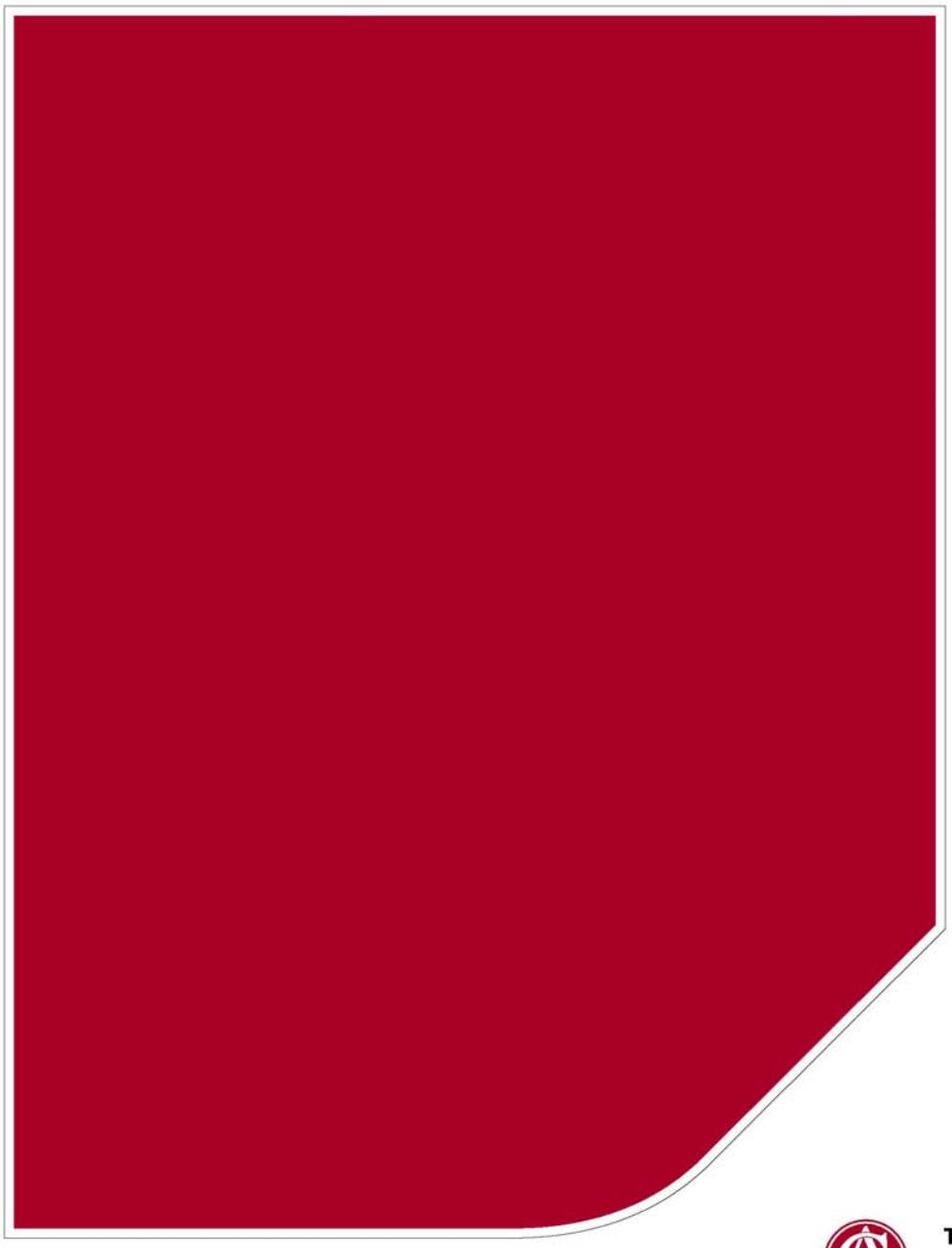
Submission to the Taskforce on Reducing the Regulatory Burden on Business



The Institute of Chartered Accountants in Australia

www.icaa.org.au

CONTENTS

ABOUT THE INSTITUTE

The Institute of Chartered Accountants in Australia (The Institute) was established by royal charter in 1928. It is Australia's premier accounting body, which represents over 42,000 members who are fully qualified Chartered Accountants working in diverse roles within private practice, business, industry, government and education, both in Australia and overseas.

The Institute is focused on leadership, protecting the standards and reputation of the accounting profession and influencing the policies and regulations that affect the industry.

