Australian Government
Productivity Commission

Performance Benchmarking of Australian Business Regulation:

Quantity and Quality

Productivity Commission

Research Report

November 2008

© COMMONWEALTH OF AUSTRALIA 2008

ISBN 978-1-74037-269-5

This work is subject to copyright. Apart from any use as permitted under the Copyright Act 1968, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgment of the source. Reproduction for commercial use or sale requires prior written permission from the Attorney-General's Department. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Canberra ACT 2600.

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

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

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

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

An appropriate citation for this paper is:

Productivity Commission 2008, *Performance Benchmarking of Australian Business Regulation: quantity and quality*, Research Report, Canberra.

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

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 consideration for the wellbeing of the community as a whole.

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

Terms of reference

Text of letter from the Treasurer dated 3 September 2007 requesting the Commission to commence stage two

3 September 2007 [received 5 September 2007]

Mr Gary Banks AO
Chairman
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Banks

On 11 August 2006 I requested that the Productivity Commission conduct a two stage study on performance benchmarking of Australian business regulation. The Commission's stage one report, released on 6 March 2007, concluded that benchmarking of regulatory burdens across jurisdictions is feasible and would complement other initiatives to monitor and reform regulation.

Accordingly, and consistent with the decision of 13 April 2007 by the Council of Australian Governments, I request that the Commission commence stage two of the study extending over the next three years. In keeping with the terms of reference [of 11 August 2006], stage two of the study is to examine the regulatory compliance costs associated with becoming and being a business, the delays and uncertainties of gaining approvals in doing business, and the regulatory duplication and inconsistencies in doing business interstate.

The Commission is requested to begin stage two of the study by providing a draft and final report on the quantity and quality of regulation, and results of benchmarking the administrative compliance costs for business registrations within 12 months.

In undertaking stage two of the study, the Commission is requested to convene an advisory panel, comprising representatives from all governments, to be consulted on the approach taken in the first year. The panel should be reconvened at strategic points, providing advice on the scope of the benchmarking exercise and facilitating and coordinating data provision. It must also be given the opportunity to scrutinise and comment on the preliminary results.

The Commission is requested to review the benchmarking exercise at the conclusion of year three and report on options for the forward programme of the benchmarking exercise.

Yours sincerely

TREASURER

The Hon Chris Bowen MP
Assistant Treasurer
Minister for Competition Policy and Consumer Affairs

COPY

0 8 OCT 2008

Mr Gary Banks AO
Chairman
Productivity Commission
GPO Box 1428
Cabnerra City ACT 2601

Dear Mr Banks,

Thank you for your letter of 2 September 2008 seeking an extension of the reporting date for stage 2 of the Productivity Commission's Business Regulation Benchmarking study.

I agree to the extension requested. The Commission should now report to the Government by 28 November 2008.

I look forward to receiving a copy of the Commission's final report.

Yours sincerely

CHRIS BOWEN

PO Box 6022
Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7360
Facsimile: 02 6273 4125
http://assistant.treasurer.gov.au

Contents

Abbreviations

COAG	Council of Australian Governments
GDP	Gross Domestic Product
GSP	Gross State Product
MRA	Mutual Recognition Agreement
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Co-operation and Development
RIS	Regulatory Impact Statement
TTMRA	Trans-Tasman Mutual Recognition Agreement
VCEC	Victorian Competition and Efficiency Commission

OVERVIEW

Key points

- The quantity of regulation that business must comply with is one indirect indicator of compliance costs
  - as regulation is not classified in any jurisdiction by who is regulated, only the total quantity of regulation can be measured
  - significant differences were found across jurisdictions in the number of acts and other regulation and their size, and the relative use of different regulatory instruments.
- The number and scale of regulators, and the extent of their interaction with businesses is another such indicator. Estimates provided by business regulators showed considerable differences in the number of regulators, their average size, the number of business licences issued and the value of fees and charges collected, not fully explained by the relative sizes of the jurisdictions.
- The quality of the processes for developing and administering regulation was used as a proxy for the quality of regulation itself. There are significant variations across jurisdictions in the processes for developing and reviewing regulations and in the way regulators interact with businesses. However, some common patterns emerged:
  - there are few mandatory requirements for consultation on regulatory proposals
  - the proportion of regulatory proposals actually subjected to regulatory impact analysis or compliance cost estimation is generally low
  - few regulators have facilities for online lodgement of forms, renewal of licences, and payment of fees and charges
  - few regulators will allow businesses licensed in another jurisdiction to operate in their jurisdiction without obtaining a separate licence.
- Local governments play a major role in business regulation. Limited survey responses meant benchmarking quality and quantity of regulation was only possible for the capital cities. Large capital city councils appear to exhibit similar characteristics to business regulators of similar size.
- The exercise points to significant differences across jurisdictions in the quantity and quality of regulation. These reflect some inherent differences, such as in business structures and industry intensity, as well as different approaches to regulation by the jurisdictions.
- Indirect indicators have limitations in providing a measure of comparative regulatory burdens across jurisdictions. However, the lessons from this study are that such benchmarking could be improved:
  - for quantity indicators, by targeting more closely business regulation
  - for quality indicators, by assessing the application of best practice principles in each jurisdiction's regulatory decisions.

Overview

In February 2006, the Council of Australian Governments (COAG) agreed that all governments would, in-principle, aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business across jurisdictions. The Productivity Commission was asked to undertake a two stage study on performance benchmarking for COAG. The first stage considered the feasibility of benchmarking and methodology, with the second stage to benchmark a range of business regulations (over a three-year program).

This report is one of a pair in the first year of this second stage. It presents indicators of the quantity and quality of business regulation across jurisdictions. (A companion report develops and applies benchmark estimates for business registrations for five types of businesses (PC 2008b)).

The quantity and quality indicators are intended to assist in the ongoing assessment and comparison of regulatory regimes and their burden on business, and to assist governments to identify areas for possible regulation reform. This report is also intended to identify where indicators need to be refined and how this might be done to improve any future benchmarking.

The report focuses on measuring elements of each jurisdiction's regulatory system that reflect the level and quality of regulation that affects business. This turned out to be more difficult than envisaged, and some measures fall short of the demonstrated links required for use as indicators of regulatory burden on business. Nevertheless, the report provides a snapshot of the current regulatory environment across jurisdictions and yields insights into the application of best practice principles of regulation in each jurisdiction.

Approach taken to the benchmarking

Ideally, quantity indicators would refer only to business regulation and quality indicators would focus only on the characteristics of regulation affecting businesses. However, in practice such direct measures were unattainable and the Commission has, therefore, relied on indirect indicators; namely:

- for quantity, broad measures of the stock and flow of regulation and regulatory activities generally (box 1)

- for quality, measures of good regulatory process applicable to all regulation (such as those proposed by COAG or the Regulation Taskforce) rather than measures of the effectiveness and efficiency of specific regulations.

Box 1 **What is regulation?**

Regulatory instruments can be classified according to their legal basis, including:

- *Primary legislation* consisting of Acts of Parliament (A legislative proposal for enactment of a law is called a bill until it is passed and receives a Royal Assent, at which time it is a law (statute) and is no longer referred to as a bill)
- *Statutory rules* are any regulations that are made under enabling legislation, with a requirement to be tabled in parliament or be assented to by the Governor or Governor General-in-Council.
- *Other legislative instruments* include guidelines, declarations, orders or other instruments that have legal enforceability, but that are not tabled in parliament.

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

Source: PC (2007a). http://dictionary.law.com/ (accessed 11 October 2008).

The report sought data for 2006-07 directly from jurisdictions through three questionnaires:

1. regulatory system questionnaire
2. business regulator questionnaire
3. local council business regulation questionnaire.

Responses from each jurisdiction were generally coordinated through their central agencies. The Commission also benefitted from the advice and input from an Advisory Panel comprised of representatives from the Australian, state and territory governments, and the Australian Local Government Association.

Stock and flow of regulation

Data for the total stock of primary acts, subordinate regulations and other legislative instruments reveal significant differences in the quantity and proportionate use of each type of regulation across jurisdictions (table 1).

Table 1 **Number of regulatory instruments and pages**

As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*	*Tas*	*NT*	*ACT*
Acts	1 279	1 257	870	543	545	844	605	365	305
Pages	98 486	32 700[b]	44 214	49 419	16 525	40 751	13 254	16 992	21 771
Statutory rules	18 000	388	556	319	558	761	1 782	382	158
Pages	90 000	7 717	12 625	15 635	8 526	22 816	12 071	4 057	7 763
Total pages	188 486	40 417	56 839	70 748	25 403	63 567	25 325	21 049	29 534

[a] Based on legislation in force at 31 December 2007. [b] Approximate page count calculated by converting number of bytes in the html-format NSW Legislation database.

Differences in the number of regulatory instruments in comparable jurisdictions may be partly explained by different approaches to regulation. Some jurisdictions regulate a broad area of policy by a single legislative instrument; others enact many legislative instruments for a similar policy area. Some jurisdictions also assign different regulatory roles to local governments. In addition, the share of regulation that applies to business may vary across jurisdictions, while a greater volume of regulation need not be more burdensome. The jurisdictions noted that different approaches to drafting regulations or inclusion of supporting material such as explanatory memorandums might explain the differences in the number of pages.

The indicator of the flow of regulations (the number and pages of new acts and other instruments) enacted in 2006-07 also shows significant variation across jurisdictions (table 2).

Table 2 **Number of new regulatory instruments and pages**

Enacted between 1 July 2006 and 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Acts	198	83	68	10	50	58	49	32	7
Pages	8 198	2 081	2 672	1 286	914	2 498	1 418	1 015	981
Other legislative instruments	4 487	570	173	35	287	42	136	41	52
Pages	31 439	4 422	2 549	1 884	1 858	1 075	1 834	372	2 575

Comparison of the number of pages of new and existing regulation (tables 2 and 1, respectively) also shows variations across jurisdictions. For example, Western Australia enacted 1075 pages of new statutory rules (under 5 per cent of the existing stock) whereas the corresponding proportion in New South Wales was 57 per cent. However, the results again need to be treated with caution, as they reflect only one year of legislative activity. Moreover, a high proportion of new regulations in some jurisdictions may be the result of sunset or other review mechanisms. Nonetheless,

businesses need to be aware of and comply with any regulatory changes, with the costs that this entails.

Regulator structure and activity

The report provides information on the number, characteristics and activities of business regulators across jurisdictions. However, the data relate only to the regulators who responded to the Commission's survey.

Table 3 shows the number and type of regulators whose activities include regulating some aspects of business. It reveals that there is little commonality across jurisdictions. Jurisdictions vary in the numbers of regulatory bodies and exhibit a differing relative use of executive agencies and independent statutory agencies.

Table 3 **Number of business regulators, by type**
As at 30 June 2007

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Government departments, offices and agencies	29	24	22	26	25	13	7	6
Statutory authorities	31	43	71	23	33	27	29	4
Regional or other authorities[a]	13	0	0	0	6	0	0	0
Non-government bodies with mandatory regulatory functions	2	0	0	0	4	0	1	0
Total business regulators	75	67	93	49	68	40	37	10

[a] Does not include local government bodies.

The absence of a common model for regulators is further illustrated by data on the number of staff and expenditure. Victoria, for example, has a higher proportion of large regulators, which regulate a wide range of business activities.

Obtaining a licence is the most common form of interaction between businesses and regulators. The Commission collected data on different types of licences and the number of licences in operation. Information from regulators showed significant variations in the types of licences across jurisdictions. Victoria and the Northern Territory, for example, administered around 200 different types, whereas Queensland, South Australian and Western Australia administered in excess of 500. Nevertheless, the volume of licences in operation was generally commensurate with the economic size of jurisdictions. (Western Australia was an exception, with regulators reporting around five times the number of licences in operation in South Australia.)

Design and review of regulation

The study reports a number of indicators related to five principles of good practice in the design and review of regulation: consultation requirements, analysis of the impacts of proposals, gatekeeping arrangements, guidelines on the drafting of regulations, and ex-post review. Taken together, they provide a picture of each jurisdiction's incorporation of the principles of good regulatory process, though not necessarily the degree of adherence in practice.

Consultation requirements were found to be more frequently imposed on proposals for statutory rules than for bills or other forms of regulation. Some jurisdictions do not mandate public consultations for any regulatory proposal.

In most jurisdictions, analysis of regulatory proposals involves preparation of a regulatory impact statement. All jurisdictions have mandatory requirements for analysis of bills and, except for the ACT, for statutory rules. However, as jurisdictions have their own criteria to determine whether proposals require analysis and the form of that analysis, the existence of mandatory requirements does not mean that every bill or statutory rule was analysed. Table 4 shows the proportion of regulatory proposals that were actually subjected to analysis in 2006-07.

Table 4 **Percentage of new regulatory proposals subjected to analysis**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*[b]	*Tas*	*NT*	*ACT*
Bills	21	n.av	9	4	8	40	0	29	42
Statutory rules	n.av	n.av	18	4	1	10	3	23	3
Other legislative instruments	n.av	n.av	0	0	25	10	n.av	0	0
Quasi-regulations	n.av	n.av	0	0	n.av	10	n.av	0	0

n.av not available. Data for COAG proposals is unavailable, as a count of these proposals is not maintained by any jurisdiction. [a] South Australia data only applies to regulatory proposals that proceed to cabinet. [b] Western Australia is unable to disaggregate data for statutory rules, other legislative instruments and quasi-regulations.

Only Western Australia and COAG require stakeholder consultation for all types of proposals. Also, only a few jurisdictions (Commonwealth, Tasmania and Queensland) require regulatory analysis to be made public.

All jurisdictions have a body assessing compliance with requirements for impact analysis. However, it was not possible to determine the degree of autonomy of those bodies.

Most jurisdictions require quantitative measurement of compliance costs and have a designated body to assess them. Table 5 shows the proportion of regulatory proposals for which estimates of business compliance costs had been prepared.

Table 5 **Percentage of new regulatory proposals with quantitative estimates of business compliance cost**

1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*	*Tas*	*NT*	*ACT*
Bills	100	n.av	9	0	24	0	n.av	7	n.av
Statutory rules	n.av	n.av	17	4	2	0	n.av	12	n.av
Other legislative instruments	n.av	n.av	0	0	25	0	n.av	0	n.av
Quasi-regulations	n.av	n.av	0	0	n.av	0	n.av	0	n.av

n.av not available. Data for COAG proposals is unavailable as a count of these proposals is not maintained by any jurisdiction. [a] South Australia data only applies to regulatory proposals that proceed to cabinet.

The effectiveness of such process requirements is enhanced where 'gatekeeping' mechanisms are in place, to assess and report on compliance. Most jurisdictions indicated that they have such mechanisms in place. The effectiveness could not be discerned, however, in this study.

Most jurisdictions have guidelines on the plain English drafting of regulations, together with a body responsible for assessing compliance.

The periodic review of regulation is crucial to ensuring good regulatory performance over time. For the period under review, no jurisdictions reported that sunset provisions were required in primary legislation. The general requirement for the use of sunset provision appears limited to statutory rules in five jurisdictions. That said, most jurisdictions have requirements for the periodic review of specific regulations (other than sunset provisions).

Quality of regulatory administration

The way in which regulation is administered has a significant influence on the regulatory burden faced by businesses. To compare the quality of regulatory administration across jurisdictions, the Commission measured the interaction between business and regulators with respect to applying for and renewing a registration, permit or licence. Indicators included the ease of accessing information and lodging forms or paying fees, the timeliness of responses, the presence of appeal mechanisms, access to mutual recognition, and the enforcement of regulation.

Survey data indicate that over 50 per cent of regulators in all jurisdictions except the ACT (40 per cent) have information about all of their licences available online. Similarly, at least half of the regulators in each jurisdiction have application forms and the criteria for assessment for all of their licences available online.

In contrast, few jurisdictions enable businesses to interact with regulatory bodies online. For example, 70 per cent or more of regulators in each jurisdiction do not provide for any licensees to update their business details online nor allow any licences to be renewed online. And 65 per cent or more of regulators in each jurisdiction do not provide for the online payment of any application or renewal fees.

Survey data also showed major differences across jurisdictions in the proportion of regulators that had binding processing time limits for all their licences, provided target processing times for all their licences, or provided advice to businesses of expected processing time for all their licences.

On the issue of mutual recognition, in each jurisdiction, over 70 per cent of regulators reported that they did not recognise other jurisdictions' licences for any of the licensing processes they administered.

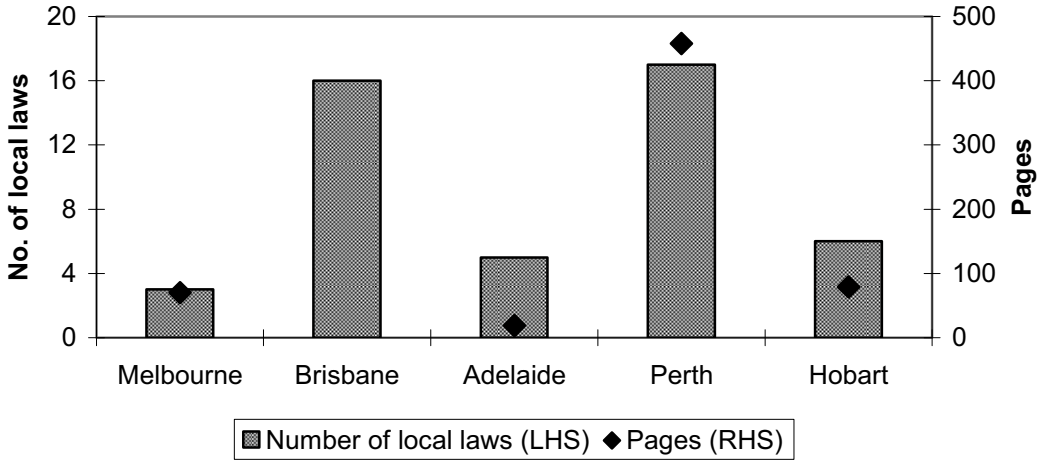
Local government regulation

Local governments administer and enforce some state and territory business regulations as well as their own regulations. Their areas of responsibility include business activities such as land use, construction, waste management, and the production and sale of food.

Despite a similar number of staff employed, capital city local governments exhibit marked differences in the number of local laws they administer. Figure 1 shows the number of regulations, and their pages, administered by local governments in selected capital cities.

As in the case of regulations administered by states and territories, information and application forms for licences are usually available online, but the payment of application or renewal fees was not possible online. Only Brisbane and Hobart had any binding processing time limits for some of their licences and published enforcement strategies and outcomes. All capital city local governments indicated the existence of review and appeal mechanisms.

Figure 1 **Number of local laws and pages, by capital city local government**
1 July 2006–30 June 2007



No data supplied by City of Sydney, page data not supplied by Brisbane City Council.

Lessons for future benchmarking

Improving indicators of the quantity of regulation

Stock and flow data would be substantially improved as indicators of potential burdens on business, if governments were able to identify regulation for which the primary purpose is to regulate the activities of business, or that have a substantial impact on business. Future studies of the stock and flow of regulation would also be improved by including information on 'quasi-regulations', as these are known to be a significant source of regulatory burden.

While an ideal measure of the quantity of business regulation would target the number of obligations imposed on business by regulation in each jurisdiction and the cost of those obligations, the utility of this approach is limited by the large amount of data needed. A practicable alternative would be to survey selected businesses and regulators on the obligations that they have to satisfy and enforce, respectively.

Improving indicators of the quality of regulation processes

There are problems in interpreting process indicators. One issue is whether good process has actually been applied to all regulation that may affect business. A more fundamental issue is the extent to which good process can ensure lower burdens.

Comparison of processes formally in place is problematic as their application and the rigour with which they are applied will vary. Addressing this shortcoming in subsequent work would require development of more detailed process output indicators.

Improving the data gathering process

Survey questions need to accommodate the differences between jurisdictions in their approaches to regulation. More extensive initial consultations would assist in ensuring that responses are based on a consistent understanding of the data being sought. The processes used to distribute and collect questionnaires, and follow up unanswered questions, could be reviewed in conjunction with jurisdictions, with the objective of maximising response rates and improving data quality.

1 Background

1.1 Origins of this study

In February 2006, the Council of Australian Governments (COAG) agreed that all governments would aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business across jurisdictions (COAG 2006a). The Productivity Commission was asked to examine the feasibility of developing quantitative and qualitative performance indicators and reporting framework options, as the first stage of a possible two-stage study of performance benchmarking. (Appendix A contains the terms of reference for that study.) The Commission's report concluded that while benchmarking would confront methodological complexities and uncertainties about data, it was technically feasible and could yield significant benefits (box 1.1). That report proposed an initial three-year program with a trial in the first year confined to benchmarking business registrations and the quantity and quality of regulation (PC 2007a). At its April 2007 meeting, COAG agreed that the second stage should proceed (box 1.2) (COAG 2007a). Following consultation between governments about the content of the initial three-year program and the process to be followed (PC 2007b), the Australian Government asked the Commission to commence as it had suggested.

Box 1.1 **Benefits of performance benchmarking regulation**

The Productivity Commission report *Performance Benchmarking of Australian Business Regulation* found that a benchmarking program could only be based on indirect indicators but could nonetheless yield various benefits, including:

- identifying differences in compliance costs and regulatory processes across jurisdictions
- increasing the transparency with which jurisdictions implement and manage regulation
- promoting 'yard stick' competition amongst jurisdictions
- facilitating a process of continual improvement.

The report proposed the following areas to be benchmarked over an initial three-year period:

(continued next page)

Box 1.1 (continued)

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

In its submission to this study, the Australian Bankers' Association endorsed the value of benchmarking, noting that it can lead to a number of benefits such as:

- improving efficiency and effectiveness of regulation
- ensuring consistency of regulation across jurisdictions
- improving transparency of decision making and accountability of regulators
- ensuring regulation delivers 'net benefits'.

Although not a benchmarking exercise, the Victorian Government publishes an annual report into its business regulators. As the Victorian Competition and Efficiency Commission (VCEC) observed in *The Victorian Regulatory System*:

> Collating key regulatory data in a single document promotes greater transparency of regulator operations and strengthens the accountability of regulators to stakeholders (both those who bear the costs of regulation and those who benefit from it) for the efficient and effective achievement of regulatory outcomes. Better informed stakeholders can engage more effectively in public consultation processes, including being able to suggest alternatives to proposed regulations based on approaches used elsewhere. (VCEC 2007, p. 4)

Sources: Australian Bankers Association (sub. 3); PC (2007a); VCEC (2007).

Box 1.2 **COAG's response to the Stage 1 report**

In its communiqué of 13 April 2007, COAG responded to the Commission's Stage 1 report as follows:

> COAG has agreed to proceed to the second stage of a study to benchmark the compliance costs of regulation, to be undertaken by the Productivity Commission. Benchmarking the compliance costs of regulation will assist all governments to identify further areas for possible regulation reform. The benchmarking study will examine the regulatory compliance costs associated with becoming and being a business, the delays and uncertainties of gaining approvals in doing business, and the regulatory duplication and inconsistencies in doing business interstate. COAG has asked Senior Officials to finalise by the end of May 2007 any variations to the areas of regulation to be benchmarked in the three-year program outlined in the Commission's feasibility study '*Performance Benchmarking of Australian Business Regulation'*. COAG noted the Commonwealth will fully fund the benchmarking exercise.

Source: COAG (2007a, p. 10).

1.2 Australia's regulatory reforms

Regulation influences almost every economic and social activity. It follows that getting regulation 'right' in terms of effectively delivering its benefits at least cost is of profound importance for the well being of the community. Regulatory reform has a crucial role to play in this regard, both to address any deficiencies in the stock of existing regulation and to ensure that new regulation is appropriate and cost effective.

Mounting evidence of the cost of inappropriate regulation and of the benefits of regulatory reform has led to two waves of regulatory reform in Australia.

The first of these focussed on anti-competitive regulation and barriers to trade, and involved new forms of regulation as well as deregulation. The Organisation for Economic Cooperation and Development (OECD) has highlighted the importance of such reform in sharpening competitive pressures and providing incentives for firms to become more efficient, innovative and competitive (OECD 1997). Such reform has been shown to boost productivity, deliver price reductions, and improve the quality and range of products and services, to the benefit of consumers, businesses and their workers. In Australia, the National Competition Policy reforms from 1995 were the culmination of this policy focus. The Productivity Commission has estimated that the infrastructure reforms alone were associated with price reductions and productivity gains amounting to around 2.5 per cent of GDP (PC 2006).

More recently, regulatory reform has focussed on reducing compliance burdens and systematically improving the processes involved in the making and application of regulation (box 1.3), including intergovernmental agreements on regulation. This focus on 'red tape' can also deliver significant gains. The Netherlands Bureau for Economic Policy Analysis, for example, estimates that a 25 per cent reduction in the administrative burden of regulation of European Union countries would, in the long term, translate into a structural increase in their GDP of 1.4 per cent (CPB 2004). A summary of international developments in measuring and reducing regulatory requirements are shown in box 1.4.

Commission estimates suggest that the implementation of COAG's national reform agenda in this area could reduce the regulatory burden on Australian business by up to 20 per cent (or as much as $8 billion (in 2005-06 dollars)).

Box 1.3 **Examples of major reviews of regulatory burdens and process**

In November 2005, the Australian Government's Regulation Taskforce made 178 recommendations for alleviating the compliance burden on business from regulation and key areas of overlap with state and territory legislation, including improving regulation-making practices.

The NSW Independent Pricing and Regulatory Tribunal review into the burden of regulation and improving regulatory efficiency recommended the establishment of the Better Regulation Office to coordinate regulatory reforms.

The Victorian Competition and Efficiency Commission produces an annual report on the Victorian regulatory system, detailing all business regulators in Victoria, their responsibilities and operating regulations, contact details, and changes to the regulatory system in the previous 12 months. This publication, the only one of its type in Australia, is a valuable resource for understanding the context and workings of regulatory institutions in Victoria.

In South Australia, the Competitiveness Council has completed reviews of the state regulatory system and the regulatory burdens in a number of industries, including cafes and restaurants, motor vehicle retailing and services, heavy vehicle road transport, building and construction, and fishing and aquaculture.

Sources: IPART (2006); Regulation Taskforce (2006); VCEC (2007).

Box 1.4 **International developments in measuring and reducing regulatory burden**

The following is a summary of recent international developments in quantifying and reducing the quantity of regulation.

The **Netherlands** was one of the first countries to set a target for reducing administrative burden. In 2002, the Netherlands set a target of a 25 per cent reduction in administrative burden by 2007. In October 2006, it was announced that by the end of 2007, an overall reduction in administrative burden of 25.9 per cent could be expected.

In May 2005, the **United Kingdom** embarked on a plan to reduce the cost to business of administering regulation in the private and public sectors by 25 per cent by 2010. This was expected to reap savings of around £3.5 billion.

In 2001, **British Columbia** set a target of reducing 'regulatory requirements' (defined as 'a compulsion, obligation, demand or prohibition placed on an individual, entity or activity by or under the authority of a provincial Act, regulation or related policy') by one third. A progress count of regulatory requirements is published by the province on a quarterly basis.

In the **United States** a report was released in April 2006 which showed that its annual effort to comply with the Regulatory Flexibility Act (1980) saved small business $6.6 billion in regulatory costs in the 2005 fiscal year.

The **World Bank** has used quality indicators to monitor the impact of regulatory arrangements that exist in a range of countries. In *Doing Business 2008,* Australia ranked first in terms of ease of starting a business in 2007, which is up from its ranking of second in 2006. Australia ranked ninth out of 178 countries for ease of doing business in 2007, which is the same ranking it achieved in 2006.

The **OECD** has been undertaking work on measuring administrative burdens of business regulations in recent years via its Red Tape Assessment project which measures and compares the administrative burdens in the road freight sector in 11 member countries.

Key findings from the study in terms of achieving best practice included the availability of digital on-line facilities to enable easy lodgement of applications; minimising the need to renew licences by making them valid for life or able to be renewed automatically; and avoiding duplication and simplifying procedures required in gaining licences (for example, by recognising an EU licence as a national licence)

Sources: Jones et al (2005); Netherlands Cabinet Letter (2006); OECD (2007); UK Department for Business, Enterprise and Regulatory Reform (2007); U.S. Small Business Administration (2006); World Bank (2007).

All levels of government acknowledge the need for ongoing reform to maximise the net benefit of their regulation either through increasing its effectiveness (that is, benefits) and/or reducing its costs. Governments have a range of reforms in train to improve regulatory processes and reduce regulatory burdens.

COAG-initiated reforms

In recent years, the Australian, state and territory governments, through COAG, have committed to review many 'hotspots', with a view to reduce costly duplication and inconsistency, and to improve regulatory processes.

COAG has progressively widened the scope of regulatory areas identified for priority attention to achieve better national outcomes. In February 2006, COAG initially identified six regulatory 'hotspots': rail safety regulation; occupational health and safety laws; national trade measurement; chemicals and plastics regulation; development assessment arrangements; and building regulations. In July 2006, COAG identified a further four 'hotspots' for reform: environmental assessment and approval processes; business name, Australian Business Number and related business registration processes; personal property securities; and consumer product safety.

In March 2008, COAG agreed to pursue regulatory reform in a further nine areas: standard business reporting; food regulation; a national mine safety framework; electronic conveyancing; upstream petroleum regulation; maritime safety; wine labelling; director's liability reform; and financial services delivery.

COAG has subsequently highlighted the importance of national harmonisation of occupational health and safety laws, and committed to the development of model legislation by September 2009.

In December 2007, COAG formed the Business Regulation and Competition Working Group. The working group was asked to consider whether further reforms were necessary to ensure jurisdictions have best-practice regulation and review processes in place by the end of 2008. The working group was also asked to examine processes to ensure that there was no net increase in the regulatory burden along with the possibility of common start dates for legislation.

Process related reforms

Governments have also pursued a range of reforms to improve their regulation-making processes. These include establishing and strengthening requirements to undertake regulatory impact assessments; strengthening gatekeeping mechanisms; improving public consultation in the regulation making process; and undertaking or improving the measurement of compliance costs incurred by businesses as a result of new and amended regulations.

Improving the quality of regulatory impact analysis

Governments have committed to thorough and transparent analysis of regulatory proposals a key requirement in improving the quality of regulation. In recent years the Australian, state and territory governments have improved the standard of regulatory impact analysis required for proposed regulation. This has resulted in more focus on measurement of the compliance costs faced by business as a result of proposals, greater inclusion of risk analysis, and more use of formal cost-benefit analysis for significant regulatory changes.

In recent years, the Australian, Victorian, Queensland and New South Wales governments have released updated guidance on regulatory impact analysis within their jurisdictions. In October 2007, COAG released its updated handbook *Best Practice Regulation A Guide for Ministerial Councils and National Standard Setting Bodies*. This guide outlines the obligations of governments when undertaking regulatory impact assessments on behalf of ministerial councils and national standard setting bodies.

More effective gatekeeping processes

While there are a variety of approaches to ensuring good regulatory practice, most require a body with a clear responsibility for advocating best practice regulation principles. This responsibility includes assessing the veracity and transparency of regulatory impact assessments, reporting on compliance with published best practice requirements and guidelines, and acting as a 'gatekeeper' against poor regulation making practices. Reforms to improve regulatory practices in these areas are evident in all jurisdictions. Box 1.5 provides some examples of these.

Box 1.5 **Some recent gatekeeping initiatives**

The Australian Government has enhanced the role of the Office of Regulation Review as the Office of Best Practice Regulation (OBPR), relocating it in the Department of Finance and Deregulation. The Government has published a *Best Practice Regulation Handbook* to provide advice to agencies undertaking regulatory impact analysis, and a *Quickstart Guide to Regulatory Impact Analysis*, which provides summary information on the new requirements. The Government has also strengthened its gatekeeping mechanisms, by making a commitment that regulatory proposals will not proceed to the final decision maker unless the costs and benefits of the proposal have been adequately assessed. This requirement will be monitored and reported on by the OBPR.

In November 2006, the NSW government established the Better Regulation Office to act as an advocate for best practice regulation. The NSW government also created a new ministerial role of Minister for Regulatory Reform, responsible for ensuring that effective regulation-making processes are followed.

The Queensland Government has established the Queensland Office for Regulatory Efficiency to oversee the government's implementation of its obligations under the April 2007 COAG agreement. This agency serves a similar role to the OBPR, the VCEC and the New South Wales Better Regulation Office by providing advice and assessment on regulatory impact statements, and undertaking targeted industry regulation reviews.

Sources: Australian Government (2007); NSW Government (2007); Queensland Treasury (2008).

Better public consultation

Public consultation is a key component of effective regulatory impact analysis. It enables stakeholders to be appraised of potential changes to regulation that may affect their business or industry, and provides them with an opportunity to outline to governments the effect that those reforms may have. In recent years, governments in Australia have implemented reforms aimed at improving the public consultation process (box 1.6).

Box 1.6 **Examples of reforms to public consultation processes**

Longer periods for consultation allow for greater participation:

- In 2006, the New South Wales Government extended the minimum consultation period for regulation impact statements prepared under the *Subordinate Instruments Act 1989* (NSW*)* to 28 days. The government also strongly advised departments and agencies to allow a 28 day period for public consultation for all other regulatory proposals.

Online forums offer a low cost, easily accessible mechanism for public comment:

- the Queensland Government has established an online portal called 'Queensland Regulations: Have Your Say'
- the South Australian Government, as part of its 'Reducing Red Tape on Business' agenda, has also established an online forum for members of the public to comment on regulation and compliance costs. South Australia also publishes a list of regulations that are due to expire in the upcoming year on the Attorney General's Department website.

Much regulatory activity and review is generated by regulations that 'sunset', or lapse, after a certain time. In some circumstances these sunset regulations may be automatically repealed, and in others may trigger a review. Publication of a list of regulations coming up for review can assist in engaging community participation:

- since 2005, the VCEC publishes annually a list of regulations that are due to sunset within the next 12 months
- the Australian Government publishes Annual Regulatory Plans for each department and agency. These plans outline the expected regulatory activity for each department and agency, including both proposed new regulations, and also those regulations due for review or repeal under sunset clauses.

Sources: Australian Government (2007); NSW Government (2006); Survey responses from Australian, state and territory governments (unpublished); VCEC (2007).

Measurement of compliance burdens

Good regulatory practices regulatory impact analysis, consultation, compliance cost measurement, gatekeeping provisions, and regulatory review should minimise the regulatory burden and consequent compliance costs associated with any regulation. An important initiative by governments to reduce or eliminate unnecessary burdens on business imposed by their regulation is to systematically cost the burden imposed by new and amended regulations (box 1.7).

Box 1.7 **Examples of compliance cost accounting to reduce 'red tape'**

Various 'cost calculators' provide a valuable tool in analysis of compliance costs:

- the Australian Government has developed a Business Cost Calculator to facilitate the estimation of compliance costs of regulation
- the South Australian Government requires detailed estimates of the compliance costs imposed by new and amended regulations (using the Business Cost Calculator) to assist it in achieving its commitment to reducing red-tape on business by 25 per cent, or $150 million, by July 2008
- the Victorian Government requires departments and agencies to include estimates of compliance costs as part of the preparation of any regulatory impact analysis (using the Standard Cost Model) as part of achieving its commitment to reducing the regulatory burden on business by 15 per cent within three years, and 25 per cent within five years. This program also makes incentive payments to departments and agencies that reduce their regulatory burden on business. Departments or agencies proposing regulations must detail off-setting simplifications that are at least equal to the burden imposed by the new regulation. The Victorian Government estimated that a 25 per cent reduction in compliance costs would result in annual savings to business of $825 million.

Sources: Australian Government (2007); South Australian Government (2006); Victorian Government (2006).

1.3 Scope of and approach to the study

The Commission has been asked to report on the quantity and quality of regulation. This component of the study's second stage is intended to provide a comparison of regulatory regimes across all levels of government and identify where (and how) indicators might be improved.

