible new personal property secured financial products.

The indicative benefits, therefore, focus on the impacts that the PPS reforms are likely to have on transaction and compliance costs for borrowers and lenders. The impacts from PPS reforms are likely to begin to occur in the first half of 2012.

Estimated benefits related to harmonised PPS registration regulation

National PPS laws are likely to have three main ongoing impacts on businesses. These will be in the form of:

- reduced registration costs;
- reduced search costs; and
- reduced red tape compliance costs from only having to comply with, and be aware of, one set of regulations relating to PPS.

Estimates of the possible savings are based on the explanatory memorandum for the *Personal Property Securities Act 2009* (McClelland 2009b) and cost recovery impact statement (Attorney General's Department 2011b). It is estimated that the PPSR would recover around $45 million annually from fees paid on registrations and searches, made up of around $22 million from around 1.3 million registrations per year and around $23 million from 6.1 million searches per year.

Reduced search and registration costs

Under the pre-reform arrangements, it is likely that the existence of multiple registers (in each State and Territory) would have meant that more searches and registrations would have been completed. However, it is difficult to gauge the number of searches and registrations that occurred prior to the PPSR. Further, while the Commission sought feedback on this issue in its discussion draft, none was received. As such, the search and registration numbers in the cost recovery impact statement (Attorney General's Department 2011b) have been used to indicate the level of search and registration activity that occurred pre-reform (it should be noted that the estimates in the cost recovery statement allow for increased use due to a more accessible service). If search costs were, on average, around $5 per search, as put forward by the IBLSA (sub. DR-R14), the reforms will result in a fall in search costs for businesses of around $10 million per year.[3]

3 Fall in search costs is equal to the search costs under the pre-reform arrangements less the costs under the new arrangements. Total searches prior to reforms is assumed to equal to 6.1 million. At $5 per search based on information provided by IBLSA (sub. DR-R14), total costs amount to close to $31 million ($5 times 6.1 million). With estimated costs of $23 million under the reforms, this represents a saving of around $8 million (rounded to $10 million for this study).

Applying the same approach to registrations, if registration costs were $138.50 for registration of company charges, and assuming pre-reform registration costs for other items were $20 on average, the reforms would result in a fall in registration costs for businesses of around $25 million per year.[4]

Reduced compliance costs

The third element of the prospective cost savings to businesses relates to the reduction in red tape (for example, labour costs related to activities to comply or make use of the legal arrangements surrounding PPS). Again, little quantitative information exists on which to base estimates. However, if it is assumed that businesses would benefit from costs savings of a similar magnitude to those related to searches and registration, the reforms could result in a fall in business red tape costs of around $35 million per year.[5]

Estimated benefits from substantial changes in PPS regulation

While indicative prospective impacts from the PPSR have been discussed above, the introduction of codified requirements for the creation, priority and enforcement of security interests under the reforms is also likely to affect financing costs. With this change, the expected legal and other business costs of dealing with disputes on defaults on personal property loans should fall. If achieved, there could be a flow-on reduction in the cost of credit to business.

However, estimating these prospective effects is difficult. There is little information on the costs of legal disputes arising from defaults on personal property secured loans and, as noted by Access Economics (2006), there are relatively few disputes. Thus, while costs could be expected to fall, given the uncertainties involved and the small number of disputes, the Commission has not quantified this effect. Any such fall in costs could induce greater usage of personal property secured credit instead of other forms credit, potentially lowering average credit costs faced by businesses.

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4 Fall in registration costs is equal to the registration costs under the pre-reform arrangements less the costs under the new arrangements. Total registrations prior to reforms are assumed to equal 1.3 million (0.2 million registrations of company charges and 1.1 million others). At $138.50 for registration of company charges and $20 per registration for all others, total costs pre-reform are estimated to amount to close to $50 million. With estimated costs of $22 million under the reforms, this represents a saving of around $28 million (rounded to $25 million for this study).

5 Equal to the savings from searches plus the savings from registration.

Estimated benefits of altered governance arrangements on government administration costs

The rationalisation of registers and policy work should reduce government administration costs. The estimated policy costs can be inferred, in part, from the budget papers for the 2007-08 Budget. The portfolio budget statement for the Attorney General's Department indicates approximately $0.5 million (2.5 full time staff) were allocated to the ongoing PPS policy function. If each jurisdiction had one full time staff member responsible for PPS law, the reforms would likely result in a net cost saving of around $1 million per year. [6]

4.5 Indicative costs of achieving reform

As noted in the previous section, the lack of quantitative information means that the Commission has developed some indicative 'exploratory' estimates of the prospective costs of PPS reform.

Transitioning to the new regulatory regime will impose one-off costs on those involved in PPS, for example, in becoming aware of the requirements of the new regime and making any necessary changes to their practices to comply with the altered reporting requirements. Access Economics (2006) suggested that, based on discussions with businesses in the banking sector, these costs could be in the order of $50 million to $100 million in the first year of the reform's operation. Further, the new register has experienced a number of technical problems for users of the web-based platform, as well as problems in migrating data from old registers in the first few months of its operation which has likely added to the transition costs (see box 4.2).

6 Savings in government costs are equal to the per jurisdiction policy cost prior to reform of $1.6 million ($0.2 million per full time staff member), multiplied by the number of jurisdictions (eight), less the $0.5 million cost of the current system.

Box 4.2 **Teething problems associated with the PPSR**

The PPSR became operational on 30 January 2012 and initially experienced some technical problems related to higher than expected demand (searches and registrations). However, it soon became evident that other issues existed in the migration of data from the old registers to the new PPSR. In some instances, incomplete records were placed on the new PPSR, creating concerns over the integrity of data on the PPSR.

Examples of the teething problems include Australian Business Numbers being migrated instead of Australian Company Numbers on records migrated from the ASIC Register of Company Charges (Head 2012) and delays in banks issuing payments to car dealers on car purchases due to technical problems with certain PPSR functions (Rogers 2012). An update from the Attorney-General's Department, on 23 February 2012, indicated that a number of technical problems had been resolved (but several days would be required to get through backlogs) and workarounds had been put in place in other areas (PPSR 2012). These actions, along with transitional provisions within the Act, meant there were no legal issues with the validity of the migrated security interests.

Sources: Head (2012); PPSR (2012); Rogers (2012).

Beyond the costs for those who were previously involved in PPS, transition costs could be faced by others given the broader scope of the new legislation. As noted by Allens Arthur Robinson (2010), the PPS reforms have the potential to influence a number of other contracts and dealings which were not previously considered security interests in personal property. The broader scope of the laws was raised by SA Famers' Federation who suggested the new regime is likely to add to farmers' costs in coming to terms with the new arrangements:

> … for primary producers who want to ensure that they will maintain title of their products until fully paid for by having retention of title clauses in all their contracts, they will now have to register each of their contracts. It would appear that where for example a cereal grain producer sells to several grain traders each year, each and every contract needs registering, even where there may be more than one contract with the same trader. (sub. DR-R18, p. 1)

Despite these claims, the PPS reforms do not require a business to register a security interest. Instead, the decision to do so is commercial, based on the costs and benefits of doing so. If the decision to register is made, then the security provider (such as the producer) has an automatic security interest in the proceeds from sale of the property (or goods received in kind). Further, one registration of the security relationship can be made to cover a range of contracts between a primary producer and trader.

But the claims put forward by SA Farmers' Federation are indicative of a wider range of businesses spending time and resources to become aware of the new regime — activities which will increase the costs of transitioning to the new regime. Taking the broader scope into account, and assuming that as a result it could lead to a 50 per cent increase in transition costs above those canvassed by Access Economics (2006), the total one-off transition costs could be in the order of \$150 million in the first year of the reform's operation.

The Australian Government has also faced some one-off transition costs associated with developing the reforms. The Australian Government has provided approximately \$88 million over various budgets to progress the reform, including the establishment of the PPSR. Of this amount, \$33 million will be recovered from industry which is incorporated in the usage charges paid by businesses. Therefore the net one-off transition cost to Australian Government is \$55 million.

4.6 Summary of effects

The direct impacts on businesses and governments from PPS reforms will be in the form of altered costs (table 4.2). The ongoing savings are likely to directly accrue to businesses which operate in the financial services sector and business services sector more generally. For businesses, the transition costs are most likely to be borne by firms in the financial services sector. However, in light of the broader scope, about one-third of these costs could be borne by businesses in other sectors who have contractual arrangements now subject to PPS law.

Table 4.2 **Summary of estimated impacts from PPS reforms**
\$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in business costs from harmonisation	..	70	70	..	(150)
Government administration costs	..				
Australian Government	..	(0.5)	(0.5)	..	(55)
State and Territory governments	..	1.5	1.5	..	..
Total	..	1	1	..	(55)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates.

The transition costs are assumed to occur mostly in the first year of operation (75 per cent), with the remainder in the following year. The ongoing cost savings to government are assumed to begin in the first year of operation and continue thereafter. Both the transition and compliance cost savings are assumed to be concentrated in the value adding inputs of labour and fixed capital along with the intermediate input of business and professional services.

4.7 Opportunities for improvement

The Commission was informed that some business groups felt there would be scope to revise the fees and charges of the PPSR given the new system has experienced significantly higher demand than expected. This could lower the costs that would need to be recovered from each transaction completed on the register. However, the Commission notes that a revision of fees and charges is already planned under the cost recovery guidelines. As stated in the cost recovery impact statement:

> A new CRIS will be prepared for commencement in July 2013 … to reflect a more accurate estimate of transaction volumes based on actual demand, while providing stability over the commencement period. (Attorney-General's Department 2011b, p. 18)

Planned periodic reviews have been scheduled to provide greater certainty for users over pricing of services supplied by the register and also to provide opportunities for stakeholder engagement.

> The 17 month period of the current CRIS will provide stability to industry over the commencement period and enable more accurate estimation of demand volumes and system enhancement (capital investment) planning.
>
> Given that these periodic reviews may result in the introduction of new fees, withdrawal of fees on particular activities, or changes in the level of fees, ITSA will be formally involving stakeholders in this periodic review process. (Attorney-General's Department 2011b, p. 21)

It is also noted that during the periodic reviews, a number of aspects of the charges will be examined, including:

> … operating expenses, including depreciation and capital management arrangements and the accuracy of its demand assumptions and cost recovery revenue forecasts. (Attorney-General's Department 2011b, p. 21)

The PPS reforms and the creation of the PPSR may also enable the development of new financial products that cover a wider range of personal property. By doing so, the reforms may reduce the cost of finance to small and medium businesses. In this sense, the reform would have established the necessary infrastructure for new products to be developed but is not, of itself, sufficient to deliver new products.

Reduced business financing costs and new financial products are therefore *potential* impacts that may flow-on from this reform. The extent to which this occurs will depend on future actions by businesses and the realisation of the prospective ongoing benefits to stem from the reforms.

5 Trustee corporations

Key points

- Australian governments, through COAG, agreed to extend the coverage of the Corporations Act in 2008 to cover trustee corporations, creating a national regulatory approach for these businesses.
- The reforms focus on reducing business compliance costs associated with operating in multiple jurisdictions. Some additional consumer protection measures have also been included in the national regulation.
- In 2010, there were around 11 trustee companies in Australia. All but one operated across state borders.
- Available information indicated that the reforms could reduce the costs of operating across jurisdictions by about $4 million per year.
- The reforms also enable some rationalisation in government policy and administration costs through the transfer of some functions from state to Australian Government jurisdiction, affording net savings of around $3 million per year.
- The new arrangements, however, entail some one-off transition costs — estimated to be of the order of $6 million, made up of:
  - around $4 million for affected businesses to gain familiarity with the new regulations; and
  - around $2 million for the Australian Government in instituting the new arrangements.
- Further improvement may be made through consolidation, once arrangements to facilitate consolidations are completed, and through further deregulation of fees — a matter subject to a forthcoming review.

In 1994, the Standing Committee of Attorneys-General issued a discussion paper on uniform trustee company legislation (CRC 2009a). Initiatives to create a national regulatory approach to the regulation of trustee corporations have been ongoing since. Reform efforts got close to a harmonised system in 2001, when a Model Trustee Corporations Bill was developed. However, it failed to become law. The national regulation of trustee corporations was then adopted as part of the package of reforms under the Seamless National Economy national partnership.

The Commission's assessment of the likely direct impacts of this reform is presented in this chapter. This has required judgements to be made about the effects of reforms and the timescale over which benefits of these reforms may accrue. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

5.1 Reform objectives and changes

Trustee corporations are businesses which are licensed to undertake what is termed 'traditional services' (box 5.1). State and Territory governments first introduced regulations to allow trustee corporations over a century ago to provide an alternative source of trustees which previously could only be undertaken by a natural person (such as a solicitor). One of the benefits of trustee corporations is that they can act as a trustee in perpetuity.

There have been numerous attempts to pursue uniform regulation of trustee corporations since the early 1990s (CRC 2009a).

- In 1994, the Standing Committee of Attorneys-General issued a discussion paper on uniform trustee corporation legislation.
- In 1997, the Financial System Inquiry (Wallis Inquiry) recommended uniform regulation. However, it was agreed that the Commonwealth would not assume responsibility for trustee corporations when it assumed responsibility for financial institutions.
- In 2001, the Standing Committee of Attorneys-General released a model trustee corporations bill, intended to be enacted in each jurisdiction, but it was not adopted.
- In 2007, the Standing Committee of Attorneys-General agreed to form a working group to develop nationally consistent regulation, considering the options of either a national scheme or mutual recognition.

The reforms were then adopted as part of the *National Partnership Agreement to Deliver a Seamless National Economy*. In March 2008, COAG agreed that the Commonwealth would legislate to regulate trustee corporations under the *Corporations Act 2001*. State and Territory governments agreed to repeal their existing regulation.

Box 5.1 **Trustee corporation activities**

Trustee corporations undertake a number of 'traditional services', which include the following activities:

- apply for probate, and/or act as executor or administrator of a deceased estate;
- act as a trustee;
- operate a common fund, that is, be able to pool the funds from estates and trusts for investment;
- act under a power of attorney; and
- other services, such as acting as a guardian for a minor or disabled person.

These traditional services are also offered by Public Trustees, which are State and Territory government agencies that operate in each jurisdiction.

Over time, the activities of trustee companies have expanded beyond traditional activities and they now often undertake a broad range of other financial services, such as acting as a trustee of superannuation funds or as a responsible entity of managed investment schemes.

Source: Bowen (2009b).

In releasing the bill with the proposed new legislation in May 2009, the (then) Minister for Superannuation and Corporate Law noted:

> The new legislation includes a significant boost for consumer protections, a major reduction in red-tape for business and the creation of a national market for trustee company services for the first time. …
>
> Today we announce the end of multiple, often contradictory, state-based regulations totalling about 300 pages and their replacement with one clear, standard, national regime – but we've done this at the same time as boosting consumer protection and cutting business red-tape burdens … (Sherry 2009)

On 7 May 2010, the (then) Minister for Financial Services, Superannuation and Corporate Law announced the commencement of national regulation of trustee corporations.

What was the nature and structure of trustee corporations law pre-reform?

Previously, trustee companies were regulated under separate legislation in each jurisdiction. Companies had to be licensed in each jurisdiction in which they operated.

In addition, the legislation also applied a number of prescriptive conditions on licensees, including:

- the regulation of some fees trustee companies were permitted to charge clients;
- restrictions on the ownership of trustee companies, as well as a requirement for some of the directors to live within the jurisdiction;
- personal liability of directors; and
- how a trustee company may be wound up.

While broadly similar in intent, these provisions differed in detail between jurisdictions, as did a number of other requirements, such as, reporting timeframes, requirements to have professional indemnity insurance and the regulation of opening hours (in the Northern Territory only).

What has changed under the national trustee corporations laws?

The national regulation of trustee corporations has been effected through amendments to the *Corporations Act 2001* (Cwlth), with the new regulations administered by the Australian Securities and Investments Commission (ASIC). Commonwealth legislation takes precedence in six specified areas — namely, licensing, charging of fees, account keeping, the duties of officers and employees, voting power in trustee companies and dealing with assets on the cessation of a licence. Meanwhile, State and Territory governments have amended their trustee company legislation with respect to these areas of regulation.

There is now a national licensing system for trustee companies. A new authorisation under the Australian financial service (AFS) licence regime has been created. Those trustee companies that already have an AFS licence because of their other activities have had their licence amended to allow them to provide the new category of financial service. For those companies that did not previously have an AFS licence, there is a transitional period in which to obtain the licence that ends on 31 December 2012. An applicant must be approved by the Australian Government — and the Corporations Regulations must be amended to list the company — before it can apply to ASIC for a licence.

Some of the key aspects of the new regulatory regime, as it applies to trustee companies, include:

- the removal of most of the caps on fees, although there is an exception with respect to charitable trusts (a fee schedule does need to be disclosed though);

- a limit that any one person can hold no more than 15 per cent of the voting power, although there are transitional arrangements for existing trustee companies and the Minister can approve exceptions; and
- arrangements (termed compulsory transfer determinations) to transfer the trust estate assets and liabilities of a trustee company to other trustee companies if their licence is cancelled, as well as for the voluntary transfer between companies.

Subsequent to the implementation of the national regime for trustee corporations, there have been further legislative amendments in 2011 (and some further amendments are also planned[1]), aimed at addressing deficiencies in the initial legislation. The main amendment centred around facilitating industry AFS licence consolidation, so that groups may have just one licensed entity that undertakes traditional services. Other changes included provisions to allow the transfer of assets to a public trustee in some circumstances, in the event a trustee company has its licence cancelled; an increased in the size of penalties; and clarification of some of the fees that trustee companies are permitted to charge.

In addition to these particular arrangements for trustee companies, there are also more general requirements that are imposed on financial service providers under the Act, with which trustee companies must now comply. These include standard obligations for reporting and disclosure, having adequate compensation arrangements in place and provision of internal and external dispute resolution systems.

5.2 Who will be affected by the reforms?

There are two broad groups affected by the trustee corporation reforms. These include traditional service providers and consumers.

Traditional service providers

The main group affected by the reforms are trustee companies themselves. The market is relatively concentrated, with only 11 such firms operating in Australia. In 2010, they had approximately $500 billion in assets under management, of which around $25 billion was related to traditional services.

1 Some States need to implement some additional legislative amendments, primarily aimed at facilitating the voluntary transfers of trustee companies (CRC 2012).

Of the 11 companies, all but one operated in multiple jurisdictions. The most jurisdictions in which any one company operated was seven, with Trustee Corporations Association of Australia (TCA) members operating, on average, in four jurisdictions (TCA 2011). Further, where a company operates in multiple jurisdictions, they may do so through a separate subsidiary company in each State or Territory of operation. Initially, each of these subsidiaries is required to be licensed if they have not transferred their traditional activities business to another licensed entity within the group by the end of the transitional period. Once the recent amendments are operational there will be scope to consolidate these subsidiary companies.[2]

Traditional services are also provided by other groups who may be indirectly affected by the reforms. These include the Public Trustees in each jurisdiction, as well as non-corporatised service providers, such as solicitors. These competitors may be affected if the changes to the regulation of trustee corporations affect the relative competitiveness of trustee companies in providing traditional services.

Consumers

Consumers of traditional services may be affected by the regulatory changes in two ways. First, if the nationalisation of regulation decreases the cost of operating in multiple jurisdictions, this could result in lower cost traditional services, particularly if nationalisation leads to increased competition.

Second, incremental change in the regulation could affect consumers. Changes in the enforcement framework and the addition of external dispute resolution could provide additional protection for consumers. However, the incidence of consumer dissatisfaction with trustee corporations has been relatively low. The Regulation Impact Statement (RIS) (Bowen 2009b) noted that between 1995 and 2008, the number of complaints received by the TCA about its members ranged between 1 and 14 per year.

5.3 Understanding the direct impacts of the reforms

The direct impacts of the trustee corporation reforms on businesses, governments and society more generally can be separated into four components, made up of the effects of:

[2] Commonwealth legislation was amended in 2011, but some complementary legislative amendments by State and Territory governments are still required to facilitate the voluntary transfer of assets between entities.

- harmonisation of common regulations on business costs — ongoing changes in red tape for multi- and single-state firms;
- substantial changes to the provisions of the regulation — changes to the manner in which regulatory outcomes are achieved such as the additional consumer safeguards;
- altered governance arrangements on government administration costs — the extension of the Corporations Act to cover trustee corporations and subsequent repeal of legislation by State and Territory governments will partially shift the administrative burden to the Commonwealth; and
- removing impediments to the efficient operation of markets and location and organisational change — over time, the reforms will allow for the consolidation of operations within groups, and may induce some companies to expand operations into other jurisdictions.

In achieving these changes businesses and governments may incur some one-off learning or transition costs.

Harmonisation of common regulations

The establishment of a single system for the authorisation and oversight of trustee corporations across all jurisdictions is likely to provide some cost savings for multi-state trustee companies. This will arise because trustee companies no longer need to be separately licensed in each jurisdiction in which they operate. This will reduce the amount of regulations with which firms need to be familiar. In addition, it will remove duplicative reporting requirements.

There will be transition costs for all trustee corporations in becoming familiar with the new regulatory regime. For those firms that operate in only one jurisdiction, these may not be offset by harmonisation benefits.

Substantial changes to the regulation of trustee corporations

While harmonisation of regulation may be the primary objective of reform, the reforms to the regulation of trustee corporations have gone beyond ameliorating the red tape costs associated with overlap and duplication. The additional features of the new regulations can be broadly grouped into two categories:

- changes that reduce the number and nature of legislative requirements; and
- changes that alter the safeguards for consumers.

Under the new system, some requirements have been removed or relaxed, relative to the previous State-based systems. For instance, there has been a partial deregulation of the restrictions on the fees that trustee corporations can charge. There have also been changes with respect to directors, removing their personal liability and the residency requirements that previously existed in some jurisdictions. Also, the new regime has made the process for entry to the industry consistent across jurisdictions and more transparent with ASIC providing information about the process for applying for an AFS licence to provide traditional services. Changes such as these reduce the constraints on how trustee corporations conduct their business and reduce barriers to entry. While these effects are difficult to estimate, the changes could increase competition and create incentives for productivity improvement within the industry.

A key element of the new regulatory approach involves additional safeguards for consumers of traditional services. These include:

- requirements for trustee companies to have adequate resources and compensation arrangements, and demonstrate organisational competence to minimise the risk of poor management of trust assets;
- disclosure requirements;
- requirements for trustee companies to be members of an external dispute resolution scheme; and
- additional enforcement measures.

While these additional measures could increase costs to trustee companies, greater transparency for consumers could increase demand for traditional services supplied by trustee companies.

Government administration costs

This reform has affected the Australian Government and State and Territory governments. The Australian Government has assumed responsibility for the regulation of trustee corporations through amendments to the Corporations Act. Its regulatory responsibilities will be administered through ASIC. State and Territory governments, on the other hand, have reduced regulatory responsibilities as they have amended their relevant legislation and no longer have authorisation and supervisory responsibility for trustee companies.

Removing impediments to efficient market operation

It is possible that the change to a national regulatory approach would, by removing constraints placed on certain activities, have some longer-term effects.

The voluntary transfer of assets provisions that will, once finalised, facilitate industry consolidations could substantially increase efficient market operation, as the TCA submitted:

> … a major benefit of the move to a national regulatory regime for trustee companies would be in terms of facilitating industry consolidation. (sub. DR-R16, p. 3)

The harmonisation related costs savings from the single licensing regime could also encourage companies to operate in more jurisdictions. This could lead to increased competition in some markets, along with the opportunity for firms to exploit economies of scale. Such changes should place downward pressure on prices.

Further, having one jurisdiction responsible for the authorisation and oversight of trustee corporations removes the opportunity for further regulatory divergence over time. Such divergence can impose additional costs on multi-state firms in the future.

5.4 What are the direct benefits of the reforms?

While the reforms have been implemented, they have only been operating for a relatively short time and have been subject to amendments that are not yet fully implemented. It is therefore difficult to assess any realised impacts from the reforms. Further, some of the longer-term effects, such as impacts on competition within the market are still likely to be prospective in nature.

Despite these limitations, some indication of the benefits and costs (see following section) in prospect can be estimated. Necessarily, the focus of the analysis is on the impacts on business from harmonisation and the changes associated with the new regime. To this end, some assumptions are made to provide an indication of the possible magnitude of the impacts. These are accompanied by estimates of the possible changes in government administration costs. The lack of available data means that the assumptions underpinning these estimates of the prospective impacts should be considered illustrative only. Further, given the low rates of disputes of traditional services supplied by trustee corporations (between one and 14 per year), the benefits to consumers, while likely positive, have not been quantified.

Estimated benefits for business from harmonisation

The RIS (Bowen 2009b) cited the example of ANZ Trustees which had previously provided compliance cost data to the Attorney-General's Department in an earlier review. ANZ Trustees estimated that their total regulatory compliance cost was around $1.8 million per year (in 2007 dollars), of which 20 per cent could be attributed to differences in legislation and the duplication of reporting requirements. Using this as a guide, in current dollars, compliance costs attributed to regulatory differences between jurisdictions could be approximately $0.4 million per annum for that trustee.

Most trustee companies operate in multiple jurisdictions, although some operate in only a few. On the basis that ten trustees operate interstate and assuming that $0.4 million represents the average additional compliance costs due to regulatory differences incurred by these ten trustees, then a single national regime could save business around $4 million per annum in compliance costs.

Some further compliance cost gains may also accrue if companies utilise the voluntary transfer provisions to consolidate their activities.

Estimated benefits for governments

The change in regulatory arrangements will also have impacts on government administration costs. The partial transfer of responsibility will result in a shift in costs from State and Territory governments to the Australian Government.

These increases incurred by the Australian Government are likely to be more than offset by administrative savings by State and Territory governments. As each trustee company operates, on average, in four jurisdictions, it is likely each jurisdiction would administer half the number of firms that ASIC now administers. For illustrative purposes, if each jurisdiction were to have incurred administrative costs equal to half that of ASIC then, due to the smaller scale of their regulatory responsibilities, the annual administrative cost savings to State and Territory governments in aggregate would be $4 million per year. Overall, this would result in net administrative cost savings for Australia of $3 million per year (given increased costs incurred by the Australian Government of $1 million per year).

5.5 Indicative costs of achieving reform

It was estimated that ASIC would incur transitional costs in preparing to administer trustee corporations of approximately $2 million (Bowen 2009b). Further, ASIC would incur ongoing administration costs of around $1 million per year.

There are also likely to be transition costs incurred by trustee corporations in moving to the new regulatory system. Potentially, for some firms these could be significant, and for the single-state firm, there would be no offsetting gains from harmonisation. However, given that most firms were already familiar with AFS licensing as a result of conducting other financial service activities which require licensing, it is likely that the transition costs would be relatively small. If the transition costs amounted to the full value of the potential cost savings to business in the first year, they would amount to $4 million.

5.6 Summary of effects

Overall, there are likely to be small, yet net beneficial, impacts from the Seamless National Economy reforms of trustee corporation regulation (table 5.1).

Table 5.1 **Summary of estimated impacts from trustee corporations reform**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential[a]*	
Reduction in business costs from harmonisation	..	4	4	..	(4)
Government administration costs					
Australian	(1)	..	(1)	..	(2)
States	4	..	4	..	..
Total	3	..	3	..	(2)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates.

The transition costs are assumed to occur in the first year of operation (2010-11). The ongoing cost savings are assumed to begin in 2011-12 and continue thereafter. Both the transition and compliance cost savings are assumed to be concentrated in the value adding inputs of labour and fixed capital.

5.7 Opportunities for improvement

Some opportunities for improvement in the regulation of trustee corporations are being addressed through a round of amendments to relevant legislation and regulation to facilitate consolidation within trustee companies. Further, there has been some grandfathering of provisions, such as in relation to the treatment of charitable trusts, where prescribed fees for administering charitable trusts under the previous State regulations have been retained, while fees are capped for new charitable trust clients. However, there is scope for variation of fees by mutual agreement as well as variation in what services are included within capped trustee fees. The Australian Government undertook to review charitable trust fee arrangements after two years, that is, in May 2012. Deregulation of fees may be a possible area for future changes.

Beyond these, the regulation of trustee corporations appears to be a relatively discrete area of reform and the Commission is not aware of other substantive opportunities for improvement in this area.

6 Standard business reporting

Key points

- In 2008, COAG agreed to support the standard business reporting (SBR) program as a mechanism to reduce the burden on business of reporting to government.
- SBR includes standardisation of terms, removal of duplicate information requests, and a single online secure sign-on for participating government agencies.
- It has been operational since July 2010. Its development has cost the Australian Government approximately $170 million.
- To date, the take up rate of SBR by business has been very low. The benefits being achieved are small relative to the potential available.
- Greater commitment from participating government agencies could substantially improve the take up rate of SBR and the realisation of benefits. In this regard:
  - the Australian Taxation Office has recently committed to adopt SBR technology across the reports lodged to the ATO by June 2015; and
  - the Australian Securities and Investments Commission has also signalled its intention to expand the capabilities of its SBR platform, although no funding has been committed.
- Based on earlier business case analysis of SBR and consultations conducted during this study, the Commission assesses the potential benefits from the uptake of SBR are substantial — estimated to be in the order of $500 million per year.
- Further benefits may also be available from the wider application of SBR methodologies for reporting to government and in business reporting.
  - However, wider applications by government should be subject to cost-benefit analysis.

Standard business reporting (SBR) is a multi-agency program intended to reduce the reporting burden on business by providing standardised business-to-government reporting and supporting electronic lodgement. It has been established by the Australian Government in cooperation with State and Territory governments.

The *Taskforce on Reducing Regulatory Burdens on Business* (Regulation Taskforce 2006) recognised that there was considerable scope to streamline business-to-government reporting. It recommended that the Australian Government ensure agencies use consistent terms and rationalise existing reporting requirements.

The development and adoption of a business reporting standard was recommended, based on the Netherlands Taxonomy Project which had commenced in 2004 (box 6.1).

Box 6.1 International interest in SBR-like practices

The Australian SBR program has developed in parallel to the SBR system in the Netherlands. The Netherlands Taxonomy Project, as it was known when introduced in 2004, was later renamed SBR, in line with Australia's SBR program (OECD 2009).

The Dutch Government entered into a covenant with 100 business intermediaries (such as software companies, accounting firms and tax agents) to develop and incorporate SBR in their systems. The project rationalised reporting by reducing the number of individual data units from 200 000 to 4000. SBR was intended to save businesses in the Netherlands up to 25 per cent of their compliance reporting costs (OECD 2009).

However, take up by businesses in the Netherlands has been lower than expected to date, partly because intermediaries and software companies lack incentives to invest in SBR. In early 2011, the Head of the Tax Administration in the Netherlands recommended that the alternative older online tax channels should be phased out as they risked undermining the take up of SBR. From 2013, SBR is mandated to be the exclusive channel for online lodgement of corporate and income tax reports in the Netherlands (SBR 2011).

Other countries have, or are considering, SBR programs. A business case for New Zealand was built on a modified version of the assumptions made for Australia's business case (although New Zealand is no longer progressing with its SBR project due to other funding priorities (SBR 2011)). Brazil is drawing on Australia's SBR program to develop a project for intra-government reporting. Singapore is also currently in the process of developing a business case for SBR.

The internationally recognised eXtensible Business Reporting Language (XBRL) used in the Australian SBR program provides a uniform system for information to be exchanged between programs. It has been adopted in financial and banking reporting in a number of countries including:

- some cases of mandatory use for particular businesses and government agencies in Japan, China, Spain, United Kingdom and United States;
- a transition to mandatory use in Denmark and India; and
- voluntary use in Canada (SBR 2011).

In August 2007, a division within the Australian Treasury commenced the development of the SBR program through a process of consultation with Australian and State government agencies, software developers, accountants, bookkeepers and the broader business community, drawing on earlier work by the Australian

Taxation Office (ATO). The SBR program, while based on the original Netherlands Taxonomy Project, has a number of additional features to facilitate direct reporting to government via accounting software (OECD 2009).

This chapter provides an overview of the SBR program including its objectives and impacts. It considers who will be affected, and provides estimates of the realised and prospective direct benefits and costs of the reform, as well as potential impacts. Quantitative and qualitative analysis is drawn from the 2007 Treasury business case and the Commission's own assessments based on consultation with a range of business and government stakeholders.

The Commission's assessment of the likely direct impacts of the SBR reform has required judgements to be made about the effects of the SBR program in its current form and how it may evolve. The SuperStream reform, the written advice of the ATO Commissioner to the Productivity Commission regarding the ATO's transition to SBR technology, and the recent announcements by the ATO about closing down some of its existing means of lodgement as part of its transition to SBR by 2015 have had a considerable bearing on the Commission's final assessment. Without these commitments, it would be difficult to see a substantial take up of SBR in the near term. Judgements have also been required to assess the take up and time saving value of SBR which will determine the benefits of the reform. The results are exploratory and should be regarded only as broadly indicative of the likely effects of the reform.

6.1 Reform objectives and changes

At its July 2008 meeting, COAG agreed to support the SBR program as a mechanism for reducing the regulatory burden of reporting requirements on business (COAG 2008d).

All businesses, to varying degrees, are required to complete a range of reporting statements for a number of government agencies. Forms for a small business include a yearly income tax return and quarterly business activity statements. For a large business, the number of forms can be extensive with reporting obligations to a number of different government agencies. Compliance requirements cost businesses and individuals time and money and can have broader impacts, such as through raising costs or reducing productivity (box 6.2).

Box 6.2 Costs of reporting

Financial reporting by businesses provides important information for management decisions within a business and for governments. However, regulation that requires the provision of documentation to a third party also imposes a number of costs:

- *business compliance costs* — the direct additional costs to businesses of performing the various tasks associated with complying with government regulations;
- *government administration costs* — the costs incurred by governments (and imposed on taxpayers) in 'regulating' or, more specifically, in managing and responding to the information; and
- *efficiency costs* — the costs imposed on the economy when regulation distorts the use of resources, such as higher prices and reduced consumer choice, innovation and productivity *(*PC 2006b).

The SBR program intends to decrease business compliance costs and ultimately government administration costs. In turn, efficiency costs can be reduced.

The SBR reform was one of the 13 streams listed in the *National Partnership Agreement to Deliver a Seamless National Economy* in 2008 offering reward payments to the States and Territories for implementation. The explicit milestones centred upon the development and release of a series of standard reporting definitions for use by developers of business accounting and financial software. COAG has reported that:

> SBR has been operational since 1 July 2010, offering Australian businesses, accountants, bookkeepers, tax agents and payroll professionals a quicker and simpler way to complete and lodge reports for government. (COAG 2011a, p. 5)

The COAG reform milestones were assessed as complete by the COAG Reform Council in its 2009-10 Performance Report (CRC 2010) because the SBR platform had been built and the system launched. Accordingly, an update of the SBR reform was not provided in the COAG Reform Council's 2010-11 Performance Report (CRC 2012). However, the benefits of SBR are only realised if SBR is actually used by business. Currently, aside from the use of AUSkey, the take up rate by business is very low and, without a substantial increase in the take up rate, there is doubt as to whether the benefits achieved will exceed the project development costs. The main reasons for the low take up rate are discussed in section 6.3.

What is intended by SBR?

Currently, many businesses and intermediaries complete aspects of their reporting obligations to government by electronic means (for example, using the electronic commerce interface, or ECI, to lodge with the ATO). Electronic reporting through agency-specific portals has evolved over time, and businesses have become familiar with this method of electronic reporting. Alternatively, information can be transposed from paper-based accounts and computer-based accounting packages onto paper forms and sent by post to the relevant agency. The ATO reports that of the 13 million business activity statements received annually, 47 per cent are paper lodgements.

Small to medium size businesses are typically required to lodge a number of forms with the ATO. Tax file number declarations, pay-as-you-go payment summaries, business activity statements and employment termination payment summaries are examples. Larger businesses have additional reporting obligations with more government agencies, including payroll tax obligations to state revenue offices and reporting to the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA). Their reporting requirements may be handled by an intermediary or through custom built software packages using agency-specific channels to report electronically.

SBR is a program for business-to-government reporting (box 6.3). By SBR-enabling a number of financial reporting forms, it is intended to:

- standardise reporting terms based on international standards and best practice;
- remove unnecessary and duplicate information requested in government forms;
- utilise business software to automatically prefill government forms;
- provide validation and confirmation of requirements and confirmations in reporting; and
- use a single, online secure sign-on to meet the reporting requirements of the agencies involved.

Box 6.3 **Standard business reporting — a snapshot**

The development of SBR for financial reporting considered the data that businesses already collect and the data that government agencies require. The forms included in the SBR program underwent a review for data that was collected more than once across participating agencies, and for where similar data was requested but was described in different ways.

Definitions used to collect data were then standardised and linked to existing data already held by business. The data collected are 'tagged' using the dictionary of financial terms known as the 'Taxonomy'.

This tagging process operates 'behind the scenes' with software that is SBR-enabled (using XBRL – eXtensible business reporting language). Businesses collect and record the data they need, and the SBR-enabled software collates and reports the data as required for business-to-government reporting purposes.

The prefilled reports in the business software can then be sent directly from the software package to the relevant government agency using the Core Services component of the SBR program. This is an electronic interface for business to interact with government. Businesses access the Core Services (a portal for the lodgement of forms) with the AUSkey authentication, the single secure sign-on for using SBR.

Source: PC (2009b).

Possible impacts

SBR provides an opportunity for the same reporting requirements to be met with less time and expertise.

More efficient reporting methods could provide businesses with opportunities to reduce labour and other business costs associated with the preparation and submission of reports to government. For example, the SBR Taxonomy rationalises data requests and prefills forms using information that is common in reporting across agencies.

Similarly, government agencies could benefit by being able to receive reports in a more timely fashion and a more consistent format, thus reducing the administrative cost of organising and managing large inflows of information across numerous documents.

A consistent language and standard system of reporting could also improve the quality of financial reporting and data management. This could reduce the likelihood of inaccurate or incorrect information being reported to governments.

However, the launch of the SBR program, and the associated completion of the three key capabilities of SBR — the Taxonomy, authentication, and Core Services — are not sufficient in themselves to ensure that the reporting burden on business is reduced. For the benefits of SBR to be realised, businesses need to use software that is SBR-enabled. This requires software developers to design accessible products, and for these products to be used by businesses and business intermediaries.

If SBR does achieve widespread take up, the benefits to business could be substantial. The magnitude of business cost savings will largely depend on the number of forms included in the SBR program, the time savings SBR provides over the existing alternative methods of lodging these forms, and the number of firms using and submitting forms successfully using SBR.

6.2 Who and what are affected by the reform?

There are three main groups affected, or potentially affected, by the SBR program:

- businesses that are required to submit information to government agencies;
- business intermediaries, such as software developers, accountants, bookkeepers, tax agents, payroll providers and financial advisors; and
- government agencies that receive reports from businesses.

Businesses

When the business case was developed for SBR in 2007, there were approximately 2.1 million businesses operating in Australia (Treasury 2007). Based on the number of businesses that use computer software accounting, it was assumed that there were over 1.5 million prospective SBR users.

Adoption of SBR is voluntary and businesses are only likely to become users if they are aware of the program and judge that the benefits of adopting it will outweigh the costs.

Most businesses could benefit from the intended outcomes of the SBR program. For example, small businesses could benefit from notifications regarding compliance and the automatic prefill of commonly lodged forms. Medium and large firms with a substantial number of forms to lodge with different agencies would benefit if, over time, the number of SBR-enabled accounting programs and SBR-enabled forms increases. However, very small businesses with limited reporting requirements to government and that are not presently using computerised accounting software are likely to be slow adopters of SBR and only as they shift to relevant computerised systems.

Software developers and intermediaries

Software developers and other business intermediaries can make SBR accessible to businesses by including it as a feature in their products and services. SBR provides an opportunity for business intermediaries to offer a new feature that can add value to data management and simplify reporting procedures. To the extent SBR is valued by their customers, software developers that incorporate SBR could benefit from being able to increase the price of their products or secure market share. To date, for the limited number of available SBR-enabled software products, software developers have either charged an annual subscription fee, or included SBR in a software update at no additional cost to their customers.

The Australian Government developed a software developers' kit that is available at no cost to developers. It includes a set of optional components and documentation to assist in SBR-enabling software. Software developers who choose to offer SBR services undertake an initial investment to provide SBR — either in one complete SBR-enabled accounting package or as an SBR product that can be used with other commercial accounting packages. The one-off costs of building the capabilities into the product and mapping information to the Taxonomy may be substantial. However, these are commercial investments undertaken because of an expected commercial benefit. Any such (indirect) costs should be captured in the economy-wide modelling (see chapter 3 of volume 1). Ongoing services by software suppliers would include maintenance and customer support. In some cases, transition to SBR would mean that past investments in other accounting and reporting systems become obsolete.

For software developers to invest substantial resources into SBR they must be confident that it will be competitive with existing electronic reporting channels. The Commission's consultations with software developers have highlighted a mixed response to SBR, even though many software developers acknowledge its theoretical benefits and expect it to eventually become the industry standard.

Governments

The SBR division within The Treasury is responsible for the SBR program. Certain Australian Government agencies and all of the state revenue offices entered into a memorandum of understanding in June 2010 (SBR 2010) for the effective management of the SBR program. The initial cost of developing the capabilities within agencies was met by the Australian Government.

Under the memorandum of understanding, the participating agencies have committed to a range of responsibilities.

- The Treasury — to have governance and oversight of the SBR program and the associated IT infrastructure; to provide leadership in its development and maintenance; and to co-ordinate communications.
- ATO — to develop and maintain the Taxonomy and support other agencies in its use; to maintain the AUSkey credential; to maintain, host and manage the SBR Core Services; and to provide support to businesses using SBR and software developers.
- APRA, ASIC and the State and Territory governments — to update the Taxonomy; to support the promotion of SBR and to encourage take up by businesses; to communicate with other participating agencies, including notification of any information that may impact on the demand for SBR; to participate in issue resolution; and to provide businesses using SBR with a product that meets expectations and that is accessible.
- Department of Industry, Innovation, Science, Research and Tertiary Education — to develop and maintain the authentication process, AUSkey, and matters relating to its use, including proposing strategic changes to the authentication.

The SBR Program Board is chaired by the Secretary of the Treasury and includes the chief executive officers of ASIC, the ATO, APRA, the Queensland Office of State Revenue, the Department of Human Services and the Australian Government Information and Management Office (AGIMO). There are also representatives of business, the Board of Taxation, Australian Chamber of Commerce and Industry, Business Council of Australia and Australian Industry Group.

The Steering Group consists of senior representatives of the SBR program, the ATO, APRA, ASIC, AGIMO and the New South Wales Office of State Revenue.

Degrees of effective commitment

The Commission's consultations have indicated that the agencies working with The Treasury have had differing degrees of effective commitment to SBR. For example, one participating agency has made a significant investment in a new platform that is not fully SBR-enabled. Agency commitment to the program has also oscillated over time. In part, this is a result of more pressing and changing priorities within these organisations. It also reflects personnel changes in the high-level management of these agencies.

Further, for government agencies that use the Core Services of SBR, a single portal may not allow for the same level of control that agencies currently exercise over their own lodgement channels. This has been a concern expressed by some of the participating agencies, particularly because it reduces their ability to be responsive in changing and updating their lodgement systems.

The Core Services was a key reason for the early withdrawal of the Australian Bureau of Statistics (ABS) from the program. The ABS has advised the Commission that the *Census and Statistics Act 1905* does not allow it to contract out the collection of information on its behalf to another organisation. While recognising that 'SBR isn't just a good idea, it's a great idea' (sub. R10, p. 2), the ABS also had some reservations:

> Aside from the legal position, there are two further considerations … Firstly, the ABS is unwilling to assume the risk of having full accountability for protection of the security and secrecy of data passing through an SBR Core Services set up over which it has no custodial role and no direct control. Secondly, the ABS must avoid the risk to its reputation of a public perception that data sent to the ABS through a Core Services function operated by a commercial provider contracted to the ATO will be accessible to those organisations. (sub. R10, p. 1)

Subsequent to the discussion draft, the Commission has been informed that:

> The ABS and the Department of Treasury are involved in ongoing discussions regarding SBR. These are focused on two areas: the ABS's re-engagement in the SBR program through the removal of existing barriers and the extension of SBR beyond financial reporting. (ABS, pers. comm., 29 February 2012)

6.3 What are the direct impacts of the reform?

What others have said: the business case

The business case study by The Treasury (2007) calculated that the full implementation of SBR in Australia by 2013-14 could provide annual nominal cost savings of $795 million to business. These cost savings were calculated based on assumed take up rates and the difference in time businesses were likely to spend on their reporting obligations using SBR compared to the time taken for reporting without SBR.

The business case assumed that software developers would offer SBR-capabilities in software products for business use by 2010-11. It assumed sufficiently skilled and experienced personnel were available to develop and administer the utilisation of SBR by businesses and government agencies.

The take up rates in The Treasury business case assumed businesses using accounting software would increasingly adopt SBR. The take up rate was assumed to increase annually as follows:

- 12 per cent of businesses in 2010-11 (one year after the launch of the program) — this was based on the percentage of businesses that electronically reported to the ATO in 2007;
- 24 per cent of businesses in the second year — attributable to the number of businesses that complete any of their government reporting obligations online;
- 48 per cent in the third year — equivalent to the approximate number of businesses using the internet in 2007; and
- 60 per cent from the fourth year (2013-14) and onwards — in line with an expected increasing trend in the use of software accounting by business.

The Treasury business case also adopted assumptions regarding the value of SBR to business. A small business that adopted SBR was assumed to reduce the time required for reporting from an annual average of 38 hours to 26 hours — an estimated 12 hour reduction annually from SBR. Medium sized businesses were estimated to save 42 hours annually on average, and large businesses using SBR were assumed to reduce their reporting time from an average 578 hours to 429 hours — saving 149 hours per business annually. Cost savings were calculated for small, medium and large businesses, and not-for-profit organisations, starting with a conservative average hourly wage of $27 in 2006-07 and allowing for wage growth of 3 per cent per year thereafter.

The benefits (and costs) were estimated in the business case to impact on businesses progressively from the program launch on 1 July 2010. The business case estimated a benefit to businesses of $800 million in total over the six years 2006-07 to 2012-13, and an annual benefit to businesses of $795 million per year from 2013-14 onwards. The business case did not attempt to quantify the additional benefits that might accrue to government through the standardisation of reporting.

Over the initial six years of development, the cost to government was estimated to be $320 million. Transitional costs to business included planning and learning, IT costs and the time required to change record keeping procedures, such as mapping existing accounts to the SBR Taxonomy. The costs to software developers to map the Taxonomy in software packages were not quantified in the business case.

Realised benefits

COAG's implementation plan for the SBR reform entailed the delivery of three main functions associated with the SBR program. The first two are an organisation of reporting terms into a Taxonomy and a whole of government authentication for secure access to lodgement. These have been completed and some of the benefits of these are being realised by businesses using SBR-enabled products. The third relates to development of Core Services.

The Commission's assessment is that the realised benefits are approximately $3 million per year and are ongoing. This estimate comprises around $2 million to business and intermediaries and an assumed $1 million to governments per year. The estimated benefit to business arises from the Taxonomy and authentication components of SBR (that is, functions 1 and 2). The estimated realised benefits also include cost savings that are equivalent to a quarter of the value of time saving to business proposed in the original business case. The time savings are applied to the approximately 1000 businesses currently using SBR to lodge forms. The estimated realised benefit to government arises from lower data collection administrative costs.

Function 1: The Taxonomy

The first element of the SBR program was to provide a data dictionary of uniform definitions and terminology. The standardisation of commonly used terms and definitions across government agency forms was intended to:

- reduce the complexity of reporting;
- reduce the associated number of errors; and
- reduce duplication of data requests.

Addressing duplication saw the number of unique data elements reduced from 26 537 to 5923 across approximately 417 financial government reports (Treasury, pers. comm., 5 December 2011).

All businesses that use an SBR-enabled software package are using the Taxonomy, regardless of whether SBR is used for lodging reports. According to the number of accounting packages that are currently SBR-enabled and their active customer base, approximately 80 000 businesses to date are estimated to be using the Taxonomy (sub. R12, p. 1).

The improvements in the quality of data and the efficiency of managing these data provide cost-saving opportunities to business and government. However, there is a risk that businesses will continue to report in the same manner, despite the rationalisation of definitions achieved by the Taxonomy. Nonetheless, errors in reporting which arise from terminology can be reduced through the shared access to information between businesses and their intermediaries that SBR provides.

Function 2: The Authentication

The second element of the SBR program was the development of AUSkey, a secure online authentication system to provide a single log-in for businesses that can be used across government agencies. AUSkey removes the need for numerous user IDs and passwords for each separate government agency. Businesses can interact with government agencies through one log-in and one set of authentication details.

Approximately 300 000 businesses now have the AUSkey, with around 560 000 issued since its launch in May 2010 (a business can have multiple authentications). This system overrides the previous distribution of 400 000 digital certificates to businesses (Treasury, pers. comm., 20 Sept 2011). Unlike digital certificates, which could take up to 28 days to be issued, AUSkey can be issued immediately through an on-line request (Treasury 2007).

In the Commission's consultation with stakeholders, the response to the AUSkey was generally positive. There was some concern regarding the costs of modifying the AUSkey if the authentication were to be adopted by other agencies.

Function 3: Core Services

The third element of SBR was the development and use of the Core Services which allow for businesses to lodge reports to government directly from their accounting software. The benefits of the Core Service feature are:

- the notification of compliance requirements;
- automatic prefill;
- prelodgement checks and electronic lodgement; and
- verification of a successful lodgement.

The benefits are only realised when SBR is used by a business to report to government. Currently, approximately 1000 businesses report using the SBR Core Services. These 1000 businesses have lodged around 12 000 reports (an average of 12 reports lodged by each business since 1 July 2010). As a result, very little reduction in the burden of reporting to government has been realised.

The business case versus realised benefits

The realised benefits are significantly below those anticipated in the original business case. A number of factors have contributed to this outcome, including:

- The business case is widely agreed to have turned out to have been overly ambitious in its expectations of take up and the time saving value of SBR. This is due to the incomplete bundle of SBR-enabled forms made available so far and tentative marketing by participating agencies.
- The political and economic circumstances during the development of SBR included the Global Financial Crisis and changes in leadership in various State and Territory governments, in the Australian Government and within relevant government agencies. Accordingly, the degree of government focus on SBR has been somewhat variable.
- In a fast changing regulatory environment, a voluntary program is not a priority for government, software developers or business, particularly when competing with a range of other demands on time and resources.
- Existing agency-specific electronic reporting channels are considered familiar and reliable by many businesses.

The extent to which the benefits of SBR may be realised in time (prospectively), or only after considerable further action is taken (potentially), depends on two key factors — take up by business and the value of SBR on take up.

Take-up of SBR

More than a year after the program was launched (and completed in terms of COAG milestones), only a few software companies currently offer commercially available SBR-enabled services. There are a number of self-certified programs in development. In consultations with the Commission, some software developers discussed the difficulties in allocating adequate resources to finance SBR development among a range of competing priorities. As noted earlier, approximately 80 000 businesses have access to SBR lodgement, just 5 per cent of the number of potential SBR users identified in the original business case. Of these 80 000 businesses, only around 1000 businesses or 0.05 per cent of all businesses, are using SBR to lodge reports (sub. R12, p. 1). Since the launch of SBR in July 2010, these businesses have lodged over 12 000 reports successfully (Treasury, pers. comm., 9 December 2011).

The Commission's early consultations with government agencies and businesses indicated varied expectations regarding future take up of SBR by business. It was suggested that take up rates are approximately 12 months behind schedule. One software developer expected uptake to increase over the next two years as software products become more readily available and more competitive with alternative reporting channels. Some of the larger software developers informed the Commission of their broad intention to have SBR-enabled software in the near to medium term. In general, however, no specific time path had been determined. Other consultations suggested the take up rates of the original business case may require up to ten years to be achieved given the obstacles to take up that have been encountered so far.

Since the discussion draft, the ATO's announcement to move ahead on SBR and close some existing means of lodgement has suggested to the Commission that the number of businesses using SBR for reporting is likely to increase more rapidly in the medium term:

> As Host, the ATO continues to champion the adoption of SBR and to work with Treasury in increasing take-up … As an agency using SBR, the ATO is committed to transition to SBR as our primary channel for electronic interaction between business and the ATO. (sub. DR-R17, p. 1)

The SBR division of The Treasury has seen an immediate increase in inquiries from a number of major software providers following the recent commitments made by the ATO (sub. DR-R19, p. 1). Moreover, software companies developing SBR-enabled products have indicated confidence that, over time, SBR will successfully compete with the current channels for reporting to government. For example, Noble & Associates commented:

> The technology supporting SBR … is effectively the next paradigm shift in accounting. The technology carries with it, the power to cope with the complexities of our modern reporting environments … (sub. DR-R13, p. 2)

Value of SBR on take up

If SBR offered the benefits estimated in the business case then the commercial value of SBR should be sufficient to encourage its development and use (providing SBR-enabled reporting is possible). Consultations with software developers and intermediaries suggest that SBR is gradually being adopted as awareness grows about the benefits on offer. However development of software takes time. According to one software developer, the SBR-compatible forms must come first and then time is needed for developers to produce products.

The value of the current SBR product to business is low as relatively few high volume forms are SBR-enabled and included in software packages. Further, the additional benefits to business provided by SBR-enabled forms can be quite low, individually, when compared to the existing lodgement processes for individual forms (box 6.4). For example, the current system of filling out and lodging forms such as the business activity statement is considered by many businesses and software developers to be quick and simple. Accordingly, the value added by lodging this form through SBR is considered to be small, if indeed it provides any additional value at all.

Deloitte Touche Tohmatsu (sub. DR-R28, pp. 1-2) stated that its small business clients have reported only a small saving in the time taken to prepare reports lodged through the SBR-enabled product, GovDirect. However, its clients have reported other time saving benefits associated with using SBR, such as not having to photocopy forms and file them for record keeping purposes.

In regard to the functionality of aspects of the system, Impact Management Group submitted that while the case for SBR is sound:

> … Utility facilities such as payments, client update, account information should always be made available in SBR without turning users away from the SBR channel. Having to go to ATO portal just to change an email address is not time saving. (sub DR-R29, p. 4)

Box 6.4 **Considering the alternative options of electronic lodgement**

It is already possible, without SBR, to perform a wide range of business-to-government interactive services online.

Through the ATO website it is possible to manage business tax affairs and lodge a business activity statement. The Electronic Lodgement Service (ELS) provides online services in income tax return lodgements, activity statements and Australian Business Number applications. The Electronic Commerce Interface can lodge bulk data and employer obligation reports such as multiple activity statements in a single transaction, tax file number declaration reports, bulk superannuation reports and claim forms for excise fuel grants.

