



Annual Review of Regulatory Burdens on Business

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The Voice of Leadership

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Table of Contents

<i>Executive Summary.....</i>	<i>3</i>
<i>Recommendations</i>	<i>4</i>
<i>Introduction</i>	<i>8</i>
<i>1.0 Reform or rhetoric?</i>	<i>9</i>
1.1 <i>The Federal Government's lead.....</i>	<i>9</i>
1.2 <i>COAG has made a start.....</i>	<i>10</i>
1.3 <i>Assessing regulation effectively</i>	<i>11</i>
<i>2.0 Time for an overhaul.....</i>	<i>13</i>
<i>3.0 Features of an effective regulatory system</i>	<i>16</i>
3.1 <i>International authorities have led the way</i>	<i>16</i>
3.2 <i>Meaningful regulatory assessment.....</i>	<i>18</i>
3.3 <i>A checklist for good regulation</i>	<i>20</i>
3.4 <i>The Office of Best Practice Regulation needs teeth</i>	<i>20</i>
3.5 <i>Streamline regulatory authorities.....</i>	<i>21</i>
3.6 <i>Recommendations</i>	<i>21</i>
<i>4.0 Specific examples.....</i>	<i>23</i>
4.1 <i>Insurance and superannuation funds.....</i>	<i>23</i>
4.2 <i>Property operators and real estate services.....</i>	<i>24</i>
4.3 <i>Architectural, engineering, and technical services.....</i>	<i>27</i>
4.4 <i>Heritage activities</i>	<i>29</i>
4.5 <i>Recommendations</i>	<i>29</i>
<i>Appendices.....</i>	<i>33</i>
A1 <i>The Problems with RISs.....</i>	<i>33</i>
A2 <i>Making Regulatory Impact Statements More Effective.....</i>	<i>34</i>
A3 <i>The Property Council of Australia</i>	<i>35</i>
A4 <i>Contacts.....</i>	<i>36</i>

Executive Summary

The property industry faces an ever-increasing regulatory burden.

Much of this is a result of an inadequate policy development and a poor regulatory review process.

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

Currently, the industry is subject to regulations which are:

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

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

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

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

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

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

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

Recommendations

Features of an effective regulatory system

Principles

- 3.6.1 The Council of Australian Governments should formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.

Methodology

- 3.6.2 The Federal Government should adopt the CRA International methodology to improve the quality of regulatory assessment and prevent poor legislation from being enacted.

Red tape reduction

- 3.6.3 The Federal Government should require departments to assess their regulatory regimes regularly and introduce improvements to reduce regulatory burdens.

Checklist

- 3.6.4 The Federal Government should develop a leading practice regulation checklist, which can be completed during the process of preparing regulation. This must be signed off by the relevant minister, and include:

- demonstrated evidence of market failure;
- empirical research demonstrating why non-regulatory alternatives have not or could not achieve the same result;
- consideration by regulatory authorities of the effectiveness and implications of existing regulation in a particular policy area before imposing new provisions; and
- evidence of consultation between all relevant agencies where there is determined to be an overlap with other provisions.

Office of Best Practice Regulation

- 3.6.5 The Federal Government should continue to expand the responsibilities of the Office of Best Practice Regulation to include:
- the responsibility for commissioning and evaluating regulatory impact statements for all federal and COAG legislation; and
 - the power to veto legislation where an RIS does not demonstrate that the benefits outweigh the costs.

Regulatory agencies

- 3.6.6 The Federal Government should task the Productivity Commission to conduct a comprehensive review into the possible consolidation of regulatory bodies in Australia.

Specific Examples

Insurance and Superannuation Funds

- 4.5.1 The Federal Government should, through COAG's Business Regulation and Competition Working Group, review current state and territory approaches to insurance and compensation, particularly:
- building on previous reforms, such as the 2002 tort law reform, to update the legal framework for insurance and compensation issues;
 - the development of a matrix to guide compensation decisions;
 - the potential to simplify and reform taxes and levies on insurance policies, and ensure that levies are only imposed on untaxed premiums; and
 - the removal of fire services levies, and commitment to funding all emergency services from consolidated revenue.

Energy/Carbon Reporting

- 4.5.2 The Federal Government should:
- revise existing reporting regimes and responsibilities to identify areas that may be streamlined and simplified;
 - introduce a Federal moratorium on additional compulsory reporting requirements for at least two years, pending the outcomes of the above review; and
 - through COAG, seek a similar moratorium from state and territory governments.