Ideally, quantity indicators would focus on business regulation only and quality indicators on the characteristics of regulation that businesses face. In practice, as described in chapter 2, this has not been feasible. Rather, as foreshadowed in the Stage 1 report, the Commission has relied mainly on indirect indicators:

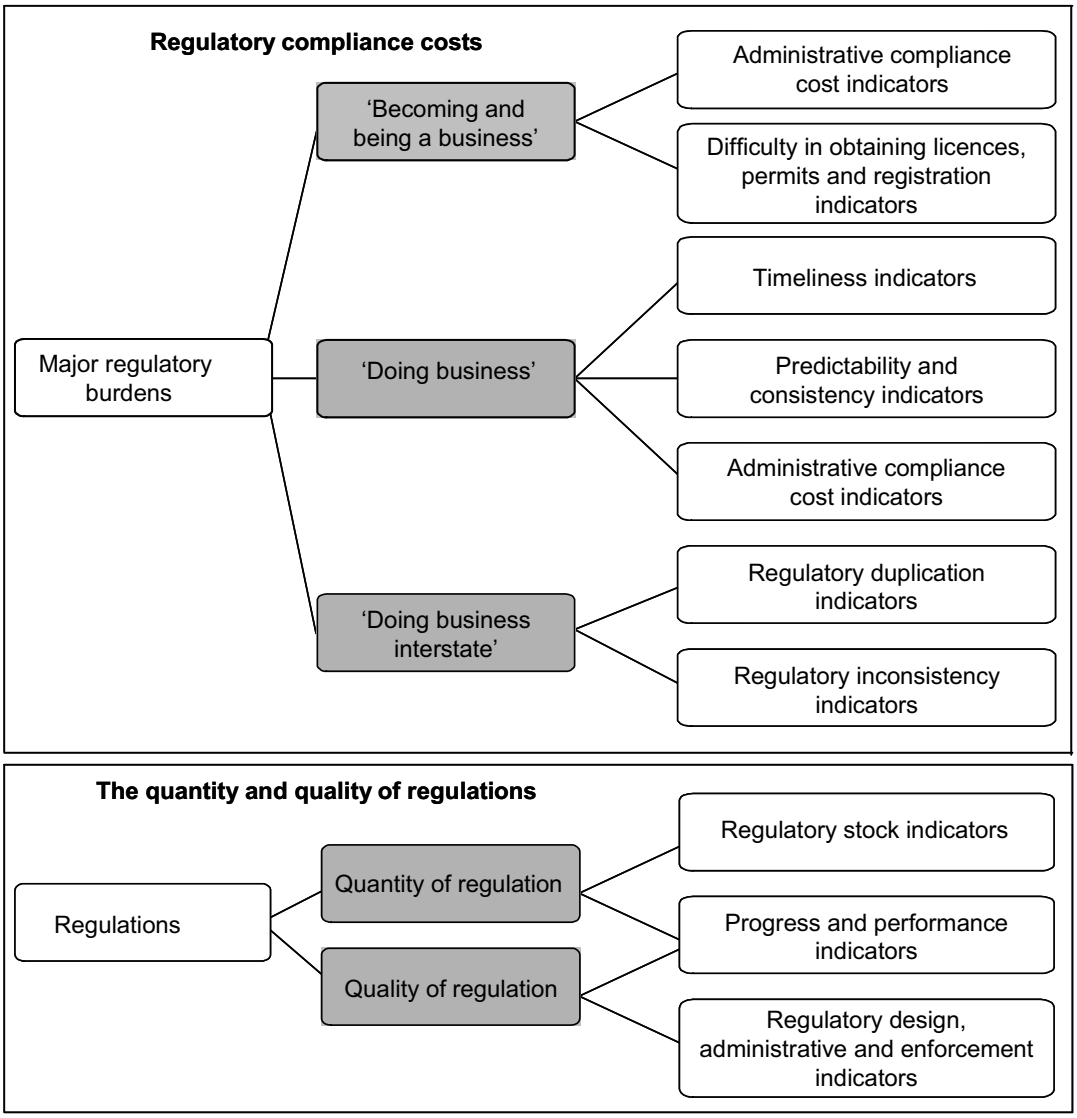
- for quantity, this has meant using broad measures of the stock and flow of regulation and regulatory activities generally
- for quality, this has meant using measures of good regulatory process rather than of regulatory outcomes.

This also means that it has not been possible to draw strong conclusions about the comparative performance of regulatory regimes across jurisdictions. Nevertheless,

the results of this study provide useful insights into differences between jurisdictions and a basis for further analysis, including by jurisdictions themselves.

As noted, this study forms only one part of a broader benchmarking framework suggested by the Commission's Stage 1 report (figure 1.1).

Figure 1.1 **The benchmarking framework**



Source: PC (2007a).

In benchmarking the quantity and quality of regulation, this report does not attempt to measure the efficiency or effectiveness of any specific regulation, or examine the necessity for any regulation. However, as good regulatory processes are pre-requisites to maximising the net benefits of regulation, the indicators in this report provide some measure of the extent to which a jurisdiction's system of

regulation might deliver a government's stated policy objectives, while ensuring that regulatory burdens on business and the community are accounted for.

While providing for comparisons between jurisdictions today, the results in this report also provide a baseline for each jurisdiction, against which trends in the quantity and quality of regulation can be assessed in the future.

Comparisons of the quantity of regulation and regulatory processes may assist policy makers and legislators to identify options to explore in their efforts to streamline regulation and reduce unnecessary compliance costs faced by businesses. The Commission is conscious that governments and jurisdictions have differing characteristics (for example, in size, industry composition or regulatory framework), and differing regulatory needs. Similarly, different approaches can deliver comparable quality outcomes. This report does not seek to draw conclusions about the efficiency and effectiveness of regulation in the jurisdictions. Rather it aims to highlight differences and similarities in approaches, and in so doing, help to identify potential areas for further reform at a COAG or jurisdictional level.

Comparisons between jurisdictional performance against key quantity and quality indicators shown in the following chapters need to be cognisant of differences in population and economic output. This information is provided in table 1.1.

Table 1.1 **Estimated Resident Population and Gross State Product (GSP) by State and Territory**

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*Aust*
Est res pop ('000)	6 889	5 205	4 182	1 585	2 106	493	224	339	21 017
Share of total est res pop (%)	33	25	20	7	10	2	1	2	100
GSP (current prices $b original)	335	247	195	70	141	21	15	22	1 046
Share of total GSP (%)	32	23	19	7	14	2	1	2	100

Sources: ABS (Residential Population Growth, Australia, 2006-07, Cat. No. 3218.0); ABS (Australian National Accounts: State Accounts, 2006-07, Cat No. 5220.0).

1.4 Conduct of the study

In conducting this study, the Commission has been assisted by an Advisory Panel comprising representatives from each of the Australian, state and territory governments and the Australian Local Government Association. The panel provided advice and feedback to the Commission regarding the coverage and methodology of the benchmarking exercise and coordinated the provision of data from jurisdictions.

In October 2007, the Commission released an information paper outlining its intended approach to the first year of Stage 2 of the Performance Benchmarking of Australian Business Regulation study. The study was advertised in *The Australian Financial Review* and *The Australian* newspapers. Copies of the information paper were sent to a range of interested parties, who were invited to make a submission. The terms of reference and study particulars were also listed on the Commission's website.

The Commission had discussions with a range of interested parties to help identify and assess issues relevant to the study. In addition, the Commission received a small number of formal submissions (appendix A).

In December 2007, the Commission requested information from each jurisdiction through Advisory Panel representatives. Three separate questionnaires were distributed:

1. *Regulatory System Questionnaire 2006-07* for completion by a central agency responsible for policy and legislation
2. *Business Regulator Questionnaire 2006-07* for completion by all business regulators in each jurisdiction
3. *Business Registration Requirement Questionnaire 2006-07* for completion by the relevant regulator(s), in respect of general business registration processes as well as registration in five specific industries.

The Commission also sought information from four local governments in each state and the Northern Territory, based on a questionnaire on their regulatory role and activities. Appendix B contains a detailed description of the methodology of the study. The survey questionnaires are available on the Productivity Commission website.

2 Benchmarking quantity and quality of business regulation

2.1 What is benchmarking?

Benchmarking involves the collection of data on an agreed set of indicators or measures from different sources to enable comparisons. It can help to identify best practice processes, set targets for improvement, and measure progress against objectives.

In its Stage 1 report, the Commission identified two types of regulatory benchmarking that could be undertaken *performance benchmarking* and *standards benchmarking* (box 2.1).

Box 2.1 Framework options for benchmarking

The Commission's stage 1 report, *Performance Benchmarking of Australian Business Regulation*, identified two possible frameworks for undertaking a benchmarking study of business regulation:

- *performance benchmarking* involves measuring and comparing indicators of regulatory performance across jurisdictions, and over time, without reference to any specific standards or performance
- *standards benchmarking* involves the comparison of jurisdictions' performance against best practice standards or policy targets.

For a variety of reasons, performance benchmarking of the quantity and quality of regulation are most likely to yield comparable results across jurisdictions.

Source: PC (2007a).

There are a number of obstacles to benchmarking the quantity and quality of business regulation using a standards benchmarking methodology. First, there is no 'best practice' standard against which the quantity of regulation can be measured, as there is no consensus about what is the optimal level of regulation. Second, quality relates to the outcomes achieved in terms of minimising the regulatory burden imposed but also in achieving the intended benefits that flow from the regulation.

Consequently quality standards for regulatory burden will vary with the objectives of the regulation. Third, the time-constraints for this study made the development of standards infeasible, given the need for agreement by all jurisdictions. Last, a standards benchmarking approach may also limit the potential gains from the benchmarking exercise, particularly if the standards are applied in practice as a 'tick the box' exercise by regulators (sub. 7, p. 20). The consequence of setting minimum standards may be that regulators have little incentive to move beyond those standards.

For these reasons, a performance benchmarking approach was considered more appropriate for this study. However, in the future it may be possible to develop agreed standards of measurement in consultation with all jurisdictions for well defined areas of regulation with common objectives.

This chapter outlines the indicators that have been used to measure the quantity and quality of regulation, the issues with benchmarking regulation in Australia, and a number of important caveats that should be considered when comparing indicators across jurisdictions.

2.2 Benchmarking regulation in Australia

Regulation is a key means by which governments seek to bring about change in the economy or society, and discharge their obligations to the community. The term 'regulation' also often refers to those legal instruments, enacted by parliaments or the executive government, that are designed to give effect to the will of a government. Thus, it is important to distinguish between regulation as a process involving the creation of regulatory instruments and their administration and enforcement, and the regulatory instruments that are enacted. Box 2.2 identifies the types of regulatory instruments most common in Australian legal systems.

The Commission has been asked to benchmark the quantity and quality of Australian business regulation as it affects the regulatory burden on business. Measuring the quantity of regulation involves some count of the stock of regulatory instruments and regulatory activity related to business behaviour. However, in order to benchmark the quality of regulation, identifying those regulatory processes that lend themselves to comparison across jurisdictions is essential. Figure 2.1 outlines a simple regulatory process flow model, identifying the common steps in the process of regulation.

Box 2.2 **What is regulation?**

Regulation can be defined as a principle, rule, or law designed to control, govern or influence conduct. Regulatory instruments thus shape incentives and influence how people behave and interact, helping societies deal with a variety of problems.

Regulation can be divided into economic regulation (which can directly influence market behaviour such as pricing, competition, market entry or exit) and social regulation (which protects public interests such as health, safety, the environment and social cohesion). Some economic and social regulations apply widely to the community, while others apply only to certain industries, such as agriculture, and financial services.

Regulatory instruments can also be classified according to their legal basis, including:

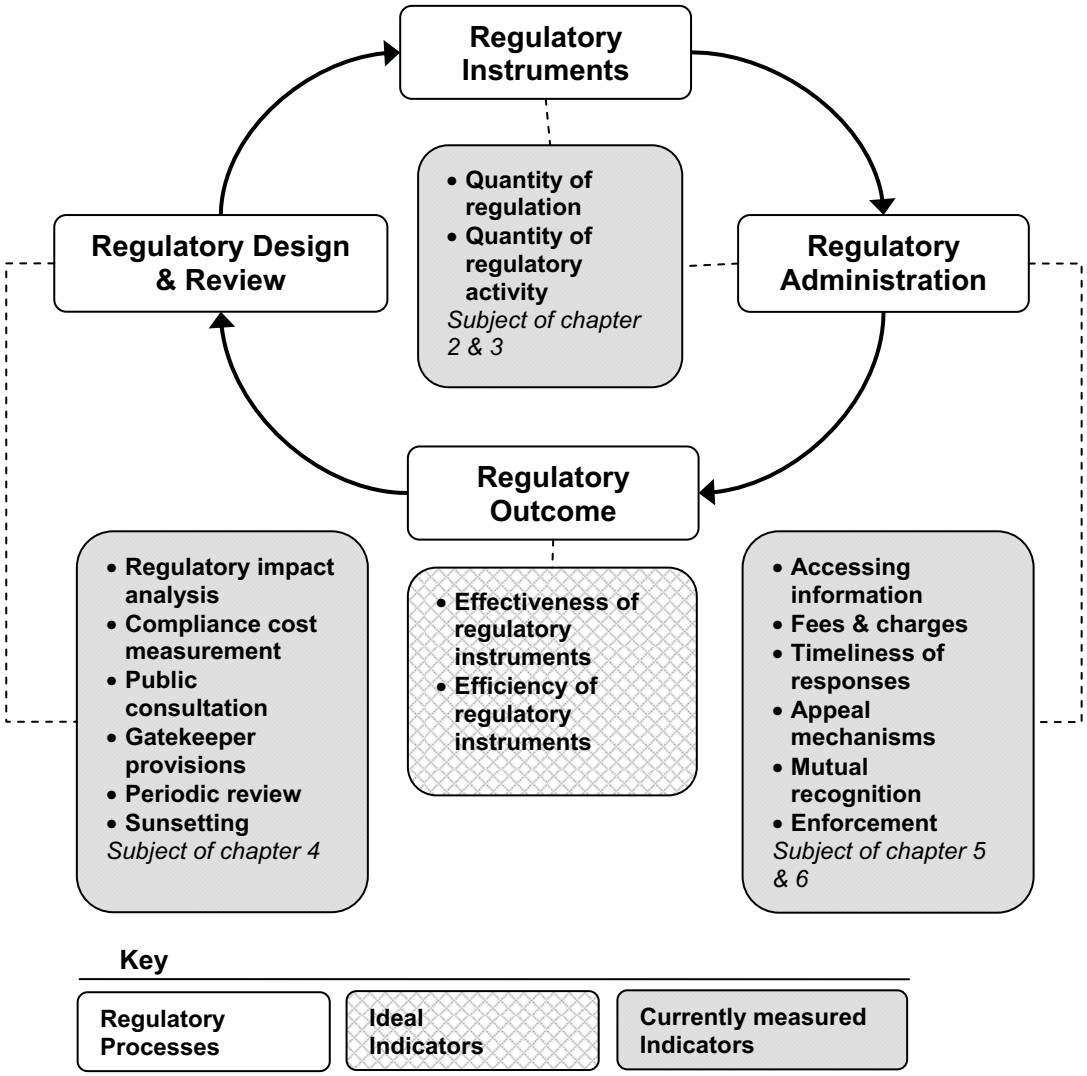
- *Primary legislation* consisting of Acts of Parliament (A legislative proposal for enactment of a law is called a bill until it is passed and receives a Royal Assent, at which time it is a law (statute) and is no longer referred to as a bill)
- *Statutory rules* are any regulations that are made under enabling legislation, with a requirement to be tabled in parliament or be assented to by the Governor or Governor General-in-Council.
- *Other legislative instruments* include guidelines, declarations, orders or other instruments that have legal enforceability, but that are not tabled in parliament.

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

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

Source: PC (2007a); http://dictionary.law.com (accessed 11 October 2008).

Figure 2.1 **Quantity and quality indicators and the regulatory process flow**



The regulatory process has four main aspects:

1. Regulatory design and review the need for government intervention is identified, options for government intervention are analysed according to an established process and a decision is made by government on a course of action
2. Regulatory instruments government enacts primary legislation, subordinate legislation or quasi-regulation to address the identified problem
3. Regulatory administration government regulators (including government departments, statutory authorities, non-government bodies or local governments) implement and enforce the regulatory instruments
4. Regulatory outcome regulations achieve their stated policy objective, maximising net benefits.

The aspects of regulation that most affect the compliance costs for business are at the design stage and in administration. The design process aims to ensure quality at three levels: *appropriateness* (that is, the net impact in terms of benefits exceeding costs); *effectiveness* (that is, the extent to which regulation meets the stated objectives) and *efficiency* (that is, instruments that meet these objectives at least cost).

For this benchmarking study the focus of the quality indicators is on the extent to which the design process minimises the burden on businesses of complying with the regulation. That is, whether good process delivers the most cost effective regulatory approach. Likely cost effectiveness is related to the extent to which compliance costs are identified and measured as part of the process of designing the regulation, the extent to which businesses are consulted during the development of the regulations and have the opportunity to comment and influence the design, and the application of independent oversight to encourage effective application of good process. Robust evaluation of existing regulation and other regulatory options provides the evidence base for making such assessments. Consequently, evaluation of existing regulation is also an important component in the development of new regulatory proposals.

Issues in measuring the *quantity* of regulation

There are two possible approaches to measuring the quantity of business regulation:

- measuring the number of obligations imposed on business by regulation
- measuring the number of regulatory instruments imposed on business.

The first way of measuring the quantity of business regulation would involve counting the number of regulatory requirements imposed on business. This approach has been used in British Columbia to measure the regulatory burden on business (Jones et al 2005) . This approach would more closely reflect the potential regulatory burden on business than a measure of the potential burden based on the number of regulatory instruments. However, collecting data for all jurisdictions would be time and resource intensive, and is not feasible in the time available for this study. Thus, measuring the number of regulatory instruments (and the associated number of pages) imposed on business proved the only viable option.

The volume of regulatory instruments will nevertheless be broadly related to a firm's time and effort in becoming aware of the regulation, and is likely to be related to the quantity of obligations imposed on business. This approach, while feasible, involves some measurement challenges.

Categorising regulation into 'business' and 'non-business' regulation is difficult

There is a threshold question as to what constitutes 'business regulation'. Almost all regulation has a direct or indirect impact on business and could be considered to be regulating some aspect of business. It might be possible to categorise each piece of regulation into 'business' or 'other' regulation based on its primary purpose. However, categorising regulations at that level would result in individual provisions which impact on business not being included because the regulation was not primarily business regulation (box 2.3). Other provisions which do not impact on business could be included because the regulation was considered to be primarily business regulation.

Box 2.3 **Examples of 'business regulation'**

Regulation can be characterised according to whom it primarily regulates, for example, as 'business' and 'non-business' regulation.

Business regulation includes those regulatory instruments the purpose of which is to regulate some aspect of business only. Regulations of this type include regulations requiring the registration of business names or registration for payroll tax. These types of regulations do not apply to non-business entities.

Some regulation applies to individuals only, such as licensing motor vehicle drivers and road safety rules.

However, much regulation in our society can apply to both individuals and businesses, depending on the context. Planning laws are often applied across a town or locality – whether they apply to businesses or individuals will depend on each individual block of land, and who owns it. Similarly, general taxation laws apply to the taxation of income, with some differing provisions depending on whether the taxpayer is an individual or business.

Thus, characterising regulation as 'business' or 'non-business' is a difficult task, and renders impractical the task of calculating the total stock of business regulation.

Governments generally do not categorise regulatory instruments (or their individual provisions) as business or non-business regulation there is no readily available data that the Commission can use to measure 'business regulation'. Identifying and measuring only those regulations that directly impact on business would therefore be a difficult task for jurisdictions and would involve a great deal of subjective judgement.

For these reasons, collecting data on the stock of 'business regulation' was considered to be impractical for this study. Instead the Commission surveyed the Australian, state and territory governments about the stock of *all* primary and subordinate regulation. This distinction between 'business regulation', and the

Commission's examination of the (much larger) total stock of regulation, is important when considering the results of the surveys which are presented in chapters 3, 4 and 6.

Attempting to measure the quantity of *quasi-regulation* that impacts on business entails a wider range of issues. As with primary and subordinate legislation, quasi-regulation cannot be easily divided into 'business' and 'other' regulation. Moreover, some quasi-regulations are developed by, or in conjunction with, industry associations and are then enforced or approved by government without being subject to any uniform process. Few governments have data on all of the quasi-regulation for which they are responsible, or a comprehensive catalogue of quasi-regulation from which that data can be derived. For this reason the Commission decided not to seek data on the quantity of business quasi-regulation during this study.

Measuring the quantity of local government laws and by-laws also presents a challenge. There are approximately 700 local government bodies in Australia. The size of their respective jurisdictions and their regulatory roles vary, making it difficult to develop any meaningful measures of the quantity of local government regulation. Rather than attempt to collate information on the quantity of regulation from every local government body the Commission decided to survey a small sample of local governments. The results are reported in chapter 7.

The flow of regulation is not the same as changes in the stock

In addition to measuring the *stock* of primary and subordinate regulation the Commission sought to measure the *flow* of the same categories of regulation. The flow of regulation can be quantified by measuring the number of new regulations introduced in a defined period. Attempting to limit the measurement of new regulations to business regulation would lead to the same issues discussed above. The Commission therefore collected data on the flow of *all* new regulation.

The flow of legislation in a given period may include legislation that was introduced to repeal or amend earlier legislation. As outlined in chapter 1, each of the jurisdictions has been involved in initiatives to review and streamline regulation and this has led to changes to legislation aimed at reducing the regulatory burden on business. For this reason, the flow of new regulations cannot simply be added to the existing stock to provide an updated estimate of the stock of regulation.

Issues in measuring the *quality* of regulation

Ideally, as noted, the quality of business regulation relating to the burden on businesses would be measured through indicators of the cost-effectiveness of regulatory instruments across Australia that is, whether or not individual jurisdictions enact regulatory instruments that minimise the costs of regulation to business given the objectives. Ideally, benchmarking would compare the compliance costs imposed on businesses where comparable policy objectives are achieved. However, this is impractical for a number of reasons.

First, as with the quantity of regulation, there is no established 'gold standard' for the quality of regulation against which the performance of the jurisdictions can be measured. Second, governments can have different regulatory objectives and it is only valid to benchmark where there are common objectives. Third, governments can enact regulatory instruments to fulfil a number of objectives at one time, making benchmarking compliance costs of regulations related to specific objectives difficult. In practical terms, benchmarking regulatory burdens would involve making assessments about the benefits of a regulatory instrument (the extent to which it meets policy objectives), as well as the compliance costs imposed by that regulation.

The approach taken for this report relies on the well established relationship between good regulatory development processes and quality regulatory outcomes. There are a number of widely accepted design principles that should inform the development of regulatory instruments (box 2.4). Benchmarking the quality of regulation involves comparing aspects of some or all regulatory instruments against these best practice design principles.

While it is possible to identify the attributes of well designed regulation, an assessment of any individual regulation against those attributes is likely to be a subjective assessment at best, as will be any weighting to reflect the relative importance of those attributes. To do so across the entire stock of regulatory instruments would be a major undertaking. The Commission has therefore sought a more feasible, if indirect, approach to gaining information about the quality of regulation.

Box 2.4 **Principles of regulatory design**

Regulatory quality could be benchmarked against a range of best-practice regulatory design principles, such as:

- Targeting: Does the regulation target the problem effectively, and apply to the right group? Is the regulation too wide or narrow?
- Timeliness: Does the regulation address the problem in sufficient time?
- Additionality: Does the regulation duplicate other regulations?
- Consistency: Does the regulation introduce inconsistencies and adverse interactions with other regulations and policies?
- Accountability: Is the regulation clear, and processes for its application transparent and contestable?
- Risk management: What are the risks posed by the regulation, including offsetting or adverse behaviour by firms?
- Enforcement: Is the enforcement regime appropriate and proportionate to the risks?
- Flexibility: Is the regulation likely to continue to be effective as markets and societies change their behaviours?

Source: Lattimore et al (1998).

Measuring processes instead of outcomes

The Council of Australian Governments (COAG) has indicated that improving the processes for the development and review of regulation can be expected to lead to improved quality of regulation (box 2.5). Regulatory quality is likely to be higher where jurisdictions have in place best practice processes for the design, administration, enforcement and evaluation of regulation. Developing regulations within a framework consistent with these best practice processes should entail consideration of whether the proposed regulation has the characteristics of good regulation. Measuring the extent to which best practice processes have been implemented within a jurisdiction is a practical approach to measuring the quality of regulation.

For this reason the Commission has focussed its quality benchmarking efforts on examining and comparing indicators of the design and review process, and on the administration and enforcement of regulation. These indicators do not directly measure the quality of regulations but indicate the extent to which jurisdictions follow processes that should lead to consistently better quality regulation. The Commission's indicators measure the extent of good regulatory practice as an indicator of the quality of regulation.

Box 2.5 **Maximising the efficiency of regulation**

COAG has agreed that all Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by:

(a) establishing and maintaining 'gatekeeping mechanisms' as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible

(b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis

(c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model

(d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative

(e) applying these arrangements to Ministerial Councils.

Source: COAG (2007b).

In choosing to measure those aspects of the regulatory process that can be benchmarked readily and at minimum cost (consultation, analysis, reporting, review, administration and enforcement processes), an assumption has been made that these processes lead to better regulatory outcomes that is, there is a valid and significant link between regulatory processes and the outcomes they deliver. The Regulation Taskforce (2006, p. 148) said that:

> The taskforce agrees with business groups that many of the regulations in need of reform exist because of deficiencies in the processes and institutions responsible for them. 'Regulate first, ask questions later' is how some business representatives characterised the approach. …
>
> In the Taskforce's view, the key areas where reforms to improve regulation-making are most needed are:
>
> - analytical standards when assessing regulation;
> - consultation processes when developing regulations; and
> - the mechanisms for enforcing good process.

This benchmarking study takes these as given, though testing the links between good regulatory process and quality outcomes remains an area for empirical research.

Principles of good regulatory practice

In Australia the principles and processes for good regulatory practice have been examined several times and are well established. COAG first published its principles and guidelines in 1995 and has regularly revised and updated them (COAG 2004). The Regulation Taskforce (2006) set out similar principles of good regulatory practice (box 2.6).

Box 2.6 **Regulation Taskforce's principles of good regulatory practice**

- Governments should not act to address 'problems' until a case for action has been clearly established:
  - this should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) government action.
- A range of feasible policy options — including self-regulatory and co-regulatory approaches — need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

Source: Regulation Taskforce (2006).

These principles are the broad areas that the Commission has focussed on when determining the indicators to be used in benchmarking the jurisdictions.

The quality of regulation is also a function of how regulatory instruments are administered and enforced by business regulators. Individual Commonwealth, state, and territory jurisdictions have responsibility for providing the administrative framework needed to support the enforcement of regulations. The way regulations are administered by regulators will affect the burden imposed by regulation on

businesses. Therefore, the Commission has also examined some indicators of the ways regulators interact with the businesses which they regulate.

2.3 The quantity and quality indicators

The following sections outline the indicators chosen to measure quantity and quality of regulation. These indicators were selected on the basis that they are reasonable representations of the jurisdictions' regulatory systems, and that reasonably reliable data were expected to be available.

Indicators of the quantity of regulation

Chapter 3 reports on indicators of the quantity of regulation in Australia, including the total stock and flow of regulation contained in primary and subordinate legislation; while chapter 5 reports on the number and characteristics of business regulators. For the purposes of this study, the Commission has considered *business regulators* to be those government departments or agencies responsible for regulating some aspect of business activity. These indicators were selected from the range of possible indicators identified in the Commission's stage 1 report on performance benchmarking of business regulation.

The specific indicators used to measure the stock of regulation include the total number of regulatory instruments (acts, subordinate legislation, and other statutory rules) that exist at a point in time; and the total number of pages associated with those instruments. The flow of regulatory instruments is measured by the total number of new regulatory instruments and the total number of pages they contain.

Of the total stock of regulation in each jurisdiction a proportion will be 'business' regulation, and it is likely that this proportion will be similar across all jurisdictions. Given this, comparing the total stock of regulation across jurisdictions may provide an indirect indication of the relative levels of business regulation. This is likely because the states and territories all share similar areas of regulatory responsibility. Also, political pressures for regulatory change in one state frequently lead to changes in other states, meaning that the areas of business activity that are regulated tend to be broadly similar in all states and territories.

A number of indicators are included to measure the number of business regulators in each jurisdiction, and their level of activity. These indicators focus on the number and type of business regulators, the size of those regulators, the number of regulations administered, the total number of licences on issue, and the total amount of fees and charges collected by regulators.

Indicators of the quality of regulatory processes

Design and review

As noted, the *quality* of regulatory process indicators used in this report relate to the extent to which the design and review of regulation is consistent with established principles of best practice regulation (see box 4.1 and box 4.2). The indicators selected cover:

- the extent and level of public consultation
- analysis of regulatory proposals, including the preparation of regulatory impact statements and estimation of compliance costs
- the extent of gatekeeping provisions, and other internal checks on the regulatory process
- the use of plain English drafting in preparing regulatory instruments
- provisions for the review of regulation.

Chapter 4 presents the results of these indicators.

The indicators used in considering consultation requirements look at the existence of mandatory consultation requirements for regulatory proposals and the minimum time period for consultation under those mandatory requirements. Consultation allows business to inform government of the expected compliance costs associated with the proposed regulation and its effectiveness.

The indicators for regulation impact analysis examine whether there are mandatory requirements for both regulatory impact analysis and the development of compliance cost estimates, whether that analysis is subject to independent assessment, and how the results of that analysis are used. The proportion of proposals which are actually subject to analysis is used as a check on the comprehensiveness of any reported mandatory requirements. Such analysis and processes are expected to reduce unnecessary compliance costs associated with achieving any set of policy objectives, that is, improve the cost effectiveness of the regulation.

Having examined the indicators for these processes, chapter 4 then looks at the existence of gatekeeping processes, which show whether there are procedures in place to ensure that the processes for analysing proposals have been followed.

Indicators relating to plain English drafting are included as they can clearly affect the cost to business of understanding compliance requirements.

The indicators used to reflect the quality of review processes are whether there is a requirement for the use of sunset provisions in new regulations, or an ongoing requirement for the review of existing regulation. Such review processes provide an opportunity to consider whether existing regulation continues to be appropriate, efficient and effective.

Administration

To benchmark the quality of regulatory administration and enforcement, measures that reflect the interactions between business regulators and the businesses they regulate are used. For the purposes of this study, the Commission has focussed on those processes concerned with business licences, permits or registration activities one of the most common interactions between regulators and businesses. The results are presented in chapter 6. The indicators are directly related to the likely compliance costs imposed on business. They focus on:

- how businesses can access information and lodge forms
- the setting of, and methods for receiving payment of, fees and charges
- the timeliness of responses by business regulators in responding to licence applications
- the extent and type of appeal mechanisms available
- the application of mutual recognition principles
- the type and extent of regulatory enforcement.

The indicators used in considering the accessibility of information and lodgement of forms examine the availability of information and application forms online, the ability to make payments of fees and charges and to renew licences online, and the basis on which fees and charges are set. The ability to undertake transactions online is supported by business and gives business a low cost option for interacting with regulators.

The indicators which reflect on the timeliness of the response by regulators look at the existence of time limits in processing new applications and the use of, and reporting on, target times by regulators. The time taken for processing applications can impose additional costs on business, particularly where it is not anticipated.

Other indicators are the availability of internal and external appeal mechanisms for businesses who are dissatisfied with the outcome of a licence, permit or registration application.

Two indicators are used to measure the application of mutual recognition principles. The first indicator examines the extent to which regulators are prepared to allow businesses to operate in their jurisdiction on the basis of an equivalent licence issued interstate. The second indicator examines the extent to which regulators will take an interstate licence into account in assessing an application for a licence in their own jurisdiction. Mutual recognition lowers the licensing costs for businesses operating in more than one jurisdiction.

The indicators used to provide insight into the enforcement of regulation include the use of risk-based enforcement strategies, the publication of enforcement strategies and outcomes, and the availability to business of appeal mechanisms. Well understood and consistent enforcement rules and approaches provide a more certain environment for businesses to operate, lowering the regulatory burden associated with uncertainty about their, and others, compliance obligations.

3 Indicators of the quantity of regulation

This chapter presents general indicators of the total quantity of regulation in Australia. The indicators describe the broad features of the regulatory systems of the Commonwealth, state and territory governments, relating to the:

- stock of existing regulation
- flow of new regulation.

As discussed in chapter 2, the data presented here on the stock and flow of regulation cover *all* Commonwealth, state and territory primary and subordinate regulation. As this study is primarily focussed on the quantity and quality of business regulation, inferences as to the burden imposed on business are based on an assumed direct relationship between the total quantity of regulation and that pertaining to businesses. This is premised on a constant share of regulation affecting business across all jurisdictions, which cannot be validated with the current data available. The link from the quantity of regulation to regulatory burden may also be tenuous, and there is evidence to suggest that there are a few 'hotspots' which drive the majority of the regulatory burden on business. These limitations must be kept in mind in any interpretation of the quantity indicators presented in this chapter.

Data on the stock and flow of Commonwealth regulation are provided for the sake of completeness, not for direct comparison. Only the state and territory governments have directly comparable legal jurisdictions. The information on Commonwealth and each state and territory jurisdiction regulation also provides a baseline measure which could be used in future studies to identify trends in the quantity of regulation.

Unless otherwise indicated, the data reported in this chapter are derived from questionnaires completed for the Commission by the Australian Government, and each state and territory government. Further information on these questionnaires is provided in appendix B. Where no numbers are cited in the tables below, this indicates a nil response by the respective jurisdiction, due to either the data not being available or the question not being applicable, rather than a response with a zero value.

3.1 Total stock of regulation

A potential indirect indicator of the regulatory burden on business is the total stock of primary acts, subordinate regulations and other legislative instruments in each jurisdiction. In its stage 1 report, the Commission found that benchmarking the total stock of regulation affecting business within each jurisdiction would be a useful starting point in assessing the aggregate regulatory burden on business and would provide useful contextual information (PC 2007a). Table 3.1 provides a snapshot of the total volume of legislation in each jurisdiction as at 30 June 2007.

This information only provides a general indication of the volume of regulation in each jurisdiction. It does not indicate the regulatory burden on business from that regulation. When comparing the numbers of acts, regulations and other legislative instruments across jurisdictions, a smaller number for one jurisdiction is not necessarily 'better'. What ultimately matters to business is the number of regulatory obligations that they must comply with, and the concomitant compliance burden, not just the number of regulatory instruments.

Table 3.1 **Number of regulatory instruments and pages**
As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*	*Tas*	*NT*	*ACT*
Acts	1 279	1 257	870	543	545	844	605	365	305
Pages	98 486	32 700[b]	44 214	49 419	16 525	40 751	13 254	16 992	21 771
Statutory rules	18 000	388	556	319	558	761	1 782	382	158
Pages	90 000	7 717	12 625	15 635	8 526	22 816	12 071	4 057	7 763
Total pages	188 486	40 417	56 839	70 748	25 403	63 567	25 325	21 049	29 534

[a] Based on legislation in force at 31 December 2007. [b] Approximate page count calculated by converting number of bytes in the html-format NSW Legislation database.

Source: Survey responses from Australian, state and territory governments (unpublished).

Besides primary acts and statutory rules, some jurisdictions also reported that they had other regulatory instruments. The ACT reported that they had 875 other regulatory instruments, while Queensland reported 89 other instruments (with 5694 pages), and South Australia had 30 other regulatory instruments (with 352 pages).

The regulation of any particular policy area requires a minimum amount of legislation that is not necessarily connected to jurisdiction size, population, business count or economic activity. This might be expected to be the same for all jurisdictions whether large or small. Intuitively, it might also be expected that broadly similar jurisdictions in terms of population or economic activity would have a similar quantity of regulation. However, the table shows marked differences among jurisdictions in the number, size and relative use of acts, statutory rules and other instruments.

There is significant variation between similar jurisdictions in the number of acts in force. For example, New South Wales has a much larger number of acts (1257) than Victoria (870) or Queensland (543). Further, there is not always a relationship between the size of a jurisdiction and the number of acts. For example, Tasmania has 605 acts although its population is not much bigger than the ACT which has 305 acts. Moreover, the number of acts in Tasmania is greater than that in Queensland (543).

The total number of pages of legislation in those acts also varies widely between jurisdictions. The variation, though, does not always mirror the number of respective acts. For example, Queensland and South Australia have almost the same number of acts (543 and 545 respectively) but those acts have a significantly different total number of pages (49 419 and 16 525 respectively). Some of the variation, however, does appear to be correlated with the size of the jurisdiction. For example, larger jurisdictions like Victoria, Queensland and Western Australia have a similar number of total pages or regulatory instruments, while smaller jurisdictions like the ACT, Northern Territory, South Australia and Tasmania have a similar, but lower, number of total pages.

There are also significant differences in the volume of subordinate legislation. For example, Queensland and Western Australia have 319 and 761 statutory rules respectively, while the ACT and Tasmania have 158 and 1782 respectively.

Moreover, all State and Territory governments exhibit marked differences in their relative use of acts, statutory rules and other instruments (for example, the ACT has 305, 158 and 875 respectively while South Australia has 545, 558 and 30 respectively). As subordinate regulation is often subject to less scrutiny than primary legislation (see chapter 4) this difference might influence the overall quality of regulation.

Possible sources of differences

The differences across the jurisdictions seen in table 3.1 may flow from the different approaches taken to developing primary and secondary legislation by the Commonwealth, state and territory governments. There are a number of reasons which might explain these variations between jurisdictions.

- Different states may take different approaches to the way they draft legislation. For example, some jurisdictions may draft more detailed 'black letter' law while other jurisdictions may adopt a 'principle-based' approach to drafting.
- Jurisdictions may take different approaches to the inclusion of supporting material, such as explanatory notes, in their regulations and to the formatting of regulations.

- Some jurisdictions may choose to regulate a broad area of policy with a single act of parliament while other jurisdictions regulate that same area of policy through a number of separate acts, each dealing with a single issue.
- The areas of regulatory responsibility across the state and territory governments are very similar, but not identical. Most jurisdictions, for example, refer some of their powers to local governments, while the ACT does not have that additional level of government.
- Differences in the industry structure of jurisdictions could lead to differences in the focus and volume of regulation.

3.2 Flow of regulation

The flow of regulation is important to business as it provides an indication of the amount of 'regulatory churn' in each jurisdiction over a particular time. For all Australian jurisdictions, the onus is on business to be aware of their legal requirements, and the actions they must undertake to discharge those obligations. Thus, frequently changing regulation represents a burden on businesses, as they must become familiar with a new set of requirements, even if the change to ongoing requirements leads to a reduction in the long term burden.

In its submission, the Australasian Compliance Institute highlighted the results of a survey it conducted of its members, in which 16.6 per cent of respondents listed monitoring legislative reform and change as one of their top five ongoing compliance costs (Australian Compliance Institute, sub. 2).

As with information on the stock of regulations, the flow of new regulatory instruments is measured in terms of the number of new acts, statutory rules and other instruments, and the number of pages, in official printing, those regulations. Table 3.2 shows the results for each jurisdiction for the period 1 July 2006 to 30 June 2007. These measures provide an indication of the volume of changes to regulation which may have affected the community in that year.

