Submission to the Taskforce on Reducing the Regulatory Burdon on Business

by

National Institute of Accountants

ABOUT THE NATIONAL INSTITUTE OF ACCOUNTANTS (NIA)

The National Institute of Accountants (NIA) is one of the three professional accounting bodies in Australia, representing over 14,000 members in Australia and overseas. Members of the NIA work in all fields of accounting including in private practice, government, industry and academia. The NIA is actively involved in setting and enforcing professional standards and in reviewing and commenting on legislation at all levels. Many of our members work either in, own or work as advisers to small and medium size business, and the issue of regulation burden is one they have to constantly address and a topic they regularly raise with the NIA.

As a professional accounting body the NIA's key roles include:

- Offering post-graduate study in accounting Professional Education Program (PEP) –a Master of Commerce (Professional Accounting) from the University of New England.
- Conducting quality review of members in public practice, instigating investigations and where necessary discipline against members who have breached the NIA's professional and ethical requirements;
- Offering Continued Professional Education for all members (and non-members);
- Providing members with information about legislative, regulatory and other changes that are affecting or may affect them;
- advocating on behalf of members and the profession as a whole, as well as issues of national importance;
- Liaising with Regulatory bodies on issues affecting members, particularly in the areas of taxation, superannuation, financial services, Corporations Law and accounting and auditing standards;
- Setting and enforcing professional and ethical standards;
- Promoting issues in the accounting profession.

For more information on the NIA please visit our website: www.nia.org.au

Introductory Comments

The NIA believes that the Government's setting up of this taskforce is a welcoming addition to the on going debate about the impact of compliance burden on business. The NIA, however, would note that what is needed - more than an occasional review of regulatory burden years apart- is a thorough, regular review of all such burden's on an ongoing basis. While the requirement to have Regulatory Impact Statements has helped to some degree, the NIA believes that more can be done to ensure that regulatory burden's are not introduced or at least limited at the first instance rather than reviewing them down the line once business has already had to bear those costs.

The reality is that regulatory burden's exist and will continue to exist. While they are a burden for business, some of them provide vital data so that government can conduct its affairs and implement policies more effectively. The issue therefore is not one of eliminating all regulatory burden's but rather to reduce it to an acceptable level and ensure that there is no duplication in the provision of information. One issue that really annoys business people is the feeling that they are constantly providing the same information just in different forms to different government authorities (or different sections of the same government authority). Business just wants to be left alone to do its core business, that is provide goods or services to their clients and make a living from this.

The NIA appreciates that regulatory burden is not solely caused at the Federal Government level. Australia's multiple levels of jurisdictions can lead to a smorgasbord of different regulations at different levels. Small and medium's business often cite local regulations and by-laws as the biggest regulatory impost on their business. What is needed is not just a Federal review but a mechanism for Federal, State, Territory and local authorities to work together to reduce the burden and remove duplication. While this may be outside of the review's current ambit, it is an important issue that needs to be discussed as part of this process.

It is important also that the issue of regulatory burden be at the forefront of drafters of regulation. There is a perception, rightly or wrongly, that when it comes to regulations, for some bureaucrats, more is never enough. There is a concern that regulators seek information that they do not use and request it multiple times. The strength of a regulation is not in its length but whether it achieves its purpose. The NIA has proposed below some questions that should be at the forefront of all legislative drafters.

Another issue the NIA believes requires consideration is the need to put into place review dates for regulations. At that review date, say three years after implementation of the regulation, the regulation should be reviewed along the following lines:

- Has it addressed the issue it was aimed at addressing?
- Is it still necessary?
- Is there a more effective way for it to achieve its objective?
- Is the cost of regulation in line with projections?

Other issues the NIA believes need to be considered in a broad way when drafting regulation or reviewing such includes:

- Allowing Federal and State agencies greater ability to share information they have with each other, avoiding businesses providing the same information to different agencies;
- Ensuring, where possible, a "one stop shop" for complying with various requirements;
- Funding for "compliance technicians" to help SME's meet their compliance requirements. Federal and State Governments, together with the SME sector could provide joint funding to train "Compliance technicians" to assist SME's (either as employees or contractors) to ensure they meet their compliance requirements. The Federal and State Governments receive great benefits from the information provided from compliance, and therefore should help fund such an initiative as such trained people can undertake compliance work at a small cost, freeing business owners from using their precious time to do such work;
- Set up compliance minimisation panels (made up of various professional representatives and the Agency involved) to help government agencies to gather the information they need with minimum impost on business; and
- A review is required on the definition of what is a small business and the eligibility criteria for various concessions. Different legislation sets out different definitions and there needs to be greater consistency.