Occupational Health and Safety

- 4.5.3 The Federal Government should:
- work with Safe Work Australia and state and territory regulators to ensure that the model legislation is implemented properly and consistently across the nation; and
 - undertake rigorous assessment of the impacts of the new legislation, and ensure that it is providing the intended benefits.

Property Law

4.5.4 The Federal Government should:

- endorse the Uniform Torrens Title Act being drafted by the Property Law Reform Alliance;
- establish a COAG property law reform project for real property along the lines of the personal property law reform initiative; and
- host a high-level ministerial meeting with state and territory authorities to discuss mechanisms to create a uniform property law system.

Distributed Resources

4.5.5 The Federal Government should, through COAG, work with its state and territory counterparts to:

- reduce regulatory impediments to the generation and use of renewable and distributed energy;
- ensure that operators who generate energy are able to achieve appropriate commercial returns by introducing a national system for gross feed-in-tariffs; and
- make it easier for buildings and precincts to harvest water and mine waste;

4.5.6 The Federal Government should relaunch and expand the Green Precincts Fund as an equivalent investment to the National Energy Efficiency Initiative, with a focus on:

- distributed energy generation;
- water harvesting;
- waste mining; and
- the establishment of an electric vehicle recharging network.

Building Control

4.5.7 The Federal Government should:

- ensure that planning rule changes that impact upon building regulations are subject to regulatory impact assessment; and
- introduce a National Construction Code covering all aspects of building and construction to ensure consistent standards are maintained across Australia.

Development Assessment

4.5.8 The Federal Government, along with COAG, should:

- continue to engage with industry through the Development Assessment Forum, in order to improve assessment processes;
- endorse the DAF Leading Practice Model for Development Assessment and encourage state, territory, and local jurisdictions to adopt the ten principles into their planning and development assessment regimes; and
- continue to support DAF in the creation of a National Communication Protocol for Electronic Development Assessment.

Environmental protection and biodiversity

4.5.9 The Federal Government should:

- consider the additional costs and delays that may result from some of the recommendations of the Hawke Report, including the proposed broad provision for public interest litigation; and
- ensure that the legislation promotes a decision-making process which takes a fair and balanced view of environmental issues.

Introduction

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

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

It went on to say that

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

Five years later, little has changed.

Like other industries, the property sector continues to find an ever increasing burden of new laws and regulations dictating in great detail how it can, and must, operate.

Despite promises of regulatory reduction and the pursuit of evidence-based policy, new red tape is constantly being approved and implemented, even when market failure has not been demonstrated and claims of cost-effectiveness are highly suspect.

COAG's commitment to reform appears not to be shared by regulators.

Regulation is often seen as a quick and easy fix to any perceived problem.

Cost-effectiveness of a regulation is no longer assessed on the basis of the impact on an individual, but at a community level, or in relation to a government's own bottom line.

And business still bears the burden.

The Property Council welcomes the current review of regulatory burdens, but we have significant doubt about its potential for success.

While identifying individual pieces of regulation for removal may allow for the occasional headline for governments, but the system is still flawed.

It is for this reason that our focus in this submission will not, in the main, be on winners and losers.

Instead, we will examine the property sector's key concerns with the regulatory system and recommend ways it can improve.

It is only with systemic regulatory reform that we can not only get rid of some poor existing regulations, but also prevent the next generation of unnecessary red tape.

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

² *Ibid.*, p. i

However, the mere fact that a regulatory impact statement (RIS) is prepared is not enough.

The Property Council's experience is that most RISs tend to be 'marketing documents' – they justify the regulation by playing down costs and talking up benefits.

To get a true indication of the impacts of regulation, RISs must be written independently of the department that developed the proposals.

This will remove any undue influence regulators may have over the final results, as they would become stakeholders in, rather than the managers of, the process.

1.2 COAG has made a start

The regulatory reform agenda has had some progress through the Council of Australian Governments (COAG).

The COAG Reform Council and the Business Regulation and Competition Working Group (BRCWG) have already pursued some regulatory reforms.

For example, the *National Partnership Agreement to Deliver a Seamless National Economy* aims:

*to deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy.*³

However, it is rather disturbing to see that the COAG Reform Council's own report on performance against the Agreement for 2008-09 only listed milestones for that financial year – for the others it stated:

*Ongoing milestones [are] to be identified and agreed as [the] project progresses.*⁴

The report explains:

*These [milestones] were not amended when COAG considered and approved the updated implementation plan on 2 July, 2009.*⁵

This suggests a 'take it as it comes' approach to regulatory reform, rather than a long-term strategy to improve the regulatory system.