ASIC has informed the Commission that its electronic channels receive around 2.5 million lodgements annually. There are several software products that are compatible with lodging ASIC reports. Similarly, feedback from state revenue offices regarding their existing online reporting arrangements (for example, Western Australia's Revenue Online lodgement service) is that they are widely used by businesses and are considered reliable and efficient.

While the value of the Taxonomy and the authentication are unique to SBR, the Core Service component provides a service that is additional to the already available electronic portals for business-to-government reporting.

In the Commission's consultations there was a clear consensus that the value of SBR would be raised by increasing the number and range of forms that are SBR-enabled so that the reporting requirement over a range of forms is rationalised and reduced.

Why take-up rates have been so low

As noted, the clear shortcoming of the current SBR program in comparison to the business case proposed by The Treasury is the low take up rate.

While the take up rates assumed in the business case have been acknowledged as overly ambitious, the current low rate of take up in Australia appears to be the result of a number of factors:

First, there has been minimal access to commercially available SBR products. New policy initiatives from government require software changes that take precedence over SBR, given its voluntary nature. This is exacerbated by the lack of customer demand for SBR, and the level of technical skills and the resources required to incorporate SBR into software packages. The Commission also heard that in the early stages there were problems with the stability of the production and testing platforms which hampered progress of self-certification and software development (although consultation with agencies and software developers suggests that these technical problems are no longer a significant issue). This has led to poor accessibility of SBR for business because the:

- self-certified products currently listed as available on the SBR website include products that are still in the testing stage and are not actually available; and
- majority of commercially available products to date only have a small customer base
  - the Commission's consultations suggest that the large software providers are now responding positively to the Australian Government SuperStream reform and the ATO's announcements to use SBR, and will continue to do so given further advice from governments about their greater use of SBR for electronic business-to-government reporting.

Second, the SBR program is also competing with other regulatory changes for time, funding and resources. Resource constraints within government agencies make it difficult for the number of SBR-enabled reports to increase rapidly.

Third, other available online reporting services for lodging government reports have meant that at present there are only modest or uncertain gains from using SBR over the current methods of online reporting. These existing channels successfully compete with SBR because:

- software developers and business intermediaries already have investments in the current channels for electronic lodgement;
- agencies are reluctant to transfer control of their lodgement channel to another agency; and
- management of two systems is costly and time consuming and alternative electronic reporting channels already include a wide scope of forms.

Fourth, there has been uncertainty regarding the funding and resources that the Australian Government will commit to SBR in the future. This includes the risk of SBR being put on hold due to other funding priorities (as has been the case in New Zealand). Perceived commitment to SBR as the future exclusive channel for online lodgement has been undermined because of:

- the need to maintain or improve agency-specific reporting channels to meet business needs that are beyond the financial reports currently included in the SBR program;
- the long development window of IT projects; and
- a reluctance by some agencies to impose another regulatory/reporting change on business.

Finally, there has been low awareness of SBR and its potential benefits. For example, a 2011 survey of chief executive officers revealed that around three-quarters had not heard of SBR. Moreover, those chief executive officers who were aware of SBR only expected 'low to moderate' reductions in compliance costs to result from SBR (Australian Industry Group 2011). In this regard, Impact Management Group observed that:

> … SBR promotion and marketing is non-existent. Impact has to educate businesses, tax practitioners and large organisations on the benefits of SBR. Large businesses including tax practitioners are unwilling to move towards SBR and generally have not heard about it. (sub. DR-R29, p.3)

Reasons for minimal marketing include:

- a 'chicken and egg' situation where marketing is limited until the products are available, and SBR-enabled software products are unlikely to be made available without accompanying promotion to stimulate demand for SBR from the business sector; and
- the relative value of the SBR product compared to other updates and features in software packages.

As a result of all these factors, take up has been very slow and the realised gains are small compared to the benefits that were envisaged in the business case. Further momentum may be lost due to growing frustrations and uncertainty from the perceived low priority given to SBR and the costs to government and intermediaries in maintaining open but unused SBR reporting channels.

Prospective benefits

In the discussion draft, the Commission noted the lack of clear and firm announcements by the Australian Government and its agencies about their forward plans for using SBR. As one software developer stated:

> The marketplace is watching for signals of fatigue from the regulators in their support of the new technology environment. (sub. DR-R13, p. 2)

Leading up to the discussion draft, and subsequently, there have been a number of announcements concerning the utilisation of SBR. These have offered more certainty for other participating government agencies, software developers and businesses.

The SuperStream reform of the Australian Government has mandated the use of SBR-compatible data standards for superannuation information transfers by medium and large businesses by July 2014 (Australian Government 2011b). With the Australian superannuation industry processing more than 100 million transactions annually with reporting requirements which cost around $250 million in total (Australian Government 2011b), this development is a significant step towards the application of the methodology.

In response to a request from the Commission for information about the ATO's future plans, the Commissioner of Taxation provided a written statement for the discussion draft of the ATO's commitment to the SBR program (box 6.5).

In December 2011, the ATO also informed the SBR Board of the following implementation path:

- developing future online systems to build on the advantages SBR can provide to tax practitioners when lodging client returns with the ATO;
- a transition path in which SBR technology will be available for lodging from 1 July 2015, making SBR available for a range of reports that tax practitioners and businesses lodge with the ATO in parallel to ELS; and
- decommissioning ELS for lodging with the ATO from 30 June 2016, with SBR and ATO Online (portals) being the primary methods for lodgement with the ATO (ATO, pers. comm., 2 March 2012).

Box 6.5 **Excerpts from the Australian Taxation Office submission**

The Commissioner of Taxation submitted:

> I believe that Standard Business Reporting will facilitate ongoing beneficial change in the way business interacts with Government. The definitional Taxonomy now contains almost 6000 terms which are used in more than 300 government forms. These are either already incorporated in some software products, and are being integrated into others. From the ATO's perspective, we have developed approximately 50 forms into the reporting taxonomy.
>
> … I can assure you that we are committed to transitioning to SBR as our primary channel for electronic interaction between business and the ATO.
>
> You would be aware that the government has decided to use the SBR taxonomy as a key component for its Stronger Super (Cooper Review) initiative. This will be an important step forward in expanding the use of SBR.
>
> I am also keen to actively work with the Treasury to develop new approaches, and to accelerate the rate of take up. In these discussions we will also explore opportunities for SBR to be used in business to business dealings which will offer a new area of benefit for the community. (sub. R11, p. 1)

In a speech to the Professional Accountants Group, the ATO Commissioner stated that 'we plan to transition to SBR for ELS services from 2015' (D'Ascenzo 2012).

The ATO considers that the redevelopment of ELS will 'result in tax practise management software being able to support not only the next generation of ATO electronic lodgements, but also make them available to underpin whole of government interactions' (sub. DR-R17, p. 1).

The SBR division of The Treasury has observed that:

> …this [the ATO's announced intentions] has already had a significant impact upon software developers who provide the majority of accounting related solutions. (sub. DR- R19, p. 1)

As noted earlier, the Commission has also been advised by the SBR division in consultation with software suppliers that it expects that SBR will become increasingly available in software packages. More than 80 per cent of the marketplace for business and accounting software is comprised of software providers either actively enabling their products or those already with enabled products (sub. DR-R19, p. 1). In this regard, the ATO has advised the Commission that consultations with software developers have suggested that the implementation path committed to by the ATO offers sufficient time for SBR-enabled products to be made available and commercially viable for tax agent use. The ATO also expects that as tax agents have SBR-enabled software available, and become familiar with it, they will encourage their clients to use that software, and thereby extend the reach and benefits of SBR into the business community (ATO, pers. comm., 2 March 2012).

These developments have informed the Commission's assumptions about future take up rates and the associated prospective gains, and have provided stronger grounds to suggest a significant number of firms will migrate to SBR in the medium term.

In view of the new information regarding the ATO's commitment to SBR, the Commission has revised its estimate of the take up rate for SBR. In its discussion draft, the Commission estimated that SBR would be taken up by 5 per cent of all businesses (including not-for-profit organisations). The Commission now understands that software developers are responding to recent public announcements by the ATO and that the number of businesses with access to SBR compatible programs is likely to grow as a result.

In the Commission's assessment, the estimated indicative take up rate has therefore been increased to 10 per cent, leading to almost $60 million per year (2010-11 dollars) in prospective benefits (with the benefits expected to gradually accrue over the next five years and be ongoing thereafter). In deriving its estimate, the Commission has assumed that the time saving value of SBR will be equal to half the value identified in the business case, given the number and type of forms that are currently SBR-enabled.

Government impacts

There is no available information regarding the prospective cost-saving benefit to government. However, as take up of SBR increases, so will the volume of SBR lodgements that are received by participating agencies in a standardised format, leading to cost savings for governments. As an indication of improving cost effectiveness of reporting systems, the Commission has assumed a possible cost saving to government in the order of $5 million. It is likely a portion of these saving have accrued with the remainder accruing over the next five years or so with the expected growth in take up of SBR.

Potential benefits

The Commission considers that the potential benefits of SBR are likely to be large. The realisation of these potential benefits would require substantial increases from the current situation in both the time saving value and take up rates of SBR. This in turn would require further expenditure by governments and investments by software developers.

The Commission notes that the original agencies of the SBR program still have differing levels of commitment to SBR. For example, the ABS has advised the Commission that it has only recently re-engaged in SBR negotiations. ASIC is moving forward incrementally with a 'current work plan to implement COAG Business Name reforms in May 2012, and to replace [the] machine to machine channel (known as EDGE) by November 2012' (sub. DR-R26, p. 2).

As the ATO has outlined its implementation path towards full adoption of SBR, and with SBR likely to be increasingly available in accounting software, the Commission considers it a lost opportunity (for business and government) if ASIC is not able to convert both its technology and forms to SBR. However, at this stage, ASIC has advised it will 'further implement SBR (and expand our use of XBRL and SBR Core Services) within its own IT framework as funding and priorities permit' (sub. DR-R26, p. 1).

Strong leadership by the Australian Government and an effective commitment by agencies will be required to realise the potential benefits of SBR. However, the Commission envisages that with concerted and committed government action to improve the range and number of forms available in SBR, and a gradual switch in electronic channels by government agencies, take up rates will increase along with the time savings for businesses.

The Commission has identified some additional areas for improvement or further work that could allow for the potential benefits of SBR — along the lines of the benefits envisaged in the business case — to be achieved (box 6.6).

The Commission's assessment is that provided decisive action is taken by the Australian Government — in particular, that the actions intended by the ATO come to fruition — then the potential benefits of SBR could be in the order of $500 million per year. This estimate is additional to the realised and prospective benefits of $60 million per year, and includes benefits of around $100 million per year to businesses that do not take up reporting through SBR but still benefit from its Taxonomy and authentication components.

The estimate is based on the assumption that approximately 60 per cent of all businesses will ultimately take up SBR. The estimate of time saved using SBR to achieve this aggregate cost saving amounts to 80 per cent of that assumed in the business case.

Box 6.6 Achieving the potential benefits of SBR

The Commission's view is that there is a broad range of actions that have been initiated but require further action or that could be undertaken to improve SBR's take up rate and its value to business. Taken together, these actions would significantly increase the likelihood of SBR delivering cost reductions to business of a magnitude approaching the levels envisaged in the 2007 business case. These actions include:

- directing the focus within government agencies to prioritise the SBR program.
- providing greater certainty to businesses through transparency and accountability regarding the progress and future plans of the SBR program including a public commitment from all participating agencies in line with recent ATO announcements.
- increasing the number of SBR-enabled forms, based on volume and complexity, within participating agencies. Deloitte Touche Tohmatsu (sub. DR-R28, p. 2) suggested more work be done by the SBR program to understand the requirements of businesses with the aim of improving the attractiveness of SBR against the existing channels it is (in effect) competing with. In this regard, the SBR division has informed the Commission that it 'is using detailed segment analysis to identify the important reporting bundles and target the forms needed to complete the package' (sub. DR-R19, p. 2).
- at the right juncture, promoting SBR to encourage business demand. This would provide the incentive to software developers to hasten the development and use of SBR in their products.
- providing, if required and cost effective, some incentives through funding or technical expertise to increase accessibility of SBR.

Potential benefits to governments are assumed to be $10 million annually. These benefits would comprise time savings to government agencies arising from the standardised information they will receive, an increase in the timeliness of the information reported and some associated potential for improved data analysis.

6.4 Indicative costs of achieving reform

Transition costs to date

As with many projects, the development and establishment costs of the SBR program have initially exceeded the realised benefits. The realised costs of the program to date have mostly been incurred by the Australian Government.

From 2007 to 2010, the total expenditure by the Australian Government was $169 million (table 6.1). These costs included expenditure on system design, funding to agencies to support the implementation of SBR and consultation.

The funding from the Australian Government has been directed to its agencies and the state revenue offices based on their level of responsibility for delivering SBR services. For example, some of the agencies are responsible for the development of the core infrastructure and capabilities, while other agencies have SBR-enabled forms and are provided with funding to maintain, operate and promote SBR as a viable and attractive method for business-to-government reporting.

Table 6.1 **SBR expenditure breakdown, 2007 to 2010**[a]

Area of expenditure	*Expenditure*	
	$m	%
Authentication	43.9	26
Taxonomy	29.0	17
Core Services	48.1	28
Agency infrastructure, system changes	32.5	19
Program management, integration, software developer tools	15.3	9
Total	**168.8**	**100**

a Figures may not add to totals due to rounding.

Source: Treasury (pers. comm., 22 September 2011).

Transition costs for end-user businesses are likely to be minimal and would likely be largely captured in the business-as-usual software updating costs. As the additional SBR features are unlikely to require additional training/learning beyond what is usually required to become familiar with software updates, implementing SBR-compatible software within a business is unlikely to impose any significant *additional* one off costs.

Ongoing costs

The Australian Government's budget forward estimates indicate ongoing expenditure will be of the order of $20 million. These outlays would support and maintain the SBR channels in participating agencies. For 2010-11, the measure includes $2.6 million for payments to the States and Territories. The Commission has used forward estimates for the prospective ongoing costs to maintain and operate the SBR reporting channels within government agencies. The costs to Government to expand the capabilities of SBR to achieve the potential benefits of SBR are assumed.

6.5 Summary of effects

There is scope for SBR to deliver substantial cost savings to business by reducing the time and labour resources required to comply with government reporting. The Commission's estimates of the benefits to business and government have been outlined above.

In the discussion draft, the Commission classified the benefits from SBR-enabled reporting to be largely potential benefits. Following from the ATO announcements and further consultation, the Commission has classified some of these potential benefits as prospective.

The estimate of potential benefits of $500 million per year includes the likely impact of business take up and time saving that would result from the ATO adopting SBR technology, along with the other participating agencies implementing the SBR platform along a similar time path.

The estimated impacts are summarised in table 6.2.

Table 6.2 **Summary of estimated impacts from SBR reform**
$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in business compliance costs	2	58	60[b]	500	..
Cost reduction to governments	1	4	5	10	..
Maintenance and operational costs to all governments' administration[c]	(20)	..	(20)	...	(180)
Potential transition costs for the Australian Government	..	..	..	..	(40)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. [b] This number has been revised upwards from the discussion draft although the overall benefits to business remain the same because the hourly wage used in the assessment has been revised upwards to reflect 2010-11 dollars. [c] Transition costs for governments relate to approximately $170 million of realised expenditures (for building SBR) and a prospective $10 million (see section 6.4).

Source: Commission estimates.

6.6 Opportunities for improvement

In theory, SBR offers a best practice method for business-to-government reporting. However, delivery of the SBR program to date has not provided the anticipated benefits due to overly ambitious take up rates outlined in the business case and a number of problems that have been identified in this chapter. The Commission has outlined some of the opportunities for improvement that, in its view, would increase the likelihood that the considerable potential benefits of SBR will be realised over time (box 6.6 above).

Re-engagement of the ABS could ultimately increase the value of SBR given that the original business case placed considerable value on ABS involvement in the SBR program.

In the discussion draft, the Commission suggested that the Australian Government could examine the costs and benefits of extending the coverage of forms to include business reporting with the Department of Human Services, such as Centrelink and Medicare, as well as linkages with online banking for payment services.

The Commission has since been advised that The Treasury is in the process of 'discussions with the Department of Human Services (including the Child Support Agency, Centrelink, and the Small Business Superannuation Clearing House), Department of Climate Change, the Insolvency and Trustee Service Australia and the Australian Charities and Not-for-profits Commission to extend SBR coverage' (ATO, pers. comm., 2 March 2012).

Furthermore, in the Commission's consultations, some stakeholders proposed that SBR has the potential to expand to other information transactions, including government-to-government and business-to-business. Any such expansion would require significant consultation with relevant stakeholders and an independent analysis of the likely benefits and costs beforehand.

7 Payroll tax

Key points

- In 2008, COAG endorsed a staged approach to legislative consistency across jurisdictions for a range of payroll tax provisions. Harmonised provisions in Victorian and New South Wales legislation were adopted as the benchmark.
- The reform aims to streamline administrative provisions and definitions and adopt common exemption provisions and interpretations of payroll tax law.
  - Exemption thresholds and payroll tax rates remain jurisdiction specific.
- The reform has been largely implemented, although some inconsistencies remain between jurisdictions.
- Adaptation by payroll tax-liable businesses will involve one-off transition costs — estimated at $30 million in total.
- Harmonisation is expected to produce net benefits by reducing ongoing compliance costs of payroll tax-liable businesses — by an estimated $30 million per year of which around two thirds are likely to have been realised.
  - The benefits are accruing both to payroll tax-liable businesses that operate in multiple jurisdictions and other businesses through simplified procedures.
- The changed provisions are likely to affect State and Territory governments in a number of ways, including:
  - reductions in administration costs through shared training, audits and revenue ruling interpretations;
  - transition costs associated with legislative amendments and implementation of the harmonised provisions; and
  - in some cases, changes to payroll tax revenue receipts because of changed provisions.
- Although there may be scope for further harmonisation in payroll tax systems across jurisdictions and adjustment of payroll tax rates, a more substantive reform would be to consider a broader based tax, say on value adding factors.

Payroll tax is a levy on the value of certain forms of remuneration paid by firms to, or on behalf of, their employees. It applies when the remuneration paid or payable by an employer to its employees exceeds a threshold amount. Introduced by the Australian Government in 1941, payroll tax was transferred to the States in 1971 to augment their existing tax bases.

Since this transfer, significant differences have emerged between jurisdictions in the tax rates and thresholds that apply. Substantial differences between jurisdictions have also arisen in the payroll tax base (the provisions, exemptions and definitions) and interpretations of payroll tax legislation. The COAG reform considered in this chapter addresses many of the key differences in these latter areas; it does not address differences in tax rates and thresholds.

This chapter outlines the reform objectives and the resulting changes in payroll tax arrangements. It considers who will be affected and provides estimates of the realised and prospective direct impacts of the reform. An assessment is made of whether Australia's reform potential is being achieved and opportunities for improvement.

The analysis is drawn from existing studies and the Commission's own assessments. The Commission's assessment of the likely direct impacts of the payroll tax harmonisation reform has required judgements to be made about the effect of the reform that has been implemented. This has required analysis of the impact of different legislative changes for businesses that are liable for payroll tax in each jurisdiction, and the impact of uniform legislation on multi-state businesses that are liable for payroll tax. The results are exploratory and should be regarded as broadly indicative of the likely impacts of the reform, and the timescale over which the benefits accrue.

7.1 Reform objectives and changes

In 2006, the Taskforce on Reducing Regulatory Burdens observed that:

> … payroll tax differences across the States and Territories involve a significant burden for businesses operating in more than one jurisdiction … COAG should develop measures to harmonise the tax base and administrative arrangements across the States and Territories. (Regulation Taskforce 2006, p. 123)

In recognition of the long standing view that benefits can be gained from harmonising payroll tax arrangements between jurisdictions, in 2006 the Council of Australian Federation provided the impetus for harmonisation of a range of regulatory regimes, including payroll tax. A multilateral payroll tax harmonisation work program was undertaken by the States-only Ministerial Council of Treasurers and, in March 2007, it was announced that a:

> … major national overhaul of payroll tax arrangements has been agreed to by State and Territories Treasurers … (Costa et al. 2006, p. 1)

In July 2007, the harmonised payroll tax provisions agreed by the States came into effect in New South Wales and Victoria through a bilateral agreement. This agreement also included the bilateral harmonisation of some additional payroll tax provisions.

In July 2008, COAG formally endorsed legislative consistency in the areas previously agreed by all of the States, with a number of additional provisions to be adopted (or considered) for harmonisation in line with the bilateral agreement between New South Wales and Victoria (COAG 2008e). COAG noted that the reform would offer substantial administrative savings for business (COAG 2008b). COAG's milestones for payroll tax — under the Seamless National Economy reforms — include the completion of the phased approach to payroll tax harmonisation reform by 1 July 2012 (CRC 2009a).

Reform objectives

The objective of the reform is to reduce the compliance costs to business and administrative costs to government arising from legislative and administrative differences in payroll tax across jurisdictions. In particular, the reform aims to:

- streamline administrative provisions and definitions;
- adopt common exemption provisions; and
- agree on common interpretations of payroll tax law.

The reform does not aim to harmonise the exemption thresholds and tax rates, leaving the States and Territories with a high degree of revenue raising autonomy, as has been the case since the tax was transferred from the Australian Government (box 7.1).

Box 7.1 **Jurisdictional differences in payroll tax rates and revenue trends**

Significant differences have developed between jurisdictions in tax rates and thresholds since the States gained the responsibility of payroll tax.

Exemption threshold and tax rate, financial year 2011-12

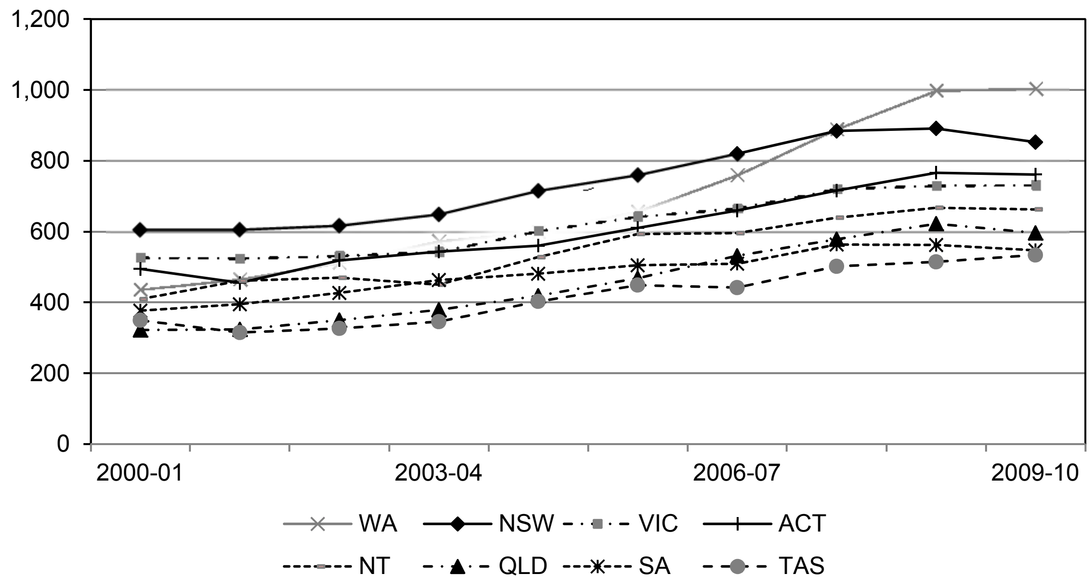
	NSW	*VIC*	*QLD*	*WA*	*SA*	*TAS*	*ACT*	*NT*
Threshold ($'000)	678	550	1000	750	600	1010	1500	1250
Tax rate (%)	5.45	4.9	4.75	5.5	4.95	6.1	6.85	5.5

Sources: Australian Capital Territory Revenue Office; New South Wales OSR; Queensland OSR; Revenue South Australia; SRO Victoria; Tasmanian SRO; Territory Revenue Office; Western Australian OSR.

However, with the exception of Queensland and the Northern Territory (which have clawback schemes), all of the states have simplified their varied designs so that the formula for payroll tax liability is uniform.[1] Despite the uniform approach to calculating payroll tax liability, the revenue raised per person varies considerably between jurisdictions.

Payroll tax revenue per person for each jurisdiction, 2000-01 to 2009-10

$ per person



Data sources: ABS *(Australian demographic statistics, Cat. no. 3101, 2011)*; ABS *(Taxation Revenue, Australia 2009-10, Cat. no. 5506.0, April 2011).*

1 Calculated by deducting the exemption threshold (if applicable) from the gross taxable wages and multiplying by the tax rate.

Stages of reform

The reform of payroll tax arrangements aims to bring all jurisdictions into alignment with the harmonised arrangements that were implemented between New South Wales and Victoria in 2007. It comprises two stages, which are being implemented through the adoption of template legislation.

- In the first stage, the States and Territories would adopt common provisions and definitions in payroll tax legislation for: timing of lodgement; vehicle allowances; accommodation allowances; fringe benefits; work performed outside a jurisdiction; employee share acquisition schemes; superannuation for non-working directors; and grouping of businesses (CRC 2009a). These were the provisions that were initially canvassed by the States-only Ministerial Council of Treasurers.
- In the second stage, the States and Territories would harmonise the following definitions and exemptions: charities; adoption and maternity leave; contractors; employment agents; financial planners; and portable long service leave and redundancy schemes (CRC 2010). These were the additional provisions that New South Wales and Victoria harmonised bilaterally in March 2007.

Under the agreement, Western Australia, the Australian Capital Territory and the Northern Territory would adopt the first-stage reforms — that had already been adopted by the other States — by the end of 2008. Queensland, South Australia, Tasmania, the Northern Territory (and Western Australia should it agree) would implement second stage reforms by July 2010. The Australian Capital Territory was not included in the 2010-11 milestones to deliver the stage two reforms.

Payroll tax reform progress

A Payroll Tax Harmonisation Committee was established in December 2008 to oversee progress on both legislative and administrative aspects of payroll tax harmonisation. Each jurisdiction has a permanent member in the committee and meetings are held to progress cooperation in line with the Protocol that was signed by all jurisdictions in mid-2008. A Payroll Tax Sub-committee and Revenue Ruling Sub-Committee have also been formed to oversee and report on legislative and administrative harmonisation respectively.

Legislative harmonisation

The COAG Reform Council has reported on the progression of legislative changes affecting payroll tax in its performance reports for the Seamless National Economy.

In its 2009-10 report, the COAG Reform Council (CRC 2010, p. 43) noted that the milestones for the reform lacked clarity and that 'there appears to be some confusion as to what measures are covered in the stage two reforms.' To address the COAG Reform Council's concerns, a Payroll Tax Sub-Committee was established to review the progress of this reform and to keep the Business Regulation and Competition Working Group (BRCWG) updated with the harmonisation process.

In its 2010-11 report, the COAG Reform Council (CRC 2012, p. 50) considered 'the output for the reform has been substantially achieved', notwithstanding some 'relatively minor matters' which are detailed below. Further, the August 2011 BRCWG Report Card 'found that common payroll tax provisions and definitions have been adopted and that where there are differences, these are minor and will not impact significantly on businesses that operate across jurisdictions' (CRC 2012, p. 48).

Western Australia has harmonised six of the eight first-stage provisions, although the changes to its grouping provisions are not due to commence until July 2012. According to the COAG Reform Council (CRC 2010), the two outstanding first stage provisions for Western Australia have been amended to be 'substantially similar' in application to the harmonised provisions. Of the 13 provisions in the stage two reforms, four of the provisions were already in line with the harmonisation processes and four were amended to be harmonised. Western Australia has reported that it has decided not to implement the remaining five harmonisation measures: contractor provisions; employment agents; charities exemption; portable long service leave; and redundancy schemes (COAG 2010).

The Australian Capital Territory Government has also chosen not to complete the full harmonisation of payroll tax provisions (CRC 2010). While it has completed alignment with the stage one harmonisation provisions, the Australian Capital Territory Government has not committed to the stage two provisions. The *Payroll Tax Act 2011* 'adopts the language and structure of the NSW and Victoria harmonised legislation ... [but] maintains ACT differences' (ACT Revenue Office 2011). For example, exemptions for charities will continue to be based on the exempt status of the charitable entity rather than its activity. The Australian Capital Territory will also not provide a payroll tax exemption to employment agents who on-hire staff to an exempt organisation, such as the Australian Government (ACT Parliamentary Counsel 2011). While the template legislation only applies to maternity and adoption leave, the Australian Capital Territory (along with Queensland, Western Australia, Northern Territory and New South Wales) has expanded exemptions to also include paternity leave and primary carer leave.

There are also a few other differences (considered minor) existing in some of the other jurisdictions. For example, the South Australian Government has adopted the template legislation but has elected to retain its portable long service leave and redundancy scheme. It saw it 'appropriate to retain a consistent treatment of all long service leave and redundancy payments for all SA payroll tax payers and employees — rather than provide an exemption for portable schemes' (CRC 2012, p. 46-47). Tasmania has not adopted the template five-year period for refunds and reassessments (rather it has maintained its three-year period), but will consider harmonising this provision when it next amends its legislation (currently scheduled for late 2012) (CRC 2012). And, while Queensland has not yet adopted the template legislation, it has adapted its legislation to be consistent with the harmonised provisions.

Despite the milestones of this reform being largely completed, other specific provisions and policies remain that are outside of the harmonisation agreement and that will continue to differ across jurisdictions (section 7.7).

Administrative harmonisation

Aside from harmonisation of legislative provisions, there are significant gains to be achieved from the harmonisation of administrative arrangements. Administrative harmonisation is included in the agreement among the States. However, in its 2009-10 Performance Report, the COAG Reform Council indicated that there was no implementation plan for administrative harmonisation and that there was uncertainty as to whether the reform was 'limited to legislative harmonisation steps or also involved further administrative harmonisation measures' (CRC 2010, p. 44). In response to these concerns, the Payroll Tax Sub-Committee agreed that despite a broad intention to achieve greater legislative and administrative harmonisation across jurisdictions, the obligations of the reform 'do not extend to the full harmonisation of administrative arrangements' (CRC 2012, p. 50). Nonetheless, a number of jurisdictions have undertaken some administrative harmonisation.

Administrative harmonisation is achieved through the uniform interpretation of legislation as determined by common public and private revenue rulings on payroll tax. Revenue rulings are published decisions that apply the tax laws to a particular situation and that can be relied upon by taxpayers as precedent in similar factual situations. Where an employer operates in more than one jurisdiction, the relevant revenue offices have agreed to consult to share information for private rulings and combine efforts to audit multi-state businesses (Victoria Revenue Office, pers. comm., 23 November 2011).

In their 2007 bilateral agreement, New South Wales and Victoria agreed to joint revenue rulings for interpretation and administration of the harmonised administrative provisions. In a presentation at the 11th Annual States' Taxation Conference, the Chair of the Payroll Tax Harmonisation Committee, Anthony Johnston, outlined the progress of administrative harmonisation. In the case of exemption and exclusion applications, objections and applications of interest and penalty provisions, the jurisdictions have agreed that where the legislation is identical (and where possible) the same outcome across jurisdictions should be obtained. Victoria, New South Wales, South Australia and Tasmania have also agreed on a harmonised approach to the application of interest and penalty provisions. This approach was not possible in the four remaining jurisdictions for various reasons, such as the lack of interest provisions in the Western Australian payroll tax legislation (Johnston 2011).

The jurisdictions that have adopted the template legislation have also adopted most (in some cases, all) of the 35 harmonised revenue rulings. However, to continue to oversee the development of harmonised revenue rulings, and to address other administrative provisions, an inter-jurisdictional Revenue Ruling Sub-Committee has been formed. In forming the Sub-Committee, all jurisdictions have agreed that revenue rulings relating to harmonised legislation should have consistent content and, where the legislation is identical, the revenue ruling should have identical content between jurisdictions.

There is also an agreement of information sharing of relevant taxpayer information where necessary and in regard to the harmonised areas between jurisdictions. These efforts to share and to cooperate on payroll tax administration provide the opportunity to improve the understanding of payroll tax legislation and how it is applied for both state revenue offices and payroll tax-liable businesses.

As a result, what are the changes from the reform?

The payroll tax reform harmonises some of the exemptions given to activities across States and Territories, provides a common definition for certain activities and provides a pathway towards the harmonisation of the administration of payroll tax arrangements. The extent of the change is jurisdiction specific. Some jurisdictions were only required to make minor adjustments for harmonisation while for others a number of legislative provisions needed to be amended. For example, the original harmonisation by New South Wales and Victoria involved 21 payroll tax changes in total. Of these, seven changes were made uniquely by New South Wales, nine were made by Victoria and an additional five provisions were changed in both jurisdictions (New South Wales Office of State Revenue 2007).

For each change, the impact can be different in terms of its significance to the businesses affected. For example, the change to the contractor provisions in New South Wales — removing the exemption for payments that are equal to or above $800 000, to align arrangements with Victoria — is a more substantial change than the harmonisation Victoria adopted to exempt individuals employed on a Community Development Employment Project.

Overall, the progress by the States in regard to administrative harmonisation has helped to establish appropriate processes for collaboration and cooperation on payroll tax. The administrative harmonisation is intended to improve the coordination of decision making and alignment of payroll administration between states.

7.2 Who will be affected by the reform?

Businesses

The payroll tax reform will directly affect businesses that are liable for payroll tax, or those with a wage bill approaching the exemption threshold. The harmonisation of exemption provisions will affect the majority of employers liable for payroll tax, including those that operate in one jurisdiction only. While employers paying wages to employees in multiple jurisdictions are likely to benefit from the harmonisation, they will still be required to be aware of — and compliant with — jurisdiction-specific payroll tax legislation.

Because of the high level of the exemption threshold applied by jurisdictions, payroll tax only applies to a small proportion of businesses. Of Australia’s two million businesses, fewer than 100 000 are liable for payroll tax, leaving around 95 per cent of businesses exempt (Henry Review 2010). However, these businesses contribute significantly to the national wage bill. In Tasmania, for example, only 2336 (6.6 per cent) of businesses in Tasmania were liable for payroll tax in 2008-09. However, together these businesses employed approximately half of the private sector workforce (Tasmanian Chamber of Commerce and Industry 2011).

The following employer categories are directly impacted:

- Employers that are liable for payroll tax and have employees in just one jurisdiction — these firms will be directly impacted to the extent of legislative and administrative changes in the State or Territory in which they operate.
- Employers that are liable for payroll tax and have employees across multiple jurisdictions — these firms will no longer be required, for the specified uniform

provisions, to have systems in place for multiple calculations. This will affect a significant proportion of businesses liable for payroll tax. Overall, nearly half of the approximately 100 000 Australian business that are liable for payroll tax operate in multiple jurisdictions. However, this proportion differs across jurisdictions. For example, in the Australian Capital Territory, 70 per cent of the employers registered for payroll tax also operate in another Australian jurisdiction, while in the Northern Territory, 80 per cent of payroll tax registered employers also employ interstate (Australian Capital Territory Parliamentary Counsel 2011 and sub. DR-R20). By contrast, in New South Wales, only around 40 per cent of payroll tax-liable businesses operate in another jurisdiction (New South Wales Office of State Revenue, pers. comm., 1 December 2011).

- Employers that do not currently pay payroll tax but are close to the exemption threshold — these firms may need to keep payroll tax records in case they exceed the exemption threshold or to verify that they are not liable for payroll tax.

Government

To varying degrees, State and Territory governments have modified their payroll tax legislation to be consistent with the harmonised provisions and administrative arrangements. The changes are likely to impact on auditing costs and government administration costs. For example, the areas of harmonisation allow for joint seminars and staff training, joint audits and national audits, and collective information dissemination to payroll tax-liable employers.

The changes will inevitably have some implications for the amount of revenue collected by individual States and Territories. However, as noted, the key drivers of payroll tax revenue — the tax rate and the level of the exemption threshold — are not affected by the reform.

7.3 Understanding the direct impacts of the reform

The direct impacts on businesses are likely to be evident through:

- reductions in compliance costs for those businesses that are both liable for payroll tax and operate over multiple jurisdictions;
- one-off transitional costs for businesses that are liable for payroll tax in understanding the changes to their payroll tax obligations following harmonisation;
- potential changes in the tax impost to businesses due to the legislative changes; and

- incentives to revise decisions on labour hiring and the location of business activities.

The direct impacts on State and Territory governments are likely to be evident through:

- changes in government administration costs; and
- changes to payroll tax revenues.

Compliance costs for businesses

Reducing compliance costs

Harmonisation of payroll tax legislation will make it easier for businesses that operate in more than one jurisdiction to comply with their payroll tax obligations. It will simplify the understanding of obligations for multi-state firms by making many provisions consistent across jurisdictions. This can reduce the need for external advice (from lawyers and accountants for example) and the likelihood of inaccurate calculations by businesses of their payroll tax liability.

Some aspects of the harmonisation process will provide opportunities for a reduction in the administrative costs to all businesses that collect, calculate and/or report information regarding payroll tax. For example, the move to uniform motor vehicle and accommodation allowances, based on Australian Taxation Office rates, simplifies the calculations and aligns them to other reporting obligations. The Northern Territory Treasury commented:

> Having payroll tax laws redrafted with simpler, modernised and consistent provisions has enabled taxpayers to better understand the rules and improved compliance in a more cost-efficient manner. (sub. DR-R20, p. 1)

To some extent, cost savings in administration that arise from reducing the reporting burden may be transferred to a record keeping burden to verify exemption applicability. For example, employers are no longer liable for payroll tax on wages for any of the work performed in another country if the service is provided for longer than six months. This will reduce reporting requirements for some employers. However, relevant information still needs to be assembled and managed to demonstrate eligibility for the exemption.

Harmonisation of revenue rulings will assist employers operating in both single and multiple jurisdictions to understand and interpret payroll tax legislation and to act in accordance with these rulings. This could reduce uncertainty, and thus reduce the frequency of rulings and the complexity of payroll tax compliance. Shared auditing by state revenue offices can reduce the burden to multi-state businesses of demonstrating compliance.

Increasing compliance costs

In contrast, some processes have been amended, which may increase business compliance costs. For example, fringe benefits are now calculated using the type 2 gross-up rate and not the type 1 gross-up rate that is used to report fringe benefits with the Australian Taxation Office. The newly adopted method is deemed to be a more appropriate calculation for payroll tax purposes, but the separation from the Australian Taxation Office calculation requires additional calculations, and therefore increases compliance costs for all businesses incurring such labour costs.

Compliance costs can be expected to increase in cases where payroll tax is now applied to activities that were previously exempt, requiring additional data management and calculations for compliance.

Western Australia has informed the COAG Reform Council that it will not be implementing all of the harmonisation measures because it:

> … completed detailed analysis (including consultation) and formally decided that it will make no further amendments as part of the COAG process, primarily due to concerns that harmonisation would actually increase the red tape burden for many local businesses and community organisations. (CRC 2010, p. 42)

In particular, the harmonised contractor provisions have not been adopted by the Western Australian Government. This is because the Western Australian State Revenue Office estimated that there would be a substantial cost to certain businesses in recording the relevant information to satisfy this provision. It was also considered to increase uncertainty of employers' liability throughout the year. Furthermore, the compliance cost to all payroll tax-liable businesses of adopting the contractor provisions was compared to the relative benefit of harmonisation for multi-state firms. The Commission was advised that only two of the top twenty housing construction companies in Western Australia operated in multiple jurisdictions (Western Australian Treasury, pers. comm., 27 February 2012).

Transitional compliance costs

The reform of payroll tax arrangements will inevitably impose some transitional or adjustment costs on businesses associated with understanding the changes to legislation and assessing what impact there will be, if any, on their payroll tax obligations. In cases where obligations do change, there may be a need to change in-house data management systems. For example, liable businesses in jurisdictions adopting the Employee Acquisition Scheme[2] will be required to learn the new arrangements and change their in-house systems accordingly to ensure compliance.

Tax on business

Harmonisation may change the tax base by removing some exemptions or introducing new exemptions. The extent to which this occurs is specific to each jurisdiction. For example, the New South Wales harmonisation with Victoria removed the payroll tax exemptions for contractors, employment agents and financial planners. Conversely, some of the harmonisation provisions have introduced new exemptions to some jurisdictions, such as removing the payroll tax liability on wages paid in relation to charitable activities and on work performed in emergency services.

Resource allocation decisions

The changes to certain provisions (such as making payments to contractors liable for payroll tax) will result in some changes in the incentives facing businesses. The changes to incentives could, at the margin, alter business decisions regarding labour hiring and the location of business activity.

Harmonising activities that are payroll tax exempt will reduce the distortions that arise from businesses avoiding or reducing payroll tax liability by locating their activities in more ‘favourable’ jurisdictions. States have viewed exemptions as one way of attracting businesses to their State, forgoing revenue temporarily for perceived longer term gains (including the tax collected once the exemption expires). While difficult to quantify, reducing the scope for exemptions could have substantial benefits. In this regard, the Henry Review noted that:

> Exemptions in the payroll tax base introduce biases in the allocation of labour across the economy and lead to complexity in administration and compliance, particularly when exemptions differ even slightly between States. (Henry Review 2010, p. 300)

Administration costs for government processes

The changes will impose some transitional costs on state revenue offices associated with amending legislation and upgrading payroll tax systems. However, the primary

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2 An employer’s contribution to any grant of a share or option to an employee or deemed employee will be liable to payroll tax (New South Wales Office of State Revenue 2007).

ongoing administration activities incurred in collecting payroll tax are those associated with processing returns lodged by employers, auditing and enforcing payment. Furthermore, as the Henry Review noted:

> …the duplication of revenue authority infrastructure, including administration, compliance staff and IT systems, increases the administration costs of Australia's tax system. (2010, p. 300)

As far as the Commission has been made aware, to date there have only been limited realised reductions in administrative costs to revenue offices. However, the harmonisation of administrative arrangements is likely to provide ongoing opportunities for cooperation between State and Territory revenue offices, for example in designing forms, developing IT systems for processing returns and sharing information between jurisdictions. Already Victoria, New South Wales and Tasmania have standardised some forms, including audit and client feedback questionnaires and investigation entry (and exit) letters, and have agreed to formulate a consistent set of procedures (Johnston 2011).

The joint auditing program has seen 40 cases audited between New South Wales and Victoria (28 of which also included Tasmania). From March 2010 to February 2011, all jurisdictions cooperated to undertake 10 national audits and put in place processes for future collaboration in audits.

Furthermore, uniform interpretations of payroll tax law across jurisdictions could reduce the frequency of revenue ruling cases from increased consistency and clarity in the interpretation of legislation. Such revenue ruling cases can be costly in terms of both time and resources.

Government revenue implications

Over the longer term, the changes are expected to be largely revenue neutral for most jurisdictions. Within this broad situation, some of the provisions introduced new exemptions for certain activities, while other provisions removed exemptions. Similarly, while some of the new exemptions are only likely to affect a minority of businesses or organisations and hence will have limited revenue implications, others will have a more substantial effect on revenue.

Revenue implications are one of the reasons Western Australia has not yet adopted the full extent of harmonisation provisions. The Commission was informed during consultations that the harmonisation changes that were made by Western Australia are estimated to reduce their payroll tax revenue collection by approximately $60 million annually (Western Australian Treasury, pers. comm., 27 February 2012). This is largely due to the changes in grouping provisions that will not take effect until 1 July 2012. These have been deferred ‘as part of temporary corrective measures to address short-term weaknesses in the outlook for general government revenue’ (Parliament of Western Australia 2010). This harmonised provision loosens the determination of grouping for Western Australia to the extent that 2900 businesses are estimated to benefit (that is, they are no longer to be defined as a grouped business and can therefore claim the threshold more than once). The impact of this change is considered to be unique to the circumstances of Western Australia.

In addition, the exemptions on emergency and volunteer service work and adoption and maternity leave will reduce payroll tax revenues by $2 million over four years (Parliament of Western Australia 2010). This is a provision that has been adopted by a number of States and Territories and could possibly have similar revenue implications in other jurisdictions.

The impact on the other States, as far as the Commission has been made aware, is not substantial. For example, information received in the course of the study indicates that the harmonisation changes in the Northern Territory will result in a $3 million reduction in payroll tax collections annually (sub. DR-R20). In contrast, it is understood that additional tax revenue collections, in the order of $2 million annually, have resulted for Victoria (Department of Treasury and Finance Victoria, pers. comm., 2 March 2012).

Autonomy in the payroll tax structure allows jurisdictions to tailor revenue collection according to their specific circumstances. It is partly for this reason that Western Australia and the Australian Capital Territory have chosen not to harmonise all of their payroll tax provisions. However, the overall benefit of the harmonisation process will be lowered because employers that operate in Western Australia or the Australian Capital Territory and another jurisdiction, and that are liable for payroll taxes, will need to be aware of — and compliant with — the legislation in each jurisdiction.

7.4 What are the direct benefits of the reform?

The process of harmonising payroll tax arrangements is a reform that has been adopted and developed by COAG. The benefits and costs will be considered for harmonisation across all jurisdictions. The Commission’s assessment will therefore include the impacts of the bilateral agreement between New South Wales and Victoria in 2007 and the impacts of all subsequent reforms undertaken by the other States and Territories.

Impacts of the 2007 bilateral agreement between New South Wales and Victoria

The Allen Consulting Group (2009a) undertook a study to assess the change in compliance costs for businesses in Victoria following the harmonisation of payroll tax arrangements with New South Wales in 2007. The study drew on the results of an online survey of Victorian businesses and direct consultations with affected businesses. The results were validated by several tax agents.

The administrative saving for businesses in Victoria resulting from the harmonisation was estimated at $1.5 million per year ongoing (based on an annual average benefit over the first ten years). There was an estimated one-off increase in costs to businesses in the first year of approximately $12.7 million associated with understanding the legislative changes and the need to adapt in-house systems. For each additional year, there was an ongoing reduction in costs of approximately $2.3 million stemming from greater ease in understanding compliance obligations.

Cost savings were also estimated from efficiencies that could arise from aligned systems for businesses operating in both Victoria and New South Wales. Additionally, an overall net benefit (cost savings) was calculated for Victorian businesses liable for payroll tax because the changes for Victoria were considered to be predominately more simplified and less burdensome. The record keeping component was assumed to be unchanged as only minor changes were required and these were largely in line with existing information requirements of the Australian Taxation Office. An initial set-up and ongoing cost for administering the Employee Share Acquisition Scheme was included as the reform introduced this program to Victoria.

Of the $1.5 million estimated average annual cost saving to Victorian businesses, the Allen Consulting Group attributed an annual cost saving of around $156 000 arising from time saved in researching joint public ruling information across different websites. An additional cost saving of approximately $46 000 was estimated based on State Revenue Office data for time savings for businesses that no longer needed to consider the different rulings in both New South Wales and Victoria. The uniformity of payroll tax administration through public and private rulings accounted for a considerable proportion of the estimated net benefit from the harmonisation process.

Realised benefits

The methodology used by the Allen Consulting Group (2009a) is comprehensive in data collection and provides the best available information for extending the findings to provide an indicative estimate of the compliance cost savings across all jurisdictions from harmonisation.

However, because of jurisdictional differences it is unlikely that the realised benefits attributed to Victoria would increase proportionately as the other States and Territories adopted the uniform provisions. Factors that militate against a proportional increase pertain to the extent of operation of multistate enterprises, differing economic conditions and different fiscal conditions between jurisdictions. Each of these factors is outlined below.

The realised benefits would not increase proportionately — even after allowing for the differences in the sizes of the economies of the States and Territories, and their payroll tax base — for three key reasons.

First, the majority of multi-state businesses operate across only two or three jurisdictions, with some combinations being more common than others given geographic proximity or similarities in the economic bases of some States. While around half of payroll tax-liable businesses employ labour in more than one jurisdiction (Henry Review 2010), the compliance cost savings for each business will depend on the number of jurisdictions in which the business operates and the extent to which those jurisdictions have harmonised their payroll tax arrangements. A majority of these businesses only operate in one or two other jurisdictions, with only around 7000 businesses operating in five jurisdictions or more.[3] As a result, the harmonisation benefits to businesses are mostly from employers with payroll tax liabilities in two or three jurisdictions.

Second, the impacts of harmonisation realised in Victoria cannot be applied uniformly across jurisdictions because the nature, significance and scope of changes are different for each jurisdiction. For example, the ongoing cost included for the Employee Share Acquisition Scheme in Victoria would not be required for Western Australia which already had this provision. However, each of the jurisdictions is likely to face some other significant changes that could have a range of implications on business and government.

[3] ABS 2005, *(Business Register, Counts of Businesses*, Cat. no. 8161).

Third, there are other impacts that were beyond the scope of the Allen Consulting Group (2009a) study. Changes in tax transfers between businesses and governments, and government administration costs, will have direct impacts on business activity, as well as fiscal impacts on State governments.

With regard to reduction in business costs from harmonisation, the Commission's estimate is benchmarked to the benefit for Victoria from New South Wales-Victorian harmonisation (that is, about $3 million per year in 2006-07 dollars).[4] This estimate is projected to the nation as a whole in proportion to the estimated number of payroll tax-liable businesses. This aggregate is then adjusted to take account of the likelihood that benefits do not increase proportionally with the number of payroll tax-liable businesses and to allow for the fact that the extension of harmonisation will raise benefits to business above what would be achievable with only New South Wales and Victorian harmonisation.[5] Drawing on these results, the Commission's assessment is that the payroll tax reforms have delivered realised reductions in business compliance costs of around $20 million per year — and that this benefit will be ongoing. The Commission also estimates that to date there have been no realised reductions in ongoing government administration costs.

The Commission has been made aware by some jurisdictions of the impact of tax revenue implications and has used this information accordingly.

Prospective benefits

The Commission has treated the majority of the benefits that stem from harmonising legislative provisions as realised (and ongoing). The Commission has not attributed a value to the prospective benefits that could arise were Western

4 The combined benefits arising from harmonisation of legislation, harmonisation of revenue rulings and ease of understanding identified in the Allen Consulting study (2009a).

5 The estimated number of payroll tax-liable businesses in 2010-11 is about 120 000. The estimate of the aggregate benefit is an aggregation of three components. (i) If the ease of understanding benefit attributed to Victorian businesses were simply scaled up to the national total, an aggregate benefit of around $9.6 million would be available. For the purposes of this study, this has been adjusted downward by one fifth to take account of the likelihood that benefits from uniform measures to improve understanding do not increase proportionately with harmonisation across jurisdictions. (ii) The benefits of harmonised legislation for Victoria (of nearly $700 000), if scaled to a national total on the basis of payroll tax-liable business numbers, would measure approximately $3 million. As this only takes account of bilateral relationships between businesses in Victoria and another jurisdiction, this estimate is further scaled upwards (by a factor of three) to take account of relationships between businesses outside of Victoria. (iii) The same methodology is applied to estimate the realised national benefits from harmonised revenue rulings, using the estimated benefit to Victoria (of around $200 000) from harmonisation with New South Wales.

Australia and the Australian Capital Territory to harmonise the remaining stage two provisions because both jurisdictions have indicated their intention not to implement these. Furthermore, harmonising these provisions is not considered to necessarily deliver prospective benefits as the changes required for full harmonisation may not be optimal for these jurisdictions.

Significant progress has been made in harmonising administrative arrangements in uniform revenue rulings and other collaborations. Benefits will accumulate prospectively as a result of the improved clarity and common understanding stemming from the harmonised rulings and improved ability for businesses to access information and comply with harmonised legislation.

Business compliance cost savings

A business liable for payroll tax that operates across multiple jurisdictions will increasingly benefit as it becomes more familiar with the harmonisation of previously jurisdiction-specific payroll tax exceptions and definitions. As these inter-jurisdictional differences are removed, and as businesses become more confident in treating administrative interpretations as uniform across jurisdictions, compliance costs should decrease. For example, all jurisdictions have agreed to develop a common web page which highlights the major areas of harmonisation (Johnston 2011). This will improve the access and availability of information that is harmonised.

In its discussion draft, the Commission estimated prospective gains of $2 million arising from harmonised revenue rulings being better understood. This preliminary estimate has been revised upward based on:

- additional information being provided by the New South Wales Revenue Office regarding additional steps in administrative harmonisation; and
- further progress in legislative harmonisation, as reported by the COAG Reform Council 2010-11 Performance Report (CRC 2012).

The Commission's assessment has been revised to measure a higher benefit in administrative harmonisation benefits around revenue rulings and other shared processes that may improve the ease of compliance for businesses. Based on this revision, the prospective gains to business could amount to around $10 million annually.

Government administration cost savings

Payroll tax reform has provided a range of opportunities for streamlining State and Territory administration across jurisdictions, such as the use of standardised forms, collaboration in audits, and reductions in the costs of maintaining numerous IT systems. Johnston (2011) identifies the benefits to the revenue offices in 'sharing the collective wisdom' of senior staff across all jurisdictions and the opportunity to take advantage of economies of scale to address issues in a harmonised environment. Cost reductions may also accrue through the clearer interpretation of legislation and the associated reduction in the number of revenue ruling cases.

While there is no specific information available to the Commission, an indicative estimate of the possible prospective ongoing benefit to government administration is in the order of $5 million per year.

7.5 Indicative costs and revenue implications of achieving reform

Transition costs

As noted in section 7.3, payroll tax reform will result in some transitional costs for businesses and State government budgets. Applying the results of the transitional costs estimated in the Allen Consulting Study (2009a) to the other jurisdictions would suggest a possible transitional cost of $57 million. This estimate has been scaled down to account for the approximately 50 per cent of businesses that operate in more than one jurisdiction and therefore only have to accommodate for this transition once. The Commission's assessment is that these one-off costs are in the order of $30 million to businesses. The transitional cost to governments is assumed to be $10 million based on consultations regarding the costs of legislative changes.

Government payroll tax revenue implications

In response to the information provided by state revenue offices, a $1 million reduction in state revenue collections annually is estimated to have occurred.

Available information also indicates an ongoing revenue reduction of nearly $60 million per year (current 2011-12 values) is likely to occur from 1 July 2012. Most of this change is due to a variation in the legislation of grouping provisions in Western Australia (section 7.3).

7.6 Summary of effects

Overall, the Commission's assessment is that the harmonisation of legislative and administrative arrangements could provide a combined realised and prospective benefit to business of around $30 million annually into perpetuity (table 7.1). This would amount to an average cost saving of around $300 per business liable for payroll tax, although the extent to which an individual business benefits would depend on its particular circumstances. In the Commission's assessment, about two thirds of this benefit is likely to have accrued with the introduction of the harmonised system, with the remainder likely to accrue over the next four years.