Issues for Regulatory Drafters

The NIA believes that regulation drafters should be required to consider the following questions when drafting a regulation:

Is the regulation necessary? Is the regulation or the information it seeks strictly necessary? Just because the information may be nice to have does not mean that business should be burdened. A lot of regulation is drafted to address perceived or possible issues rather than live or real issues. The result is that unforseen costs or impediments can be placed on legitimate activities of business to address a phantom menace.

Is it already covered by similar regulation elsewhere? If the regulation is already handled elsewhere or requires information to be provided to government that already exists somewhere else, then do when need this new regulation? Can it piggy-back off existing regulatory requirements?

Is the person affected the right person? Often information is required to be provided by the wrong person. This can lead to unnecessary double handling of information whereby the person has to search out the right person and then get them to provide the information so it can then be provided to a regulator. An example of this is that a lot of information that is required from a business may in fact exist with their accountant or other adviser. Being able to deal directly with that person will reduce the time and costs business owners have to otherwise spend.

Does the regulation require the minimum information to meet its objectives? Regulation may be necessary but there is a perception that at times regulations goes further than necessary to meet their objective. Regulations need to strictly deal with the necessary matters and not be drafted in such a way that it can be used by a regulator to interpret it to their own advantage.

In addition regulators must move away from the culture of constantly seeking to mitigate risk (say to the revenue) by ever increasing compliance requirements. Governments need to establish a culture within their agencies that there needs to be on occasions an acceptance of risk in implementing any law. A law will not cover every instance and regulators should not invent worse case scenario's in developing regulations. That is, Government's and regulators have to assume some risk in the development of regulations and not shift that risk into compliance burden on all businesses. The never ending pursuit of increasingly marginal risks will and does impact on the vast majority of businesses that are inadvertently caught.

It would not be a bad idea for those responsible for writing such regulations to actually spend time with businesses affected by their regulations, so that they can have a better understanding of the impact of what they do on those businesses. It is much easier to put a burden on someone when you are not aware of its cost in time and money on the other person.

Standardised lodgement dates

The NIA is aware of arguments that favour the creation of a standard lodgement date. The current arrangements can create difficulties for business because they need to be aware of competing lodgement dates and can lead to confusion as to which taxes have been paid and which forms has been filled in. The NIA though would note that the creation of standardised lodgements dates can have deleterious outcome as well. It compresses the compliance requirements into a small time frame for all companies which means there internal and external advisers have an unmanageable spike in their workload, which then can have an effect on the quality of the work that is performed because the focus becomes getting everything out on the one date rather that e quality of the work. This then creates double handling as errors have to be reported and sent back to be corrected.

The NIA would prefer instead for there to be a standard lodgement place, where information could be housed and shared out to various Federal and State agencies on a needs basis. This could reduce the requirements to be lodged and ensure that there is a one-stop-shop for business to lodge to and to check to make sure they have complied with their requirements. There would need to be strict protocols in place to ensure only relevant information was sent to agencies that had statutory authority to have access to this information but this could be achieved through modern software protocols.

Having one place to go to lodge would make it easier for companies to comply and for government to operate efficiently. It would also reduce the need to report the same information to more than one government agencies.

This would require a deliberate effort upon the part of the various governments to work together and would require the removal of petty jurisdictional fights that are often the cause of many of the problems in the first place. If governments where committed to reducing red tape to business though then they will need to make such hard decisions.

One "Small-Large business test"

There are differences in how small and large companies are treated as well as their reporting requirements. This takes into account the differences in resources between such companies and the difference in public concern. The difficulty for most businesses is that they never know whether or not they are a "small business" within legislation due to the fact that there is no standard definition, sometimes not even within Acts.

A small business should know that once it is defined as such it will be regarded as such for all purposes. This will make it easier for them to apply for any concessions and know what their liabilities will be. The current 'hodge-podge' of rules means that there is no clarity. This can lead to increased costs of running a business as they may apply for a concession that they may not be able to access because of uncertainty whether it applies to them or not.