The Property Council welcomes COAG's attention to regulatory reform, but believes that assessment of performance against agreed actions needs to be examined more closely.

³ *National Partnership Agreement to Deliver a Seamless National Economy*, quoted in the Report on Performance 2008-09, COAG Reform Council (2009), p. 308.

⁴ Ibid, p. 307.

⁵ Ibid, p. 311.

For example, one of the actions agreed in 2007 was:

*All proposals must undergo a preliminary assessment to establish whether they are likely to involve an impact on business and individuals or the economy.*⁶

The Report on Performance listed this item as 'completed' for the Commonwealth because of the existence of the *Best Practice Regulation Handbook*, which recommends that a case for action be made and alternatives to regulation examined.

Yet recent regulations, such as the energy efficiency amendments to the Building Code of Australia, have passed without any attempt to assess the effects or status of existing regulation and the need for further changes, prior to drafting.

It is difficult to imagine that a case for action can be made or alternatives properly assessed without any examination of previous regulations.

This outcome demonstrates that, while a *Handbook* may be a useful guide, it won't lead to systemic change.

In practice the burden on business has increased, largely because those who are setting the reform agenda are not the same as those who develop regulation.

Ministers and departments are not being held to account by their governments against COAG's proposals, and are very willing to introduce new regulations even when RISs do not hold up to scrutiny.

For regulatory reform to be truly effective, COAG needs to take stronger control over its ministerial councils and drive significant cultural change throughout the bureaucracy.

Unless a concerted strategy for regulatory reduction and reform is undertaken by each government agency, the weight of compliance will continue to fall heavily on business.

1.3 Assessing regulation effectively

In an effort to improve the overall quality of regulation, COAG established a set of regulatory principles in October, 2007.⁷

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

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

1. *establishing a case for action before addressing a problem;*

⁶ Ibid. p. 342.

⁷ Ibid. p. 310.

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

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

With the Office of Best Practice Regulation's new-found powers, we hope that direct pressure will be brought to bear on government departments so that poor RISs, and the regulations they assess, are rejected.

2.0 Time for an overhaul

The Property Council recognises that there is a legitimate role for regulation.

Regulatory instruments establish the rules within which business may operate, generally with the aim of preventing poor or dangerous practices from occurring.

However, over time, numerous pieces of inappropriate and ineffectual regulation have been introduced by each of the three spheres of government, often with little consultation or review.

The sheer volume and complexity of existing regulations has placed significant burdens on individual organisations, and made it a considerable challenge to conduct business in Australia.

While usually done with the best of intentions, the effects have been to impede economic growth, limit the scope for innovation, undermine entrepreneurial drive, and reduce productivity and competition.

The system needs to be overhauled for the following reasons:

1. **Most bureaucrats aren't committed to reform**

Ongoing regulatory reform should be a key priority at all levels of government.

Yet, most regulators are more focussed on introducing new rules than on minimising existing red tape.

Any reform initiatives that are introduced tend to tinker around the edges instead of removing outdated statutes.

Without clear and specific directions to bureaucrats to reduce regulations, little tangible reform will happen.

2. **Regulation is generally the first option – alternatives are rarely seriously considered**

Too often, regulation is seen as the only solution to a problem.

Rather than a last resort mechanism to fix real market failures, regulation has become the go-to option for delivering most government policy.

Additional regulation is often imposed to correct the adverse implications of previous 'policy-on-the-run' efforts.

Alternatives are only proposed as RIS 'straw men' – suggestions designed to be rejected – rather than as seriously considered solutions.

...

The end result is an ever increasing regulatory burden and rapidly escalating compliance costs.

3. “Evidence-based” policy is the exception rather than the rule

Claims by governments that their policy initiatives are ‘evidence-based’ continue to be undermined by reality.

New rules are often introduced with poor research and limited understanding of the industries being impacted upon.

Research is rarely empirical and is often tailored to support the regulation, rather than to investigate whether it is needed in the first place.

4. Market failure is rarely proven

Almost every time a new regulation is introduced, the department proposing it claims that it is needed to overcome ‘market failure’.

Rarely is firm evidentiary support provided of this failure and often the decision to regulate is based on flawed assumptions.

Rarely is there an attempt to assess whether previous regulation had been successful or if more regulation is warranted.

5. Regulatory stringency is usually too high

Even when regulation is legitimately needed, it is often applied too broadly, and captures businesses which weren’t the intended target.