Table 3.2 **Number of new regulatory instruments and pages**
Enacted between 1 July 2006 and 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Acts	198	83	68	10	50	58	49	32	7
Pages	8 198	2 081	2 672	1 286	914	2 498	1 418	1 015	981
Other legislative instruments	4 487	570	173	35	287	42	136	41	52
Pages	31 439	4 422	2 549	1 884	1 858	1 075	1 834	372	2 575

Source: Survey responses from Australian, state and territory governments (unpublished).

Not all of this regulatory flow consists of new regulation. Much of it involves acts that amend, replace or repeal existing regulation. In some cases the changes may entail a reduction in the volume of ongoing regulation and in the regulatory burden on business.

These figures also need to be treated with caution as they reflect one specific year of legislative activity. For example, between 1 July 2006 and 30 June 2007 Queensland, Victoria and New South Wales all held state elections, so the data from those states may not reflect a normal year of legislative activity.

As discussed, there may be a wide range of explanations for the differences between jurisdictions. The variations are not necessarily indicative of differences in regulatory efficiency, nor the level of regulatory burden on business, but should be seen as indicating possible areas for further investigation.

Table 3.2 shows that there are a number of differences between the jurisdictions. The number of new acts varies widely from 83 in New South Wales to seven in the ACT. The variation in the number of pages of new acts is smaller than the variation in the number of acts. The flow of new legislation in South Australia (914 pages) was less than half that in Victoria (2672 pages).

The flow of regulation shown in table 3.2 can be also be considered in light of the amount of change to the existing stock of regulation shown in table 3.1. The flow of new acts in Queensland as measured by the number of pages represents approximately 2 per cent of the existing stock, while in South Australia it represents approximately 5.5 per cent.

The number of other new legislative instruments shows a much wider variation than the number of new acts. In all states and territories, except Western Australia, the number of newly enacted other legislative instruments is generally many times the number of new acts (across all States and Territories these range from 35 570 compared to 7 83, respectively).

The differences seen in the number of legislative instruments is less apparent for the volume of pages of instruments. However, there are some interesting variations. The ACT, for example, reports enacting a greater number of pages of legislative instruments than any other state or territory except New South Wales.

Comparing the data for the flow of legislative instruments with the data for the existing stock of statutory rules suggests a large variation in the turnover of regulations. In the year 1 July 2006 to 30 June 2007, Western Australia reported that it enacted 1075 pages of new legislative instruments compared to the stock at the end of the year of 22 816 pages of statutory rules (under 5 per cent). In contrast

Queensland enacted 1884 pages of new legislative instruments compared to a stock of 15 635 pages of existing statutory rules (12 per cent), the ACT enacted 2575 pages of new legislative instruments compared to a stock of 7763 pages (33 per cent), and New South Wales enacted 4422 pages compared to a stock of 7717 pages (57 per cent). The high level of turnover for some jurisdictions may be related to the use of sunset provision in those jurisdictions.

4 Indicators of the quality of regulation: design and review

This chapter reports quality indicators based on the principles of good process for the design and review of regulation. Good practice processes aim to ensure new and existing regulations are efficient, effective and appropriate in that they generate the greatest net benefit for the community. For businesses, the most important feature of good practice is to encourage cost effective regulation, that is, regulation that achieves its objectives at minimum cost to business in terms of regulatory burden. While this study is focused on the burden on business, it is difficult to separate the application of best practice design and review processes to business regulation from other regulation. As in chapter 3, this chapter considers the processes applied to the design and review of all new regulation, as this will reflect the application of good practice to the development of regulation that affects business.

Indicators of good practice as indicators of regulatory quality

The principles of good design and review set out by the Regulation Taskforce and the Council of Australian Governments (COAG) (chapter 2) can be achieved through a variety of mechanisms. Different jurisdictions in Australia have taken different approaches to satisfying the principles. Chapter 2 identified five outcome areas: consultation requirements, analysis of the proposal, gatekeeping arrangements, guidelines on the drafting of regulations and review. In order to develop a representative set of indicators the Commission sought information from each jurisdiction on the mechanisms they employed in each of these areas.

The indicators cast some light on the application of COAG principles by jurisdictions, although the diversity of mechanisms used presents a challenge. First, the same good practice principle may be achieved by different mechanisms or combinations of mechanisms. Consequently, while the presence of all mechanisms is likely to indicate good practice, the identification of fewer mechanisms may not indicate a poorer outcome. Second, the formalisation of a particular process by a jurisdiction indicates only the requirements that have been set down, and this alone is not evidence of the effectiveness of those processes. These issues suggest caution in interpreting the indicators as measures of potential regulatory quality.

Nevertheless, the indicators do identify areas of difference between jurisdictions which might warrant further examination.

Sources of data on mechanisms used in design and review of regulation

Unless otherwise indicated, the data are derived from the *Regulatory System Questionnaire 2006-07* and the *Business Regulator Questionnaire 2006-07* which were distributed in late 2007. These questionnaires were completed by the Commonwealth Government, each of the state and territory governments, for COAG, and by most business regulators in each jurisdiction. COAG processes have been included in the study because, while COAG itself does not enact or implement regulations, regulatory proposals are sometimes developed and analysed through COAG processes prior to their being applied in each jurisdiction.

Appendix B contains further information on these questionnaires. Where there are no numbers or responses in the tables set out below, information was not supplied to the Commission by that jurisdiction. In some cases the questionnaires asked respondents to indicate what range their response would fall into (that is, 0 per cent, 1 49 per cent, 50 99 per cent, 100 per cent), rather than to estimate a figure.

4.1 Consultation

The importance of consultation in developing regulation is widely recognised in Australia and overseas. Consultation provides the opportunity for business groups and other stakeholders to provide comment on the proposed changes to regulatory arrangements and would be expected to elicit views on how those changes would impact upon them. The principles of good regulatory practice agreed by COAG (COAG 2004) and reaffirmed by the Regulation Taskforce (Regulation Taskforce 2006) refer to the need for public consultation during the development of regulation. COAG has set out a number of grounds on which consultation on regulatory options can improve the quality of the solution adopted (COAG 2007c). The Office of Best Practice Regulation (OBPR) developed a set of best practice consultation principles which have been endorsed by the Commonwealth Government and are shown in box 4.1.

Box 4.1 **Best practice consultation principles**

The best practice consultation principles developed by the OBPR include:

1. Continuity — consultation should continue through all stages of the regulatory cycle including when detailed design features are bedded down.
2. Targeting — departments and agencies need to ensure that wide consultation with stakeholders likely to be affected by the proposed regulatory changes is conducted. These groups would include businesses; consumers; unions; environmental groups; state, territory and local governments; and Commonwealth government departments, agencies, statutory authorities and boards.
3. Appropriate timeliness — consultations should be conducted early in the process when policy objectives and approaches are still being considered. Timeframes for consultation should also be realistic to allow stakeholders sufficient time to provide a considered response.
4. Accessibility — agencies should inform stakeholders of proposed consultation through the most appropriate means such as press releases and media advertisements. Information on regulatory proposals such as issues papers listed on websites should be provided in language that is easy to understand. Consultation could also take the form of public meetings, focus groups, surveys or web forums
5. Transparency — the objectives of the consultation process should be made very clear. For example, if a decision to regulate has already been made, stakeholders should be informed that their views are being sought on regulatory design and implementation rather than the merits of regulation.
6. Consistency and flexibility — having consistent consultation procedures provides certainty to stakeholders that they have the opportunity to participate in the consultation process. The manner in which consultation is achieved may vary according to the nature of the regulatory proposal. For example, a matter that affects national security would require consultation to be conducted in-confidence rather than made public.
7. Evaluation and review — agencies should continue to evaluate and review existing consultation processes to improve cost-effectiveness and timeliness.

Source: Australian Government (2007).

COAG has identified consultation mechanisms consistent with its principles for best practice consultation. Those mechanisms included the use of annual regulatory plans, business consultation portals and policy 'green papers' (COAG 2007c).

Making information available on new regulatory proposals

Publicising information on new regulatory proposals gives the community advance notice of what proposals are to be considered. To get some indication of

consultation processes, the Commission asked jurisdictions if they published a list of new regulatory proposals which would be considered in the following year. Only the Victorian and Commonwealth Government indicated that they published such a list between 1 July 2006 and 20 June 2007.

Mandatory consultation requirements

The Commission sought information from each jurisdiction on the extent to which proposed regulations were subject to mandatory consultation requirements (table 4.1). The data sought by the Commission is limited to the existence of mandatory requirements for consultation, as this can be objectively measured. The absence of a mandatory requirement does not mean that consultation does not occur, nor reflect on the standard of consultation which occurs.

Table 4.1 **Percentage of new regulatory proposals subject to mandatory public consultation**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Bills	0	0	0	0	0	0	0	1–49	0	100
Statutory rules	0	50–99	100	1–49	0	0	1–49	1–49	0	100
Other legislative instruments	0	0	1–49	0	100	0	1–49	0	0	100
Quasi-regulations	0	0	1–49	0	0	0	0	0	0	100

Source: Survey responses from Australian, state and territory governments (unpublished).

The responses show that in 2006-07 there are limited mandatory requirements for public consultation. Requirements are more frequently imposed on proposals for statutory rules than for bills or other forms of regulation. Only COAG processes are subject to such requirements for all new regulatory proposals, while some jurisdictions do not impose mandatory consultation requirements on any proposals.

Timing of public consultation process

To be effective, public consultation should occur over a reasonable timeframe. From a stakeholder perspective, such time frames should be sufficient for the stakeholder to engage in the consultation process and present their views (sub. 7). This is recognised by COAG (COAG 2007c) and in other countries such as the United Kingdom (Cabinet Office 2005). The Commission, therefore, sought information on the minimum period of time required for consultation where mandatory requirements were in place. The data only identifies the minimum

consultation period where mandatory requirements exist. It does not show the length of time over which consultation actually occurs.

Where mandatory consultation requirements exist, the minimum number of working days for public consultation varied across jurisdictions. In Queensland and the Northern Territory the minimum number of working days was 20, in Tasmania the requirement is for a minimum of 21 days, and New South Wales and Victoria required 28 days. The longest minimum period for consultation was 40 days for other legislative instruments in South Australia.

However, jurisdictions may embed in particular acts or other legislative instruments longer minimum consultation timeframes. For example, the *Tasmanian Living Marine Resources Management Act 1995* (Tas) requires that draft fisheries management plans be exhibited for a minimum of 60 days.

4.2 Analysis of proposals

One of the principles of good regulatory design set out by COAG is that proposed regulations should be subject to a regulatory impact assessment. Regulatory impact assessments provide decision makers with information on the regulatory proposal and its impact, including the regulatory burden imposed on business. That assessment should quantify the costs and benefits of the proposal to the greatest extent possible extent (COAG 2004).

In February 2006, the Commonwealth, state and territory governments agreed that they would establish and maintain effective arrangements to improve the quality of regulation impact analysis through the use, where appropriate, of cost benefit analysis and by broadening the scope of analysis (COAG 2006b).

The type of analysis required varies across jurisdictions. In most jurisdictions this analysis is conducted through the preparation of a regulatory impact statement (RIS), or an equivalent process, which sets out the problem being addressed, the options for addressing that problem, and the costs and benefits of the various options. The elements of a COAG RIS are set out in box 4.2.

Box 4.2 **Elements of a regulatory impact statement (RIS) prepared for Ministerial Councils**

There are seven key elements that should be contained in a RIS.

Element 1 Statement of the problem

The RIS should clearly identify the fundamental problem(s) that need to be addressed.

Element 2 Objectives

The RIS should clearly articulate the objectives, intended outcomes, goals or targets of government action.

Element 3 Statement of options

The RIS should identify a range of viable options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options.

Element 4 Impact analysis (costs and benefits)

The RIS should provide an adequate analysis of the costs and benefits of the feasible options. The techniques to be employed are: risk analysis; cost–benefit analysis; business compliance costs; and competition effects.

Element 5 Consultation

Consultation should occur as widely as possible but, at the least, should include those most likely to be affected by regulatory action (for example, consumer and business organisations).

Element 6 Evaluation and conclusion

The RIS should demonstrate that: the benefits of the proposal to the community outweigh the costs; and the preferred option has the greatest net benefit for the community, taking into account all the impacts.

Element 7 Implementation and review

The RIS should provide information on how the preferred option would be implemented, monitored and reviewed.

Source: COAG (2007c).

The Commission sought information from each jurisdiction on the extent to which regulatory proposals are subject to analysis, the assessment of that analysis, consultation on that analysis, and the transparency of these processes.

Mandatory requirements for regulatory impact assessments

Jurisdiction were asked whether they had mandatory requirements for subjecting different types of proposed regulations to regulatory impact analysis. Proposals may still be subject to some form of analysis even if there is no mandatory requirement. The responses are set out in table 4.2.

Table 4.2 **Mandatory regulatory impact analysis**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Bills	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Statutory rules	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Other legislative instruments	✓	×	×	×	✓	✓	×	✓	✓	✓
Quasi-regulation	✓	×	×	×	✓	✓	×	✓	✓	✓

[a] South Australia data only applies to regulatory proposals that proceed to cabinet.

Source: Survey responses from Australian, state and territory governments (unpublished).

The existence of a mandatory requirement does not mean that a RIS is prepared for every proposal. Within that mandatory framework each jurisdiction has its own threshold, or criteria, which is used to determine whether particular regulatory proposals require analysis through a RIS or equivalent, the type of analysis to be undertaken and the scope of that analysis. Examples of the threshold criteria used by some jurisdictions are set out in box 4.3.

All of the jurisdictions and COAG reported having mandatory requirements for analysing regulatory proposals in relation to bills and statutory rules. The requirements for analysis for other legislative instruments and for quasi-regulation are less uniform. Only the ACT, the Northern Territory, South Australia, Western Australia, the Australian Government and COAG have requirements for those types of regulatory proposals. It should, however, be noted that jurisdictions may have mandatory regulatory impact analysis requirements for some of their other legislative instruments and quasi-regulations. For example, Tasmania requires regulatory impact analysis be undertaken for local government by-laws made under the *Local Government Act 1993* (Tas) and for Fisheries Management Plans.

Regulatory proposals subject to impact analysis

In order to gain a better indication of how extensively regulatory proposals are actually being subjected to assessment through a RIS, or an equivalent process, the Commission asked jurisdictions to indicate what proportion of regulatory proposals were subjected to analysis (table 4.3).

Box 4.3 **Regulation impact analysis — threshold criteria**

While each jurisdiction has mandatory requirements for regulation impact analysis, the criteria for those requirements coming into effect varies between jurisdictions. The Australian Government requires the preparation of a RIS where a proposal will have:

> A significant impact on business and individuals or the economy (whether in the form of compliance costs or other impacts).

The Queensland Government advised that:

> The Statutory Instruments Act provides that if proposed subordinate legislation is likely to impose an appreciable cost on the community or part of the community, then, before the legislation is made, a RIS must be prepared. All new and amending primary and subordinate legislation that restricts competition must be subjected to a public benefit test before Cabinet considers the policy proposal.

In Victoria:

> The threshold for a RIS for statutory rules is that the proposed rule would have 'Appreciable economic or social burden on a sector of the public', as defined by Premier's Guidelines made under s26 of the Subordinate Legislation Act. The threshold for a Business Impact Assessment (which is equivalent analysis to a RIS) is that the proposed legislation would potentially have 'significant effects for business and/or competition in Victoria' as defined in the Victorian Guide to Regulation.

Western Australia's requirement's are framed differently:

> There is no legislative basis for the mandatory review process, although the requirements to conduct a Small Business Impact Statement and Legislation Review are outlined in the Cabinet Handbook (for Cabinet submission), which was updated in 2007. The Small Business Impact Statement encourages the application of the Office of Best Practice Regulation's Business Cost Calculator. Western Australia has committed to updating its RIS process, which will incorporate mandatory review processes for all new regulatory proposals — as per its contribution to the Appendix of the Regulation Reform Plan.
>
> All Cabinet submissions must include a Small Business Impact Statement. A legislation review is required if the proposal restricts (or has the potential to restrict) competition (noting the definition of legislation includes all subordinate mandatory legal requirements).

The Tasmanian Government advised that:

> A regulatory impact statement is required to be prepared for all proposed primary legislation anticipated to have restrictions on competition and, in some cases, significant negative impacts on business. Proposed subordinate legislation, assessed as imposing a significant burden, cost or disadvantage on any sector of the public, also requires a RIS.
>
> Restrictions on competition are the trigger for the preparation of a RIS for both primary legislation and subordinate legislation. A restriction on competition or an impact on business is considered to be significant where it has economy-wide implications, or where it significantly affects a sector of the economy, including consumers.

(continued next page)

Box 4.3 (continued)

In New South Wales some of the criteria are set out in legislation:

The Subordinate Legislation Act 1989 requires the preparation of a formal RIS for a principal statutory rule that would impose an 'appreciable burden' on any sector of the public. Under Premier's Memorandum 2006-17, all legislative and regulatory proposals are required to demonstrate that a best practice regulatory process has been followed, including through reducing the cost of regulation for business, clarity of objectives, cost-benefit analysis, and consideration of alternatives to regulation.

The South Australian criteria are set out in a circular:

The Department of the Premier and Cabinet Circular 19 indicates that - If there is a significant regulatory or regional impact a formal Regulatory Impact Statement (see page 24) or Regional Impact Assessment Report (see pp 27 to 28) is required and should be attached [to the Cabinet Submission].

The Northern Territory Government advised that:

A new regulation making framework was introduced in September 2007. The scope of the new framework includes all primary and subordinate legislation and codes and rules. The requirement to complete a CIA was triggered if the proposed or amended legislation sought to:

- govern the entry or exit of firms or individuals into or out of a market;
- control prices or production levels;
- restrict the quality, level or location of goods and services available; or
- impose significant costs on business or confers advantages to some firms over others by, for example, shielding some activities from pressures of competition.

In the ACT:

The ACT Government Cabinet Handbook (2007) prescribes that for all new or amended law or Government direction, a RIS must be completed as part of the policy development process for Cabinet submissions. Under the Legislation Act 2001, proposals for subordinate laws or disallowable instruments that are likely to impose appreciable costs on the community (including businesses) require the preparation and tabling of a RIS.

Source: Survey responses from Australian, state and territory governments (unpublished).

Table 4.3 **Percentage of new regulatory proposals subjected to analysis**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*[b]	*Tas*	*NT*	*ACT*
Bills	21	n.av	9	4	8	40	0	29	42
Statutory rules	n.av	n.av	18	4	1	10	3	23	3
Other legislative instruments	n.av	n.av	0	0	25	10	n.av	0	0
Quasi-regulations	n.av	n.av	0	0	n.av	10	n.av	0	0

n.av not available. Data for COAG proposals is unavailable as a count of these proposals is not maintained by any jurisdiction. [a] South Australia data only applies to regulatory proposals that proceed to cabinet. [b] Western Australia are unable to disaggregate data for statutory rules, other legislative instruments and quasi-regulations.

Source: Survey responses from Australian, state and territory governments (unpublished).

The table shows considerable divergence in the extent to which regulatory proposals are subjected to RIS analysis. Data on the number of statutory rules, other legislative instruments and quasi-regulations was often not available to the jurisdictions, making the calculation of proportions difficult (although some data on the total number of legislative instruments is presented in table 3.1).

The NSW Better Regulation Office's gatekeeping requirements did not commence until 1 June 2008. As a consequence, data on the proportion of regulatory proposals that were subject to a RIS (or equivalent) in New South Wales for the year ending 30 June 2007 is not available.

In the case of the Commonwealth, data could only be provided on the RISs prepared for bills or primary legislation. The OBPR, which is responsible for monitoring the Commonwealth Government for compliance with their RIS requirements, reported that for legislative instruments, 95 per cent of the RISs prepared complied with the requirements. Data on the proportion of subordinate rules subject to a RIS was not available. Further, one RIS was prepared for other legislative instruments, and two RISs were prepared for quasi-regulations at the Commonwealth level.

Requirement for regulatory impact analysis to be made available to stakeholders

Where jurisdictions have a requirement for regulatory impact analysis, the Commission sought information on whether there is also a requirement for it to be made available to stakeholders (table 4.4). In general, a transparent process is likely to place more pressure on governments to ensure that the analysis undertaken is rigorous. This can be expected to contribute to higher quality analysis and decision making. The latest COAG guidelines refer to the need to establish mechanisms to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made, and to the public as soon as possible (COAG 2007c).

Table 4.4 **Requirement for regulatory analysis to be made available to stakeholders for comment or consultation**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Bills	×	×	×	✓	×	✓	✓	×	×	✓
Statutory rules	×	✓	✓	✓	×	✓	✓	×	×	✓
Other legislative instruments	×	n.ap	n.ap	n.ap	×	✓	n.ap	×	×	✓
Quasi-regulations	×	n.ap	n.ap	n.ap	×	✓	n.ap	×	×	✓

n.ap not applicable.

Source: Survey responses from Australian, state and territory governments (unpublished).

Where there is a requirement for regulatory impact analysis, there is no uniform approach to requiring that regulatory impact analysis be made available to stakeholders for comment. Only Western Australia and COAG require analysis to be made available to stakeholders for all types of regulation.

The table only refers to the existence of a requirement, and does not necessarily reflect the practice of governments or the level of public discussion and debate on regulatory proposals.

Requirement for final regulatory analysis to be made public

Table 4.5 sets out the responses from the jurisdictions to a question asking whether there is a requirement for the finalised regulatory impact analysis to be made public.

Table 4.5 **Requirement for final regulatory analysis to be made public**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Bills	✓	×	×	✓	×	×	✓	×	×	×
Statutory rules	✓	✓	✓	✓	×	×	✓	×	✓	×
Other legislative instruments	✓	n.ap	n.ap	n.ap	×	×	n.ap	×	✓	×
Quasi-regulations	✓	n.ap	n.ap	n.ap	×	×	n.ap	×	×	×

n.ap not applicable.

Source: Survey responses from Australian, state and territory governments (unpublished).

As with the previous question there is no uniform approach to making the final regulatory impact analysis publicly available. The Commonwealth Government, Tasmanian and Queensland governments require all final regulation impact analysis to be made public. The other jurisdictions have more limited, or no, requirements. Although Western Australia does not require the final analysis to be made public, table 4.4 indicates that it has a requirement for analysis to be made available to stakeholders for comment or consultation.

Assessment and public reporting of regulatory analysis

The previous two questions shed some light on the transparency of regulation impact analysis processes. Another feature which can enhance the robustness of regulatory impact analysis is to require that the adequacy of the analysis be independently assessed. Review of the analysis by a separate body will help to ensure that the analysis has been conducted rigorously.

The value of the review will be enhanced where the body conducting the review is independent of the department or agency developing and promoting the regulatory

proposal. The degree of independence of the bodies which assess the adequacy of a RIS varies between jurisdictions, and is difficult to measure objectively. The Commission therefore sought data on whether those bodies were characterised by statutory independence. The bodies that exist are included in box 4.4.

Box 4.4 Bodies which assess compliance with regulation impact analysis requirements

Commonwealth

Office of Best Practice Regulation

States and Territories

New South Wales — Better Regulation Office

Victoria — Victorian Competition and Efficiency Commission

Queensland — Queensland Office for Regulatory Efficiency

South Australia — representatives from the Departments of Premier and Cabinet; Trade and Economic Development; Families and Communities; and the Environment and Conservation portfolio.

Western Australia — Department of Treasury and Finance

Tasmania — Economic Reform Unit within the Department of Treasury and Finance

Northern Territory — Competition Impact Analysis Unit within the Northern Territory Treasury

ACT — Regulation Policy Unit within the Department of Treasury

Source: OBPR (2007).

The Commission asked each jurisdiction about the mechanisms for the assessment and public reporting on compliance with regulation impact analysis requirements (table 4.6).

Table 4.6 Assessment and public reporting of regulatory analysis
As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Body to assess compliance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Independence under statute	✓[a]	×	×	×	×	×	×	×	×	✓[a]
Body to publicly report compliance	✓	✓	✓	×	×	×	×	×	×	✓
Reporting body's independence under statute	✓[a]	×	×	n.ap	n.ap	n.ap	n.ap	n.ap	n.ap	✓[a]

n.ap not applicable. [a] At 30 June 2007, the OBPR shared the statutory independence of the Productivity Commission. It is now part of the Department of Finance and Deregulation.

Source: Survey responses from Australian, state and territory governments (unpublished).

The Commonwealth, state and territory governments and COAG have a body to assess compliance with their requirement for mandatory regulatory impact analysis. Following the recent move of the OBPR to an executive agency, none of the bodies assessing compliance has statutory independence (that is, it is established and operational under an Act of Parliament). The Commonwealth Government's Minister for Finance and Deregulation has, however, stated:

> The (Commonwealth) government has put in place procedures to ensure that neither ministers nor their staff can seek to intervene in or influence the OBPR's deliberations. (Tanner 2008)

Operational separation may be achieved through mechanisms other than legislation. For example, the Commissioners of the VCEC are required by an Order-in-Council to act independently when providing assessments to the Victorian Government.

The public reporting of compliance with regulatory impact analysis requirements is also limited, with only four jurisdictions publicly reporting on compliance. Only one of those bodies which publicly reports (the OBPR) had statutory independence on 30 June 2007.

Requirements for measurement of compliance costs

In 2006, COAG also agreed that governments would establish arrangements for better measurement of compliance costs flowing from new and amended regulations (COAG 2006b). Quantitative information about the level of compliance costs associated with a regulatory proposal can be an important input to the decision making process. Where this information is available, it is likely to lead to better decision making.

The Commission sought data on the extent to which jurisdictions have requirements that compliance costs of proposed regulations be quantified (table 4.7). In some jurisdictions this process may form part of a broader analysis of the impact of a proposed regulation, while in others it may be a separate or distinct requirement. It should be noted that although a jurisdiction may not have a general requirement for the quantification of compliance costs there may be such a requirement for specific areas of regulation.

Most jurisdictions require the quantitative measurement of compliance costs in assessing bills and statutory rules, whereas about half require quantification for other legislative instruments and quasi legislation.

Table 4.7 **Requirement for quantitative measurement of compliance costs**
As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Bills	✓	✓	✓	×	✓	×	✓	✓	✓	×
Statutory rules	✓	✓	✓	✓	✓	×	✓	✓	✓	×
Other legislative instruments	✓	×	✓	×	✓	×	×	✓	✓	×
Quasi-regulation	✓	×	✓	×	✓	×	×	✓	✓	×

Source: Survey responses from Australian, state and territory governments (unpublished).

It should be noted that for some jurisdictions, this requirement has changed since the time period covered by this report. For example, before significant quasi-legislation can be considered by the New South Wales Cabinet or Executive Council, a quantitative measurement of compliance costs must be completed as part of a Better Regulation Statement.

If the requirement for regulatory impact assessment (table 4.2) and the requirement for quantitative measurement of compliance costs (table 4.7) are considered together, there are few areas of regulation which escape some level of scrutiny. Only some legislative instruments and quasi regulation in New South Wales, Queensland and Tasmania escape coverage by one or both of these requirements.

Regulatory proposals with business compliance cost estimates

In order to gain a better indication of how frequently quantitative estimates of business compliance costs are being prepared, the Commission asked jurisdictions to indicate the proportion of regulatory proposals for which estimates of business compliance costs had actually been prepared (table 4.8).

Table 4.8 **Percentage of new regulatory proposals with quantitative estimates of business compliance cost**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*[a]	*WA*	*Tas*	*NT*	*ACT*
Bills	100	n.av	9	0	24	0	n.av	7	n.av
Statutory rules	n.av	n.av	17	4	2	0	n.av	12	n.av
Other legislative instruments	n.av	n.av	0	0	25	0	n.av	0	n.av
Quasi-regulations	n.av	n.av	0	0	n.av	0	n.av	0	n.av

n.av not available. Data for COAG proposals is unavailable as a count of these proposals is not maintained by any jurisdiction. [a] South Australia data only applies to regulatory proposals that proceed to cabinet.

Source: Survey responses from Australian, state and territory governments (unpublished).

The reported proportion of proposals with compliance cost estimates is highly variable. The Commonwealth Government reported that all regulatory proposals in bills were being costed. Other jurisdictions reported proportions varying from 0-24 per cent for bills. Only South Australia advised that some other legislative instruments were being costed.

As the New South Wales Better Regulation Office's gatekeeping requirements did not commence until 1 June 2008, data is not available on the number or proportion of regulatory proposals subject to quantitative compliance cost analysis during the relevant time period. A number of other jurisdictions did not have data on the number of statutory rules, other legislative instruments and quasi-regulations enacted, making the calculation of the proportion for which quantitative estimates of compliance costs were prepared impossible. Tasmania indicated that no central agency oversees the development of regulatory proposals and, thus, information on this indicator was not available. The Commonwealth OBPR advised that during the time period, quantitative estimates of compliance costs were prepared for eight statutory rules, and one other legislative instrument, but not for any quasi-regulations. The reported figures may not include instances where compliance cost information has been included in other processes although not specifically mandated, such as the Public Benefits Test in Queensland.

Purpose of quantitative business compliance cost estimates

Jurisdictions provided information on whether business compliance cost estimates were used as a basis for public consultation, and whether they were being provided to decision makers (table 4.9). These processes would allow stakeholders to comment of whether they feel that the compliance cost estimate accurately reflects the financial impact of a proposal, and assist the final decision maker in determining whether to proceed with the proposal.

Table 4.9 **Quantitative business compliance cost estimates**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Required for:										
public consultation	×	×	×	✓	×	n.ap	✓	✓	×	n.ap
final decision maker	✓	✓	✓	✓	✓	n.ap	✓	✓	✓	n.ap

n.ap not applicable.

Source: Survey returns from Australian, state and territory governments (unpublished).

Most jurisdictions reported that compliance cost estimates are provided to the decision maker. However, only a few jurisdictions reported using them for public consultation.

Nature of assessment of quantitative compliance cost measurement

As with other forms of regulatory impact analysis, the usefulness of estimates of compliance costs depends on their reliability. One method of enhancing the reliability of estimates is to subject them to scrutiny by a body operating at arms-length from the department or agency concerned. Table 4.10 shows that at 30 June 2007 every jurisdiction had a designated body to assess estimates of compliance costs, though only one had statutory independence.

Table 4.10 **Assessment of quantitative compliance cost measurement**
As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Designated body	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Independence under statute	✓[a]	×	×	×	×	×	×	×	×	✓[a]

a At 30 June 2007, the OBPR shared the statutory independence of the Productivity Commission. It is now part of the Department of Finance and Deregulation.

Source: Survey responses from Australian, state and territory governments (unpublished).

Transparency of compliance cost estimates

The transparency of the regulation making process can contribute to enhancing the quality of regulation. The Commission sought data from jurisdictions on whether there is a requirement for compliance cost estimates to be made public prior to the enactment of the regulation (table 4.11).

Table 4.11 **Percentage of new regulatory proposals where quantitative business compliance cost estimates were made public prior to enactment**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*[a]	*NT*	*ACT*
Bills	n.av	n.av	0	0	0	0	0	0	0
Statutory rules	n.av	n.av	100	1–49	0	0	0	0	0
Other legislative instruments	n.av	n.av	0	0	0	0	0	0	0
Quasi-regulations	n.av	n.av	0	0	0	0	0	0	0

n.av not available. **a** Quantitative estimates of compliance costs were only made public if included in a RIS.

Source: Survey responses from Australian, state and territory governments (unpublished).

Only Victoria and Queensland indicated that compliance cost estimates were made public prior to the enactment of the regulation. Neither New South Wales nor the Commonwealth governments kept data on whether quantitative compliance cost estimates were made available to the public. Moreover, the reported figures for other jurisdictions may not include instances where compliance cost information has been included in other documents such as issues papers or discussion papers.

4.3 Gatekeeping

The above data give a general indication of the extent to which regulatory proposals are analysed, and processes used which should contribute to more rigorous and transparent analysis. The effectiveness of these processes are likely to be enhanced where mechanisms (so-called 'gatekeeping') are in place to assess and report on compliance and ensure that proposals satisfy these requirements before they proceed (Regulation Taskforce 2006). To cast some light on this issue, the Commission asked whether there was a mechanism to prevent regulatory proposals from proceeding to a final decision if they do not comply with the requirements for analysis (table 4.12).

Table 4.12 **Existence of gatekeeping mechanisms**
As at 30 June 2007

Mechanisms to prevent non-compliant proposals proceeding	*Cwlth*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
For proposals not compliant with									
regulatory impact assessment	✓	✓	✓	✓	✓	×	✓	✓	✓
quantitative compliance cost measurement	✓	✓	✓	✓	✓	×	✓	×	✓

Source: Survey responses from Australian, state and territory governments (unpublished).

It should be noted that jurisdictions often also have in place mechanisms for notifying decision makers (generally ministers or parliament) when the analysis of a proposal is deficient or non existent, while still allowing the proposal to proceed. This is consistent with the notion that gatekeeping mechanisms act as a 'check' on the quality of analysis that the public service is providing to elected officials. Parliaments and ministers retain the discretion to make policy decisions and are accountable for their decisions.

Most jurisdictions indicated that they have mechanisms which aim to prevent regulatory proposals proceeding which do not comply with regulatory assessment processes. Seven of the jurisdictions indicated that they had mechanisms in place in relation to compliance cost measurement.

Jurisdictions that have regulatory impact analysis requirements embedded in acts providing for subordinate legislation (such as in Victoria) may also provide for oversight of the RIS process by a parliamentary committee. For example, in Victoria the Scrutiny of Acts and Regulations Committee oversees the Victorian RIS process (in conjunction with the VCEC), and can recommend to parliament that a subordinate rule be disallowed if due process has not been followed.

4.4 Plain English drafting

In its principles of good regulatory design, COAG has stipulated that regulation should be drafted in plain language to improve clarity and simplicity, reduce uncertainty, and enable the public to understand the implications of regulations (COAG 2004, COAG 2007c). To gain an indication of the extent to which this principle was being adopted, the Commission asked jurisdictions whether they had a policy or guidelines encouraging the use of plain English drafting, and whether there was an independent process for assessing whether those requirements were being met (table 4.13).

Table 4.13 **Use and assessment of plain English drafting**
As at 30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Plain English drafting policy	✓	✓	✓	✓	✓	✓	✓	×	✓
Independent assessment of plain English drafting	✓	✓	×	✓	✓	×	✓	×	✓

Source: Survey responses from Australian, state and territory governments (unpublished).

Only the Northern Territory indicated that it does not have a policy or guidelines on plain English drafting. Most jurisdictions also have a process for independently assessing compliance with those requirements.

4.5 Ex-post review of regulation

In its principles of good regulatory design, COAG called for the periodic review of regulation. It suggested this be done at least every 10 years and could be achieved by incorporating sunset provisions into regulations (COAG 2004). This theme is repeated in COAG's more recent guide for ministerial councils (COAG 2007c). The aim of reviewing existing regulations is to ensure that they remain relevant and effective over time. All governments have committed to annually reviewing existing regulation with a view to encouraging competition and efficiency, streamlining the

regulatory environment and reducing the regulatory burden on business arising from the stock of regulation (COAG 2007c).

Use of sunset provisions

In order to gauge the extent to which new regulations are subject to review, the Commission asked jurisdictions to indicate what proportion of new regulations were required to include sunset provisions (table 4.14). The Regulation Taskforce (2006) noted that sunset provisions provide a useful housekeeping mechanism for getting rid of redundant or ineffective regulation. However, it also noted that it was questionable whether such provisions are appropriate for significant regulations that are vital to facilitating market transactions or where policy certainty is important, such as regulations applying to financial markets, or supporting the tax and social welfare systems.

Table 4.14 **Requirement for sunset provisions contained in new regulations (per cent)**
1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Bills	0	0	0	0	0	0	0	0	0
Statutory rules	[a]	50–99	100	100	50–99	0	100	0	0
Other legislative instruments	[a]	0	0	0	0	0	0	0	0
Quasi-regulations	0	0	0	0	0	0	0	0	0

[a] The *Legislative Instruments Act 2003* (Cwlth) established a single regime for the sunsetting of legislative instruments. Under the Act, legislative instruments automatically cease 10 years after they commence or are required to be registered. 2013 will be the first year that Commonwealth legislative instruments will cease under these sunsetting provisions.

Source: Survey responses from Australian, state and territory governments (unpublished).

None of the jurisdictions reported that sunset provisions were required in primary legislation during the period in question. The general requirement for the use of sunset provisions appears limited to statutory rules in five jurisdictions, although other regulations may be subject to this requirement in specific instances.

The New South Wales government reported that under its staged repeal program, most regulations are subject to automatic repeal after five years, a provision that has a similar effect to sunsetting provisions.

Requirements for periodic review of legislation

The use of sunset provisions is not the only approach to ensuring systematic review of regulations. In some cases the need for review is specified within the legislation.

Some regulations are subject to other ongoing requirements for periodic review of regulation (table 4.15).

Table 4.15 **Ongoing requirement for periodic review of regulation (per cent)**

1 July 2006–30 June 2007

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*[a]	*NT*	*ACT*
Bills	0	50–99	100	0	50–99	1–49	0	1–49	n.av
Statutory rules	0	50–99	100	0	50–99	1–49	100	1–49	n.av
Other legislative instruments	0	0	1–49	0	0	1–49	0	1–49	n.av
Quasi-regulations	0	0	1–49	0	0	1–49	0	1–49	n.av

n.av not available. [a] Some primary legislation may contain review requirements and Fishery Management Plans are required to be reviewed five years after being made.