Table 7.1 **Summary of estimated impacts from payroll tax reform**
$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in business compliance costs	20	10	30	..	
Transition cost to business					(30)
Reduction in State government administration costs	..	5	5	..	
Transition cost to governments					(10)
Changes to State and Territory government payroll tax revenue [b]	(1)	(59)	(60)	..	..

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. [b] Changes in payroll tax revenue represent transfers between the governments of Victoria, Western Australia and the Northern Territory, and payroll tax-liable businesses.

Source: Commission estimates.

Over the longer term, payroll tax reform is likely to lower ongoing administrative costs to government. Although information on the size of benefits is limited, an indicative estimate of an administrative cost saving of around $5 million across the jurisdictions is included in this report. This cost saving is assumed to accrue progressively over a period of four years.

There have also been transition costs for businesses and government associated with understanding the changes to legislation and modifying their accounting systems. Available information suggests that these transition costs could be in the order of $30 million and $10 million, respectively, and are likely to have been substantially incurred already.

There will also be some tax transfers between business and government, which will differ across jurisdictions. However, with the exception of Western Australia, the overall net effect on payroll tax liabilities (and government revenues) associated with the harmonisation of the State systems is not expected to be substantial.

7.7 Opportunities for improvement

Continuing the harmonisation of payroll tax

Harmonisation efforts to reduce the complexity of payroll tax liability, particularly for liable businesses that operate across multiple states, have had momentum since the mid-2000s. While substantial progress has been made, there are further opportunities for harmonisation in legislative and administrative provisions. Processes and committees have been established that offer the capacity to drive further harmonisation.

One area proposed by some of the state revenue offices has been in regard to developing a single web portal for taxpayers to log on and register for payroll tax. Furthermore, continued progress to harmonise definitions and other legislation could open the possibility of utilising the Standard Business Reporting platform as the single portal for businesses to meet their payroll tax obligations. Liable businesses would only be required to submit information once and the information could be disseminated across other jurisdictions as appropriate.

Improving the efficiency of payroll tax

Payroll tax is potentially one of the broadest and most efficient taxes that can be used by the States (Gabbitas and Eldridge 1998). This is partly because labour compensation is a large proportion of gross state product and can provide a stable source of revenue (Henry Review 2010).

An efficient tax is commonly defined as one whereby resource allocation cannot be distorted to avoid compliance or to reduce the size of the compliance obligation. As the payroll tax base is relatively stable, a tax on labour income can be relatively efficient, and can be similar to a broad based tax on the value added of goods and services such as the GST (Henry Review 2010).

The efficiency of payroll tax is reduced when the base becomes narrower and the tax rate becomes higher, resulting in fewer businesses bearing a proportionately larger tax burden. Such narrowing of the tax base creates an incentive for liable businesses to reduce the size of their payroll tax bill by allocating resources in a sub-optimal manner; for example, by investing in capital rather than labour or relocating between jurisdictions to take advantage of a lower payroll tax rate. Alternatively, a business could avoid a payroll tax liability completely by limiting employment and maintaining their wage bill below the exemption threshold.

In this situation, broadening the payroll tax base would tend to reduce distortions in employment and productive decision making. While the harmonisation of exemptions across jurisdictions has removed the incentive for businesses to make resource allocation decisions to take advantage of these differences, the removal of exemptions altogether would further reduce these distortions. The resulting broader tax base would allow for a lower tax rate, while keeping payroll tax revenue unchanged. Broadening the base could also be achieved by lowering the exemption threshold, or by maintaining the exemption threshold despite wage growth. However, the determination of an optimal threshold level would need to take into account the impact on government administration costs and business compliance costs.

Improving the efficiency for revenue collection

The reform to date has concentrated on the relatively narrow objective of harmonising certain provisions of payroll tax. Although worthwhile, consideration could be given to:

- assessing the structure of the payroll tax system; and
- assessing the merits of payroll tax relative to alternative revenue raising schemes.

In regard to other mechanisms for State revenue collection, and in light of the relatively narrow payroll tax base, the Henry Review recommended that:

> … State payroll taxes should eventually be replaced with revenue from more efficient broad-based taxes that capture the value-add of labour. (2010, p. 301)

This theme was repeated in the course of the study by the Chamber of Commerce and Industry Queensland which submitted that it:

> … continues to advocate strongly for the complete abolishment of payroll tax and believes that COAG would be the appropriate forum to commence a national dialogue about the benefits of reducing this tax. (sub. DR-G4, p. 5)

The Henry Review suggested that some of the inefficiencies of the payroll tax system could be removed or reduced by replacing payroll tax with a tax on employee remuneration through the pay as you go (PAYG) withholding system. This would take advantage of systems already in place for the administration and payment of PAYG withholding and reduce opportunities for tax exemptions by taxing the personal income base. The tax rates could also be harmonised or, if necessary, jurisdiction-specific rates could continue to satisfy the revenue requirements of each State or Territory.

However, there are some problems that would arise from this alternative approach to taxing labour. First, some individuals are below the tax-free threshold and are therefore not part of the PAYG withholding system. Second, an incentive would arise to report labour income as capital income, for example, by being a contractor or being self-employed.

The favoured approach of the Henry Review was to replace payroll taxes with a broad-based consumption tax (similar to the GST). As the consumption tax would incorporate labour in its base, an additional labour tax would not be required. The Henry Review noted that a broad consumption tax would be more efficient and arguably more equitable than simply taxing the labour component of income. Incentives to allocate resources away from their optimal use to avoid payroll tax would be lowered as the tax burden on businesses is reduced while the number of liable businesses increases. Furthermore, since it is a broader tax on the value added of both capital and labour, the tax rate could be lower than for a payroll tax.

8 Occupational health & safety

Key points

- In 2008, an intergovernmental agreement was signed between the Australian and State and Territory governments to harmonise OHS laws.
- The harmonised laws were to become operational on 1 January 2012; however, only five jurisdictions have implemented the new laws.
  - In addition, the laws have been passed in Tasmania, but are not due to commence until 1 January 2013.
- Uncertainty exists over the implementation of the agreed reforms by the remaining three jurisdictions.
- If implementation proceeds, and the agreed reforms become operational:
  - all employers are likely to face transition costs in the order of $850 million in aggregate (around $75 per worker);
  - multi-state businesses are likely to see compliance costs fall and safety outcomes improve, generating total possible net cost savings of $480 million per year; and
  - for single-state businesses, despite possible improvements in safety outcomes, additional compliance activities are likely to increase business costs in aggregate for this group by around $110 million per year.
- Without full implementation, there is a risk that businesses will face significant transition costs without realising the possible cost savings from harmonised laws.
- The Australian Government's intention to shift OHS coverage of businesses under the Comcare scheme also has the potential to increase costs for these businesses as they will potentially interact with eight regulators instead of one.
  - The Comcare Scheme has been a relatively low-cost means of achieving a national approach for some large multi-state firms (that is, an opt-in approach attractive to business).

Processes to harmonise occupational health and safety (OHS) laws in Australia have been ongoing since the mid-1980s. Since the establishment of the National Occupational Health and Safety Commission in 1985, there has been a number of reviews of OHS laws, the development of the National OHS strategy and, more recently, the development of model OHS laws as part of the Seamless National Economy reforms. This latter harmonisation move is the subject of this chapter.

The Commission's assessment of the likely direct impacts of OHS reforms has required judgements to be made about the effects of reforms that are in the process of implementation. Judgements have also been required to assess the timescale over which the benefits of these reforms may accrue.

The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

8.1 Reform objectives and changes

Under the 2008 *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA), the Australian and State and Territory governments agreed to harmonise OHS Acts, regulations and associated codes of practice. The IGA also provides for a nationally consistent approach to enforcement and compliance. Despite all states signing the IGA, Western Australia, while supporting the principle of harmonisation and the majority of the provisions in the model laws (Safe Work Australia, sub. DR-R23), did not agree to adopt conditions in the model laws which were significantly different from its own policy settings (Buswell 2009).

The objectives of the reform are to:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- create efficiencies for governments in the provision of occupational health and safety regulatory and support services; and
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

The Australian Government commissioned an expert panel to recommend to the Workplace Relations Ministers' Council the optimal structure and content of a model OHS Act. The reforms create a new national coordinating body called Safe Work Australia. Model regulations and codes of practice were subsequently developed and were finalised by August 2011. The reforms were scheduled to be implemented by 1 January 2012.

The COAG Reform Council, in assessing the progress of the OHS reforms (CRC 2010), previously identified a number of risks to the reform being achieved within the targeted timeframe. Notably, while an updated version of the model work health and safety bill, incorporating technical and draft amendments, was approved by Safe Work Australia in April 2010, paving the way for its adoption by all jurisdictions, two States were not committed to the full implementation of the reforms. Western Australia, as mentioned earlier, stated that it was unlikely to adopt certain clauses of the model Act where significant differences existed between the proposed and Western Australian legislation.[1] New South Wales also raised doubts about the full implementation of the model OHS laws in the areas of the removal of union rights to prosecute for OHS breaches and the reverse onus of proof.[2] More recently, Victoria has also qualified its intent, stating 'Victoria supports the principle of harmonisation subject to satisfactory assessment of the regulatory impacts and benefits to Victoria' (Rich-Phillips 2011). Despite earlier doubts in New South Wales, the BRCWG Report Card on the Progress of Deregulation Priorities in August 2011 (COAG 2011a) noted that, as of August 2011, the NSW Government had passed the model OHS legislation with only minor amendments.[3]

Due to the earlier actions of Western Australia and New South Wales, and the more recent statements by the Victorian Government surrounding its own review of the model laws, the COAG Reform Council (CRC 2012) assessed that these jurisdictions had failed to meet the required agreed milestones within this reform stream. Further, since the BRCWG and COAG Reform Council's reports were released, a number of jurisdictions have moved away from their commitment to the 1 January 2012 implementation deadline, with the result that harmonisation did not occur at that date. In particular, Victoria's adoption of the model laws was to be subject to its own review (WorkSafe Victoria 2011). This review was released in April 2012 and suggested Victorian businesses could face additional costs over the next five years under the proposed national laws (Baillieu and Rich-Phillips 2012). Among other things, the report noted that from a Victorian perspective 'many of the key changes reflect a general approach of the Model WHS [Workplace Health and

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1 The four areas where the Western Australian Government does not support the model OHS laws relate to: the level of penalties; union rights to enter worksites where there is a suspicion of an OHS breach; powers of health and safety representatives to stop work; and the reverse onus of proof for charges of discriminatory conduct. Safe Work Australia states that the amendments to the model laws in Western Australia's proposed laws do not represent material changes (sub. DR-R23).

2 Reverse onus of proof refers to the situation where a defendant to an alleged breach of OHS laws is required to prove they have complied with OHS requirements. Under a usual onus of proof (innocent until proven guilty), the onus is on the prosecution to prove the defendant has breached OHS requirements.

3 The amendments made by New South Wales related to allowing unions the right to prosecute breaches where Workcover NSW and the Director of Public Prosecutions both decide not to prosecute. However, these are subject to a number of review procedures that need to be completed before prosecution occurs.

Safety] laws to prescribe in greater detail the types of risks to be controlled and the nature of controls to be used' (PricewaterhouseCoopers Australia 2012, p. 5).

The South Australian Parliament, on 30 November 2011, postponed debate on the proposed model laws until 14 February 2012 (SafeWork SA 2011), a postponement which remains ongoing as at April 2012. Tasmania, after having passed the model laws, amended the start date by one year until 1 January 2013 (WorkSafe Tasmania 2011). Western Australia has also stated that implementation of the model laws (amended) will occur at an unspecified later date (WorkSafe 2011).

Against this background, at its April 2012 meeting, COAG noted:

> On occupational health and safety reform, of the nine jurisdictions, six have legislated the new workplace safety arrangements and one other is in the process of legislating the reform. COAG agreed that the current occupational health and safety laws will be reviewed by the end of 2014. The Commonwealth noted that the National Partnership Agreement to Deliver a Seamless National Economy contains reward payments for successful implementation of these measures. (COAG 2012, p. 6)

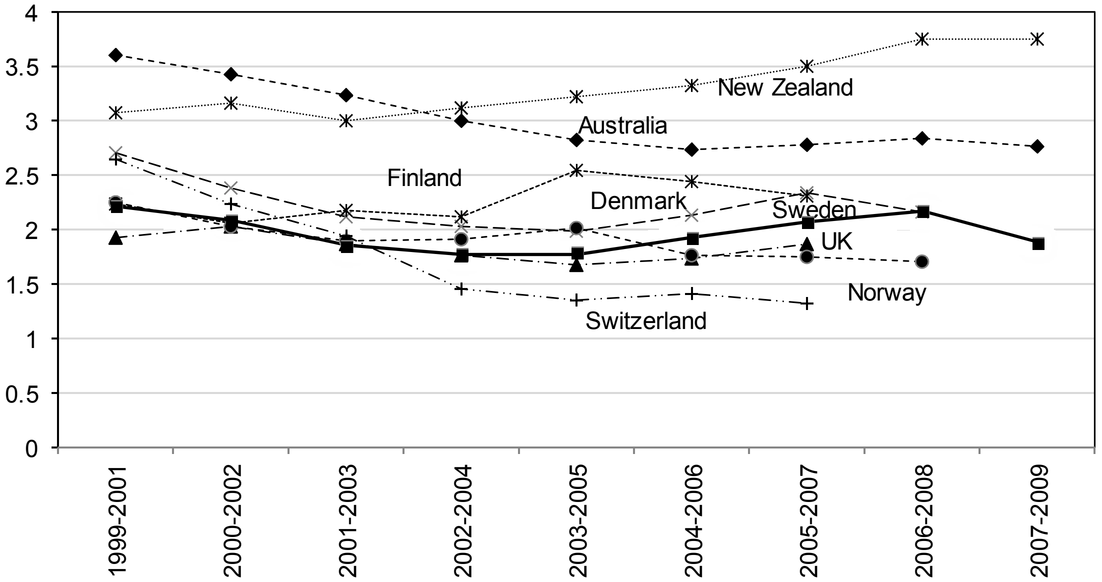
Backdrop to the OHS reforms

The move to nationally harmonised OHS laws is occurring against a backdrop of continued reductions in workplace injury and illness rates and inter-jurisdiction cooperation. As identified in the Commission's recent Australian Business Regulation Benchmarking Report (PC 2010b), Australia currently ranks seventh among the best OHS performing countries in the world (in terms of work-related fatality rates), behind Switzerland, Sweden, the United Kingdom, Denmark, Norway and Finland. Of greater significance, since 2001 Australia's work-related fatality rate has generally decreased at a faster rate than the best performing countries in the world (figure 8.1). Prior to the reforms (and continuing after), State, Territory and Australian governments were also working together through the National OHS Strategy 2002-2012 (ASCC 2002).

Although there have been reductions in fatalities and many other work related physical injuries, accepted mental stress claims resulting from work-related stress (such as bullying, harassment and occupational violence) had been increasing until recently. Accepted mental stress claims had initially increased from 1997-98 to a peak in 2003-04, but subsequently fell each year after until 2007-08 (figure 8.2). Despite the fall, the number of accepted claims in 2007-08 was still 34 per cent greater than in 1997-98.

Figure 8.1 **International comparison of best performing OHS countries, 1999-2001 to 2007-2009[a]**

Fatalities per 100 000 employees

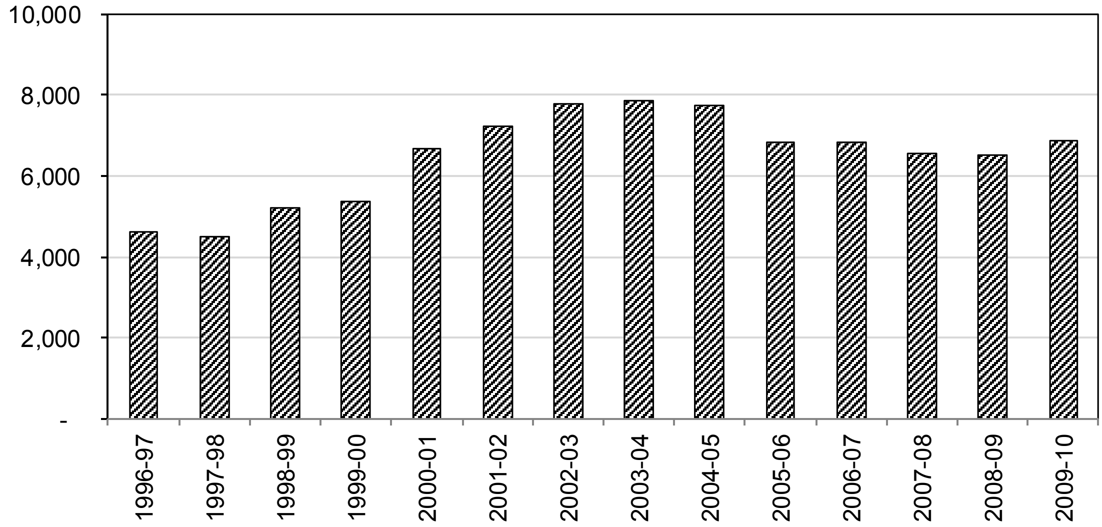


[a] Data were standardised against Australia to take account of different industry mixes and a three year average was used to remove some volatility associated with the small numbers. Safe Work Australia notes that while the methodology has attempted to address concerns associated with comparing different data sets across countries some issues have not been fully resolved and may impact on the final results.

Data source: Safe Work Australia (2012, unpublished).

Figure 8.2 **Number of accepted mental stress claims, 1996-97 to 2007-08**

Number of claims



Data source: Safe Work Australia (2012, unpublished).

Nature and structure of pre-reform OHS regulatory regimes

The system adopted in Australia to provide a healthier and safer workplace is outcome based. It uses a combination of risk assessment and prescription through regulations, guidelines and codes of practice to facilitate the development of safe work practices that best suit the individual circumstances of organisations.

Prior to the current reforms to develop a harmonised system, OHS matters were the sole responsibility of the individual State, Territory and Australian governments. The Australian Government regulates OHS in those areas where it has constitutional responsibility, principally in activities involving employees of the Australian Government, as well as the maritime and offshore petroleum industries and, more recently, for companies covered by its workers' compensation scheme (Comcare). States and Territories have responsibility for regulating OHS in all remaining areas.

The regulatory approach adopted by all Australian jurisdictions was influenced by the recommendations of a committee headed by Lord Robens in the United Kingdom. The Robens Report was released in 1972 (Robens 1972) and recommended that the United Kingdom introduce a single enabling Act to replace the mass of existing legislation which regulated specific hazards or types of workplaces in the United Kingdom.

The Robens report recommended that this overarching Act should:

- lay down the duties of employers, workers and suppliers of materials;
- establish basic rights for workers and their representatives;
- create new structures through which standards may be developed;
- reform the administration and enforcement of the law by a single national authority; and
- be supported by regulations and voluntary codes of practice and standards.

In line with Robens' proposed approach for the United Kingdom, during the 1980s and 1990s each jurisdiction in Australia adopted a three-tiered OHS regulatory system consisting of Acts, regulations, and codes of practice or guidance material. The Acts set out the key principles, duties and rights of employers and employees. Legally enforceable regulations made under those Acts are more detailed and specify procedures and administrative matters. Codes of practice and guidance materials are not legal requirements as such, but provide interpretation of legal requirements imposed by the Acts and regulations, as well as practical guidance on how to comply with them.

The OHS legislation in all jurisdictions contains common themes and addresses the same core aspects of OHS. These include:

- duties of care that are conferred on a number of economic agents to ensure the health and safety of people at the workplace;
- responsibilities for employers to consult with workers on issues and work practices that may affect their health and safety and that of others;
- the requirement for employers to provide relevant OHS training and information to workers to make them aware of safe work procedures;
- incident notification and record keeping;
- requirements for licensing, registration or use of permits;
- the role and powers of inspectors; and
- the requirement to undertake OHS risk management which involves the identification and management of general or specific risks or hazards.

OHS legislation in all jurisdictions apart from the Australian Government, South Australia and Tasmania outlines the entry powers available to authorised union representatives to investigate suspected OHS breaches and to discuss OHS matters.

What has changed under the harmonisation reforms?

The Regulation Impact Statement (RIS) completed to support the development of the national OHS laws (Access Economics 2010) sets out the major changes that will occur to OHS Acts (box 8.1).

In some instances, these provisions will result in modest changes to the scope and requirements of OHS laws to businesses in individual jurisdictions.[4] Overall, however, the changes have been made in the interest of harmonisation. It should also be noted that the Robens approach has been maintained.

Despite assessments that changes have been 'modest', some have expressed concerns over the removal of the 'control' qualification to the duties of care and over perceived changes to the application of OHS laws to volunteering activities. On the issue of control, despite precedence of control being taken into account when determining 'reasonably practicable' (which remains as the central qualification), contractors (Phillips 2011) and other groups have suggested during consultations that its removal will add confusion and possible compliance costs to smaller operators.

4 Details of the differences in OHS laws prior to these reforms in the identified areas can be found in PC (2010b).

Box 8.1 Key changes to OHS laws as set out in the Regulation Impact Statement

The major changes to the OHS Acts include:

- wording and coverage of the duty of care imposed by the Act — encompassing all businesses and undertakings;
- all duties qualified by the term 'reasonably practicable';
- definition of a 'worker';
- duties imposed on those with control of workplaces, 'officers' and 'workers and others';
- penalties for breaches of duties — including both criminal and civil penalties; maximum penalty amounts and the adoption of enforceable undertakings;
- burden of proof — removal of the reverse onus of proof in some jurisdictions;
- requirements for worker consultation and advice;
- requirements for health and safety representatives and committees;
- requirements for issues resolution;
- the right to cease work when reasonable grounds exist to believe continuing to do so would expose the worker to serious health and safety risks;
- procedures and burden of proof surrounding discrimination, victimisation or coercion of persons with OHS rights or responsibilities;
- incident notification;
- authorised union right of entry; and
- who can prosecute breaches — removing third party rights to do so.

Source: Access Economics (2010, Appendix B).

The exclusion of the term 'control' from certain areas of OHS law was recommended by the expert panel (Stewart-Crompton, Mayman and Sherriff 2008) that was used to determine the content of the model OHS laws. This was intended to clarify the interpretation of OHS law, however, the full implications of the exclusion will remain unclear until case law has been developed.[5]

[5] In this regard, it should be noted that in the High Court case Baiada Poultry Pty Ltd v The Queen [2012] HCA 14 Baiada was found to have contractual power to give safety directions to its contractors, however the trial judge did not adequately direct the jury to consider whether Baiada's employment of qualified contractors was 'sufficient to discharge Baiada's obligation to do what was reasonably practicable to [provide] and maintain a safe work site in the particular respect in issue' (at para 17). For Baiada to be found guilty, it would need to be proven beyond reasonable doubt that this was not the case. Among other things, the majority judgement noted: '… even if Baiada had had the right to control what its subcontractors did at the Houbens' farm, DMP was in charge of the use of the forklift and it had not been proved beyond reasonable

Linked to the issue of control, stakeholders raised concerns with the Commission during consultations that those with a duty of care cannot contract out their responsibilities (for example, a principal contractor cannot be contracted to take OHS responsibility for the site they have control over, even if that is to the exclusion of the person conducting a business or undertaking's employees). This was reported to increase the reporting and auditing requirements of the person conducting a business or undertaking, in order to demonstrate they had taken all reasonable steps in case an issue ever arose. In this regard, a report on the model law to the Victorian Government noted:

> The obligation on officers is proposed to change from a negative obligation (ie an officer of a body corporate must not fail to take reasonable care with respect to OHS in the organisation) to a positive duty (ie an officer will have a proactive duty to exercise due diligence in relation to health and safety in an organisation). It is expected that this change will mean that officers will need to take reasonable steps to: keep up to date knowledge on health and safety matters; understand the risks associated with their work; ensure the entity eliminates or minimises risks; ensure they have processes for responding to incidents, hazards and risks; and ensure the entity is compliant with its duties.
>
> … While there is obviously concern that this proposed change will increase compliance costs for organisations, and there was the view amongst some that the risks associated with being an officer were increased, a theme expressed by OHS managers in the public and private spheres was that this additional focus would elevate OHS matters within an organisation's list of priorities. Stakeholders were reluctant to specifically claim that this would lead to quantifiable safety benefits. (PricewaterhouseCoopers Australia 2012, pp. 11, 12)

With regard to the use of the terms 'control' and 'duties' of office holders, Safe Work Australia has advised:

> Although the word 'control' is not widely used in the new laws the concept of control underpins all of the health and safety duties because the laws only require what is 'reasonably practicable' (or reasonably able) to be done. This qualifier recognises that some matters may be beyond a person's control. The laws do not require the unachievable, just what is reasonably practicable. The High Court recently ruled that the concept of 'control' can be directly relevant to determining what is 'reasonably practicable'.
>
> The WHS laws also clearly state that a person must discharge their duties 'to the extent to which the person has the capacity to influence and control the matter'—see clause 16(3)(b). The WHS Act also places duties on persons that 'control' workplace, plant etc – see clauses 20 and 21.

doubt that it was reasonably practicable for Baiada to have taken steps that would result in DMP going about its task of operating the forklift in a way that provided and maintained a safe working environment' (at para 32). The High Court allowed the appeal and ordered a new trial.

> We do not consider the new laws require anything that was not previously required to be done. The primary health and [safety] duties will not change significantly for any jurisdiction.
>
> The officer's duty in the model act involves similar obligations to those officers have under the pre-harmonised OHS laws and the Corporations Act in respect of their duties of care and diligence and their duty to ensure compliance with financial reporting and other laws. (Safe Work Australia, pers. comm. 22 April 2012)

On volunteering, some press reports suggested that the broader definition of a business, moving from 'employer' to 'person conducting a business or undertaking', had expanded the coverage of OHS laws to volunteering activities (Phillips 2012). However, the new definition of a business does not capture volunteer organisations (those without employees) as per previous OHS laws. And, as for previous OHS laws, organisations with volunteers who also have paid employees maintain their duty of care to both employees and volunteers. The most significant change has been to extend the coverage of an employee's duty to that of a volunteer (to be mindful of their own and others' health and safety), which has had the effect of bringing common law provisions within the scope of OHS laws. These changes are expected to have a minimal impact on volunteering activities, as stated by Tom Phillips, Safe Work Australia Chair:

> This isn't new – this was the case even in the old state schemes and it makes sense. In three states and territories, Queensland, the Northern Territory and the ACT, occupational health and safety legislation (OHS) already specifically applied to volunteers – this hasn't changed. In all the other jurisdictions, the protections afforded by OHS legislation also applied to volunteers at workplaces. (Phillips 2012, p. 1)

On regulations, these are used to provide further detail on the duties imposed within the Acts. In relation to safety outcomes, therefore, it is less likely that the regulations will have a more significant impact than the changes to the laws. Instead, the impacts from changes to the regulations are likely to centre around compliance costs in the sense that the regulations will directly impact on the costs of complying with the duties set out in the model Act.

Access Economics, in the consultation RIS released with the draft model regulations, similarly commented that safety outcomes were most likely to be influenced by changes in the model Act:

> The harmonising of work health and safety regulations is a part of a coherent work health and safety framework. The model WHS Act was the first tier which describes the performance outcomes in a set of broad principles. Introducing model WHS Regulations and Codes of Practice is the second tier. Development of common compliance policies and enforcement activities across regulating bodies will be the third tier. Given that the development of the model WHS Regulations are mostly a consolidation of existing regulations, and largely based on already agreed national

> work health and safety standards, it is anticipated that the impact of this second tier may be less than that of the third for most jurisdictions. (2011, p. 80)

Access Economics also said:

> … the large number of regulations and tight timeframes set by COAG dictate that for the most part this is a harmonisation exercise rather than an optimisation exercise. This confers the benefit that, for any given regulation, businesses in the majority of states will not face considerable changes. (2011, p. 99)

The model regulations and codes of practice include a number of changes to the regulations used by individual jurisdictions. These were identified in the consultation RIS prepared by Access Economics (2011) and the later decision RIS released by Safe Work Australia (2011) and include changes to the:

- requirements to use 'residual current devices' as part of the safety requirements for electrical work (excludes electricity supply, generation, transmission or distribution);
- registration of plant;
- notification process for construction excavation;
- registration of Major Hazard Facilities;
- asbestos assessor licensing; and
- asbestos removalists licensing (current licence holders will have their licences grandfathered to the new scheme).

Because of differing starting points, the changes introduced by the model regulations are not the same for each jurisdiction. For jurisdictions that currently regulate mine safety through general OHS regulation (that is, all except New South Wales, Queensland and Western Australia), there will be some changes to the OHS regulations that govern mining activities.[6]

Reflecting the variation in current practice between jurisdictions, the changes to the Acts and regulations to achieve harmonisation will not affect jurisdictions uniformly. In some aspects, the model regulations represent no change from the status quo for individual jurisdictions, while for others they represent modest changes. As put by Safe Work Australia:

6 Queensland, Western Australia and New South Wales all have separate mining OHS laws. In New South Wales, however, unlike in Queensland and Western Australia, the separate mining OHS laws are subordinate to the generic OHS legislation. In the event of any inconsistencies, the provisions in the generic OHS legislation prevail. The *National Partnership Agreement to Deliver a Seamless National Economy* also includes reforms to mine safety.

> While each jurisdiction's regulation will change, a majority of jurisdictional regulations differ only slightly in detail and content from the model WHS Regulations. (sub. DR-R23, p. 7)

8.2 Who will be affected by the reforms?

OHS laws affect most businesses and workers in the economy with the exception of those whose OHS requirements are governed by industry-specific OHS Acts — such as mining in Queensland and Western Australia. Further, as the effects of workplace injury and illness are borne by individuals and their families, OHS regulation has the potential to also indirectly influence society more generally.

The most recent estimate by Safe Work Australia (2012) found the total economic cost of work-related injury and illness for the 2008-09 financial year to be \$60.6 billion, representing 4.8 per cent of GDP. Injuries accounted for about half of this cost — \$30.7 billion or 51 per cent.

Safe work Australia found that workers bear much of the cost of workplace injury and illness. For 2008-09, it estimated that:

- five per cent (\$3.2 billion) of the total cost was borne by employers through lost production, employer funded medical expenses and legal costs;
- 74 per cent (\$44.9 billion) was borne by workers and their families through loss of income (net of compensation, welfare and tax), medical costs, legal costs and carer costs (net of government payments); and
- 21 per cent (\$12.7 billion) was borne by the community through welfare and other government payments, public medical expenses, legal and government administration costs and deadweight losses from tax collection.

Businesses affected

The costs associated with differing OHS regulatory regimes are generally borne by businesses which have a presence in multiple jurisdictions. In 2009, 1.7 per cent of all businesses were classified as multi-state firms — that is, those which had employees based in more than one State or Territory (see table 1.1).

Multi-state businesses are generally larger than single-state firms in terms of employment size, suggesting that while they only represent a small proportion of total businesses they account for a much larger proportion of economic activity (employment and value added). Although dated, in 1998, employees of multi-state businesses, then representing 0.9 per cent of all businesses, accounted for 28 per cent of all employees (PC 2010b). This suggests that given the proportion of multi-state businesses has increased, the proportion of workers employed by such businesses would have also increased.

Small and medium enterprises that operate solely within a single jurisdiction may still be affected by differences in OHS regulations directly through purchasing or selling goods and services from interstate, or indirectly through competing with businesses located in other jurisdictions which may face higher or lower compliance burdens associated with OHS regulation.

The Commission's earlier benchmarking study of OHS regulation identified a number of areas where small and medium enterprises reported that differences in regulations had an impact on their business. Only a small proportion of all businesses surveyed suggested that inter-jurisdiction differences had any impact on their business — 9 per cent. Of these, 28 per cent suggested differences had a positive impact, with 72 per cent suggesting the impact was negative. Respondents provided further details on the incidence of various impacts (table 8.1).

Table 8.1 **Ways in which differences in jurisdictions' OHS laws impact upon businesses, 12 months to May 2009**

Impact	*Number*	*Per cent*[a]
Makes our costs higher than businesses in other States and Territories	55	35
Rules not set for each state	24	15
Makes it harder to compete with businesses undertaking similar activities interstate	19	12
Time consuming	13	8
Results in cheaper prices for products and services from other States and Territories	12	7
Financial impact	10	6
Training	7	5
Makes it a safer place to work	7	5
Hard work to keep up to standard/hard to implement changes	7	5
Need to keep up to date	4	3
Transport requirements	4	3
Transferring information between States/companies	3	2
Increased paperwork/admin	3	2
Additional policies in place	2	1
Increase in red tape	2	1
Creates a more effective/productive environment	2	1
We already do everything that is required/work to the highest standard	2	1
It affects pricing	1	1

[a] Sum exceeds 100 as respondents had multiple answers. Expressed as a percentage of total responses.

Source: PC (2010b).

Firms commonly reported that differences made costs higher for their business compared to those in other jurisdictions — claimed by 55 businesses. This claim, however, was made by businesses in all jurisdictions suggesting businesses had a 'grass is greener' view of OHS regulation in other jurisdictions and thus did not point to evidence of any one jurisdiction being lower cost than another.

Reflecting the small proportion of these businesses operating in more than one jurisdiction, only 5 per cent (or 97 out of 1802 surveyed) reported that they had incurred any additional costs associated with dealing with differences in OHS regulations in other States.

8.3 Understanding the direct impacts of the reforms

The direct impacts of the reforms to develop a model OHS regulatory regime on businesses, workers, governments and society more generally can be separated into four components, made up of the effects of:

- harmonisation of common regulatory elements on business costs — ongoing changes in red tape for multi- and single-state firms which come at a one-off learning/transition cost for all firms;
- changes to regulatory provisions — ongoing changes in the manner in which regulatory outcomes are achieved will have an impact on business compliance costs and safety outcomes;
- altered governance arrangements on government administration costs — ongoing possible future cost savings from having a centralised policy development organisation (Safe Work Australia); however, establishing reforms takes administrative effort and therefore comes at a cost; and
- removing impediments to the efficient operation of markets and location or organisational change — over time, reduced red tape costs of operating in multiple jurisdictions may induce a greater number of firms to operate in more than one jurisdiction.

Harmonisation of common regulatory elements

The primary focus of the reforms is to develop a harmonised OHS regulatory system in Australia. This will remove differences that currently exist between the OHS regulatory systems of various jurisdictions.

The differences between regulatory requirements for firms under the existing Comcare scheme (box 8.2) run by the Australian Government compared to other multi-state firms provides an indication of the likely effects of harmonisation.

Box 8.2 **The Comcare scheme**

Comcare is the regulator for the Australian Government's OHS, rehabilitation and workers' compensation arrangements. These arrangements, known as the Comcare scheme, cover all Australian Government public sector agencies along with some eligible corporations which have been granted a self-insurance licence (the latter arose out of recommendations of a previous Commission report into workers' compensation and OHS arrangements — PC 2004a). From March 2007, eligible corporations also came under the jurisdiction of the Australian Government's *Occupational Health and Safety Act 1991* and thus were removed from state-based OHS regulation.

An 'eligible corporation' for the Comcare scheme, under section 100 of the *Safety, Rehabilitation and Compensation Act 1988*, is a corporation that:

- is, but is about to cease to be, an Australian Government authority; or
- was previously an Australian Government authority; or
- is carrying on business in competition with an Australian Government authority or with another corporation that was previously an Australian Government authority.

National companies such as Optus (the first non-Australian Government employer in the scheme), Linfox and John Holland are among the 29 companies covered by the Comcare scheme.

Entry of further eligible corporations to the scheme halted in December 2007 when, as a result of a change in policy, a moratorium on granting further self-insurance licences under the Comcare scheme was put in place. Along with the moratorium, the scheme was reviewed in order to examine whether it provided workers with adequate workplace safety and compensation arrangements. The review was to have been completed by the end of July 2008, but the report was not released until September 2009. The review found while the scheme's compensation and OHS arrangements were comparable with other schemes in the States and Territories, shortcomings existed in the enforcement of OHS matters and some of the compensation arrangements. In response, the government implemented a number of changes to the workers' compensation arrangements within the scheme, such as a time limit on claims processing, compensation coverage for workers having on-site breaks and changes to benefits. Comcare was also directed to strengthen its enforcement of OHS and prepare additional guidance material.

At that time, the Australian Government decided to maintain the moratorium until after 2011 when it is expected uniform OHS laws will have been implemented in all jurisdictions. Subsequently, the Australian Government announced its intention to transfer OHS coverage of self-insurers to the States and Territories after uniform OHS laws have been implemented.

Sources: Gillard (2009); WRMC (2009); DEEWR (2009); PC (2010b).

While direct cost comparisons were not available, the Commission used a number of indicators in its previous benchmarking report to highlight the potential for compliance-cost differences between those firms regulated by Comcare (and by proxy a harmonised OHS system) and those that have to deal with individual State and Territory regimes (PC 2010b). These comparisons were for the extreme example of differences in the requirements of the Comcare regime and the cumulative total of all States and Territories in:

- the number of regulators that businesses need to interact with;
- the number of licences/certificates required for staff that operate/conduct:
  - high risk work (as defined in the national standard — ASCC 2006) activities,
  - load-shifting equipment,
  - other high risk work activities set out in regulation,
  - work with hazardous materials,
  - formwork and explosive-powered tools, and
  - other plant or equipment or undertake tasks that require a licence, certificate or permit;
- the number of compliance reporting processes that need to be established; and
- the number of different employee-based OHS consultative requirements (such as OHS committees, representatives or officers).

The comparisons show the differences between a business that operates nationally and is regulated by Comcare, and a national business that is regulated separately in each State and Territory. For example, businesses covered by the Comcare scheme had to be aware of 25 codes of practice compared to 276 for a business that operates in all jurisdictions (table 8.2). In other areas, the contrast is not as large. Licences for high risk work, for example, do not include any overlap due to the existence of a national standard (ASCC 2006) and mutual recognition among all jurisdictions.

Having a number of different reporting requirements within each State and Territory was also suggested to impose additional costs on large businesses. The Commission's study made reference to a leading Australian retailer operating under all State and Territory OHS regimes reporting that the cost of developing and implementing an incident reporting system, taking into account the differences in each State and Territory, was $50 000 per year.

Despite the potential cost savings for multi-state firms, all businesses will be required to familiarise themselves with the new arrangements as they are introduced. This will create some transition costs as firms become aware of the changes and train staff.

Table 8.2 **Selected comparisons of regulatory compliance between Comcare and State and Territory regimes, 2008-09**

Indicator	*Under Comcare*	*Under all State and Territory jurisdictions*
Codes of practice	25	276
Regulators	1	8
Licensing		
High risk work licences/certificates	29	29
Load-shifting licences/certificates	0	9
Other high risk work licences/certificates	0	4
Hazardous materials licences/certificates	0	9
Formwork and explosive-powered tools	0	2
Other licences/certificates/permits	1	37
Compliance reporting processes required	1	8
Regulated employee based OHS consultative committees	1	7

Source: PC (2010b).

Changes to OHS laws and regulations

The changes made to OHS laws and regulations due to the reforms are intended to have an impact on the safety outcomes achieved. Given the structure, it is the changes in the OHS Act compared to regulations that are likely to have the greatest impact on safety outcomes.

The changes, however, do not fundamentally change the way OHS regulation seeks to achieve safety outcomes. Instead, they revolve around improving the clarity of provisions, increasing the number of enforcement tools available to regulators and providing a more consistent approach across jurisdictions to onus of proof and union rights to entry.

Of the changes set out in box 8.1 (above), the most significant changes identified in the RIS supporting the development of the model OHS laws are the:

- recasting of the primary duty of care to a broader set of work relationships;
- qualifying of all duties by 'reasonably practicable';
- removal of the reverse onus of proof in New South Wales and Queensland;
- introduction of criminal penalties and increases in maximum penalties;
- allowance for union rights to entry in instances of suspected OHS breaches; and
- introduction of enforceable undertakings (Access Economics 2010).

Such changes could increase workplace health and safety through reducing the complexity of becoming familiar with OHS laws, thereby increasing compliance. Other measures are intended to encourage businesses to undertake additional preventative activities which also reduce the number and/or severity of workplace accidents. Improved health and safety outcomes achieved in practice would then lead to benefits for businesses (such as increased worker productivity, reduced worker replacement costs and reduced workers' compensation costs), workers (increased participation, reduced medical costs among others) and society more generally (though reduced public expenses on health, welfare and legal systems).

The changes to OHS laws will also have an impact on compliance costs. New requirements mean that businesses need to spend more time and effort to ensure compliance. For example, provisions for union rights to entry effectively mean that businesses need to deal with two inspection regimes and greater accountability of company directors will require businesses to document more thoroughly steps taken to ensure the health and safety of their workers.

Government administration costs

The reforms will shift the majority of OHS policy review and development to Safe Work Australia. This has the potential to reduce the overall cost to governments of delivering OHS regulatory services as instead of having nine jurisdictions doing this work, it will be done by one.

Balanced against this development, it should be noted that each state jurisdiction will maintain its own OHS regulator. Jurisdictions will also have the scope to give effect to additional provisions provided these do not materially affect the operation of the model legislation. Given this, it is likely that while there will be reduced regulatory activity by individual jurisdictions, some will remain, limiting the overall cost savings available. Depending on the actual organisational changes across jurisdictions, the new arrangements may even add to government costs if the additional regulatory effort by the Australian Government is not offset by reduced effort across the States and Territories.

Safe Work Australia pointed out that the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* provided some protections against changes that may serve to erode the integrity of the model laws and flow over to affect government costs. In particular, it pointed out that the agreement states:

> 5.5 Maintenance of Nationally Uniform OHS Legislation

> 5.5.1 The Parties commit to ensure that their laws and other instruments giving effect to the agreed model OHS legislation will remain nationally uniform over time. (Safe Work Australia, pers. comm., 22 April 2012)

While recognising these provisions, the Commission also recognises that the agreement is voluntary and does not necessarily bind successive governments. It also notes that regulatory and associated administration changes may flow over to affect the costs of government (and business).

Removing impediments to efficient market operation

Harmonised business regulations have the potential to reduce the costs to firms looking at expanding their activities from their home State into other jurisdictions. Where regulatory systems differ significantly, the costs of becoming aware and complying with multiple regimes can make it unprofitable for firms to operate across borders. This can then decrease the number of businesses operating in multiple jurisdictions. In this sense, differing regulatory regimes effectively act as State-based barriers to trade and investment, raising the cost of supplying goods and services in multiple jurisdictions.

Reductions in border costs, therefore, can reduce the impediments to firms operating in multiple jurisdictions. If the number of firms operating in multiple jurisdictions increased, there is the potential for competition to increase in some markets. Further, it may also allow firms to take advantage of economies of scale as they expand their activities. Both these impacts can place downward pressure on prices, either through lower production costs or through greater competition leading to innovation and subsequent productivity improvements (Soames, Brunker and Talgaswatta 2011).

In the case of OHS laws, any such impacts will depend on whether costs created by differing OHS systems for firms operating interstate are significant and to what extent the reforms reduce these costs.

8.4 What are the direct benefits of the reforms?

The OHS reforms were scheduled to begin in January 2012. However, to date only five jurisdictions — the Australian Government, New South Wales, Queensland, the Australian Capital Territory and the Northern Territory — have implemented the model laws. The resulting mix of laws suggests that the gains from this reform will not be realised for some time and, assuming model laws are implemented in the remaining four jurisdictions, will be prospective in nature. However, it should be noted that significant risks remain to the full implementation of these reforms (as outlined earlier). Given the prospective (and possibly potential) nature of the benefits of the OHS reforms, assessment of the impacts relies on ex ante estimates.

Indicative information to guide estimates of prospective benefits (and costs — see next section) is available from studies completed as part of the RIS process. These include the RIS prepared for the model OHS laws, and the RIS prepared for the model OHS regulations and take into account the position of the Western Australian Government. Other research on the costs of differing OHS regimes also exists — such as that done by the Commission in its benchmarking report of 2010.

Together, these three reports are the primary sources of evidence used to estimate the impacts in this study. It should be noted, however, that these studies have limitations for the purpose of this study, including:

- low survey response rates — while Access Economics (2010) surveyed businesses on the likely costs and benefits from key changes in OHS laws, the response rate to the survey was low with less than 30 respondents. Access Economics reported that such a low response rate casts doubt over the usefulness of the estimates, meaning they did not have enough confidence to suggest the quantitative analysis replace the qualitative assessment for making the decision to implement, or otherwise, the reforms.
  - Access Economics conducted a second survey for the decision RIS for OHS regulations (Safe Work Australia 2011). This survey had a higher response rate. However, despite some improvements, estimates remained *ex ante* and are based on perceived changes.
- data obtained from questions designed for a different purpose — the Commission's OHS benchmarking report (PC 2010b) examined the differences in OHS regulation across jurisdictions and identified unnecessary burdens placed on business. The Commission collected some compliance cost information as part of this study, but it did not focus on cost savings from harmonisation. Further, as the survey did not capture large businesses, very little information was collected for multi-state firms, making inferences difficult.

Despite this, in the absence of other data, these sources represent the best available information on which to make estimates of the prospective impacts the reforms.

It should be noted, however, that additional information on the impacts of OHS reforms will become available over the next few years. The OHS reforms will be subject to ongoing ex post analysis by Safe Work Australia:

> The evaluation plan aims to answer four over-arching questions that align largely with the objectives of the IGA and the Model WHS Act:

f) Has model legislation resulted in greater uniformity and consistency in regulatory and operational approaches to work health and safety across Australia?

g) In what ways has model legislation impacted on regulatory burden for businesses of different sizes and operating in one, or more than one, jurisdiction?

h) In what areas has model legislation created efficiencies for Commonwealth, state and territory governments in provision of regulatory and support services, and how?

i) What changes have occurred in the health and safety performance of Australian workplaces since the introduction of the model legislation, and to what can these changes be attributed? (sub. R1, p. 4)

This analysis should shed more light on the nature and magnitude of the impacts of OHS reform as implemented.

Estimated benefits related to harmonised OHS laws and regulation

As discussed above, the major change resulting from the reforms will be the establishment of harmonised OHS laws and regulations. This will have differing ongoing impacts on multi- and single-state firms. One common element for both, however, will be the one-off transition cost in shifting to the new system.

Drawing on information presented in the two decision RISs completed to support the development of model OHS laws and regulations (Access Economics 2010 and Safe Work Australia 2011 respectively), the following estimates of ongoing changes in 'red tape' can be made:

- ongoing red tape cost savings for multi-state firms of between \$25 to \$33 per worker (Access Economics 2011, pp. 57 and 105) as a result of legislative changes; and
- no additional ongoing red tape costs savings for single state firms as a result of the legislative reforms.

As regulations and codes of practice provide additional detail on how businesses should undertake their compliance activities to discharge their duties under the Act, harmonisation in this area is likely to have a greater impact on reducing red tape costs than that seen for the harmonised Act itself. Survey information suggests that red tape and other compliance cost savings could amount to around an additional \$32 per worker for multi-state firms.[7]

[7] Comprised of an estimated \$22 per worker compliance cost savings (Safe Work Australia 2011, p. 258) plus an additional 'harmonisation saving' of \$10 per worker (Safe Work Australia 2011, p. 254).

Based on the share of workers employed by multi- and single-state firms,[8] and combining the estimated impacts from harmonised laws and regulations yields a cost saving to businesses of approximately between $195 and $220 million per year (table 8.3).

Table 8.3 Estimated prospective cost savings from uniform OHS laws and regulations

2010-11 dollars (unless otherwise stated)

	Ongoing	*Workers*
	$	No.
Single-state	0/worker	7 971 000
Multi-state	57-65/worker	3 416 000
Total (~$m)	**195-220**	**11 387 000**

Sources: Access Economics (2010); Safe Work Australia (2011); ABS (*Labour Force Australia*, 2011, Cat. no. 6202.0); Commission estimates.

Estimated benefits from changes in OHS regulation

The changes that will occur in the move from existing to model laws and regulations as part of the OHS reforms will change OHS outcomes. These will impact both multi- and single-state firms.

Ongoing impacts on businesses

Access Economics (2010) and Safe Work Australia (2011) sought information from businesses on the relevant net ongoing benefits (for transition costs see below) from the changes to the OHS laws arising from the reforms.

For multi-state firms, it was reported that the new regime should result in an ongoing 1.4 per cent improvement in OHS outcomes which, when combined with other ongoing costs savings (such as licensing and awareness savings) could result in a net benefit of around $89 per worker (Access Economics 2011, p. 105)[9] with an

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8 In 1998, 28 per cent of workers were employed by multi-state firms which accounted for 0.9 per cent of all businesses. In 2009, multi-state firms accounted for 1.7 per cent of all businesses; however, no data on employment shares is available. To account for the likely greater share of employees in multi-state businesses, it has been conservatively assumed that multi-state firms account for 30 per cent of all employees in Australia in 2010-11. Employment numbers for 2010-11 taken from ABS (*Labour Force Australia*, 2011, Cat. no. 6202.0).

9 Multi-state firms were also asked what their willingness to pay would be to operate under the uniform OHS arrangements and reported an average value of $75 per worker.

additional $12 per worker in net benefits arising from the changes to the regulations[10].

In arriving at these net benefits, respondent firms also reported a number of additional costs which are taken into account in arriving at the net own-business benefits. In particular:

- union rights to entry would both involve additional compliance costs and result in a net fall in OHS outcomes; and
- there would be some additional costs related to the removal of the 'control' and the lack of an ability to contract out some of the duties of the person conducting a business or undertaking.[11]

For single-state firms, the new regime was reported to lead to an ongoing net cost of $41 per worker due primarily to union rights to entry and higher maximum penalties for breaches (Access Economics 2011, p. 102). However, this is partly offset by an ongoing net gain of around $7 per worker (Safe Work Australia 2011, p. 258) as a result of the changes to the regulations.

However, in presenting the results of the impacts of the changes to OHS laws, Access Economics (2010) noted a number of qualifications.

The first qualification was in respect to union rights of entry leading to poorer OHS outcomes. As noted in PC (2010b), in a number of studies, union rights to entry have been associated with improvements in OHS outcomes. Further, as suggested by Access Economics (2010), even if they were not, it is questionable that if the provisions were abused for industrial reasons (the main reason cited for additional costs) that such actions would worsen a firm's OHS performance. Industrial disputes do, however, increase firms' costs.

Master Builders Australia cautioned that a recent report by Cardiff University researchers had questioned some of the findings of studies into the impact of union rights of entry and noted that replicating studies into union rights to entry has been difficult (sub. DR-R25, p. 2). Master Builders Australia also highlighted concerns raised at the Australian Royal Commission into the Building and Construction Industry:

> The evidence provided to the Royal Commission clearly demonstrates that in addition to the short term direction of resources away from safety to deal with disputed entry,

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[10] The additional safety benefit attributed to harmonisation of $16 per worker per year (Safe Work Australia 2011, p. 258) less the additional compliance costs imposed by the regulatory changes of $4 per worker per year (Safe Work Australia 2011, p. 258).

[11] The combined additional business costs of the model laws were estimated to be around $41 per worker (Access Economics 2011, p. 102).

misuse of OHS right of entry for other purposes has the potential to have a longer term detrimental impact on safety. (sub. DR-R25, p. 2)

The second qualification related to higher maximum penalties which were reported to cause OHS outcomes for single-state firms to deteriorate. Firms reported that the additional compliance measure backed by financial penalties — enforceable undertakings — would be expected to improve outcomes despite the compliance costs involved. This suggests that firms respond to financial incentives when making compliance decisions, and thus, higher maximum penalties are unlikely to worsen OHS outcomes.

If union rights to entry were assumed to provide benefits in terms of OHS outcomes to cover the additional compliance costs, and higher penalties also yield benefits analogous to those from enforceable undertakings, total benefits from the harmonised laws increase. For multi-state firms, benefits are $41 per worker higher. For single state firms, the net impact of the change in laws is neutral.

Based on the share of workers employed by multi- and single-state firms, the impacts from the changes within the harmonised OHS laws and regulations range between a net cost of approximately $70 million per year and a net benefit of approximately $400 million per year (table 8.4). The low estimates include the additional costs from deteriorated OHS outcomes from union rights to entry and higher maximum penalties. The high estimates do not include these effects.

Table 8.4 **Estimated prospective cost savings for business from changes to the OHS regulatory regime**

2010-11 dollars (unless otherwise stated)

	Low	*High*	*Workers*
	$	$	No
Single-state	(35)/worker	7/worker	7 971 000
Multi-state	60/worker	101/worker	3 416 000
Total (~$m)	**(70)**	**400**	**11 387 000**

Sources: Access Economics (2010); ABS (*Labour Force Australia*, 2011, Cat. no. 6202.0); Commission estimates.

Impacts on workers and society

Changes to OHS laws will also have broader impacts to the extent that they lower costs of workplace injury and illness to workers and society. Overall, these costs were estimated to have amounted to $55.3 billion in 2005-06 (ASCC 2009).

Of this, costs to workers from workplace injury and illness were estimated to be around $28.2 billion (ASCC 2009). The largest component of this was due to reduced participation in the workforce and the resultant loss in income (compensation, welfare and tax payments were netted out). Other costs included medical and legal costs, plus carer costs.

The social costs were estimated to be $27.1 billion. Much of this related to welfare payments and compensation payments, as well as forgone income tax revenues.

As noted above, Access Economics (2010) estimated that health and safety outcomes would be improved by 1.4 per cent for multi-state firms as a result of the reforms to OHS Acts. No improvement was estimated to be achieved for single-state firms. Following the RIS for the model laws (Access Economics 2010), if this improvement were achieved by multi-state firms, this implies a 0.42 per cent improvement in workplace health and safety outcomes for the workforce.[12]

If the estimated improvement in workplace health and safety outcomes has a proportional effect on reducing the costs from workplace injury and illness, then benefits of around $233 million per year (0.42 per cent of $55.3 billion) could be available. An additional benefit of around $200 million annually was estimated to be available from changes to the regulations (Safe Work Australia 2011, p. 259). Overall, the combined effect could amount to a total improvement in health and safety outcomes for the workforce from the OHS reforms of close to 0.78 per cent ($433 million divided by $55.3 billion).[13]

The $433 million benefit per year can be re-expressed in terms of direct effects on participation and altered household expenditure to capture the major components identified in ASCC (2009). Changes in participation for this study were derived based on the following information:

- In 2009-10, a total of 20 200 individuals did not return to work after they received a workplace injury in the past 12 months (ABS 2010).[14]
- In September 2010, there were 24 700 persons not in the workforce due to family reasons relating to the ill health of another, with 102 700 individuals not

[12] That is, 30 per cent of 1.4 per cent. The 30 per cent is derived from historical information. In 1998, 28 per cent of workers were employed by multi-state firms which accounted for 0.9 per cent of all businesses. In 2009, multi-state firms accounted for 1.7 per cent of all businesses; however, no data on employment shares is available. To account for the likely greater share of employees in multi-state businesses, it has been assumed that multi-state firms account for 30 per cent of all employees in Australia in 2010-11. Employment numbers for 2010-11 are taken from ABS (*Labour Force Australia*, 2011, Cat. no. 6202.0).