The concept of regulation representing a minimum standard, in order to eliminate poor practice, appears to be outdated, with ‘good’ practice now a common goal.

This undermines innovation, as it makes general compliance so much more difficult and costly.

Regulators should attempt to proscribe against what the community considers to be unacceptable rather than predicting what it would prefer.

6. “Acceptable” compliance costs are too great

Each regulation that is imposed on business comes with a cost for implementation and compliance.

Companies are spending more of their time and money on keeping up with increasingly complex regulatory requirements, and less time focusing on their core business.

Yet, each new regulation is considered by regulators to be cost-effective, often because their own costs are likely to be reduced as a

result of the new rules or because the community is deemed (rather than proven) to benefit.

7. Transparency and accountability are foreign concepts

Limited transparency leads to poor outcomes and inappropriate regulation.

There are no stringent accountability and transparency standards for regulators, who continue to deliver suboptimal rules and statutes.

New proposals are often developed by bureaucrats who have little understanding about the industry they are regulating, yet still fail to consult properly with stakeholders.

Bureaucracies that champion inappropriate regulations must be held accountable if they do not work or are found to be too onerous.

8. There is little national consistency, but a lot of duplication

The trend of regulating to higher levels of stringency is made even more painful for businesses due to the lack of regulatory uniformity within, and across, jurisdictions.

Consideration should be given to introducing a "Whole of Government" methodology, which would require the strategy for delivering the policy to be drawn from all relevant government stakeholders, rather than just being developed by one department.

Ministerial Councils should similarly be encouraged to review all decisions in relation to other government and COAG initiatives.

9. Regulatory impact assessment is often very poorly done

Very few regulatory impact assessments are done well.

Most use economic and philosophical sleights of hand to create greater support for regulations that have already been written.

It is very rare for an RIS to result in a regulation not proceeding.

While the Office of Best Practice Regulation has an appropriate oversight role in the regulatory process, its ability to require more rigorous assessment of regulation has been rather constrained.

We hope that the new powers approved by Minister Tanner will help the Office to ensure better regulatory outcomes.

3.0 Features of an effective regulatory system

"Poor quality regulation-making processes are often associated with decisions being made in haste, with incomplete information about options and their impacts. Inadequate or ineffective consultation can also contribute to poor regulatory outcomes."⁸

The starting point for good regulation is that it is implemented for the right reasons.

Unfortunately, many of the regulations affecting Australian businesses come into play as a result of flawed policies and decision-making processes which automatically see regulation as the first-choice solution to problems.

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

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

This is not to say that regulation is never the right answer to a problem.

However, it seems that policy development remains the first-choice option when government is seeking to change business behaviour.

We need to go back to first principles to change the way regulation is designed and implemented.

In its report into regulatory reform in Australia, the OECD noted that "it is a continuing challenge to marry the stated aims for regulatory management with what occurs in practice at the level of regulators."⁹

This challenge – to fix the nuts and bolts of Australian regulation – must be taken up by Australian governments.

3.1 International authorities have led the way

OECD Guiding Principles

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

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

⁸ Productivity Commission, *Regulation and its Review 2004 – 5* (2005), p. xv.

⁹ *OECD Reviews Of Regulatory Reform: Government Capacity To Assure High-Quality Regulation In Australia* – p7

It said that governments should¹⁰:

1. adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation;
2. assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment;
3. ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory;
4. review and strengthen where necessary the scope, effectiveness, and enforcement of competition policy;
5. design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests;
6. eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness; and
7. identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

The report also outlines a number of key features for the development of regulation. These identify that good regulation should¹¹:

- serve clearly identified policy goals, and be effective in achieving those goals;
- have a sound legal and empirical basis;
- produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
- minimise costs and market distortions;
- promote innovation through market incentives and goal-based approaches;
- be clear, simple, and practical for users;
- be consistent with other regulations and policies; and

¹⁰ *OECD Guiding Principles for Regulatory Quality* (2005), pp. 3 – 8

¹¹ *Ibid*, p. 3

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

The model creates a system where review is independent and rigorous, and introduces accountability at every level of the regulatory process.