Source: Survey responses from Australian, state and territory governments (unpublished).

Requirements for the periodic review of regulation are more varied and it should be noted that there may be periodic review requirements for some specific regulations which have not been captured in the responses reported above. The Queensland government advised that under the Legislative Review Program, it has committed to undertaking desktop reviews of all primary legislation originally reviewed in 1997 (under the Competition Principles Agreement), with a view to determining whether the original rationale for any restrictions on competition remain.

In some jurisdictions, the requirement to have sunsetting provisions within legislation or statutory rules provides the impetus for a review of those regulatory instruments. For example, the Queensland *Statutory Instruments Act 1992* (Qld) provides that a key objective of the expiry provisions for statutory rules is to provide a mechanism for instigating a review of the instrument to ensure its continued relevance, effectiveness and efficiency.

5 Indicators of regulator structure and activity

This chapter reports on features of business regulators which reflect the extent of government efforts to regulate business activity. The extent to which engagement with regulators imposes compliance costs on businesses is one aspect of the overall regulatory burden. The indicators presented measure some of the broad features of the bodies responsible for regulating some aspect of business activity at the Commonwealth, state and territory levels of government. It examines:

- the number of business regulators
- characteristics of regulators
- activities of regulators.

Unless otherwise indicated, the data are derived from questionnaires completed for the Commission by the Commonwealth Government, each state and territory government and business regulators. Further information on these questionnaires is provided in appendix B.

The Commission received responses to its *Business Regulator Questionnaire 2006-07* from most of the regulators in each jurisdiction. However, in considering the information which follows, readers should be aware that not every business regulator responded, and some regulators did not provide data in response to every question. Appendix A contains a list of the business regulators who returned questionnaires to the Commission. Appendix B contains an outline of the process used to conduct the survey and a table showing the number of regulators in each jurisdiction who provided a response in relation to the information reported in each table or figure.

5.1 Number of business regulators

The usefulness of the measure as an indicator

The number of business regulators in each jurisdiction provides an indication of the number of regulatory bodies with which businesses in each jurisdiction may have to interact.

The regulatory burden which might be imposed on business need not be directly related to the number of regulators they deal with. While it might be expected that businesses would benefit from dealing with a smaller number of regulators, this study does not contain any data which supports or verifies that conclusion. A jurisdiction with fewer regulatory bodies is not necessarily performing better than one with more.

However, it is safe to assume that what matters to businesses is the number and quality of its interactions with business regulators the accessibility and value of information provided by the regulator, the timeliness with which it deals with business issues and other measures of the quality of business interactions with government regulators. The quality of the interaction between regulators and business is considered in chapter 6.

Estimating the number of business regulators

The Commission asked jurisdictions to identify the number and type of bodies 'whose activities include regulating some aspect of business activity'. In practice many government instrumentalities affect both the activities of businesses and other parties, and it is not always easy to categorise a particular activity as regulatory, or a particular organisation as a business regulator. Within a government department there may be several separate branches, offices or agencies with regulatory functions. In reporting the number of regulators, jurisdictions may apply different interpretations to determining which of those branches, offices or agencies should be identified as a separate regulator, or counted as part of the larger department.

The data on business regulators reported in table 5.1 are based on responses to a question used in the Commission's *Regulatory System Questionnaire 2006-07* (listed in table B.1 in appendix B), and not the number of regulators who responded to the *Business Regulator Questionnaire 2006-07* (appendix B describes the individual survey instruments).

The number of business regulators who responded to the *Business Regulator Questionnaire 2006-07* (listed in appendix A) differs from the number of regulators reported by the jurisdictions in table 5.1. There are two reasons for this. First, not all regulators responded to the business regulator survey. Second, in a few cases, individual agencies or divisions within a regulator (such as a government department) provided a separate regulator response to the business regulator survey, whereas jurisdictions reported only the single larger organisation when responding to the regulatory system survey on the number of business regulators.

Within each jurisdiction there are also a number of (non-government) industry self-regulatory bodies. However, these lie outside of the scope of this report.

The reported number of business regulators

Table 5.1 reports on the number and type of business regulators in each state and territory.[1] There is no common model across jurisdictions for the number and type of business regulators, and jurisdictions' results across the categories will depend on their categorisation of a particular regulator. Some jurisdictions have 'super-regulators' with large regulatory budgets and staff numbers, and are responsible for regulating a wide range of business activities. Other jurisdictions have regulators that cover only one policy area and in some cases, only an enforcement or administrative area.

Table 5.1 **Number of business regulators, by type**
As at 30 June 2007

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Government departments, offices and agencies	29	24	22	26	25	13	7	6
Statutory authorities	31	43	71	23	33	27	29	4
Regional or other authorities[a]	13	0	0	0	6	0	0	0
Non-government bodies with mandatory regulatory functions	2	0	0	0	4	0	1	0
Total business regulators	75	67	93	49	68	40	37	10

[a] Does not include local government bodies.

Source: Survey responses from state and territory governments (unpublished).

Jurisdictions regulate business through different numbers of bodies and exhibit different relative use of executive agencies (such as government departments) and independent statutory bodies. For example, Western Australia has 58 regulators

[1] Data provided on the number of Commonwealth regulators was not sufficiently comprehensive to include in the table.

across both of these categories (25 and 33 respectively) while Queensland has 93 regulators (with 22 and 71 respectively). Only New South Wales and Western Australia report having regional or other local authorities.

The number of government departments, offices and agencies which regulate business appears to be broadly similar in jurisdictions of broadly comparable size. Tasmania, the ACT and the Northern Territory have between six and 13 regulators in this category, while New South Wales, Victoria and Queensland have between 22 and 29 regulators of this type.

The number of statutory authorities is less consistent. For example, the Northern Territory has 29 statutory authorities, New South Wales has 31 and Queensland 71. The ACT is unique in having fewer statutory authorities than government departments, offices and agencies.

5.2 Regulator characteristics

The usefulness of the measure as an indicator

The number of regulators a business may have to deal with does not reflect the intensity of the engagement. This may be better reflected by the scale or resources that are applied by the regulator in regulating business. To provide indicators of the intensity of business regulation the study examined the size and scope of activity of the business regulators. The Commission collected data directly from business regulators on their business regulation expenditure and the number of full time equivalent staff engaged in business regulation. Respondents to the business regulator survey are listed in appendix A.

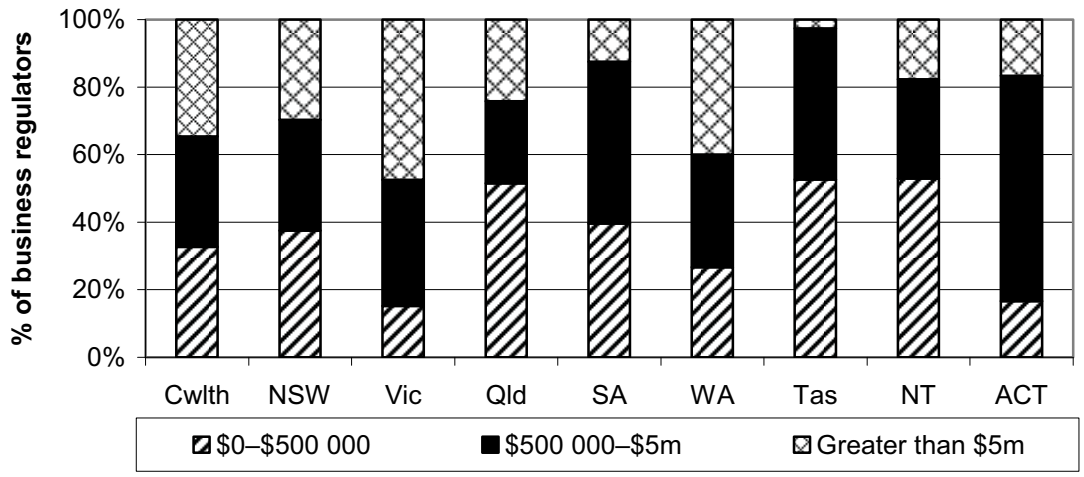
While the sample of business regulators is large and considered representative of the population of regulators in each jurisdiction (see appendix B), it is not a complete population of business regulators. As a result it was not possible to aggregate responses to get an overall estimate of the total level of government effort going into business regulation in each jurisdiction. Nevertheless, this data does cast some light on the relative proportion of small, medium and large regulators in each jurisdiction.

The scale of the business regulators responding to the survey

Scale based on expenditure on business regulation

Figure 5.1 shows the proportion of business regulators in each jurisdiction which fall into the small, medium or large categories according to their expenditure on business regulation. The categories were designed to give an indication of the extent to which responsibility for business regulation is concentrated in a few large regulators or is dispersed across a large number of smaller regulators.

Figure 5.1 **Size of business regulators**
By business regulation expenditure, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

Where a regulator did not provide a response to the question about its business regulation expenditure it has not been included in calculating the proportion of regulators in the different categories.

This data reflects, to some extent, the information contained in table 5.1 which shows the number of regulators reported in each jurisdiction. Those jurisdictions which have a smaller number of regulators, such as Victoria, have a greater proportion of large regulators than jurisdictions, such as New South Wales, with more regulators. Victoria has the greatest concentration of large regulators.

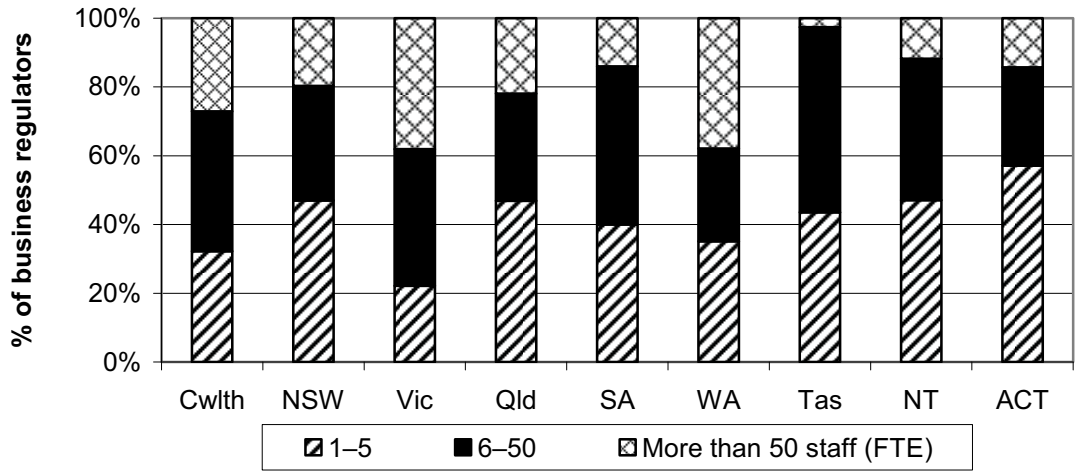
However, there are some variations which are not clearly attributable to size of jurisdiction or number of regulators. Tasmania and the Northern Territory, for example, have a similar number of regulators (40 and 37, respectively) but the Northern Territory has a higher proportion of large regulators.

Scale based on staff numbers

The Commission also gathered data on the number of full-time equivalent staff engaged in business regulation by each regulator. This data can cast some light on the level of regulatory activity by regulators and the relative proportion of small, medium and large regulators in each jurisdiction. Figure 5.2 shows the proportion of small, medium and large regulators based on the number of staff engaged in business regulation. As with the previous figure the categories used by the Commission are designed to give an indication of the extent to which regulatory activity is concentrated among a few large regulators, or dispersed among a large number of smaller regulators. The figure is based only on data from those regulators who responded to the Commission's questionnaire.

Figure 5.2 **Size of business regulators**

By number of full-time equivalent staff, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

Figure 5.2 shows a slightly different pattern to figure 5.1, because of the different way in which the categories are defined. Victoria has a much bigger concentration of large and medium regulators than any other jurisdiction, including the Commonwealth. The Northern Territory is characterised by a bigger proportion of large regulators than Tasmania despite having a smaller and much more widely dispersed population.

The data in both figures includes only the resources devoted to business regulation, not the overall size of the agencies.

Scale by number of regulations for which each regulator was responsible

The Commission also sought information on the number of regulations for which each regulator was responsible (table 5.2), giving an indication of the scope of activity for each regulator in a jurisdiction. However, the Commission did not collect data on the extent to which multiple regulators may have responsibility for administering different parts of the same regulatory instrument. Thus, it is not possible to aggregate the results in table 5.2 to derive a total number of 'business regulatory instruments'.

Table 5.2 **Average number of regulatory instruments administered by business regulators**

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Acts	4	4	2	3	12	8	4	11
Legislative Instruments	7	5	4	7	43	5	86	20
Quasi-regulations	30	13	14	7	19	4	62	7

Source: Survey responses from state and territory governments (unpublished).

The average number of regulations administered by each business regulator is reasonably consistent across most jurisdictions. It reflects the interaction between the number of regulatory instruments in each jurisdiction (table 3.1) and the number of business regulators who responded to the *Business Regulator Questionnaire 2006-07*. Due to incomplete coverage of regulators it was considered impractical to an include an average for the Commonwealth in the table.

5.3 Regulator activity

The usefulness of the measure as an indicator

The quantity of business regulation in Australia can also be benchmarked in terms of the level of contact between business regulators and the businesses they regulate. This is most readily gauged through indicators such as the number of different types of licences, the total number of licences on issue and the total amount of fees and charges collected. While a subset of the interactions between business and the regulators, licences constitute a substantial proportion of the number of engagements that is expected to be relatively constant between jurisdictions, with the possible exception of the Commonwealth. If the sample of regulators responding is representative, the results should be reasonably comparable across jurisdictions.

Fees and charges on the other hand represent a direct cost to businesses. However, the relationship between fees and charges paid to regulators and the cost to business depends on the basis on which those fees are set. This may differ between jurisdictions and regulators. Surprisingly, comparison of the aggregate fees and charges may be more valid than comparisons of single regulators. For example, some regulators will include the cost of title searches in their fees while others will require businesses to apply to other regulatory bodies for these searches. This raises additional difficulties in ensuring like-with-like comparisons, as even apparently similar regulators may have different regulatory scope.

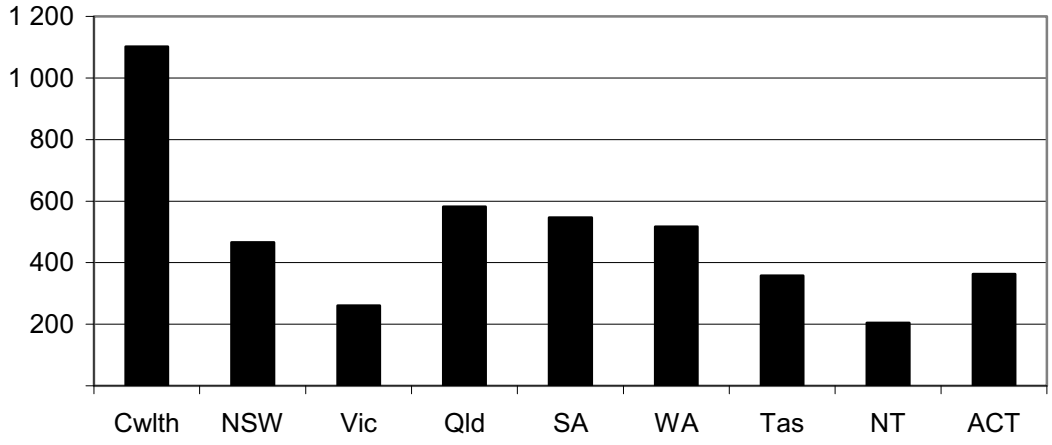
Estimates of the indicators of business regulatory engagement with businesses

The number of types of licences

The Commission collected data from business regulators on the number of different types of licences, permits and registrations they administer (figure 5.3), and the total number of these licences issued (figure 5.4). This data gives a broad indication of how many possible licensing processes businesses might be subject to in each jurisdiction.

Figure 5.3 **Different types of business licences**

Number of different types of licences, permits and registrations administered by jurisdiction, for respondent regulators, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

The data in these charts covers only those regulators from whom the Commission received a response. The figures may also be affected by licensing regimes in some

jurisdictions being structured so as to have a large number of different licence types, while in another jurisdiction the same range of activities might be covered by a single licence type with a range of different conditions or classes. Similarly, regulators in different jurisdictions may have applied different interpretations in deciding what constituted a different type of licence. For these reasons the data are most useful in terms of identifying possible avenues for further investigation.

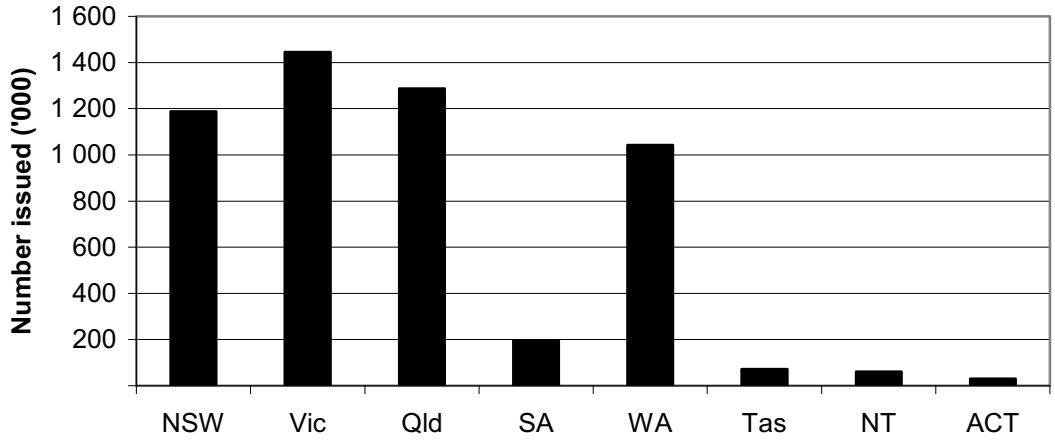
The Commonwealth reported the highest number of different types of business licences, permits and registrations. For all states and territories, the difference between the lowest (Northern Territory) and highest (Queensland) was nearly 400 licence types.

The total number of licences, permits and registrations on issue

The Commission also asked business regulators to provide information on the total number of current licences, permits and registrations in operation on 30 June 2007 (figure 5.4). This gives an indication of the total number of times all businesses in each jurisdiction are interacting with regulators on licensing matters.

Figure 5.4 **Number of business licences in operation**

Total number of licences, permits and registrations in operation, for respondent regulators on 30 June 2007



Data source: Survey responses from state and territory governments (unpublished).

As discussed above, these numbers reflect only the totals from regulators who provided data to the Commission. The data are most useful in terms of identifying possible avenues for further investigation. It should be noted that the data for the ACT in figures 5.3 and 5.4 incorporates licensing activities which are carried out by local governments in other jurisdictions.

Commonwealth Government regulators reported that they had issued a total of approximately 57 million business licences, permits and registrations.

As would be expected, the larger jurisdictions issued more licences than the smaller jurisdictions. But there are some variations within that pattern. Regulators in New South Wales report fewer licences issued than those in Victoria and Queensland while South Australia issued far fewer licences than Western Australia.

Value of licence fees and charges collected

The Commission also asked business regulators to advise it of the total value of licence fees and charges collected between 1 July 2006 and 30 June 2007. However, it was considered that comparisons between jurisdictions would be misleading due to the differing number and composition of regulators responding from each jurisdiction, and the differing approaches taken by jurisdictions to funding regulator activity (eg directly via cost recovery or indirectly via taxation revenue).

6 Indicators of the quality of regulatory administration

Chapter 4 focussed on quality indicators relating to mechanisms for the development and evaluation of regulatory proposals, and the review of existing regulations. However, for businesses, the way in which regulation is administered can be just as important. Good regulation which is poorly administered can create just as great a burden for business as a poorly designed regulation.

This chapter focuses on those regulations that require business to obtain registration, a permit or a licence, before they are able to operate or to undertake some activity. These processes are among the most common forms of interaction between regulators and businesses, and lend themselves to measurement.

Registrations, permits and licences impose a regulatory burden on businesses. They can create delays in business processes, requiring businesses to meet information obligations to obtain the necessary permissions from government. They also take up the time and effort of businesses to gain approval and often require the payment of fees or charges.

This chapter presents indicators of the interactions between business and regulators with respect to applying for and renewing a registration, permit or licence. The indicators reflect the mechanisms adopted by the regulators, which are related to the time businesses require to access information on their regulatory obligations, obtain and complete the required forms, make payments of fees and charges, and seek a review of administrative decisions. A set of measures relating to the elapsed time for processing applications is also provided. This chapter also presents indicators for some aspects of the enforcement of regulations by regulators; namely enforcement strategies, the transparency of those strategies, and the availability of appeal mechanisms. These indicators are intended to provide insight into the 'system wide' characteristics of regulatory administration in each jurisdiction.

The data in this chapter are drawn from information provided by business regulators who responded to relevant questions in the *Business Regulator Questionnaire 2006-07* (box 6.1). The respondents in each jurisdiction are listed in appendix A.

Box 6.1 **Interpreting the figures in this chapter**

As discussed in chapter 2, the Commission attempted to survey all business regulators in Australia, as identified by each individual jurisdiction. Appendix A contains a list of the business regulators who returned surveys to the Commission.

Throughout this chapter, the figures presented for each question in the survey are derived from the responses of only those regulators who responded to the question. The aim of this chapter is to compare and contrast the regulatory activity of each jurisdiction, through their business regulators. The figures in this chapter thus omit those regulators for whom the question did not apply (that is, those that responded 'not applicable'), and those regulators that were not able to, or were unwilling, to provide a response.

As a result, the value of '*n*' (that is, the number of regulators in each jurisdiction who provided a response to each question) is different for each jurisdiction for each question. Appendix B contains a table of the *n* values for each jurisdiction for each table and figure in this report.

In answering the survey questions, regulators were asked to calculate the total number of valid licences, permits and registrations in force on 30 June 2007. In answering questions about their regulatory activities, the business regulators were asked to answer according to the categories 0 per cent, 1 to 49 per cent, 50 to 99 per cent, and 100 per cent in terms of their total stock of licences on issue.

So, for example, in figure 6.1 approximately 10 per cent of Commonwealth regulators who responded to the question indicated that none of the licences they had issued had information available about those licences online. Approximately 7 per cent of the Commonwealth regulators who responded to the question answered that between 1–49 per cent of the licences they had issued had information available online. This method for aggregating individual responses has been used throughout this chapter.

During the course of the study, some jurisdictions queried the comparability of the data, derived as it was from sample populations that differed in number and composition between jurisdictions. To address this issue, the Commission undertook a 'reality check' using responses where it was possible to match regulators in each jurisdiction in similar areas (environmental protection, fair trading, food safety, liquor and gambling, primary industries, and transport). The results from this 'like-with-like' group of regulators were consistent with the results derived from the larger and more diverse sample of regulators (and reported in this chapter). On the basis of this exercise, the Commission is confident that the indicators presented in this chapter provide statistically robust data and benchmarking. (A discussion of how the sample exercise was conducted is in appendix B.)

6.1 Accessing information and lodging forms online

The way in which regulators interact with the businesses they regulate has a significant influence on the burden of regulation on business. The first step in that interaction usually involves businesses seeking information about their obligations, obtaining copies of forms and lodging those forms with the regulator.

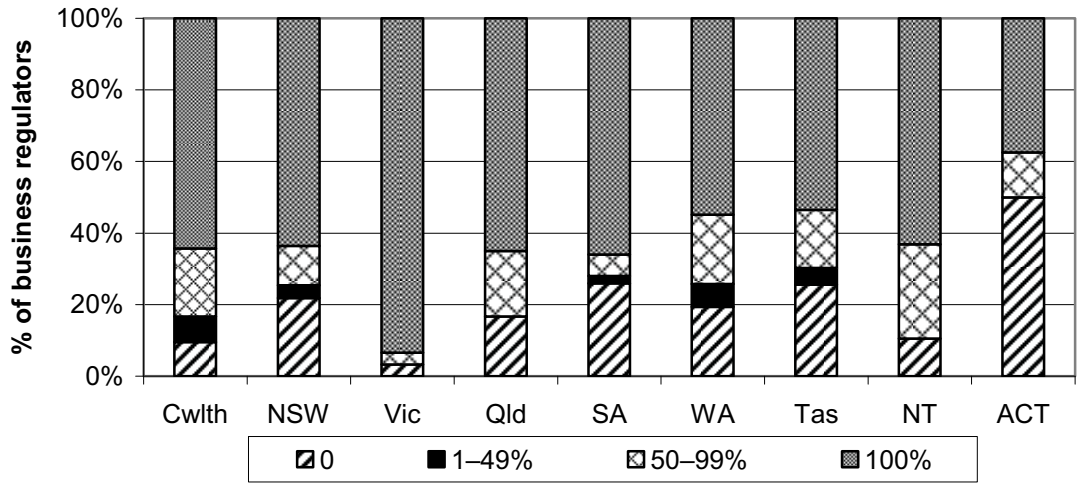
Accessing information online

The internet is the quickest and most accessible source for businesses to obtain information about their obligations under regulations. Where information is available online it can be readily accessed by any business with an internet connection, generally without delay.

Making information available online, and keeping it up-to-date, imposes costs on regulators. It would therefore be expected that regulators would focus on making information available online for the most frequently issued licences. Measuring the proportion of the different types of licences for which information is available online might therefore give a distorted impression of the availability of information, as it may not reflect the experience of businesses generally in being able to obtain the information they most often need. For this reason, the Commission sought this data in terms of the online availability of information for the total number of licences issued (figure 6.1).

Figure 6.1 **Online licence information**

Proportion of licences, permits and registrations issued with online information available, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

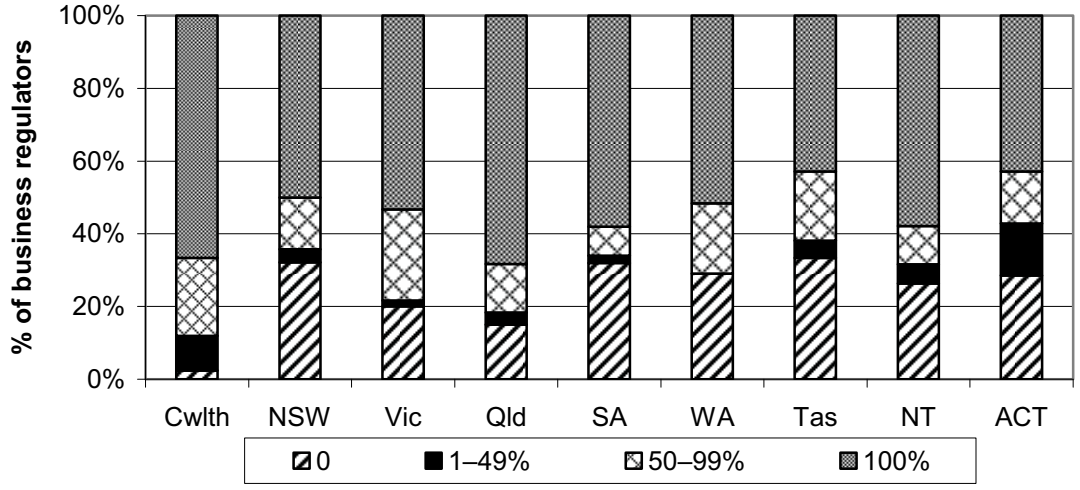
In general, larger jurisdictions appear to have more information about licences available online than smaller jurisdictions. Most of the regulators in each jurisdiction, except the ACT, report having information about all of their licences online. Victoria stands out in that more than 90 per cent of those regulators who responded report having information available online for all of their licensing processes.

Accessing and lodging application forms online

Closely related to the ability to access licensing information online is the ability for businesses to access application forms online (figure 6.2). Regulators were asked to report on the proportion of licences for which online application forms were available based on the total number of licences they issued, not the number of licence categories.

Figure 6.2 **Online application forms**

Proportion of licences, permits and registrations with application forms available online, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

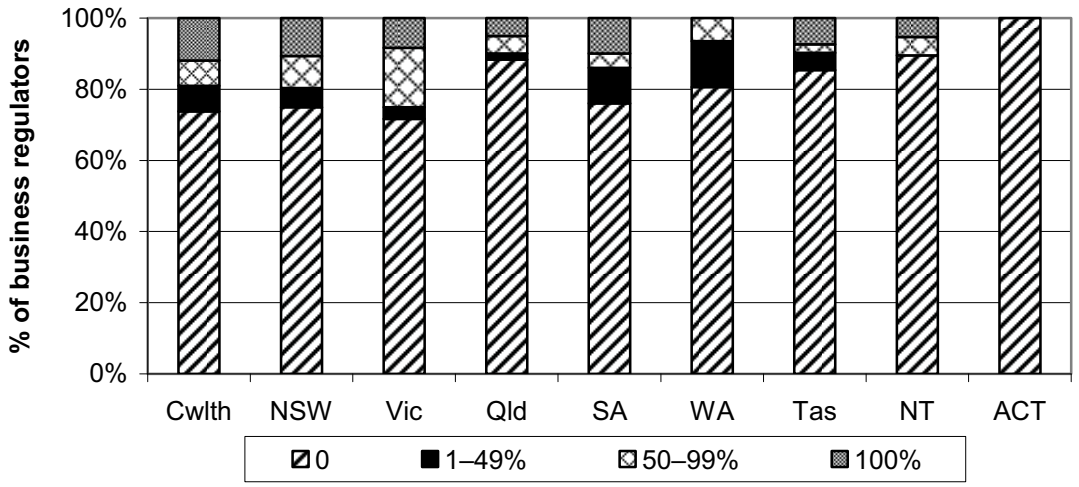
The proportion of application forms available online is generally slightly lower than the availability of information online. Regulators in the larger jurisdictions generally have a greater availability of application forms online than the smaller jurisdictions.

Having obtained an application form, businesses must then complete it and lodge the form with the regulator. Online lodgement of forms is generally the quickest and most convenient means of lodgement.

While it appears that information and application forms are often available online, the data in figure 6.3 show that very few regulators are able to accept applications online. Between 70 per cent and 100 per cent of regulators in each jurisdiction reported that none of their application forms could be submitted online. This may be because the applications must be accompanied by other documents which cannot easily be submitted online.

Figure 6.3 **Online lodgement of application forms**

Proportion of licences, permits and registrations with online submission of application forms, by regulator, 1 July 2006–30 June 2007



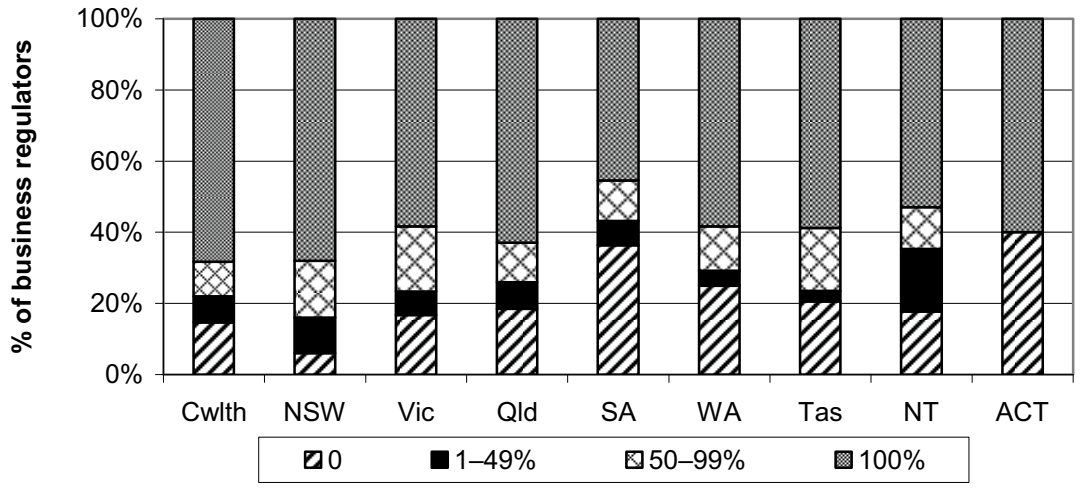
Data source: Survey responses from Australian, state and territory governments (unpublished).

Businesses seeking a licence will want to know what criteria they have to satisfy to be granted a licence and whether their application is likely to be successful. Having ready access to information about the criteria used in assessing applications will assist businesses.

The Commission asked regulators about the proportion of licences on issue for which decision criteria were publicly available (figure 6.4). In some cases regulators do not administer a licensing process, or there are no applicable decision criteria as all applications are automatically registered or approved. The data below therefore excludes those regulators who responded by indicating that the question was not applicable.

Figure 6.4 **Criteria for licence assessment online**

Proportion of licences, permits and registrations with application assessment criteria available online, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

The information supplied by regulators shows no clear pattern across jurisdictions, although the larger state/territory jurisdictions are generally more likely to have application assessment criteria available online.

Updating information and renewing licences online

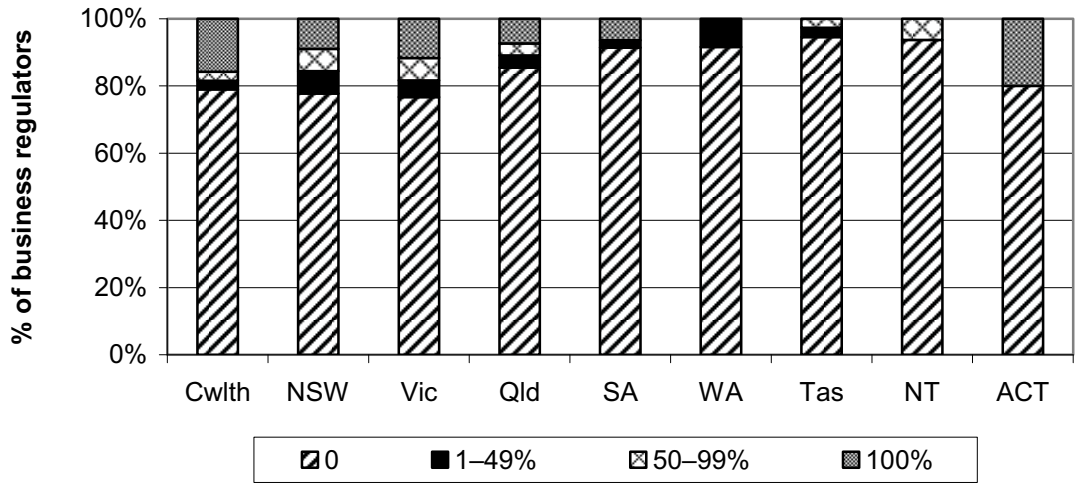
Businesses which have been issued with a licence may need to update their details. For many businesses the fastest and most convenient way of doing this is online. The Commission asked regulators about the proportion of licences on issue for which details can be updated online by the licensee (figure 6.5).

In some cases regulators do not administer a licensing process, or there may be no need for businesses to update details. The data below therefore excludes those regulators who responded by indicating that the question was not applicable.

The data indicates that few regulators have facilities which will allow licensees to update details online.

Figure 6.5 **Updating business details online**

Proportion of licences, permits and registrations with online update of business details, by regulator, 1 July 2006–30 June 2007

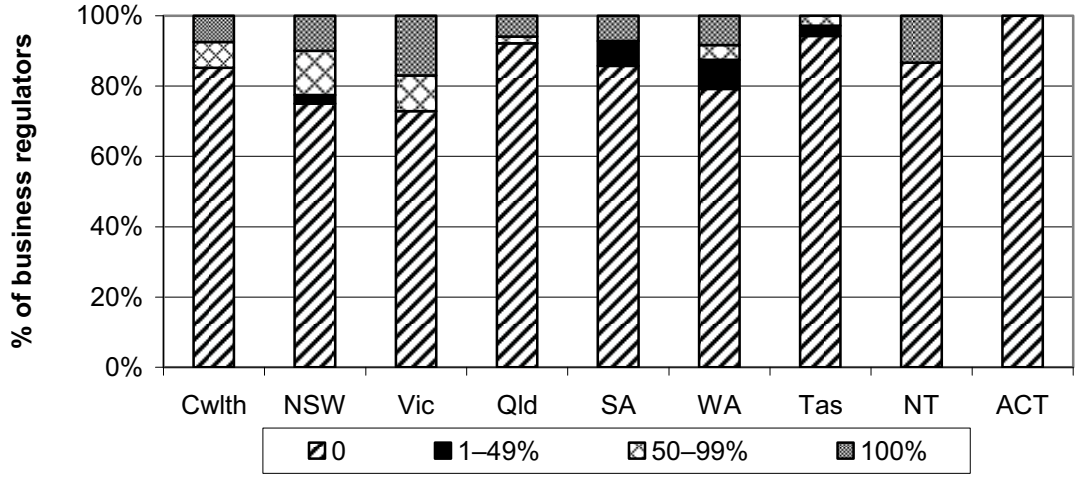


Data source: Survey responses from Australian, state and territory governments (unpublished).

Another point of contact between regulators and business occurs when licences are renewed. The Commission asked business regulators what proportion of licences (as a proportion of total number of licences on issue) businesses can renew online (figure 6.6).

Figure 6.6 **Renewing licences online**

Proportion of licences, permits and registrations with online renewal, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

The survey responses indicate that few regulators have facilities which allow licences to be renewed online. The larger state/territory jurisdictions (New South Wales and Victoria) are more likely to have online renewal facilities.

Comparing figure 6.3 with figure 6.6 shows that business regulators across all jurisdictions have reported a lower availability of online renewal of licences, permits and registrations than online lodgement of initial applications. A reason for this may be that it is more cost effective to introduce online systems for initial applications, and systems for additional activities such as processing renewals and online payments may become available at a later date. However, it could also be that it is technologically easier to establish online application systems where the regulator can collect the relevant details from the new business, than it is to build systems capable of processing renewals, where this requires a complete database of licences on issue.