If business had one standard definition, at least in relation to taxation matters, this would be one stepping stone to reducing the burden of complying with regulation. In stating this, the NIA is aware that changing the various thresholds within the Income Tax Assessment Acts will have a revenue impact.

It has been a decade since the introduction of the large-small size test in the *Corporations Act*, which sets down which entities are required to prepare and lodge financial statements with the Australian Securities and Investments Commission (ASIC). We will occasionally hear from members in practice concerned about whether the lodgement and preparations thresholds is Section 45A of the *Corporations Act* 2001 is too low and captures entities in which they believe there may be no 'public interest'. It is our view that the Corporations Act's size test sets down a notion of what is economically significant. An entity that is deemed to be economically significant in this way should be regarded as having users interested in its financial statements and, therefore, they should comply with all accounting standards. The application of accounting standards should be linked in with the size test in our view and the enforcement of accounting standards tightened. However, this should not take place before the size test in the law is thoroughly reviewed.

Review of thresholds

The thresholds set down in section 45A of the *Corporations Act 2001* for the purposes of determining the entities that are economically significant for the purpose of preparation, audit and lodgement of financial statements need reconsideration. An entity is presently considered large if it meets at the end of a given reporting period two of the three criteria: gross revenue of more than $10 million, gross assets of more than $5 million or more than 50 employees. Consideration needs to be given to whether the benchmarks are still reasonable or whether one or all of the three criteria need to be revised in the current economic environment, such as the prices of property in some Australian cities are likely to push some businesses over the $5 million in gross assets threshold. The consequence of such a review may be that some entities obliged to report under current guidelines will no longer be considered economically significant and therefore no longer required to lodge reports in the future. This would be a consequence of reviewing and revising the thresholds for reporting.

Complications with grandfathering

A further complication is the existence of provisions that created grandfathering for some large entities when the size test regime came into existence. While reasons for grandfathering some entities from lodging reports are understandable such exemptions further complicate the system by creating additional questions preparers must ask about how the law regulating the lodgement of financial statements applies to them. It would be easier if such grandfathering did not exist and entities had certainty about reporting thresholds and whether they are caught by them.

The Federal Government needs to consider whether to continue to have such an anomaly in our system is appropriate. It would be much simpler to have a single set of lodgement requirements applied to companies for consistency and understandability. A review of the large-small size test and associated lodgement rules embedded in the law is therefore critical in achieving at least part of this objective.

Business registration

The NIA would like to see a one-stop shop solution for business registration that would apply to all Federal and State requirements. Such a register could then be linked to all Federal and State regulators and bodies that deal with business. It would have all the contact information about a business, so that any changes would

only need to be reported once, and would then be informed to all relevant government agencies.

Federal and State agencies would need to agree on a single form that they could use or have access to information that they are required to have access to. Therefore any new business would need to only lodge one form and be confident that all the necessary agencies would have access to the information they need.

Single definition of "employee"

The definition of "employee" is important because it forms the basis of a businesses PAYG, Superannuation, pay-roll tax and workers compensation obligations. However, there is no consistency in definition. This requires businesses to take time to make different determinations for what should be the same base amount. This can lead to confusion as to calculation and requires additional time and software adjustments to meet each different definition. If the same definition was used to calculate all these requirements it would be less costly for business to administer and lead to greater conformity with the requirements. It would also reduce the workload for those agencies requiring the information as there is likely to be higher accuracy in reporting and payment.

***Fringe Benefits Tax* (FBT)**

In August 2004 representatives of the accounting profession, including the NIA, wrote to the Assistant Treasurer and Minister for Revenue, the Hon. Mal Brough in relation to concerns about the cost of compliance with certain Fringe Benefit Tax measures. A meeting was held with Treasury in April 2005 to discuss these concerns. These issues are pertinent to this taskforce as well. The concern is not so much at the application of FBT but the reporting requirements that are attached to it.

Reportable Fringe Benefits confined to Remuneration benefits only

The reporting provisions of FBT have created a significant compliance difficulties for many small to medium size businesses, due to the costs and time required to make the necessary FBT the calculations. The reporting requirements require that benefits be tracked to particular employees, however, the accounting systems of most small and medium size businesses (and some large ones) does not allow for this information to be captured. This requires employers to maintain a separate database (or databases if more than one entity) that records under each individual which benefits they received. This is particularly burdensome in relation to recreational expenditure where knowing exactly who attended what may not always be ascertainable, or not at least in an efficient cost effective manner.