[13] Applying this methodology to recent work by Safe Work Australia (2012) suggests a similar per cent improvement in health and safety outcomes (0.75 per cent). However, the Safe Work Australia estimates do suggest relatively higher costs attributed to workers ($44.9 billion) and relatively lower social costs ($12.7 billion).

[14] ABS, *(Work-Related Injuries 2009-10*, Cat. no. 6324.0).

in the workforce due to their own short- or long-term illness, injury or disability (ABS 2011)[15] — this equates to 0.24 carers per person outside the workforce due to their own short- or long-term illness, injury or disability.

- Improvements in OHS outcomes from the reforms will have a proportional impact on reducing those outside the workforce due to work-related injury and illness — that is, a 0.78 per cent reduction.

Using the information above and applying the estimated improvement in OHS outcomes yields an increase in those in the workforce of around 200 individuals per year. Based on estimated welfare payment costs identified in ASCC (2009) of $7229 million, the increase in participation could be expected to be accompanied by a fall in welfare payments made by governments of around $55 million per year.

The ASCC (2009) estimated that the medical costs from workplace injury and disease were in the order of $3177 million per year for workers and society. Once again, if a proportional impact on these costs from changes in OHS outcomes were achieved, spending on health due to workplace injury and illness could be reduced by around $25 million — $2 million from workers (households) and $23 million from society (government).

Estimated benefits from removing impediments to efficient market operation

Safe Work Australia (2011, p. 256) conjectured that as a result of the reforms, businesses' productivity, in terms of technical and organisational change, could improve, yielding benefits in the order of $1.5 billion to $2 billion per year in addition to the estimated impacts discussed above. However, the link between the reforms and evidence linking the technical and organisational changes required to yield productivity improvements was not set out in the report. Given the magnitude and lack of detail in the Safe Work Australia (2011) estimates, and the uncertainties involved, the Commission has not quantified this impact.

8.5 Indicative costs of achieving reform

As noted in the previous section, questions around the accuracy of available information means that the Commission has developed some indicative 'exploratory' estimates of the prospective costs of OHS reform. The costs of reform relate to:

[15] ABS, *(Persons Not in the Labour Force, Australia, Sep 2010*, Cat. no. 6220.0).

- transition costs imposed on all businesses; and
- additional government administration costs.

Transition costs imposed on employers

Drawing on information presented in the two decision RISs completed to support the development of model OHS laws and regulations (Access Economics 2010 and Safe Work Australia 2011, respectively), estimates of one-off transition costs can be made. These studies suggested the one-off transition costs in educating workers of the new OHS regulations could be around $75 per worker.

With around 11.3 million people employed in Australia in 2010, this equates to close to a $850 million cost on employers in the first year of the reform's operation.

Estimated impacts of altered governance arrangements on government administration costs

The RIS released by Safe Work Australia (2011) for the harmonised regulations and codes of practice detailed some information on the additional costs that are likely to be faced by regulators due to the new arrangements. Although most jurisdictions did not quantify the effects on their costs of the new arrangements, from responses from those that did, it was estimated that a one-off adjustment cost of $24 million would be borne by all regulators.

In terms of ongoing costs, only the Australian Capital Territory reported information of possible cost increases. Using this estimate, Safe Work Australia (2011) estimated ongoing additional costs for all regulators would be around $47 million per year across all jurisdictions (about $4 per worker nationally).

8.6 Summary of effects

The impacts on businesses will be in the form of altered costs. Under the 'lower bound' estimates, business compliance costs could fall overall by around $120 million per year. In contrast, under the 'higher bound' estimates, business costs could fall by around $620 million per year (based on estimates in tables 8.3 and 8.4). In both scenarios, the one off transition cost in the first year (2012) is estimated to be around $850 million.

Given the uncertainty in outcomes from harmonised OHS laws, the mid-point between the two estimated impacts on business costs has been adopted as the expected direct impact from these reforms. The Commission estimates a net cost saving of around $370 million per year (table 8.5). As discussed, the estimated net cost saving is derived from information proved in the two decision RISs. It reflects a balance between the benefits and compliance costs of individual changes, as well as the balance of effects between single and multi-state businesses.

Additionally, the reforms could add around 200 individuals to the workforce from those otherwise not participating in the workforce annually due to workplace injuries. Associated with this increase in workforce participation, government expenditures on welfare payments (most likely from the disability support pension) could be reduced by approximately $55 million annually and annual expenditures (household and government) on medical services could be reduced by around $25 million (from 2012 onwards). The reforms will require additional activities by all regulators which are estimated to be around $50 million per year.

Table 8.5 **Summary of estimated impacts from OHS reforms**
$ million (2010-11 dollars unless otherwise stated)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised & prospective*	*Potential*[a]	
Business compliance costs with harmonisation[b]					
Single-state	..	(110)	(110)	..	(600)
Multi-state	..	480	480	..	(250)
Total	..	370	370	..	(850)
Reduction in social security payments	..	55	55	..	..
Reduction in medical costs	..	25	25	..	..
Increased workforce participation	..	200 persons	200 persons	..	..
Government administration costs[c]	..	(50)	(50)	..	(25)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. [b] Reductions in business costs represent the midpoint of the lower and upper bound estimates, (rounded to the nearest 10 million dollars) (see tables 8.3 and 8.4 above). [c] Costs spread equally across 9 jurisdictions.

Source: Commission estimates.

In the Commission's assessment, the estimated ongoing impacts are assumed to begin in the first year of operation and continue thereafter. Both the transition and compliance cost savings for businesses are assumed to be concentrated in the value adding inputs of labour and fixed capital.

Robustness of estimates

As noted earlier, the Commission has had to rely on *ex ante* estimates made for the RISs that support the new laws, where concerns over the robustness of the estimates exist. These concerns relate in particular to the impact of the national laws, particularly on single-state firms and to some provisions of those laws.

In the final stages of the Commission's study, several reports on the impacts of the model laws were released — one for Victoria and another for South Australia. The report *Impact of the Proposed National Model Work Health and Safety Laws in Victoria* by PricewaterhouseCoopers Australia for the Victorian Government was released in April (Baillieu and Rich-Phillips 2012). This report focuses on:

- the ongoing costs to Victorian business of major differences between the current Victorian laws and the national harmonised laws;
- the transition costs to Victorian businesses as they 'understand the changes and modify their policies, practices and workplaces to comply with the Model WHS laws' (PricewaterhouseCoopers Australia 2012, p. 1); and
- an analysis of the safety benefits associated with the major differences.

The report did not examine possible cost savings for multi-state firms from uniform OHS laws and regulations. Nevertheless, it did note:

> … multi-state businesses are expected to be the biggest beneficiaries of national OHS harmonisation … in the case where all other jurisdictions implement the Model WHS laws and Victoria does not, many multi-state businesses indicated through interviews that they are likely to harmonise anyway. (PricewaterhouseCoopers Australia 2012, p. 10)

On the basis of the factors analysed, the report conjectured that the likely overall direct impact on Victorian businesses, in net terms, would be negative. This assessment was made against estimated compliance costs of: $587 million per year over the first five years and one off transition costs of $812 million (for employing businesses); and a view that the necessary reduction in workplace illness, injury and death claims to balance these outlays is unlikely to be achieved. The assessment also took account of a number of Victoria-specific considerations. In particular, the analysis suggested '…if businesses are already complying with a more general duty in the current Victorian laws, the greater specificity in the Model WHS laws is unlikely to translate to significant safety benefits' (PricewaterhouseCoopers Australia 2012, p. 5).

Another recently released supplementary RIS was also undertaken for the South Australia Government (Deloitte 2012). It follows the methodology adopted for the national decision RIS. It also recognised that there would be one-off implementation costs but suggested that after these costs are taken into account a net benefit would accrue to the South Australian economy of around $16 million per year over the next ten years. The supplementary RIS for South Australia suggested net benefits would accrue to both multi-state and single-state businesses.

The national decision RIS on which the Commission's discussion draft and final analysis is based, conjectures that the balance would be positive nationally. That is, after account is taken of the operating benefits to multi-state enterprises, a net benefit would accrue from harmonisation nationally. In this assessment, single-state firms are not assessed to directly benefit from the national legislation (table 8.3) while legislative changes are likely to impose a net cost on them (table 8.4).

At this stage, it is not certain what the final response from Victoria and South Australia will be. It has been suggested that:

> …This combination of variations [in implementation of harmonised laws across jurisdictions] means we may not … achieve the objectives and potential benefits of this reform. In fact I argue that they may lead the reform to do more harm than good. (McClintock 2012, p. 4)

However, given the scope for Victorian (and other) multi-state firms to opt into the national laws (which have been entered into law in five jurisdictions and the Commonwealth), the benefits of the reform should be generally available, provided sufficient momentum is maintained.

The Commission is therefore not in a position, at this stage, to discount the broad findings of the decision RIS concerning the overall direction of change and the availability of benefits. It nevertheless notes that to the extent that only Victorian (and other) multi-state firms opt into complying with national laws when they benefit, the aggregate scale of national benefits could be larger than modelled. On the other hand, if compliance costs are higher than modelled (particularly for smaller firms) without matching OHS or other benefits, the aggregate scale of national benefits could be lower.

More broadly, in completing its estimates, the Commission recognises that some questions remain about the likely impacts of model OHS laws, reflecting uncertainties around:

- the final outcome of legislated changes and supporting regulation, and the administration of the model framework;
- the timing of outstanding legislation and full implementation of the laws;
- the development of case law around the changed provisions;

- the incentive effects of provisions concerning authorised union right of entry and the impact these may have on workplace health and safety, costs and productivity;
- the behavioural responses of employers, employees and others to the changes more generally — 'will they ultimately find the changes as significant and costly, or as relatively minor adjustments that lead to cost effective improvements in workplace health and safety?' — and implications for transition and on-going costs; and
- the dynamic impacts of the model laws — 'will the new framework deter businesses from operating in some areas or encourage competition and technological change?' — and implications for productivity.

While recognising these uncertainties, the Commission's assessment is that the current estimates provide a meaningful initial indication of the prospective changes and associated transition costs of the OHS reforms, and what may be at stake in achieving a cost-effective transition to the new framework.

8.7 Opportunities for improvement

The Commission heard during consultations that the formation of the model OHS regulations was a missed opportunity for reform. While the development of the model Act, through the expert panel and subsequent consultation, represented an example of a 'good regulatory making process', the compressed timeframe left for the development of model regulations significantly limited reform potential in this area (for example, BusinessSA, sub. DR-G5).

Business groups in particular were of the view that due to the compressed timeframe, the development of model regulations and codes of practice was more of a 'consolidation' process, rather than an attempt to simplify and reduce the burdens placed on businesses. Further, some groups expressed concerns that the short time period has increased the transition costs faced by businesses. As put by the Chamber of Commerce and Industry Queensland:

> CCIQ also notes that Queensland businesses have not been afforded adequate opportunity to transition into the new WHS environment following commencement of the model laws in Queensland from 1 January 2012. This significantly increases the cost and burden for Queensland businesses required to understand the new laws and their compliance responsibilities, implement updated and changed procedures in the workplace and train staff. Longer implementation and transition timeframes are recommended as is greater support and clearer information required to assist businesses adapt to the new regime. (sub. DR-G4, p. 5)

Similar sentiments were also raised by the Housing Industry Association (HIA):

> From the outset, while the process for development of the model Act commenced in 2008 and concluded in 2011 with the passing of model legislation, much of the detail required to supplement the broad duties is contained within the model Regulations and draft codes of practice which were developed over a much shorter timeframe and with limited industry consultation. (sub. DR-G7, p. 3)

Avoiding the compressed finishing time, argued HIA, could have reduced transition costs for businesses:

> … ultimately rushed implementation has provided unnecessary duress to the transitional period for those states that have proceeded to introduce the changes, again placing upfront costs on business in the early stages of implementation that could have been avoided. (sub. DR-G7, p. 3)

In other areas, the reform process may have also created some unintended outcomes for larger multi-state businesses. As noted earlier (box 8.2), the Australian Government has stated at the Workplace Relations Ministers' Council (WRMC) its intention to transfer OHS coverage of self-insuring businesses under the Comcare scheme to the States and Territories after uniform OHS laws have been adopted:

> WRMC has previously agreed that the WHS coverage of Comcare self-insured licensees will transfer to state and territory jurisdictions after model laws have been implemented in all jurisdictions. Consultation has occurred with licensees, state and territory WHS regulators and unions regarding the proposed transfer. Ministers today agreed that the transfer date of all non-Commonwealth licensees to state and territory jurisdictions would be 1 January 2013. (WRMC 2011, p. 1)

As States and Territories will maintain OHS regulators, such a move is likely to impose additional costs on these businesses by increasing the number of interactions they have with regulators. Such cost increases may be significant if differences in the approaches of regulators as identified in the Commission's benchmarking report on OHS regulation (PC 2010b) remain. In this light, the intention to shift OHS coverage from Comcare to State and Territory regulators should be reviewed.

More broadly, the potential for unintended costs highlights the importance of the ex post review of the reforms. In this regard, COAG has agreed '… that the current occupational health and safety laws will be reviewed by the end of 2014' (COAG 2012, p. 9). The review needs to provide a thorough assessment of the economy-wide costs and benefits of the changes in the OHS regulatory environment and the implications of different approaches between jurisdictions on business costs and OHS outcomes.

The Commission also notes that there remain uncertainties concerning the full implementation of the reforms. If the reforms cannot be brought to finality, there is a substantial risk that substantial transition costs will be incurred without the ongoing benefits being realised.

9 Rail safety

Key points

- The current round of rail safety reforms is part of an ongoing process to establish a regulatory framework for Australia's transport system. The rail safety reforms are being implemented progressively through the introduction of:
  - a model rail safety law (the 'Model Law' completed in 2010); and
  - a National Law and National Rail Safety Regulator (scheduled to commence operations in 2013).
- State and Territory regulators will apply the National Law under service-level agreements.
- The reforms are aimed at harmonising safety regulations, reducing the risk of accidents and reducing the regulatory burden on rail operators.
- The reform could generate gross cost savings for rail operators of around $16 million per year (ongoing). Most benefits are likely to accrue in the early stages after implementation.
  - The reforms could also reduce personal hardship and loss of work associated with rail accidents. These benefits are likely to accrue gradually.
- Achieving the reforms will involve additional ongoing compliance costs of $4 million to business and one-off transition costs to business and government, amounting to around $15 million and $20 million, respectively.
- The completion of the reform depends on the successful introduction of the National Law and national regulator. Achieving the reform objectives will require the States and Territories to work with the National Rail Safety Regulator.
- Achievement of the reforms will require remaining jurisdictional differences to be resolved and confidence to be established in the effectiveness of the new system.
- Non-safety related inter-jurisdictional differences remain in rail regulation. There would be merit in considering further harmonisation and productivity improving reforms.

While rail is a relatively safe form of transport, accidents occur, causing damage to property, injury and death. Regulation is a key tool to reduce the frequency and severity of rail accidents. However, regulation also imposes costs on rail operators that are increased by jurisdictional differences associated with Australia's rail history (box 9.1). To provide the greatest community benefit, it is important that regulation is not only effective from a safety point of view, but also minimises the compliance costs on business.

This chapter discusses the details and objectives of rail safety reform and considers who and what will be affected. It also reports estimates of some of the benefits and costs of the reform, and canvasses the scope for further reform in this field.

The Commission's assessment of the likely impacts of the reform has required judgments to be made about the effects of reforms that have just been implemented, or are in the process of implementation. Judgements have also been required to assess the timescale over which benefits of the reforms may accrue. The estimates presented in this chapter are derived from the regulatory impact statements proceeding the implementation of the reforms and feedback from consultations undertaken in the course of this study. The estimates are exploratory and should be regarded as broadly indicative of the likely effects of the reform.

Box 9.1 **Evolution of rail safety regulation in Australia**

Railways in Australia evolved as separate entities in each State and Territory. The result was different rules, regulations and technical specifications in each jurisdiction. Most notably, rail track gauges varied, requiring interstate passengers to change trains at State borders. Rail operators also had to adhere to different rules and standards in each State. Examples include differences in safety standards, rules around the structural separation of track and rolling stock and the access regimes governing these arrangements.

Over time, efforts have been made to standardise the physical and regulatory restrictions. Since 1995, all interstate train lines have a standard gauge. The National Competition Policy and related reform process of the 1990s separated the above and below ground[1] components of the existing State run monopolies while providing access to private operators.

Separate rail safety regulations are themselves a by-product of the ongoing reform process. When the rail industry consisted of vertically integrated State run monopolies, safety matters were handled internally. As these State–run operations were broken up and access granted to other operators, there were concerns that safety standards would be eroded. Safety regulators were therefore introduced to guard against this possibility. Viewed in this context, the harmonisation of rail safety laws are a continuation of a process of moving towards a single national market for rail services.

[1] Above ground refers to rail rolling stock such as engines and carriages. Below ground refers to the track and other fixed infrastructure.

9.1 Reform objectives and changes

The objective of national rail safety regulatory reforms is to harmonise rail safety legislation across Australia and in doing so, reduce the burden on multi-state rail operators of complying with a number of different safety regimes. Reform in this area has occurred in two stages.

The first stage was the enactment of model rail safety law (the Model Law). All the milestones associated with this reform have been completed and benefits are being realised (CRC 2011).

The second stage is the development of the Rail Safety National Law and Regulations (National Law), a new National Rail Safety Regulator (the National Regulator) that will implement the National Law, and a national rail safety investigation regime. Full implementation of these reforms by December 2012 is specified as the sole milestone for 2012-13 (CRC 2012). The Reform Council also reported that COAG signed the intergovernmental agreement on Rail Safety Regulation and Investigation on 19 August 2011, which affirms COAG's commitment to have a national regulator in place by January 2013.

Adopting the Model Law — the first stage of reform

The adoption of the Model Law was aimed at harmonising existing State and Territory rules, as well as improving existing laws by adopting best practice approaches from around Australia. These reforms originated in 2003 as part of a broader harmonisation process within Australia's rail system. At that time, COAG requested that the National Transport Commission (NTC) develop:

> A framework to improve and strengthen the co-regulatory system for rail safety including the application of mutual recognition. (COAG 2003, p 5)

The NTC developed a model bill and this was accepted by State and Territory ministers in 2006.[2] The bill was passed into law in New South Wales, Victoria and South Australia in 2008, with the other jurisdictions passing their bills in 2010.

While the Model Law brought all jurisdictions toward a common risk based approach to rail safety management (based on the existing co-regulatory structure, box 9.2), rail safety continued to be overseen by seven different rail safety regulators.

2 This was subsequently amended to clarify a small number of issues in 2007.

Box 9.2 **The co-regulatory nature of rail safety**

Rail safety regulations in Australia are co-regulatory in nature, which means they operate through consultation and cooperation between the rail operator and the regulator. Under such arrangements, operators are responsible for determining the best way to manage safety within their business while still having an independent source provide advice and guidance, as well as determine whether a sufficient safety standard has been met. The arrangements facilitate a degree of flexibility:

> In practice, there are degrees of prescription. Rail safety law does not tend to specify requirements with a high degree of precision; rather, it prescribes parameters around the process in which an operator must develop a safety management system. In this way, while reducing the degree of flexibility for operators in determining how safety shall be managed, the co-regulatory process is predominantly maintained. (NTC 2011, p. 17)

The process of co-regulation involves the following key steps:

- the operator undertakes a risk assessment and develops a safety management system for managing that risk;
- the regulator reviews the safety management system and grants accreditation;
- the operator must monitor and manage its own safety system, against pre-determined benchmarks; and
- the regulator undertakes audits of the process to ensure that the system is working and the standards are being met.

In theory, this process allows the operators, who are the most informed parties about their work, to choose the optimal methods for managing risk, while still having an independent source determine that an appropriate standard of safety is being achieved.

The Seamless National Economy reforms do not alter this structure of rail safety regulation.

Source: Accreditation Authorities Group (2011).

Important aspects of the Model Law

The main regulatory changes in the Model Law were the:

- inclusion of general safety duties on all parties who can affect safety;
- rationalisation of the use of regulatory instruments;
- power to declare certain codes of practice to have deemed to comply status;
- expansion of the range of powers available to regulators;
- introduction of a hierarchy of enforcement and sanction options;
- strengthening of regulators’ powers of direction;

- introduction of explicit appeals mechanisms;
- introduction of explicit criteria for accreditation;
- limitation of the scope of accreditation that parties are required and able to hold;
- involvement of rail personnel in the development of safety management systems;
- development of interface co-ordination plans; and
- requirements for data publication (NTC 2009, p. 13).

Significant variations remain

Under current arrangements, rail operators and track infrastructure owners in Australia are regulated by seven State and Territory regulators (all with their own rail safety laws based on the Model Law). Rail safety legislation in all States and Territories is based on a co-regulatory system (see above).

The design of the model bill specified some areas that were to be completely consistent; however, it allowed the jurisdictions some flexibility in other areas. While the adoption of the Model Law is now complete, significant differences between legislation in each jurisdiction remain. The Australasian Railways Association identified four such examples:

> Victoria — legislation was passed even before the National Model Legislation was approved. A significant variation example is around the notion of including "loading and unloading" of rolling stock in the definition of rail safety work. This was not in the Model legislation and made a significant impact on the extent of safety duties for industry.
>
> Queensland — drug and alcohol management provisions were not included in the Queensland regulation, contrary to the Model Legislation.
>
> New South Wales — this state established a schedule in the Regulations that enshrined fixed shift limits and rest periods for train drivers, again contrary to the Model legislation with very significant impacts on rail operations.
>
> Fees — these varied across all jurisdictions. (sub. R6, pp. 1-2)

Differing interpretations

Even where the law is consistent across jurisdictions, there can be different interpretations of the law. Under a co-regulatory framework, decisions are made on a risk management basis which means decisions are made regarding the appropriate response to a potential risk. If jurisdictions make different assessments of risks, the safety practices can vary.[3] One example of this is the interpretation of driver-only operations, which are currently more difficult to get approved in some jurisdictions than in others.

Overcoming the remaining differences

On the overall success of model law reform, the NTC commented:

> … this arrangement has preserved some key limitations. These include variations in how states and territories have implemented the Model Law, as well as the need for rail transport operators to be separately accredited in each state or territory in which they operate. (NTC 2011, p. 8)

Rationalising the remaining differences in the application of the Model Law and achieving a consistent national approach is a key objective of the National Law.

Moving to a National Law Framework – the second stage of reform

The move to a single national law, regulator and investigation framework was agreed to by COAG in December 2009. The key features of this stage of reform are:

- the introduction of national rail safety law for the safety regulation of Australian rail operations;
- the establishment of an independent national rail safety regulator that administers the national rail safety law and maintains, monitors and enforces rail operators' application of, and compliance with, appropriate safety standards; and
- an expansion of the role of the Australian Transport Safety Bureau (ATSB) to cover rail safety investigations nationally (COAG 2011b, p. 5).

Under the Intergovernmental Agreement on Rail Safety Regulation and Investigation the National Regulator (located in South Australia) is scheduled to begin operating from January 2013. At this time, the Australian Transport Safety Bureau (ATSB) is also scheduled to commence its role as the national rail safety investigator (CRC 2010, p. 294). The extension of the ATSB's role nationally as the rail safety investigator is intended to provide independent safety investigations throughout Australia, and to remove potential conflicts of interest in conducting investigations.

[3] However, in practice it can be difficult to distinguish a case where States disagree on the best response to a given risk, from a situation with a different underlying risk.

The NTC was tasked by COAG with developing a national rail safety law, based on the existing Model Law. While the National Law proposes around 100 amendments to the Model Law, according to the Regulatory Impact Statement (RIS), the majority of these are technical changes and propose no change to policy (NTC 2011, p. 15). The more significant changes to the Model Law include:

- additional mandatory risk management principles of a safety management system;
- compliance with the National Standard for Health Assessment of Rail Safety Workers from being only ‘so far as is reasonably practicable’, to mandatory;
- introduction of mandatory elements of a drug and alcohol management program and a fatigue risk management program;
- prescribing performance standards for communication between train drivers and network control officers; and
- a requirement that rail infrastructure managers undertake consultation prior to amending rail network rules under their control (NTC 2011, p. 18).

There are also requirements to extend the scope for forming interface coordination agreements that govern the management of safety where rail interacts with other infrastructure, primarily level crossings (NTC 2011, p. 31).

The introduction of the National Law should remove almost all of the state-based regulations in the area of rail safety and replace them with national regulations. Under the national regime, operators will only have to apply for safety accreditation once and have the same rules and standards apply regardless of the jurisdiction of operation. However, the National Regulator is not yet operational and there are a number of risks during the transition period that need to be avoided to ensure the success of the reform.

Risks to national reform

The COAG Reform Council has noted that there is a considerable amount of work required to give effect to the national law (as specified in the intergovernmental agreement signed in August 2011) in the time allocated to do so. This suggests there is some risk that full implementation may not be achieved on the schedule set out (CRC 2011). This risk is exacerbated by the difficulties in resolving outstanding points of difference in legislative approaches to specific safety issues, such as, the appropriate regulatory guidelines to manage fatigue.

Additionally, as occurred under the Model Law, it is possible that jurisdictions will write exceptions into the National Law when they adopt it through their parliament.

This will potentially create differences between the rules applied in different States and Territories and lower the benefit that may be realised from a national system.

There are also risks to meaningful harmonisation under the National Law. While, there will be a National Regulator with responsibility for regulatory oversight across all of Australia, some jurisdictions[4] plan to retain their existing regulators and work with the national regulator through Service Level Agreements (SLA).

As noted by the Australian Logistic Council, this gives rise to the risk that jurisdictional regulators will:

> - develop their own cultures:
> - interpret the provisions of the national law in perhaps novel ways (and may also develop internal guidelines that will effectively become the law as those guidelines are utilised in practice by junior officers), particularly as it relates to the interpretation of chain of responsibility issues; and
> - develop their own enforcement priorities. (sub. R4, p. 1)

Under this approach, avoiding such undesirable outcomes will require careful construction of SLAs. As the Project Director responsible for establishing the National Regulator put it:

> The SLA will therefore be a critical document and will detail the roles, responsibilities and accountabilities of each party. (NRSRPO 2011, p. 2)

One claimed reason for opting for SLAs is that in some states the regulators also cover safety in other areas such as light rail, ferries and buses, and SLAs allow better coordination within jurisdictions in this area. Such arrangements will introduce trade-offs between achieving the objectives of the National Law and those related to safety in other areas of transport (such as light rail, ferries and buses). The arrangements will also mean that there will be duplication in rail–system administration (such as human resources, legal or accounting) which could add to the national cost of rail regulation.

4 New South Wales, Victoria and potentially Queensland.

9.2 Who will be affected by the reform?

The rail industry employs around 47 000 people[5] and is run on around 43 000 kilometres of track (ATSB 2011). The industry is responsible for around 0.5 per cent of Australia's GDP (PC 2007a, p. 20) and has annual revenue of nearly $13 billion[6].

The two main areas of operation are passenger transport and freight transport. Passenger transport is concentrated in Australia's capital cities, dominated by Sydney and Melbourne (BTRE 2006). The main areas of freight transport are ore and minerals, grain and non-bulk freight. The split between freight and passenger train movement is approximately 40 and 60 per cent respectively of total train kilometres (NTC 2011, p. 10).

The three main groups likely to be affected by rail safety reforms include:

- rail operators;
- beneficiaries of improved safety outcomes (including train passengers, pedestrians, train crew, track maintenance workers, freight customers and the community more generally); and
- regulators and investigators.

Rail operators

As of October 2010, there were 164 safety-accredited rail operators in Australia (NTC 2011, p. 145). The costs associated with different rail safety arrangements are borne by rail operators who operate across multiple jurisdictions. Commenting on the impact of multiple rail safety arrangements, the Bureau of Transport and Regional Economics (BTRE) said:

> When a player moves across regulatory interfaces, the bridging (transaction) costs can include significant management resources. Specifically, those management resources can represent considerable opportunity costs, notably where the attention and proactivity of key safety managers is diverted to managing the multiple regulatory systems. Further, additional resources are also required for tailoring the training and auditing for each system. Managers also need to devote time to seek and maintain consistency, especially when facing unilateral regulatory decisions. (2006, p. xxv)

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5 ABS *(Labour Force, Australia, Detailed, Quarterly,* Cat. no. 6291.0.55.003, 2011).

6 ABS *(Australian Industry*, 2009-10, Cat. no. 8155.0, 2011).

Around one quarter of Australia's rail operators operate in more than one State or Territory (table 9.1). The reforms are intended to reduce the costs of transport companies operating across jurisdictions. They will also affect contractors who work with rail operators across jurisdictions.

Table 9.1 **Rail operators working in both single and multiple jurisdictions in 2011**

	Number of jurisdictions operators are working in:							*Total no. of firms*
	1	*2*	*3*	*4*	*5*	*6*	*7*	
No. of firms	127	16	9	2	6	4	0	164

Source: NTC (2011, p. 145).

Beneficiaries of improved safety outcomes

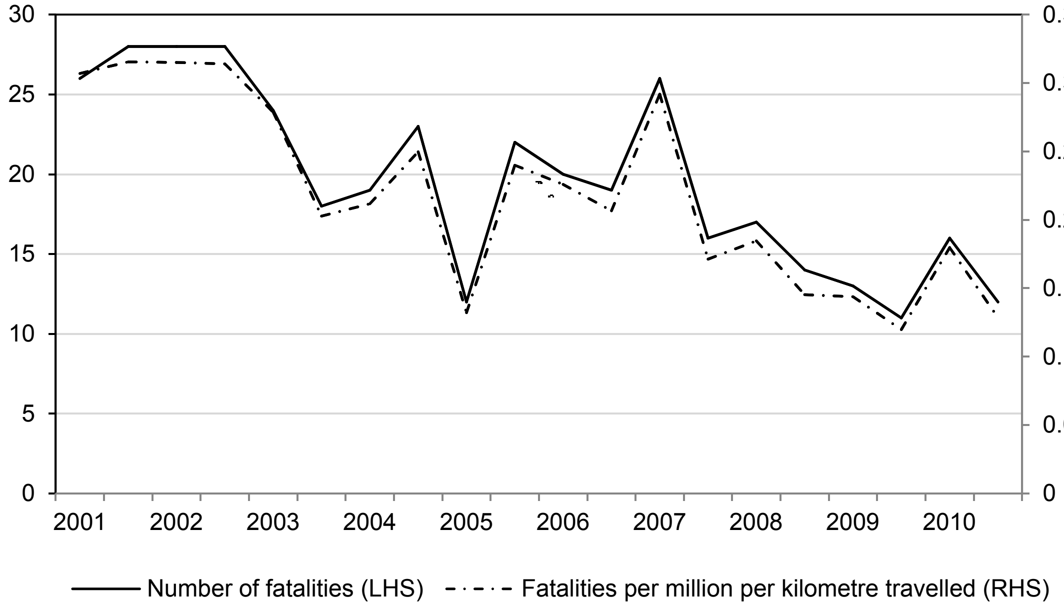
In 2010, 28 people died as a result of rail accidents in Australia (ATSB 2011).[7] There were also a significant number of serious injuries as well as property loss due to accidents. Rail accidents affect not only those who die or are injured in an accident, but also those who witness accidents, as well as others in the community (including the family of the person who dies or is injured, as well as the community more generally due to lost productivity when someone dies prematurely or is disabled).

Although nationally consistent data are not available to calculate the extent of injuries (as jurisdictions have different interpretations of what constitutes a serious injury (ATSB 2011)), rail safety trends appear to have improved over the past decade. The data suggests fatalities have declined by around 55 per cent over the period 2001 to 2010, although there is significant variation between the years, reflecting particular incidents (figure 9.1).

Over the last decade, level crossings accidents (figure 9.2, left hand panel) and people being struck by a train (right hand panel) are the two largest causes of fatality. Only a small proportion of rail fatalities (that is, 5 per cent of the total) are the result of a train crash.

7 This figure does not include suicides.

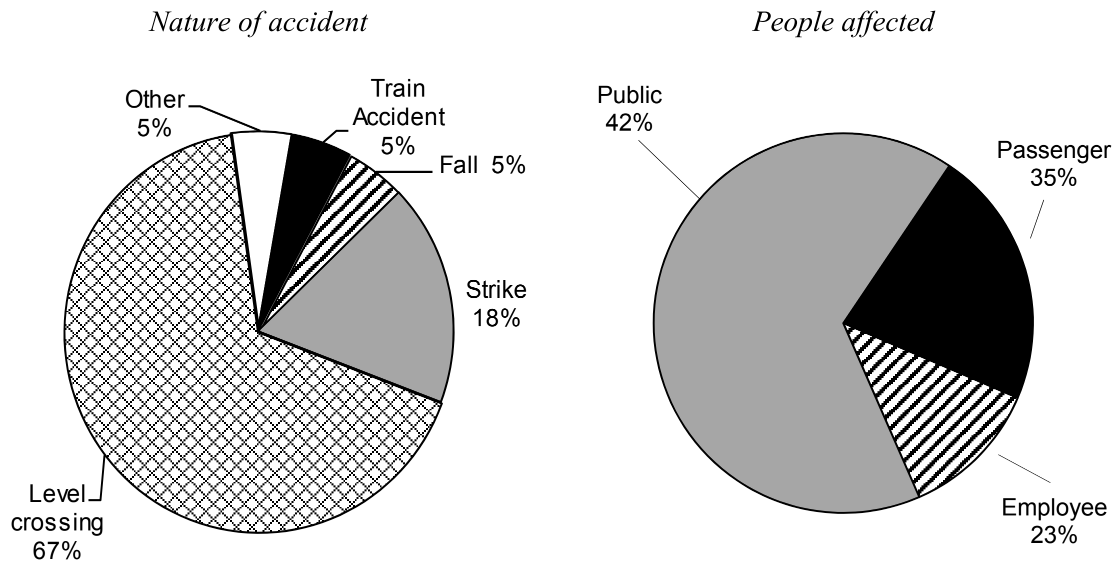
Figure 9.1 **Rail fatalities in Australia, 2001 to 2010[a]**



[a] Figures are on a six monthly basis.

Data source: ATSB (2011).

Figure 9.2 **Rail related fatalities by nature and affected groups, 2001 to 2010[a,b]**

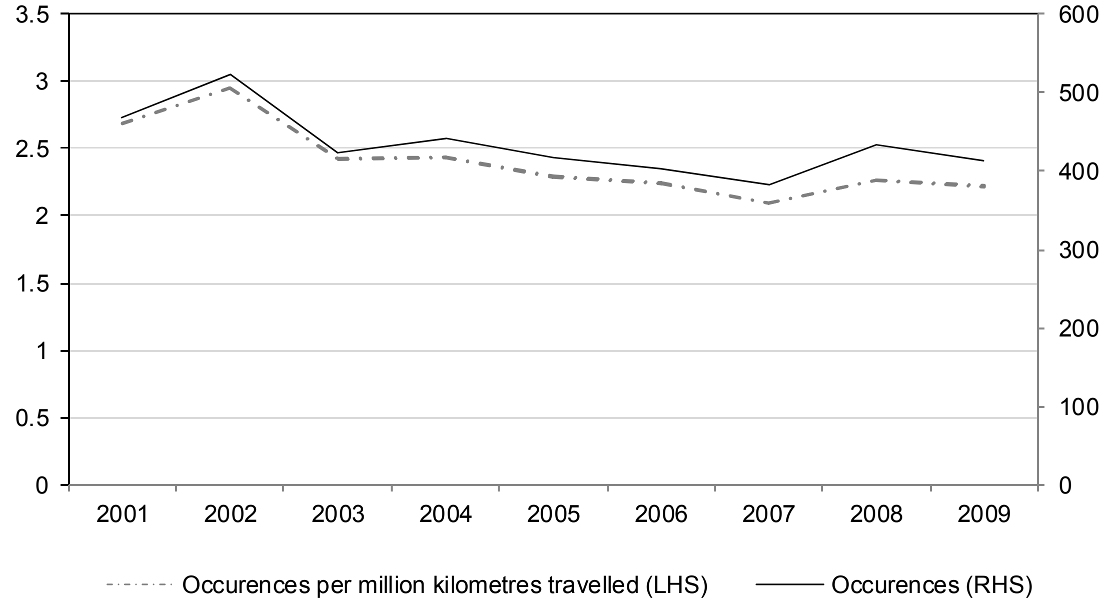


[a] Data provided on request by the Rail Safety Regulators Panel [b] Data excludes suicides and accidents that occur due to trespass which collectively represent 85 per cent of all rail related fatalities. Cases of trespass are excluded as in practice it is difficult to distinguish between a case of trespass and suicide in a timely manner. Data also excludes Western Australia and South Australia.

Data source: Rail Safety Regulators Panel (2011, unpublished).

Accident occurrences have also been trending downwards (where an occurrence is defined as any reportable safety breach, whether or not that resulted in an economic cost or loss) (figure 9.3). However, the reliability of these data are diminished by differences in the definitions of an ‘occurrence’ between jurisdictions. One benefit of national safety regulation will be that the National Regulator will be better able to align safety data to provide a clearer indication of such trends.

Figure 9.3 **Trends in occurence of rail accidents, 2001 to 2009[a]**



a Figures are on a yearly basis.

Data source: NTC (2011, p. 148).

Regulators and government administration

There are currently seven state regulators in Australia who manage rail safety, along with a number of other roles in New South Wales and Victoria.[8] The introduction of the National Law will result in some of these regulators being replaced by a regional branch of the National Regulator. In other cases the existing regulator will remain and work with the National Regulator under a service level agreement. Under these arrangements, existing state bodies will remain and their employees will work as delegates of the national body with regard to rail safety matters.

8 The Independent Transport Safety Regulator in New South Wales, for example, is responsible for regulating buses, taxis and hire cars as well as railways.

9.3 Understanding the direct impacts of the reforms

COAG's rail safety reforms have the potential to improve outcomes in a number of areas:

- safety;
- regulatory burden;
- operational costs for regulators; and
- productivity gains from increased interstate competition.

Better safety outcomes

Greater regulatory uniformity reduces the complexity of safety requirements facing inter-jurisdictional rail operators and drivers, and can contribute to more consistent compliance and improved safety outcomes.

The reforms have also resulted in more stringent safety regulations. Both the Model Law and the proposed National Law have sought to improve safety either by strengthening the regulations or by 'adopting best practice' from the existing laws. Some examples include:

- strengthening drug and alcohol management;
- strengthening fatigue management; and
- introducing interface agreements, which provide a framework for consultation around areas where rail infrastructure interacts with utilities and roads.

A single investigator, that is independent of regulators, may also improve safety outcomes. Under some existing arrangements, there is scope for conflicts of interest where investigators are making judgements about whether the safety standards are met as well as whether the existing standards (which they have set) are adequate. This conflict was commented on in the investigation into the Ladbrook Grove rail inquiry:

> … it was inappropriate for the safety regulator to carry out the function of investigation since it might be necessary for the investigation to examine the decisions and activities of the safety regulator itself. (HSC 2001, quoted in NTC 2009, p. 85)

Reduced regulatory burden

A more harmonised rail safety regulatory system will remove the differences that currently exist between the regulatory systems of various jurisdictions. Operators and their suppliers should face lower compliance costs because there will be a single law (rather than multiple laws and hence fewer pages of legislation to be across) and one regulator rather than multiple regulators to interact with.

Lower operational costs for the regulator

The move to a national rail safety regulator should result in future government cost savings by reducing duplication in areas such as assessing applications for accreditation, research, and back office functions such as human resources and accounting. Gains could also be expected from having a consistent approach to data collection and a larger pool of accepted safety measures to draw on.

While cost savings may be found in this area, the extent to which they are realised will largely depend on how effectively existing State and Territory regulators can merge into the national setup.

Productivity gains resulting from improved interstate trade

Multiple rail safety laws and regulation increase the costs associated with operating across jurisdictions and as a result could discourage interstate competition. The NTC observed that:

> Within the rail industry additional administrative requirements for dealing with each regulator may distort competition within the above rail freight market, by discouraging operators from expanding into other jurisdictions. (2009, p. 19)

The credible threat of a competitor moving interstate can be enough to drive competition, a point made by ACIL Tasman:

> … when working for a bidder for Westrail, we met two mineral companies who wanted to seriously pursue the possibility of using an alternative rail operator because of dissatisfaction with the service they were then getting. We have been involved in similar cases with mining and grain clients in other states. The ability of alternative railways to be able to enter new areas, or credibly threaten to do so, is enhanced if the safety regime is similar to one they are already familiar with. (ACIL Tasman 2003, p. 6)

Competition between rail and other transport services, primarily road freight, may also be affected. As the BTCE has said:

> Harmonisation can significantly improve the standard of service that can be supplied to consumers. This can include reducing journey times and increasing the punctuality and reliability of services. These improvements can improve rail's competitive edge relative to road and thereby enable it to gain traffic. (BTCE 2006, p. 43)

A respondent to a report into rail safety also observed:

> Most customers are reluctant to accept the additional time taken for projects to be finalised due to regulator compliance complications. In some cases customers have looked at alternative modes of transport. (Synergies Economic Consulting 2008, p. 35)

If the reforms reduce impediments to business in establishing and maintaining operations across jurisdictions, competition between rail service providers would be increased. This process would provide operators with the incentive to lower costs through innovation or organisational change and in doing so improve productivity.

9.4 What are the direct impacts of the reforms?

There are a number of qualitative and quantitative studies of rail safety reforms. In this study, the Commission drew on:

- the three Regulatory Impact Statements (RISs) prepared by the National Transport Commission (NTC 2006, 2009, 2011) for estimates of the impacts of improvements to safety; and
- a consulting report into the regulatory costs of rail safety regulation (Synergies Economics Consulting 2008) for estimates of business costs

Improvements to safety

Three RISs undertaken for the Model Bill, the National Regulator and independent investigator and the National Law all identified potential improvements in safety outcomes. The first two RISs (NTC 2006 and 2009) used a human capital approach to measure the value of avoiding injuries and fatalities based on the methodology of a Bureau of Transport and Regional Economics[9] (BTRE 2002) report on Rail Accident Costs in Australia (box 9.3). This method characterises people as labour inputs and measures the cost of accidents as the labour lost as a result of death and injury. It also includes a valuation for household labour and quality of life.

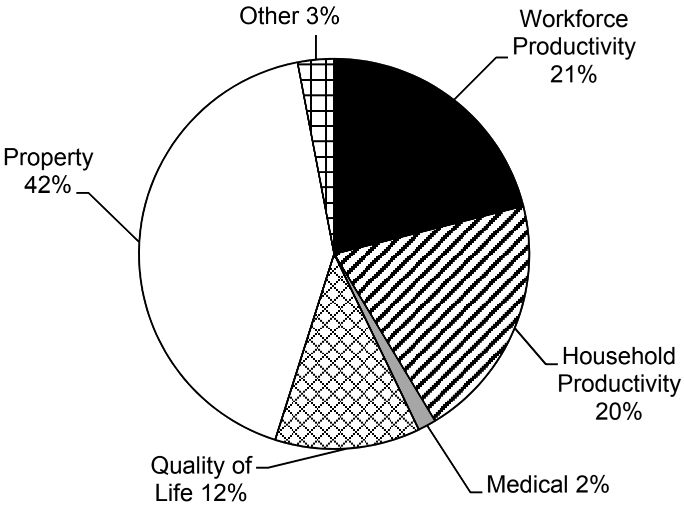
[9] Now known as the Bureau of Infrastructure, Transport and Regional Economics.

Box 9.3 **Economic costs of rail accidents and incidents**

The most complete analysis of the costs of rail accidents is a Bureau of Transport and Regional Economics report titled *Rail Accident Costs in Australia* (BTRE 2002). The approach in this report was subsequently adopted by the NTC in developing the Regulatory Impact Statements for rail safety reform.

The BTRE estimated that the total cost of rail accidents that occurred in 1999 was around $133 million (excluding rail-related incidents such as level crossing accidents, estimated to be $32 million, and rail-related suicides and attempted suicides). The average economic cost of a fatality was estimated to be around $1.9 million, a serious injury around $27 000 and a minor injury about $2000.

These estimates were net present values of all the costs (including future costs) associated with accidents occurring in 1999. The estimated costs were broken up in the following manner:



Workforce productivity costs are the wages that people do not earn due to death or disability as the result of a rail accident.

Household productivity costs are a value assigned to work that can no longer be performed around the house, such as cooking or cleaning, due to injury or death.

Property damage is a measure of the property loss that is a result of rail accident. This includes rail infrastructure, such as rail carriages and other objects that may be damaged in a collision, such as cars in level crossing accidents.

Medical costs include inpatient costs, ambulance costs and medicine.

Quality of life is trying to capture elements such as pain and suffering and the loss of freedom that can be associated with a long term disability. It was estimated using a method derived from compensation payments for traffic accident victims awarded by the Traffic Accident Commission in Victoria.

Other costs include the delay of rail travel, lost cargo and emergency services costs.

Source: BTRE (2002).

The NTC's 2011 RIS estimated the value of avoiding injury and death using a willingness to pay approach, based on the estimates provided by the Office of Best Practice Regulation (OBPR 2008). This is now the preferred method for valuing the risk of death and injury and is derived using surveys and by directly observing people's preferences for avoiding risky behaviour.

While the two methods give different values, they are based on the same underlying estimate of safety improvements (such as a reduction in fatalities). Importantly, estimates that are made using one method can be converted to the value they would be under the other method. Estimates derived under each method suggest that rail safety reform, if fully implemented, could reduce the costs of rail accidents in Australia by around 10 per cent (table 9.2).

Table 9.2 **Estimated cost impacts of safety improvements from full implementation of rail safety regulatory reform**[a,b]

$ million (unless otherwise stated)

Reform	*Human Capital Approach*		*Willingness to pay approach*	
	Annualised estimate	10 year NPV	Annualised estimate	10 Year NPV
Model Law	9.2	69.2[d]	15.3	115.2
National Regulator and Investigator [e]	0.8-4.9	6-37	1.3-8.2	10.0-61.6
National Law [e]	3.2-7.9	24.0-59.5	5.3-13.1	40-99
Total gain in 2011[c]	**14.7-23.8**		**24.4-39.6**	
Total cost of rail accidents in 2011	187		311.7	
Cost decrease as a percentage of total rail accident costs	**7.8-12.7 per cent**		**7.8-12.7 per cent**	

a To convert estimates from the human capital approach to the willingness to pay approach, multiply by 1.664. This is because the willingness to pay approach gives a dollar value to death and injury 2.21 times as large as the human capital approach (NTC 2011, p. 149). As death and injury makes up 55 per cent of the total value (property loss makes up the other 45 per cent), this provides a conversion factor of 0.55*2.21+0.45*1 = 1.664 **b** Annualised estimates were converted from 10 year NPVs using a uniform yearly estimate and a discount rate of 7 per cent (as used in the original RISs). **c** Sum of the above estimates after adjusting for inflation. **d** The 2006 RIS does not give an estimate of safety per se. Rather, it estimates the total potential improvements in safety and suggests that in order for the reform to be cost effective, 22.2 per cent of this total improvement would need to be as a result of safety regulation reform. The value used here is the smallest value they estimate that would make the reform cost effective. **e** Figures were represented as ranges in the original RISs.

Sources: NTC (2006; 2009; 2011).

Evidence on the ground

As some of the reforms have been in place for a number of years, it should be possible to observe the safety performance of the states that implemented the reforms earliest and compare the results with their performance before the reforms. The problem with this approach is that due to the highly variable nature of rail safety data, it is difficult to distinguish between a change in trend and natural variation (a 'lucky' year). The NTC (2011) came to a similar conclusion:

> Due to the nature of rail crashes, in which multiple fatalities may result from a single crash, in combination with the overall low number of crashes and other major incidents, it is difficult to draw reliable conclusions on any trends from the casualty data alone. (p. 11)

As there are only a few data points available since the Model Law, it is not possible to detect any change in the longer-term safety trend. And, even with a longer dataset, distinguishing the impact of changes in rail safety resulting from the regulatory reforms from other influences (such as improvements in technology) is likely to be difficult.

There is also the question of whether it is possible for regulatory reform to significantly improve rail safety. Rail is considered a relatively safe mode of transport and consultations made in preparation for this discussion draft suggest that the systems in place to manage rail safety work well. The NTC (2006) describes the current situation as such:

> Rail is a relatively safe mode of transport. There is little evidence available (e.g. indications of poor or worsening safety outcomes) to warrant major changes to the existing regulatory approach (e.g. a change towards adoption of a more prescriptive regime). Moreover, the outcomes of inquiries into rail accidents and rail regulatory structures indicate that the capacity of governments to deal with complex organisations and complex safety problems through rules alone is very limited. (NTC 2006, p. 3)

Transport Safety Victoria also said that 'no diminution in safety' was an important goal of the reforms, rather than considering large potential gains (sub. R3, p. 2).

This is also consistent with the latest NSW Rail Industry Safety Report that reports that the rate of passengers transported to hospital as a result of injury on railway property, per passenger journey in 2009-10, was lower than the comparable figure for Great Britain (ITSR 2011).

On the other hand, international comparisons of rail fatalities in OECD countries published by the Australian Transport Safety Bureau found that:

> The number of railway accident deaths per 100,000 population in Australia remained above the OECD median until the early 1990s and stayed close to it thereafter. ((ATSB 2004, p. 3)

The OECD study also found that the United States and the United Kingdom significantly outperformed Australia in 1999, the last year of the study. At this time, the Australian rate of fatality per capita was more than four times as high as in these countries. While the authors cautioned against drawing too many conclusions from these results for technical reasons,[10] and the data is now dated, the results suggest some scope for rail safety improvement in Australia through Seamless National Economy reforms.

Some reasons why the initial estimates may be high

The safety improvement estimates from the RISs were made before the policies were implemented. As such, they are expected benefits rather than actual benefits. As discussed in section 9.1, the Model Law reforms were less successful than expected, which suggests that the estimates of potential improvements may have been higher than the realised benefits.

Predicting safety trends is also difficult, and the estimates are, by necessity, highly assumption driven. This means that while studies may seek to make the estimates as accurate and meaningful as possible, there is still substantial uncertainty.

Based on previous research and consultations during this study, the Commission's assessment is that further improvement in the area of rail safety could be achieved with the full implementation of the reforms, although the potential may not be as large as indicated by the upper bounds of initial estimates. Importantly, there is still much uncertainty around the size of these benefits.

For the purposes of this study, the Commission has assumed a 10 per cent improvement in safety outcomes, which is near the midpoint of the estimates from the RISs. It has also benchmarked its estimate of impacts to those provided by the 'human capital method' which aligns with the economy-wide framework adopted by the Commission in this study.

Calculating the direct benefits of safety improvements

The human capital method suggests that the total 'annualised' cost of rail accidents in 2011 dollars is of the order of $187 million (table 9.2). If a 10 per cent reduction in these costs could be achieved, an ongoing saving of $18.7 million per year would

10 The study uses a fatality rate per capita as a measure of exposure to risk. However, this does not take into account relative levels of rail usage across countries, which may distort the results.

be provided. The Commission has attributed the estimated cost savings in the same proportions as in the 2002 BTRE study (box 9.3). Applying these shares:

- lower *property costs* could amount to $7.9 million per year (or 42 per cent of savings) — such a reduction would typically be realised through lower production costs;
- increased *workforce productivity* could amount to $3.9 million per year (or 21 per cent of savings) — with average yearly earnings of $70 910,[11] this would equate to 55 full time equivalent workers added to the economy; and
- lower *medical costs* could amount to $0.3 million per year (or nearly 2 per cent of savings) — under liability arrangements, such costs would largely be borne by rail operators and hence savings would be observed as a decrease in cost to business.

Improvements in *'quality of life'* and '*household productivity*' accounted for 12 and 20 per cent of estimated benefits, respectively. Such benefit capture reduction in elements such as pain and suffering and household losses (box 9.3). While these are potential significant benefits, they are predominately non-market effects. Because of this they are not incorporated in the estimated direct effects of reform due to the difficulty in assessing possible realised impacts on the economic activity.

Reduced compliance costs from a national approach

A 2008 study by Synergies Consulting estimated the regulatory burden associated with inter-jurisdictional differences in rail safety regulation to be around $10.5 million per year. This study was based on a survey of the major rail organisations in Australia.[12]

Adopting the methodology used by NTC (2009, p. 71), the Commission estimates that around 50 per cent of such compliance costs ($5.25 million) have been eliminated by the Model Law reforms.[13] It is estimated that a further 30 per cent ($3.15 million) will be eliminated by the National Law, resulting in a combined compliance cost reduction of $8.4 million.

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11 ABS 2011, *(Average Weekly Earnings Australia,* Cat. no. 6302, August), reports average weekly earnings as $1305.4. This was converted to a yearly rate.

12 The paper sent a survey instrument to 22 rail operators in Australia and received 8 responses. While this number is very low as a proportion of rail operators, the survey does claim to 'include most of the major above and below rail operators in Australia'.

13 Although the model law was drafted in 2006, it was not implemented across Australia at the time that the Synergies consultation process took place.

The ongoing operating costs of regulators

In the longer term, the costs of enforcing rail safety regulation could be expected to decrease. This is because of the consolidation of administration costs (including rail safety policy and overhead costs) into a single body, as well as efficiencies occurring from only having to interpret a single set of regulations. However, as discussed above, for these efficiencies to occur, it would be important for the National Regulator to replace the existing state based functions, rather than just add to them.

The ongoing costs will largely depend on future policy choices, including whether the States continue with service level agreements with the National Regulator in the long term. Commenting on the likelihood of cost savings from regulators, NTC (2009) said:

> Ministers noted in 2008 that in the options for a single, national rail safety regulatory framework would allocate no less resources allocated to the rail safety regulatory task. This decision sets a minimum resourcing benchmark. (p. 14)

In its assessment, the Commission has estimated that aside from the transition costs, there will be no change in the ongoing operating cost of regulators, without further policy change.

Efficiencies from improved competition?

While the RISs (NTC 2006, 2009, 2011) and other studies (Synergies Economic Consulting 2008) suggest that the national rail safety regulatory reforms will promote additional interstate competition, there are no quantitative estimates of the benefits that have been achieved or can be expected in the future.

For a benefit to be achieved it will be necessary for the regulatory burden to decrease enough to significantly change production choices. For example, to encourage a firm to operate in a state in which they previously did not. The current regulatory burden is very small as a proportion of total operating costs of rail businesses. It is therefore unlikely to play a major role in determining the entrance of a firm into a new market.

As noted in the discussion draft, the benefits in this area are likely to be positive, but small. Given the difficulty associated with quantifying any such benefits, the Commission did not provide estimates in the discussion draft. The Commission has not received additional information on the possible scale of any such effects that would support quantification in this final report.