6.2 Fees and charges

Another area of interaction between business and regulators is the setting and collection of fees and charges. This section explores how those charges are set and collected.

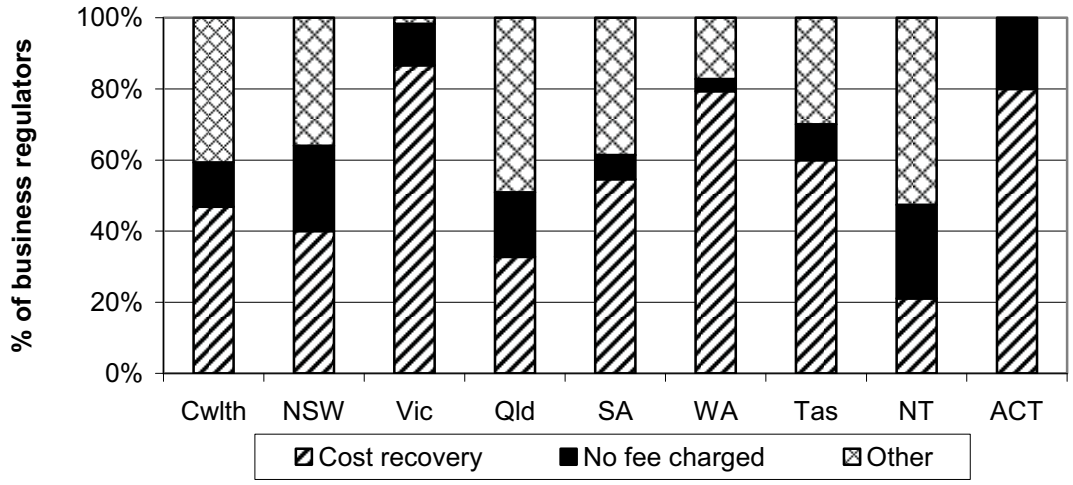
Basis for setting fees and charges

The Commission asked regulators about the predominant basis on which fees and charges were set (figure 6.7).

Many regulators who responded to the Commission's questionnaire did not charge fees in relation to licence processes, although jurisdictions showed considerable variation in this regard. For example, over 80 per cent of regulators in Victoria reported that they have in place cost recovery arrangements when setting fees and charges, while this was so for less than 25 per cent in the Northern Territory.

Figure 6.7 **Setting licence fees**

Predominant basis for setting licence, permit and registration fees, by regulator, 1 July 2006–30 June 2007



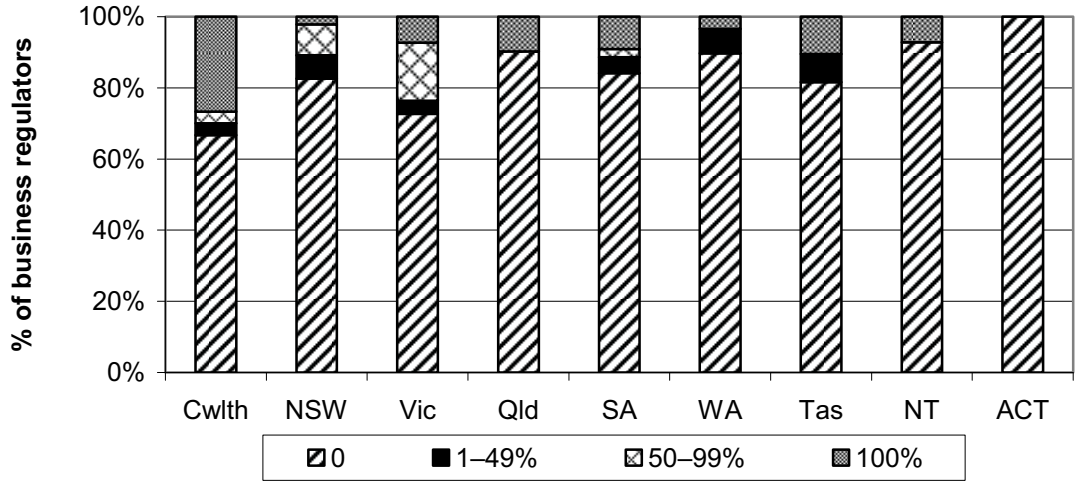
Data source: Survey responses from Australian, state and territory governments (unpublished).

Online payment of fees and charges

Another quality indicator is the extent to which fees and charges can be paid online (figure 6.8).

Figure 6.8 **Online payment of application fees**

Proportion of licences, permits and registrations with online payment of application fees, by regulator, 1 July 2006–30 June 2007



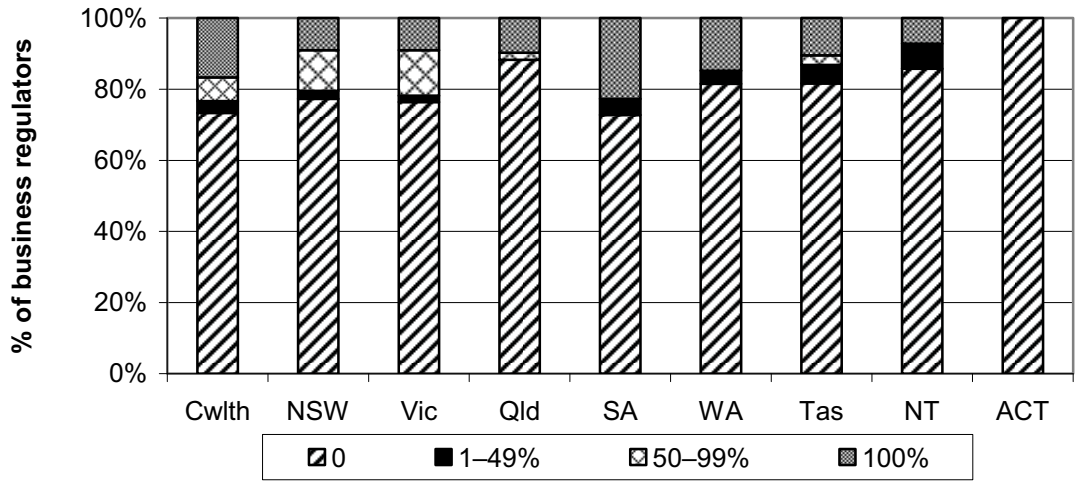
Data source: Survey responses from Australian, state and territory governments (unpublished).

In every jurisdiction, 65 per cent or more of regulators report that they are unable to accept payment of application fees online. Regulators in Victoria reported the most extensive availability of online payment for application fees, while in the ACT no regulators reported that payments can be made online.

The ability to pay renewal fees and charges online is another feature which relates to the ease with which businesses can interact with regulators (figure 6.9).

Figure 6.9 **Online payment of renewal fees**

Proportion of licences, permits and registrations with online payment of renewal fees, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

The most noticeable feature of this data is that in every jurisdiction over 70 per cent or more of regulators report that they are unable to accept payment of renewal fees online. Regulators in South Australia report having the most extensive availability of online payments while in the ACT no regulators reported being able to accept payment online.

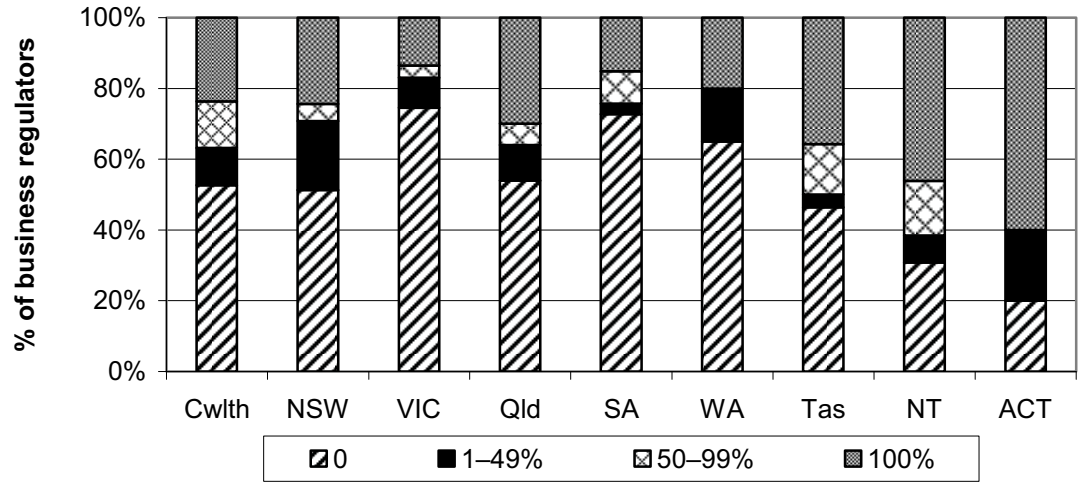
6.3 Timeliness of response

Businesses frequently need to complete a licence, permit or registration before they can lawfully carry on some aspect of their business. If there are delays in having applications processed, businesses may suffer losses because they are unable to operate or carry out particular operations while awaiting approval. The Commission sought data from business regulators in relation to the time taken to process business licences, permits and registrations.

Some regulations specify a time limit for processing and approving, or rejecting, an application. In some cases an application is automatically deemed to be approved if it is not rejected within a specified time limit. These provisions assist businesses by giving them some certainty about the timeframe for regulatory processes. The Commission asked regulators to indicate what proportion of applications for licences issued by them, in terms of the number of licences issued, had a legally binding time limit for processing (figure 6.10).

Figure 6.10 **Legally binding time limits**

Proportion of licences, permits and registrations with legally binding processing time limit, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

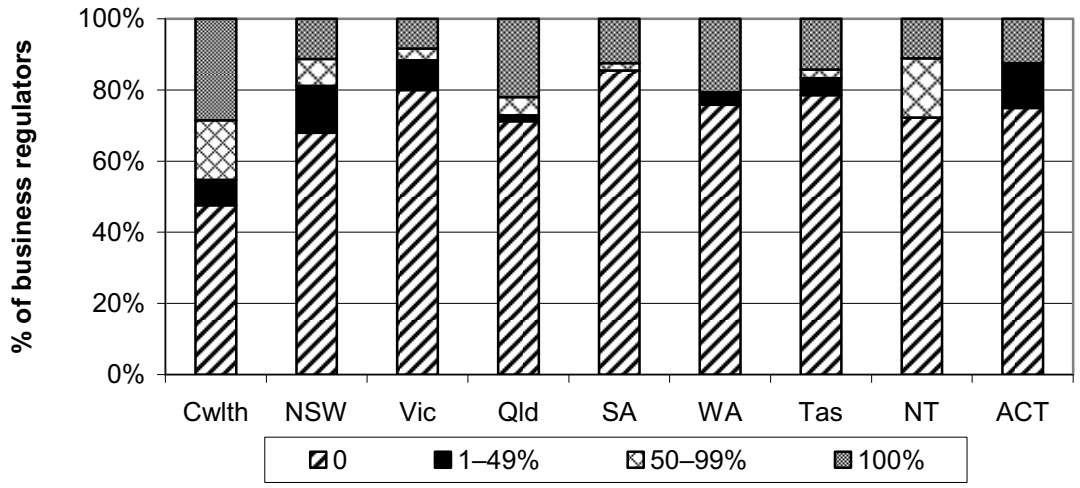
The responses by regulators show a wide diversity across jurisdictions. In the ACT, 60 per cent of regulators indicated that all their processes were subject to time limits while in Victoria this figure was approximately 10 per cent.

However, while time limits are likely to promote the timely processing of applications, it does not necessarily follow that their absence leads to slower processing of applications. It should also be noted that although the Commission collected this data from the regulators who administer these regulations, they are not usually responsible for making these regulations.

Although regulators do not usually control the imposition of legally binding processing times, they are in a position to provide guidance to businesses by publicly setting target times for their own performance (figure 6.11).

Figure 6.11 **Target times for processing**

Proportion of licences, permits and registrations with publicly identified 'target time period' for processing, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

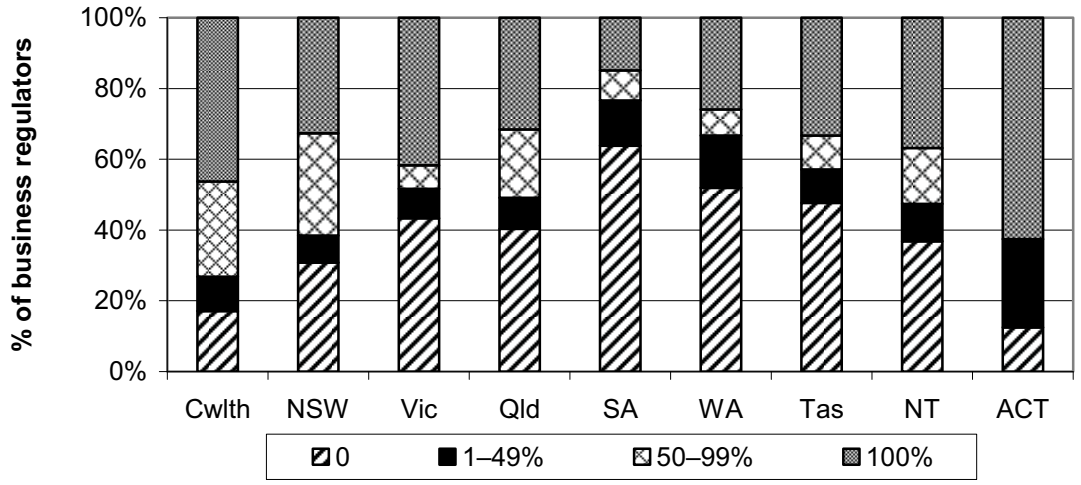
The proportion of regulators which publicly identify target times for processing applications is low across all jurisdictions. Commonwealth Government regulators report the highest levels, but approximately 70 per cent of them report that they do not publicly identify target times for all of their processes.

Another method used to provide information to applicants is to advise them of the expected processing times for applications (figure 6.12).

The data provided by regulators show a wide variation across jurisdictions. The ACT stands out as the jurisdiction where regulators are most likely to advise businesses of expected processing times.

Figure 6.12 **Advising businesses of expected processing times**

Proportion of licences, permits and registrations advising businesses of expected processing time, by regulator, 1 July 2006–30 June 2007

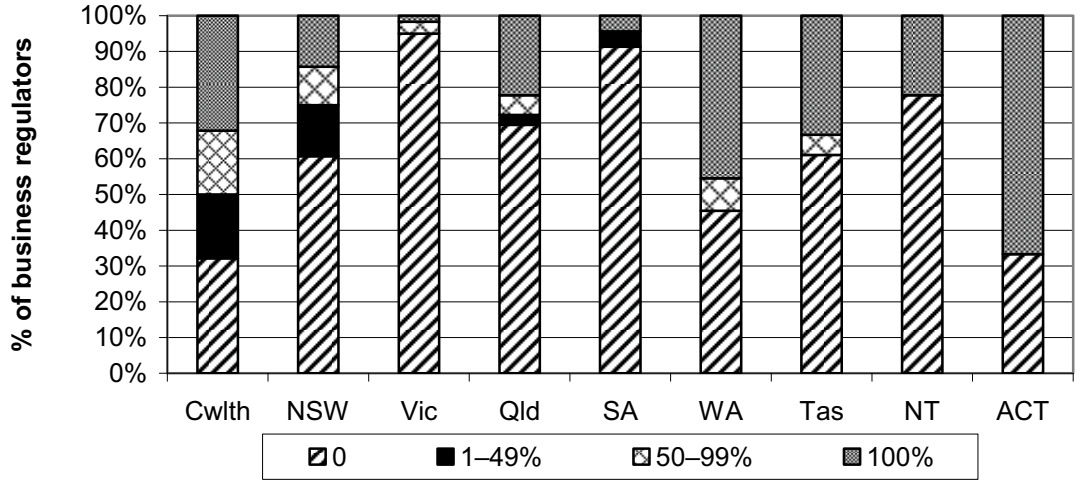


Data source: Survey responses from Australian, state and territory governments (unpublished).

A different aspect of this issue is whether regulators publicly report on their performance against targets (figure 6.13). Public reporting provides an opportunity for policy makers, and the public, to hold regulators accountable for their performance in administering regulations.

Figure 6.13 **Public reporting of processing times**

Proportion of licences, permits and registrations with public reporting against 'target processing times', by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

The proportion of regulators which publicly report against target processing times varies across jurisdictions. The data suggest regulators in the smaller jurisdictions are more likely to report against targets than those in the larger jurisdictions. Western Australia and the ACT have higher rates of reporting against targets than other jurisdictions.

Further, comparing figure 6.13 to figure 6.10 that public reporting against target processing times could be associated with having a legally binding processing time for applications. Essentially, those jurisdictions with stronger administrative processes (a legally binding processing time limit) might be more likely to have stronger transparency processes as well.

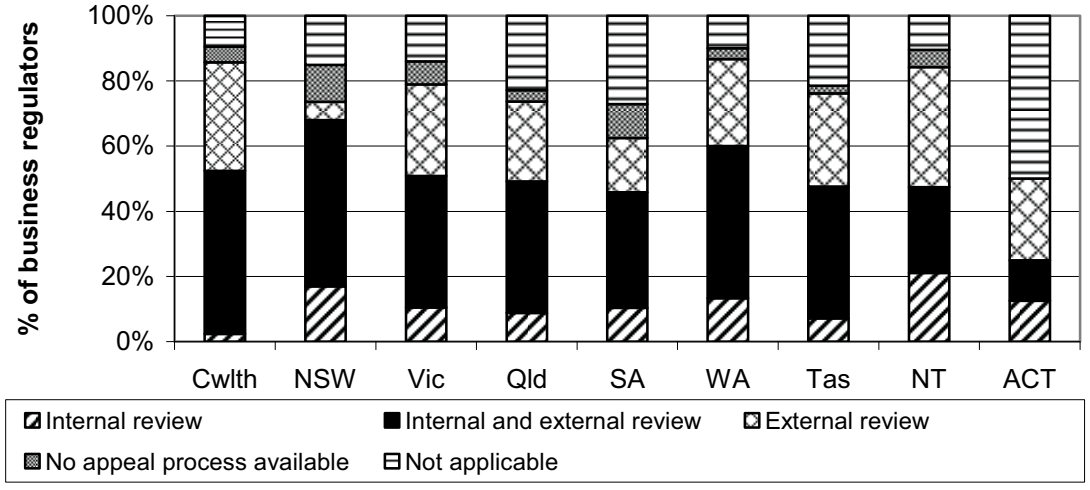
6.4 Appeal mechanisms

When an application for a licence, permit or registration is rejected, businesses may wish to seek a review of that decision. The existence of review or appeal mechanisms provides businesses with an opportunity to have the matter reconsidered where they believe that an application has been incorrectly or improperly rejected. Appeal mechanisms should thus lead to an improved 'final decision' for businesses once all processes have been finalised.

The Commission asked regulators whether there were appeal mechanisms available where an application is rejected (figure 6.14).

Figure 6.14 **Appeal mechanisms**

Proportion of business regulators with licences, permits or registration application appeal mechanisms, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

Regulators in all jurisdictions report that appeal mechanisms are available for most licensing processes. However, there is significant variation across jurisdictions in the relative use of internal and external appeal mechanisms.

Appeal mechanisms may not be necessary for licences, permits or registrations for which a regulator is not required to make a decision. Registrations such as those for a Commonwealth tax file number, or for payroll tax in a state or territory, are generally a 'notification' only that is, no decision is needed on the part of the regulator. In circumstances like this, it may not be possible for the business to be refused registration, and thus there would not be any instance in which appeal mechanisms were necessary.

An external appeal mechanism is a process for appealing decisions made by the regulator that is conducted by a separate body. This could include an appeals board, external review commission or a tribunal.

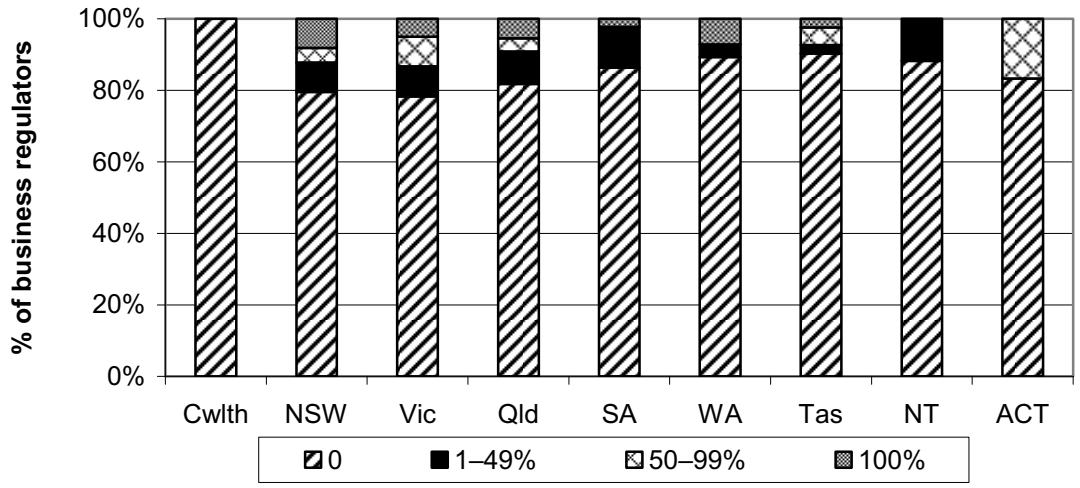
It should also be noted that in each jurisdiction, government decisions can be appealed through the civil courts, such as the Commonwealth Administrative Appeals Tribunal (for appeals against Commonwealth government decisions), or state based small claims courts. These processes work over and above regulator-based appeal mechanisms.

6.5 Mutual recognition

Many businesses operate in more than one jurisdiction, or may relocate their activities from one jurisdiction to another. For those businesses, the need to obtain separate licences dealing with the same business activities in different jurisdictions can represent a significant burden. This additional burden can be reduced if regulators are prepared to recognise licences issued in other jurisdictions. The Commission asked business regulators to identify what proportion of their licences allowed businesses which hold an equivalent licence from another jurisdiction to operate in their jurisdiction without applying for a local licence (figure 6.15).

Figure 6.15 **Recognising interstate business licences**

Proportion of licences, permits and registrations which recognise interstate equivalents, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

In each jurisdiction, over 70 per cent of regulators reported that they did not recognise interstate licences for any of the licensing processes they administered. Regulators in Victoria appear to be the most likely to recognise interstate licences.

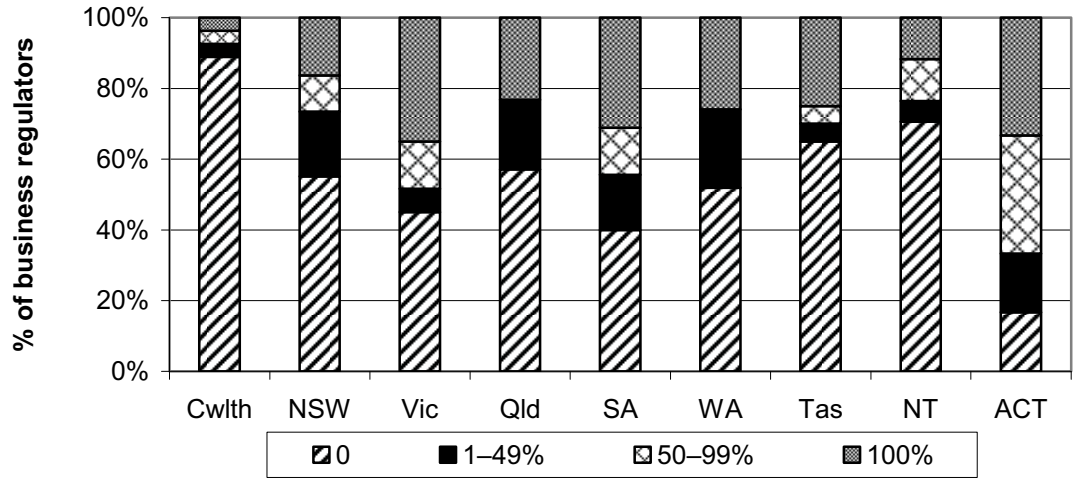
The extent to which interstate licences are recognised may be underrepresented in these figures as some licences are specific to activities which take place in a particular location and the question of mutual recognition may not arise. Also, the Commonwealth is likely to have relatively few licensing requirements where mutual recognition is an issue.

A related question is whether a regulator in one jurisdiction is prepared to take into account a licence issued in another jurisdiction when considering an application for an equivalent licence (figure 6.16).

Regulators are more likely to recognise an interstate licence when considering an application in their jurisdiction, rather than give outright recognition to interstate licences. This could be because although jurisdictions recognise the standards and processes that exist in other jurisdictions, each jurisdiction still wishes to be able to regulate businesses operating in its jurisdiction. Part of the rationale for this may be that licence, permit and registration regulations are not always solely about recognising standards, but can serve other purposes.

Figure 6.16 **Considering interstate business licences in applications**

Proportion of licences, permits and registrations which consider interstate equivalent licences, by regulator, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

However, the level of consideration of equivalent licences varies across jurisdictions. Regulators in the ACT report high rates of recognition while in the Northern Territory over 65 per cent of regulators will not take an interstate licence into account in any of their licensing processes. Over 80 per cent of Commonwealth regulators do not consider other licences, permits or registrations for any of their own licensing processes. However, this figure is likely to be high because for many Commonwealth processes, such as the Australian Business Number, there are no equivalent licences.

The limited extent of mutual recognition of interstate business licences is in contrast to the universal application of mutual recognition in the area of occupational licences (box 6.2).

Box 6.2 **Mutual recognition of occupations**

Australian jurisdictions are signatories to two agreements governing the mutual recognition of occupations:

- Mutual Recognition Agreement (MRA)
- Trans-Tasman Mutual Recognition Arrangement (TTMRA).

In broad terms, under the MRA, a person registered to practise an occupation in one Australian state or territory can practise an equivalent occupation in another, without the need to undergo further testing or examination.

Similarly, under the TTMRA, it is generally the case that a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and vice-versa, without the need to undergo further testing or examination.

Applicants who wish to avail themselves of mutual recognition under the MRA or TTMRA must first lodge their home jurisdiction registration details with another jurisdiction's registration body. 'Deemed registration' is then granted automatically, which allows applicants to practise their occupation pending the granting or refusal of substantive registration. The relevant registration body has one month to grant, postpone or refuse registration. If a decision is not made after one month, applicants are entitled to immediate registration.

Registration may be refused by the registration agency of the new jurisdiction on the grounds that the registered occupations in the two jurisdictions are not 'equivalent'. Equivalence means that the activities authorised to be carried out under each registration are 'substantially the same'. The legislation allows conditions to be imposed on a registration so that equivalence is achieved.

Appeals against decisions by the new jurisdiction to refuse or restrict mutual recognition of a licence may be appealed to the Administrative Appeals Tribunal in Australia and the Trans-Tasman Occupations Tribunal in New Zealand.

The MRA and TTMRA do not apply to laws governing the registration of sellers and business-franchise licences. However, the distinction between occupation registration and business licences is not always clear in practice. Some business licences have developed into a form of hybrid licence that encompasses both occupation registration and business requirements. These restrict businesses to persons registered to carry on the core occupation associated with the business, such as dentists for dental surgeries and lawyers for unincorporated law firms.

The Australian Government has asked the Commission to undertake a scheduled five-yearly review of the MRA and TTMRA. The review will assess the coverage, efficiency and effectiveness of the two mutual recognition schemes. A range of issues relating to occupational licensing will be considered in the review. A draft report from the study will be released in November 2008, followed by a final report in January 2009.

Source: PC (2008b).

6.6 Enforcement of regulation

Businesses, in addition to incurring costs through regulation which requires a licence, permit or registration, are also affected by the enforcement of that regulation by regulators. Enforcement activities can impose a burden on businesses through the need to be able to demonstrate their compliance with regulations, cooperate with inspections and submit records or documents.

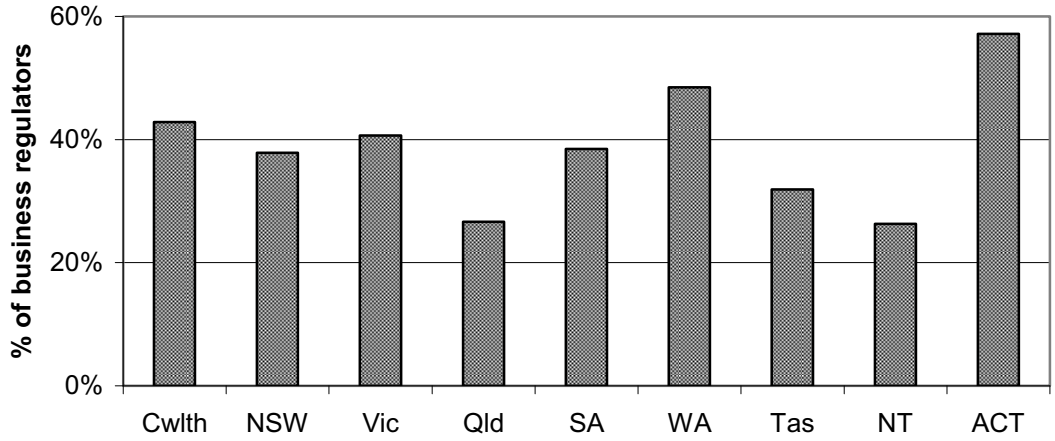
While licensing procedures lend themselves to objective data about levels of activity and the mode by which regulators interact with business, it is much more difficult to measure enforcement activities. For this reason the Commission has focused on gathering data on regulators' enforcement strategies, reporting of enforcement activities and appeal mechanisms.

Publication of enforcement strategies and outcomes

Many business regulators also have a significant role in the enforcement of those regulations for which they are responsible. The publication of enforcement strategies contributes to the transparency and accountability of regulators for their enforcement activities. It can also serve as a part of the regulators' enforcement strategy by publicising enforcement activities and informing business about the areas of greatest concern to the regulator. The jurisdictions' performance in this area is shown in figure 6.17.

Figure 6.17 **Publishing enforcement strategies**

Proportion of business regulators with published enforcement strategies, 1 July 2006–30 June 2007

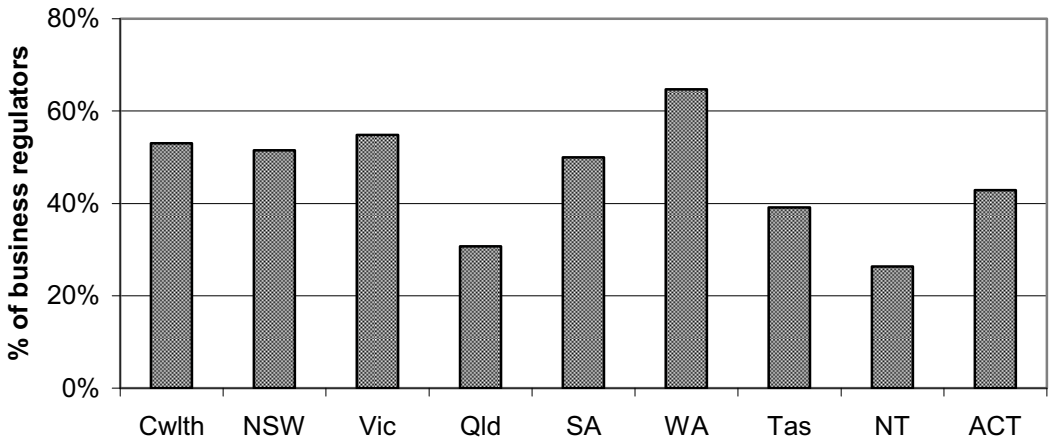


Data source: Survey responses from Australian, state and territory governments (unpublished).

The proportion of regulators which publish enforcement strategies varies from over 50 per cent in the ACT to less than 30 per cent in Queensland. The Commission also asked regulators whether they publish the outcomes of their enforcement activities (figure 6.18).

Figure 6.18 **Publishing enforcement outcomes**

Proportion of business regulators who publish enforcement outcomes, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

Again, there is considerable variation in the proportion of regulators who publish enforcement outcomes. The rate at which regulators publish enforcement outcomes is similar, though usually somewhat higher, than the rate at which they publish enforcement strategies.

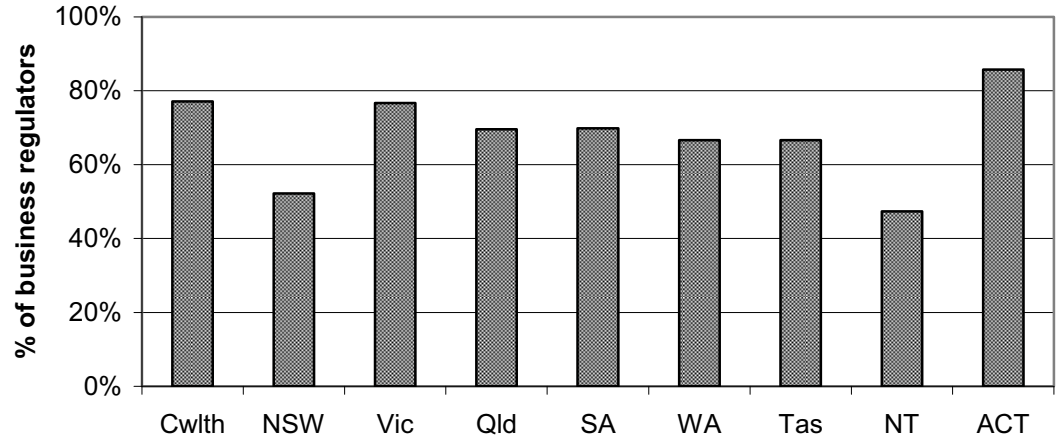
Use of risk-based enforcement strategies

Many regulators take a risk-based approach to enforcing regulations. That is, they focus their enforcement activities on areas where the risk of non-compliance is highest or where non-compliance carries the greatest risk of harm. Risk-based enforcement strategies are desirable. They can ensure that the objectives of regulation are met while reducing the burden of regulatory activity on businesses which have a low probability of non-compliance. The Commission asked regulators whether they employed risk-based strategies in enforcing regulation (figure 6.19).

The majority of regulators in each jurisdiction indicated that they use risk-based enforcement strategies. Regulators in the ACT reported the highest proportion of users of risk-based strategies.

Figure 6.19 **Risk based enforcement**

Proportion of business regulators with risk-based enforcement strategies, 1 July 2006–30 June 2007



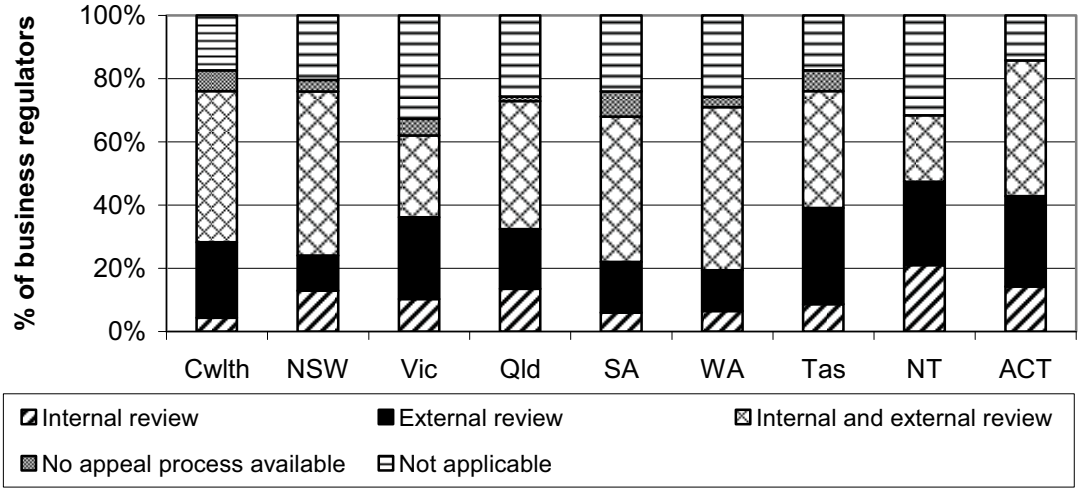
Data source: Survey responses from Australian, state and territory governments (unpublished).

Enforcement appeal mechanisms

The Commission also sought information about whether businesses, which were the subject of enforcement activities, were able to appeal against those decisions or activities (figure 6.20).

Figure 6.20 **Enforcement appeal mechanisms**

Proportion of business regulators with enforcement appeal mechanisms, 1 July 2006–30 June 2007



Data source: Survey responses from Australian, state and territory governments (unpublished).

There is considerable variation between jurisdictions in terms of the proportion of regulators who have internal, external, or both internal and external appeal mechanism. However, there is less variation in the overall availability of appeal mechanisms.

7 Local government regulation

Businesses often raise concerns about the nature and extent of regulatory burden at the local government level. This chapter attempts to put these concerns into perspective by examining the role that local governments play in the development and use of regulatory processes. As noted, the study focussed on a small sample of capital city councils. Among the topics examined in the chapter are the:

- basis for local government powers
- business regulation by local government
- the Commission's approach
- quantity of regulation
- quality of regulation.

7.1 Institutional basis for regulatory powers

Local governments have a material role in business regulation in all states and the Northern Territory. Moreover, their regulatory reach is growing, as state and territory governments assign them additional responsibilities (PC 2008c).

Local government's role in business regulation derives from responsibilities or delegations under Commonwealth, state or territory legislation (box 7.1). For example, under some state food Acts, local governments are responsible for ensuring food businesses are registered.