The problem arises from the fact that the FBT regime now covers so wide a range of so called 'benefits' that where not traditionally considered to be benefits. The issue here does not relate to those clearly part of salary sacrifice arrangements but to the creeping of the legislation into other areas. One particular area is that of tools of trade. It is standard practice in some workplaces that the employer provides such tools so that the employee can do the work, however under the FBT regime this is now a 'benefit' that must be reported (how many tools are lost or replaced in a year?) and that can affect the employee's government benefits. Office employees are not said to receive a benefit because they receive paper and pens from their work, so why are people in other workplaces affected by this?

One way to ease the burden on employers (and employees) while maintaining the reasoning for the FBT in the first place, would be to require only benefits which form part of the remuneration package as being reportable on payment summaries. This would make it easier for administrators to determine the amount of FBT, ensure employees are not penalised because they work in a particular industry that has these FBT problems, yet ensures that those who are attempting to reduce their taxable income through salary sacrifice are caught.

Another recommendation is to amend the reporting rules so that individual reporting is not required where it is not possible to accurately determine the fair value of a fringe benefit to an employee.

A further recommendation is where an employee is required to have a company car at home (because they are on call) but for which they are not allowed to use for personal use, be exempted from the FBT requirements.

Recreational Expenditure

Currently when a company provides entertainment for its employees not only is this subject to FBT, but each item must be traced to each individual employee. This requires the employer to:

- Determine the amount of the recreational expenditure;
- Determine the identity of each individual that attended; and
- then determine a taxable value for each individual, and report the amount for each individual.

Often employees are also required to attend such a function, for instance, so it is not necessarily a benefit to them but another requirement of employment. They may be required for networking.

An example of this is the situation where a company had a corporate box to say watch the AFL Grand Final and an employee was invited, there would be FBT payable by the company but there would not be a separate reporting of that back to each individual. However, if the company simply bought tickets for employees to attend the same game as part of a corporate function, there would need to be this separate reporting back to each individual and this would be recorded on the individual payment summary.

It is therefore suggested that all recreational expenditure be exempt from the reporting requirements. This is not saying the events should not be subject to FBT but the company should not have to do the difficult and costly tracing back to each individual and reporting that to the Australian Tax Office (ATO) and would avoid the situation of that being on individual payment summary.

GST Reconciliation issues

The requirements currently are that FBT needs to be reported on a GST inclusive value, however, the accounting systems record these as GST exclusive (because the GST component is coded to the GST account). This requires at times a lengthy process because of the need to determine the values of those benefits that are subject to GST and those that are not and then this has to be grossed up. It would be simpler and less costly for employers to be able to report on a GST exclusive basis.

Toll Road expenses

Currently road tolls do not fall into the category of 'car expenses', which creates a problem when trying to make a FBT determination. The ATO view is that such amounts would either be an expense payment fringe benefit or a residual fringe benefit. Either of these options requires the employer to make extensive record keeping and tracing arrangements to comply with the law. This could be even more difficult where different users have access to the same motor vehicle and determining when it is for personal use and when it is part of work. Compounding this is that the toll account will be in the company name not the individual or the particular car. This adds to the difficulty of determining who the benefit is said to belong to. An easy solution would be to bring such cost into the definition of 'car expenses'. The government would still get the FBT but the reporting requirements for the company will be reduced.

Grouping

Currently the FBT rules do not allow for a company to group/consolidate their FBT obligations, which differs from other taxation laws. It causes a problems for groups that have already consolidated for other purposes as they will need to deconsolidate for FBT purposes. There does not appear to be any good reason why companies should not be able to group/consolidate for FBT purposes.

Superannuation Issues

Single reporting for Licensed Trustees

Currently licensed trustees are required to lodge separate reports with the Australian Prudential Regulatory Authority (APRA) and ASIC. Where regulatory authorities require the same or similar information from the one person in relation to the same area of compliance efforts need to be put into finding a way to ensure that such information is lodged only once.