9.5 Indicative costs of achieving reform

The costs of achieving reform can be distinguished into two groups, transitional costs and the ongoing costs of more stringent regulations.

Transition costs

Both stages of rail safety reform require changes in the operating procedures of rail industry participants and regulators alike. In response to the implementation of the Model Law, state-based rail regulators have had to learn to work within the new system as well as communicate the changes to industry. Rail operators have had to adapt to the new regulatory system, adjusting to the changes and adapting their operating practices in some areas. In doing so, they will incur the one-off regulatory compliance costs.

The introduction of a National Regulator and National Law has seen the creation of the National Rail Safety Regulator Project Office, which has been tasked with setting up an office and transferring staff to a national system. There are also one-off transition costs incurred by state-based regulators as staff time is spent preparing for the transition.

Cost to operators

In the National Law RIS, it was estimated that the one-off transition costs to rail operators would be $4.8–10.6 million (NTC 2011, p. ix). As the RIS into the Model Law does not give an estimate of this effect, the Commission has assumed that the costs will be similar. In both cases the midpoint of the estimated range, $7.7 million, is used.

Cost to regulators

The transition to a model law required a significant effort by state regulators in terms of learning the new system and adapting their processes to implement it. This involves training staff as well as explaining the changes to industry. In its submission to this study, Transport Safety Victoria suggest that the current reforms:

> … continue to draw significant internal resources in terms of providing input on the finalisation of legislative/ policy issues, assisting in the multiple working groups setting up the new regulator, assisting our staff to implement new legislation, implementing governance/ organisational changes etc. This represents a significant cost incurred by government agencies … (sub. R3, p. 2)

The Commission understands that it is difficult for regulators to separate out the one-off costs that occur due to this transition from other, 'ongoing' costs. In this report, and in the absence of indicator information on transition costs to State and Territory governments, an indicative estimate of the one-off cost from the transitions to the Model Law and the National Law of $5 million each ($10 million in total) has been included.

The establishment of the National Regulator involved setting up a new office and negotiating an enterprise bargaining agreement with the new staff. This process is being funded by the Australian Government. Consultation in the course of preparing this report indicated that while the cost is still to be finalised the final outlay is likely to be less than $10 million. For the purpose of this study, this indicative estimate has been adopted.

Ongoing cost of compliance with stronger regulations

As discussed earlier, some aspects of the safety reforms have amounted to more stringent regulations, or a 'higher bar', to pass accreditation. For example, under the national regulations all operators must comply with rules around fatigue management. In such areas, it is important to count not only any safety improvements from the changes, but also any increased compliance costs of business.

There is little quantitative evidence available in this area. The NTC estimated that the additional ongoing compliance costs to business of the model legislation would be around $2 million (NTC 2006, p. 51). The more recent RISs (NTC 2009, 2011) do not separate out estimates of compliance costs in this way.[14]

For the purpose of this report, an indicative estimate of, the costs to rail operators of complying with stronger regulations could be around $2 million per year for the Model Law and an additional $2 million per year as a result of the National Law.

[14] NTC 2011 (table 50, p. 197) estimate an overall economic cost to business for different policy options. However, this does not distinguish between higher costs of regulation due to stronger regulation and decreased costs occurring due to other reasons. Adding the estimates of the preferred options gave a value of $1-2 million per year, similar to the number given above.

9.6 Summary of effects

Overall, the rail safety reform should deliver a small ongoing net benefit to rail operators. This benefit should accrue mainly through reductions in costs due to a more unified national system and reduced property loss (table 9.3). Achieving this benefit, however, is estimated to entail some one-off transition costs and (lesser) ongoing additional regulatory compliance costs. Government regulators are also estimated to incur additional, one-off, transition costs in moving to a more national framework.

Table 9.3 **Summary of estimated impacts from rail safety reforms**

$ million (2010-11 dollars unless otherwise stated)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Business operating and compliance costs					
Reduction in business compliance costs due to a more unified national system	5	3	8	..	(15)
Decreased property loss as a result of improved safety	4	4	8	..	..
On-going increases in business compliance costs due to more stringent regulation	(2)	(2)	(4)	..	..
Decreased medical costs as a result of improved safety	0.2	0.1	0.3	..	..
Increased workforce participation as a result of improved rail safety (no. of persons)	3 persons	52 persons	55 persons	..	..
Transition costs incurred by rail regulators	..	..	..	..	(20)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates.

In this assessment, these benefits and costs are deemed to accrue concurrently with the regulatory changes. Thus, any benefits and transition costs associated with the adoption of the Model Law are assessed as realised, with benefits (and costs) associated with the introduction of the National Law accruing from its scheduled introduction in 2013.

Increased workforce participation from reduced fatalities are assessed as likely to accrue gradually over 40 years, starting with the introduction of the Model Law then increasing at a greater rate following the introduction of the National Law (thus the 'prospective' column in table 9.3) reflects the combined impact of both reforms).

In all other areas, realised benefits are entirely due to the Model Law and prospective benefits are entirely due to the National Law (and will accrue immediately after it comes into effect).

9.7 Opportunities for improvement

The introduction of the National Law will result in a single National Regulator interpreting a single law for all railways in Australia. This is the culmination of an extended period of regulatory reform. To ensure the success of this reform process, there are a number of important issues for the rail industry and its regulators to manage.

While the National Regulator will commence operation at the start of 2013, in practice there will still be a process of convergence between the operations of the States and Territories as the workers in the various jurisdictions learn to act as part of a national system. This will be particularly important in states that plan to work with the National Regulator under service level agreements.

Beyond this, opportunities for improvement will emerge from experiences in implementing the National Law. Over time, when evidence emerges that it is ideal to change safety practices, the National Regulator needs to be able to respond accordingly. In principle, this should be easier to achieve under a national system. However, this process needs to be effective and transparent to maintain the confidence of the jurisdictions. If confidence is lost, it is possible that the States and Territories may reinstate their own state regulators and much of the work of reform will be undone.

Another issue for the industry to manage is the transition to full cost recovery for the National Regulator, which is identified as a long-term goal. However, at this stage, both the timing and the methodology of this transition are still being determined.

While outside the direct remit of the safety reforms considered in this chapter, Transport Safety Victoria also points to broader scope for improvement, stating:

> … more fundamental sources of inconsistencies impeding a truly ‘national seamless economy’ remain to be addressed. This includes eg. a national approach for improving interoperability (e.g. in terms of consistency in key infrastructure like rail gauge or communication systems) and a more concerted national effort to harmonising the rail industry standards and rules that supplement the national legislative framework. (sub. R3, p. 3)

The Commission considers there would be merit in assessing the likely cost effectiveness of such possibilities in future rounds of rail reform and that appropriate coordination mechanisms should be maintained to consider and advance productivity enhancing reforms.

10 Health workforce

Key points

- In 2008, Australian, State and Territory governments agreed to implement a new, nationally consistent system of registration and accreditation of health professionals. The new Scheme commenced on 1 July 2010.
- It is intended that the new Scheme will reduce the administrative burden, improve labour mobility, and increase the consistency and quality of training.
- This reform should improve the productivity of the health sector over the long term.
  - An increase in total factor productivity of around 0.2 per cent would generate ongoing savings in health service provision of around $160 million per year.
- The introduction of the new Scheme was also associated with significant, one-off costs.
  - Around $20 million was provided by Australian, State and Territory governments to facilitate the implementation of the new Scheme.
  - Disruptions for practitioners with the bedding down of the new Scheme also came at some cost to business. It is estimated these costs could be around $24 million.
- Implementation of the reform depended on broad-based and sustained commitment of government and the sector.
  - A more gradual approach to that adopted could have risked the opportunity for change.

The delivery of health care services relies heavily on appropriately skilled, effective and flexible practitioners. The requirements for accreditation and professional registration are key regulatory devices underpinning the quality and the efficient deployment of the health workforce.

- Registration is the process through which practitioners' qualifications, experience and conduct are deemed to be suitable for practice and legally recognised. Registration systems require adherence to standards, the maintenance of registers, the collection of data, and the administration of disciplinary procedures.
- Accreditation is the process that ensures that education and training institutions provide practitioners with the knowledge, skills and competencies required of their profession. This involves the assessment and approval of the curriculum,

course requirements and facilities of education and training institutions against specified standards.

Until recently, registration occurred on a state-by-state, and profession-by-profession basis, with an array of government bodies and specific legislation. While accreditation was mainly undertaken on a national basis, there were still over 20 different bodies, with considerable differences in approaches across professions. Some were established in cooperation with peak professional associations while others had explicit statutory functions or had responsibilities delegated from registering authorities.

The Commission (2006c) found that this fragmented approach: resulted in duplication and higher administrative costs (in terms of the various organisations processing the registrations and the practitioners who often had to register in multiple jurisdictions); undermined geographical mobility of practitioners; and resulted in inconsistencies in the standards of registration and accreditation applying to practitioners.

Subsequently, COAG implemented substantial reforms to the system of registration and accreditation in Australia (CRC 2009a). The objectives and the key features of the health workforce reform are outlined in section 10.1, while section 10.2 identifies the groups most affected by the changes. The impacts of the reform and the associated costs are discussed in sections 10.3 to 10.7.

As no empirically based estimates of the potential impacts of the reform exist, a conjectural approach is adopted, which is guided by previous studies and the scale of the sector affected. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reform.

Many of the issues examined in this chapter were also considered in the recent report by the Senate Finance and Public Administration References Committee (2011). This chapter draws upon the Committee's report, and the submissions to it.

10.1 Reform objectives and changes

On 26 March 2008, the Council of Australian Governments (COAG) signed an intergovernmental agreement to establish a National Registration and Accreditation Scheme (the new Scheme) for health professions, commencing on 1 July 2010. The ten health professions included in the new Scheme are: chiropractors, dental practitioners, medical practitioners, nurses and midwives, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists and psychologists. From 1 July 2012, Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists will also be included.

The scheme is designed to provide a nationally consistent system of registration and accreditation for health professionals. The underlying goals include: reducing the administrative burden of registration and accreditation, improving labour mobility of health professionals, increasing the consistency and quality of their training and, in turn, the quality of health services generally (box 10.1).

Box 10.1 **Objectives of the Intergovernmental Agreement**

The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions states that its objectives are to:

- provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
- facilitate workforce mobility across Australia and reduce red tape for practitioners;
- facilitate the provision of high quality education and training and rigorous and responsive assessment of overseas-trained practitioners;
- have regard to the public interest in promoting access to health services; and
- have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.

Source: COAG (2008h, p. 3).

Where is it up to?

Under the *National Partnership Agreement to Deliver a Seamless National Economy*, specific milestones for this reform were identified:

- 2009-10 — Queensland to enact template legislation, and all other jurisdictions to enact referencing legislation by the end of 2009. The Commonwealth to amend any relevant legislation by the end of 2009.
- 2010-11 — All jurisdictions to implement the registration and accreditation scheme and complete all related transitional arrangements by 1 July 2010.

The Ministerial Council has reported these milestones as completed (CRC 2010). The scheme was implemented using a 'template legislation' model (see box 1.2), where template legislation was enacted in Queensland, then subsequently enacted in other jurisdictions.[1]

In the first stage, the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Qld)* received Royal Ascent in the Queensland Parliament on 25 November 2008. This identified the framework for the scheme and the national bodies responsible for administering it, but did not give effect to their substantive function. Following further consultation, the *Health Practitioner Regulation National Law Act 2009 (Qld)* received Royal Assent on 3 November 2009. This detailed the substantive provisions for registration and accreditation and replaced the initial legislation. Finally, all jurisdictions drafted and enacted legislation referencing the national law. While there were some minor alterations to existing federal legislation, there is no specific federal legislation underpinning the new Scheme.

The new Scheme commenced on 1 July 2010 in all jurisdictions except Western Australia, which joined the Scheme on 18 October 2010. Since commencement, responsibility for the implementation of the new Scheme has been with the Australian Health Workforce Ministerial Council, which is comprised of the Australian Government Health Minister and the ministers responsible for the health portfolio in each jurisdiction.[2] A detailed timeline is set out in table 10.1.

While all jurisdictions have now joined the new Scheme, New South Wales and the Australian Capital Territory included provisions within their legislations to allow for the continued operation of state-based complaints bodies.

Key features of the new system

The new Scheme, under a single nationally-consistent law and one national agency, replaced eight separate regulatory systems, 65 pieces of legislation, 85 health practitioner registration boards and 38 regulatory organisations (AHPRA 2011a). The 1.2 million data items held by the 85 boards were consolidated into a single national registry and a single national fee structure was adopted for each profession.

1 This legislative model is also referred to as an 'adoption of laws' model.

2 Prior to this, responsibility lay with the Australian Health Ministers Conference.

Table 10.1 **Passage of health workforce reform**

Date	*Event*
19 Jan 2006	Productivity Commission Research Report — *Australia's Health Workforce* recommended the establishment of a single national registration board for health professionals, and a single national accreditation board for health professional education and training.
14 July 2006	COAG Response to the Productivity Commission Report.
26 Mar 2008	COAG signed an Intergovernmental Agreement (IGA) for the creation of a National Registration and Accreditation Scheme for the Health Professions from 1 July 2010.
26 May 2008	The National Registration and Accreditation Implementation Project (NRAIP) was established to provide the support required for an effective and stable transition.
25 Nov 2008	The Queensland Health Practitioner Regulation (Administrative Arrangements) National Law Bill 2008 (Bill A) received Royal Assent, giving effect to the new national law.
5 Mar 2009	Australian Health Workforce Ministerial Council announced appointments to the AHPRA Management Committee and decisions on mandatory reporting, criminal history and identity checks.
12 June 2009	Health Ministers released Exposure draft of Health Practitioner Regulation National Law Bill 2009 (Bill B) for consultation.
6 Aug 2009	The Senate Standing Committee on Community Affairs reported its findings on the Inquiry into National Registration and Accreditation Scheme for Doctors and Other Health Workers.
31 Aug 2009	Health Ministers announce appointments to national boards for the National Registration and Accreditation Scheme.
9 Sept 2009	Regulatory Impact Statement released to public to support the Australian Health Ministers' Advisory Council's decision to implement the Health Practitioner Regulation National Law.
3 Nov 2009	The *Health Practitioner Regulation National Law Act 2009* (Qld) received Royal Assent on 3 November 2009. This details the substantive provision for registration and accreditation and replaced the initial legislation passed in 2008.
1 July 2010	National Registration and Accreditation Scheme for the Health Professions commences in all jurisdictions except for Western Australia.
18 Oct 2010	Western Australian joins the scheme.

These changes enabled:

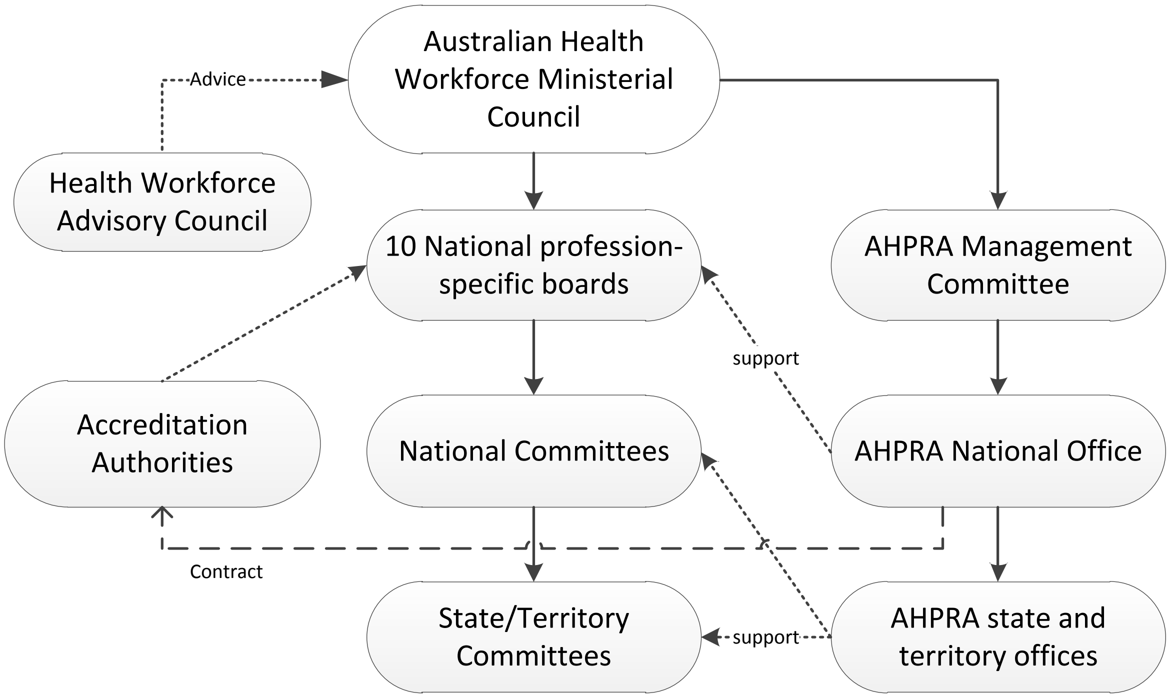
- Australia wide-registration for all practitioners covered by the new scheme (replacing separate requirements for registration in each jurisdiction);
- one annual renewal date for each profession (replacing different renewal dates between jurisdictions);
- national consistency as registration conditions and types are standardised within and across professions (replacing differences in conditions within and across professions);
- uniform registration standards within professions and broad consistency across professions (replacing different requirements for eligibility);
- nationally consistent data on the regulated professions (national data was limited prior to the new Scheme); and
- digitisation of registration processes, expanded online services and improved community accessibility (previous arrangements were largely paper based) (AHPRA 2011a).

The administrative structure (figure 10.1) of the new Scheme is comprised of:

- *The Australian Health Workforce Ministerial Council (AHWMC)*. The AHWMC appoints National Board members and the Australian Health Practitioner Regulation Agency Management Committee. It approves registration standards and specialty lists and titles, and has the capacity to give direction to AHPRA and the Boards as to the policy they must apply in exercising their functions.
- *The Health Workforce Advisory Council*. This council provides independent advice to the AHWMC.
- *The Australian Health Practitioner Regulation Agency (AHPRA)*. The AHPRA is governed by the AHPRA Management Committee. In addition to providing operational and administrative support to the Boards (see below), AHPRA manages applications and enquiries about registration, and receives and processes complaints about practitioners. AHPRA has offices in each State and Territory and a national office in Melbourne. It also maintains and publishes the national registers of practitioners.
- *The National Boards.* There are 10 National Boards — one for each of the health professions included in the new Scheme. The National Boards have responsibility for developing standards of registration and accreditation, registering health practitioners who meet these standards, setting national fees and investigating and managing notifications about performance or conduct of practitioners. Two jurisdictions have retained some independence over the management of complaints. New South Wales entered the new Scheme as a 'co-

regulatory jurisdiction', with complaints, performance and health matters to operate under NSW law and be dealt with by the NSW Health Care Complaints Commission. In the Australian Capital Territory, there are provisions for the joint consideration of complaints by the National Boards and the ACT Health Services Commissioner (CRC 2010). The National Boards also have power to delegate responsibilities to AHPRA, as well as to national or jurisdictional committees.

Figure 10.1 **Architecture of the National Registration and Accreditation Scheme**



Data source: AHPRA (2011a).

Other changes

The new Scheme is also designed to improve the regulatory oversight of health professionals. As noted by McLean and Bennet:

> The lack of a mandatory national consistent assessment process and local workforce requirements have, in some cases, led to unintended consequences; in the most notable case — that of Doctor Jayant Patel in Queensland — there have been adverse effects on patient outcomes. (2008, p. 464)

The national requirements for registration of health practitioners have been based on the States and Territories judged to have the highest standards of public safety, and in some cases going beyond this (AHPRA 2011b). This represents an increase in the regulatory stringency of measures aimed at public protection across jurisdictions and professions.

Areas where requirements have been substantially strengthened include:

- *English language skills.* Practitioners who did not undertake their secondary and tertiary education in English must demonstrate they meet the standard through completing an English language test.
- *Criminal history.* A criminal history check must be completed for each new application and National Boards may undertake ad hoc checks of existing registered health practitioners.
- *Recency of practice*. The new Scheme requires practitioners to meet the recency-of-practice requirements set out by their National Board.
- *Continuing professional development.* The new Scheme introduced requirements for all practitioners to undertake mandatory continuing professional development that meet the relevant National Board's requirements.
- *Professional indemnity insurance.* Practitioners must not practise unless appropriate professional indemnity insurance arrangements are in place.
- *Automatic expiry of registration.* The national law provides for automatic lapsing of registration at the end of the late period, one month after the registration expiry date. Prior to the new Scheme, some boards had greater discretion about when/if health professionals would be de-registered.
- *Mandatory reporting requirements.* Practitioners and employers must notify AHPRA of conduct that would place the public at risk of harm, such as practising while intoxicated, or with an impairment or health condition that compromised their ability to fulfil their duties.

10.2 Who will be affected by the reform?

Health practitioners and service users are the main groups affected by this reform. Health practitioners will be subject to changing fees and processes, a new administrative system and stricter registration requirements. Consumers of health practitioners' services will be affected by greater consumer-protection measures, improved labour force flexibility and greater consistency in service quality. The large numbers of practitioners and consumers, along with the importance of health services to people's wellbeing and productive capacity, suggest that even small changes can have material impacts.

Health practitioners

Health practitioners are a subset of the greater health workforce, which totals around 825 000 persons (AIHW 2010). There are over 530 000 registered practitioners in the ten health professions covered under the new Scheme (table 10.2). Of these, around 332 000 (63 per cent) are nurses and midwives, and 88 000 (17 per cent) are medical practitioners (AHPRA 2011a). This workforce has grown by around 13 000 since July 2010 (AHPRA 2011b) and there are currently around 99 000 students on the student register. To varying degrees, practitioners will be affected by: the additional regulatory requirements placed on them; the short-term transition costs associated with implementing the new Scheme; and longer-term improvements in the form of improved administrative processes and economies of scale (described in sections 11.3 to 11.5 below).

Table 10.2 **Number of registrants, before and after implementation of the new Scheme**

Eligible professional	*2009*	*2011*
Nurse/Midwife	326 571	331 885
Dentist	17 166	18 319
Optometrist	4399	4442
Chiropractor	4093	4350
Medical practitioner	93 060	88 293
Osteopath	1414	1595
Pharmacist	23 542	25 944
Physiotherapist	20 142	22 384
Podiatrist	3081	3461
Psychologist	25 367	29 142
Total	**518 835**	**530 115**

Sources: AHPRA (2011b); Australian Health Ministers' Advisory Council (2009).

Consumers

All Australians will require the services of health care professionals at some point in their lives. Consumers stand to benefit from the new Scheme to the extent that it increases the quality of — or access to — health care services, or decreases the costs of delivering these services. Over the last decade, national expenditure on health has increased from around 8 per cent of GDP to over 9 per cent of GDP, amounting to around $120 billion per year, or $550 per Australian. A significant amount of this expenditure is in areas other than the direct services of health professionals (for example, medication accounts for around 13 per cent of the total). Expenditure on hospitals, medical and dental services and other health practitioners totalled around $79 billion in 2009-10.

10.3 Understanding the direct impacts of the reform

A number of potential benefits have been associated with this reform (PC 2006c; Australian Health Ministers' Advisory Council 2009). Broadly, these can be described as productivity benefits that improve the value derived from inputs into the health sector (dollars spent on labour and capital) in terms of the quantity and quality of services delivered (that is, health service outputs). This can be expressed in two ways:

- a given amount of resources can be used to produce more (or better quality) health services; or
- fewer resources can be used to produce a given amount (or level of quality) of health services.

The following sections describe the origins of productivity improvements that impact on the quantity and quality of health services.

Sources of productivity improvement

The new Scheme is designed to improve the efficiency of the system of accreditation and registration, as well as the labour market for health professionals more generally. These benefits are derived from:

- *Achieving economies of scale.* Registration boards generally performed similar functions (for example, processing registrations, collecting data, maintaining registries and administering disciplinary procedures). Under a national system, it is possible to derive cost savings from reducing the duplication of infrastructure and processes underlying the regulatory system (for example, it is easier to maintain one IT system than several dozen). Similarly, registration and accreditation of smaller professions in smaller jurisdictions is likely to have been below 'efficient scale'. To the extent that administrative effort and resources, including overhead costs, could be spread more efficiently, national arrangements offer the potential to reduce costs of regulatory oversight. Additionally, as a single national purchaser, AHPRA may be able to negotiate substantial savings in the procurement of external legal services (compared to the multiple, lower volume arrangements under the previous system).

- *Reducing administrative burden*. Whereas, prior to the new Scheme most boards used paper-based systems, AHPRA is now achieving around 85 per cent up-take of online registration renewal. As these new online system becomes established, registration processes should become more efficient, reducing administrative costs for both practitioners and AHPRA. Available information suggests that the cost of online processing is around $0.35 per application, compared to $4.60 for paper based applications.
- *Reducing barriers to workforce mobility*. This affects practitioners operating on jurisdictional borders, those on 'fly in, fly out' arrangements, and those seeking to move from one jurisdiction to another to provide health services. As tele-health technology matures, it may also impact on practitioners remotely practicing in multiple jurisdictions. The new Scheme reduces barriers to workforce mobility for these groups in two ways:
  - under the new arrangements, practitioners need only register once and can practice anywhere in Australia (reducing the financial costs, and time of registering to practice in more than one jurisdiction); and
  - the new Scheme further improves labour mobility by eliminating inter-jurisdictional differences in recognition or categorisation of specialties.
- *Enhancing governance incentives.* The new Scheme allows the publication of performance indicators for AHPRA at a national level. This allows a greater degree of scrutiny than the previous, more diffuse arrangements, and facilitates analysis of performance and continuous improvement at an organisational level. Similarly, the costs of the new Scheme are now fully covered by registration fees and are easily observed by stakeholders, rather than being covered through a combination of fees and government subsidies. The greater transparency and accountability of the new arrangements provides an ongoing impetus to improve performance.
- *Using the improved data to assist with workforce planning and other functions of the health system*. Forty two different State and Territory registration board databases, with varying accuracy, completeness and data management practices, were consolidated into a single, uniform national registry. This should improve the accuracy, accessibility and timeliness of data about the workforce in the health professions in a number of ways.
  - The National Statistical Resource is using this data (along with data from a number of other sources) to analyse the demand for services, entrants and exits from the workforce, and to provide an interactive tool projecting

workforce demand and supply.[3,4] The registration of students allows for much more reliable 'pipeline' analysis of the future supply of health practitioners.

- Improved data collection will also assist other government agencies. For example, a single consistent database reduces costs and the risk of errors associated with Medicare accessing registration data.[5]
- Health Workforce Australia can also draw upon the results of a non-compulsory survey, which health practitioners are requested to complete at the time of their online registration renewal. This has a response rate of 98 per cent of online registrants (or about 85 per cent of total registrants).

Quality of health services

The quality of services from health practitioners is ultimately reflected in effectiveness of treatments as measured by the health outcomes of patients. In addition to the welfare effects associated with improving people's health and wellbeing, improved healthcare quality can also benefit the broader economy through improved employment outcomes or reducing sick leave. There are several ways that the new Scheme may foster quality improvement.

More thorough and consistent registration requirements, such as criminal history checks and reporting of impairment, should reduce the occurrence of errors, patients receiving inappropriate treatment, or missed opportunities for treatment. Other related requirements, such as continuing professional development, should also contribute to practitioners' use of contemporary best practice.

The consistent registration requirements of the new system should enhance safeguards even in jurisdictions where public protection measures were already strong. This is because under the previous arrangements, practitioners could seek registration in jurisdictions with less strict requirements (for example, less rigorous

3 The dataset will also hold data from the Australia Institute of Health and Welfare (AIHW), Australian Bureau of Statistics (ABS), Medicare Australia Department of Immigration and Citizenship (DIAC) and the Department of Education, Employment and Workplace Relations (DEEWR).

4 www.hwa.gov.au/work-programs/information-analysis-and-planning/national-statistical-resource

5 The Australian Medical Council found evidence that shortcomings with data systems prior to the new Scheme led to some practitioners having the authority to bill Medicare, despite not being currently registered as legally qualified medical practitioners (2011, p. 4).

testing of English language skills), and then practise elsewhere in Australia under mutual recognition agreements.

The introduction of a national administrative approach to accreditation should also provide a platform for greater collaboration and learning between the health professions, and may also improve curriculums, teaching practices and the transmission of international best practice. In turn, this can increase the calibre of graduating health practitioners, role innovation and team based healthcare.

While these influences relate to the professions transitioning from the old to the new Scheme, the addition of four professions to the new Scheme — Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists — in July 2012 should further improve the quality, consistency and safety of these health services. In some jurisdictions, this will be the first time some of these professions are subject to registration and accreditation requirements, implying a greater regulatory adjustment for practitioners and regulators.

10.4 What are the direct impacts of the reform?

No empirically based estimates of the potential economic impact of the new Scheme exist. In large part, this is due to the fact that, although the reform is complete, the ongoing fine tuning of the new regulatory system means its long-run operation is still very much a work in progress. For this reason, it also too early for ex-post evaluation to be able to observe and attribute changes to the reform. The benefits of the new Scheme are largely prospective.

As discussed above, the introduction of the new Scheme will have productivity impacts that could either occur in terms of the level of output (or its quality) for a given level of inputs, or the level of inputs required to produce a given level of output. Evaluating the productivity impact from either perspective is problematic, especially in regards to aspects of the reform specifically designed to improve quality.

It is often not clear which indicators of health output should be used and how to appropriately attach value to them. In practice, it is also hard to separate demand and supply factors in determining what is influencing observed changes in industry output and input. Finally, it is very difficult to apportion impact to a particular reform from other factors, such as health sector resourcing, technological change, numerous other concurrent health sector reforms,[6] and other lifestyle factors.

Notwithstanding this, the productivity effects on the level of production for a given level of health service inputs can be more simply described, and there is *some* evidence as to what could plausibly be achieved by the introduction of the new Scheme. As part of the National Reform Agenda (NRA) modelling, the Commission (2006c) examined the economic impact of a range of proposed changes to the health sector. The health sector reforms considered arose from *Australia's Health Workforce* (PC 2005) which included establishing a national registration and accreditation scheme. Other potential reforms considered in the NRA analysis included:

- better cooperation between Australian, State and Territory governments in the funding and provision of health care to reduce cost-shifting and fragmentation of service delivery;
- better utilisation of e-health information and communication technologies;
- more patient orientated health care and greater competition in the acute care sector;
- removing impediments to more effective and efficient scopes of practice, appropriate mixes of competencies and job redesign; and
- improvements to the efficiency of the Medicare Benefits Scheme.

A range of econometric studies were sampled in order to estimate a productivity frontier. The gap between average productivity and the 'outer limit' was then used as a proxy for the potential for improvement under the proposed reforms. It was then calculated that if the combined impact of the implementation of all reforms bridged one-fifth of the productivity gap in the hospital sector, and one-tenth of the productivity gap in the non-hospital sector then overall health sector productivity would increase by around 5 per cent. This equated to a saving of around $3 billion in health sector costs (PC 2006c).

The new Scheme represents a small but significant component of the reforms considered in the NRA analysis of health reform. As such, the NRA estimates are a useful guide as to possible effects of the new Scheme. As an upper bound, given the combined scale of the other health sector reforms considered, it is unlikely that the new Scheme could account for more than 10 per cent of the NRA estimate.

6 Such as the National Health and Hospitals Agreement, the National Partnership Agreement on Hospital and Health Workforce Reform and the National Health Reform Agreement.

For the purposes of this study, half of this possible value is canvassed here — five per cent of the NRA estimate. This equates to a 0.23 per cent increase in total factor productivity in the health sector, or a cost saving of around $160 million (2010-11 dollars) per year.

Alternatively, the direct impacts could be considered in terms of labour productivity. In this context, if the introduction of the new Scheme improved labour productivity of health practitioners by around 1 per cent, this would yield a saving to the health sector of around $240 million per year (in 2010-11 dollars) in the long run.

In time, the benefits described in section 10.3 strongly suggest the new Scheme should yield *some* positive impact. This is further evidenced in the near universal support for the new Scheme reported by health practitioners and their associated industry bodies, despite the significant disruption experienced during implementation (Senate Finance and Public Administration References Committee 2011).

Given the considerable uncertainty around these impacts, the Commission has adopted the lower figure (that is, long-run savings of around $160 million per year).

10.5 Indicative costs of achieving reform

Transition costs

As specified in the Intergovernmental Agreement, $19.8 million was provided by Commonwealth and State and Territory governments for the implementation of the new Scheme (COAG 2008h). The Australian Government paid half of this ($9.9 m) and the State and Territory governments paid the other half.[7]

Beyond these direct financial costs, there have been considerable transition costs associated with the implementation of the new Scheme. While large-scale changes to regulatory systems are invariably associated with disruption to the sectors involved, the Senate Finance and Public Administration References Committee (2011) document the particularly acute issues that arose with the introduction of the new Scheme. Health practitioners and peak bodies reported serious difficulties in accessing accurate information, including:

7 Answers to questions on notice to the Department of Health and Ageing, taken at the public hearing on 5 May 2011 and provided on 23 May.

- very long periods of time spent on hold when contacting the AHPRA call centre and long response times for email inquiries. For example, Ramsay Health Care Australia (the largest operator of private hospitals in Australia) suggested their employees waited an average of 29 days for emails or phone calls to be returned. In many cases, it was reported that responses were never received (sub. 35, p. 4);
- inadequate and infrequently updated information on the AHPRA website; and
- inadequately trained or informed staff that were unable to provide accurate information or updates on registration progress.

They also reported administrative problems, including:

- practitioners not receiving notifications of renewal;
- incorrect forms being sent out;
- incorrect information being entered on databases and difficulty having errors corrected;
- loss of documents relating to payment and registration; and
- long processing times for applications.

In addition to the magnitude and complexity of the reform itself, several factors exacerbated these transitional difficulties and administrative problems. First, the timeframe for implementation was relatively short[8] and limited staff were available prior to commencement as most were still employed to administer the State and Territory registration schemes. Second, delays to key pieces of legislation hindered early preparation.[9] Third, transition and implementation costs were greater than anticipated (AHPRA 2011b, p. 24) and exceeded the amount earmarked under the Intergovernmental Agreement.

The majority of the costs of transitioning to the new Scheme have been imposed on health practitioners in terms of the time, energy and inconvenience associated with registration (table 10.3). Also, long registration times for new graduates and overseas trained practitioners have delayed commencement of employment, resulting in lost income and unnecessarily reducing, at the margin, Australia's health workforce during this period (Senate Finance and Public Administration References Committee 2011).

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[8] For example, changes to mutual recognition in 1992 were implemented over three years and did not entail any changes to existing organisational structure.

[9] Only New South Wales, Victoria and Queensland passed their referencing legislation by the end of 2009 as set out in milestone two of the *National Partnership Agreement to Deliver a Seamless National Economy*.

Table 10.3 **Difficulties with registration reported by samples of health practitioners**

Body	*Member's issue*	*Number*
Royal Australian College of General Practitioners	Having difficulties with their registration and contacting AHPRA	100
	Not informed of their registration renewal	Several hundred
MDA National Insurance	General difficulties	15-20
Australian Dental Association	Difficulty communicating with AHPRA to check the status of their registration	500
	Sent wrong information about their registration even though they had put in paperwork and paid fees	20-30
Ramsay Health Care Australia	Unsure if they were able to practise as names not appearing on AHPRA's register	234
	Had to cease practise for a period of between 3 days to 5 weeks due to de-registration	34
Australian Physiotherapy Association	Did not get a renewal notice	18 (30% of survey)
	Paid renewal fees but not processed	36 (60% of survey)
	Made an online query and did not receive a reply	15 (25% of survey)
Australian Private Midwives Association	Not notified of renewal, or given incorrect paperwork	50 (Qld)
		30-50 (Vic)
Australian Psychological Society	Failed to renew registration	500
	Contacted APA with concerns about the registration process	50-100 (Vic)

Source: Senate Finance and Public Administration References Committee (2011).

In some cases, administrative errors have also resulted in health practitioners being inadvertently de-registered, causing some loss of income and possible impacts in other areas: the reputation of the health practitioner, staff shortages at health organisations, patient treatment times and coverage of indemnity insurance. However, it is not clear how widespread or severe the impacts of inadvertent de-registrations have been. AHPRA has argued that the overall rate of lapsed registration did not appear to deviate greatly from historical trends (AHPRA 2011b). Using the number of people who lapsed and have reapplied as a proxy for those unintentionally deregistered, it was estimated that around 3800 practitioners may have been unintentionally deregistered (around 1 per cent of those scheduled for renewal).

While the Senate Finance and Public Administration References Committee (2011) provides detailed anecdotal data around transition issues, it does not attempt to aggregate system wide transition costs. Nevertheless, some 'back of the envelope' calculations suggest the transitional cost could be substantial. For the purpose of this study an indicative estimate of around $24 million has been adopted (box 10.2).

Box 10.2 **'Back of the envelope' calculation of transition costs on health professionals**

Two key components of the transition costs on health practitioners during the implementation of the new Scheme are the additional time spent registering and the time lost by those inadvertently de-registered.

In order to estimate an indicative transition cost, it is assumed that, on average, health practitioners took 2 hours longer to register in the first year of the new Scheme than they did under previous arrangements. In part, this simply reflects that new regulatory requirements typically take some time to understand. It also encompasses the registration issues that some health professionals experienced. While some would have spent longer than two hours, for others the time spent may have been comparable or even reduced in the first year of the new Scheme (due to the availability of online registration). In 2010-11, there were around 530 000 registered practitioners in Australia, implying an additional 1 060 000 hours spent registering, or 26 500 weeks of total labour. Average weekly earnings for health care and social assistance workers in this period was around $870 dollars. This suggest a total cost of around $23 million in labour costs.

While practitioners may have missed key registration dates from time-to-time under the old arrangements, the consequences for doing so are more severe under the new Scheme (practitioners' registration now automatically expires following a one month grace period after the nominated expiry date). In order to minimise the impact on practitioners who may have been unaware of this change, AHPRA implemented a 'fast-track' application process' from September 2010. This allowed practitioners whose registration had expired the capacity to re-register within 72 hours of submitting the required documentation to AHPRA. Around 3 900 practitioners applied for re-registration through the fast track process. Assuming the average time between practitioners discovering they had been de-registered, and re-registering via the fast track process was 48 hours, this suggest a loss of around 7 800 working days. Valued at average weekly earnings for health care and social assistance workers this suggests a total costs of around $1.4 million.

Combined, these calculations suggest a total additional cost of around $24 million for health practitioners during the implementation period.

Sources: ABS (*Average Weekly Earning Australia*, Cat. no. 6302, November, 2011); AHPRA (2011a); Commission calculations.

Ongoing costs

Registration fees have increased for all health professions, ranging from an increase of $26 per year on average for nurses and midwives (a 29 per cent increase) to $315 per year on average for medical practitioners (a 89 per cent increase) (table 10.4).

Table 10.4 **Annual renewal fee for general registration before and after implementation of the new Scheme**
$ per year

Eligible professional	*2009*[a]	*2011*
Nurse/Midwife	89	115
Dentist[b]	302	563
Optometrist	199	408
Chiropractor	352	510
Medical practitioner	355	670
Osteopath	353	496
Pharmacist	225	305
Physiotherapist	116	196
Podiatrist	234	362
Psychologist	216	403

a Weighted average of all States and Territories. **b** Lower weighted averages apply for certain types of dental registrations, such as hygienist, therapist, and prosthetist.

Sources: Australian Health Ministers' Advisory Council (2009); National Board Websites.

The Australian Medical Association has drawn attention to these increases in renewal fees for medical practitioners and expressed concern that fees paid by medical practitioners were subsidising the costs of regulating other health professions. Concerning fee relativities, AHPRA has stated that the costs of administering the new Scheme for the medical profession is in line with the fees paid (AHPRA 2011a). That is, while fees paid by the medical profession are relatively high, so are the costs — despite making up only 16 per cent of registered practitioners, AHPRA spends 39 per cent of its budget on medical practitioners.

Some of the increase in fees is being driven by the higher regulatory standard embodied by the new Scheme. In this regard, AHPRA has noted:

> The National Scheme provides for a more robust and protective regulatory environment than was in place previously... In some areas, new registration standards have added costs to the system… these requirements create new demands in the complexity of administration and the effort per practitioner to assess and process applications. (AHPRA 2011a, p. 19)

More broadly, changes to fee structures reflect a number of influences and are not necessarily due to increased overall costs under the new system, including:

- registration and accreditation systems already experiencing significant cost pressures prior to the introduction of the new Scheme (in particular due to legal fees). Increasing fees reflect increasing cost pressures that are not related to the introduction of the new Scheme.
- the withdrawal of subsidies provided by State and Territory governments to local registration boards under the old system (either through direct funding, or indirectly through the provision of legal or other services). In effect, this cost has been transferred from taxpayers to health professionals, but is not an additional *net* cost.
- the need to develop an adequate level of financial reserves, given that lower than expected reserves were transferred from State and Territory bodies at the commencement of the new Scheme (AHPRA 2011b, pp. 19–20).

Over time, the intended administrative efficiencies could lower fees in the future. For example, the Dental Board of Australia has announced it will no longer require State, Territory or regional boards from 1 July 2011 (AHPRA 2011a). Similarly, the introduction of the new Scheme has been accompanied by technological improvements in several areas (section 10.1) which should deliver further efficiencies over time.

The reform and rebalancing of the fee structure will reduce fees to certain groups. In particular, health professionals who practise in multiple jurisdictions will be financially better off, as they now only need to pay to register once nation-wide. While data on multi-jurisdiction practitioners was not available for all health professions prior to the introduction of the new Scheme, the AIHW has published data on medical practitioners, nurses and midwives (who together make up around 80 per cent of all health professionals). This suggests that around 8.2 per cent of medical practitioners and around 3.9 per cent of nurses and midwives were registered in multiple jurisdictions (equating to 7216 medical professionals and 12 870 nurses and midwives).

Overall, it is not clear whether increased fees imply an overall cost increase, or (if it does) whether the increase will persist in the long run.

10.6 Summary of effects

Table 10.5 summarises the assessment of impacts arising from the new Scheme. Because the new Scheme only came into effect in July 2010, it is unlikely substantive gains have been realised to date. Accordingly, the benefits are assessed as prospective. With the system now up and running, it is the Commission's assessment that the ongoing benefits could progressively accrue over the next twenty years. For the purposes of this study, it assumed that new Scheme will generate an increase in total factor productivity of around 0.23 per cent, which corresponds to savings of around $160 million per year in the long term.

Available information suggests that significant transition costs are being incurred by health professions and governments, of the order of $24 million and $20 million respectively. For this study, the Commission has assessed that the bulk of these costs were incurred over several years leading up to its commencement in 2011. At this stage, it is not clear that there will be net increases in on-going administrative and compliance costs to the professions or governments.

Table 10.5 **Summary of effects of introduction of national accreditation and registration scheme**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts[a]				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[b]	
Increase in productivity of health service provision	..	160	160	..	..
Government administration costs					
Australian Government	..	..	..	..	(10)
State governments	..	..	..	..	(10)
Cost to health practitioners	..	..	..	..	(24)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] In addition to the productivity effects described, the new Scheme will also have implications for the ongoing costs of administering the regulatory regime. However, it is unclear what these will be over the long run. On the one hand, scale and efficiency measures should drive cost savings. On the other, stricter registration requirements increase the resources required to administer the new Scheme, compared to previous arrangements. [b] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates.

10.7 Opportunities for improvement

For the purposes of the *National Partnership Agreement to Deliver a Seamless National Economy*, the health workforce reforms are complete and no further actions are scheduled. Governments will continue to play a role through the

Australian Health Workforce Ministerial Council, and the nature of its relationship with the National Boards and AHPRA itself may continue to evolve over time.

There is scope for AHPRA to continue to develop its administrative processes and organisational capabilities (a number of past and ongoing measures are detailed in AHPRA 2011a and 2011b). The Australian Medical Association (sub. R.5) points to a number of specific issues, such as:

- inefficient administrative processes not well suited to the tiered registration structure of the medical profession;
- little information about the process of notifications, who the decision makers are and how matters are escalated; and
- mandatory reporting requirements, aimed at monitoring practitioners with health conditions or impairments that may undermine their ability to treat patients, may increase risk to patients, rather than decrease it. This is because the mandatory reporting requirements may discourage practitioners from seeking treatment, or from divulging all necessary information to permit appropriate care.

Many of the stated concerns should be abated over time as the operation of the new Scheme becomes more widely understood, and AHPRA's administration processes become fully established. Further improvements in performance are appropriately based on the experiences garnered by the management of the accreditation and registration system over time, and the evidence unveiled through the course of its operations. AHPRA states that it:

> … has a significant program of work to continue to develop business processes and capacity. AHPRA has made strong progress in relation to the reliability and performance of its operational systems and processes. It has also made substantial progress to further standardize national processes for dealing with notifications about the health, performance or conduct of individual practitioners. Over the last year, AHPRA has also had a clear focus on improving customer service, particularly in responding to community and practitioner phone calls, emails and counter enquiries. (sub. DR-R15, p. 1)

Further work will also be required with the inclusion of four new professions in the new Scheme from July 2012 onwards. For some of these (such as podiatrists), this will involve transitioning from state-based regulatory frameworks to nationally consistent arrangements. However, for others (such as Chinese Medicine Practitioners and Aboriginal and Torres Strait Islander Health Practitioners) many jurisdictions do not have registration and accreditation requirements. The absence of experience with registration and accreditation systems means that additional care will be required in transitioning practitioners in these jurisdictions, and establishing effective quality assurance mechanisms.

As noted by the COAG Reform Council (CRC 2010), the continued operation of local complaints bodies in New South Wales and the Australian Capital Territory potentially undermines one element of the harmonisation objectives of the reform. Once the new Scheme has become firmly established, there is merit in reviewing the desirability of separate complaints bodies, the costs and benefits of the arrangement, and the possible integration into the national framework.

There may also be scope to improve the harmonization of regulatory systems that connect with the new Scheme. For example, while the new Scheme makes it easier for dentists and medical practitioners to operate in more than one jurisdiction, in doing so they are likely to encounter different legislative requirements around prescription, supply, possession and administration of drugs. This can reduce their capacity to *effectively* practise in more than one jurisdiction, and may also undermine their geographic mobility.

In many cases, the mobility of health professionals is not matched by the mobility of patient information that they need to practise effectively. As such, the objective of more efficiently aligning the supply of health professionals to patient demand is likely to be assisted by the introduction of E-health technology such as personally controlled electronic health records.

Lessons learned from the implementation of the new Scheme

The new Scheme represents a large scale change, completed in just over 2 years following the signing of the Intergovernmental Agreement (although COAG had signalled its intention in this area from mid-2006). The Australian Medical Council describes this as ‘the most radical reform of regulation of the health professions in Australia since the first Act of Parliament to regulate the practice of medicines in the British dominion was passed in 1873’ (2011, p. 1).

Morauta (2011) examines the ‘adoption of laws’ model used to implement the new Scheme and identifies several critical factors contributing to the completion of the reform within the tight time-frame. These include:

- extensive and iterative consultation that was responsive to stakeholder concerns;
- a high level of consensus between jurisdictions;
- effective collaboration between departments, ministers and COAG, including strong ministerial leadership, having dedicated avenues to advance reform (beyond the usual inter-jurisdictional arrangements), and having specifically funded support structures to enable effective development and implementation; and

- a high level of commitment to advancing the reform, such as holding to the nominated commencement date for the scheme was seen as a key strategy for maintaining reform momentum.

The importance of these factors was also reaffirmed in consultation during the course of this study.

On the other hand, the introduction of the new Scheme was associated with considerable transition costs, most evident in the disruptions to practitioners registering with AHPRA for the first time. It is possible, in hindsight, to identify particular areas where the transition could have been improved on (for example, additional resourcing of call centres). However, the extent to which this can provide useful generalisation to other reforms is limited by the disparate nature, environment and objectives of the reforms themselves. In any event, even the best planned reforms are vulnerable to unforeseen problems — minimisation of the costs associated with these will be a function of the timeliness of their identification and the effectiveness of the response.

It will rarely be the case that disruption to sectors undergoing reform can be entirely eliminated, and typical responses to such risks carry their own costs. For example, while longer lead times and more gradual transitions can reduce the intensity of the transitionary costs experienced, this carries costs such as:

- deferring the benefits of the reform; and
- the risk of losing momentum and not achieving meaningful reform at all.

The experience with the implementation of the new Scheme highlights this important trade-off. During consultations, the Commission was advised that a more gradual approach in the case of the new Scheme would have risked missing a window of opportunity for change — thereby risking the reform itself.

11 Trade measurement

Key points

- Trade measurement regulation aims to ensure the accuracy of measuring devices such as scales and dispensers, and that products are properly measured and labelled.
- As part of the COAG Seamless National Economy reforms, the previous state-based system of trade measurement regulation was replaced in July 2010 with a national system administered by the Australian Government.
- The change has involved the transfer of administrative and enforcement costs of $21 million from the State and Territory governments to the Australian Government.
- In conjunction with the move to a 'one-stop shop', minor changes were made to licensing provisions and new 'product shortfall' provisions were introduced.
- Overall, the changes are estimated to lower ongoing business costs by around $5 million per year, phasing in over the first three years of operation.
- Implementation of the reform is estimated to involve a one-off transition cost of $9 million to the Australian Government.
- While there is scope for ongoing administrative gains, there appears little potential, as this stage, for substantive further reform within COAG's reform agenda.

From everyday purchases of bread, milk and petrol to multi-million dollar exchanges of minerals, energy and agricultural commodities, there are millions of consumer and business transactions in which the price paid is dependent on measures of quantity and/or quality (or product 'grade'). By one estimate, the value of Australian business-to-business and retail transactions reliant on measurement could exceed $400 billion per year (MCCA 2006).

The use and verification of product measures in Australia is governed by trade measurement regulation. Its provisions cover:

- approval and use of measuring instruments for trade (such as weighing scales, flow-meters, tanks and beverage dispensers);
- licensing of measuring instrument servicing organisations that have personnel nominated to certify measuring instruments;
- packaging and labelling of pre-packaged articles;

- sale of goods by measurement (of quantity or quality);
- licensing of operators of public weighbridges; and
- inspection of trade measuring instruments and pre-packages, and penalties for breaches of the law.

Trade measurement regulation has primarily been the province of the States and Territories. Each jurisdiction enacted and administered its own trade measurement legislation and conducted its own enforcement and compliance programs. In 1990, the States and Territories (excluding Western Australia) agreed to adopt Uniform Trade Measurement Legislation (UTML), to address concerns about discrepancies in trade measurement and to 'provide a high level of consistency of regulation between jurisdictions' (Tan 2008, p. 4). Despite the adoption of UTML, inconsistencies in approaches remained, and a number of reviews argued that there would be merit in a more nationally consistent approach to trade measurement regulation (box 11.1).

As part of the COAG Seamless National Economy reforms, the previous State-based system of trade measurement regulation was replaced in July 2010 with a national system administered by the Australian Government.

This chapter discusses the details and objectives of this reform and considers who and what will be affected. It also reports estimates of some of the benefits and costs of the reform, and canvasses the scope for further reform in this field. The Commission's assessment of the likely direct impacts of the shift to the new trade measurement system has required judgements about the effects of reform that has just been implemented and is still being consolidated. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reform.

11.1 Reform objectives and changes

According to the COAG Reform Council, the overall aim of the reform was 'to ensure that nationally consistent and equitable trade measurement practices and standards' were used on all measurement-based transactions (CRC 2010, p. 63). Among other things, the new national system would see one set of rules, fees and administrative system replacing 17 pieces of State and Territory legislation. A further benefit envisaged was that a shift to a single regulator would enable more efficient administration and enforcement practices, including better workforce training and retention, within the trade measurement sector.

Box 11.1 **Recent reviews of Australia's trade measurement system**

Kean review 1995

This *Review of Australia's Standards and Conformance Infrastructure* received numerous submissions highlighting the differing fee structures across the jurisdictions, varying requirements on industry and the inconsistent administration of legislation across the jurisdictions. The review concluded that the UTML was not achieving its objectives, and recommended that a national system be adopted.

The Australian Government subsequently amended the *National Measurement Act 1960* to take responsibility for trade measurement in utility meters, but the broader recommendation was not taken up.

Regulation Taskforce report 2006

The *Taskforce on Reducing Regulatory Burdens on Business* heard that ongoing differences in trade measurement regulation between jurisdictions were resulting in some costs for industry. Cognisant of the long history of efforts to achieve a nationally-consistent approach, its January 2006 report recommended:

> The Australian Government should initiate an independent public review to identify practical steps to expedite the adoption of a nationally consistent trade measurement regime and streamline the present arrangements for certifying trade measurement instruments. (Recommendation 5.52)

Subsequently, on 10 February 2006, COAG agreed to address six cross-jurisdictional areas, including trade measurement, where overlapping and inconsistent regulatory regimes were deemed to be impeding economic activity.

Ministerial Council of Consumer Affairs review 2006

The *Review of National Arrangements for Administering Trade Measurement in Australia*, released in May 2006, assessed several options for moving to a nationally consistent system. The study identified and provided some indicative estimates of the likely impacts of the different options — based in part on submissions from some major businesses, project surveys from jurisdictions and estimates by the National Measurement Institute. It found that moving to a system of national legislation with a single national regulator would be:

> … the best option to remove existing structural problems, to rationalise the different regulatory regimes of the States and Territories, and to address the challenges presented by new measurement technologies (Ministerial Council on Consumer Affairs 2006).

Sources: NMI (2011); Regulation Taskforce (2006); MCCA (2006).

As part of the April 2007 agreement to establish the new system, COAG provided three years for the transition. During this period:

- the Australian Government appointed the National Measurement Institute (NMI) as the system administrator, and allocated around $30 million over four years in its 2007–08 Budget to establish and begin operating the new system (this included a three year transition period, and the costs of its first year of operation);

- administrative arrangements were negotiated for the transfer of various State and Territory trade measurement resources and staff to the NMI;
- drawing on consultation with business and other stakeholders, the NMI examined whether specific trade measurement provisions should be reformed in conjunction with the switch to the national system;
  - only two substantive changes were made: the introduction of new ‘shortfall’ provisions and some minor refinements to licensing provisions (box 11.2);
- the *National Measurement Amendment Act 2008 (Cwlth)*, which provides a legislative basis for the system, was passed and commenced on 1 July 2009;
- the supporting *National Trade Measurement Regulations 2009 (Cwlth)* were also developed and gazetted; and
- the States and Territories repealed relevant legislation in their jurisdictions.