Key recommendations of the report include:

1. **mandatory consultation** with a minimum consultation period for all proposed regulations:
 - a. above a minimum materiality threshold;
 - b. differentiated according to the significance of the regulation in terms of its likely (direct and indirect) cost consequences; and,
 - c. requiring the publication of a draft RIS at the start of the consultation period;
2. a requirement for the **relevant Minister to certify that the RIS process has been followed**, and that the RIS adequately assesses the impact of the proposed rule;
3. the regular **secondment of Office of Best Practice Regulation (OBPR) staff** to government departments to enable an improved 'culture of compliance';
4. the right of the OBPR to **veto significant regulations** judged to have been inadequately assessed under an RIS;
5. the **removal of local government and planning legislation exemptions** from RIS requirements, at least above a certain materiality threshold;
6. a greater degree of **standardisation and consistency** of RIS formats to highlight the conclusions that can be drawn from them, in particular a clear statement of the net costs and benefits of a proposed measure;
7. the **full and transparent inclusion** of assumptions, data, and analysis undertaken in any quantification performed;
8. the collation of **improved databases** to assess industry-specific administrative burdens;
9. the requirement for departments to adopt a **rigorous analytical and quantitative technique** and to justify the choice of analysis;
10. the introduction of a **two-stage approach** to RIS requirements and consideration of a range of alternatives;
11. legislating to require all government departments to make all their **RISs available on their websites**; and,
12. **'scoring' the RIS quality of government departments** and consequently directing OBPR training towards the lagging departments with the aim of improving their future RISs.

3.3 A checklist for good regulation

In 2004, the Irish Government identified the six key principles of good regulation (reference). These principles form the basis of a useful checklist that should be adopted by regulators before any regulation is introduced:

<i>Necessity</i>	Is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?
<i>Effectiveness</i>	Is the regulation properly targeted? Is it going to be properly complied and enforced?
<i>Proportionality</i>	Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
<i>Transparency</i>	Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?
<i>Accountability</i>	Is it clear under the regulation precisely who is responsible for whom and for what? Is there an effective appeals process?
<i>Consistency</i>	Will the regulation give rise to anomalies and inconsistencies, given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

All regulators and ministers should consider using a similar checklist to measure new provisions against these criteria. If a regulation doesn't stack up to the principles, it should not be implemented.

3.4 The Office of Best Practice Regulation needs teeth

As already noted, the Property Council welcomes proposals by Minister Tanner to strengthen the role of the Office of Best Practice Regulation (OBPR).

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

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

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

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

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

3.5 Streamline regulatory authorities

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

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

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

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

3.6 Recommendations

Principles

- 3.6.7 The Council of Australian Governments should formally adopt the principles and key features outlined in the OECD Guidelines as a basis for ongoing regulatory reform.

Methodology

- 3.6.8 The Federal Government should adopt the CRA International methodology to improve the quality of regulatory assessment and prevent poor legislation from being enacted.

Red tape reduction

- 3.6.9 The Federal Government should require departments to assess their regulatory regimes regularly and introduce improvements to reduce regulatory burdens.

Checklist

- 3.6.10 The Federal Government should develop a leading practice regulation checklist, which can be completed during the process of preparing regulation. This must be signed off by the relevant minister, and include:
- demonstrated evidence of market failure;
 - empirical research demonstrating why non-regulatory alternatives have not or could not achieve the same result;
 - consideration by regulatory authorities of the effectiveness and implications of existing regulation in a particular policy area before imposing new provisions; and
 - evidence of consultation between all relevant agencies where there is determined to be an overlap with other provisions.

Office of Best Practice Regulation

- 3.6.11 The Federal Government should continue to expand the responsibilities of the Office of Best Practice Regulation to include:
- the responsibility for commissioning and evaluating regulatory impact statements for all federal and COAG legislation; and
 - the power to veto legislation where an RIS does not demonstrate that the benefits outweigh the costs.

Regulatory agencies

- 3.6.12 The Federal Government should task the Productivity Commission to conduct a comprehensive review into the possible consolidation of regulatory bodies in Australia.

4.0 Specific examples

Following are a few examples of regulatory concerns matched with some of the ANZSIC codes outlined in the Productivity Commissions discussion paper.

4.1 Insurance and superannuation funds

Insurance reform

Australia's insurance system needs an overhaul. Insurance regulations are inconsistent across the country, and difficult to understand.

Regulation reform in this area would deliver considerable benefits, including:

- lower cost, more reasonably priced coverage for consumers;
- greater legislative consistency across the country;
- greater choice and more flexible options for policyholders;
- reduced litigation and an increased emphasis on individual responsibility; and,
- clearer information on the level of coverage available to the insured.

This will make it more attractive for individuals and businesses to commit to appropriate insurance coverage.

While tort law reforms helped to streamline the industry, many other laws and processes remain inconsistent, leading to confusion when it comes to complying with regulatory requirements.