Local governments play a role in business regulation through both the administration and enforcement of some state government regulations, and the development, administration and enforcement of their own regulations. They are a significant contributor to the overall regulatory burden faced by business. However, while some local governments have embraced reforms aimed at streamlining processes and improving interactions with business, the local government sector as a whole does not appear to have undertaken a program of coordinated, comprehensive reforms along the same lines as the Commonwealth, state and territory governments.

Box 7.1 **Basis for local government regulatory powers**

Most local governments in Australia are statutory bodies, created by state government legislation (principally Local Government Acts) which provides the legal and regulatory framework under which local governments carry out their responsibilities. In the Northern Territory, local government is provided for by the *Northern Territory (Self-Government) Act 1978* (Cwlth) and the *Local Government Act 1993* (Cwlth).

Although most local governments are established under State local government acts, these are not the only entities recognised as constituting local governing bodies. A small number of other bodies (for example, indigenous community councils) established under State legislation, or 'declared' to be local governing bodies (declared bodies) by the Commonwealth Minister, are eligible to receive financial assistance under the *Local Government (Financial Assistance) Act 1995* (Cwlth). Declared bodies typically do not have the same regulatory responsibilities as local governments.

In the ACT, the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) does not provide for a separate local government system. Accordingly, the territory government undertakes the functions performed by local government.

Source: PC (2008c).

7.2 Scope and incidence of business regulation

Local governments have regulatory responsibilities in areas such as:

- land use and environmental planning and development
- building and construction
- waste management
- food production and sale
- use of local roads
- public health matters (such as skin penetration procedures and sale of tobacco).

The presence of local governments in all jurisdictions except the ACT means their regulatory activities directly affect a substantial proportion of businesses throughout Australia.

Meaningful benchmarking of the quantity and quality of local government business regulation is problematic. Regulation by local government is primarily determined by state or territory legislation (the subject of the preceding chapters). Additionally, local governments exhibit enormous diversity in the scale and scope of their regulatory role: reflecting differences in population, geographic area, the extent and

nature of economic activity, environmental and social characteristics, and the legislative framework within which they operate (table 7.1) (PC 2008c).

Table 7.1 **Select characteristics of local governing bodies: June 2006**

	NSW	Vic	Qld	SA	WA	Tas	NT
No. of LGBs [a]	155	80	157	74	142	29	64
Population							
Minimum	57	3 191	57	67	150	877	–
Maximum	283 458	217 349	971 757	154 514	182 047	65 021	69 262
Area (sq km)							
Minimum	–	3	–	–	2	80	–
Maximum	53 511	22 087	117 084	8 860	378 533	9 750	28 700

[a] LGBs are local governing bodies. – Nil or zero. Some LGBs have no population, such as the Northern Territory Roads Trust. Similarly some LGBs have no incorporated area.

Source: PC (2008c).

7.3 The Commission's approach

As most regulation implemented by local government derives from state or territory government regulation, the Commission confined its benchmarking to a narrow range of quantity and quality indicators relating to local laws and by-laws. Further, to deal with diversity among local governments, the Commission sought information from four local governments in each jurisdiction, that were representative of:

- a central metropolitan (capital city) area
- an outer metropolitan area
- a large regional city
- a rural area.

However, the number and composition of responses (16 responses, including six from central capital city areas) meant meaningful comparisons were possible only for central metropolitan local governments (for some quantity and quality indicators). Appendix A (section A.5) provides the details of the survey respondents.

The Commission's survey questionnaire may be found at www.pc.gov.au/study/regulationbenchmarking/stage2. Additional information on the survey methodology may be found in appendix B.

From the central metropolitan areas, survey responses were received from Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart City Councils. Table 7.2 shows the estimated residential and business populations for each of these local governments.

Table 7.2 **Characteristics of selected capital city local governments**
As at June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Estimated residential population	168 682	81 144	1 007 901	18 575	13 486	49 720
Estimated business population	50 895	25 614	166 704	14 817	11 580	5 664

Sources: ABS (*Residential Population Growth, Australia, 2006–07*, Cat. no. 3218.0); ABS (*Counts of Australian Businesses, including entries and Exits, June 2003 to June 2007*, Cat. no. 8165.0).

7.4 Quantity indicators

To gain a sense of the quantity of business regulatory activities by local government, the Commission sought information on the number of business regulation staff employed, the number and pages of local laws (regulation which local government may be considered to control) and the number and type of licences in force in each local government.

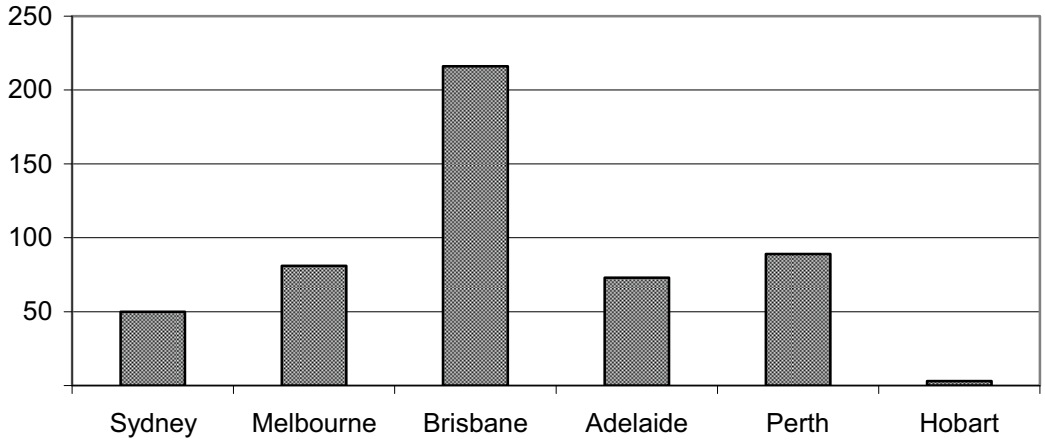
A measure of the scale of *all* business regulation implemented by local government may be inferred from the number of staff employed in business regulatory functions (figure 7.1).

Differences in the scale of operations make some direct comparisons inappropriate. But Sydney, Melbourne, Adelaide and Perth appear to have similar numbers of staff employed in business regulation. Brisbane has the largest number of staff employed in business regulation (figure 7.1), and the largest estimated business population that needs to be serviced (table 7.2). Sydney has twice the estimated business population of Melbourne, but fewer staff identified as being involved in business regulation.

Despite similar numbers of staff employed in business regulation, these local governments exhibit marked differences in the number of local laws they administer and the pages associated with these laws (figure 7.2**).** There is also some diversity in the number of types of licences required and the quantity issued (figure 7.3). It is notable that the local government with the fewest local by-laws (Melbourne) has the greatest number of types of licences (105). Moreover, this is substantially greater than Brisbane (22) which embraces a much larger population and number of businesses. In contrast, Perth is the local government with the most number of local

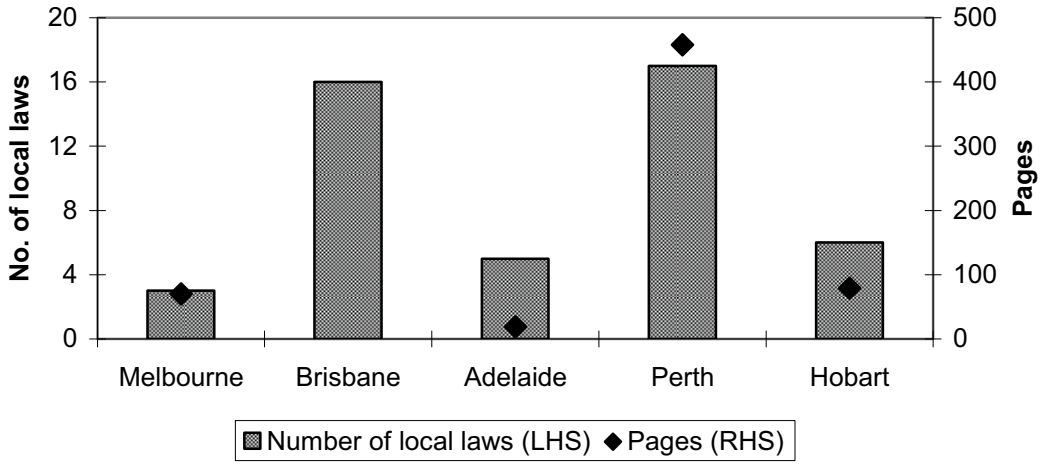
laws and pages associated with those laws, but has the least number of types of licences (five).

Figure 7.1 **Number of business regulatory staff in selected capital city local governments**
1 July 2006–30 June 2007



Data source: Survey responses from local governments (unpublished).

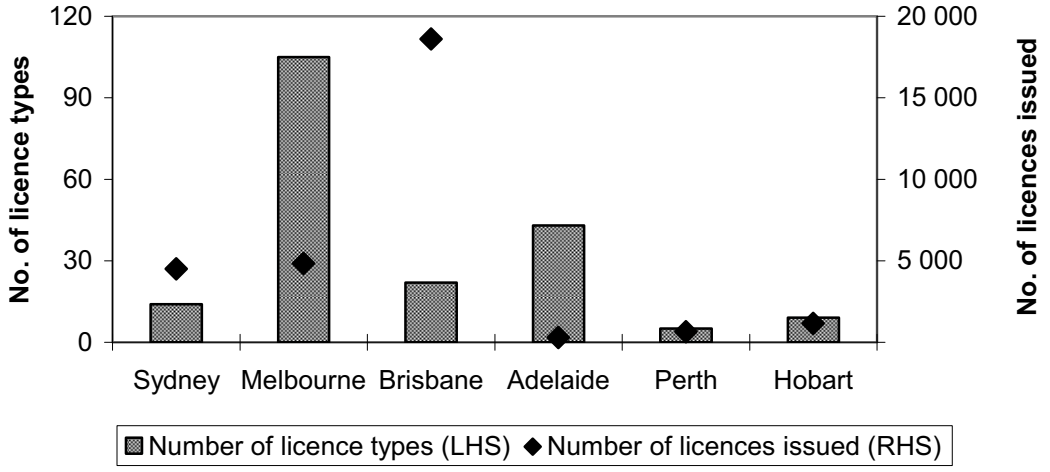
Figure 7.2 **Number of local laws and pages, by selected capital city local government**
1 July 2006–30 June 2007



No data supplied by City of Sydney, page data not supplied by Brisbane City Council.

Data source: Survey responses from local governments (unpublished).

Figure 7.3 **Number of different licence types and quantity issued, by selected capital city local governments**
1 July 2006–30 June 2007



Data source: Survey responses from local governments (unpublished).

Sydney, which has approximately 10 per cent of the number of licence types that Melbourne has, nonetheless has approximately the same number of licences issued as Melbourne.

7.5 Process quality indicators

The quality indicators for local government regulation focus on the administration, processing and enforcement of regulations, as these are aspects of regulation over which local governments have most control. To this end, the Commission sought information on local governments' use of online facilities, binding time limits for licensing decisions, enforcement strategies and appeal mechanisms.

While differences in the size of local governments are important in comparing the quantity of regulation, differences in size are less important when comparing the quality of regulation.

The indicators in this section are designed to be meaningful, but do not capture all of those mechanisms of good process that might result in good outcomes. Hence the absence of a process indicator cannot be interpreted as resulting in poor regulatory outcomes for business. The indicators do, however, highlight the different approaches taken by the local governments, and thus this section may stimulate local government interest in exploring different mechanisms that could improve outcomes for businesses.

Accessing information, lodging and renewing forms

As noted in chapter 5, the way in which regulators interact with businesses affects how burdensome regulation might be. Accordingly, the Commission asked local governments about the availability of online access for information relating to the licences, permits and registrations that they administer, and for their lodgement or renewal. In order to better reflect the aggregate experience of business interactions with regulators, the measure of online availability relates to the total number of licences issued rather than to each type of licence issued.

Table 7.3 shows that information, application forms, lodgement, criteria and renewal is generally available online for the six central capital city local governments which responded to the Commission's survey. Notwithstanding this general availability, the proportion of online facilities differs considerably across local governments and within some local governments for different steps in the registration process.

Table 7.3 **Proportion of licences, etc with online administration, in capital city local governments (per cent)**
1 July 2006–30 June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Licence information online	50–99	1–49	50–99	50–99	1–49	1–49
Licence application form online	50–99	1–49	50–99	1–49	n.s	1–49
Licence form submission online	0	1–49	1–49	n.s	n.s	1–49
Licence criteria online	50–99	50–99	n.s	100	100	1–49
Renewals online	0	1–49	1–49	n.s	n.ap	n.s

n.ap not applicable. **n.s** not supplied.

Source: Survey responses from local governments (unpublished).

In contrast to the general online availability of the functions listed in table 7.3, online payment for some application and renewal fees was reported as being available only for the Brisbane local government. Less than a half of all application fees and renewal of fees for licenses, permits and registrations could be paid online in Brisbane.

Timeliness of response

The time taken by regulators to process and approve licence, permit or registration applications can impose substantial costs on businesses if they are unable to operate, or carry out particular activities, until their application is approved.

Some regulations specify a time limit for processing and approving, or rejecting, an application. In some cases an application is automatically deemed to be approved if it is not rejected within a specified time limit. These provisions assist business by giving them some certainty about the timeframe for regulatory processes. Similarly, if businesses know in advance the likely time required for processing and approval, they can plan accordingly and minimise any cost associated with processing times.

The Commission asked local governments to indicate what proportion of licences issued by them, in terms of the number of licences issued, had a legally binding time limit for processing applications or for which they advised businesses on likely processing times (table 7.4). For the former, the responses show no consistent approach: only Brisbane and Hobart have any binding time limits for some of their licences. For the latter, Brisbane, Adelaide and Hobart reported that advice on likely processing times was available for some or most licence applications.

Table 7.4 **Licence processing procedures, by selected capital city local governments**

1 July 2006–30 June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Proportion of licences with binding time limits (%)	0	0	50–99	0	n.ap	1–49
Businesses advised of expected processing time for applications (%)	0	n.s	50–99	50–99	n.s	1–49
Review mechanism available for rejected applications	✓	✓	✓	✓	✓	✓
Type of review mechanism available	Internal review	Internal & external review	Internal review	Internal review	Internal & external review	Internal & external review

n.ap not applicable. **n.s** not supplied.

Source: Survey responses from local governments (unpublished).

These figures should be interpreted carefully, as while specified limits are likely to promote the timely processing of applications, their absence does not necessarily indicate slower processing of applications.

A review or appeal mechanism gives businesses an avenue to have a regulator's decision on their application reconsidered, for example, where a business considers its application has been incorrectly or improperly rejected. These mechanisms can be expected to lead to a higher quality of decision making. The Commission asked local governments whether they had appeal mechanisms in place and the form they took (table 7.4).

All central capital city local governments reported they had review or appeal mechanisms, although the form of those mechanisms varied. All had internal review mechanisms, while Melbourne, Perth and Hobart also had external mechanisms.

Enforcement of regulation through publication of enforcement strategies

Businesses, in addition to incurring costs through regulation which requires them to obtain a licence, permit or registration, are also affected by the enforcement of regulation by local government.

The publication of local government enforcement strategies and outcomes contributes to the transparency of regulation and the accountability of regulators for their activities. The performance of the six central capital city local governments in this regard is shown in table 7.5.

Table 7.5 **Publication of enforcement strategies and outcomes, by selected capital city local governments**
1 July 2006–30 June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Published enforcement strategies	×	×	✓	×	×	✓
Publish outcome of enforcement activities	×	×	×	×	✓	✓

Source: Survey responses from local governments (unpublished).

There is no common approach to publishing enforcement strategies or the outcome of enforcement activities between the central capital city local governments. Only two of the six respondents publish enforcement strategies, and only two of the six publish the outcome of their enforcement activities. Only Hobart publishes both its enforcement strategies and the outcomes of its enforcement activities.

Use of risk-based enforcement

A risk-based approach to enforcing regulations focuses on areas where the risk of non-compliance is highest, or where non-compliance carries the greatest risk of harm. Risk-based enforcement strategies aim to maximise the benefits of compliance and reduce the burden of regulatory activity on businesses which have a low probability of non-compliance. Table 7.6 describes how the six central capital city local government respondents compare on this measure.

Table 7.6 **Risk-based enforcement, by selected capital city local governments**

1 July 2006–30 June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Use of risk-based enforcement strategies	×	✓	✓	✓	✓	×
Proportion of enforcement activities based on risk strategy (%)	n.ap	100	50	99	80	n.ap

n.ap not applicable.

Source: Survey responses from local governments (unpublished).

All except Sydney and Hobart use risk-based enforcement strategies. Among those with risk-based strategies, the proportion of enforcement activities that are risk based varies from 50 per cent to 100 per cent.

Review mechanisms for enforcement activities

The Commission also sought information on whether businesses which were the subject of enforcement activities were able to appeal those activities (table 7.7).

Table 7.7 **Review mechanisms for enforcement activities, by selected capital city local governments**

1 July 2006–30 June 2007

	Sydney	*Melbourne*	*Brisbane*	*Adelaide*	*Perth*	*Hobart*
Review mechanism available for enforcement activities	✓	✓	✓	✓	✓	✓
Type of review mechanism available	External review	Internal & external review	Internal review	Internal review	Internal & external review	Internal review

Source: Survey responses from local governments (unpublished).

In line with the reported experience with licence processing procedures, all central capital city local governments reported they had review or appeal mechanisms for their enforcement activities. All except Sydney had internal review mechanisms, while Melbourne and Perth also had external mechanisms. Sydney had external review mechanisms only.

8 Lessons for future quantity and quality benchmarking

This study forms part of the Council of Australian Governments' (COAG) ongoing process of regulatory reform. In conjunction with the Commission's report on *Performance Benchmarking of Australian Business Registration* (PC 2007a), this is the first time in Australia that the regulatory systems of the Australian, state and territory governments, as well as the regulatory activities of each jurisdiction's business regulators, have been systemically compared. The study is aimed at providing a snapshot of the current regulatory environment across the jurisdictions and insights into the regulatory burdens imposed on businesses. It also provides insights into the application of best practice principles by the jurisdictions. With these purposes in mind, and the prospect of revisiting this exercise in the future, it is useful to reflect on the robustness of the indicators and how they could be improved.

8.1 Reliability of the indicators

As discussed in chapter 2, this report focuses on proxy indictors of the quantity of regulation (via the stock and flow of all regulations) and the quality of regulation (via processes for the design and review of regulation, and the administration of regulation). The Commission's study does not support conclusions about whether any jurisdiction is performing better than another overall, nor for most of the individual aspects that are being benchmarked. While this may be seen as a deficiency in a benchmarking exercise, it points to the complexity of the relationships between objective indicators of quantity and process and the outcomes achieved. This highlights the importance of understanding what is required to deliver regulation that minimises the regulatory burden while achieving the regulatory objectives.

Quantity indicators

Two types of quantity indicators were reported, the stock and flow of regulation and the number and scale of business regulators.

The stock and flow indicators do not directly measure the quantity of business regulation

The stock and flow of regulation could only be measured at the total stock level and not at the level of business regulation or the preferred number of obligations imposed on business by regulation. To the extent that the share of regulation affecting business is similar across jurisdictions, the comparisons of the total stock and flow of regulation may be indicative of the relative stock and flow of business regulation. There are however, a number of features of legislative processes that reduce comparability of stock and flow estimates in terms of the burden imposed on business. The presumption that the volume of regulation reflects the number of obligations on businesses, and that these relate to the level of regulatory burden, needs to be tested. Indeed, there is evidence to suggest that it is a relatively few 'hotspots' which drive the majority of the regulatory burden on business, such as taxation and occupational health and safety.

The number and scale of business regulators is a more robust measure

The number and scale of business regulators is a more robust indicator both in terms of directly reflecting the government effort involved in regulation of business, and in terms of the strength of the link between government activity and burden for business. It must be noted that this indicator does not reflect excessive burden, as the effort may be optimal for achieving regulatory effectiveness. However, significant differences across jurisdictions do suggest that there may be lower cost alternatives for some jurisdictions.

Despite a good response rate from the jurisdictions' regulators, the measures suffer from not capturing the full population of business regulatory activities. While the indicators are likely to provide a reflection of the level of engagement with businesses, in the absence of a full population of regulators, care must be taken in drawing comparisons. The absence of local government data may have some impact on the reliability of the estimates, as there may be differences between jurisdictions in the extent to which business regulatory activities have been transferred to the local government level.

While the survey asked for absolute numbers, aggregation was problematic in the absence of a complete population or confidence that the respondents formed a representative sample. As a result, the information on scale of regulatory activity has been presented in categories.

Quality of business regulation indicators

Two main aspects of quality are measured in the study, the quality of the process of design and review of regulation, and the quality of administration and enforcement of regulations.

The process indicators are objective but cannot be aggregated

The process indicators are objective measures of whether jurisdictions have in place specific mechanisms known to be related to good practice principles. Most only reflect the requirement for a mechanism, but some also measure the extent to which this is applied. These latter indicators are closer to reflecting actual practice than indicators about the stated requirements for good practice. Several indicators, notably relating to the analysis of compliance costs, directly relate to the regulatory burden imposed on business. Also, in a number of jurisdictions the process indicators apply more widely than to regulation impacting on business.

The reliability of the process indicators hinges on the robustness of three links: the indicator as reflecting what is implemented effectively, the indicator as reflecting good practice, and the strength of the link between good practice and good outcomes. As all elements of good practice are generally required for good outcomes, presence of only a subset of good practices is no guarantee. The analysis is further complicated by different mechanisms being utilised by the jurisdictions to implement the same principles of good practice. This diversity of approaches is a potential strength of Australia's federal system. But to make the most of this strength requires that the jurisdictions evaluate their approaches and then share their experiences. The indicators reported in this study are a first step toward such evaluations. Further research is required to assess the combinations of mechanisms adopted by the states that deliver not just aspects of good practice but also good regulatory outcomes.

The administration and enforcement indicators

The administration and enforcement indicators are largely process-based. Availability of information, applications and renewals online and the setting and reporting of processing times have reasonably strong links to compliance costs imposed on businesses. The setting of fees and charges is less clearly related to a business compliance burden (except where there is an explicit cost recovery or revenue objective). It is also not necessarily related to administrative efficiency. This makes interpretation of the indicator difficult, beyond pointing to different

approaches across jurisdictions with regard to business licensing, permits and registrations.

As with the business regulator quantity data, the broad categories provided in the survey may mask the actual proportions which are, for example, providing information on-line. The proportion of regulators reporting they undertake a process a percentage of the time may not reflect the share of businesses that have this process available to them. To obtain this information, each regulator's response would have to be weighted by its share of the total number of engagements with business. In this study, the share of the total number of licences, permits and registrations on issue might be a reasonable proxy for the level of engagement with business, but as some licences may require one-off and others repeat engagements, these shares were not considered sufficiently meaningful to use to weight the regulator responses. Thus, large and small regulators are equally weighted in the measures provided.

The indicators of the enforcement of regulation are similar in construction to the quality indicators discussed above, as they report on the presence of specific mechanisms that are believed to be good practice. As such, they suffer from the same limitations as the other process indicators, with the additional limitation that the reported measures relate only to those regulators who responded. It was not possible to test whether this was a statistically representative sample of regulators. The number of regulators responding to the survey for each question is provided in appendix B. As no record appears to be kept of all agencies with some business regulatory responsibilities, the total population of all regulators is not known. While the Commission has reason to believe that the regulators who responded conduct the vast majority interactions with businesses in their jurisdiction, this was not possible to test. Consequently, the responses are presented as a share of respondents and not as a share of business regulators, or more importantly, as a share of business interactions.

The survey provided response categories for the regulators to complete. While this made the survey easier for respondents, gathering the absolute numbers (or a larger number of response categories) would improve the information content of the indicators. Aggregation was problematic in the absence of a complete population or confidence that the respondents formed a representative sample.

8.2 Lessons for future quality and quantity benchmarking exercises

The value of this study lies not only in the data produced, but also in what has been learned about the methodology applied in collecting the data. This was envisioned in the Commission's terms of reference, which require the Commission to review the process and report back to COAG.

As discussed in chapter 2 and appendix B, the data gathering process for this study was based on the preferred indicators identified in stage 1 of the study, the availability of data, and the need to gather data in a form which would be meaningful and consistent across all jurisdictions. The data gathered have provided an overview of the current state of regulatory architecture in Australia and identified variations between jurisdictions which may warrant further examination. However, there are some areas where the processes used could be refined to produce better data in future.

The data gathering process

The processes used to distribute and collect questionnaires, and to follow up questions which were not answered, could be reviewed in conjunction with the jurisdictions, with the objective of maximising the response rates and improving the robustness of the data. This review could also consider the implementation of a more formalised quality control process.

In developing the questionnaires used in this study, the Commission sought the views of the Australian Bureau of Statistics and feedback from the jurisdictions. Despite this process, the questions and the explanatory and interpretative material provided would benefit from further discussions with the jurisdictions. This would ensure that the questions better accommodate differences between jurisdictions in their approaches to regulation, and that responses are more consistent across jurisdictions. The trade-off between ease of completing the questionnaire and the richness of the data gathered should also be reconsidered.

The indicators used were generally at a high level and could be reviewed, in consultation with the jurisdictions, before any follow-up study. A review of the indicators might encompass whether the indicators should be more focussed on specific areas of interest to the jurisdictions, and seek to gather more detailed information on those areas. Some suggestions that could be explored are provided below.

Improving indicators of the quantity of regulation

The data presented on the stock and flow of regulation covers all Commonwealth, state and territory regulation. This is a potentially poor indicator of the quantity of business regulation for reasons previously noted.

Future studies of the stock and flow of regulation would be substantially improved if governments were able to identify regulations the primary purpose of which is to regulate the activities of business, or that have a substantial impact on business. Rather than classifying all regulation, an option is to undertake an analysis of a stratified sample of regulation. An advantage of this approach is that it would allow an assessment of the number of obligations imposed as well as the share of regulations pertaining to business to be made. As an indicator, this refined measure of the stock and flow of regulation might serve as a more useful proxy of the regulatory burden faced by business.

Future studies of the stock and flow of regulation would also be improved by including quasi-regulation. As outlined in chapter 2, gathering comprehensive data on quasi-regulation would be very difficult. However, an option would be to undertake an analysis of a sample of quasi-regulation within a limited field. This approach would allow an assessment of the number of obligations imposed on business by quasi-regulation as well as the relative proportions of different types of regulation in that field. It might also provide useful insights into the broader significance and impact of quasi-regulation, and the measurement methodologies.

As discussed in chapter 2, the ideal measure of quantity is the number of obligations imposed on business by regulation in each jurisdiction. This information would require a detailed analysis of all legislation, as it is not currently labelled as pertaining to business. The utility of this approach may still be limited, however, without accounting for the relative burden imposed by each requirement. Gathering data at this detailed level would be a very time consuming process, unless confined to a subset of legislation pertaining to specific business activities. An alternative approach is to survey businesses and regulators on the obligations that they have to satisfy or enforce respectively. Again, this would be more practicable for specific business activities than the universe of business activities.

Improving measures of the quantity of business regulators as indicators of the extent of engagement with business

The indicators reflect the number, size and some aspects of the level of regulatory activity of regulators in each jurisdiction. The value of this information might be enhanced by improving the quality of the data collected and by using indicators based on more specific data.

Better insight may result from being able to use specific indicators to:

- distinguish between the number of staff involved in, or funds expended on, different aspects of regulation: such as providing information, licensing, administration, and enforcement
- identify the number of businesses being regulated
- identify the industry sector(s) covered by each regulator
- identify which aspect of business activity is covered by each regulator.

The information reported gives a general indication of the distribution of different sizes of regulators in each jurisdiction but does not give any indication of how the size of regulator might affect the regulatory burden on business. It might be expected that where regulation is being administered by a large number of small regulators, those regulators would have less scope to access scale efficiencies, and that business is more likely to have difficulty in dealing with a large number of small regulators. That may not necessarily be the case, especially if small regulators are acting in a highly specialised field. This issue could form the basis for a future study of business regulators in Australia, the results of which would facilitate more informative analysis of this data.

Improving the quality indicators: design and review processes

As discussed, there are problems interpreting these process indicators in terms of the implications for regulatory burden and in some cases the actual application of good practice. Indicators of the proportion of new regulatory proposals subject to analysis (table 4.3), proportion of new regulatory proposals with quantitative business compliance cost estimates (table 4.8) and ongoing requirement for periodic review of regulation (table 4.15) come closest to reflecting compliance with best practice principles. Even for these indicators, comparisons across jurisdictions are problematic as the quality of the analysis and the compliance with review findings will vary.

In future, it may be useful to examine process output indicators. This could include objective measures such as the incidence of assessments that have not complied with regulation impact statement requirements, the relative number of times gatekeeping mechanisms have been exercised, the number of action plans responding to recommendations of reviews of regulation, and changes to legislation where sunset provisions have been applied. There will still be issues with comparability across jurisdictions as there may be alternative approaches that achieve the same or better outcomes. A more comprehensive analysis of what mechanisms are necessary and which are sufficient to achieving good process is

required to develop such measures. This will be difficult to achieve at a business regulation wide level, and may be best undertaken at a more targeted level.

Subjective assessments of the quality of the process can also help to identify where there are problems or particularly good approaches. Case studies on the relationship between processes and quality outcomes for a diverse range of regulations would help to identify which types of regulation need particular attention to good process. As the cost of good process is not insubstantial, this could also provide guidance on where effort to apply best practice principles is most warranted. Benchmarking could then focus on the application of best practice to these areas of regulation design and review.

Improving measures of the indicators of business regulator administration and enforcement

As these measures are for a sample of regulators, interpretation would clearly be improved if the sample was known to be representative of the population. The interpretation of the indicators in terms of the burden imposed on business could then be strengthened if the responses could be weighted by the level of interaction the regulators had with businesses. This may be too difficult a task at the level of the population of all business regulators, but it would be possible, in consultation with the jurisdictions, to target particular areas of interaction and develop a more detailed set of indicators.

Indicators could also be developed to examine other aspects of the administration of regulation such as:

- how businesses are consulted on, or advised of, changes to administrative arrangements or requirements
- how often licences, permits and registrations need to be renewed
- the frequency of reporting by businesses to regulators
- the number of inspections of business premises.

9 Comments from jurisdictions

In conducting this study, the Commission was assisted by an Advisory Panel comprised of representatives from each of the Australian, state and territory governments, and from the Australian Local Government Association. In addition to providing advice to the Commission and coordinating the provision of data, government representatives examined the draft report prior to publication and provided detailed comments and suggestions to address factual matters and improve the analysis and presentation of the data.

The Commission also invited each jurisdiction, through its panel members, to provide a general commentary for inclusion in the report. These commentaries are included in this chapter, and presented in the same order as the data in the report.

Australian Government

“Deregulation and better quality regulation is a key priority for the Australian Government.

The deregulation agenda is an important element of the Government’s focus on improving Australia’s productivity, underpinning our commitment to sustainable long-term growth and prosperity.

The Minister for Finance and Deregulation — who is also a member of Cabinet — has been appointed by the Government to lead this agenda, assisted by the Minister Assisting the Finance Minister on Deregulation.

The Australian Government is fast-tracking a number of regulatory reforms, including cross-jurisdictional reforms in cooperation with the states and territories as part of the Council of Australian Government’s seamless national markets initiative.

Also, the Commonwealth has established systems to promote high quality regulation.

A new deregulation policy function, established within the Department of Finance and Deregulation, provides central agency responsibility for addressing the stock and costs of regulation.

Regulation Impact Statements (RIS), which accompany significant new or amended regulation, draw on a cost-benefit analysis framework for assessing proposed regulation.

Consultation forms an important part of most Commonwealth regulation and is a specific requirement of the regulatory impact assessment process.

Except in exceptional circumstances, regulatory proposals cannot proceed to the decision making stage until the Office of Best Practice Regulation agrees that best practice regulation principles have been met.

This report is a useful input into furthering the deregulation agenda.”

New South Wales

“ The NSW Government welcomes the Productivity Commission’s study to benchmark the quantity and quality of regulation across Australian jurisdictions. The NSW Government believes the benchmarking activity is a valuable exercise in comparing the different approaches and mechanisms that deliver good practice and good regulatory outcomes. The study provides useful information on each jurisdiction’s regulatory framework.

One of the main benefits of the benchmarking study is the ability to compare over time whether improvements are being made. The NSW Government looks forward to being able to provide more data on New South Wales’ performance in the future.

NSW Regulatory Reform Initiatives

New South Wales has undertaken significant activity with its renewed emphasis on red tape reduction and regulatory reform.

- The NSW Government State Plan contains specific targets under State Plan Priority P3 - Cutting red tape.
- The NSW Better Regulation Office (BRO) was established administratively in January 2007 and has been fully operational since July 2007.
- In April 2008, BRO released the *Guide to Better Regulation* as the key gatekeeping document in New South Wales. Its requirements have applied since 1 June 2008. The Guide sets out better regulation principles and requires the preparation of a Better Regulation Statement (BRS) for significant regulatory proposals.
- BRO has completed its first targeted review, which reviewed the regulation of shop trading hours. The relevant legislation commenced on 1 July 2008. The reforms allow all shops to trade on Sundays, provide more certainty around public holiday trading restrictions, and provide for a simpler and clearer process for shops to apply for exemptions to trade on public holidays.
- BRO has commenced two new targeted reviews. The occupational licence review will assess the ongoing need for licensing eleven occupations that require licensing only in New South Wales, or in New South Wales and one or two other jurisdictions. The review into New South Wales’ plumbing and drainage regulation will investigate whether the framework can be reformed to reduce unnecessary costs for business, consumers and government.
- In October 2008, BRO released the second six-monthly progress report on implementing recommendations made in the Independent Pricing and Regulatory Tribunal’s *Investigation into the Burden of Regulation and Improving Regulatory Efficiency*. This identified that 37 of the 74 recommendations had been implemented in full, and the remaining 37 were on track to be delivered.

- BRO released a costing tool, *Measuring the Costs of Regulation*, in June 2008. It provides agencies with detailed advice on how to quantify the costs and cost savings of regulatory proposals to comply with the requirements of the Guide. In September 2008, BRO released two further tools, *Risk-Based Compliance* and *Assessment Against the Competition Test.*
- *Annual Update: Removing Red Tape in NSW* was released in October 2008 and outlines the NSW Government's performance in reducing red tape during the 18 months to 30 June 2008. The report highlights 128 reforms to ease regulatory burden that were achieved in that time period.

Data collected through New South Wales' gatekeeping requirements, which commenced on 1 June 2008, will mean that the NSW Government will be able to provide more data in the future on a number of the indicators used to measure the quality of regulation. The Better Regulation Office is now collecting information through this process, including the proportion of new regulatory proposals subject to analysis, and the proportion of new regulatory proposals with quantitative business compliance cost estimates.

The requirements of the Guide to Better Regulation also apply to a broader range of regulation and quasi-regulation, resulting in more proposals being subject to regulatory impact analysis, including assessment of the costs to business and the broader community.

Future Quantity and Quality Benchmarking

As the Productivity Commission recognises, process measures are a good proxy and may provide useful insights into the quality of gatekeeping mechanisms. Ideally, however, there should be a focus on identifying performance indicators for good regulatory outcomes. New South Wales, as well as other states and territories, is contributing to the work of the Business Regulation and Competition Working Group on this issue.

The NSW Government supports the Productivity Commission's suggestion of assessing case studies on the relationship between process and quality outcomes for a diverse range of regulations. This exercise may help to identify which types of regulation require more attention to regulatory process than others and could be useful for jurisdictions in understanding where particular gatekeeping efforts may need to be concentrated.

Victoria

“ Victoria is at the forefront in implementing reforms which are essential to the competitiveness of the Australian economy. Regulation is a necessary and important tool in achieving the Government's policy objectives. However, ensuring that regulation is appropriate and that there is no unnecessary burden on businesses and not-for-profit organisations is a key priority.

The Victorian Government has already made a commitment to reduce the administrative and compliance burden of regulation through the introduction in 2006 of its *Reducing the Regulatory Burden* initiative. Through this program the Government has committed to reduce the administrative burden of State regulation as at 1 July 2006 by 15 per cent over three years and 25 per cent over five years. In the *2007/08 Progress Report* released in November 2008, the Treasurer announced that the net reduction in administrative burden based on current initiatives is estimated to be $162 million annually. Victoria is making progress toward meeting its three year target of achieving annual savings for business of around $256 million by July 2011. Our modelling shows that such a reduction could boost Victoria’s economy by up to $747 million by 2016.

All departments now have three-year administrative burden reduction plans in place and the Government is progressing its commitment to reduce the number of principal Acts of Parliament by 20 per cent by 2010.

To support these reforms, the Government has commissioned major reviews from the Victorian Competition and Efficiency Commission (VCEC). The VCEC has identified ways to improve the regulatory environment and to reduce the burden of regulation in a number of different areas, including:

- an examination of regulatory impediments to the development of regional Victoria (encompassing a review of relevant planning and environmental regulation, and an examination of regulation impacting on the mining, forestry and aquaculture industries);
- the housing construction industry; and
- food regulation in Victoria.

The Government has also recently referred an inquiry into environmental regulation to the VCEC, which will identify additional ways of reducing administrative and compliance burdens on businesses.