The new national system for trade measurement formally commenced on 1 July 2010. The COAG Reform Council reported in December 2010 that, while there had been minor delays in meeting some intermediate milestones, the overall reform was delivered on time.

11.2 Who or what will be affected by the reform?

The number of businesses directly affected by trade measurement regulations — and which might thus be significantly affected by any reforms — is much smaller than data on the pervasiveness of measurement-based business transactions might suggest. Trade measurement regulations do not materially affect the operation of most businesses, many of which buy and sell pre-measured and packaged goods. Businesses that use measuring devices (such as scales and bowsers) are potentially more affected, but are unlikely to notice much change in their interactions with the regulatory system. As the NMI stated:

> … the [new] Regulations largely correspond to current state and territory trade measurement legislation … there is little impact on the daily operation of most businesses. (NMI 2009, p. 3)

Box 11.2 **Main changes to the regulations**

Shortfall provisions

'Shortfall provisions' relate to whether quantities stated on pre-packaged goods are accurate, and are the area of most substantive change to the regulations.

Under the pre-existing UTML system, no one pre-packed article could contain more than a 5 per cent shortfall, and there could be no deficiency (on average) in a sample or batch of a particular product.

The new regulations, while allowing businesses to continue using the UTML provisions, also include an option for businesses to instead use the (slightly different) Average Quantity System (AQS). The AQS is an internationally recognised method intended for use in large scale packaging plants for goods (for example, breakfast cereals) packed in the same quantity in large numbers.

Under AQS, the average net content of packages in a production run may not be less than the stipulated quantity, but a small number of pre-packed articles is allowed to exceed a specified 'tolerable deficiency' that is proportional to the quantity of product and related difficulty of accurate filling. For example, for a lot of 200 packages, a sample size of 50 is required for inspection and 3 packages in the sample are allowed to exceed the tolerable deficiency (for a 500 gram net package, for example, the tolerable deficiency is 15 grams or 3 per cent.)

Businesses that opt to use AQS for their products are required to print a mark on their packages to show they have been packed under AQS rules.

Licensing changes

One of the rationales for moving to a national system of trade measurement regulation was to remove the need for businesses operating in more than one jurisdiction to obtain multiple licenses. In parallel with the move to a single national license, some other details of the licensing system were refined. The changes entailed:

- extending license renewal periods from one to three years;
- removing a requirement for 'certificates of suitability' for public weighbridge operators;
- allowing weighbridge licensees — often local councils — to contract their operations to third parties;
- phasing in skill and competency recognition arrangements for verifiers and operators; and
- adjusting license fees to align with licensing costs.

Two groups of businesses will be materially impacted:

- those that supply and/or verify the accuracy of trade measurement devices, or operate weighbridges, which are required to be licensed by the NMI — the

Commission has been advised that there are currently around 750 such businesses Australia-wide (NMI, pers. comm., November 2011); and

- those businesses wishing to avail themselves to the optional, new AQS shortfall provisions — this may be a larger group, although data on the actual number are not available.

For consumers, changes to the trade measurement system are unlikely to be discernible. While any improvement in efficiencies or reductions in costs consequent upon the reforms could in theory be expected to flow through to lower price levels (or lower net taxes where efficiencies are captured by governments), such benefits would likely only become visible at the aggregate (population) level.

The reforms will also have some impacts on governments and their officials. The move to a national system has entailed administrative and financial changes, including the transfer (and, in some cases, relocation) of staff to the NMI, with some differences in pay, duties and work practices entailed. Legislators themselves may also be affected insofar as the reforms reduce the demands on all jurisdictions to alter regulations and legislation where changes in the approach to trade measurement are made.

11.3 Analysis of the direct impacts of the reforms

While it seems likely that the magnitude of the impacts of this reform is small in an economy-wide sense, information that would allow a precise assessment of those impacts is not readily available. Reflecting the 'machinery of government' nature of the reforms, the Office of Best Practice Regulation waived the requirement for a Regulation Impact Statement (RIS) when the new national legislation was enacted. And while the national system formally commenced in July 2010, the NMI has indicated that it is still in a process of consolidation and that the full extent of any operational efficiencies it will be able to obtain, relative to the previous State-based system, is as yet unclear.

However, the 2006 Ministerial Council on Consumer Affairs (MCCA) study provides a basis for identifying some of the potential impacts from the shift to the national system, and includes 'indicative' estimates of some of those impacts.

The Ministerial Council on Consumer Affairs study

Problems with the previous system

The MCCA study identified several concerns about the State-based system. Those concerns represent areas of potential benefit from the move to a national system. The key problems raised were:

- legislative differences across jurisdictions, due to lack of synchronisation of amendments to trade measurement acts and regulations;
- different enforcement regimes, as jurisdictions have separate trade measurement administration acts which reflect different procedures, priorities, fees and charges;
- multiple licensing systems for certifiers of measuring instruments, involving multiple fees and reporting systems for companies which operate across jurisdictions; and
- inconsistent advice and interpretation of legislation by trade measurement authorities, leading to industry confusion and costs. (MCCA 2006, p. 32)

Further, some State and Territory trade measurement authorities were concerned about their ability to maintain appropriate levels of enforcement activity given an anticipated loss of experienced staff in the coming years. It was noted that:

> Although there could be a loss of expertise in the short term, a national agency would offer improved career opportunities for staff, and would create a critical mass for effective skills development, knowledge transfer and succession planning. (MCCA 2006, p. 56)

The tendency for legislative changes to be slow, as multiple agencies needed to amend their legislation, was also regarded as problematic:

> … there are differences in administration across States and Territories and the time taken to implement changes to the UTML is excessive; there are additional costs to industry through each State having its own Administrative Act, and each jurisdiction has its own priorities for amending the legislation. (MCCA 2006, p. 29)

The MCCA study noted that moving to a national trade measurement system under the one single jurisdiction would eliminate the problems arising from differences between the States and Territories. That is, it would potentially address the licensing concerns, differing legislative and enforcement regimes and inconsistencies on industry as well as the burdens on States and Territories.

Cost-benefit analysis

The MCCA study included an 'economic' cost-benefit analysis (CBA) of moving to a national trade measurement system under a single national regulator. The estimates included in the analysis were based on consultations with NMI on predicted transition costs, expenditure and revenue data from the States and Territories, and some estimates from businesses of potential reductions in paperwork burden and compliance costs.

The items estimated included:

- costs for the Australian Government;
  - drafting of new national Trade Measurement Act and Regulations, establishment of a national licensing scheme, new IT equipment and other establishment costs;
  - staff and operating expenses; and
  - annual enforcement and laboratory services.
- benefits for the States and Territories;
  - savings in legislative maintenance and amendment costs and reduced expenditure on administering and enforcing trade measurement legislation.
- benefits for businesses;
  - reduced administrative costs and other efficiency benefits.

In the CBA, the costs and benefits of the reform were streamed over a 10 year period (with an assumed start date of 1 January 2007) and yielded a net present value — calculated using a 7 per cent discount rate — of $5.7 million (table 11.1).[1]

[1] The MCCA report included both a 'financial' CBA and an 'economic' CBA. The financial CBA included estimates only of impacts for which direct financial flows could be identified. The financial CBA yielded a $14.4 million net cost (in net present value terms), but it was emphasised that this result did not include the unquantified benefits from the reform. The 'economic' CBA additionally included estimates of the value of some indirect productivity savings (e.g. time savings) for business and government. As noted in the text, it yielded a small net benefit (of $5.7 million) in net present value terms.

Table 11.1 **MCCA study estimates of impacts of trade measurement reform**

$ millions (2006)[a]

	Government	*Business*	*Combined*
Direct cost savings	(16.2)	1.8	(14.4)
Efficiency benefits	0	20.2	20.2
Net benefits	**(16.2)**	**22.0**	**5.7**

.. zero. Estimates in brackets ( ) represent cost increases. Totals may not sum due to rounding. [a] These impacts reflect the present value of the estimated benefits to business and the present value of the estimated costs to government.

Source: MCCA (2006, tables 6.12 and 6.13).

Importantly, the MCCA study emphasised that its estimates were based on a range of assumptions and, in some cases, limited data or evidence, and that they should be treated only as indicative.

The study also noted that it had not sought to quantify all the possible benefits that might arise from moving to a national trade measurement system run by the Australian Government. One source of unquantified benefits was identified as improved operational efficiency of the regulator. The study also indicated that the benefits to business would probably be larger than implied by its estimates, and that there could be flow-on benefits for consumers.

Some impacts in more detail

The AQS shortfall option

As mentioned in box 11.2, the adoption of the AQS method entails a variation on existing shortfall provisions and has been introduced as an option for businesses.

The AQS is an internationally recognised method and its availability as an option should provide benefits for businesses, particularly importers and exporters, which already use, or are required to demonstrate compliance with, AQS for some of their sales. In its progress report for 2008-09, COAG stated that one of the benefits of adopting AQS is in the reduced need to 'overfill' packages. Of course, the costs to business entailed in overfilling packages are offset to some extent by benefits to consumers. Even so, as COAG went on to observe, there are also efficiency and international competitive issues to consider:

> [The AQS method] is intended to introduce an internationally accepted mark to provide ease of access to markets that accept the mark. The costs of overfilling are not faced by

many overseas competitors with Australian packaged goods given widespread international use of AQS. (CRC 2009b, p. 42)

While the provision of the AQS option thus appears likely to yield a net benefit, data is not available on the likely uptake of AQS or on the magnitude of any savings for businesses that may result. Nor were estimates of the benefits of the AQS option included in the MCCA study's CBA.

Licensing issues

One of the rationales for moving to a national system of trade measurement regulation was to remove the need for businesses operating in more than one jurisdiction to obtain multiple licenses. This has now been achieved. Estimates from the MCCA study included the value of this change.

However, as noted in box 11.2, in parallel with the move to a single national license, refinements were made to other details of the licensing requirements, including to the length of license renewal periods, and the conditions of licenses. In general, the changes are intended — and appear likely — to reduce transactions costs and/or increase flexibilities for licensees. Accordingly, these changes would be expected to provide benefits additional to those estimated in the MCCA study. However, as noted earlier, there are around 750 licensees Australia-wide. Accordingly, while these changes are of value, they are unlikely to be significant in an economy-wide sense.

As part of the reforms, license fees are also being harmonised and the NMI is moving to cost-reflective license fees. Because fees in many jurisdictions under the previous system were low relative to the costs of licensing, the new national fee will represent an increase for a proportion of licensees. While this represents an additional cost for those businesses, this cost is basically offset from an economic viewpoint by the additional revenue received by government. That is, it represents a 'transfer' between different groups, rather than a 'cost' in an economic sense. As such, it is not necessary to adjust estimates of the benefits and costs of the reforms to account for this change.

Transitional costs

The NMI conducted an array of activities during the three year transitional period for the new system. The activities included: reviewing and/or drafting legislation and regulations; communicating with stakeholders and website development; facilitating the transfer of State-and Territory staff; evaluating State and Territory trade measurement properties, plant and equipment and assessing future needs;

acquiring and fitting out some new premises; and acquiring and/or establishing new databases and ICT systems (NMI 2011).

The NMI incurred total capital and operating expenses for the transition of around \$10 million over the three years (NMI 2011, pp. 8-10). The NMI also allocated an additional \$1 million for capital expenditure in 2010-11 to complete aspects of the transition process. These expenditures exceeded the amount estimated in the MCCA study (which had assumed that the transition would take place over two years).

Up to around \$2 million of the additional expenditure was directed to the establishment and fit-out of new premises for NMI in Brisbane. As part of the COAG agreement, there had been an expectation that the premises of all States and Territories would be available for use by NMI. The Commission has been informed that NMI's need for new premises in Brisbane reflected the nature of the existing premises, and it is possible that the Queensland Government would have needed to incur similar expenditure at some point had it retained responsibility for trade measurement. If so, the expenditure by NMI could be considered a 'transfer' between the states and the Australian Government, rather than being an additional 'cost' of switching to the new system. The NMI has also indicated that it had needed to incur expenditure on some information technologies that, due to privacy and licensing issues, were unable to be transferred from the States and Territories. (NMI 2011, p. 10)

Improved regulator efficiency

As alluded to above, one of the benefits seen in moving to a national system under a single, central regulator is that it should facilitate longer term efficiencies within the trade measurement regulation field.

Staff development is seen as offering significant potential for improvement. The previous State-based system faced an aging workforce and had experienced problems in retaining and developing expertise. As noted above, the MCCA study considered that the move to a national agency would offer improved career opportunities for staff, and would create a critical mass for effective skills development, knowledge transfer and succession planning (MCCA 2006).

The move to a single national regulator is also expected to unlock efficiencies in the form of better use of technology. The NMI is establishing a national database containing information on licensees and inspection outcomes, which should aid in the identification of higher-risk businesses and enable better coordination between inspectors around the country. The NMI is also training and equipping enforcement officials with upgraded field and office information and communication technology devices and systems which are expected to significantly improve efficiency. For example, the Commission has heard anecdotally that, previously, field enforcement officers could spend as much as two fifths of their time on 'paperwork' associated with inspections. It is understood that this figure could fall substantially as the new systems come online.

While some of these and other efficiencies might in theory have been captured by individual jurisdictions had the State-based system continued, it appears that the recent reforms are expediting and possibly deepening such change.

11.4 Summary of effects

The indicative estimates developed in 2006 for the MCCA study suggested that the move to a national trade measurement system run by the Australian Government could, over a 10 year period, generate a small net benefit.

The Commission has drawn on the MCCA estimates as the starting point for its own estimates, but has adjusted them to, among other things, account for the additional costs incurred by NMI in the (longer) transitional period, data on actual costs incurred by NMI in operating the new system and for the effects of inflation. The components of the Commission's estimates are set out in box 11.3.

Available information indicates that the three year transition to the new system would entail an estimated cost of around $11 million, while the operation of the new system will afford a reduction of business compliance costs by around $5 million annually (2010-11 prices).

A case could be made to adjust the former estimate downwards, to recognise that some element of the expenditure by NMI during the transition period — for example, some or all of its expenditure on its Brisbane premises and possibly some other capital expenditure — does not reflect a net economic cost of transitioning to the new system. Correcting for this, transition costs for this reform are estimated to be around $9 million.

A case could be also made to adjust the latter estimate upwards to account for the 'unquantified' economic benefits identified by the MCCA study, and for the potential benefits of those reforms not considered by the study, such as the adoption of the AQS option. However, given the limited information available at this early stage after implementation on the possible scale of those benefits, the Commission has taken a conservative approach and not included such adjustments.

Box 11.3 **Components of the Commission's estimates**

- Ongoing reductions in business costs — the estimate is derived from the MCCA study estimate of annual business benefits (MCCA 2006, p. 64), of $3.9 million in 2006 dollars, adjusted to 2010-11 dollars ($4.5 million).
- Ongoing costs to the Australian Government for administration and enforcement — this is the 'budgeted ongoing funding' for NMI for trade measurement purposes for 2010-11, taken from the NMI 'Transition' report (NMI 2011, p. 7).
- Ongoing savings to the State and Territory for administration and enforcement — for the purposes of estimating the effect of shifting to the new system, the Commission has made the simplifying assumption — similar to the treatment in the MCCA study — that the ongoing costs of administering and enforcing trade measurement regulation, now being incurred by NMI, exactly offset the expenditures that would have been incurred by the States and Territories had they remained responsible for trade measurement.
- One-off costs to the Australian Government incurred for the transition — this estimate is derived from 'actual' expenditure data in the NMI 'Transition' report, for both capital and operating costs for the years 2007-08 to 2009-2010, adjusted for inflation (that is, adjusted to 2010-11 dollars), and the additional capital expenditure allocated for 2010-11 (NMI 2011, pp. 9-10).

The Commission estimates that the reform may deliver around $5 million in net benefits on an annual basis, accruing to business in the form of ongoing cost savings (table 11.2).

Table 11.2 **Estimated direct impacts of trade measurement reform**
$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in business compliance costs from harmonisation	5	..	5	..	..
Increase in Australian Government administration and enforcement costs	(21)	..	(21)	..	(9)
Saving in State and Territory government administration and enforcement costs	21	..	21	..	..

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. [a] As discussed in section 11.5, the Commission's assessment is that there is little potential for further reforms to the trade measurement regulatory framework that would be likely to yield significant net benefits.

Sources: MCCA (2006); NMI (2011); Commission estimates.

With the new system having commenced in July 2010, after a three year transition period, some of the benefits and costs of the reforms would have already been realised. Because the reform is still in the transition phase, the estimated costs borne to date are likely to have exceeded the benefits actually realised. However, the stream of prospective benefits (both quantified and unquantified) should continue in perpetuity to deliver a longer-term net economic benefit.

11.5 Opportunities for improvement

Recasting institutional arrangements?

The shift to a national system of trade measurement regulation under the auspices of the NMI is the culmination of several decades of reviews and reform effort and represents a major recasting of institutional and governance arrangements. It is difficult to envisage scope for any further change to these arrangements that would yield major net benefits.

Reform of regulations?

Prior to the drafting of the new Act and Regulations, the NMI released a number of discussion papers seeking comment from industry and other stakeholders on aspects of UTML and its enforcement. The reforms to the shortfall provisions and licensing arrangements discussed above, and a number of other, minor refinements introduced in the new regulations, emerged from those consultations. The NMI has indicated that it followed the Australian Government's requirements for 'best practice' regulation-making in considering the merits of those changes, although no formal RIS was deemed necessary as the changes were adjudged to have a sufficiently minor impact on business.

Some other issues that arose in the NMI's consultations were deemed sufficiently significant that any decision to proceed would likely require preparation of a RIS. Those matters included specifying the use of 'accuracy classes' for particular trade applications; re-verification periods for certain measurement devices, and extension of provision for the sale of beer and specific spirits. For practical reasons, the NMI decided to hold over more detailed consideration of those issues until after the new system had commenced. The NMI has now released a discussion paper on those matters and is in the process of considering the merits of reform in these areas (NMI 2010).

These processes will exhaust the potential areas of reform to trade measurement regulation identified in the NMI's consultations. While new problems with the existing regulations, or matters warranting new regulation, will no doubt emerge from time to time, at this stage it is not evident to the Commission that there is scope for further reform to the regulations that would generate major net benefits.

Regulator productivity dividend?

It is expected that the shift of responsibilities to a single regulator will enable efficiency gains to be accrued in administration and enforcement. Over time, such gains could allow the NMI to increase the level of effective enforcement of the regulations within existing resourcing. Alternatively, such efficiencies could allow any particular level of enforcement to be maintained with fewer resources. As part of the 2007 COAG agreement to move to the new national system, the Australian Government committed to ensure the maintenance of existing service standards, but made no specific commitment on future input levels.

The NMI has advised that, at present, it is still consolidating its new structure, rolling-out new systems and facilitating workforce development. Its current staffing levels are less than the aggregate pre-reform staffing levels in the States and Territories, but the NMI is intending to progressively increase staffing levels over time. The NMI has stated:

> NMI is maintaining services by ensuring that staffing and resources are adequate and that staff receive appropriate training. It is expected that in the next three to five years NMI will be able to demonstrate that services have not only been maintained but have provided more outcomes for industry and the community with increased confidence in trade measurement transactions. (NMI 2011, p. 48)

One issue for government is to what extent the resource savings represented by the efficiency gains within NMI should be 'reinvested' in further efforts to enforce trade measurement regulations. An alternative would be to reallocate those resources to the consolidated revenue fund to be available for other uses. However, in its 2006 study, the MCCA noted that State and Territory resourcing of trade measurement had declined significantly over the previous five years and that:

> It is expected that [the reform] would deliver significant operational efficiencies, and it is assumed that the resultant savings would be redirected towards areas which are currently under-resourced. (MCCA 2006, p. 61)

Summing up

The Commission's assessment is that, while there is scope for ongoing administrative gains, there appears little scope, at this stage for substantive further reform within COAG's reform agenda. The changes that have been implemented or set in train in conjunction with the move to a national system may have largely exhausted the pool of reforms available in this field.

12 Food regulation

Key points

- In 2008, COAG agreed to develop nationally consistent approaches to monitoring and enforcement of food standards and improve food labelling policies and laws.
  - While a food labelling review has been finalised, there has been no agreed regulatory changes to food labelling by COAG and the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC).
- A Code Interpretation Service (CIS) commenced in July 2011, removing the need for multi-state firms to seek advice on food standards from multiple regulators.
- The CIS is intended to improve the consistency of enforcement and monitoring of food standards and reduce the overall cost to business of advice on food standards.
  - The ongoing benefits to applicants and other industry participants from using the CIS are estimated to be around $540 000 per year.
  - Achieving these benefits would involve the cost of CIS advice estimated to amount to around $240 000 per year.
- Cost impacts on governments are expected to be minimal because of the cost recovery pricing of CIS's advice.
- Opportunities for improvement include expanding CIS to food safety and primary processing and production, and improving food labelling policies and laws.

Legislative responsibility for food regulation resides with State and Territory governments. Over the last three decades, there has been a series of reforms aimed at harmonising Australia's food regulatory system, with much of the reform momentum being in the last decade or so (box 12.1). A major review of food regulation — the 'Blair review' (1998) — found that the framework was 'complicated, fragmented, inconsistent and wasteful'. It recommended an integrated and coordinated national food regulatory system with nationally uniform laws. Following this review, Australian governments agreed to move towards a national system of food regulation.

In 2007, the Australian Government announced an independent review to examine ways to streamline Australia's food regulations and develop a nationally consistent approach. This review — the Bethwaite review — was not completed. Instead, the review task was referred to the COAG Business Regulation and Competition Working Group for action.

Box 12.1 **A brief history of reform and harmonisation**

1991: A centralised Australian authority for food — the National Food Authority (now Food Standards Australia New Zealand (FSANZ)) — was created that included food policy areas from the Department of Health and food standards areas from the Attorney-General's Department (Federal Bureau of Consumer Affairs). FSANZ also has responsibility for developing inspection policies for imported food.

1994: A comprehensive review of the Australian Food Standards Code began. The process took nearly six years to complete and led to major changes to the Food Standards Code, including expanding the Code to cover New Zealand, and having standards focus on food categories rather than specific products. A Treaty was signed that joined New Zealand to the Australian Food Regulation System.

1996: Initiatives by the Australian Government to reduce the regulatory burden on industry led to the *Review of the Food Regulation System* (the 'Blair review').

1998: The Blair review (1998) found that approximately 150 Acts and secondary instruments controlled food in Australia, and concluded that the regulatory framework was 'complicated, fragmented, inconsistent and wasteful'. The review recommended an integrated and coordinated national food regulatory system with nationally uniform laws and a co-regulatory approach. Following the review, the Australian, State and Territory governments agreed to move towards a national system of food regulation.

2000: COAG signed the Intergovernmental Agreement on Food that established FSANZ. The Model Food Act that formed part of this Agreement became the basis of a national approach to food regulation, and included Model Food Provisions for State and Territory legislation.

2001: The first jurisdictions adopted Model Food Provisions (Victoria, South Australia, and the Australian Capital Territory).

2007: The Australian Government announced an independent review to examine ways to streamline Australia's food regulations and develop a nationally consistent approach. The initial attempt — the Bethwaite review — was not completed and the review was referred to the COAG Business Regulation and Competition Working Group.

2008: COAG agreed to reform ANZFRMC voting arrangements, develop nationally consistent approach to monitoring and enforcement of food standards, and improve food labelling policies and laws.

2009: The last of the jurisdictions adopted the Model Food Provisions (Western Australia).

2011: COAG extended the Intergovernmental Agreement on Food to establish the Code Interpretation Service which provides interpretative advice on food standards. It is administered by FSANZ and its advice is to be adopted by all jurisdictions.

The Commission's assessment of the likely direct impacts of food regulation reforms has required judgements to be made about the effects of reforms that have just been implemented. Judgements have also been required to assess the timescale over which benefits of these reforms may accrue. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

12.1 Reform objectives and changes

In March 2008, with regard to food regulation, COAG agreed to:

> … accelerate development and implementation of reforms to reduce the regulatory burden on businesses and not-for-profit organisations, without compromising public health. (COAG 2008d)

In the third version of the implementation plan for the National Partnership Agreement to Deliver a Seamless National Economy, COAG further agreed to three reform outputs for food regulation:

- reform of ANZFRMC voting arrangements;
- national consistency in monitoring and enforcement of food standards; and
- improved food labelling policies and laws (COAG 2010b).

These outputs have been carried forward in all subsequent versions of the implementation plan (COAG 2010b). Changes associated with each output are discussed below.

Changes to the ANZFRMC voting system

The changes proposed to the ANZFRMC voting system aimed to streamline the decision making process of the Ministerial Council. The changes included replacing requirements for consensus with requirements for a majority vote for draft food standards, and a two-thirds majority vote for other decisions.

While there was agreement that requests for reviews of draft food standards would require a majority vote, no agreement had been reached with New Zealand to amend the voting arrangements so that all other resolutions could be carried by a two-thirds majority vote (CRC 2010). Therefore agreement was not reached on the proposed changes to the ANZFRMC voting processes. COAG, in August 2011, reported:

> New Zealand has not agreed to further reform of ANZFRMC voting arrangements and as a result this reform cannot be taken any further. (COAG 2011a, p. 5)

There are no further plans to pursue these changes and the COAG Reform Council considers the reform of Ministerial Council voting arrangements to have been achieved (CRC 2012).

Nationally consistent monitoring and enforcement

A national approach to monitoring and enforcement of food regulation has taken shape through a series of reforms, with the creation of a single national authority for food policy in 1991 (FSANZ) followed by a succession of initiatives to reduce the regulatory burden on food businesses. Nevertheless, jurisdictional differences remain. In a previous study, the Commission observed:

> … a number of regulatory differences which either result in variable burdens being imposed on businesses in different jurisdictions and/or increase the costs of doing business across jurisdictions. (PC 2009a, p. XVII)

These differences can be attributed, in part, to the incomplete state of the ‘national approach’ to regulation, in that several key food standards have yet to be implemented (box 12.2). Differences can also be attributed to the autonomy afforded to jurisdictions by the Food Regulation Agreement in drawing up food legislation.

The combination of ambiguous food standards and different approaches to monitoring and enforcement means that regulatory decisions can differ between jurisdictions, even where national standards are in place. In practice, the variation that occurs can add to the regulatory compliance costs of firms that operate across jurisdictions (box 12.3). Those seeking advice on food standards have historically been required to duplicate their efforts, contacting different regulatory bodies in each State or Territory. Because of jurisdictional differences, firms often needed to comply with different interpretations of food standards by different enforcement agencies.

In December 2008, the NSW Supreme Court handed down judgement in Christine Tumney (NSW Food Authority) v Nutricia Australia Pty Ltd [13660/08] (Nutricia). The Nutricia judgment highlighted problems in the Food Standards Code related to enforceability and consistency across the jurisdictions. The judgement also brought to light problems with the existing drafting of the Code which have implications for the food regulatory system.

Box 12.2 Sources of jurisdictional differences in food regulation

The continuation of differences across jurisdictions is attributed to a number of factors:

- The process of harmonisation is unfinished. Some standards have taken several years to reach implementation, particularly in primary production and processing (PC 2009a). For instance, standards on eggs have only recently been finalised, and will take effect in November 2012.
- Jurisdictions impose requirements additional to the model food provisions. This applies equally to core provisions in Annex A of the Food Regulation Agreement (FRA), including offences, defences, definitions, and provisions in Annex B, including monitoring, enforcement, licensing and auditing. As a result, for instance, compliance burdens for food businesses differ between jurisdictions.
- Adoption of the provisions in Annex B, which include monitoring, enforcement, licensing and auditing, is optional. With regard to these provisions, a jurisdiction may impose 'whichever provisions it chooses to include' (FRA 2008, Annex B, 11b).
- Quite separately to the issue of harmonisation, there has been a general shift in food regulation over the past 20 years towards less prescriptive standards (PC 2009). The shift towards an outcomes-based approach to food standards can of itself create jurisdictional variation. Outcomes-based standards, compared to prescriptive standards, 'do not readily provide enforcement agencies with targets against which to measure compliance' (FSANZ 2009) and can result in jurisdictional variation in interpretation and greater compliance costs for firms that operate in multiple jurisdictions.

In the 2008 Ministerial Council Stakeholder Consultation Forum, one of the main themes of discussion was the need for consistent implementation and enforcement.

> Stakeholders emphasised the cost to business, and the inconvenience and lack of both certainty and clarity surrounding the inconsistent interpretation across jurisdictions and between regulatory authorities. (DoHA 2008, p. 1)

The solution reportedly suggested by stakeholders was an 'independent organisation/referee' to interpret food standards (DoHA 2008).

Box 12.3 **Stakeholders' issues with the current system**

Businesses seeking advice on food standards have reported uncertain and often excessive waiting times, particularly when advice is sought from more than one regulator.

> An example cited at recent consultations in 2010 was that there was a difference of two to over seven days between various jurisdictions providing advice on a simple straightforward query on a food standard at a crucial time in a new product processing stage. (DoHA 2010 p. 14)

> A large business indicated that it took over two weeks to receive an answer from a State regulator on a relatively easy interpretive matter. (DoHA 2010 p. 17)

Differences in interpretation between regulators can increase compliance burdens.

> The CMA can cite many examples where the uniform interpretation of regulations has been inadequate, making it difficult for companies to do business intra and interstate … For example the Victorian Food Branch of the Department of Human Services provided Company A with an interpretation on a functional health claim. This differed from the interpretation offered to Company A in another jurisdiction, namely New South Wales. (Confectionery Manufacturers of Australasia Ltd 2008, p. 6)

> A large national retailer indicated that one state regulator had concerns that a supplier's food product did not comply with a relevant food standard. It was the only food regulator to have that view where all other State and Territory food regulators were of the view that the relevant safety measures were in place. As a result, the retailer had to spend considerable time working closely with FSANZ, the supplier and the specific state regulator to convince them that no further action was required. (DoHA 2010 p. 18)

> Recently, our supermarkets have received mixed advice from councils about the regulatory requirements for open fish displays. In Brisbane for example, we can display fish fillets but not in Cairns … In Victoria, our Werribee store is required to put plastic cloches over fish on ice … In many cases, our supermarkets have been treated differently to others (e.g. fish markets and wholesalers) who operate the same fish displays standards. (Coles 2011, p. 2)

A Code Interpretation Service

The *Intergovernmental Agreement for Food Reforms* (IGA for Food) was signed in February 2011 and stipulated that a centralised interpretation service (now known as the Code Interpretation Service or CIS) be established to provide non-adjudicatory advice on the Food Standards Code. The objective of the service was to:

> … enable a nationally consistent approach to the way in which food standards are interpreted and enforced by jurisdictions. (COAG 2011a, p. 5)

In December 2011, the COAG Reform Council reported that this had been achieved:

> An Intergovernmental Agreement to establish the centralised interpretive advice function was considered and signed by COAG, and … [the output of] national

consistency in monitoring and enforcement of food standards has been achieved. (CRC 2012, p. 135)

The CIS became operational in July 2011 and is administered by FSANZ. The CIS applies to general food standards and food product standards (chapters 1 and 2 of the ANZFS Code). Extending the CIS to other areas such as food safety and primary production and processing (chapters 3 and 4 of the Code) will be considered in a review to be undertaken in 2013.[1]

As a centralised service, it enables multi-state firms to avoid seeking advice from several different regulators on such issues. As a provider of advice that is adopted nationally, the CIS also enables multi-state firms to obtain a common interpretation of food standards that is applicable across jurisdictions.

The scope of the CIS advice is restricted to interpretations of existing food standards. FSANZ will not provide advice where the application:

- seeks advice about compliance;
- relates to a specific product, or is otherwise specific only to the applicant; or
- relates to a matter about which there is current enforcement action. (FSANZ 2011a, p. 7)

The service does not replace other regulatory functions. For example, it is not an approval process for individual products or a means to appeal an action of enforcement.

The CIS operates on a cost recovery basis, meaning that applicants pay for the service. Costs differ according to the complexity of the issue (table 12.1). In comparison, State and Territory regulators provide advice on food standards free of charge.

More complex applications to the CIS require a greater extent of external legal advice and consultation with States and Territories. CIS advice on applications is published on the FSANZ website and can be used by others in the industry, thereby reducing duplicative efforts in providing advice and improving transparency. The wealth of public interpretive advice will build over time.

1 Standards within chapters 1 and 2 apply to both Australia and New Zealand, except for four standards which apply only in Australia and one standard which applies only in New Zealand. Standards in chapters 3 and 4 apply only within Australia.

Table 12.1 **FSANZ projections for demand and revenue per year**

Level of cost/ complexity	*Total cost per application*	*FSANZ projected demand*	*Projected administration fees retained by FSANZ*	*Projected fees paid for external legal advice*	*Projected total expenditure on applications*
	$	No.	$	$	$
Level 1	8 105	6	18 630	30 000	48 630
Level 2	13 105	7	21 735	70 000	91 735
Level 3	18 105	4	12 420	60 000	72 420
Level 4	23 105	1	3 105	20 000	23 105
Total	**—**	**18**	**55 890**	**180 000**	**235 890**

Source: Adapted from FSANZ (2011a).

Reform to food labelling

There have yet to be any regulatory reforms implemented intended to improve food labelling policy and laws arising from the Seamless National Economy reform stream.

Towards fulfilling the COAG objective to 'improve food labelling policies and laws', COAG agreed that the Ministerial Council undertake a comprehensive review of food labelling law and policy and provide a progress report back to COAG, through the BRCWG, by July 2009. At its July 2009 meeting, COAG agreed to a terms of reference for the review. The review was to cover matters related to Seamless National Economy reform and other reform areas:

> Through COAG, all Australian governments have committed to regulatory reform to create a seamless national economy, reduce the regulatory burden without compromising public health and safety and maintain or increase the competitiveness of Australian businesses.
>
> As part of its prevention stream of work in the health policy arena COAG has also agreed to tackle the burden of chronic disease, which raises issues of relevance to the food regulatory system. (COAG 2009f)

In consideration that new food labelling requirements could impose regulatory burdens and costs on business and consumers, the terms of reference recognised the importance that all food labelling laws:

- are evidence based and effective at achieving their policy purpose;
- do not impose unjustifiable regulatory burdens on business; and
- are capable of being enforced in an effective, proportionate and consistent manner. (COAG 2009f)

Within this context, the review panel was required to examine a wide range of matters and make recommendations (box 12.4).

Box 12.4 Requirements of the food labelling review panel

The review panel was required to:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.
5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.

Source: COAG (2009f).

In October 2009, ANZFRMC commissioned the independent review of Australian food labelling (the 'Blewett review'). The cost of the review was $936 700 and was shared by the Commonwealth Government and the state and territory governments using the Australian Health Ministers' Advisory Council cost-share formula (the Hon Catherine King, pers. comm., 25 January 2012).[2] The review panel received 134 submissions from industry, government, researchers and Members of Parliament and political parties, and over 6000 submissions from individual consumers.

The review's final report — *Labelling Logic* (Blewett et al. 2011) — was released in January 2011, and included 61 recommendations. Key themes of the recommendations included:

- *A comprehensive nutrition policy* be developed that includes a framework for the role of food labelling.
- *A risk hierarchy classification of food labelling regulation that governs the initiation of regulatory action* under which regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government. Regulatory action on other issues related to 'consumer values' would be initiated largely by industry.

2 Under the cost-share formula, the Commonwealth provides 50 per cent of funding and the states and territories combined provide 50 per cent (Commonwealth Secretariat 2008), with shares appearing to be proportional to gross state product.

- *Traffic light labels* would be made mandatory where high-level health claims are made on the label.
- *New technologies* for processing foods would be indicated on the label for the first 30 years after entry into the human food supply. This would apply to technologies that currently trigger a pre-market food safety assessment, such as foods treated by irradiation or produced using gene technology.
- *Improved enforcement* of food labelling standards, requiring greater resources from regulators.
- *Establishment of a food labelling bureau* to operate in Australia and New Zealand.

Some of the recommendations in the Blewett review, such as traffic light labelling, reflect objectives that relate to preventative health rather than reducing business costs characteristic of Seamless National Economy reforms.

The finalisation of the independent review and the release of the final report occurred in accordance with COAG's reporting milestones (CRC 2011).

Response to the Blewett review

In November 2011, the Australian Government outlined possible next steps for food labelling reform (Roxon and King 2011). At the subsequent first meeting of the Forum on Food Regulation (which replaced the ANZFRMC), the Food Ministers considered the recommendations of the Blewett review and agreed on a number of key initiatives (box 12.5).

At the time of writing, no further timetable or Seamless National Economy milestones had been agreed regarding the implementation of improvements to food labelling.

Previously, the COAG Reform Council observed that the Seamless National Economy milestones for the 'finalisation and full implementation of reform by 1 July 2011' were not clear (CRC 2010, p. 164). The Council suggested COAG amend the milestone to clarify the proposed reform. The milestone was not included in the 13 February 2011 version of the implementation plan and the Council did not include it in its 2010-11 performance report (CRC 2012).

Box 12.5 Forum on food regulation response to the Blewett review

In December 2011, the Forum on Food Regulation (Forum) issued a response to the review. The Ministers agreed on a number of initiatives.

- *Food Labelling Hierarchy* — to develop a framework that will guide decision making on food labelling matters using a hierarchy consisting of food safety, followed by preventative health and consumer value issues. It was agreed that any new technology would be considered on a case-by-case basis against this hierarchy.
- *National Nutrition Policy* — to develop a comprehensive National Nutrition Policy and a guideline document that will outline the expectations of FSANZ in relation to the role of food standards in supporting public health objectives.
- *Front of Pack Labelling* — to lead a collaborative process with industry, public health and consumer groups to develop an easily understood, interpretive front-of-pack labeling system for foods within a year.
- *Pregnancy warning labels on alcohol* — to warn about the risks of consuming alcohol while pregnant. Industry is to be given the opportunity to introduce appropriate labelling on a voluntary basis for a two-year period before regulating for this change.
- *Health claims* — to consider a new standard for Nutrition, Health and Related Claims to help inform their decision on the Labelling Review recommendations. FSANZ has been asked to undertake broad consultation on the draft standard.

Source: FSANZ (2011c).

12.2 Who will be affected by the reforms?

At this stage, the only substantive food regulation reform that has been implemented is the establishment of the CIS. This section therefore focuses on those groups directly affected by this aspect of food regulation reform:

- businesses in the food supply and distribution chain;
- consumers; and
- governments and regulators.

In addition, groups that could be affected by food labelling policy or law reform are also identified.

Business

Activities involved in the supply and distribution of food are wide ranging and large in terms of value. Household final consumption of food in 2010–11 was $77 billion.[3] Retail turnover for food in 2010–11 was $98 billion.[4]

The businesses most likely to be impacted by the CIS are in food manufacturing or food retailing. Food product manufacturing (ANZSIC division C.11) had total sales of $75 billion in 2009–10, with industry value added of almost $17 billion. Food retailing (ANZSIC division G.41) had total sales of $100 billion in 2009–10, with industry value added of $18.5 billion.[5]

Furthermore, harmonisation around food standards has more potential to affect food businesses that operate in more than one jurisdiction:

> The advisory service is seen to be more of an advantage for businesses that operate across jurisdictions and it is anticipated they will be the main users and beneficiaries. (DoHA 2010, p. 56)

Such businesses are therefore the most likely to use the CIS. This is because FSANZ negotiates each case with all States and Territories, and this is likely to be reflected in the cost of the service.

Firms operating across jurisdictional lines are also likely to account for the majority of the food industry by value. Among such firms, those likely to be impacted by the CIS include:

- food retailers that operate stores in several jurisdictions; and
- food manufacturers whose products are sold in various jurisdictions.

Prevailing estimates suggest that the markets for food retail and food manufacturing are both highly concentrated.[6] It is likely that multi-jurisdictional firms comprise (by value) at least three quarters of food manufacturing and well over half of food retailing.

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3 ABS 2011 *(Australian National Accounts: National Income, Expenditure and Product*, Cat. no. 5206.0).

4 ABS 2011 *(Retail Trade, Australia*, Cat. no. 8501.0).

5 ABS 2011 *(Australian Industry, 2009-10*, Cat. no. 8155.0).

6 Estimates of the proportion of food retail (by value) sold by Coles and Woolworths stores ranges from around half to almost 80 per cent, although the higher estimates are disputed by Coles and Woolworths (Speedy 2011; Coles 2008; Woolworths 2008). Woolworths (2008) noted that in various areas of food retail, their market share was between 23 and 31 per cent. With regard to food manufacturing, almost 75 per cent could be attributed to the top fifty manufacturers in 2008 (DFAT 2008).

In regard to food labelling, businesses involved in all stages of food supply and distribution may be affected by food labelling reform — with labels being a key marketing tool. Reforms in this area will have impacts on businesses costs of labelling and compliance, as has been the case in the past (box 12.6). It has been suggested that some recommendations of the Blewett review, such as those regarding new technologies and genetically modified foods, have the potential to affect investment into research and development (Dairy Australia, sub. R2).

The Commission notes that there are widely divergent views held by interested industry and consumer groups on the potential effects of moving to implement measures recommended in the Blewett review. And even with the benefit of the Forum on Food Regulation's response, it is unclear what final measures will eventuate. It would therefore be too speculative to postulate, in this study, possible effects of what may emerge from governments' deliberations over time.

Box 12.6 **Past food labelling reforms have affected business costs**

Recent changes to food labelling requirements have involved additional costs to business. While the most direct costs relate to the redesign of labelling templates, several other cost areas may be affected.

- In 2002, more stringent labelling requirements were introduced in relation to allergens. The number of recalls attributed to labelling issues rose during transition to the new arrangements from 8 in 2002 to 40 in 2003. Subsequently, recalls declined gradually (PC 2009a).
- The standards for eggs, to take effect in November 2012, will include new requirements for the stamping of individual eggs. Ongoing costs of egg stamping are estimated at around $1.9 million per year ($800 000 attributed to medium and large scale egg producers, and around $1.1 million attributed to small producers) (FSANZ 2011d).
- Some businesses in the meat industry noted that changes to labelling requirements in relation to nutritional panels led to substantial transition costs (PC 2009a.)

On the other hand, some changes in labelling laws can lead to net benefits to business. For example, in the case of recent COAG reforms to wine labelling (chapter 13 of this report), the reforms are intended to harmonise requirements for domestic and export wine, and are expected to reduce the costs associated with duplication. In this case, the reforms are estimated to provide a benefit to business of $25 million per year.

State and Territory regulators

The establishment of the CIS does not alter the responsibilities held by various governments in regard to food regulation, in that States and Territories will remain in control of monitoring and enforcement of food standards (COAG 2011a, p. 5). For regulators, this will mean being consulted by FSANZ in the process of developing CIS advice. As the CIS becomes established, it may also mean a shift in interpretative workloads between the national and state regulators.

Consumers

To the extent that the CIS lowers business costs, consumers could benefit indirectly through lower prices or improved service. However, the magnitude of business cost savings that would drive this consumer benefit would depend on the marginal benefit of the service to businesses.

Nationally recognised advice from the CIS could also affect product variety. CIS advice could either result in more products being available in jurisdictions where they previously would not have gained access, or could also disallow the sale of certain products. Hence, the nature and extent of the impact on consumers is uncertain at this stage.

Any reforms to food labelling could have a more pervasive effect on consumers through changing information and its presentation on a wide range of food products.

12.3 Understanding the direct impacts of the reforms

Given the lack of progress to date on reform to ANZFRMC voting arrangements and the lack of agreed reforms to date on food labelling, the Commission has not speculated about the scale of possible impacts in these areas.

The main direct impact of COAG food regulation reform to date is improved consistency in monitoring and enforcement through the establishment of the CIS. This reform can be expected to have ongoing effects through reducing the cost to businesses of seeking advice on food standards.

There are also several factors which put the intended outcomes of the CIS at risk.

Improved consistency in monitoring and enforcement

The CIS can reduce the amount of time and resources businesses spend actively seeking advice, particularly for those operating across jurisdictions. For instance:

- it may allow businesses to only fill out a single application as opposed to several;
- businesses may spend less time actively negotiating with regulators during the process, given that FSANZ will consult with all jurisdictions;
- the CIS provides certainty over the duration of the process, whereas the time it takes to seek advice from regulators is less certain; and
- given the complexity of food regulation in Australia, particularly from a national perspective, there may be significant savings on search costs for businesses simply from not having to navigate through the system.

Such cost advantages may outweigh the cost of the advice, particularly for firms that trade across multiple jurisdictions. However, the extent of the time savings is unclear. For example, some participants expressed grievances over the delay of ‘over two weeks’ in receiving advice from State and Territory regulators (DoHA 2010, p. 17). By comparison, the CIS process is expected to take ‘between 29 and 34 working days’ from the receipt of application to finalisation of advice (FSANZ 2011b, p. 3).

Instead, the savings to applicants are more likely to come from the reduction in the time *actively* spent seeking advice. The time taken for FSANZ itself to fulfil this role is estimated at 54 hours of work, valued at $3105 (FSANZ 2011b). If an applicant is able to seek advice from regulators in each jurisdiction with similar efficiency, search-cost savings from using the CIS will be similar to the administration fee paid to FSANZ. Businesses that find it more time consuming to seek advice across jurisdictions have a greater incentive to use the CIS.

Risks for the outcomes of the CIS

There are several risks that may impede the effectiveness of the CIS, many of which have been identified by DoHA (2010).

First, there is a risk that businesses will not opt to use the CIS. Possible reasons include:

- Businesses may choose to seek advice from State and Territory regulators free of charge in spite of the potential for differing advice between jurisdictions.

- The level of legal complexity could be so high that the CIS fee is prohibitive and a business will opt not to use the service. Businesses may also need to pay for further legal advice because CIS advice is not legally binding.
- A business may be unwilling to pay for CIS advice that would be made public and hence could benefit competitors. Individual traders may be unwilling to pay the price of the CIS individually, even though the collective benefit across industry participants is greater than this price.
- Smaller businesses are less likely to be able to afford CIS fees (even though they often face greater uncertainty over food standards (PC 2009a)).

Another risk is that jurisdictions do not adopt CIS advice. This reflects the fact that CIS advice is not legally binding. However, there are strong grounds for jurisdictions to adopt the advice, given that it is provided under the terms of the Intergovernmental Agreement for Food.

In the future, there is also a risk that the CIS may not be expanded to cover food safety and primary production and processing (chapters 3 and 4 of the Food Standards Code). Stakeholders noted that the interpretation of these chapters relies heavily on site inspections, assessments and knowledge of local areas, and thus does not easily lend itself to a nationally centralised model (DoHA 2010). The Australian Food and Grocery Council and SA Health suggested that the CIS should be limited to chapters 1 and 2, as these were related most directly to food.

12.4 What are the direct impacts of the reforms?

The prospective impacts will depend on the rate of adoption of the system by business, the number of applications made to the CIS, and the marginal improvement to businesses that the CIS offers over the alternative avenues of inquiry. Benefits are also likely to accrue to non-applicants, as any interpretive advice is made public.

To March 2012, the Commission has been informed that the CIS had received 16 enquiries from a mixture of private and industry bodies and published two interpretive guidance documents (FSANZ pers. comm. 28 March 2012). Any benefits realised to date are therefore likely to be minimal at a national level.

Projected demand and expenditure

In estimating the cost of external legal advice, FSANZ categorises cases into four broad levels of complexity and cost (see table 12.1 above). FSANZ estimated the number of cases at each level of complexity for 2011-12, giving a projected total cost to business of around $236 000. This is made up of about $56 000 of administration costs retained by FSANZ and $180 000 in external legal fees.

FSANZ also estimated the number of applications it would receive in the first year of operation at each level of cost and complexity (table 12.1). In developing these estimates, FSANZ recognised that demand was uncertain, and that industry response to consultation on cost recovery was ‘limited’ (only two submissions were received during the consultation period) (FSANZ 2011a).

Given the cost recovery model, the projected expenditure on applications provides a baseline estimate of the benefit to individual applicants. That is, FSANZ estimates that applicants will be willing to spend around $236 000 for the service in the first year. Therefore, it can be inferred that the saving achieved by industry from the CIS service would be at least this amount.

Benefits to applicants

The value of the CIS over and above the cost recovery price would depend on specific business circumstances, and would be difficult to estimate. FSANZ has not estimated the benefit of the CIS to industry and it has not received any such estimates in industry submissions.

However, given that the CIS is an optional service for business, any expenditure by businesses on CIS services would need to be commercially justified. As an indicative estimate, the return to business from a CIS application could be commensurate with the applicant’s internal ‘return to capital’ or ‘return to funds employed’. Given that the CIS is likely to be used by large companies, such a return could align broadly with the average rate of return of 15 per cent on the general operations of those businesses.[7] Using this rate as a proxy for the commercial justification of a CIS application, and given that business expenditure on the CIS is estimated to be $235 000 per year, the gross benefit to applicants is estimated to be $270 000 per year.

Benefits to non-applicants

As noted, benefits are also likely to accrue to businesses that do not apply to the CIS, including because of cost and the fact that any interpretive advice is made public.

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[7] The Commission has based this estimate on the average of a small number of large food businesses, including Coles, Woolworths and Metcash.

If applications to the CIS are made by businesses that most value the advice, then conceivably they could be market leaders in relation to the types of food or ingredients on which advice is being sought. As an indicative estimate, if, on average, the applicants benefit from the advice to the same degree as its (aggregated) competitors, the total gross benefit to industry of the CIS could be $540 000 per year.

12.5 Indicative costs of achieving reform

As noted above, FSANZ estimates that costs to business applicants will amount to around $236 000 (in total) for CIS advice in the first year. This estimate is based on demand projections and assumptions regarding complexity of the applications. The Commission has assumed these costs remain constant for each of the following years.

Government costs

Establishing the IGA on Food and the CIS is estimated to amount to a one-off cost of $4.3 million over four years (Australian Government 2011a). This cost is not charged to applicants and represents a cost to government.[8]

The Commission understands that given that the CIS is run according to a cost recovery model and is administered by an existing body (FSANZ), it is likely to pose a negligible ongoing net cost to government.

Under this approach, the cost of processing claims accepted for assessment is charged to applicants and will represent an additional cost to them. Applications that are rejected at an early stage, however, are not subject to cost recovery (FSANZ 2011b). By FSANZ's calculation, this can take up to 3.5 hours of work per rejected application, amounting to $402.50 of unrecovered costs per rejected application (FSANZ 2011b). If the number of rejected applications is similar to the number accepted (projected to be 18 in the first year), then unrecovered cost of the service would amount to $7245 per year. However, there may be potential for these small costs to be covered to some extent (at least initially) by the Australian Government's initial $4.3 million transitional outlay.

With regard to the food labelling reform agenda, as noted above, some costs have already been realised in relation to the Blewett review (2011) including the cost of

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8 FSANZ is to account for all expenditure after four years and refund any unspent funds to the contributing jurisdictions.

the review of $936 700. The cost was jointly funded by the Australian Government and State and Territory governments using the Australian Health Ministers' Advisory Council cost-sharing formula (Chair, Legislative and Governance Forum on Food Regulation, pers. comm., 25 January 2012).

12.6 Summary of effects

The contribution of the CIS to reducing the cost of doing business is likely to be positive but small in national terms.

The main impacts on businesses will be in the form of reduced business costs in seeking advice on food standards. Business costs are expected to fall overall by around $270 000 per year for applicants and by a similar amount for non-applicants amounting to a total business cost savings in the order of $540 000 per year (table 12.2).

Table 12.2 **Summary of estimated impacts from the Code Interpretation Service**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reductions in business costs for advice on interpretation of food standards	..	0.5	0.5	..	..
Fees paid by business	..	(0.2)	(0.2)	..	..
Australian Government set-up costs	..	..	..	..	(4.3)
Cost of independent review into food labelling	..	..	..	..	(0.9)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Commission estimates based on FSANZ (2011a).

The cost recovery basis of the CIS, by focusing harmonisation reforms to areas where industry most values such reforms, also means that its contribution to harmonisation is on a case-by-case basis. As such, its impacts could be gradual and narrow. Against this background, reform benefits are likely to accrue progressively over a half decade or so as businesses become familiar with and utilise the CIS and as the public knowledge of applicability of CIS advice accrues.

On the cost side, fees paid by businesses that utilise CIS services are estimated to be $236 000 per year. Government costs related to these reforms include establishing the IGA on Food and the CIS and are estimated to amount to a one-off cost of $4.3 million over four years.

12.7 Opportunities for improvement

There are several opportunities for further reform of food regulation. While some opportunities are inherent in the Seamless National Economy reforms yet to be completed, there are others which have been identified by the Commission in its earlier benchmarking report (2009a) and noted by Government.

Expansion of the CIS

With regard to the CIS, further reform could include the expansion of the service to cover food safety and primary processing and production (chapters 3 and 4 of the Code). The impacts of such an expansion are potentially substantial, given the magnitude of compliance costs around food safety and primary production. For example, requirements to employ food safety supervisors were estimated to cost Victorian food businesses an additional $30 million in regulatory burdens (PC 2009a). As such, these areas may produce significant interest in centralised interpretation of food standards as provided by the CIS.

Further, providing consistent advice on food safety standards may also impact on public health costs. Impacts are potentially large, given that food-borne illness costs Australia around $1.2 billion per year (Blewett et al. 2011).[9] The net impacts on business costs (and indeed, the direction of these impacts), however, is uncertain, since the CIS interpretation could make regulation more or less stringent.

However, expanding the CIS is not straightforward — some stakeholders have noted their preference for limiting the CIS to the first two chapters of the Code in the initial stage (DoHA 2010). This is likely to reflect the complexity around regulating food safety and primary production and processing, namely:

9 The Department of Health and Ageing estimated in 2006 that the cost of foodborne illness comprised of: productivity and lifestyle costs ($770 million); premature lifestyle costs ($230 million); and health care service costs ($220 million).

- there is a greater emphasis on inspections of premises and other contextual factors; and
- some differentiation in the way businesses meet outcomes-based standards could be desirable.

Furthermore, an extended centralised interpretation service would require some coordination of site inspections and other monitoring mechanisms within and across jurisdictions. With the CIS operating in parallel with jurisdictional interpretive services and local regulation, any gains from the arrangement, although useful, may be limited. The combination of ambiguous food standards and different approaches to monitoring and enforcement means that regulatory decisions can differ between jurisdictions even where national or more flexible standards are in place.

Despite these qualifications on the possible expansion of the CIS, as it is currently implemented, it provides a useful policy experiment towards greater harmonisation and enforcement. Whether it provides a small or large positive impact, the net cost to government is likely to be minimal, and its operation may prove useful in developing future reform options.

Further reform to better align the regulation of food standards and enforcement across jurisdictions should contribute to the achievement of Seamless National Economy reform objectives.