It is time to rationalise the inefficient differences in insurance systems between jurisdictions.

Levies, taxes, and charges on insurance, including fire services levies, add significantly to the cost of premiums.

In country Victoria it has got to the stage where taxation on insurance premiums constitutes over 40% of the total cost of the premium.

This is a significant disincentive to people taking out adequate insurance.

Fire services

Fire services levies applied to insurance policies create an unfair burden on policy-holders, who are funding an essential community service.

Extra levies on insurance policies are an anachronistic and inequitable way to fund this essential service.

Just like police and ambulance services, government has a responsibility to provide fire brigades to protect the community.

These agencies operate to protect people and control fire, not to provide a service solely to the property owner, and should therefore be funded out of the public purse.

Experience from the 2009 Victorian bushfires suggests that fire fighters don't check to see if a property is insured before they protect it, so arguments in favour of a tax on insurance are flawed.

Fire and emergency services must be funded out of consolidated revenue, not through a tax on insurance premiums or property values.

4.2 *Property operators and real estate services*

Energy/Carbon Reporting

The desire to find a solution for climate change is strongly held by most government departments.

As a result, the number of energy and carbon reporting regimes in Australia continues to increase.

Property owners are subject to a range of compulsory reporting requirements. At a federal level, this includes:

- the National Greenhouse and Energy Reporting System (NGERS);
- the Energy Efficiency Opportunities Act (EEO); and
- the proposed scheme for mandatory disclosure of commercial energy efficiency, which will commence in 2010.

These regimes are all operated by different government agencies, and apply different methodologies.

Additionally, members are being asked to respond to surveys conducted by the Australian Bureau of Statistics, while the Department of Environment, Water, Heritage and the Arts is proposing a further environmental baseline study to determine the energy efficiency of individual buildings.

All of these are backed up by their own pieces of legislation, complete with a range of severe penalties for those who fail to comply.

They are compounded by the myriad additional reporting schemes established at state and territory level, which have similar stringencies and penalties to their federal counterparts.

Each regime requires companies to commit significant resources to measuring and collecting data in different ways.

Compliance with these incompatible regulatory frameworks requires unreasonable time, cost, and effort which divert resources from activities that will actually improve environmental performance.

Occupational health and safety

A nationally consistent approach to OHS is essential to the delivery of safer workplaces, and the Property Council has welcomed the development of the model *Work Health and Safety Act*.

This reform has been a long time coming.

If states implement the model legislation according to the COAG Intergovernmental Agreement, and without adding their own amendments, there will be a significant reduction in the burden faced by national businesses.

The time and effort taken to achieve this national OHS framework is evidence of the difficulties that are faced in attempting to streamline legislation across jurisdictions.

While the *Work Health and Safety Act* has been accepted by the states, there is more work to be done in securing the commitment of all jurisdictions to future reforms.

Property law

"I am looking at ways to make our legal system more user friendly to corporations that operate in our region. It is inappropriate that they should have to spend thousands on advice about competing State and Federal jurisdictions even before a remedy is considered."

**The Hon Robert McClelland MP
Federal Attorney-General, 16 May, 2008**

Australia has one of the most advanced property titling systems in the world, in the form of Torrens Title.

Internationally, this system of recognising and registering ownership has been adopted by several countries.

However, our federated political system has resulted in eight markedly different versions of this system.

This has an adverse impact upon trade and commerce.

Currently, any organisation operating in more than one state or territory must abide by a variety of different requirements, which affect the timing of property deals and necessitate the use of a range of legal representatives.

If Australia is to continue to be attractive to international investors, our antiquated approach to property law needs to be overhauled.

While Federal, state, and territory governments have made moves to reform personal property laws and the national licensing of lawyers, little has been done to extend this to real property.

However, national property law reform would:

- 1 deliver on the Federal Government's commitment to remove hindrances to business activity, because every company either owns or rents property;
- 2 ensure that a world-class 19th century system can be made relevant and effective for 21st century businesses;
- 3 enable states and territories to establish the most efficient, rigorous, and fair system for managing property transactions, making the Australian property industry internationally competitive;
- 4 enable local and overseas companies to expand their Australian operations beyond one state, opening up the possibility of increased investment and more jobs;
- 5 reduce the costs and transaction timeframes for vendors, purchasers, lessors, and lessees and create a nationally consistent system under which they can operate;
- 6 overcome a constitutional anachronism where companies are covered by national legislation, but their property transactions are beset with different state-based regimes;
- 7 continue the business regulation reform agenda that started with Corporations Law and the review of personal property, helping to deliver a seamless, national economy;
- 8 ensure that the proposed National Legal Market creates a system where practitioners can not only be recognised in different jurisdictions, but also have the capacity and knowledge to represent interstate clients effectively;
- 9 ensure that moves to create a National Electronic Conveyancing System will not merely codify existing differences, but work to remove anomalies; and
- 10 put property investment on a level playing field with other asset classes.