Other initiatives which are underway or which have already been implemented include:

- The State Services Authority’s *Review of Not-for-Profit Regulation* which will lead to a reduction in the administrative burden on community and not for profit organisations;
- Consolidation of Victorian WorkCover Authority Regulations (13 separate regulations consolidated into a single document);

- Victoria playing a key role in the national harmonisation of occupational health and safety regulation and payroll tax harmonisation;
- E-Business Offerings (for example, 93 per cent of all payroll tax transactions are now available to be completed online);
- Abolition of duty on Hire of Goods; and
- Land Tax pre-assessment letter (this enables taxpayers to clearly identify their liabilities prior to the final assessment being issued).

Moreover, each year the VCEC publishes a report, *The Victorian Regulatory System*, which draws together information about the State's business regulators. The information contained in the report provides a comprehensive database about Victoria's regulators, bringing into focus the full range of their activities and the tools that they use. It is chiefly through this report that Victoria has been able to provide the Commission with such detailed and comprehensive information for the purposes of its benchmarking exercise. No other Australian jurisdiction publishes such comprehensive information, and the VCEC is not aware of any other country that publishes similar information. Thus, arguably, Victoria is a world leader in terms of the transparency of its regulatory framework.

Meanwhile, Victoria actively participates in the Business Regulation and Competition Working Group that has been established under the auspices of the Council of Australian Governments to accelerate and broaden the regulation reduction agenda. This Working Group is examining a large number of regulatory "hotspots", with a view to reducing regulatory burdens, and is also looking at ways to harmonise regulation across Australia with the aim of promoting a "seamless" national economy.

Victoria supports initiatives which assist Australia's jurisdictions to reduce the regulatory burden on business. The Victorian Government considers that the Productivity Commission's report, *Performance Benchmarking of Australian Business Regulation: quantity and quality of regulation*, could assist jurisdictions to identify areas where regulation-making processes can be improved and business costs further reduced. We note that this is the first time that the Commission has attempted to benchmark the regulatory burden in Australia's jurisdictions. While the Commission's report is more robust than other studies undertaken in this area, the Commission is by necessity required to perform the benchmarking exercise by reference to an imperfect methodology. This problem arises because it is not yet practicable to directly assess regulatory burdens; instead the Commission must rely on proxies. The comparisons also use data that many jurisdictions have collated for the first time, and Victoria understands that the Commission has not had the opportunity to conduct the detailed cross-checks of data which it may be able to perform in subsequent editions. Issues of data consistency mean that a cautious approach should be adopted when making any inter-jurisdiction comparisons on the basis of the report. ”

Queensland

“ The Queensland Government has a demonstrated, long standing commitment to regulatory reform. Since 1999, the Queensland Government has delivered more than $108.4 million worth of savings to business as a direct result of red tape reduction initiatives. It has built a reputation as the Smart State which prioritises investment in new technologies, skills and innovation. Integral to delivering the Smart State is the provision of a regulatory environment that promotes productivity, facilitates innovation and increases competition to make Queensland more attractive to both individuals and business investment.

Queensland supports this initiative by the Commission to benchmark the quantity and quality of regulation across Australia. The lessons learnt from Phase 2 will inform and refine future benchmarking activities, including measuring progress with regulatory reform at the Council of Australian Governments and state levels.

Despite the limitations of the data and methodology (acknowledged by the Commission in its report), Queensland is generally encouraged by its comparative performance in relation to both the quantity and quality of regulation, while recognising opportunities for improvement.

Quantity and Quality of Regulation

Queensland’s regulatory stock reflects the vastness of the State and the range of sectors and activities undertaken.

Queensland’s count includes tables of provisions, end notes, annotations, transitional provisions and covers.

Queensland regulations have a distinctive plain english style which incorporates the generous use of white space, footnotes and separation of provisions to support improved interpretation and understanding. Having adopted this approach since 1991, most of Queensland’s statute book is in plain english.

Where national regulation is adopted by Queensland, the Scrutiny of Legislation Committee encourages the practice of ensuring the model regulation is attached to the Queensland regulation (eg. national gas laws and electricity national schemes). Queensland also prefers to re-enact, rather than adopt, regulation in its entirety as Queensland Acts. These practices promote greater transparency and easy reference by users.

In line with COAG commitments, Queensland is in the process of developing a package of reform initiatives designed to strengthen its existing impact assessment process, gate-keeping arrangements, and consultation and compliance awareness practices, to improve the quality of future regulation.

Business Regulators

Business regulators in Queensland have evolved over time in response to specific business regulatory needs. Queensland’s business regulators have distinct roles and responsibilities, and work to provide businesses in Queensland with quality service.

The Queensland Government also undertakes periodic reviews to ensure the services it provides to business and community remain contemporary and efficient.

Impact Assessment

Queensland's current impact assessment regimes are two-fold – assessing competition impacts on primary and subordinate regulation and cost impacts on subordinate regulation.

Moving Forward

Queensland remains committed to regulatory reform and will continue to explore new and innovative ways to address the quantity of existing regulation and the quality of future regulation.

South Australia

“ Adelaide continues to outrank all other Australian cities as the most cost-competitive place to do business in Australia. The latest KPMG Report (*Competitive Alternatives: KPMG's Guide to International Business Location*, 2008 edition), compares the costs of doing business in cities across the world. It shows Adelaide has maintained its number one ranking within Australia as having the lowest business cost (compared with Sydney, Melbourne and Brisbane).

Of the 102 cities featured in the Competitive Alternatives 2008 study, including the four Australian cities surveyed, Adelaide was found to have the third lowest business costs in its population bracket of 500 000 to 1.5 million.

The compliance cost to business of regulation is one component of the cost of doing business and the South Australian Government is committed to achieving substantial reductions.

The South Australian Government continues to refine its approach to regulatory gate keeping. For example, South Australia was the first state to adopt the Business Cost Calculator and apply it to State Cabinet decisions that directly impact on the business sector. In 2006 the government also embarked on a major dedicated program to reduce business compliance costs by $150 million per annum by July 2008.

The Competitiveness Council, overseeing the red-tape reduction program, adopted a two-pronged strategy of industry red-tape reviews and agency level savings targets.

Seven industry red-tape reviews have been completed, covering:

- Cafes and restaurants
- Motor Vehicle Retailing and Services
- Building Construction
- Fishing and Aquaculture
- Heavy Vehicle Road Transport
- Wine Grape Growing and Wine Manufacturing and
- Metal Manufacturing

The agency level red tape targets are supported by senior executive champions in all departments, and are incorporated in Chief Executive performance agreements. The program also includes independent verification of claimed savings and public reporting of results.

The program has been very successful. An independent assessment by Deloitte in July 2008 shows that savings to business are in excess of $170 million per annum and that other initiatives will add even greater savings in the future.

Building on the success of the first program, a second target is proposed, which will be developed in consultation with agencies. The new program will be broadened to include the Not-For-Profit sector and is due for conclusion in December 2010.

In June 2008 the South Australian Government also announced significant reforms to the planning system, which are estimated to cut red tape by $75.6 million a year, cut mortgage costs for homeowners by up to $5000 and yield savings to the housing industry of $62 million a year through a reduction in delays. The key elements of the Government's planning and development reform strategy comprise:

- a 30-year plan to properly manage Adelaide's growth and development;
- a huge investment in building efficient transport corridors that encourage the creation of new commuter-friendly neighbourhoods within existing suburbs;
- a 25-year rolling supply of broad acre land to meet the residential, commercial and industrial needs of a growing population and expanding economy;
- simplified and faster assessment of new housing and home renovations; and
- five regional plans to help guide the development of the State outside of Adelaide.

KPMG estimates these reforms to the planning system could add about $5 billion to Gross State Product within five years by attracting people and jobs to South Australia.

The experience with the red tape targets and other reform initiatives to date suggests that much of the red tape burden comes from the way regulations are administered — the forms, regulator policies and interpretations, approval times, etc. In this regard, the detailed indicators of the quality of regulatory administration, in particular, warrant further investigation and will be referred to agency red-tape champions in order to identify further future opportunities for improvement within SA. ”

Western Australia

“ The Western Australian Government is committed to improving the quality of regulation in Western Australia. In the 2008-09 State Budget, the Government committed $3.75 million over four years to fund a new system of regulation review for Western Australia. The new system will be consistent with best practice principles of regulation as endorsed by the Council of Australian Governments (COAG). Implementing a new system of best practice regulation review is an important milestone for Western Australia in meeting its COAG commitments for regulation reform, including those outlined in the Regulation Reform Plan (April 2007) and being developed by the Business Regulation and Competition Working Group of COAG.

New regulations, which have the potential to restrict competition (meaning they impact on business and/or consumers), must be accompanied by a review, including a public interest test, when they are considered at Cabinet. A process of public consultation is also required as part of the review. Cabinet submissions include a Small Business Impact Statement. The State's Cabinet Handbook (which guides agencies in preparing Cabinet submissions on behalf of Ministers) outlines review requirements. However, a considerable proportion of new regulations are not considered at the Cabinet level and many of these become law without appropriate review.

The new system of regulatory gatekeeping and review for Western Australia will build on, and strengthen, the existing regulatory development processes by requiring mandatory consultation and the monitoring of regulation-making pathways to ensure that all new regulations (whether it is considered at Cabinet or at any other level within Government before becoming law) are subjected to the appropriate level of review.

An important part of the review process will be strengthened regulatory assessment provisions, including formal requirements for regulatory impact statements (RISs), and improved documentation of any compliance costs likely to be borne by businesses as a result of the regulation. Western Australia also intends to improve the transparency of the regulation making process through the publication of RISs for new regulation.

A regulation review unit established within the Department of Treasury and Finance (DTF) will administer the system. In addition to the ensuring that new regulation is consistent with best practice principles for regulation development, the DTF will be responsible for reporting on: compliance with the regulation review system; and the change in the overall regulatory burden (including the growth in new regulation). Improved reporting of the regulation and the regulatory burden will assist in future benchmarking activities.

The new system of regulation review is expected to be in operation in Western Australia in early 2009.

Tasmania

“ The Tasmanian Government has a long standing objective of ensuring that the State's statute book should only contain legislation that is necessary, effective and efficient. In particular, the Government recognises that unnecessary legislation can impose avoidable costs on business, restrict competition, stifle innovation and prevent businesses from being competitive in Australia and in international markets.

The Tasmanian Government is committed to adopting a best practice regulation culture, which includes consultation with stakeholders early in the policy development process wherever possible. This provides an initial check that new regulation does not impose unnecessary costs on business.

Tasmania also has robust gatekeeper arrangements for all new legislation. Under the Government's Legislation Review Program, all new legislative proposals are subject to rigorous assessment by the Economic Reform Unit within the Department of Treasury and Finance. In the case of proposed regulations and other subordinate legislation, this assessment is undertaken under the *Subordinate Legislation Act 1992*, which requires a Regulatory Impact Statement to be prepared if the proposed legislation imposes a significant cost, burden or disadvantage on a sector of the community.

The Tasmanian Government publicly releases all Regulatory Impact Statements for proposed primary and subordinate legislation and is required to consider the outcome of this public consultation before finalising the legislation.

This process provides an opportunity to check that the proposed legislation is, in fact, necessary and also to examine whether the proposal is superior to alternative measures that would meet the same objectives. In several cases, comparison is made with non-legislative options. Most importantly, it is designed to ensure that regulation should only be in place where it is demonstrably in the public interest.

In addition to the automatic expiry of subordinate legislation after 10 years under the Subordinate Legislation Act, Tasmania regularly prepares Legislation Repeal Acts to remove redundant and outdated legislation from the statute book.

In some cases it is in the public interest to introduce new and detailed regulation into areas that may have been subject to very light handed regulation in the past. Under these circumstances, the Tasmanian Government is fully prepared to introduce extensive legislation, if necessary. A recent example is the legislation that covers Tasmania's water and sewerage sector, which was enacted earlier in 2008. In this case, very detailed legislation was required to secure public health, environmental and economic outcomes.

For these reasons, the focus of the Tasmania Government is to achieve the optimal level of regulation, which is not necessarily the minimum possible.

The Tasmanian Government also remains committed to seeking opportunities for national harmonisation of legislation to reduce administration and compliance

costs on businesses that operate in more than one state of territory of Australia.

Much progress has been made in recent Council of Australian Governments' meetings in identifying reform areas and agreeing on long term outcomes. In particular, the agreement to harmonise legislation across all jurisdictions that covers regulatory areas such as occupational health and safety and business licensing has the potential to provide substantial cost savings to the business community.

The Tasmanian Government is fully committed to work with other jurisdictions and the business community to progress these reforms and further reduce regulatory costs on businesses, where possible, to increase productivity and business competitiveness and allow businesses to focus on what they do best, which is doing business.

Despite the very significant progress that has been made in recent years in improving Tasmania's stock of legislation, the Tasmanian Government continues to look for opportunities for further reforms. The Government has recently announced that a Business Tax and Regulation Reference Group will be formed to enhance the communication channels between the business community and the Government. This Reference Group will comprise local business representatives and will examine reform proposals, including measures to reduce the regulatory burden on businesses.

Northern Territory

Developments in regulatory reform

Since 2006-07, the Northern Territory Government has made some substantial changes to its regulatory review framework.

In 2007, a review of the Territory's gate-keeping process, known as the Competition Impact Analysis (CIA) framework, was undertaken. Key aims of the review included alignment with national principles agreed by COAG in April 2007, and establishing processes for improving the quality and efficiency of regulation.

The review was completed in June 2007, with recommendations approved by Government in September 2007. The review recommended a new Regulation Making Framework (RMF) with key objectives of improving the quality and rigour of regulation impact analysis and hence policy outcomes, and more closely integrating regulation making requirements as part of policy and legislative development processes.

To this end, the RMF introduces a two-stage process comprising a preliminary impact assessment to be undertaken at the time approval to draft legislation is requested, and, if required, a full regulatory impact statement (RIS) undertaken as part of the regulation development process. A full RIS is triggered only if the preliminary impact assessment indicates the proposal will have material economic implications which may not result in net benefits for the community.

Additional guidance material for Government agencies in undertaking cost/benefit analyses for RIS's has also been developed, including an increased focus on business compliance costs. To this end the use of the Business Cost Calculator (BCC) is also encouraged. The RMF commenced on 1 January 2008.

Training courses in regulation impact analyses are currently being developed for agency officials.

Australian Capital Territory

Council of Australian Governments' Regulatory Reform Commitments

The Australian Capital Territory (ACT) is looking to refine the broader process around regulatory impact assessment and regulation-making. This includes:

- updating its Regulatory Impact Statement (RIS) guidelines; and
- enhancing training measures to assist and educate agencies in the preparation of RISs.

In this regard, the ACT is particularly focusing on how to make it easier for agencies to identify the costs and benefits of both regulatory and non-regulatory policy options.

A Conduct of the benchmarking study

A.1 Terms of Reference of 11 August 2006

The original Terms of Reference for the benchmarking study are provided below.

Productivity Commission Act 1998

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

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

In undertaking this study, the Commission is to:

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

   In developing options, the Commission is to:

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

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

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

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

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

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

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

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

The Commission would:

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

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

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

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

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

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

The Commission's reports would be published.

TREASURER

A.2 Submissions

Participant	*Submission number*
Australasian Compliance Institute	2
Australian Bankers' Association Inc	3
Madeleine Kingston	7
New Zealand Ministry of Economic Development	4 & 6
Philip Clark	5
Tortoise Technologies Pty Ltd.	1

A.3 Advisory committee meetings

Government Advisory Panel Roundtable (12 October 2007, Melbourne)

Australian Government
- Department of Prime Minister and Cabinet
- Department of Treasury

Victoria
- Department of Premier and Cabinet
- Department of Treasury and Finance

Western Australia
- Department of Premier and Cabinet

Tasmania
- Department of Premier and Cabinet
- Department of Treasury and Finance

New South Wales
- Department of Premier and Cabinet

Queensland
- Office for Regulatory Efficiency

South Australia
- Department of Premier and Cabinet
- Department of Treasury and Finance

Northern Territory
- Department of the Chief Minister
- Treasury

Australian Capital Territory
- Department of Treasury

Government Advisory Panel Roundtable (24 July 2008, Melbourne)

Australian Government
- Department of Finance and Deregulation
- Department of Treasury

Victoria
- Department of Premier and Cabinet
- Department of Treasury and Finance

Western Australia
- Department of Treasury and Finance

Tasmania
- Department of Treasury and Finance

New South Wales
- Department of Premier and Cabinet

Queensland
- Office for Regulatory Efficiency

South Australia
- Department of Premier and Cabinet
- Department of Treasury and Finance

Northern Territory
- Treasury

A.4 Visits

ACT Department of Treasury

Australian Local Government Association

Consumer Affairs Victoria

New Zealand Ministry of Economic Development

New Zealand Treasury

Queensland Office for Regulatory Efficiency

The Australian Treasury

Victorian Competition and Efficiency Commission

Victorian Department of Innovation, Industry and Regional Development

A.5 Survey respondents

Table A.1 *Business regulator questionnaire 2006-07* respondents

Commonwealth	
Aged Care Standards and Accreditation Agency Ltd	Department of the Environment, Water, Heritage and the Arts
	— Commonwealth Terrestrial Protected Areas (Director of National Parks)
Auditing and Assurance Standards Board	— Developments and Wildlife Approvals
Australian Accounting Standards Board	— Genetic Resources in Commonwealth Protected Areas
Australian Communications and Media Authority	— Great Barrier Reef Marine Park Authority
Australian Community Pharmacy Authority	— Hazardous Waste Regulation
Australian Competition and Consumer Commission (including the Australian Energy Regulator)	— Heritage Legislation
Australian Customs Service	— Marine Protected Areas (Director of National Parks)
Australian Pesticides and Veterinary Medicines Authority	— Office of the Renewable Energy Regulator
Australian Prudential Regulation Authority	— Ozone and Synthetic Greenhouse Gases Regulation
Australian Radiation Protection and Nuclear Safety Agency	— Photovoltaic Energy Systems Standards
Australian Safeguards and Non-Proliferation Office	— Water Efficiency Labelling Standards Scheme
— Chemical Weapons Convention Implementation Section	
— Nuclear Accountancy and Control	Export Finance and Insurance Corporation
Australian Safety and Compensation Council	Food Standards Australia New Zealand
Australian Securities and Investments Commission	Gene Technology Regulator
Australian Taxation Office	Migration Agents Registration Authority
Civil Aviation Safety Authority	National Competition Council
Comcare / Safety, Rehabilitation and Compensation Commission	National Industrial Chemicals Notification and Assessment Scheme
Department of Agriculture, Forestry and Fisheries	Private Health Insurance Administration Council
Department of Foreign Affairs and Trade	Reserve Bank of Australia
Department of Health and Ageing	Tax Agents' Boards
— Ageing and Aged Care Division	
— Tobacco and Drug Prevention Section	Therapeutic Goods Administration
— Office of Chemical Safety	The Treasury
	— Foreign Investment and Trade Policy Division
Department of Immigration and Citizenship	

NSW

Anti-Discrimination Board
Architects Registration Board
Attorney General's Department
Board of Studies NSW
Board of Surveying and Spatial Information
Border Rivers-Gwydir Catchment Management Authority
Casino Control Authority
Central West Catchment Management Authority
Chiropractors Registration Board
Dental Board of New South Wales
Dental Technicians Registration Board
Department of Ageing Disability and Home Care
Department of Commerce — Office of Fair Trading
Department of Community Services
Department of Education and Training
Department of Environment and Climate Change
— National Parks and Wildlife Service
— Threatened Species Regulation
Department of Local Government
Department of Primary Industries
Department of State and Regional Development
Department of Water and Energy
— Greenhouse
— Licensing
— Metropolitan Water
— Technical Regulation and Compliance
Environment Protection Authority
Firearms Registry
Greyhound and Harness Racing Regulatory Authority
Hawkesbury-Nepean Catchment Management Authority
Independent Pricing and Regulatory Tribunal
Independent Transport Safety and Reliability Regulator
Institute of Teachers
Lower Murray Darling Catchment Management Authority
Ministry of Transport
— Passenger Transport
— Regional Airlines
Murrumbidgee CMA
Namoi Catchment Management Authority
Newcastle Port Corporation
Northern Rivers Catchment Management Authority
NSW Bar Association
NSW Fire Brigades
NSW Food Authority
NSW Health
— Private Health Care Branch
NSW Maritime
NSW Medical Board
NSW Police Force — Security Industry Registry
Nurses and Midwives Board
Office for Children — Children's Guardian
Office of Industrial Relations
Office of Liquor, Gaming and Racing
Office of State Revenue – Treasury
Office of the Legal Services Commissioner
Optical Dispensers Licensing Board
Optometrists Registration Board
Osteopaths Registration Board
Pharmaceutical Services
Pharmacy Board of New South Wales
Physiotherapists Registration Board
Podiatrists Registration Board
Port Kembla Port Corporation
Psychologists Registration Board
Racing NSW
Roads and Traffic Authority
Rural Fire Service
Southern Rivers Catchment Management Authority
Sport and Recreation
Sydney Ports Corporation
Sydney Water
The Law Society of New South Wales
Veterinary Practitioners Board
Vocational Education and Training Accreditation Board
Western Catchment Management Authority
WorkCover NSW

Victoria	
Aboriginal Affairs Victoria	Legal Services Board and Legal Services Commissioner
Animal Standards Branch	Marine Safety Victoria
Architects Registration Board of Victoria	Medical Practitioners Registration Board of Victoria
Bookmakers and Bookmakers' Clerks Registration Committee	Medical Radiation Practitioner's Board of Victoria
Building Commission	Metropolitan Fire and Emergency Services Board
Bureau of Animal Welfare	Minerals and Petroleum Regulation Branch
Business Licensing Authority	Optometrists Registration Board of Victoria
Chemical Standards Branch	Osteopaths Registration Board
Children's Services	Parks Victoria
Chinese Medicine Registration Board of Victoria	Pharmacy Board of Victoria
Chiropractors Registration Board of Victoria	Physiotherapists Registration Board
Communicable Diseases Control Unit	Plant Standards Branch
Consumer Affairs Victoria	Plumbing Industry Commission
Country Fire Authority	Podiatrists Registration Board of Victoria
Dairy Food Safety Victoria	Primesafe
Dental Practice Board of Victoria	Private Hospital Unit
Department of Sustainability and Environment	Professional Boxing and Combat Sports Board of Victoria
Drugs and Poisons Regulation Group	Psychologists Registration Board
Energy Safe Victoria	Small Business Commissioner
Environmental Health Unit	Supported Residential Services
Environmental Protection Authority	Surveyors Registration Board of Victoria
Essential Services Commission	Sustainability Victoria
Fisheries Victoria	Tobacco Policy
Food Safety Unit	Veterinary Practitioners Registration Board of Victoria
Greyhound Racing Victoria	VicRoads
Harness Racing Victoria	Victorian Commission For Gambling Regulation
Health Services Commissioner	Victorian Equal Opportunity and Human Rights Commission
Heritage Victoria and Heritage Council of Victoria	Victorian Police — Licensing Services Division
Industrial Relations	Victorian Public Transport Safety Authority
Infertility Treatment Authority	Victorian Registration and Qualifications Authority
Land Victoria	Victorian Taxi Directorate
Liquor Licensing	Victorian WorkCover Authority

QLD

Biosecurity Queensland
— Agricultural Chemicals Distribution Control Act
— Industrial hemp licensing
— Interstate Certificate Assurance
— Livestock Travel Permits
— National Livestock Identification System
— Pest animal/plant permits
— Registration of a brand
— Registration of beekeepers
— Scientific use of animals

Building Services Authority

Business Services Division
— Office of Fair Trading

Chicken Meat Industry Committee

Chiropractors Board of Queensland

Commission for Children and Young People and Child Guardian

Dental Board of Queensland

Dental Technicians and Dental Prosthetists Board of Queensland

Department of Communities, Office for Children

Dept of Education, Training and the Arts
— Office of Higher Education

Department of Emergency Services
— Chemical Hazards & Emergency Management Services
— Queensland Fire and Rescue

Department of Employment and Industrial Relations

Department of Housing

Department of Mines and Energy
— Resource Strategy
— Director-General
—Petroleum and Gas

Department of Natural Resources and Water

Department of Natural Resources and Water
— Forest Products

Department of Primary Industries and Fisheries

Disability Services Queensland

Electrical Safety Office

Environmental Protection Agency

Liquor Licensing Division

Main Roads — Corridor Access Branch

Medical Board of Queensland

Medical Radiation Technologists Board of Qld

Motor Accident Insurance Commission

Non-State Schools Accreditation Board

Occupational Therapists Board of Queensland

Office of Racing Regulation

Office of State Revenue

Optometrists Board of Queensland

Osteopaths Board of Queensland

Pharmacists Board of Queensland

Physiotherapists Board of Queensland

Podiatrists Board of Queensland

Prostitution Licensing Authority

Psychologists Board of Queensland

Queensland Corrective Services

Queensland Explosives Inspectorate

Queensland Health
— Drugs and Poisons Policy and Regulation
— Private Health Unit
— Radiation Health Unit

Queensland Nursing Council

Queensland Office of Gaming Regulation

Queensland Parks and Wildlife Service

Queensland Police Service
— Weapons Licensing Branch

Queensland Transport

Safe Food Production Queensland

South Bank Corporation

Speech Pathologists Board of Queensland

State Registration Authority
— Commonwealth Register of Courses and Institutes for Overseas Students

Surveyors Board of Queensland

The Board of Architects of Queensland

The Board of Professional Engineers of Queensland

Training and Employment Recognition Council

Treasury — Office of State Revenue

Workplace Health and Safety Queensland

South Australia

Administrating Authority — Rail Safety Regulator

Chiropractic and Osteopathy Board of SA

Commercial Marine Services
- — Qualifications
- — Survey

Dairy Authority of South Australia

Department for Environment and Heritage
- — Botanic Gardens
- — Fauna Permits
- — NPW Act
- — Tourism

Department for Families and Communities
- — Alternative Care
- — Office for Community Housing

Department for Transport, Energy and Infrastructure
- — Driver Training and Audit
- — Safety and Regulation Division, Accident Towing and Investigations
- — Safety & Regulation Division, Transport Safety Regulation, Accreditation and Licensing Centre

Department for Transport, Energy and Infrastructure
- — Taxis
- — Towtrucks
- — Transport Safety Compliance Section
- — Vehicle Services
- — Licensing and Standards

Department of Further Education, Employment Science and Technology under delegation from Training and Skills Commission

Department of Further Education, Employment Science and Technology under delegation from Training and Skills Commission — Quality Branch

Department of Further Education, Employment, Science and Training, Traineeship and Apprenticeship Services

Department of Health
- — Food regulation
- — Private hospitals
- — Public Environmental Health
- — Scientific Services Branch

Drug and Alcohol Services South Australia

Environment Protection Authority

Equal Opportunity Commission

Essential Services Commission of South Australia

Independent Gambling Authority

Legal Practitioners Conduct Board

Non-Government Schools Registration Board

Occupational Therapy Board of South Australia

Office of Consumer and Business Affairs

Office of the Liquor and Gambling Commissioner

Office of the Technical Regulator

Optometry Board of South Australia

Pharmacy Board of South Australia

Physiotherapy Board of South Australia

Podiatry Board of South Australia

Primary Industries and Resources SA
- — Agriculture, Food and Wine Division
- — Aquaculture, Aquaculture Act 2001
- — Building Policy Branch
- — Fisheries
- — Mineral Resources Group
- — Petroleum and Geothermal Group

RevenueSA
- — Payroll Tax
- — Stamp Duty — Rental Business Provisions
- — Stamp Duty on Insurance

South Australia Metropolitan Fire Service

South Australia Police

South Australian Psychological Board

Western Australia	
Architects Board	Motor Vehicle Industry Board
Builders' Registration Board	Nurses and Midwives Board of Western Australia
Dental Board	Occupational Therapists Registration Board
Dental Prosthetist Advisory Committee	Office of Rail Safety
Department of Agriculture and Food	Osteopaths Registration Board
Department of Consumer and Employment Protection	Painters' Registration Board
Department of Fisheries	Department of Planning and Infrastructure
	— Marine Safety
Department of Housing and Works	— Passenger Services Business Unit
Department of Local Government and Regional Development	— Pastoral Lands Board
Department of Racing, Gaming and Liquor	Perth Market Authority
Department of the Attorney General	Physiotherapists Registration Board
Department of Treasury and Finance, Office of State Revenue	Potato Marketing Corporation of Western Australia
Department of Water	Racing and Wagering Western Australia
Dept of Industry and Resources	Radiological Council
— Mineral and Titles Services Division	
— Environment Division	Real Estate and Business Agents Supervisory Board
— Petroleum and Royalties Division	Settlement Agents Supervisory Board
Land Surveyors Licensing Board	Training Accreditation Council
Land Valuers Licensing Board	Veterinary Surgeons Board
Legal Practice Board	Western Australian Meat Industry Authority

Tasmania	
Board of Environmental Management and Pollution Control	Forest Practices Authority Tasmania
Dental Board of Tasmania	Inland Fisheries Service
Dental Prosthetists Registration Board of Tasmania	Marine and Safety Tasmania
Department of Education — Child Care Unit	Medical Radiation Science Professionals Registration Board
Department of Health and Human Services — Hospitals Act	Office of Energy Planning and Conservation
— Pharmaceutical Services Branch	Office of the Surveyor — General, Information and Land Services Division
— Population Health Branch	Parks and Wildlife Service
— Tobacco Licensing	Pharmacy Board of Tasmania
Department of Infrastructure Energy and Resources — Rail Safety	Podiatrists Registration Board
— Transport Commission	Racing regulatory panels
Department of Police and Emergency Management — Firearms	Rail Safety Regulator
Department of Primary Industries and Water — Animal Brands and Movement Act	Recorder of Titles
— Chemical Management Branch	Schools Registration Board
— Conservation	Secretary of Primary Industries and Water
— Food Safety Branch	State Fire Commission — Community Fire Safety
— Marine Farming Branch	State Fire Commission — Corporate Services
Department of Treasury and Finance — Gaming Branch	Sullivans Cove Waterfront Authority
— Liquor Licensing Branch	Tasmanian Dairy Industry Authority
Director of Environmental Management	Tasmanian Energy Regulator
Director of Public Health — Food Act	Tasmanian Heritage Council
— Radiation Protection Act	Tasmanian Qualifications Authority
Director of Racing	Workplace Standards Tasmania

Northern Territory	
Bushfires NT	— Optometrists Board
Commissioner of Territory Revenue	— Pharmacy Board
Department of Fisheries	— Physiotherapists Board
Department of Health and Community Services	— Private Hospital Licensing
— Children's Services Unit	
Department of Justice, Licensing and Regulation	— Psychologists Board
Department of Natural Resources, Environment and the Arts	— Radiographers Board
— Land Clearing	
— Environment and Heritage	— Heritage
Department of Planning and Infrastructure	— Parks
— Building Advisory Services Branch	
Department of Primary Industry, Fisheries and Mines	— Pastoral Land Board
Health Professions Licensing Authority	— Water management
— Aboriginal Health Workers	— Wildlife Permits
— Chiropractors and Osteopaths Board	Northern Territory Police Force
— Dental Board	NT WorkSafe
— Medical Board	Utilities Commission of the Northern Territory
— Nursing and midwifery Board	Veterinary Board of the Northern Territory

Australian Capital Territory	
ACT Accreditation and Registration Council	Department of Education and Training
ACT Planning and Land Authority	Environment Protection Authority
ACT Revenue Office	Independent Competition and Regulatory Commission
Department of Disability, Housing and Community Services, Children's Policy and Regulation Unit	Office of Regulatory Services

Local governments	
Adelaide City Council	George Town Council
Alice Springs Town Council	Greater Bendigo City Council
Brisbane City Council	Hobart City Council
Cairns City Council	Ipswich City Council
City of Melbourne Council	Launceston City Council
City of Mount Gambier Council	Litchfield Shire Council
City of Perth Council	Mid-Western Regional Council
City of Sydney Council	Nebo Shire Council

B Study methodology

In this study of the quality and quantity of regulation, the Commission directed its activity at developing a range of baseline and contextual data. Comprehensive measures of the quantity and quality of regulation are difficult to develop, and expensive to collect. The Commission, therefore, sought to contain the scope of the exercise, particularly in terms of the number of data points being collected.

As discussed in the body of this report, the data gathering process was influenced by the availability of data and the need to gather data in a form which would be meaningful and consistent across all jurisdictions.

The Commission sourced the data, as far as possible, directly from the governments involved. To ensure data was gathered on a consistent basis, the Commission developed three questionnaires, which were distributed to governments and their business regulators:

1. Regulatory system questionnaire 2006-07
2. Business regulator questionnaire 2006-07
3. Local council business regulation questionnaire 2006-07

These questionnaires (described below) were prepared in consultation with the jurisdictions and with the assistance of the Australian Bureau of Statistics. Copies of the questionnaires are available on the Commission's web site at http://www.pc.gov.au/study/regulationbenchmarking/stage2.

The quality of the data gathered through the surveys was controlled through several processes. Advisory Panel members were asked to monitor the quality of responses from their jurisdiction. They were also provided with tables setting out the data received by the Commission from their jurisdiction so that they could verify the data being used by the Commission. Where individual responses to significant questions were missing, or appeared to be anomalous, the Commission sought clarification from the relevant Advisory Panel member.

B.1 Regulatory system questionnaire 2006-07

The Commission sent the regulatory system questionnaire to the Australian Government and all state and territory governments. It provided the questionnaire to the Advisory Panel members in each jurisdiction who then completed it or forwarded it to an appropriate agency in their jurisdiction. Advisory Panel members were responsible for returning the completed questionnaires to the Commission.

The data collected through this process is reported in chapters 3, 4 and 5 along with observations on the limitations of the data and its interpretation.

Part 1 of the questionnaire sought information relating to the quantity of regulation in each jurisdiction. Part 2 sought information on a range of indicators on the processes undertaken in developing and reviewing regulation. Table B.1 contains the questions asked in the Commission's *Regulatory system Questionnaire 2006-07*.

Table B.1 **Regulatory System Questionnaire 2006-07**

Survey question	*Table / figure number*
Part 1 — Quantity of regulation	
1. How many Acts of parliament/assembly (primary legislation) were in force in your jurisdiction at the close of business on 30 June 2007?	Table 3.1
2. In total, how many pages were in the official printing of these Acts at 30 June 2007?	Table 3.1
3. How many statutory rules and other legislative instruments were in force in your jurisdiction at the close of business on 30 June 2007?	Table 3.1
4. In total, how many pages were in the official printing of these instruments at 30 June 2007?	Table 3.1
5. How many new Acts of parliament/assembly, excluding appropriation Acts, were enacted in your jurisdiction between 1 July 2006 and 30 June 2007?	Table 3.2
6. In total, how many pages were in the official printing of these Acts?	Table 3.2
7. How many new legislative instruments (subordinate legislation) were enacted in your jurisdiction between 1 July 2006 and 30 June 2007?	Table 3.2
8. In total, how many pages were in the official printing of these instruments?	Table 3.2
9. How many business regulators did your jurisdiction have as at 30 June 2007; that is, bodies whose activities include regulating some aspect of business activity?	Table 5.1
Part 2 — Quality of regulation	
10. Between 1 July 2006 and 30 June 2007 did your jurisdiction publish a list of new regulatory proposals which would be considered in the following year?	
11. Between 1 July 2006 and 30 June 2007 what percentage of bills, statutory rules and other legislative instruments and quasi-regulation were subject to mandatory public consultation requirements for new regulatory proposals which affected business?	Table 4.1
12. If any regulatory proposals were subject to mandatory public consultation requirements, what was the minimum period of time required for consultation?	
13. On 30 June 2007 did your jurisdiction have a mandatory requirement that regulatory proposals affecting business be subject to assessment through a RIS (or equivalent) process?	Table 4.2
14. What is the threshold for the preparation of a RIS (or equivalent)?	Box 4.3
15. What is the coverage of the RIS (or equivalent)? For example, does the RIS document the impact on all other groups, as well as business?	
16. Where a RIS (or equivalent) is required, is there a requirement that it be made available to stakeholders for comment or consultation?	Table 4.4
17. Is there a requirement that a final RIS (or equivalent) be made public?	Table 4.5
18. Between 1 July 2006 and 30 June 2007 what proportion of regulatory proposals in your jurisdiction were subject to a RIS (or equivalent)?	Table 4.3
19. On 30 June 2007 was there a designated body with responsibility for assessing compliance with RIS (or equivalent) requirements?	Table 4.6
20. Does this designated body have independence under statute?	Table 4.6
21. On 30 June 2007 was there a mechanism to prevent regulatory proposals proceeding to a final decision if they do not comply with the RIS (or equivalent) requirements?	Table 4.12

(continued next page)

Table B.1 **(continued)**

Survey question	*Table / figure number*
22. On 30 June 2007 was there a designated body with responsibility for publicly reporting on compliance with RIS (or equivalent) requirements?	Table 4.6
23. Does this designated body have independence under statute?	Table 4.6
24. Between 1 July 2006 and 30 June 2007 was there a requirement for the quantitative estimation of compliance costs on business of new regulatory proposals?	Table 4.7
25. In the case where the quantification of compliance costs was required, was it for the purpose of consultation with stakeholders and/or for the information of decision makers?	Table 4.9
26. Between 1 July 2006 and 30 June 2007 for what proportion of regulatory proposals was a quantitative estimation of compliance costs prepared?	Table 4.8
27. Are quantitative estimates of compliance costs made public prior to the enactment of the regulation?	Table 4.11
28. On 30 June 2007 was there a designated body with responsibility for assessing compliance with the requirement to prepare measurements of compliance costs?	Table 4.10
29. Does this body have independence under statute?	Table 4.10
30. On 30 June 2007 was there a mechanism to prevent regulatory proposals proceeding to a final decision if they do not comply with the requirement to prepare quantitative estimates of compliance costs?	Table 4.12
31. Does your jurisdiction have either a policy or guidelines encouraging the use of plain English drafting of regulations?	Table 4.13
32. Do you have an independent process for assessing proposed regulations to ensure that they satisfy those plain English requirements?	Table 4.13
33. Does your jurisdiction require the inclusion of sunsetting provisions in new regulations?	Table 4.14
34. Does your jurisdiction have an ongoing requirement for the periodic review of some regulation?	Table 4.15
35. Between 1 July 2006 and 30 June 2007 did your jurisdiction publish a list of regulations that will be reviewed in the coming year?	
36. Does your jurisdiction provide a single entry point for information about government requirements on business?	
37. What is the estimated proportion of initial contacts from business between 1 July 2006 and 30 June 2007 which were received through a single entry point?	