Response to food labelling review

The Seamless National Economy reforms have yet to produce any reform output on food labelling. However, depending on the approach taken, this area of reform has the potential for both substantial costs and benefits.

The Blewett review and the Forum on Food's response may prove to be important first steps in the reform process although it is unclear what course governments may ultimately follow.

Other areas of food regulation beyond food standards

In a previous study, the Commission identified a number of notable differences across jurisdictions in regulatory settings affecting food producers that could impact significantly on business compliance burdens:

- the proportion of the costs of regulatory oversight recovered from food businesses versus those being funded from general government revenue;

- the level and nature of fees and charges including the use of risk-based fees;
- the inconsistent application of risk classifications to food businesses conducting broadly similar activities;
- the frequency and duration of audits and inspections;
- the availability and type of appeal mechanisms and the extent of transparency; and
- dramatic differences in penalties for non-compliance across products and jurisdictions (PC 2009a).

The Australian Government has referred to the above areas for possible further food regulation reform (Wong and Sherry 2011).

13 Wine labelling

Key Points

- On 23 January 2007, representatives of the Australian Government signed the *World Wine Trade Group Agreement on Requirements for Wine Labelling* (the Treaty).
- In 2008, COAG agreed to complete the necessary legislative amendments to bring the Treaty into effect.
  - The required amendments were completed in mid-2009 and came into effect at that time.
- The Treaty was aimed at harmonising labelling requirements between domestic and export markets — thereby reducing production costs and barriers to trade.
- It is estimated that reform will yield around $29 million per year in cost savings for wine producers.
  - These benefits are likely to accrue over the first few years after the Treaty comes into effect.
- Further benefits could accrue from extending the Treaty to include other aspects of wine labelling and from expanding the country coverage of the Treaty.

Before the introduction of the *National Trade Measurement Regulations 2009*, consistent Australia-wide labelling requirements were overseen by the States and Territories under the *Uniform Trade Measurement Legislation* (UTML). However, Australia had different wine labelling regulations from its major trading partners. This meant that Australian wine producers were required to print different labels for domestic and export markets, raising printing costs and constituting an unnecessary impediment to trade.

Following a period of consultation and negotiation[1], representatives of the Australian Government signed the *World Wine Trade Group (*WWTG) *Agreement on Requirements for Wine Labelling* (the Treaty) on 23 January 2007. Other signatories (and members of the WWTG) were the United States, New Zealand, Chile, Canada, Argentina and South Africa.

1 Initial discussions between industry groups and government date back to the mid-1990s (JSCOT 2011a, p. 12).

This chapter provides an overview of the reform to wine labelling requirements in Australia, including its objectives and the reasons for the proposed changes (section 13.1). It considers who will be affected and examines the existing estimates of the impacts of the reform as well as the costs of the reform (sections 13.2 – 13.5). Opportunities for further improvement in this area are also considered (section 13.6).

13.1 Reform objectives and changes

The Treaty was aimed at harmonising labelling requirements so that one common label (of the two usually found on wine bottles) could be used for both domestic and export markets — thereby reducing production costs and barriers to trade. It did so by specifying four mandatory items of information that must appear within a 'single field of vision' (that is, they must all be printed on the same label) on standard sized wine bottles.[2] These are the product name, the country of origin, the net contents and alcohol content. While countries may still have additional labelling requirements, the Treaty allows wine producers 'to have a single "marketing" label that can be used unchanged across all major wine markets, with a second "legal" label that upon which the unique requirement of specific markets can be adjusted as required' (Battaglene 2011, p. 10).

While the terms of the Treaty entailed significant change for some signatories, the changes required in Australia were relatively modest (box 13.1). The main difference was that compliance with the Treaty required an exemption from the State and Territory *UTML* for the requirement to display a volume statement on the 'principal display panel' (the front of the product).

COAG's involvement

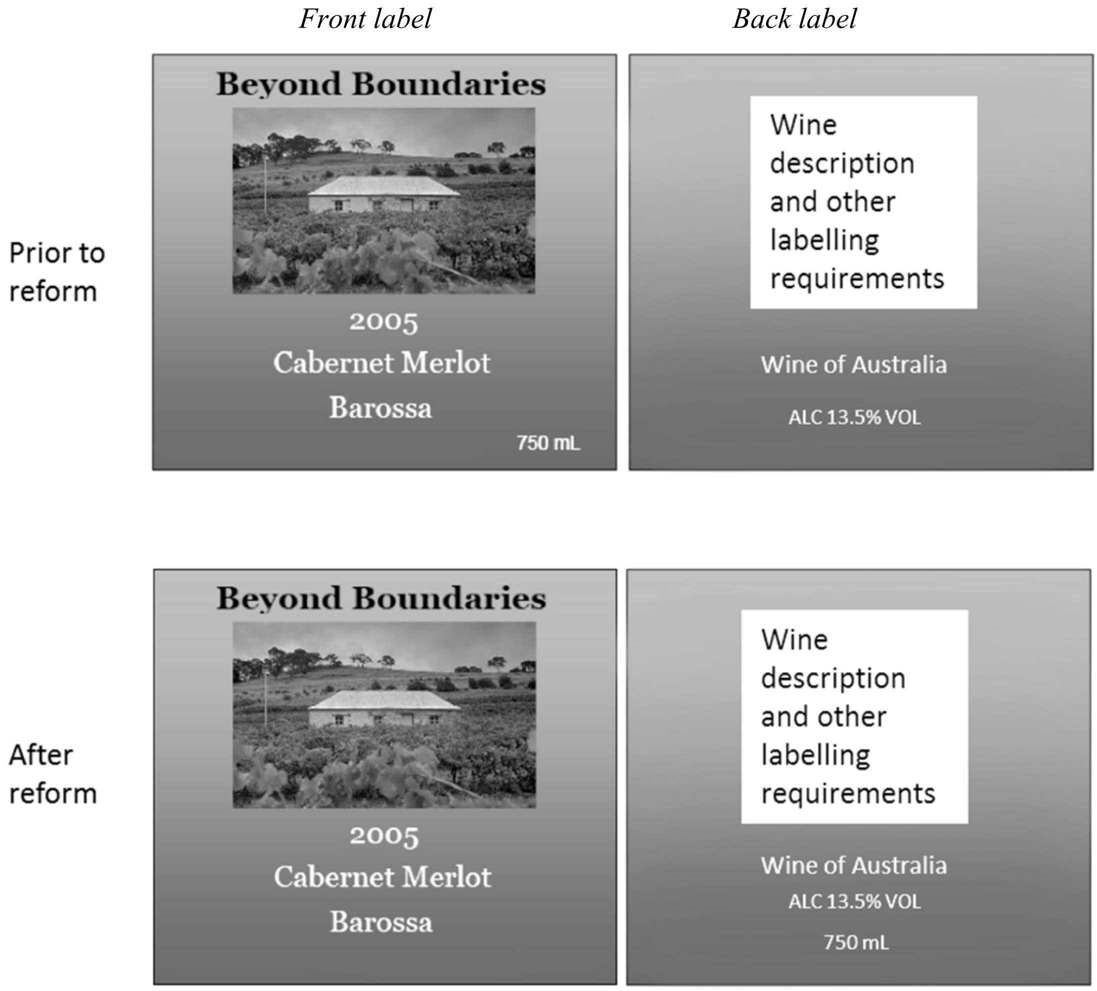
Bringing State and Territory legislation into line with the requirements of the Treaty was identified as a goal by COAG in November 2008, and the sole milestone for this reform was completed on schedule in July 2009 (CRC 2009a).

In July 2010, responsibility for regulating label information was passed to the Australian Government (see chapter 11) under the *National Trade Regulations 2009*. These new regulations also exempted standard sized wine containers from volume statements on the 'principal display panel'. However, the *Guide to the New*

2 The standard sizes are 50ml, 100ml, 187ml, 200ml, 250ml, 375ml, 500ml, 750ml, 1 litre, 1.5 litres, 2 litres, 3 litres, or larger in quantities of whole litres, except for those volumes that are not permitted by the importing party.

Trade Measurement Regulation suggested further regulatory amendment would take place once the Treaty had been ratified. The Joint Standing Committee On Treaties (JSCOT) acknowledged some inconsistency with the requirements of the International Organisation of Legal Metrology.[3] Nevertheless, the Committee recommended that binding treaty action be taken (JSCOT 2011b).

Box 13.1 **Example of compliant labels before and after the reform**



Source: Adapted from wine label example provided on Wine Australia website.

3 Specifically, the changes to UTML contradict R79 of the International Organisation of Legal Metrology about volume statements on the principal display panel. However, as pointed out in the JSCOT hearings, exemptions already exist to this across Europe for wine, so difficulties appear surmountable (JSCOT 2011a).

While there are no further COAG milestones for this reform, the Treaty has not yet been ratified (box 13.2). The Commission understands that the treaty is in the final stages of ratification, which should occur in mid-2012 (DFAT, pers. comm., March 2012). Nevertheless, with changes to the State and Territory *UTML,* and the subsequent exemptions from principal display panel requirements for wine under the *National Trade Regulations 2009*, the intent of the reform has been largely achieved — with 'single field of vision' requirements now consistent between Australia Argentina, Chile and New Zealand (who have ratified the Treaty) as well as the European Union who have adopted similar provisions. DFAT has suggested that around 80 per cent of Australian wine exports go to countries with exemptions from the requirement to display volume statements on the principal display panel (JSCOT 2011a).

Box 13.2 **Passage of the treaty**

- 23 January 2007 — Representatives of the Australian government sign the *World Wine Trade Group Agreement on Requirements for Wine Labelling* (the Treaty).
- 13 April 2007 — COAG decides that a new system of trade measurement should come into effect.
- 29 November 2008 — COAG agrees on an implementation plan to complete the necessary legislative amendments to bring the Treaty into effect, with 'ongoing milestones to be identified and agreed as project progresses'.
- 2 July 2009 — Revised implementation plan by COAG reports that the reform has been completed.
- 1 July 2010 — Commonwealth National Trade Measurements Regulations come into effect and superseded the responsibility for regulation of labelling information.
- 16 November 2010 — The Treaty was referred to JSCOT.
- 7, 17 and 25 — February 2011, public JSCOT hearings are held.
- March 2011 — JSCOT recommends that binding treaty action be taken and that the National Measurement Institute amend and implement the National Measurement Regulations to support the agreement.

13.2 Who will be affected by the reform?

The primary beneficiaries of the reform will be wine producers who will face lower label printing costs and easier access to export markets. Grape growing and wine production are significant industries in Australia and have grown rapidly over the last 20 years. Australian producers sell around 1.3 billion litres of wine a year and exports represent around 63 per cent of total sales[4]. Australia accounts for around 4.4 per cent of global wine production and 8.9 per cent of global wine exports (Anderson and Nelgen 2010).

Theoretically, consumers could also benefit if some of the cost savings from the reform were passed on through lower retail prices. However, labelling represents only a small proportion of production costs (around 1 per cent) and an even smaller proportion of the retail cost of wine. Moreover, only a part of this saving would be passed on to consumers. For product ranges sold exclusively to the Australian market, there would be no change to production costs or retail prices. Overall, this suggests that the direct impact on the cost of bottled wine to Australian consumers is likely to be negligible.

13.3 Analysis of the impacts of the reform

Harmonisation of label requirements between domestic and export markets can lead to cost savings for producers in a number of ways.

- *Economies of scale*. Print run sizes increase due to consolidation of domestic and foreign labels for each product range.
- *Production line interruption.* Changing labels during the bottle labelling process incurs a cost through production delays. In instances where the changes result in both the front and back labels being the same for multiple markets, this cost can be avoided.
- *Template saving per variety*. With fewer types of labels required, costs arising from setting plate or film templates are reduced.
- *Smaller inventories of labels*. Due to minimum orders, or to cut costs, larger print runs are often warehoused. Larger average print runs can shorten label ordering cycles and warehousing costs.
- *Lower buffer stocks of finished goods*. Buffer stocks that were previously siloed for different markets can be consolidated, reducing the amount of wine produced for the purposes of unexpected one-off large orders.
- *Reduced wastage of labels*. This can occur in a number of ways, including: reduced label wastage from reallocation of product to unintended markets; reduced label wastage from over-runs and relabelling excess stock from one market for sale in another; and reduced labour costs in label procurement.

[4] ABS, 2010 (*Australian Wine and Grape Industry,* Cat. no. 1329.0).

In 2005, the Winemakers' Federation of Australia (WFA) estimated the various sources of cost savings that would arise from the proposed treaty by analysing cost data from Southcorp[5] (Ministerial Council for Consumer Affairs 2007). At this time, Southcorp was responsible for almost a quarter of wine production in Australia and the results of the analysis were scaled up to derive industry estimates. In total, it was predicted that the proposed treaty would yield around $25 million in annual cost savings to the wine industry (table 13.1). This analysis was verified by the Australian Bureau of Agricultural and Resource Economics, which reviewed the WFA calculations against the Southcorp data, and cross-checked key cost figures against data provided by another wine company. ABARE suggested some small changes to individual data items, but overall found the estimate provided by WFA to be reasonable.

Table 13.1 **Indicative estimates of cost savings from changes to labelling requirements, 2005**

	Impact across wine type			*Industry saving*
	Popular premium	Premium	Super-premium	$ million
Economy of scale	5% decrease in costs	10% decrease in costs	30% decrease in costs	$11.1
Production interruption	5% decrease in costs	10% decrease in costs	5% decrease in costs	WFA estimate $1.3 ABARE estimate $1.0
Template saving per variety				$1.9
Smaller inventories of labels				WFA estimate $0.4 ABARE estimate $0.2
Lower buffer stocks of finished goods	25% decrease in inventory	25% decrease in inventory	No change	$6.0
Reduced wastage of labels				$4.3.
Total				**$25**

Source: ABARE (2006).

The WFA and ABARE estimates of cost savings include a number of positive and negative biases arising from the assumptions made in their analysis, and subsequent or future changes to industry structure as well as domestic and international labelling requirements (box 13.3).

5 Since acquired by Fosters and incorporated into Foster's Wine Estate, then de-mergered and separately listed as Treasury Wine Estates

Box 13.3 **Other factors that may affect cost savings**

There are a number of factors that could increase, or decrease, the cost savings associated with harmonising wine labelling requirements beyond those incorporated into the WFA or ABARE estimates. Factors that may reduce actual cost saving include:

- the cost savings are based on the ‘take-up’ of the opportunity to harmonise labels across products lines. If other factors (such as the marketing benefits of having labels customised to the unique preferences of each country) are large enough, producers could elect to forego the potential cost savings of generic labelling;
- cost savings estimates based entirely on Southcorp data are likely to overstate industry savings as, in 2005, it is probable that Southcorp was more export orientated than the average Australian wine producer;
- technological change that decreases the cost of printing labels generally, or that decreases the economies of scale, will proportionately decrease the size of realised cost saving (as opposed to a counterfactual of no treaty). One potential source of such technological change is the growth of digital label printing, which reduces the costs of small print runs, prototyping and proofing (and eliminates other costs such as film and plate creation). While no data exists for the uptake of this technology in Australia, Welty (2007) suggests that around 25 per cent of U.S. wineries use digital labelling for at least some of their stock (up from 1 per cent in 2000); and
- future changes to wine labelling regulation could nullify the cost savings arising from the treaty. As noted by the COAG Reform Council (CRC 2010), the treaty has been incorporated into state and territory legislation in a broad and non-specific manner. If other signatories incorporate the treaty into their regulations in a more prescriptive way (such as requiring the first decimal place on alcohol content), simply complying with Australian regulations may not be sufficient for wine producers to access international markets. Also, the treaty does not preclude the introduction of additional labelling requirements (such as health warnings) outside of the specified four pieces of mandatory information. If Australia or other signatories introduce additional labelling requirements, the capacity for a single label to be used in multiple markets would be undermined.

Factors that may increase cost savings include:

- smaller wine producers are likely to derive proportionately bigger cost savings than large wine producers from the economies of scale derived from larger print runs (table 13.1). In 2005, Southcorp was one of the largest wine producers in Australia. This means that most wine producers supplying the export market would experience larger cost savings than those estimated from the Southcorp data. Thus, industry estimates based on linearly scaling up from the Southcorp data are likely to understate actual overall cost savings;
- despite the disruptions association with the Global Financial Crisis, the amount of Australian wine sold and the proportion of export sales has increased since 2005 (from 1100 million litres to 1259 million litres sold, and exports growing from around 61 per cent of sales to around 63 per cent of sales. Thus, contemporary estimates of cost savings on wine labels would be multiplied over more units and in more markets than the 2005 WFA and ABARE estimates; and
- reducing regulatory variation might make compliance easier in general, particularly for small firms trying to enter new export markets for the first time.

These considerations increase the level of uncertainty around the estimates of the cost savings derived from wine label harmonisation. Nevertheless, the leading role of industry peak bodies (both in Australia and internationally) in initiating the reforms to wine labelling requirements is a credible indication of the existence of tangible benefits for producers. Despite the considerable uncertainty around the magnitude of the savings, the 2005 estimate of $25 million (around $29 million in 2010-11 dollars) calculated by WFA and ABARE does not appear to be unreasonable and is the best available estimate.

To what extent are benefits realised?

While the Treaty has not been officially ratified, Australia has been compliant with the legal requirements of the treaty since 2009. Since this time, some of the other WWTG countries have ratified the treaty (Argentina, Chile and New Zealand) and the European Union has adopted similar provisions. From the point of view of producers, the potential benefits have been phasing in, and will be complete when the last of the WWTG countries ratifies the Treaty. While the Australian Winemakers' Association has suggested relatively rapid uptake of the opportunity to harmonise labels across markets[6], there is still likely to be some delay in capitalising on the cost savings (as producers become aware of the change and then must redesign their labels). In this report, it assumed the benefits phase in over five years.

13.4 Indicative costs of achieving reform

As noted by DFAT at the JSCOT hearings, the direct financial costs associated with wine labelling reforms are not significant (JSCOT 2011a, p. 8). Nevertheless, some small costs that have been noted include:

- a one off cost for winemakers who would need to redesign label templates in order to benefit from the new arrangements;
- a one off cost for WFA and Wine Australia arising from education campaigns associated with changes, such as changes to website factsheets and inclusion in industry newsletters. WFA has also set up a system to monitor any consumer complaints, which is likely to include some additional ongoing costs; and
- the costs incurred by government agencies in treaty negotiation, consultation and other administrative processes.

6 'Wineries were quick to take advantage of the reduced costs and are achieving savings in labelling costs' (Winemakers Federation of Australia 2011).

Some groups have suggested that the reform — in particular, removing the requirement to have volume statements on the principal display panel — may impose an indirect cost on consumers. In its submission to the JSCOT, Choice Australia argued that the absence of volume statements on the front of wine bottles would:

- lead to less informed consumers making less informed decisions;
- allow unscrupulous wine producers to reduce value for money to consumers by reducing the size of wine bottles; and
- risk setting a precedent that would flow on to other food and beverage products.[7]

In contrast, DFAT and the WFA emphasised that such concerns are largely eliminated by the fact that the exemption only applies to standard sized wine bottles — the vast majority of which are 750 millilitre bottles (JSCOT 2011a). This institutionalised standardisation means that wine bottles carry an implicit volume statement that is broadly known and understood to consumers, suggesting it is unlikely they would be less informed under the terms of the treaty (that is, consumers are unlikely to be unaware of the ubiquity of 750ml bottles). The capacity for wine producers to 'trick' consumers about the quantity of their product (through product shrinkage) is limited by the technical difficulties they face in deviating from standard sizes (Winemakers' Federation of Australia 2011), and the requirement for non-standard sizes to have volume statements on the front of packages.

In the specific case of wine labelling, the regulatory objective of informing consumers about product volume does not appear to be compromised by exempting wine producers from principal display panel requirements on standard wine bottles. This is reflected in moves by other WWTG countries, as well as the European Union, to introduce similar exemptions. As such, it is unlikely that there will be costs (or benefits) to consumers, arising from the full-implementation of this reform.

13.5 Summary of effects

While there is uncertainty about the precision of the ABARE and Winemakers' Federation of Australia's estimate of cost savings, it is probable the industry has received some benefit. On balance, the estimated cost savings in 2005 of around \$25 million (around \$29 million in 2010-11 dollars) appears reasonable. The cost

7 Indeed, the NMI stated that beer producers have requested similar exemptions, although NMI have categorically ruled this out.

savings is essentially isolated to a specific intermediary good – wine labels. While the treaty has not been ratified, Australia has increased the consistency between the labelling requirements of the European Union, and *some* of the WWTG countries. As such, it is assumed that the estimated cost savings phase in over five years, beginning at the completion of the milestone for the COAG agreement on wine labelling in July 2009.

Table 13.2 **Summary of estimated impacts from wine labelling reforms**
$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Cost savings to wine producers from harmonisation of labelling requirements	12	17	29	..	..

.. zero or none estimated. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort.

Source: Estimates provided by Winemakers' Federation of Australia, adjusted for inflation.

13.6 Opportunities for improvement

The treaty simplifies and harmonises labelling requirements facing Australian exporters of wine. Nevertheless, significant discrepancies remain on other labelling issues, such as grape variety, geographical origin and vintage (these are often dealt with in a piecemeal fashion through bilateral trade agreements). As such, extending the treaty to include other aspects of labelling, as well as the number of countries party to the agreement, could further reduce the costs of labelling, and make compliance with international regulations easier for exporters. In any such extension, however, potential adverse impacts on consumers should remain an important consideration. It is likely that further moves in this direction would be supported by the Australian wine industry. As stated by WFA:

> We believe there is still considerably more work to be done in harmonising labelling regulations around the world and are strong supporter of such activities, which can protect consumers and benefit producers alike. (WFA 2011, p. 2)

14 Development assessment

Key points

- In December 2008, COAG agreed to improve development assessment processes by reducing regulatory burdens and delays.
- Key reforms include a national rollout of electronic development assessment processing and accelerated use of code assessment.
- Full implementation of the reforms would provide an ongoing cost saving to business — estimated at around $350 million per year (2010-11 dollars).
  - Only a small portion of those gains are likely to have been realised, but with more expected to accrue progressively over the next half decade.
  - Full realisation of cost-saving benefits is dependent on coordinated action across administering jurisdictions (mainly local government).
- The reforms could also reduce ongoing development assessment costs to government — estimated to be of the order of $50 million per year (2010-11 dollars). These benefits would be balanced against some additional systems administration costs.
- Achieving reform would also incur one-off transition costs, mainly to government, estimated to be of the order of $150 million (2010-11 dollars).
- Full achievement of the reform objectives is likely to afford opportunities for productivity improving organisational and other changes. Given the scale of development assessment activity (about $80 billion in 2010-11), such gains could be substantial.
  - Achieving full reform potential would depend on sustained government action to lower impediments to development activity.

Development assessment is the process of ensuring that a proposed land development is consistent with the plans, zones and other instruments specifying how the land is to be used in a particular council area, region or city (box 14.1).

Land use planning and development is a State and Territory responsibility and each jurisdiction has its own development assessment system. While these systems share some key features, there are also notable differences in terminology, processes and statutory requirements. In addition, development assessment processes and administrative practices can vary between development assessment bodies (usually local councils) within jurisdictions.

In 2008, COAG agreed to progress a range of reforms to improve development approval processes across the country. This chapter discusses the background to the reforms, their details and objectives, who and what will be affected, and the progress made to date with implementation. It also reports estimates of some of the benefits and costs of the reforms, and canvasses opportunities for improvement and further reform.

The Commission's assessment of the likely direct impacts of the reforms has required judgements to be made about the effects of reforms in train. Judgements have also been required to assess the timescale over which the possible benefits of these reforms may accrue. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

Box 14.1 **Understanding development assessment processes**

Development assessment is the process of ensuring that a proposed development on land is consistent with the plans, zones and other instruments specifying how the land is to be used. The details to be provided in a development assessment vary and depend on the nature and scale of the proposed development and the requirements of the approval process. Some developments do not require any formal assessment, while others require a lengthy and complex assessment process.

The basic process of development approval is similar across all Australian jurisdictions and involves:

- the applicant lodging an application with the necessary documents and fees;
- the assessment authority checking the application and requesting additional information where required;
- the application being passed on to referral agencies and placed on exhibit for comment from owners of neighbouring properties and the community;
- the relevant assessment authorities considering the application, taking into account comments, submissions, and what is allowed under the planning regulation;
- the assessment agency deciding to reject, approve or conditionally approve the application; and
- the applicant (or a third party, in some cases) applying for an independent review of the decision where appropriate.

Following approval of an application, responsibility for the enforcement of any approval conditions may be split between the development assessment body (usually the council or local government authority), the building regulator and referral agencies.

Source: PC (2011).

14.1 Reform objectives and changes

In February 2006, COAG identified development assessments as one of six priority cross-jurisdictional ‘hot spots’ where overlapping and inconsistent regulation was impeding economic activity. COAG requested that the Local Government and Planning Ministers’ Council (LGPMC) recommend and implement strategies for improving processes (COAG 2006a).

The objectives of reform in this area are to improve processes for development assessment across Australia and reduce building costs without compromising the integrity of the assessment process. At its March 2008 meeting, COAG agreed:

> To improve development assessment processes to provide greater certainty and efficiency in the development and construction sector by reducing regulatory burdens and delays including maximum uptake of electronic development assessment processing nationally, noting that local councils remain responsible for their development policies. (COAG 2008c, p. 14)

In 2008, the LGPMC established a Ministerial Sub-Group on Development Assessment Reform to expedite and streamline development assessment processes. The LGPMC was tasked with pursuing this goal through five reform streams (with lead responsibility for the initial work allocated to various jurisdictions):

- a national roll-out of electronic development assessment (eDA) processing (led by Victoria);
- a system of national performance monitoring (led by South Australia);
- accelerated use of code assessment (led by New South Wales);
- a set of supporting national planning system principles (led by Queensland); and
- an assessment of benefits accruing from development assessment reforms (led by the Australian Capital Territory) (COAG 2009c).

Further detail on the five reform streams is provided in box 14.2.

In 2008, the then Prime Minister (Hon. Kevin Rudd MP) announced that the Australian Government would commit up to $30 million from its Housing Affordability Fund (HAF) to assist local councils across Australia to introduce eDA systems (COAG 2008d).

Box 14.2 **The five development assessment reform streams**

Roll-out of electronic development assessment (eDA) processing nationally — this involves developing costed options and a funding proposal to enable continued implementation and uptake of eDA across all jurisdictions. It is aimed at enabling all parties involved in the development assessment process to interchange information between differing systems in a 'standard' manner.

A system of national performance monitoring — this involves developing a common set of national performance measures to assess the 'health' of a development assessment system. Performance measures are to be published annually. The first report (covering the 2008-09 financial year) was released in April 2011.

Accelerated use of 'code assessment' — this involves developing a national web-based template for the assessment of low risk developments (with common language and metrics). Use of the template is expected to increase the proportion of code-assessed assessments, and assist in developing stand-alone assessment codes.

Establish a set of supporting national planning system principles — this involves reviewing leading practice approaches and developing a set of national planning principles to help guide a national approach. The National Planning Principles were made available in December 2009 (LGPMC 2009).

Assessment of benefits accruing from development assessment reforms — this involves establishing a framework for measuring the benefits of the reform streams.

Source: COAG (2009c).

Some history and reform progress to date

The Development Assessment Forum (DAF) has been instrumental in the development assessment reform process. DAF was established in 1998 in response to the call for an intergovernmental approach with industry and professional associations to look at ways to speed up assessment and cut red tape, without sacrificing the quality of decision-making or development outcomes. The DAF comprises representatives from all three levels of government, industry and professional associations (DAF 2010). It has developed a set of leading practice principles in a *Leading Practice Model for Development Assessment in Australia* (box 14.3).

Box 14.3 The Development Assessment Forum's Leading Practice Principles

The Development Assessment Forum's leading practice principles provide a blueprint for jurisdictions for a simpler, more effective approach to development assessment. The principles are listed below.

1. Effective policy development	Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
2. Objective rules and tests	Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and direction guidelines should be provided.
3. Built-in improvement mechanisms	Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdictions.
4. Track-based assessment	Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track are standard. Adoption of any track is optional in any jurisdiction, but it should remain consistent with the DAF's Leading Practice Model if used.
5. A single point of assessment	Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.
6. Notification	Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

(Continued on next page)

Box 14.3 (continued)

7. Private sector involvement	Private sector experts should have a role in development assessment, particularly in: (1) undertaking pre-lodgement certification of applications to improve the quality of applications; (2) providing expert advice to applicants and decision makers; (3) certifying compliance where the objective rules and tests are clear and essentially technical; and (4) making decisions under delegation.
8. Professional determination	Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either local government may delegate Development Assessment determination powers while retaining the ability to call in any application for determination by council or an expert panel determines the application. Ministers may have call-in powers for applications of State or Territory significance provided criteria are documented and known in advance.
9. Applicant appeals	An application should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.
10. Third-party appeals	Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in other cases.

Source: DAF (2005).

It has also developed a set of assessment 'tracks' to help guide jurisdictions and give effect to the principles. The tracks are:

- *exempt* — for developments that have a low impact and do not require development approval;
- *prohibited* — for developments that are inappropriate so that both proponents and consent authorities do not waste time or effort assessing proposals that will not be approved;
- *self assess* — for developments that will be approved if clearly specified criteria are met, enabling self-assessment (or assessment by a certified person) to occur, and with no opportunity for review of a decision;
- *code assess — for developments that are more complex but are still able to be* assessed against objective criteria by a certified person, with the opportunity for review of a decision;

- *merit assess* — for complex developments that need assessment against complex criteria or where the application raises a policy matter (or where competing policy objectives apply), and where consent may be conditional on meeting certain conditions;[1] and
- *impact assess* — for larger developments that may have a significant and uncertain impact on amenity or the environment.[2]

The States and Territories are in various stages of attempting to implement the Leading Practice Model developed by DAF. The Property Council of Australia recently reviewed the performance of the States and Territories in implementing the principles, finding that:

> … each state and territory has either made changes or is in the processes of making changes to improve their planning and development assessment systems.
>
> Some are further advanced, having made significant changes, while others have either commenced reviews or are reasonably advanced in implementing legislative or procedural reforms. (Property Council of Australia 2010, p. 6)

The most recent Business Regulation and Competition Working Group Report Card on the Progress of Deregulation Priorities (COAG 2011a) reported that the development assessment reforms that are now operational include:

- code-based assessment for single residential dwellings in all State and Territories;
- national planning system principles that have been agreed and implemented by all States and Territories (LGPMC 2009);
- a framework for measuring the benefits of current and future planning reform initiatives that all jurisdictions have agreed to use to assess the benefits of any national reform initiatives; and
- a set of nine National Performance Measures (endorsed by the LGPMC in February 2010).

In April 2010, COAG agreed that the Ministerial Council for Federal Financial Relations, together with a representative of the Australian Local Government Association, would examine housing policy work already underway in other COAG processes, including development assessment reforms to determine whether that

1 Opportunities for public consultation and expert (and independent) assessment may also be required and there should be opportunities for review of a decision.

2 The process includes public consultation, expert review and assessment of evidence relating to the impact of the proposal with elected representatives involved in decision-making.

work provides the best opportunities for substantial improvement in housing supply and affordability (COAG 2010a). The Ministerial Council was to report back to COAG in mid-2011 on the best way of ensuring a cohesive national approach to further development assessment reform, including what is to become of the remaining development assessment reforms. At this stage no report has been released.

In response to the changes to the Ministerial Council system agreed to by COAG in April 2010, Ministerial Councils lost their remit on 30 June 2011. Some councils, including the LGPMC, were wound up.

Risks to reforms progressing

In its 2009-10 and subsequent 2010-11 progress report for Seamless National Economy reforms, the COAG Reform Council (CRC 2010 and 2012) identified a number of significant risks to development assessment reforms being achieved, including:

- a misalignment between the National Partnership implementation plan and project-specific implementation plans;
- major resourcing and technical issues associated with electronic development assessment and uncertain commitment by governments to its take up; and
- COAG's decision in April 2010 to reduce the number of ministerial councils, which raised uncertainties regarding the delivery of future development assessment milestones.

In its 2009-10 performance report, the COAG Reform Council also noted:

> The National Partnership implementation plan only presents a partial and mainly process-oriented picture of governments' agreement towards achieving the five project streams, and some of the milestones and timeframes captured in the National Partnership implementation plan do not align with those in the five COAG-agreed project implementation plans. The electronic development assessment initiative faces major technical and resourcing issues. (CRC 2010, p. xxii)

14.2 Who will be affected by the reforms?

With development assessment relating to any application for the use of land for residential, commercial or industrial development, the two main groups that will be most immediately affected are development applicants and local governments. The reforms could have some lesser effects on individuals and businesses of properties adjoining proposed developments, and the community more generally — although this could vary with the circumstances of a development.

Development applicants

Development applicants include anyone undertaking a land development, such as individuals, builders, architects and developers. Those applicants facing the highest compliance costs and approval delays could be expected to benefit most from reforms that expedite or simplify development processes.

By influencing the risk of developing land and building costs, improvements in development assessment processes could also flow on to influence the cost and supply of housing. This point was made in the Review of Australia's Future Tax System ('Henry review'):

> Regulations on the use of land need to be governed by approval processes … .Where these processes are slow, they add to costs of building and the risk of developing land, thereby reducing the supply of housing. … Where approval processes are streamlined, they are likely to result in supply being more responsive to changing conditions. (Henry review 2010, p. E4-4)

Data from the first national performance monitoring report for development assessment processes indicates that in 2008-09 there were just over 250 000 development applications made across Australia (table 14.1).

Table 14.1 **Number of development applications by jurisdiction, 2008-09**[a]

NSW[b]	*Vic*[c]	*Qld*	*SA*	*WA*	*Tas*	*ACT*[d]	*NT*	*Aust*
87 056	54 162	23 609	70 852	4 921	8 997	1 319	921	251 837

a Caution should be exercised in attempting to directly compare jurisdictions' data. Some jurisdictions report development applications decided while others report on development applications lodged. **b** Comprises 71 638 development assessments, 14 975 s96 modifications to development assessments determined by local councils, and 443 major developments determined by the New South Wales Department of Planning, the Minister for Planning or the Planning Assessment Commission. **c** The number of applications 'received'. **d** Data covers the period April to December 2009.

Source: LGPMC (2011).

The LGPMC (2011) notes the lack of systematic data collection across jurisdictions and notes that caution should be exercised with these numbers. For instance, some jurisdictions report development applications 'decided' while others report development applications 'lodged'. Also, in some instances, a high proportion of building activity is now classified as 'exempt' and so is no longer counted as a 'development application'. For example, in the Australian Capital Territory, the application volume fell from around 5000 to 1300 per year with the introduction of a 'track-based' assessment system. As such, the estimate on the total number of development applications is likely to be a lower bound estimate of developments in train.

Type of applications

By value, building approvals in Australia was $75.8 billion in 2010-11, with residential buildings accounting for 62.5 per cent ($47.4 billion) and non-residential accounting for 37.5 per cent ($28.4 billion).[3]

These broad categories cover a number of different types of developments. For example, in New South Wales the most common type of development was residential alterations and additions accounting for 41 per cent of the number of developments in 2009-10. Single new dwellings were the next most common accounting for 20 per cent (New South Wales Department of Planning 2011). In Victoria, 57 per cent of all permits issued in 2009-10 were for residential land use (Planning and Permit Activity data, Victoria 2009-10).

Local governments

While State and Territory governments directly influence what land is potentially available for development, decisions about the 'types' of developments allowed and where they are built are generally made by local governments. There are currently around 560 local governments around Australia.[4]

14.3 Understanding the direct impacts of the reforms

The direct impacts of development assessment reforms can be separated into the effects of:

- more consistent development assessment processes on applicants' costs;
- more effective development assessment processes on applicants' costs;
- changes to government administration costs; and
- reduced impediments to operating across jurisdictions on business costs and productivity.

3 ABS 2011, *(Building Approvals, Australia*, Cat. no 8731.0).

4 ABS 2010, *(Australian Standard Geographical Classification*, Cat. no 1216.0).

More consistent development assessment processes

Streamlining approval processes across local governments, together with the adoption of eDA processing, has the potential to reduce compliance costs for individuals and businesses seeking development approvals (particularly for developers that submit applications across multiple councils and jurisdictions) and to improve consistency in outcomes.

The Tasmanian Conservation Trust (2010), in a submission to the Commission's *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* report (PC 2011), noted that in Tasmania the 29 local councils all have their own development assessment forms, different procedures for rezoning, separate and different forms for building approvals and another set of forms and procedures for environmental approvals.

Other participants to the study also commented on the variation in information required across councils. The NSW Business Chamber, for example, submitted that unnecessary requirements can be the reason for inconsistencies across councils:

> … inconsistent requirements across local government boundaries for the same development approvals creates frustration amongst businesses, and leads to inequitable outcomes. These local government requirements are not only inconsistent, but are often unnecessary. (2011, p. 3)

Removing intra- and inter-jurisdictional differences in administrative and regulatory processes (and removing the need to submit unnecessary supporting material) has the potential to significantly reduce the compliance burden faced by applicants.

More consistent approaches to development applications and assessments may also reduce uncertainty in the assessment process. Master Builders Australia said:

> The compliance costs associated with ensuring the requirements of each state and territory and each local government requirements is of serious concern to the industry. This often acts as a disincentive to organisations to work across jurisdictional boundaries and increases risk in the industry. (2010, p. 18)

Developers also commented on the considerable variability in application assessment times between jurisdictions. For example, one developer spoke about two very similar projects — one development was approved in four days in Victoria, while the other (which was in New South Wales) involved a six-month development approval process.

The Commission (PC 2011) also found significant differences between jurisdictions' development assessment processes — in terms of the median time taken to assess development applications and in fees charged (table 14.2), as well as the extent of community involvement in development assessments.

Table 14.2 **Differences in time taken for approvals and approval fees, 2009-10**

Benchmark	*Unit*	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Median elapsed time for DA approval[a]	Days	41	73	38	na	na	na	27	67
Minimum approval fee									
Single residential dwelling	$	1 277	0	0	0	50	300	0	0
Commercial development	$	4 365	815	2 900	2 700	2 390	1 170	5 933	870
Industrial development	$	4 037	815	4 107	2 220	2 140	1 020	5 130	870

[a] Figures are jurisdiction-wide, except for Queensland which relate to the 19 high growth councils for which data were collected by the Department of Planning and Infrastructure.

Source: PC (2011).

Of jurisdictions with comprehensive approvals data, Victoria's median approval time was the highest at 73 days (and may in part be explained by the much higher proportion of development applications being referred to external agencies and the tendency for some councils to include appeal times in their estimates). New South Wales' and Queensland's approval times in 2009-10 were about half those of Victoria, while the Australian Capital Territory had the fastest approval times with a median of 27 days.

While development assessment fees vary considerably across jurisdictions, as noted by the Commission, they represent a small fraction of the overall development costs of a project and:

> … observed differences are unlikely to have had any efficiency impact on development proposals (either by preventing projects/activities from proceeding or by encouraging substitution between jurisdictions). (PC 2011, p. 233)

Planning legislation sets out timeframes for a decision to be made on a development application and these differ across jurisdictions — from 42 days in Tasmania to 84 in the Northern Territory (table 14.3).

Table 14.3 Statutory timeframes for deciding development applications[a]

Jurisdiction	*Calender days*	*Consequences of a failure to meet the statutory timeframe*
NSW	40 to 60[b]	Deemed refusal Applicant can appeal
Vic	60	Failure to grant a permit Applicant can appeal; the tribunal is then responsible for issuing a planning decision
Qld	28 to 140[c]	Deemed approval[d] for code and compliance assessments if a deemed approval notice is lodged by the applicant and not responded to Deemed refusal for impact assessments Applicant can appeal a deemed refusal
WA	60	Deemed refusal if applicant lodges notice of default The applicant can appeal
SA	14 to 196[e]	Deemed refusal if the applicant gives two week notice seeking a decision The applicant may appeal or ask the Minister to appoint the DAC to make the decision The assessment authority must pay court costs of an appeal, unless the delay is not attributable to an act or omission of that authority
Tas	42	Deemed approval on conditions to be determined by the appeal tribunal The assessment authority must pay the applicant's costs for the tribunal hearing
ACT	28 to 63[f]	Deemed refusal[d] The applicant can appeal to the tribunal which can issue a decision
NT	84	No decision Applicant may appeal the failure to make a decision

[a] These are statutory decision times. [b] 60 days for designated development, integrated development or development for which the concurrence of a concurrence authority is required, as defined in the planning Act and Regulations; plus possible extensions depending on the submission period. Part 3A (soon to be replaced) contains different deemed refusal periods. [c] Four weeks for compliance assessment before the application is deemed approved; code assessment could be four weeks or up to 32 weeks (7 months) with extensions; impact assessment involves consultation on top of that. Time required for consultation and for applicant responses to information requests is not included in the table. [d] Referral agencies in the Australian Capital Territory and Queensland are subject to deemed approvals if they fail to decide applications in the statutory timeframe. This is three weeks in the Australian Capital Territory and six weeks plus possible extensions of six weeks in Queensland. [e] Two weeks for complying developments, but up to 12 weeks for other approvals and potential extensions of six weeks for referrals and 10 weeks for ministerial input, plus potential extensions. [f] Four weeks for code track applications; nine weeks for merit and impact track or six weeks if no representation is made in relation to the proposal.

Source: PC (2011).

According to the Housing Industry Association (HIA), local governments regularly do not meet statutory timeframes:

> Local Governments also regularly fail to meet statutory timeframes set out in state legislation for the processing of planning applications. This has dire consequences for the housing industry. Every day of delay adds to the cost of the development through 'land holding costs' that is the cost of financing the property as the applicant obtains permission. Despite some Councils being poorly resourced compared to their workload, in most cases Local Governments appear to have a blatant disregard for maintaining statutory deadlines and there is little penalty or comeback for failing to meet regulatory timeframes. (HIA 2010a, p. 12)

More effective development assessment processes

Greater use of code-based assessments and eDA processing have the potential to reduce costs to development assessment applicants in primarily two ways:

- lower compliance costs (costs associated with preparing, submitting and providing supporting material); and
- shorter approval times and greater certainty about lead times for development (which can reduce holding costs associated with the time taken to obtain development approval).

As the Business Council of Australia (BCA) noted in a submission to the Commission's *Benchmarking Report on Planning, Zoning and Development Assessment*:

> A significant burden on business from planning, zoning and development assessment processes tends to arise from delay costs including holding costs, standby costs and costs arising from uncertainty. (BCA 2010, p. 4)

Delays in development approval can mean significant costs for business including increases in land holding costs (including interest costs on borrowings), lost revenue, higher input costs (on materials and labour) and contractual penalties for exceeding agreed delivery times (box 14.4). As the Council of Mayors, South East Queensland (2011) noted, 'for developers, time is money'.

Box 14.4 **The cost of development assessment delays — some comments**

The HIA said:

> Planning delays are a source of major frustration to homebuilders and developers as the 'holding costs' on land are high. Holding costs relate to the expenses incurred by a builder or developer whilst they hold onto the land whilst awaiting appropriate permission to proceed with a development. Generally, it refers to mortgage repayments on the property and any associated fees and charges incurred during the permit phase. They can also extend to the costs associated with options taken to develop new land or redevelop urban renewal sites, which involve lengthy rezoning and approval processes.
>
> Delays in the planning process increase the cost of housing to consumers and ultimately they influence the final price paid for a new home. (HIA 2010b, p. 4)

And the Business Council of Australia stated:

> One of the greatest frustrations for business is that the actual time taken to resolve planning and zoning matters generally exceeds published guidance on expected timeframes and there is limited accountability for delays. For companies operating across a number of jurisdictions, this creates considerable uncertainty and regulatory risk. In some jurisdictions, significant delay and administrative costs are incurred as a result of the need for business to liaise with a number of government agencies and address their requirements as part of the planning and zoning process. (BCA 2010, p. 4)

In some cases, delays could prevent developments from proceeding and the scope for delay could discourage business from exploring development possibilities. The Department of Resources, Energy and Tourism argued that:

> It is likely many tourism projects are abandoned because small investors cannot sustain the costly delays they face or simply cannot navigate the complex planning systems. (sub. R7, p. 3)

The relative magnitude of compliance costs also depends on the nature and the jurisdiction of the development. It is generally the case that the more complex the development, the higher the compliance burden due to greater requirements for documentation and more extensive assessments.

Code-based assessments enable applications to be considered against clearly defined codes and requirements (for example, building setbacks or height) and can speed up the process for 'straightforward' developments. As a result, fewer applications require a full development assessment saving government planning and assessment resources.

Electronic development assessment tools can improve access to development assessment histories, accountability, public reporting and performance monitoring (box 14.5).

Box 14.5 **eDA tools in use in Australia**

DA tracking — applicants can view the status of their proposal as it moves through a council's internal assessment process.

Smart forms of electronic submission of information — users are guided through a checklist specific to their proposed development including reports and attachments.

Certified planning information — users can obtain (including purchase) a copy of the relevant planning information for their site from a website instantly.

Filtered planning controls — planning controls are drawn out of documents and packaged for specific proposals, negating the need to check multiple documents.

On-line maps — users can search for their site and view layers of information (for example, zoning), environmentally sensitive areas and heritage items.

Electronic development activity gathering — development activity data is collated.

Centralisation of planning information — jurisdictional one-stop shops for planning infrastructure.

Source: National eDA Steering Committee (2011).

Changes to government administrative costs

The use of on-line tools for lodging development approvals should mean lower administrative costs for local governments in the longer term (including lower costs of data entry, publishing costs, filing and archiving). Extended use of code assessments should also reduce the number of applications requiring extensive assessments and hence the use of planning and assessment resources. As the New South Wales Department of Planning said:

> The increasing use of exempt or complying development will reduce local councils' development assessment workload. This will save councils time and money and free up council resources to concentrate on more complex development applications and strategic planning for their local government area. (2009a, p. 2)

A shift from merit to code assessment could see a shift towards greater use of private accredited certifiers.

Support of best practice principles and better performance monitoring can also encourage the uptake of improvement initiatives and be a driver of improved operational efficiency in local councils. As observed by P&A Walsh Consulting and the UTS Centre for Local Government:

> Comparative performance measurement and benchmarking, with its potential to bring greater levels of accountability and ideas for better ways, can provide one of the most

> effective drivers for improvement in areas of governance where the forces of competition are difficult to apply. (2002, p. i)

The Victorian Competition and Efficiency Commission (VCEC) also suggested:

> A good reporting system helps to provide the incentives for improvements, as it makes performance transparent. It also helps policy-makers in councils and State Government, as well as other stakeholders, evaluate the success of reforms to the planning system, and develop opportunities for improvement. (2010, p. 102)

Reducing impediments to operating across jurisdictions

Over time, achieving development assessment reform could reduce business costs, reduce uncertainty about approval times and remove impediments to businesses operating across multiple councils and jurisdictions. Such developments are likely to increase competition among developers and improve flexibility in resource use. Also, greater use of code-based assessments may increase competition among accredited certifiers.

A number of practicalities have been drawn to the Commission's attention that illustrate how development regulation can affect businesses.

- A national developer observed that it had scaled back developments in a particular jurisdiction as a result of approval delays (PC 2011).
- In a similar vein, the BCA commented that risk premiums applied by lenders funding developments differ across jurisdictions based on expected delays in different planning systems (BCA 2010).
- Some developers indicated that they avoided particular local government areas and forms of development because of the difficulties entailed in the development assessment application processes.
- Developers seek to get around local differences in assessment processes by engaging local builders and architects ('they know what is required to get developments approved in their local areas').

In addition, Master Builders Australia observed that:

> When the systems are not efficient, it increases developers/builders business costs and risks and leads to frustration and reduced investment. (2010, p. 18)

Improvements in the cost-effectiveness of development assessment processes would also reduce compliance costs and the uncertainty faced by developers around approval times. While businesses have sought to mitigate or 'work around' the adverse impacts of jurisdictional differences, lowering or removing impediments to operating across jurisdictions is likely to afford opportunities for organisational and other changes that improve productivity.

14.4 What are the direct benefits of the reforms?

Comments from industry groups, governments and developers suggest that the realised benefits from development assessment reforms, to date, have been minimal. One developer, for example, said that in terms of development assessment reform 'the train is still at the station'.

The (then) Department of Infrastructure, Transport, Regional Development and Local Government noted that while the frameworks are in place, there is little evidence of outcomes on the ground:

> Through the LGPMC, there has been extensive work undertaken to establish frameworks for development assessment reform, … However, limited evidence to demonstrate the benefits that would accrue from the national reform process, and the general lack of awareness of the issue, has led to limited outcomes from these reform processes. (2010, p. 2)

The Department of Resources, Energy and Tourism (DRET), commenting on the costs to tourism firms of going through the planning and development approval process, also submitted:

> In this regard, it is not yet apparent that the reform priorities of the SNE have produced any tangible benefits for the tourism industry. … DRET is of the view that reform of development assessment processes should remain a priority for the second wave of the SNE reforms. (sub. R7, pp. 3-4)

In addition, there is currently no clear implementation schedule for two key reform streams (the national roll-out of eDA and accelerated use of code assessment) with the LGPMC being wound up and the task of determining what should become of development assessment reforms given to the Ministerial Council for Federal Financial Relations. As the HIA said:

> … there is no implementation framework in place to engage the Commonwealth and States to adopt these reforms. The demise of the Local Government and Planning Ministers Council which could have assisted to push for implementation in some manner will not improve this situation, along with the removal of Commonwealth's support for the Development Assessment Forum in December 2011.
>
> For these reasons, it is difficult to accept that significant benefits will from the development assessment reforms. Those that do evolve will be limited to those states that choose to implement actions such as electronic development assessment or the code assessment. … The presumptions that benefits will flow are understandable, but

the reality is that the disjointed administrative framework does not guarantee any real benefits from these reforms. (sub. DR-G7, p. 5)

With no milestones or clear end points (in an area that has already seen lengthy reform processes), any substantive impacts remain in prospect and, at this stage, are dependent largely on action within jurisdictions.

A recent report by the New South Wales Department of Planning and Infrastructure (2012) indicated progress in reducing delays has been slow. In fact, on average across all councils the number of days taken to process a DA application (including stop-the-clock provisions and referrals to state agencies) was assessed to have increased from 67 to 68 days from 2009-10 to 2010-11.

But state-based projects aimed at improving processes are progressing

Some States and Territories are pursuing projects aimed at improving the efficiency of development assessment processes, including increasing the proportion of code-based assessments, and achieving greater consistency in the approach taken to development applications across councils. In *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments,* the Productivity Commission detailed a number of significant changes within each jurisdiction that apply to development assessment (PC 2011).

Single residential developments that comply with prescribed standards, planning guidelines and overlays and do not trigger specified conditions in local planning schemes are now treated reasonably consistently across most jurisdictions. This is an area where some benefits are being realised (PC 2011).

There is also some evidence of cost savings to new homeowners and developers from having to go through fewer hurdles for single residential developments. The HIA, for example, notes that:

> Until recently, in NSW over 80 per cent of housing applications required both planning approval and building approval. They were subjected to locally developed standards for their design and construction, removing much of the ability for the volume building process to function. The introduction of the NSW Housing Code through a state planning policy has dramatically removed these impediments with the number of houses able to take advantage of the single approval process (complying development) increasing year on year. (HIA 2010a, p. 7)

The Commission (PC 2011) has reported improvements in development application approval times over the period 2008-09 to 2009-10 (table 14.4). The improvement in Queensland's application processing times was partly attributed to a reduction in the volume of applications, but also to increased use of assessment tracks and a concerted effort to apply electronic planning systems.

Table 14.4 **Jurisdiction-wide development application approval times in days, 2008-09 and 2009-10**

	NSW	*Vic*	*Qld*[a]	*WA*[b]	*SA*	*Tas*	*ACT*	*NT*
2008-09								
Average	71	123	185	101	na	28	36	77
Median	41	78	104	79	15	29	33	81
2009-10								
Average	67	117	98	na	na	na	34	56
Median	41	73	38	na	na	na	27	67

[a] Figures for Queensland related to the 19 high growth councils for which data is collected by the Department of Planning Infrastructure. [b] Figures for Western Australia mainly relate to subdivision approvals by the Western Australian Planning Commission and do not include applications processed by local councils as that information was not collected.

Source: PC (2011).

The New South Wales Department of Planning (2012) reported a number of improvements :

- the number of single new dwellings as complying development increased from 5 per cent in 2006-07 to 10 per cent in 2010-11;
- the share of residential alternations and additions determined as complying development increased from 15 per cent in 2008-09 to 20 per cent in 2010-11;
- the share of commercial/retail/office developments determined as complying with development requirements increased from 9 per cent in 2008-09 to 33 per cent in 2010-11; and
- the number of councils with a mean gross processing time of over 100 days decreased from 21 in 2008-09 to eight in 2010-11.

ACT Planning and Land Authority has also reported a recent increase in the percentage of development assessment decisions made in the statutory time period as a result of new processes and exemptions, including:

- a reduction from an average of five days in April 2009 to three days in June 2010 to process completeness checks; and
- an increase in merit development assessments as determined within the statutory timeframe from 59 per cent in 2008-09 to 78 per cent in 2009-10 (ACTPLA 2010).

Existing estimates of the magnitude of benefits from reforms

Estimated benefits from the roll-out of electronic development assessment

A cost-benefit analysis of eDA undertaken by Stenning and Associates (2004) for the Development Assessment Forum estimated net benefits over 10 years of $38.3 million for local councils and $141 million to industry. Key assumptions behind the estimates were:

- a reduction in the average transaction costs for applications due to eDA of $110 per application;
- a reduction in the average processing time for development assessment applications of 5 days; and
- 10 years after the introduction of the proposed eDA protocol, 63 per cent of development applications would be lodged electronically, with half of these being handled by large local governments.

While individual local governments of all sizes were estimated to gain net benefits from the implementation of eDA, the bulk of savings were estimated to accrue to large councils handling high volumes of approvals.

The study acknowledged that 'the results are based on very limited data and no firm conclusions can be drawn on how representative this data is of local governments nationally'. It further stated that:

> … given the data limitations faced by this study, it is likely that these estimates understate the potential benefits that may be obtained from the implementation of the proposed eDA protocol. (Stenning and Associates 2004, pp. ix-xi)

Comments made to the Commission during this study by key industry bodies and large developers also suggested that these estimates were on the low side.

Estimated benefits from the extended use of code assessment

There is a range of estimates on the possible benefits from increasing the number of developments that are classified as code complying.

The introduction of the New South Wales Housing Code was estimated to reduce single-story residential approval times from 120 days to 10 days (Keneally 2009). The Housing Industry Association estimated that in the Sydney metropolitan area homeowners could achieve cost savings of $6645:

- $3345 due to lower vacant-land mortgage-payment holding costs following reduced assessment times; and
- $3300 from reduced fees, documentation, amendments and time spent tracking development assessments.