Removal of different taxing points of superannuation

The Government should be congratulated for finally removing the Superannuation Surcharge Tax. This tax was a major burden on superannuation administrator's. It required a lot of time and effort and the costs of administering the tax was shared across all members of a superannuation fund, not just the payers of the surcharge. This was an unfair burden and indicates that the government can take action where it is necessary and even where the impact is not revenue neutral to the Government.

However, the Australian superannuation system is generally recognised as being over taxed and having too many taxation points. In the Australian system, amounts are taxed as they go in (contributions stage), during the period of the superannuation fund (earnings stage) and when funds are withdrawn on retirement. This not only creates a disincentive for people to invest in superannuation but becomes an administrative problem. One of the problems with superannuation is that the cost of administering it can eat into the benefits that would otherwise accrue to members. Reducing the taxation points, particularly the contribution tax, will help to reduce the costs of administering superannuation.

General regulatory coordination

We have been disappointed with the time lag that was present with the responsiveness of the tax and prudential authorities when the decision was first made to adopt IASB standards in Australia. While the relevant authorities have been doing their best to deal with some of these issues it is still unfortunate that communication between all arms of government was less than adequate at that period of time. We would like the Federal Government to note this and ensure that some type of taskforce between authorities is formed when major policy decisions such as the adoption of international accounting standards are made.

Representatives of companies that have been in the middle of their transition processes have indicated to us that they were frustrated by lack of an earlier response from government agencies, such as APRA and ASIC, to the changing accounting framework, which meant that uncertainties existed in relation to positions regarding taxation and prudential requirements. Our preferred approach is for the government to better coordinate the relevant agencies when a decision that has wide-reaching implications, such as the proposed industrial relations reforms. The adoption of IASB standards was one such circumstance that required a better coordination earlier in the adoption process.

We note and appreciate the work being done by the Australian Taxation Office (ATO) in dealing with the IFRS issues. They have sought to consult the various layers of the business community in order to come up with practical solutions with the problems underlying the blending between tax and accounting standards even though they begun the process late.

Office of the Ombudsman of Corporate Regulation

The NIA has been aware over the past 12 months that the increasing role played by ASIC in reviewing the accounting profession has caused a level of nervousness amongst practitioners. We acknowledge that some of this nervousness may be as a result of the fear organisations have of change while in other cases there may be genuine questions that relate to procedures ASIC has adopted in conducting inspections of audit firms, financial services regulation licensees and other people. The NIA believes that an increase in monitoring and inspection of accountants and auditors will continue to cause fear and angst unless there is an independent organisation those under inspection can go with what they believe to be genuine concerns about a process adopted by the corporate regulator, or such an independent organisation (that is properly resourced) can initiate own-motion reviews of the way ASIC administers and enforces the law.

The NIA believes a new Office of the Ombudsman for Corporate Regulation should be created in order to enhance the accountability of the audit inspection process and provide an avenue of appeal to those organisations or individuals that feel an aspect of an audit inspection or any other activity undertaken by ASIC has been conducted inappropriately.

The establishment of an ombudsman's office to deal with concerns raised by practitioners about the conduct of audit firm inspections is the best way to ensure the concerns of practitioners can be allayed. Such an individual or individuals holding the ombudsman's office would be independent of the corporate regulator and be available to discuss any concerns accounting firms or auditors as individuals have with the performance of various reviews. The ombudsman should have powers to ask for a withdrawal of information requests deemed inappropriate following an

inquiry consisting of a discussion between the external audit firm, relevant representatives of the corporate regulator and the corporate regulator's inspection team. Consideration should be given to the possibility of the ombudsman being able to ask for a withdrawal of aspects of an inspection report where such a report is deemed by the ombudsman to be an unfair characterisation of a firm's audit processes. As stated above, such an office would also provide an appeal mechanism for other areas of corporate regulatory activity and not just with questions related to audit inspections.

A compliance program

It would be appropriate for the law to require ASIC to issue a circular such as a policy statement that outlines the intended focus on audit inspections for a particular period. Such a document should contain the key concerns the regulator has in relation to audit regulation as well as an unambiguous outline on its approach to audit inspections. Such a circular would prove useful in allaying fears held by practitioners in audit firms regarding the methodology ASIC intends to apply and the target topics for that year's surveillance focus. It may also serve as an effective vehicle to outline other areas of inspection or surveillance activity impacting on the accounting profession.