Part 1 — Quantity of regulation

The stock of regulation

The questionnaire asked each jurisdiction to indicate how many acts of parliament/assembly and other legislative instruments were in force in each jurisdiction on 30 June 2007. The questionnaire also asked for the total length of all of these regulations in pages. This part of the questionnaire was intended to provide background and context on the overall volume of regulation in each jurisdiction.

The scope of the questionnaire covered all regulation, not just business regulation. The reasons for taking this approach are explored in chapter 2. While the data on the stock of regulation does not distinguish between business and non-business regulation, the business regulator questionnaire (discussed below) sought data on the number of acts and legislative instruments relating to business regulation which are administered by each business regulator.

As outlined in chapter 3, data on the stock of regulation should be used cautiously. For this reason the number of acts and legislative instruments may vary significantly while imposing a similar level of regulatory burden.

Similarly the data on the volume of acts and legislative instruments was sought on the basis of the number of pages in official printing. This was the most ready measure of the volume of legislation. However, because of differences in the layout of acts and the approach to drafting legislation it can not be assumed that more pages of legislation corresponds to a greater volume of legislation, or a higher regulatory burden.

The flow of regulation

This section of the questionnaire asked about the number of new acts and legislative instruments which were enacted between 1 July 2006 and 30 June 2007. The questions on the flow of regulation were intended to provide a general indication of the rate at which regulation changes. Jurisdictions were asked not to include appropriation acts in the data they reported because these acts do not usually impose a regulatory burden on business and are of a transitory nature.

While the number of new acts and legislative instruments is a general indicator of the flow of new regulations, it can not be simply added to the previous stock of regulation to show the overall change in the volume of ongoing regulation. While

changes to regulation in new acts and legislative instruments will affect the community, these provisions may be amending or replacing existing regulations and may not be contributing to an increase in the volume of ongoing regulation.

Number of business regulators

Jurisdictions were asked to identify the number of business regulators in their jurisdiction. For the purposes of the survey 'business regulators' were broadly defined as bodies whose activities include regulating some aspect of business activity.

Part 2 — Quality of regulation

Part 2 of the questionnaire sought information on a range of policies and practices which jurisdictions may use to improve the quality of regulation. The data covers a range of indicators relating to public consultation, the of analysis of the impact of proposed regulations on business, the use of plain English drafting, and the review of regulation.

Cost of Data collection

Part 3 of the questionnaire asked jurisdictions to record the time taken to complete the questionnaire. This provides an indication of the cost to jurisdictions of providing data to the Commission (table B.2).

Table B.2 **Total minutes spent completing *Regulatory System survey 2006-07***

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*COAG*
Total time (minutes)	360	360	n/s	n/s	n/s	480	300	240	1 764	360

Source: Surveys responses from Australian, state and territory governments (unpublished).

B.2 Business regulator questionnaire 2006-07

The business regulator questionnaire was provided to the Advisory Panel members in each jurisdiction who then forwarded the questionnaire to the business regulators they identified in their jurisdiction. The completed surveys were collected by the jurisdictions and forwarded to the Commission or, in some cases, forwarded directly to the Commission.

The questionnaire sought to identify all of the business regulators in Australia and gather high level information about their size, role, activities and approach taken to administering and enforcing regulation. This information provides indicators of the ways in which regulators interact with the businesses they are regulating, provides context for the Commission's later work on regulation, and a starting point for the identification of areas for further investigation.

The data collected through this process is reported in chapter 6 along with observations on the limitations of the data and its interpretation. A list of all the bodies from which the Commission received completed questionnaire is at appendix A. Table B.3 contains the questions asked in the Commission's *Business Regulator Questionnaire 2006 07*.

Table B.3 **Business Regulator Questionnaire 2006-07**

Survey question	*Table / figure number*
Part 1 — Regulator information	
1. Regulator name	
2. Jurisdiction	
3. Type of organisation (please select from drop-down list)	
4. Business regulation expenditure	Figure 5.1
5. Full-time equivalent staff engaged in business regulatory functions	Figure 5.2
Part 2 — Business regulations as at 30 June 2007	
6. Number of Acts you administer	Table 5.2
7. Number of legislative instruments you administer	Table 5.2
8. Number of quasi-regulations you administer	Table 5.2
Part 3 — Business licences/permits/registrations	
9. How many types of licences, permits or registrations do you administer?	Figure 5.3
10. At 30 June 2007, how many valid licences, permits or registrations were in operation in your jurisdiction?	Figure 5.4
11. Between 1 July 2006 and 30 June 2007, how many new licences, permits or registrations were issued?	
12. Between 1 July 2006 and 30 June 2007, how many licences, permits or registrations were renewed?	
13. What proportion of licence, permit or registration applications have information available online?	Figure 6.1
14. What proportion of licence, permit or registration applications have relevant forms available online?	Figure 6.2
15. What proportion of licence, permit and registration application forms can be submitted online?	Figure 6.3
16. What proportion of licence, permit or registration application decision criteria are publicly available?	Figure 6.4
17. What proportion of licences, permits or registrations allow businesses to update their details online?	Figure 6.5
18. What proportion of licences, permits or registrations can businesses renew online?	Figure 6.6

(continued next page)

Table B.3 **(continued)**

Survey question	*Table / figure number*
19. What is the predominant basis for setting your licence, permit or registration fees?	Figure 6.7
20. What proportion of licence, permit and registration application fees can be paid online?	Figure 6.8
21. What proportion of licence, permit or registration renewal fees can be paid online?	Figure 6.9
22. Total licence, permit and registration fees and charges collected between 1 July 2006 and 30 June 2007?	
23. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications had a legally binding time limit for processing?	Figure 6.10
24. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications did you publicly report a 'target time period' for processing?	Figure 6.11
25. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications was your performance against this target publicly reported?	Figure 6.13
26. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications were businesses advised of the expected processing time?	Figure 6.12
27. Between 1 July 2006 and 30 June 2007, if a licence, permit or registration application was rejected, were appeal mechanisms available?	Figure 6.14
28. What proportion of licences, permits or registrations allow businesses that hold an equivalent licence from another jurisdiction to operate in your jurisdiction without applying for a local licence?	Figure 6.15
29. What proportion of licences, permits or registrations consider equivalent interstate licences in applications?	Figure 6.16
Part 4 — Enforcement of regulation	
30. Did you publish enforcement strategies for business regulation for the year 1 July 2006 to 30 June 2007?	Figure 6.17
31. Will you publish outcomes for enforcement activities affecting business during the year 1 July 2006 to 30 June 2007?	Figure 6.18
32. In the year 1 July 2006 to 30 June 2007 did you employ risk-based strategies in enforcing regulation which affects business?	Figure 6.19
33. If so, what proportion of enforcement activities were risk based?	
34. In the year 1 July 2006 to 30 June 2007 were businesses able to appeal enforcement activities?	Figure 6.20

Regulator information

Part 1 and Part 2 of the questionnaire sought to identify the regulator and to collect basic information about how the regulator was constituted, resources used in relation to business regulation, and number of regulatory instruments administered.

As outlined in chapter 3, there are some limitations in the data which may affect how it can be interpreted. Many regulators are involved in both business and non-

business regulation, and the distinction between the two is not always clear. Similarly, the number and size of regulators in each jurisdiction may be influenced by the size of the jurisdiction, scale and complexity of the activities being regulated, and by the jurisdiction's approach to structuring regulatory agencies.

Business licences/permits/registrations

Part 3 of the questionnaire asked the respondents for information about their interactions with businesses in relation to business registration, licensing, and similar processes where regulators give businesses authority to undertake an activity. These processes are generally described in this report as licences.

Although business licensing represents only a part of the role of a regulatory body, the Commission focussed on this area because these activities represent the most frequent interactions between most businesses and business regulators, and because they lend themselves to the collection of objective, numerical data which can be readily compared across jurisdictions.

As the questionnaire focussed specifically on business licences, it excluded licences for individuals, such as a personal driver's licence. While the employees of a business may need various licences to carry out some business activities, those licences may not be solely a licence for a business activity. Similarly occupational or professional licences were not within the scope of the data sought. Although a business may need to employ staff with occupational or professional qualifications or licences in order to carry on some of its business activities, those licences might also be required in non-business activities. Further occupational licenses and qualifications are usually attached to the individual staff members, rather than the business itself. As such, whilst there is an impetus for the 'business' to employ staff with occupational licenses and qualifications, there is no requirement on the 'business' itself to hold such as license. There is considerable overlap between the areas of business and individual licensing and so caution needs to be exercised in interpreting the data on business licensing.

The data sought covered the number of licence types administered, the number of licences issued, the methods used for making information on these licences available to businesses, receiving applications, setting and collecting fees, and the recognition of licences from other jurisdictions.

Enforcement of regulation

Part 4 of the questionnaire sought data about enforcement strategies employed by regulators. It may have been possible to obtain numerical data on the number and

outcome of enforcement activities such as inspections, investigations and legal actions. However, differences in enforcement strategies mean that such data is unlikely to provide any useful comparisons. The Commission, therefore, focussed its data gathering on those high level enforcement strategies used by regulators.

Cost of Data collection

Part 5 of the questionnaire asked business regulators to record the time taken to complete the questionnaire. This provides an indication of the cost to regulators of providing data to the Commission (table B.4).

Table B.4 **Time spent completing regulator surveys, in minutes**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Total time by jurisdiction	8 700	10 290	n/s	6 495	6 895	5 175	3 067	100	420
Average time per regulator	161	156	n/s	97	147	162	75	55	52

Source: Survey responses from Australian, state and territory governments (unpublished).

B.3 Local council business regulation questionnaire 2006-07

As noted in chapter 6, there were 701 local government bodies across Australia in June 2006 (PC 2008). They range in size from the Brisbane City Council, which has a population of around one million, to very small rural and remote area councils with populations of a few thousand. Given the number of local government bodies and the diversity in their size and role the Commission considered that it was impractical to seek information from all of them. Instead, the Commission decided to survey four local governments in each state and the Northern Territory with the intention of collecting some indicative data which could form the basis for future studies. (In the ACT there are no local governments. The functions performed by local government in other jurisdictions are performed by the ACT government). Table B.5 contains the questions asked in the Commission's *Local Council Business Regulation Questionnaire 2006 07*.

Table B.5 **Local council business regulation questionnaire 2006-07**

Survey question	*Table / figure number*
Part 1 – Council information	
1. Name of council	
2. State / Territory	
3. Residential population in council area	
4. Full-time equivalent staff engaged in business regulatory functions	Figure 7.1
Part 2 – Local laws or by-laws administered	
5. Number of local laws/by-laws in force on 30 June 2007	Figure 7.2
6. Total number of pages of local laws/by-laws in force at 30 June 2007	Figure 7.2
Part 3 – Business licences/permits/registrations	
7. How many types of business licence, permit or registration do you administer?	Figure 7.3
8. At 30 June 2007, how many valid licences, permits or registrations were in operation in your jurisdiction?	Figure 7.3
9. What proportion of licence, permit or registration applications have information available online?	Table 7.3
10. What proportion of licence, permit or registration applications have relevant forms available online?	Table 7.3
11. What proportion of licence, permit and registration application forms can be submitted online?	Table 7.3
12. What proportion of licence, permit or registration application decision criteria are publicly available?	Table 7.3
13. What proportion of licences, permits or registrations allow businesses to update their details online?	
14. What proportion of licences, permits or registrations can businesses renew online?	Table 7.3
15. What is the predominant basis for setting your licence, permit or registration fees?	
16. What proportion of licence, permit and registration application fees can be paid online?	
17. What proportion of licence, permit or registration renewal fees can be paid online?	
18. Total licence, permit and registration fees and charges collected between 1 July 2006 and 30 June 2007?	
19. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications had a legally binding time limit for processing?	Table 7.4
20. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications did you publicly report a 'target time period' for processing?	
21. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications was your performance against this target publicly reported?	
22. Between 1 July 2006 and 30 June 2007, what proportion of licence, permit or registration applications were businesses advised of the expected processing time?	Table 7.4
23. Between 1 July 2006 and 30 June 2007, if a licence, permit or registration application was rejected, were appeal mechanisms available?	Table 7.4

(continued next page)

Table B.5 (continued)

Survey question	*Table / figure number*
Part 4 – Enforcement of regulation	
24. Did you publish enforcement strategies for business regulation for the year 1 July 2006 to 30 June 2007?	Table 7.5
25. Will you publish outcomes for enforcement activities affecting business during the year 1 July 2006 to 30 June 2007?	Table 7.5
26. In the year 1 July 2006 to 30 June 2007 did you employ risk-based strategies in enforcing regulation which affects business? If so, what proportion of enforcement activities were risk based?	Table 7.6
27. In the year 1 July 2006 to 30 June 2007 were businesses able to appeal enforcement activities?	Table 7.7

The selection of councils to be surveyed was aimed at gaining a representative sample of the different types of local governments and the environments in which they operate. The councils for each jurisdiction were selected to represent each of four broad groups:

- capital city councils or a major council (with a population of over 70 000) within the capital
- councils within the greater capital city areas, or on the fringe of the capital, or a major urban centre
- councils in major regional centres (population greater than 20 000) where the population is largely urban in nature
- smaller rural or regional councils where the population is primarily involved in primary industries.

The selection of councils was also based on the desire to include councils which might regulate industry sectors being studied as part of the Commission's benchmarking of business registration. The Australian Local Government Association and the state and Northern Territory governments were also consulted about the selection of councils.

The questionnaire was prepared in consultation with the Australian Local Government Association and the Australian Bureau of Statistics. It was sent by the Commission to the selected councils who were asked to return the completed questionnaires to the Commission. A list of bodies from which the Commission received completed questionnaires is at appendix A. The data collected through this process is reported in chapter 6, along with observations on the limitations of the data and its interpretation.

The questions asked of councils were very similar to those asked of other levels of government. Part 1 of the questionnaire sought information on the population in the council area and the number of full time staff engaged in business regulation. Part 2 asked for the number and volume of local laws/by-laws in force on 30 June 2007. Parts 3 and 4 of the questionnaire sought information on business licensing and the enforcement of regulations.

Cost of Data collection

Part 5 of the questionnaire asked business regulators to record the time taken to complete the questionnaire. This provides an indication of the cost to regulators of providing data to the Commission. Respondents reported a total time of 1540 minutes, averaging 119 minutes per respondent.

B.4 Response rates for individual questions

As discussed in the report, the figures presented in each table or graph are generally calculated using only the responses of those respondents who provided an answer to the question on which the data is based. Those respondents for whom the question did not apply (i.e. those that responded 'not applicable'), or who did not provide a response for whatever reason, were generally omitted from the calculations.

As a result, the value of '*n*' (that is, the number of respondents in each jurisdiction who provided a response to each question) may be different for each jurisdiction for each graph, figure or table. The number of responses which form the basis of data is set out below (table B.6 and B.7).

Table B.6 **Chapter 3 '*n*' values for survey responses, by figure**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Figure 3.1	50	64	49	66	48	30	38	16	6
Figure 3.2	57	66	53	64	46	37	39	16	7
Figure 3.3	40	52	50	58	47	31	40	28	7
Figure 3.4	37	51	45	57	47	31	38	27	7
Figure 3.5	23	36	41	42	33	26	33	13	4

Source: Survey responses from Australian, state and territory governments (unpublished).

Table B.7 **Chapter 6 '*n*' values for survey responses, by figure**

	Cwlth	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Figure 6.1	42	55	61	60	50	31	43	19	8
Figure 6.2	42	56	60	60	50	31	42	19	7
Figure 6.3	42	56	60	60	50	31	41	19	8
Figure 6.4	41	50	60	54	44	24	34	17	5
Figure 6.5	38	45	60	55	47	24	37	16	5
Figure 6.6	27	40	59	51	42	24	35	15	5
Figure 6.7	32	50	60	55	44	29	40	19	5
Figure 6.8	30	46	65	51	44	29	38	14	5
Figure 6.9	30	44	65	51	44	27	38	14	5
Figure 6.10	38	41	59	50	33	20	28	13	5
Figure 6.11	42	53	60	59	48	29	42	18	8
Figure 6.12	41	52	60	57	47	27	42	19	8
Figure 6.13	28	28	60	36	23	11	18	9	3
Figure 6.14	38	45	49	44	35	27	33	17	4
Figure 6.15	28	49	60	55	44	28	41	17	6
Figure 6.16	27	49	60	56	45	27	40	17	6
Figure 6.17	49	66	59	75	52	33	47	19	7
Figure 6.18	49	66	62	75	52	34	46	19	7
Figure 6.19	48	67	60	69	53	30	45	19	7
Figure 6.20	38	43	39	55	38	23	38	13	6

Source: Survey responses from Australian, state and territory governments (unpublished).

B.5 Testing the results

The Commission received responses to its survey from over 400 regulators. However, there was a significant number of regulators from whom it did not receive a response. Response rates varied across jurisdictions and some significant regulators are not included in the responses from some jurisdictions. The data sets from the various jurisdictions are not, therefore, directly comparable.

Concerns were accordingly raised by some jurisdictions about whether differences across jurisdictions in chapter 6, for a range of indicators, are due to differences in practices, or to a lack of comparability. To test this, the Commission examined data for a smaller, directly comparable, set of respondents.

The Commission identified six areas of regulation where responses were received from regulators in all, or almost all, jurisdictions (see table B.8). These areas included food, environment, transport, primary industries, liquor and gambling, and fair trading. This sample comprised 74 of the regulators who provided responses to the Commission's *Business Regulator Questionnaire 2006-07*.

Table B.8 **Business regulators by regulatory activity and jurisdiction**

As at 30 June 2007

	Food	*Environment*	*Transport*	*Primary and Fisheries*	*Gambling and Liquor*	*Fair Trading*
NSW	Food Author ty	Env ronment Protect on Author ty	M n stry of Transport; Roads and Traff c Author ty	Dept of Pr mary Industr es	Off ce of L quor, Gam ng and Rac ng; Cas no Contro Author ty; Greyhound and Harness Rac ng Regu atory Author ty; Rac ng NSW	Dept of Commerce – Off ce of Fa r Trad ng
V c	Da ry Food Safety V ctor a; Food Safety Un t; Pr mesafe	Susta nab ty V ctor a; Env ronmenta Protect on Author ty	V c Roads; V ctor an Tax D rectorate	F sher es V ctor a	V ctor an Comm ss on for Gamb ng Regu at on; Bookmakers and Bookmakers C erks Reg strat on Comm ttee; Greyhound Rac ng V ctor a; Harness Rac ng V ctor a	Consumer Affa rs V ctor a
Q d	Safe Food Product on Queens and	Env ronment Protect on Agency; Dept of Natura Resources and Water	Motor Acc dent Insurance Comm ss on; Queens and Transport	Dept of Pr mary Industr es and F sher es	Off ce of Rac ng Regu at on; Queens and Off ce of Gam ng Regu at on; L quor L cens ng D v s on	Bus ness Serv ces D v s on, Off ce of Fa r Trad ng
SA	Da ry Author ty of South Austra a; Dept of Hea th – Food Regu at on	Env ronment Protect on Author ty; Dept of Env ronment and Her tage	Dept for Transport, Energy and Infrastructure – nc ud ng Dr ver Tra n ng and Aud t; Transport Safety Comp ance; Acc dent Tow ng and Invest gat ons; Veh c e Serv ces; Transport Safety Regu at on; Accred tat on and L cens ng Centre	Pr mary Industr es and Resources SA – nc ud ng Agr cu ture, Food and W ne; and F sher es	Independent Gamb ng Author ty; Off ce of the L quor and Gamb ng Comm ss oner	Off ce of Consumer and Bus ness Affa rs

(cont nued next page)

Table B.8 (continued)

	Food	*Environment*	*Transport*	*Primary and Fisheries*	*Gambling and Liquor*	*Fair Trading*
WA	Dept of Agriculture and Food	Dept of Industry and Resources - Environment Division		Dept of Agriculture and Food; Dept of Fisheries; Western Australian Meat Industry Authority	Dept of racing, Gaming and Liquor; Racing and Wagering WA	Dept of Consumer and Employment Protection; Motor Vehicle Industry Board
Tas	Dept of Primary Industry and Water – Food Safety Branch	Environmental Management and Pollution Control Board	Dept of Infrastructure, Energy and Resources –Transport Commission per Vehicle Operations Branch	Dept of Primary Industries and Water – including Marine Farming Branch; Forest Practices Authority; Inland Fisheries Service; Dairy Industry Authority	Director of Racing; Dept of Treasury and Finance – Liquor and Gaming Branch; Racing Regulatory Panels	
NT		Dept of Natural Resources, Environment and the Arts – Environment and Heritage; Water Management; Land Clearing		Dept of Primary Industry, Fisheries and Mines	Licensing and Regulation	
ACT	Office of Regulatory Services	Environment Protection Authority	Office of Regulatory Services		Office of Regulatory Services	Independent Competition and Regulatory Commission

The Commission examined the responses from the regulators who were aligned with the key areas of regulation identified and compared the results with those reported in chapter 6. As the sample size was smaller it was expected that there may be some differences in outcomes and there was potential for variations between jurisdiction to be more marked.

The purpose of this exercise was to test whether a sample of regulators which was more consistent in coverage would produce a significantly different result from a census approach. The results for the smaller sample largely mirrored those for the full sample. Where there were variations they were often minor and they did not show a pattern which was inconsistent with the responses from all regulators.

This exercise also emphasised the difficulty of seeking to make comparisons of regulatory bodies regulating the same activities in different jurisdictions. As table B.8 demonstrates the structure and scope of regulatory bodies in different jurisdictions do not align neatly. In the area of primary industries and fisheries, for example, Queensland regulates through its Department of Primary Industries and Fisheries, Victoria regulates fisheries through Fisheries Victoria but does not have a distinct regulator for primary industries, while the Northern Territory has a single Department regulating primary industry, fisheries and mines. Comparable measures would be easier to achieve in a study with a narrower focus, where, in addition, a bottom-up approach can be applied to confirm the identification of all relevant regulators.

B.6 Evaluation of methodology

In general, the methodology used for this part of the study was effective in gathering data. However, there are some areas where the coverage and quality of the data might be improved in future studies of this kind.

Refining the indicators

The basis for determining what indicators will be used, and what data would be sought, is discussed earlier in this report. The indicators used in this study were selected by the Commission because it was considered that data was likely to be available on those indicators, and that they were likely to provide useful information. In light of the results of this study it may be possible to identify those indicators which are most likely to provide useful information in any future study. The indicators could also be reviewed in the light of advice from the jurisdictions about what areas are of most interest to them.

The indicators used in this study were generally at a very high level. While this has provided useful information, indicators which sought more detailed information on more narrowly focused issues may provide more information about the reasons for the differences between jurisdictions, and the significance of those differences.

Clarifying the questions

The process used in developing the questions used by the Commission could be reviewed and refined. In developing the questionnaires the Commission sought the views of the Australian Bureau of Statistics and also sought feedback from the jurisdictions. This process allowed the Commission to refine the questions used in the questionnaires and their presentation. To some extent, designing the questionnaires involved balancing the precision of the data sought, the facility with which respondents can complete the questionnaires, and the cost of gathering data.

The consistency with which the questions are interpreted might be improved through multi-party discussions with the jurisdictions about the wording of the questions and the supporting definitions and explanations provided. This process would help to ensure that the questions accommodated the differences between jurisdictions in their approach to regulation, and that they were being interpreted consistently across jurisdictions.

Response rates and quality control

The overall response rate to the Commission's questionnaires was satisfactory, but could be improved. The Commission received completed questionnaires from each jurisdiction, from over 400 business regulators, and from 16 local government bodies. However, the Commission's study was affected by:

- significant delays in the return of some questionnaires
- not all of the business regulators being identified and returning questionnaires
- significant gaps in the responses to individual questions.

The Commission followed up these issues throughout the course of the study. Discussions with the jurisdictions on the effectiveness of the processes used to distribute and return questionnaires may lead to improved processes, and higher response rates, for future studies.

The responses from local government bodies were limited. As described above, the Commission sought responses from four local government bodies in each state or territory with a system of local government. Sixteen responses were received from the 28 local government bodies contacted. Queensland was the only jurisdiction

from which a complete set of responses was received. The sole category of local government bodies from which a significant number of responses were received were the capital city councils. This meant that the Commission only had sufficient data to make useful comparisons between those capital city councils.

The good response rate from Queensland was due in part to the involvement of the Local Government Association of Queensland. The association was active in assisting the Commission to identify suitable local government bodies, ensure that questionnaires were completed and returned, and in clarifying the interpretation of some answers.

The Commission will also be considering ways to increase the level of confidence in the data received. This process may involve the development, in consultation with the jurisdictions, of a more formalised quality control process.

C New Zealand — Regulatory System Survey

The New Zealand Ministry of Economic Development included a completed *Regulatory System Questionnaire 2006-07* as part of its submission (sub. 6). This appendix provides the data from that completed survey alongside the equivalent Australian Government survey responses.

Table C.1 details the tables (and boxes) within the body of the report that carry the data for Australian jurisdictions and the corresponding tables (and boxes) in this appendix. The qualifications and caveats applied to the tables (and boxes) within the report apply equally to the data provided in this chapter. Further, any comparisons between the data for the Australian Government and New Zealand Government should take into account their differing regulatory responsibilities. For instance, the absence of a state or territory level of government in New Zealand means the corresponding regulatory responsibilities of the Australian states and territories would rest with either the New Zealand Government or the local governments of New Zealand.

A comparison of the Australian Government and New Zealand Government data shows the following differences:

- New Zealand had a greater stock of regulation than Australia (as measured by the number of acts). However Australia demonstrated a greater 'flow' of regulation in 2006 07
- in New Zealand all bills and statutory rules were subject to a regulatory impact statement (RIS), whereas only 17 per cent of Australian Government bills relating to regulatory proposals were subject to a RIS
- neither country has an ongoing requirement for the periodic review of regulation, nor do they have any requirements for new regulation to contain sunset provisions
- both countries have a designated body responsible for assessing compliance with, and publicly reporting on, RIS requirements, although neither body currently has statutory independence.

Table C.1 Cross referenced data tables

Appendix table (or box)	*Corresponding table (or box)within the report*
Table C.2	Table 3.1
Table C.3	Table 3.2
Table C.4	Table 4.1
Table C.5	Table 4.2
Box C.1	Box 4.3
Table C.6	Table 4.3
Table C.7	Table 4.4
Table C.8	Table 4.5
Table C.9	Table 4.6
Table C.10	Table 4.7
Table C.11	Table 4.8
Table C.12	Table 4.9
Table C.13	Table 4.10
Table C.14	Table 4.11
Table C.15	Table 4.12
Table C.16	Table 4.13
Table C.17	Table 4.14
Table C.18	Table 4.15

Table C.2 Number of regulatory instruments and pages

As at 30 June 2007

	Cwlth	*NZ*
Acts	1 279	1 641
Pages	98 486	n.av
Statutory rules	18 000	n.av
Pages	90 000	n.av
Total pages	188 486	

n.av not available.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.3 Number of new regulatory instruments and pages

Enacted between 1 July 2006 and 30 June 2007

	Cwlth	*NZ*
Acts	198	78
Pages	8 198	2 478
Other legislative instruments	4 487	404
Pages	31 439	3 382

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.4 Percentage of new regulatory proposals subject to mandatory public consultation

1 July 2006–30 June 2007

	Cwlth	*NZ*
Bills	0	100[a]
Statutory rules	0	100
Other legislative instruments	0	n.a
Quasi-regulations	0	n.a

n.a not applicable or not available. [a] Excludes Treaty of Waitangi settlement bills, Appropriation Bills and budget night bills.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.5 Mandatory regulatory impact analysis

	Cwlth	*NZ*[a]
Bills	✓	✓[b]
Statutory rules	✓	✓
Other legislative instruments	✓	×[c]
Quasi-regulations	✓	×[c]

[a] Cabinet Office rules only require a RIS if a Cabinet decision is required. [b] Excludes Treaty of Waitangi settlement bills, Appropriation Bills and budget night bills. [c] A RIS may be produced as best practice.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.6 Percentage of new regulatory proposals subject to analysis

1 July 2006–30 June 2007

	Cwlth	*NZ*
Bills	21	100[a]
Statutory rules	n.av	100[a]
Other legislative instruments	n.av	n.a
Quasi-regulations	n.av	n.a

n.a not applicable or not available. **n.av** not available. [a] Excludes Treaty of Waitangi settlement bills, Appropriation Bills and budget night bills.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Box C.1 **Regulation impact analysis — threshold criteria**

The Australian Government requires the preparation of a RIS where a proposal will have:

> A significant impact on business and individuals or the economy (whether in the form of compliance costs or other impacts).

However, all proposals are screened and some are subject testing using the Business Cost Calculator.

The New Zealand Government requires a RIS to be completed on policy proposals submitted to Cabinet that result in government bills, statutory regulations, or that propose the government support or adopt a Member's bill. There are however, exemptions to these requirements, including:

- matters of a minor or machinery nature not substantially altering existing arrangements
- administrative matters between departments
- implementing a national treaty (for which a National Interest Analysis is required)
- giving effect to a Budget decision under urgency (for example, repealing, imposing or adjusting a tax, fee, or charge)
- Order in Council that provides solely for the commencement of enabling legislation.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.7 **Requirement for regulatory analysis to be made available to stakeholders for comment or consultation**

	Cwlth	*NZ*
Bills	×	✓
Statutory rules	×	✓
Other legislative instruments	×	n.ap
Quasi-regulations	×	n.ap

n.ap not applicable.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.8 **Requirement for final regulatory analysis to be made public**

	Cwlth	*NZ*
Bills	✓	✓
Statutory rules	✓	✓
Other legislative instruments	✓	n.ap
Quasi-regulations	✓	n.ap

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.9 **Assessment and public reporting of regulatory analysis**

As at 30 June 2007

	Cwlth	*NZ*
Body to assess compliance	✓	✓
Independence under statute	✓**a**	×**b**
Body to publicly report compliance	✓	✓
Reporting body's independence under statute	✓**a**	×**b**

n.ap not applicable. **a** At 30 June 2007, the Office of Best Practice Regulation (OBPR) shared the statutory independence of the Productivity Commission. It is now part of the Department of Finance and Deregulation. **b** The body is an independently operating unit within the Ministry of Economic Development

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.10 **Requirement for quantitative measurement of compliance costs**

As at 30 June 2007

	Cwlth	*NZ*
Bills	✓	✓
Statutory rules	✓	✓
Other legislative instruments	✓	×
Quasi-regulation	✓	×

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.11 **Percentage of new regulatory proposals with quantitative business compliance cost estimates**

1 July 2006–30 June 2007

	Cwlth	*NZ*
Bills	100	n.a
Statutory rules	n.av	n.a
Other legislative instruments	n.av	n.a
Quasi-regulations	n.av	n.a

n.a not applicable or not available. **n.av** not available.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.12 **Quantitative business compliance cost estimates**

1 July 2006–30 June 2007

	Cwlth	*NZ*
Required for:		
public consultation	×	✓
final decision maker	✓	✓

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.13 **Assessment of quantitative compliance cost measurement**

As at 30 June 2007

	Cwlth	*NZ*
Designated body	✓	✓
Independence under statute	✓[a]	x[b]

a At 30 June 2007, the OBPR shared the statutory independence of the Productivity Commission. It is now part of the Department of Finance and Deregulation. **b** The body is an independently operating unit within the Ministry of Economic Development.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.14 **Percentage of new regulatory proposals where quantitative business compliance cost estimates were made public prior to enactment**

1 July 2006–30 June 2007

	Cwlth	*NZ*
Bills	n.av	100
Statutory rules	n.av	100
Other legislative instruments	n.av	n.a
Quasi-regulations	n.av	n.a

n.av not available. **n.a** not applicable or not available.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.15 **Existence of gatekeeping mechanisms**

As at 30 June 2007

Mechanisms to prevent non-compliant proposals proceeding	*Cwlth*	*NZ*[a]
For proposals not compliant with		
regulatory impact assessment	✓	✓
quantitative compliance cost measurement	✓	✓

a Ministers may withhold a paper from submission to Cabinet where the RIS has been deemed inadequate.

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

Table C.16 **Use and assessment of plain English drafting**

As at 30 June 2007

	Cwlth	*NZ*
Plain English drafting policy	✓	✓
Independent assessment of plain English drafting	✓	✓

Sources: Sub. 6, Survey responses from the Australian Government (unpublished).

References

ABS (Australian Bureau of Statistics) 2007, *Residential Population Growth Australia*, *2006-07*, Cat. No. 3218.0, ABS, Canberra.

2007, *Australian National Accounts: State Accounts*, *2006-07*, Cat No. 5220.0, ABS, Canberra.

2007, *Counts of Australian Businesses, including entries and Exits, Jun 2003 to Jun 2007*, Cat. no. 8165.0, ABS, Canberra.

Australian Government 2007, *Best Practice Regulation Handbook*, Canberra.

Cabinet Office (Better Regulation Executive) 2005, Code of Practice on Consultation, London.

COAG (Council of Australian Governments) 2004, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, http://www.coag.gov.au/meetings/250604/coagpg04.pdf (accessed 29 September 2006).

2006a, *Communiqué*, 10 February.

2006b, *Council of Australian Governments' Meeting Communiqué Attachment B*, 10 February.

2007a, *Communiqué*, 13 April.

2007b, *COAG Regulatory Reform Plan* (Supplementary Information to COAG Communiqué) , 13 April.

2007c, Council of Australian Government *Best Practice Regulation A Guide for Ministerial Councils and National Standard Setting Bodies*, October 2007

CPB 2004 (CPB Netherlands Bureau for Economic Policy Analysis), *Reducing the administrative burden in the European Union,* CPB Netherlands Bureau for Economic Policy Analysis, 25 August 2004.

Incisive media 2008, Law.com dictionary, http://dictionary.law.com/ (accessed 11 October 2008).

IPART (Independent Pricing and Regulatory Tribunal) 2006, *Investigation into the Burden of Regulation and Improving Regulatory Efficiency*, Sydney.

Jones, L., Charette, T., Hachey, L., Martin, S., Paradis, P. and Taylor, R. 2005, *Rated R: Prosperity Restricted by Red Tape*, Canadian Federation of Business, Ontario.

Lattimore, R., Madge, A., Martin, B. and Mills, J. 1998, *Design Principles for Small Business Programs and Regulations,* Staff research paper, Productivity Commission, Melbourne.

Netherlands Cabinet letter 2006, *We want to get rid of this too: Reduction of the administrative burden for business*, October.

NSW Government 2006, Ministerial Memorandum 2006 17 Improving the Regulation Making Process, available at www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2006/m2006-17, Accessed 12 March 2008.

2007, *Final Government Response to IPART's 'Investigation into the Burden of Regulation and Improving Regulatory Efficiency: Recommendations 1-16,* 13 February 2007.

OECD (Organization for Economic Cooperation and Development) 1997, *The OECD Report on Regulatory Reform Synthesis.*

2007, *Cutting Red Tape Comparing Administrative Burdens Across Countries*.

OBPR (Office of Best Practice Regulation) 2007, *Best Practice Regulation Report 2006-07*, Annual.

Report Series, Productivity Commission, Canberra.

PC (Productivity Commission) 2006, *Potential Benefits of the National Reform Agenda*, Report to the Council of Australian Governments, Canberra.

2007a, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne.

2007b, *Business regulation benchmarking: Stage 2*, Information paper, Canberra.

2007c, Best Practice Regulation Report 2006-07, Annual Report Series, Canberra.

2008a, *Performance Benchmarking of Australian Business Regulation: Cost of business registrations,* Research Report, Canberra.

2008b, *Review of mutual recognition schemes,* issues paper, Melbourne.

2008c, *Assessing local government revenue raising capacity*, Research Report, Canberra.

Queensland Treasury 2008, 'Queensland Office for Regulatory Efficiency', www.treasury.qld.gov.au/office/branches/qore.shtml Accessed 16 September 2008.

Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January.

South Australian Government 2006, *Business Impact Statements: Guidelines for Departments*, Department of Trade and Economic Development, June.

Tanner, L. 2008 (Minister for Finance and Deregulation), Australia, Ministerial Statements, House of Representatives, 17 March, pp. 1889 1891

UK Department for Business, Enterprise and Regulatory Reform 2007, *Delivering simplification plans: A summary*, December.

US Small Business Administration, Office of Advocacy 2006, *Report on the Regulatory Flexibility Act FY 2005*, April.

VCEC (Victorian Competition and Efficiency Commission) 2007, *The Victorian Regulatory System 2007*, final report, Melbourne.

Victorian Government 2006, *Reducing the Regulatory Burden The Victorian Government's Plan to Reduce Red Tape*, Department of Treasury, Melbourne.

World Bank 2007a, *Doing Business 2008*, Washington.