Based on the same assumptions, it was estimated that homeowners in regional areas could achieve savings of $2549 (New South Wales Department of Planning 2009a).

Broadly in line with these estimates, a submission by the Tasmanian Conservation Trust to the Commission's *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment* suggested that:

> Current estimates indicate that cost savings of the order of $3000–$5000 can be achieved in the preparation and submission of applications for single dwellings by using standard codes (e.g. the New South Wales Complying Development Code or the requirements of Part 4 of the Victorian Building Regulations) with an electronic application and assessment system. (Tasmanian Conservation Trust 2010, p. 14)

The estimated savings in holding costs for developers from Queensland's 'Target 5 Day Project' (aimed at having a five day turnaround for most low-risk residential applications) are $14 000 per development application (Council of Mayors South East Queensland 2011). This estimate is based on lowering residential development approval times in Queensland from an average of 93 business days (for all residential dwellings) to 27 business days.

The Victorian Competition and Efficiency Commission's (VCEC 2010) analysis of the Victorian Planning Permit Activity data found that around 38 per cent of all applications in that state were classified as 'simple' and 29 per cent as 'simple and requiring no public notification'. Using the range of 29-38 per cent as a proxy for the proportion of permits that might be suitable for code assess, and assuming administrative cost savings of 25 per cent and reduced delay costs of 50 per cent, VCEC estimated savings for that state of between $15 and $19 million. The study also suggested that in the longer term an additional 20 per cent increase in the number of applications suitable for code assessment could be possible with better strategic planning (resulting in further savings of between $3 and $4 million).

A study by KPMG (2008) modelled potential benefits from a proposed package of reforms in South Australia, including:

- an expansion of the number of complying developments by converting 50-70 per cent of all merit assessed residential applications to complying developments; and
- eliminating the 'stop-the-clock' and referral levers for those applications considered to be in compliance.

Based on a reduction of 11 weeks in the development application process, the KPMG study estimated the reforms would result in annual savings of:

- between $1576 and $5517 for residential applications (the lower estimate assumes interest payable on a $100 000 loan, the latter $350 000); and
- $11 000 for small commercial developers and $16 500 for large commercial developers (assuming holding costs per week of $1000 and $1500, respectively).

KPMG did not estimate the reduced administrative burden on individuals and businesses from the reforms but noted that 'they are potentially quite significant' (KPMG 2008, p. 26). Administrative savings of $5.4 million were also estimated for local councils in South Australia because of fewer site inspections (based on $150 per inspection) and reduced administrative costs associated with the elimination of council's 'stop-the-clock' events.

The Property Council of New South Wales (based on consultation with their members) estimated the cost savings from retail, office and industrial tenants using the NSW Commercial and Industrial Code for low-impact commercial and industrial development. The estimates were based on the assumption that approval would be provided via a Complying Development Certificate rather than the development assessment process in New South Wales (New South Wales Department of Planning 2009b). Across a range of fit-outs, the estimated cost savings from this change ranged from around $5000 to over $75 000:

- Retail (non-food) fit-out valued at $150 000 — savings on assessment $500; potential early rent commencement savings $4500 (based on $250/day with a time saving of 18 days);
- Retail (food) fit-out valued at $150 000 — savings on assessment $1000; potential early rent commencement savings $6250 (based on $250/day with a time saving of 25 days)
- Commercial office fit-out valued at $100 000 — savings on assessment $300; potential early rent commencement savings $3420 (based on $190/day and time savings of 18 days)
- Industrial fit-out valued at $1 million — savings on assessment $2000; potential early rent commencement savings $74 000 (based on $1000/day with a time saving of 74 days).

The New South Wales Department of Planning noted that:

> … if only 10 per cent of the State's 90 000 retail tenancies were to utilise the NSW Commercial and Industrial Code for their retail fit-out or change of use per year, they would realise savings of more than $40 million. (New South Wales Department of Planning 2009b, p. 4)

A survey of local governments conducted by the Commission as part of the *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment* study (PC 2011) also found that while many councils did not use track-based assessment systems, many of those councils that did considered it to have helped expedite development assessment processes.

The Commission's assessment of the direct benefits

The studies presented above provide a range of estimates on potential savings from lower compliance costs and shorter processing times from development assessment reforms. The variation between estimates reflects current variations in processing times across jurisdictions and the scope for improvement across development project types (as well as different modelling assumptions). Overall, the estimates suggest that there are potentially significant cost savings for development applicants from the extended use of code-based assessments and, to a lesser extent, from the roll-out of eDA processes.

To provide indicative estimates of the impacts of both eDA processing and increased use of code-based assessment, the Commission has considered the implications of:

- a 5 day reduction in the average processing time for development assessment applications from eDA;
- a 30 day reduction in the average processing time for applications from the extension of code-based assessments based;
- lower compliance costs (reduced fees and fewer submitted documents) of $500 (in 2010-11 dollars) on average for residential applications and $1000 (in 2010-11 dollars) for commercial/industrial applications;
- 50 per cent of applications being lodged electronically; and
- 50 per cent of applications being classified as code complying.

If these possibilities were realised, it is estimated that new home applicants could achieve cost savings of around $2500 (2010-11 dollars) on average (based on an average land value or loan of $300 000, table 14.5). For residential applications, time savings are only applied to new home applications (renovations and other residential developments are excluded) to reflect the lower costs of financing land for these applicants while awaiting development approval. Lower compliance costs are applied to all residential applications expected to be lodged electronically and to be code complying.

For commercial/industrial applications, the cost savings are estimated to be around \$5000 (2010-11 dollars) (based on an average loan of \$500 000, table 14.5).

Table 14.5 **Potential savings to applicants**

Type of Development	*Reform*	*Saving*	*Savings per applicant*	*Benefiting applications*[a]	*Total savings*
			\$	no.	\$ million
New dwellings	eDA	5 days	288[b]	26 250	7.6
	Code assessment[c]	30 days	1 726[b]	26 250	45.3
Residential applications	eDA &Code	Lower compliance costs/ fees	500	75 000	37.5
Sub total					*90.4*
Commercial applications					
	eDA	5 days	582[d]	50 000	29.1
	Code assessment[b]	30 days	3 493[d]	50 000	174.7
	eDA &Code	Lower compliance costs/fees	1 000	50 000	50.0
Sub total					*253.8*
Total					**344.1**

[a] Based on half of the 250 000 applications benefiting from the reforms. A residential/commercial split of 60:40 was applied to all applications (based on New South Wales and Victorian data). A 35:65 split for new homes/other residential was applied to all residential applications (based on New South Wales data). [b] Based on an average loan of \$300 000 and interest rate of 7 per cent. Also, that a day reduction in processing time equates to a day decrease in holding costs. [c] Broadening the range of applications that are exempt from assessment, self-assessable or code assessable. [d] Based on an average loan of \$500 000 and an interest rate of 8.5 per cent.

Source: Commission estimates.

For the 250 000 development applications lodged across Australia (table 14.1), applying these assumptions suggests possible gains from lower costs to development applicants of around \$340 million per year — around \$90 million for residential applicants and \$254 million for commercial/industrial applicants (table 14.5).

While estimates are not available for cost savings to applicants from the remaining three reform streams — performance monitoring, the establishment of a set of national planning system principles and a framework for measuring the benefits accruing from development assessment reform — savings from these administrative arrangements are expected to be relatively small. To reflect some savings to applicants from these changes, in the Commission's assessment, total savings to applicants from the five streams of reform has been rounded up from $344 million to $350 million (2010-11 dollars).

Are the impacts realised, prospective or potential?

While some of these savings are already being realised, the majority fall in the 'prospective' and 'potential' categories. This is because the percentage of applications decided through 'low risk' assessment processes and the extent of take up of eDA systems is low in most jurisdictions (table 14.6).

Table 14.6 **Proportion of development applications lodged electronically, 2008-09**

Per cent

NSW[a]	*Vic*[b]	*Qld*[c]	*Sa*[d]	*WA*[e]	*Tas*[f]	*ACT*[g]	*NT*[h]
13	2	< 1	7	0	na	25	5

[a] Based on 10 councils who currently provide for online DA lodgement. Assumes that all their determined DAs are lodged online. [b] Victoria has an eDA system (SPEAR) which enables planning permit applications to be lodged, referred, tracked and decided online. 18 councils have implemented Victoria's SPEAR eDA system with 13 more in the pipeline. [c] In 2008-09 no Councils were accepting electronic DAs directly. Smart eDA, commenced accepting eDA lodgements for Redland City Council in the first half of 2009. A total to 11 applications had been lodged by 30 June 2009. [d] South Australia has an electronic system for lodgement of land division applications (known as EDALA). [e] Currently DoP has no eDA facility (since the majority of DAs are handled by Local Government) but is developing an end-to-end electronic subdivision capability for the future. [f] A limited number of councils provide for and receive electronic lodgement of applications. [g] On average, 25 per cent of DAs have been submitted electronically. Since inception of the external eDA system in April 2009, the external uptake of eDA lodgements has gradually increased, reaching 50 per cent. [h] A new eDA system was launched in 2010.

Source: LGPMC (2011).

The HIA also noted that:

> The simple process of 'lodging a DA online' is an important first step, but the real reforms will come from improvements in the 'assessment' process which to date remains a hands on, administrative process for planners and other staff. (sub. DR-G7, p. 5)

There is evidence some States and Territories are transitioning to eDA processing. For instance, in the Australian Capital Territory, the ACT Planning and Land Authority reported that in 2010-11 over 60 per cent of new development applications were lodged online (up from 3 per cent in April 2009). From January 2012, the Australian Capital Territory will accept development applications only via the eDevelopment portal. In this context, it is notable that the Australian Capital Territory, which has essentially adopted DAF's leading practice model (including electronic development assessment processing and a track-based assessment system that streams proposals into one of four different categories depending on complexity), has the shortest development assessment approval times. As the Property Council of Australia said:

> In most respects, and more than other jurisdictions, the ACT model aligns with the DAF model. Given this, and having a predominant planning authority (noting the role played by the National Capital Authority) and a well-developed legislative framework, it could be the most effective and efficient system in Australia. (Property Council of Australia 2010, p. 23)

The savings to applicants from the extended use of code assessment are most likely to be achieved in the areas of low risk residential dwelling developments and minor residential renovations. These developments are most likely to meet pre-determined standards, and code-based assessments for single residential dwellings have been implemented in all jurisdictions. As such, it has been assumed that one quarter of the $90 million (table 14.5) of the estimated savings for residential applicants fall within the 'realised' category, and the remaining three quarters are in prospect. Rounding the total savings to $100 million results in $25 million estimated savings within the 'realised' category and $75 million within the 'prospective' category. While there remains uncertainty as to whether the benefits will be realised, for the purpose of this study, the estimated prospective impacts are assessed to accrue over a five-year period from 2010-11.

Increasing the proportion of commercial and industrial applications processed as complying development is expected to be more involved. As discussed above, there is no staged implementation plan for national code assessable templates covering low risk and model code developments for commercial and industrial development. Given this, 50 per cent of the cost savings estimated for industrial/commercial applications ($125 million; see table 14.5) have been assumed to be prospective benefits accruing over 5 years. The remaining cost savings ($125 million) have been classified as 'potential' — that is, as dependent on further policy development and regulatory reform.

Cost savings to local governments from eDA and increased use of code-based assessments are estimated to be around $50 million per year (based on $400 per application for 50 per cent of all applications, or around $90 000 on average per council).

14.5 Indicative costs of achieving reform

Reforms to development assessment processes require administrative effort and associated costs — for example, the cost of setting up eDA, templates for code assessments, setting up principles and frameworks for assessment. As noted above, the Australian Government committed $30 million of the HAF to assist with the implementation of eDA systems and online tracking services nationally. Additional HAF funds have been provided to assist the States and Territories improve planning approval processes to reduce costs associated with planning delays. Given the overlap between the objective of HAF and COAG reforms, $20 million of these funds have been attributed to achieving the COAG development assessment reforms.

The States and Territories are also funding extensions to the roll-out of eDA and code assessments. For example, the New South Wales Government recently announced that it would be providing an additional $4.3 million for the roll out of the Electronic Housing Code to 24 additional councils over the next two years (Hazzard 2011, box 14.6). The original roll-out of the Electronic Housing Code in 10 council areas in New South Wales was facilitated by funding ($5.92 million) from the Australian Government's HAF.

Based on the funding provided in New South Wales for the second roll-out of the Electronic Housing Code, the additional outlay equates to around $180 000 per council. Assuming that the $30 million from the HAF facilitated eDA roll-out for 15 per cent of councils and a cost of $180 000 is applied to the remaining 85 per cent of councils (476 councils), this suggests a further cost to governments of around $85 million. This would take the total cost of the roll-out of electronic codes to around $115 million.

Other costs to government from the reforms include:

- the costs of establishing national planning system principles;
- the set up for a national performance monitoring system; and
- conducting the framework report for assessing the benefits accruing from development assessment reforms.

If the one-off cost to government for these projects amounted to around $5 million, the estimated total one-off cost of achieving reform would be of the order of $140 million.

The one-off transitional costs for applicants associated with learning a new system have been recognised with an indicative estimate of $10 million included.

Based on an indicative maintenance cost of around $50 000 per council, the increase in *ongoing* government administration costs associated with maintaining eDA systems could amount to around $30 million across Australia.

Box 14.6 Initiatives to reduce residential development assessment timeframes

South East Queensland Target — 5 Day Project

The Target 5 Days (T5) project, managed by the Council of Mayors, South East Queensland (SEQ), is a $3.9 million initiative (funded through the Housing Affordability Fund, an initiative of the Australian Government) that aims to assist SEQ councils to reduce residential development assessment timeframes and improve housing affordability across the region. The T5 project aims to:

- develop application process reforms to reduce assessment timeframes for 95 per cent of residential developments;
- establish a 75 per cent reduction in approval timeframes for residential developments (including a five day turnaround for low risk applications); and
- implement consistent development assessment processes across participating SEQ councils (Brisbane, Gold Coast, Logan, Lockyer Valley, Redland, Scenic Rim, Somerset, Sunshine Coast and Toowoomba).

The T5 project seeks to achieve these objectives by:

- developing a risk assessment methodology;
- focusing on a 5 day turnaround;
- identifying triggers for internal referrals;
- establishing policies for information requests; and
- implementing wide ranging operational and cultural reform.

New South Wales — Electronic Housing Code

In October 2011, the NSW Minister for Planning and Infrastructure launched the Electronic Housing Code (EHC) following a $5.92 million contribution from the Australian Government's Housing Affordability Fund. The NSW Government agreed to provide an additional $4.3 million to support the implementation of EHC at up to 24 additional councils over the next two years.

The EHC is a pilot project focused on the development of an online system for the electronic lodgement of complying development applications under the NSW Housing Code for lots 200m^2 and above. The system will allow users to determine if they are able to proceed without further approvals, as an exempt development.

The system is operational in 10 local government areas — Bankstown, Blacktown, Lake Macquarie, Port Macquarie-Hastings, Rockdale, Shellharbour, Sutherland, Tamworth, The Hills and Tweed Shire Council. Liverpool City Council will be operational in early 2012.

Sources: Council of Mayors, South East Queensland (2011); Hazzard (2011); Smith (2011).

14.6 Summary of effects

The direct realised, prospective and potential impacts of development assessment reform are in the form of lower costs to development applicants (lower compliance costs and shorter approval times) and reduced government spending (table 14.7).

Table 14.7 **Summary of estimated impacts from development assessment reforms**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Reduction in costs from lower compliance costs and shorter approval times					
Residential developments	25	75	100	0	(3)
Commercial and industrial developments	0	125	125	125	(7)
Total	25	200	225	125	(10)
Lower state government administration costs		50	50		..
Costs to state governments of developing and maintaining systems	..	(30)	(30)	..	(140)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. These have been rounded to the nearest $5 million. Transition costs have been similarly apportioned, and round to the nearest $1 million.

Source: Commission estimates.

14.7 Opportunities for improvement

The Commission's *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* report (PC 2011) concluded that the adoption of leading practices would significantly improve governance, transparency, accountability and efficiency. The Commission supported the recommendations of the DAF including:

- linking development assessment requirements to their objectives;

- use of a risk-based approach;
- facilitating the timely completion of referrals;
- adopting practices to facilitate the timely assessment of applications;
- the adoption of practices to facilitate access to relevant information; and
- transparent and independent alternative assessment mechanisms.

The Property Council acknowledged that some reforms have occurred but considers that the systems are still not fully effective due to:

- overly complicated codes or assessment processes;
- local political imperatives to retain control over development assessments;
- a lack of measures to identify performance; and
- cultural and administrative constraints (Property Council of Australia 2010).

In a submission to this study, the McKenzie Group commented that eDA can improve access to information in the early stage of a project, but noted that:

> … practices and problems that have plagued the traditional development assessment processes have unfortunately been transferred to eDA tools. (sub. DR-R24, p. 2)

In a similar vein, a number of developers raised concerns about 'politicised decision-making' at the local council level and the ability of local governments to negotiate particular conditions associated with developments. On this point, the Property Council of Australia argued that:

> … some councils have been able to hold the planning approval system hostage to obtain the best deal for the community and raise the most revenue, choosing to 'negotiate' with applicants over development fees, charges and, ultimately, consent conditions. (Property Council of Australia 2010, p. 9)

One example provided to the Commission was a requirement for the establishment of a worm farm as a condition of development approval for a new multi-unit high rise development.

There is no clear implementation schedule for either the national roll-out of eDA or the accelerated use of code assessment. Further, the LGPMC has been wound up, and the task of determining what should become of development assessment reforms has been given to the Ministerial Council for Federal Financial Relations.

In its 2010-11 Report on Performance (CRC 2012), the COAG Reform Council noted that a system of national performance monitoring and a set of national planning system principles have been agreed, and accelerated used of code assessment has been achieved for low risk, low impact single residential dwellings. However:

> The ‘roll out of electronic DA processing nationally’ and the ‘assessment of benefits accruing from DA reforms’ have not been achieved. The current implementation plan does not contain any milestones beyond 2010–11 to guide the achievement of these remaining outputs. (CRC 2012, p. xvi)

In the Commission’s assessment, with no milestones or clear end points, any substantive impacts remain in prospect and, at this stage, are dependent largely on coordinated action across administering jurisdictions, that is mainly local government. Concerted government action supported by high level coordination will be needed to achieve the efficiencies available from improved consistency of local governments’ development assessment practices. Such action could also provide the impetus to lower impediments to operating across jurisdictions, affording opportunities for productivity improving organisational and other changes. Given the scale of residential and non-residential development activity in Australia, the potential for productivity gains is substantial.

15 National Construction Code

Key points

- In December 2009, COAG agreed to integrate the Building Code of Australia and the Plumbing Code of Australia into a single National Construction Code.
- The reform aims to reduce inconsistency and overlap between the codes, and streamline regulatory approaches across jurisdictions.
- The two main direct impacts of the reform on businesses are:
  - improved consistency between building and plumbing regulations; and
  - a more flexible compliance regime for plumbing.
- The total value of building work done in Australia on dwelling and non-dwelling construction was $83 billion in 2010-11, equivalent to around 6 per cent of GDP.
- It is estimated that reform could lower construction costs by around 1 per cent. If achieved, this would translate into a cost saving of about $1 billion per year (2010-11 dollars).
  - These gains would accrue progressively as industry adapts to the integrated code.
- The achievement of reform is involving some one-off transition costs — estimated to amount to around $30 million for industry and $5 million for government (2010-11 dollars).
- Areas assessed as offering scope for improvement include:
  - extending the code to other areas, such as gasfitting, electrical, and telecommunications; and
  - continuing to reduce jurisdictional variation besides from those relating to climatic and geophysical differences.

The construction of commercial, residential and public buildings has long been regulated in Australia on the basis that governments have some responsibility for health, safety and amenity standards in buildings on behalf of the community. Under Australia's constitution, responsibility for such matters resides with State and Territory governments. Over time, numerous variations in regulatory arrangements have developed across jurisdictions. Streamlining and harmonising regulatory approaches could provide economic benefits, particularly through lowering construction costs.

In recognition of these potential benefits, the States and Territories agreed to the development of the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). First editions were produced in 1998 and 2004, respectively, and the codes were, to varying degrees, subsequently referenced in State and Territory legislation.

As a result of their separate evolution, however, a number of inconsistencies and areas of overlap existed between the BCA and the PCA. In July 2008, COAG agreed to the development of a National Construction Code (NCC), covering building, plumbing, electrical and telecommunications standards. The ultimate objective is to consolidate all on-site construction regulation into a single document. The first phase of this reform, which involves integrating the BCA and the PCA into a single document, forms the NCC component of the Seamless National Economy reforms.

This chapter outlines the reform objectives and main motivating factors behind the changes to the building and plumbing code regimes. The chapter considers who will be directly affected by the reform, and provides estimates of the prospective impacts. The quantitative analysis has required judgements to be made about the effects of reform based on existing studies and the Commission's assessments for the purposes of this discussion draft. The results presented are exploratory.

An assessment is made of whether Australia's reform potential is being achieved and opportunities for improvement.

15.1 Reform objectives and changes

The objective of the first phase of the NCC is to achieve a nationally consistent approach to building and plumbing regulation in Australia. At its December 2009 meeting, COAG agreed to:

> … integrate the plumbing code and the building code into a single document which will address areas of inconsistency and overlap between the two codes. (COAG 2009d, p. 3)

The first phase has largely been implemented with the publication of the inaugural NCC Series. It has three volumes:

- Volume One pertains primarily to Class 2 to 9 buildings;
- Volume Two pertains primarily to Class 1 and 10 buildings; and
- Volume Three pertains primarily to plumbing and drainage associated with all classes of buildings.

Five jurisdictions have adopted the NCC and the remaining three — New South Wales, Western Australia and the Northern Territory — are expected to reference the NCC in their respective legislation by 1 May 2012.

In addition to consolidating building and plumbing codes into a single national code, the reform includes governance and funding arrangements for the Australian Building Codes Board (ABCB) to produce, maintain and administer the NCC. It requires all jurisdictions to make the necessary legislative arrangements for the formal adoption and effective operation of the NCC.

Key features of the NCC are outlined in box 15.1.

Evolution of the current framework

Building

With responsibility for health, safety and amenity standards in buildings resting with State and Territory Governments, eight separate Acts of Parliament and eight distinct building regulatory systems evolved across Australia. At various times, building regulation has been complicated further with jurisdictions passing over certain building regulatory powers to local councils. This has resulted in numerous building regulatory systems by way of council by-laws (ABCB 2011).

Attempts to harmonise building regulation have been made over recent decades, starting with the Australian Model Uniform Building Code. This code was first released in the early 1970s, evolved into the BCA, and then progressively adopted by States and Territories during the early 1990s.

The BCA is the primary code for technical building provisions referenced in all State and Territory building Acts or regulations.[1] It covers all commercial and domestic buildings, but not 'non-building' or engineering constructions (such as roads and bridges).

1 There is also a range of regulatory instruments across the States and Territories that meet other objectives (such as environmental objectives) that reference the BCA, resulting in complex legal and regulatory linkages (Master Builders Australia, pers. comm., 1 March 2012). The effects of the BCA are accordingly more pervasive than directly meeting requirements for the construction of buildings.

Box 15.1 **The National Construction Code – a snapshot**

The NCC is a uniform set of technical provisions for the design and construction of buildings and other structures throughout Australia. It sets out to provide nationally consistent and minimum necessary building design and construction standards with respect to health, safety, amenity and sustainability.

It is given legal effect by relevant legislation in each State and Territory. This legislation prescribes the NCC to fulfil any technical requirements that have to be satisfied when undertaking building work or plumbing and drainage installations.

State and Territory legislation empowers the regulation of construction activity, and contains the administrative provisions necessary to give effect to the legislation. Administrative provisions typically cover: plan submission and approval procedures; issue of permits; inspections and audits; provision and issue of evidentiary certificates; review and enforcement of standards; and fees and charges.

The NCC currently comprises the Building Code of Australia (BCA) as Volumes One and Two and the Plumbing Code of Australia (PCA) as Volume Three.

- Volume One of the NCC pertains primarily to Class 2 to 9 buildings, including flats, shops, offices, factories and public buildings.
- Volume Two pertains primarily to Class 1 and 10 buildings, including houses, sheds, carports, swimming pools and fences.
- Volume Three pertains primarily to plumbing and drainage associated with all classes of buildings.

The BCA's technical provisions cover aspects such as structure, fire resistance, access and egress, services and equipment, and energy efficiency as well as certain aspects of health and amenity. The BCA allows for variations in geographical, geological or climatic factors.

The PCA technical provisions cover the design, construction, installation, replacement, repair, alteration and maintenance of: water services; sanitary plumbing and drainage systems; stormwater drainage systems; heating, ventilation and air conditioning systems; on-site wastewater management systems; and on-site liquid trade waste management systems.

Source: ABCB (2011).

The BCA identifies ten classes of buildings, each covering a particular type of building (box 15.2).

Box 15.2 **Classes of buildings as defined by the BCA**

- Class 1a: a single dwelling being: a detached house; or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.
- Class 1b: a boarding house, guest house, hostel or the like with a total floor area not exceeding 300 m^2 and in which not more than 12 people would ordinarily be resident.
- Class 2: a building containing two or more sole-occupancy units each being a separate dwelling.
- Class 3: a residential building, other than a building of Class 1 or 2, which is a common place of long-term or transient living for a number of unrelated people, including: a boarding-house, guest house, a residential part of a hotel or motel, a residential part of a school, a residential part of a healthcare building that accommodates members of staff, or a residential part of a detention centre.
- Class 4: a dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.
- Class 5: an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.
- Class 6: a shop or other building for the sale of goods by retail or the supply of services direct to the public, including: a cafe, restaurant, bar, a hairdresser's or barber's shop, public laundry, market or sale room, showroom, or service station.
- Class 7a: a car park.
- Class 7b: a building for storage, or display of goods or produce for sale by wholesale.
- Class 8: a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain.
- Class 9a: a public health-care building, including those parts of the building set aside as a laboratory.
- Class 9b: a public assembly building, including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class.
- Class 9c: a public aged-care building.
- Class 10a: a non-habitable building being a private garage, carport, shed, or the like.
- Class 10b: a non-habitable structure being a fence, mast, antenna, retaining or freestanding wall, swimming pool, or the like.

Source: ABCB (2004).

Plumbing

A major step towards a national set of plumbing regulations occurred with the publication of the Australian Standards (AS) 3500 series in 1990. The AS 3500 was published by Standards Association of Australia, the predecessor of Standards Australia.[2] The series had the objective of providing acceptable technical standards for the design and installation of plumbing systems throughout Australia. Its adoption over the years, however, was piecemeal and there were significant variations in its application across jurisdictions.

A National Plumbing Regulators Forum was established in 2002 with representatives from all States and Territories. Charged with responsibility for developing the Plumbing Code of Australia, it produced the first version of the PCA in 2004. The new code was adopted in Victoria, Queensland, South Australia, Tasmania (by reference in the Tasmanian Plumbing Code), and the Australian Capital Territory. Those jurisdictions that did not adopt PCA 2004 continued to use AS 3500 or other independently developed regulations. For instance, New South Wales referenced AS 3500, at least in part, along with the NSW Code of Practice for Plumbing and Drainage, and other technical references (Allen Consulting Group 2009b).

As recently as 2008, the PCA had not been updated since its inception, partly as a result of the National Plumbing Regulators Forum having insufficient resources and funding to undertake a review process (sub. G2, p. 8).

Role of the ABCB

In 1994, the ABCB was established by an Intergovernmental Agreement signed by the Ministers of the Commonwealth and State and Territory Governments.[3] The ABCB's mission is 'to address issues relating to health, safety, amenity and sustainability by providing for efficiency in the design, construction and performance of buildings through the BCA and the development of effective regulatory systems' (COAG 2006b, p. 5). In 2009, COAG agreed that the ABCB would produce and maintain the National Construction Code. It was completed with

2 Standards Australia is an independent, non-profit organisation, recognised by the Australian Government as the peak non-government standards body in Australia. Standards Australia develops internationally aligned standards for Australia.

3 The ABCB is a joint Commonwealth, State and Territory entity operating under the Department of Industry, Innovation, Science, Research and Tertiary Education. It has 15 members: an independent chair, officials from nine jurisdictions, a representative from the Australian Local Government Association, and four industry representatives.

the release of NCC 2011 for adoption by States and Territories. All States and Territories have agreed to adopt the NCC into their respective legislation by October 2012.

What has changed under the harmonisation reforms?

As a result of COAG's 2008 agreement on the development of the NCC, the PCA was reviewed and revised by the National Plumbing Regulators Forum and ABCB, culminating in the development of the PCA 2011, which forms Volume Three of the NCC.

Improved consistency

Areas of inconsistency and regulatory overlap between the PCA and BCA were identified in the process of developing the NCC, and action was undertaken to consolidate the two codes. Revisions to the BCA resulted in fewer jurisdictional differences in mandatory technical requirements. A number of variations were also eliminated in the plumbing code as a result of applying a uniform set of deemed-to-satisfy or prescriptive solutions through standards, such as the AS 3500 suite.

Improved regulatory approach to plumbing

The NCC provides for a national performance-based approach to compliance for the plumbing code. While the PCA was revised in 2004 as a performance-based code (hereafter PCA 2004), not all jurisdictions adopted it. (The Australian Capital Territory, Queensland, South Australia, Tasmania and Victoria adopted the PCA 2004; the remaining jurisdictions continued to directly regulate the use of AS 3500 or used other independently developed regulation.) The BCA has been a performance-based code since 1996 and was adopted by all jurisdictions by 1998.

A performance-based approach incorporates more flexibility than strictly prescriptive requirements, which characterised earlier versions of the codes. Prescriptive requirements (deemed to satisfy solutions) clarify exactly how something is to be done. Performance requirements outline the required level of performance and leave it to the designer or builder as to how it is achieved. The latter is a more flexible option and allows the builder to develop alternative solutions based on new or innovative building products, systems and designs.

15.2 Who will be affected by the reforms?

For the purposes of this study, a 'ring fence' approach was adopted to define what broad activities may be covered by the NCC. Under this approach, all activities directly involved in the design and construction of all classes of buildings are considered as being covered by the code, including dwelling (residential) and non-dwelling (non-residential) construction. It does not include civil engineering projects, mine construction or other engineering projects.

The broad activities that are likely to be affected by the NCC are listed in box 15.3.

Box 15.3 **Building construction and related industries in terms of ANZSIC**

ANZSIC 2006	**Activities covered**
Subdivision 30 Building Construction	
301 Residential building construction	Construction of houses including additions and renovations
302 Non-residential building construction	Construction of non-residential buildings, such as hotels, hospitals, prisons, and additions or renovations
322 Building structure	Concreting, bricklaying, roofing, structural steel erection
323 Building installation	Plumbing, electrical, air conditioning, heating, fire and security alarm installation
324 Building completion	Plastering, ceiling, flooring, painting
Subdivision 692 Architectural, engineering and technical services	
6921 Architectural services	Planning and designing buildings
6923 Engineering design	Engineering consulting, building consulting

Source: ABS *(Australian and New Zealand Standard Industrial Classification, 2006,* Cat. no. 1292.0).

Defining the construction industry

The total (private and public) value of building work done on dwelling and non-dwelling construction was around \$83 billion in 2010-11 (table 15.1), which is equivalent to approximately 6 per cent of Australia's GDP (ABS 2011).[4] Dwelling construction represents about 60 per cent of the value of work done.

4 ABS (Australian National Accounts, Jun 2011, Cat. no. 5206.01).

Table 15.1 Value of building work done, dwelling and non-dwelling, 2006-07 to 2010-11[a]

$ million

Year	*Dwellings*	*Non-dwellings*	*Total*[b]
2006-07	40 940	27 760	68 690
2007-08	43 360	31 800	75 170
2008-09	44 500	33 560	78 080
2009-10	45 780	35 070	80 860
2010-11	48 680	34 800	83 480

[a] The value of building work done includes the costs of materials fixed in place, labour, and architect fees. It excludes the value of land and landscaping and non-building components such as fencing, paving, roadworks, tennis courts, outdoor pools and car parks (ABS *Construction Work Done, December Quarter 2011*). The activities associated with building work done correspond to the output of activities listed in box 15.3. [b] Totals may not add due to rounding.

Source: ABS (*Construction Work Done, Sep 2011,* Cat. no. 8755.0).

Gross fixed capital formation (investment) represents the main use of dwelling and non-dwelling construction work. In 2010-11, total private sector investment in buildings was estimated to be around $103 billion or 28 per cent of total gross fixed capital formation in Australia in that year (table 15.2).

Table 15.2 Value of dwelling and non-dwelling gross fixed capital formation, 2006-07 to 2010-11

$ million

Year	*Dwellings*	*Non-dwellings*	*Total*
2006-07	60 611	31 878	92 489
2007-08	64 851	37 629	102 480
2008-09	66 275	36 949	103 224
2009-10	69 077	30 721	99 798
2010-11	73 031	29 953	102 984

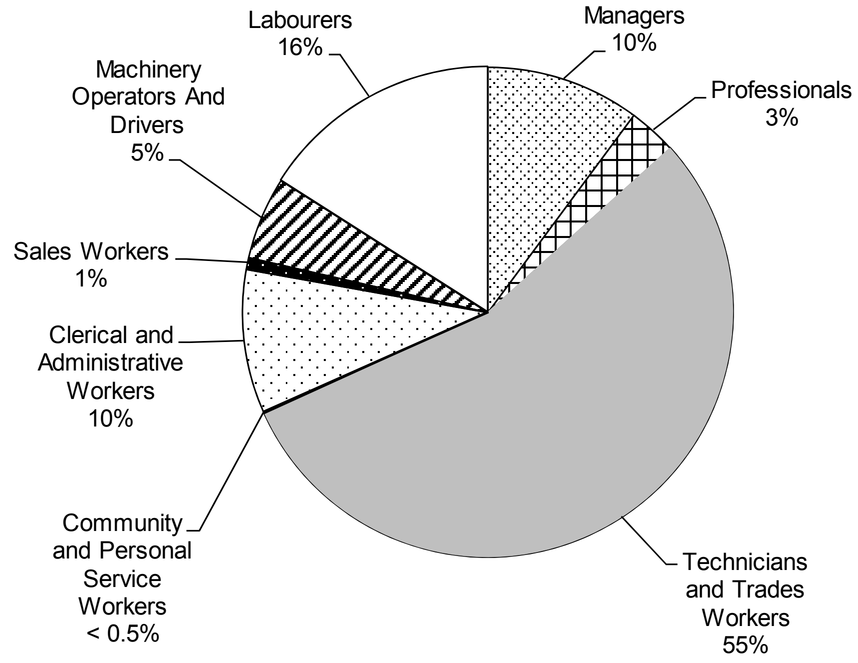
Source: ABS (*Australian National Accounts, Jun 2011,* Cat. no. 5204).

There were approximately 963 700 people employed in the building and construction areas directly affected by NCC reform in the year to May 2011, representing about 8.5 per cent of total employment in Australia (ABS 2011).[5] About 70 per cent of those employed provided construction services such as land development and site preparation, building structure, building installation and building completion services.

[5] ABS *(Labour Force Australia*, Aug 2011, Cat. no. 6291.0.55.003).

There is a range of occupations engaged in the building and construction industry, such as technicians and trades workers, plumbers, drivers, office workers, construction managers and professionals (figure 15.1). There were 31 400 professionals in the building and construction areas in 2011, including civil and other engineering, information communications technology, human resource, and occupational and environmental health.

Figure 15.1 **Composition of Australia's construction workforce, May 2011**[a]



[a] Classified by Australian and New Zealand Standard Classification of Occupations (ANZSCO) 1-digit 2006. Percentages may not add to 100 due to rounding. These figures include building construction, construction services, and other construction, not further defined. Heavy and civil engineering is not included.

Data source: ABS (2011, unpublished).

15.3 Understanding the direct impacts of the reforms

The two main direct impacts of the NCC reform on businesses are:

- improved consistency between building and plumbing regulations; and
- a more flexible compliance regime for plumbing.

Improved consistency between building and plumbing regulations

The integration of the BCA and PCA — and making them suitable for national referencing — should reduce regulatory overlap and inconsistency. This will result in fewer contradictory technical and performance requirements. The changes will assist businesses by allowing for greater consistency of practice between the building and plumbing trades, leading to time and resource savings.

The development of the NCC should also reduce inconsistencies across jurisdictions (in both the building and plumbing codes) providing greater consistency for firms that operate across borders leading to further costs savings.

The (then) Department of Innovation, Industry, Science and Research (DIISR) observed that the NCC:

> … provides for a nationally consistent and integrated approach to building and plumbing regulations. This will reduce the compliance burden on design professions and trades, for instance, where a single set of building and plumbing regulatory requirements across the country will apply. (sub. G2, p. 7)

In the Regulation Impact Statement (RIS) it prepared for the NCC, Allen Consulting Group (2009b) conducted a cost-benefit analysis of the introduction of the NCC. It found improved consistency between the building and plumbing codes would be most relevant for the non-residential sector, with potential for only small gains in the residential sector. The lesser gains in the residential sector reflect the relatively low mobility of businesses in the sector across jurisdictions (for instance, a home builder is less likely to operate in multiple jurisdictions than a non-residential builder).

In consultations for the RIS, stakeholders provided some examples of inconsistency between the originating codes, such as:

- the BCA and PCA reference different Australian Standards relating to fire hydrants and fire hose reels; and
- the BCA only requires disability access in specific circumstances, whereas the PCA requires all taps to comply with disability standards (Allen Consulting Group 2009b).

Overall, the study found that improved consistency would be expected to result in improved efficiency and lower costs of construction, with gains arising through ‘reduced delays which may have been due to errors or changes needed as a result of different approaches by practitioners on site’ (Allen Consulting Group 2009b, p. viii).

A more flexible compliance regime

Under the NCC, builders and plumbers will have the ability to obtain compliance certification either prescriptively (through existing 'deemed-to-satisfy' provisions') or innovatively (through an 'alternative solution' that can be demonstrated to meet the performance requirement of the NCC).

In *Impact Assessment of Major Reform Initiatives* (ABCB 2000), KPMG examined the economic effects of adopting a performance-based building code. Results from case studies focusing on 15 large (non-residential) construction projects suggested that benefits included:

- cost savings related to efficiency of design and construction;
- enhanced functionality for owners and end users because designs were better able to meet performance requirements of end users and owners, and operators were able to achieve economies by consolidating back office functions; and
- the flexibility to accommodate new products and materials.

Benefits of this nature are expected to arise from a move to the performance-based plumbing code.

Most of the benefits are likely to accrue to the non-residential construction sector. This sector makes extensive use of performance-based solutions and has a greater diversity across projects.

Other benefits

With building and plumbing regulation being coordinated nationally, the NCC is expected to provide an improved framework for responding to policy requirements and possible changes in building regulation, compared to multiple codes with different governance arrangements. In this vein, DIISR noted that the NCC is expected to result in:

> … more effective regulatory solutions for industry and the broader community. For example, issues such as sustainability and climate change will now be addressed in a more holistic manner. This will ensure national consistency which, in turn, will generate flow on efficiencies in the built environment. (sub. G2, p. 7)

Allen Consulting Group (2009b) noted that 'a small number of stakeholders' had considered that the construction sector would benefit from a NCC because it provided improved regulatory conditions for innovation at the national level — and that such innovation would help the industry to respond to future policy changes such as those associated with climate change.

15.4 What are the direct impacts of the reforms?

The potential impacts of NCC reforms were considered previously in the RIS prepared by Allen Consulting Group (2009b). That analysis adopted a break even approach to gauge overall effects. Under this approach, the expected benefits are not estimated directly but rather the minimum quantum of benefits needed to provide a net positive outcome is identified. That is, given the estimated costs to businesses and government of the reform, what would be the minimum level of efficiency gain needed for a net positive effect? The study focused on the non-residential portion of the construction industry where industry participants indicated the benefits would largely accrue.

Application of the break even approach suggested that a relatively small efficiency gain of 0.14 per cent would be required to achieve a net benefit. This break even efficiency gain was based on the estimated cost of $39.5 million and a total value of work done in non-residential construction in 2008 of $27.9 billion.[6]

On the improved consistency between building and plumbing regulations, Allen Consulting Group reported:

> Industry stakeholders did not consider that the potential for efficiency gains was very large, but perhaps in the order of 2-3 per cent for the non-residential sector. (2009b, p. viii)

The RIS indicated some gains would accrue to the residential sector, albeit to a lesser degree.

Applying these potential efficiency gain estimates to actual data for the non-residential sector provided an indication of the potential for savings in dollar terms:

> In the non-residential construction sector, reduced costs are estimated at between 2 and 3 per cent – that means potential savings of up to $700 million. (Carr and Sherry 2011)

On the adoption of a national performance-based code for plumbing, the RIS referred to the experience of the BCA moving to a performance-based code and the earlier ABCB (2000) study that was based on 15 construction projects. On the basis of this earlier information, the RIS suggested that adoption of a performance-based code could generate savings of 1 to 5 per cent in overall business costs for large scale building projects. These savings would stem primarily from increased efficiency of design and construction.

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6 In the context of this assessment, non-residential includes private and public sector buildings and includes hotels, shopping centres, factories, offices, schools, hospitals and cinemas, and any alterations or additions made to these buildings.

The Commission's assessment of the direct benefits

The Seamless National Economy reform with respect to the NCC is likely to yield tangible benefits. Because the current round of reforms were implemented from 1 May 2011, the realised benefits of the NCC to date are likely to be minimal. As DIISR put it:

> It is too early to assess the broad impact of the NCC on the Australian economy. The NCC is in its infancy and, as outlined previously, national introduction of the NCC is not yet complete. (sub. G2, p. 7)

While realised benefits are likely to be minimal at this stage, the prospective benefits are likely to be substantial as businesses adapt to the NCC. The benefits of reform in prospect are likely to accrue in two components.

First, improved consistency between building and plumbing regulations could result in a cost saving to construction businesses. On the basis of information provided in the RIS and consultations during this study, the Commission has assessed that these could amount to 2 per cent cost savings for the non-residential sector and 0.5 per cent for the residential sector.[7] Applying these estimates to the value of work done (table 15.1) suggests benefits of $696 million and $243 million, respectively. Alternatively, benchmarking these prospective savings to gross fixed capital formation (table 15.2) suggests benefits of $599 million and $365 million, respectively.

For the purpose of the Commission's assessment, the value of work done has been used to estimate the prospective impacts. To reflect that the savings are likely to be achieved after a period of adaptation, these cost savings are estimated to be achieved in incremental steps over a period of at least five years.

Second, improvements to the plumbing regulatory framework from adopting a performance-based code could result in cost savings worth 3 per cent of the non-residential sector (the midpoint of the 1 to 5 per cent range found in the ABCB (2000) study). These cost savings are likely to be most relevant in the plumbing activities in the non-residential sector. Benchmarking the 3 per cent cost savings to

[7] In line with the RIS, the Commission has applied the benefits to building and plumbing in recognition that both trades will benefit from greater regulatory consistency.

the plumbing share of the non-residential sector totals $104 million.[8] Alternatively, benchmarking the proportional benefit to gross fixed capital formation would suggest a cost savings related to the adoption of a performance based plumbing code of around $90 million.

The States that have already adopted a performance-based plumbing code through related reforms have likely begun to realise these cost savings (Victoria, Queensland, Southern Australia, Tasmania, and Australian Capital Territory). New South Wales, Western Australia and the Northern Territory are expected to realise these cost savings progressively over a period of about five years, upon reform.

The Commission's assessment of the likely direct impact of NCC reform has required judgements to be made about the effects of current or forthcoming reforms. The results are exploratory and should be regarded as broadly indicative of the likely effects of the reforms.

While the estimates in this assessment have focused on the costs of buildings, the adoption of the NCC could have wider ramifications for the construction sector, including:

- the possible increase in demand for building and plumbing work that may accrue from the adoption of performance-based certification of plumbing work;
- the separate impacts from reduced delays which could lead to improvements in the efficiency of capital arising from lower holding costs of real estate;
- the impacts resulting from an increased ability for policy makers to respond to future policy challenges in a more holistic way; and
- possible impacts on innovation.

The Commission has not explicitly made allowances for such effects in this study.

15.5 Indicative costs of achieving reform

The costs of achieving the NCC reform are largely transitional in nature although some additional ongoing compliance costs are also likely.

8 The Commission understands that the cost share for plumbing in construction ranges between 3 and 10 per cent, with 10 per cent more applicable to non-residential construction (Master Builders Australia, pers. comm., 26 September 2011). For the purposes of this study, given that the non-residential sector is the focus for assessing the benefits of adopting a performance-based code, the plumbing share of construction costs is estimated to be 10 per cent.

Business compliance costs

In the RIS (Allen Consulting Group 2009b), business transitional and ongoing compliance costs included:

- *Understanding and adjusting to the new code.* Transition costs to business to update knowledge on the new regulatory arrangements were estimated in the RIS to be approximately $28.3 million (that is, about $29.2 million in 2010-11 values) — a one-off transition cost.
- *Technical requirements.* Industry and government consultations for the RIS suggested the underlying technical practice that is used to comply with the BCA and the PCA will remain the same, or be similar. Consequently, the RIS reported small or insignificant additional compliance costs associated with the implementation of technical changes.
- *Purchasing the NCC.* Plumbers must now keep abreast of annual updates to the NCC, compared to the previous regulatory environment where they were either not required to purchase regular PCA updates or, given their jurisdiction, not required to purchase the PCA at all. While there is still no legal requirement to own a copy, Allen Consulting Group (2009b) estimated the additional purchasing costs for plumbers to be an ongoing cost of around $6.7 million (that is, $6.9 million in 2010-11 values) per year.[9]

For the purpose of this study, the Commission has accepted these estimates of the transition and ongoing compliance costs of the NCC.[10]

Administrative costs to government

The additional administrative costs to Australian, State and Territory governments were estimated in the RIS to be $4.5 million (Allen Consulting Group 2009b). The main components of these costs are:

- *Developing the NCC.* These costs are borne largely by the ABCB and represent a range of activities including the convening of roundtables and consultations

[9] Allen Consulting Group (2009b) estimated that 60 per cent of builders and plumbers will incur transition costs based on the following: a Master Builders Australia survey found 78 per cent of respondents had access to the BCA; and a proportion of those builders that had access would not necessarily use the code due to the nature of their on-site responsibilities. For example, skilled labourers (bricklayers) who are familiar with the standards relevant to their trade may rely on a contractor or construction manager to ensure compliance with the BCA.

[10] In an earlier report, the Commission (PC 2004b) suggested that a minimum level of free access, such as online access to the full code, would improve access and compliance.

(including travel costs of participants), undertaking the RIS, and seconding technical experts.

- *Legislative and administrative changes for State and Territory governments.* These costs will vary by jurisdiction. For instance, costs will be minimal for governments that have entrusted responsibility for building and plumbing regulation to a single agency (the Australian Capital Territory, Northern Territory, Queensland, and Tasmania). Western Australia is in the process of reforming its Building Act and consolidating regulatory work into a single agency. Costs for New South Wales and South Australia could be higher but will largely depend on how they choose to implement the NCC.
- *Communication and technical and adjustment assistance with industry.* Governments will provide training for their own staff and relevant government personnel, and introduce the NCC to industry associations and practitioners. Training on the performance-based approach to plumbing regulation will be required in New South Wales, Northern Territory and Western Australia. Some of these costs will be borne by the ABCB as they plan to offer training sessions.

For the purpose of this study, these costs are treated as transitional in nature.

The two main sources of ongoing costs are:

- *The costs of administering building and plumbing regulation in the States and Territories.* This cost is unlikely to change under the NCC because few, if any, changes would be required to the existing systems in order to adjust to the NCC.
- *Maintaining and updating the NCC.* Stakeholder feedback for the RIS indicated that these costs would be similar to the current costs of maintaining building and plumbing frameworks separately (Allen Consulting Group 2009b).

For the purpose of this study, it has been assumed that the provision of these services is part of ongoing programs and does not involve 'additional' costs.

15.6 Summary of effects

The main impacts on businesses will be in the form of reduced costs. Once the NCC reform takes full effect, business costs are expected to fall overall by around $1 billion, that is, around 1 per cent of the value of residential and non-residential building construction. This includes benefits stemming from:

- improved consistency between building and plumbing codes: a cost saving worth 2 per cent of the non-residential sector ($696 million) and 0.5 per cent of the residential sector ($243 million); and

- adopting a performance based plumbing code: a cost saving worth 3 per cent for the plumbing share (10 per cent) of the non-residential sector ($104 million) (table 15.3).

These benefits are likely to accrue progressively over a half decade as businesses adapt to the new integrated code.

Business transition costs are estimated to be $30 million and incurred during the first few years. Governments are expected to incur transition costs of around $5 million during the first few years from the introduction of the NCC.

Table 15.3 **Summary of estimated impacts from NCC reforms**

$ million (2010-11 dollars)

	Annual longer-run ongoing direct impacts				*One-off direct impacts (transition costs)*
	Realised	*Prospective*	*Realised and prospective*	*Potential*[a]	
Business cost reductions					
From adoption of performance-based code for non-residential construction[b]	..	100	100	..	..
From improved consistency:	..			..	..
Residential construction	..	250	250	..	..
Non-residential construction	..	700	700	..	..
Total	..	1 050	1 050	..	(30)[c]
Business cost increases[c]	..	(7)	(7)		..
Government administration costs	..	..	..	..	(5)

.. zero or none estimated. Estimates in brackets ( ) represent cost increases. Figures are rounded from estimates in the chapter. [a] Potential impacts relate to measures that are yet to be implemented, but which are sufficiently likely to be implemented in the future. Realisation of potential direct impacts will require continued commitment and sustained effort. [b] For the purposes of this study, the Commission has applied these benefits to all State and Territories. [c] Costs are allocated in a pro-rata fashion based on the size of each sector in 2010-11.

Source: Commission estimates.

15.7 Opportunities for improvement

Extending the NCC to other areas of construction

The NCC may eventually be extended to other areas of on-site construction, such as gasfitting, electrical and telecommunications.

The ABCB is currently undertaking a preliminary scoping study to consider the possible inclusion of gasfitting into the NCC. The outcomes of the scoping study will be used to inform the Building Ministers' Forum of the relative merit and scope for such work to proceed.

There are several issues that policy makers and regulators will need to consider and address as additional codes are assessed for possible integration into the NCC. For instance, according to the HIA, harmonising administration processes may be just as important as harmonising the codes. When commenting on the merit of extending the NCC to other areas, HIA noted:

> Any reforms that serve to ensure building regulation in all its forms meet minimum acceptable standards, in accordance with COAG's own requirements for regulation are supported. However, harmonization that does not include effective changes in the administration processes can be less meaningful. (sub. DR-G7, p. 7)

In characterising an effective approach to successive reform, DIISR noted that:

> Each code has a different regulatory framework, operating at varying degrees of efficiency and effectiveness. A 'one size fits all' approach is unlikely to be suitable. For example, some codes may not be suited to conversion to a performance-based code. Also, the current regulatory framework may be acceptable and therefore it may not be necessary for the ABCB to assume full responsibility for maintaining an additional code. In this case, alternative options for administration may need to be considered. Ultimately, it is preferable that a measured approach be applied for each successive reform. It should build on lessons learned from previous reforms and allow time for jurisdictions to adjust to new regulatory and administrative systems. (sub. G2, p. 9)

In the Commission's assessment, extensions to the NCC could yield net benefits and should be pursued when cost effective. Extensions should not necessarily exclude the improvement of administrative processes.

Reducing State and Territory variations in building and plumbing codes

While the BCA and PCA provide the minimum requirements at the national level, State and Territory governments have added regulations for their respective jurisdictions. Beyond the additional regulations that arise from geographical, geological or climatic factors, jurisdictional variations can increase complexity, particularly for builders and plumbers that operate across state borders. Addressing inconsistency in building regulation across Australia has been a reform priority for many years (PC 2010c).

The ABCB has reduced some regulatory differences across jurisdictions (PC 2004b) but many remain and are listed in a separate appendix volume of the NCC. The relevant appendix, which is to Volume Two of the code, contains 81 pages of jurisdictional variations (Volume Two itself comprises 580 pages of national residential building codes). The variations include those due to climatic, geographic and geologic factors, as well as other factors.

The ABCB is responsible for bringing greater rigour to the process by which jurisdictions and local governments introduce new delineations to the national code. This is done by working with jurisdictions to restrict new variations to those arising from geographical, geological or climatic factors, and require any new variations to be subject to a Regulatory Impact Assessment and State or Territory Minister approval. This more rigorous process is intended to minimise variations across States.

The *ABCB Intergovernmental Agreement* (COAG 2006b) requires an annual report be provided to signatory Ministers on changes in State and Territory variations to the BCA. Meanwhile, States and Territories have committed to taking reasonable steps to consolidate all of their mandatory requirements affecting the design, construction and performance of buildings into the consolidated version of the NCC (COAG 2006b).

The current IGA for the ABCB and the agreed in-principle IGA (expected to be signed by all jurisdictions by April 2012) both endorse a more structured approach (known as the 'gateway' model) towards the issue of local government intervention.

Reducing the adverse impacts of local government interventions

The problem of local government regulatory interventions over and above the minimum necessary requirements of the BCA has been well documented. In 2004, the Commission's *Reform of Building Regulation* report found that local governments, through their planning approval processes, were imposing local government area-specific regulations on building (PC 2004b).

A study by the ABCB found that local government interventions can have a particularly large impact on residential construction costs (ABCB 2008). A leading firm of construction management consultants analysed nine different local government interventions. These interventions are applied primarily to residential buildings, and pertain to a broad range of matters, including ceiling heights, reduction of external noise, and access requirements for people with a disability.

The ABCB study found the interventions increased construction costs by up to 14 per cent. The interventions were selected by a Joint Working Group consisting of officials from the Ministerial Council on Energy, the Planning Officials Group, the ABCB, the Australian Local Government Association and industry. Five of the interventions were found to return a hypothetical financial benefit to building owners over a 10 year period. While some market participants indicated they would be prepared to pay extra for the intervention, the study concluded that decisions concerning matters covered by the interventions would be better left to market forces rather than regulators.

In 2006, following COAG agreement to the National Reform Agenda, the Building Ministers' Forum identified local government interventions into building regulations as an area in need of reform. The Forum also noted that COAG may need to take further action in the event of slow progress. On 4 July 2008, the Forum endorsed a principles-based approach to managing local government interventions. This was forwarded to the Local Government and Planning Ministers' Council; however, the Council was dissolved before these actions were complete (sub. G2, pp. 9-10).

In the Commission's assessment, processes for the consideration of the ABCB study findings should be instituted and relevant cost-effective reforms identified.

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