The only effective way to achieve this reform is to introduce a CLERP-style (Corporate Law Economic Reform Program) approach, which will streamline legislation and remove inefficiencies.

To kick-start reform, the Property Law Reform Alliance – a coalition of industry groups from the legal and property sectors – has been drafting a

Uniform Torrens Title Act (UTTA) for adoption by state and territory governments.

It is our hope that this can deliver the same certainty and national consistency to property transactions as occurs with other commercial dealings.

Distributed resources

Buildings and precincts of the future will need to generate their own energy, harvest their own water, mine their own waste, and provide a plug-in point for electric vehicles.

This level of self-sufficiency will improve the efficiency of the grid and reduce the environmental footprint of the built environment.

But this future is still some way off.

Despite the increasing availability of renewable energy sources and distributed generation through cogeneration and trigeneration technology, owners and managers are still reluctant to take up these opportunities.

State and federal regulatory regimes have created barriers to these solutions and energy generators and retailers are generally unwilling to support the roll out of the technology or to pay a fair price for energy fed back into the grid.

Distributed generation solutions which are economic in design and represent low cost reductions in emissions through the deployment of existing technologies are readily available – but require the right policy settings from governments.

The absence of an appropriately structured gross feed-in-tariff and the introduction of higher environmental standards than are applied to other forms of energy generation undermine the cost-effectiveness of such projects.

4.3 Architectural, engineering, and technical services

Building Control

The creation of the Building Code of Australia was a huge step forward towards greater national consistency and increased savings for both government and industry.

Without the Code, Australia's commercial and residential building sectors would today be characterised by uncertain and costly building control randomly spawned by three tiers of government.

However, the propensity for planning and other statutes to undermine national consistency without any attempt to assess the impacts of doing so have increased uncertainty and made compliance more difficult.

A National Construction Code has been proposed, which would incorporate all aspects of construction control, including building, plumbing, and electricity rules.

This will let practitioners rely upon a single Code for all construction-related activities and make it much easier for companies operating in different states to conduct business.

The National Construction Code should establish a 'minimum standard acceptable to the community', rather than regulating for best practice.

It should be implemented consistently and without variation at state or local level – this principle should be enshrined in the Intergovernmental Agreement establishing the Code.

All governments should work together as a matter of urgency to ensure the National Construction Code can be drafted and implemented as soon as possible.

Development assessment

Planning and building control shape the communities and structures in which all Australians live and work.

Metropolitan strategies, strategic plans, local environment plans (LEPs), development control plans (DCPs), and the Building Code of Australia (the Building Code), all work to determine what can be built, where it can be built, and how it will be built.

In announcements such as "Building a Big Australia", the Prime Minister has outlined his views about the importance of effective planning.

This focus on planning reform at a national level, together with the development assessment reforms being undertaken in each jurisdiction, will play a significant role in making businesses more efficient and catering for the proposed growth to a population of 35 million by 2050.

Currently, planning rules in many jurisdictions amend or contradict building regulations, increasing red tape and causing uncertainty for business, but without any requirement for an RIS.

However, if planning policies are likely to impact on building rules, they should undergo the same assessment processes as the Building Code of Australia (or the National Construction Code).

The Development Assessment Forum, a collaboration between government and industry, was created to streamline referral and concurrence processes. It has created:

- a Leading Practice Model for Development Assessment, which identifies ten key practices essential to the good management of development assessment systems.; and

- a National Communication Protocol to improve the interoperability of electronic development assessment systems.

By adopting the DAF's ideas, jurisdictions will be able to ensure appropriate scrutiny of development applications, while delivering faster, cheaper assessments.

In January 2010, the Property Council and Residential Development Council released the *DAF Reform Implementation Report Card* assessing the progress of the states and territories in implementing the DAF model.

The report showed that despite COAG commitments to development assessment reform, all jurisdictions still have a long way to go in implementing leading practice policies.

4.4 Heritage activities

Environmental protection and biodiversity

The Property Council has welcomed the reforms proposed by Dr Allan Hawke's independent review of the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act), tabled in December 2009.

The report recognised the importance of triple bottom line decision-making approaches, integrating both long-term and short-term environmental, social, and economic considerations.

The recommendation that the assessment process be streamlined and simplified, and that joint Commonwealth and state or territory panels be established, shows a commitment to cutting red tape and making sensible decisions on environmental protection.

However, there remain concerns with the application of the Act and how it will impact upon business.

For example, the push to open up courts for public interest litigation has the potential to create costly and unnecessary delays due to vexatious claims. This will create an unfair burden on businesses that are targeted for litigation, and will significantly increase the cost of compliance.

4.5 Recommendations

Insurance and Superannuation Funds

- 4.5.10 The Federal Government should, through COAG's Business Regulation and Competition Working Group, review current state and territory approaches to insurance and compensation, particularly:
- building on previous reforms, such as the 2002 tort law reform, to update the legal framework for insurance and compensation issues;

- the development of a matrix to guide compensation decisions;
- the potential to simplify and reform taxes and levies on insurance policies, and ensure that levies are only imposed on untaxed premiums; and
- the removal of fire services levies, and commitment to funding all emergency services from consolidated revenue.

Energy/Carbon Reporting

4.5.11 The Federal Government should:

- revise existing reporting regimes and responsibilities to identify areas that may be streamlined and simplified;
- introduce a Federal moratorium on additional compulsory reporting requirements for at least two years, pending the outcomes of the above review; and
- through COAG, seek a similar moratorium from state and territory governments.

Occupational Health and Safety

4.5.12 The Federal Government should:

- work with Safe Work Australia and state and territory regulators to ensure that the model legislation is implemented properly and consistently across the nation; and
- undertake rigorous assessment of the impacts of the new legislation, and ensure that it is providing the intended benefits.

Property Law

4.5.13 The Federal Government should:

- endorse the Uniform Torrens Title Act being drafted by the Property Law Reform Alliance;
- establish a COAG property law reform project for real property along the lines of the personal property law reform initiative; and
- host a high-level ministerial meeting with state and territory authorities to discuss mechanisms to create a uniform property law system.

Distributed Resources

4.5.14 The Federal Government should, through COAG, work with its state and territory counterparts to:

- reduce regulatory impediments to the generation and use of renewable and distributed energy;
- ensure that operators who generate energy are able to achieve appropriate commercial returns by introducing a national system for gross feed-in-tariffs; and
- make it easier for buildings and precincts to harvest water and mine waste;

4.5.15 The Federal Government should relaunch and expand the Green Precincts Fund as an equivalent investment to the National Energy Efficiency Initiative, with a focus on:

- distributed energy generation;
- water harvesting;
- waste mining; and
- the establishment of an electric vehicle recharging network.

Building Control

4.5.16 The Federal Government should:

- ensure that planning rule changes that impact upon building regulations are subject to regulatory impact assessment; and
- introduce a National Construction Code covering all aspects of building and construction to ensure consistent standards are maintained across Australia.

Development Assessment

4.5.17 The Federal Government, along with COAG, should:

- continue to engage with industry through the Development Assessment Forum, in order to improve assessment processes;
- endorse the DAF Leading Practice Model for Development Assessment and encourage state, territory, and local jurisdictions to adopt the ten principles into their planning and development assessment regimes; and
- continue to support DAF in the creation of a National Communication Protocol for Electronic Development Assessment.

Environmental protection and biodiversity

4.5.18 The Federal Government should:

- consider the additional costs and delays that may result from some of the recommendations of the Hawke Report, including the proposed broad provision for public interest litigation; and
- ensure that the legislation promotes a decision-making process which takes a fair and balanced view of environmental issues.

A2 *Making Regulatory Impact Statements More Effective*

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

A3 The Property Council of Australia

The Property Council represents the property investment sector in Australia.

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

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

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

Some key statistics:

- the market value of all land and buildings in Australia is \$4.3 trillion;
- the value of investment grade stock under management is \$340 billion;
- more than 11.6 million Australians collectively own major segments of the nation's most valuable commercial property assets;
- total construction spending in 2010 is forecast to be \$100 billion in buildings and \$69 billion in infrastructure (total: \$169 billion);
- listed property is currently 5.57% of the capitalised value of the ASX;
- 39% of investment grade stock is listed;
- the market value of foreign assets owned by Australians is \$50 billion;
- \$149 million flows in to the property sector from super funds in an average week; and
- \$29 billion in property specific taxes are paid annually.

A4 Contacts

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

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