Our principal areas of interest encompass:

- Education of young accounting graduates through the Chartered Accountant Program (current enrolments comprise approximately 10,000 students)
- Continuing professional education for accountants in practice and commerce
- Technical support in the areas of accounting, auditing, taxation, superannuation, financial advisory services. This technical support is provided by way of weekly newsletters to members on changes to legislation and other developments, and also through the provision of a call up advisory line
- Lobbying and advocacy on behalf of members with respect to accounting and auditing standards, taxation, corporate law, superannuation and retirement incomes and financial services
- Thought leadership associated with our areas of primary focus, with a view to enhancing the standing and reputation of Chartered Accountants and providing input into public policy
- Quality control through an extensive program of inspections covering members operating in public practice
- Administration of a professional conduct regime, whereby members whose activities or actions could lead the profession into disrepute are called to account and disciplined appropriately
- The establishment and promulgation of standards of professional conduct.

Unlike other accounting bodies, The Institute does not include candidates/students in its membership figures. Membership is based on tertiary graduation, completing the Chartered Accountants Program and meeting the highest educational, professional and ethical standards.

For further information about The Institute, visit www.icaa.org.au

OVERVIEW

The Institute welcomes the Government's establishment of a taskforce to identify practical options for alleviating the growing compliance burden on Australian businesses.

The Institute is concerned with the increasing amount of regulation in Australia stemming from all levels of government. The Australian Chamber of Commerce and Industry (ACCI) has estimated that regulation costs the Australian economy approximately $86.0 billion per year, or 10.2 per cent of GDP. Amongst the biggest losers from anti-business regulation are consumers who are inevitably forced to pay higher prices as compliance costs get passed through to end products and services.[1]

Often regulation is introduced for the wrong reasons, either to attempt to rectify issues the Government may have in the enforcement of existing legislation, and also where there is 'confusion' in the delivery of government objectives.

For example, the complexity of the taxation system has dramatically increased over time. This is due in no small part to the expansion of the tax system's role from collecting revenue, to being increasingly required to deliver regulatory programs, user pays programs, penalties regimes, welfare and business subsidies.

It should be noted that in many cases, poor or excessive regulation is not the result of bad policy, but rather the implementation of this policy.

The Institute strongly believes that in many cases this occurs due to inadequate consultation processes – not only between Government and stakeholders impacted by regulation, but also between policy makers and regulators within government. Improved review processes for existing regulation (such as sunset clauses) would also help decrease the amount of excessive regulation.

Major areas of excessive regulation – which place significant imposts on business, but could be easily avoided – include multiple definitions in a piece of legislation (for example, there are a multitude of definitions for small business within the Tax Act) and thresholds that are not adequately reviewed and consequently are out of date.

The nature of the federal system of government in Australia provides particular challenges for policy makers and regulators, and is the cause of a large amount of the excessive and duplicated regulation in Australia.

The Institute will outline a number of examples in this paper whereby regulations differ in each Australian jurisdiction. This can result in a significant cost impost for businesses that operate in more than one Australian jurisdiction.

The Institute believes that cross-jurisdictional regulatory issues should be an issue of concern for the Council of Australian Governments (COAG).

Principles of regulation

[1] ACCI Media Release "Regulation Costs Australia $86 Billion Annually", 9 November 2005

The Institute believes that good regulation can be important for competitiveness, economic growth and good government. This includes ensuring that all regulation is subject to regular reviews, takes into account the full costs to business of compliance with regulations and also avoids duplication with existing regulations.

To ensure good regulation requires efficient and effective checks and balances to be embedded in the regulatory structure.

Currently, this does not exist in the Australian regulatory environment.

The Institute believes the regulatory system in Australia would be improved by the adoption of a principles based approach to regulation.

By way of example, in January 2004, the Irish Government released a white paper entitled 'Regulating Better'. The paper sought to ensure that new regulations are more rigorously assessed in terms of their impacts, more accessible to all and better understood.

The white paper identified six principles of good regulation:

Necessity: is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?

Effectiveness: is the regulation properly targeted? Is it going to be properly complied and enforced?

Proportionality: are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?

Transparency: 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?

Accountability: Is it clear under the regulation precisely who is responsible for whom and for what? Is there an effective appeals process?

Consistency: 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?

The Institute believes a similar system of principles would be of significant benefit in the development new Australian regulations.

Thought leadership research

The Institute regularly undertakes 'thought leadership' research projects on significant issues that impact on the economy, business and the accounting profession.

Currently, The Institute has commissioned three research projects that relate to the work of the taskforce. These pieces of research were commenced prior to the announcement of the review and the taskforce's timelines for submissions, and consequently will not be finalised in time to be provided with this submission.

The Institute anticipates that the research projects will be finalised by early December 2005, and will provide copies of the reports to the taskforce as soon as they are available.

A summary of the projects is outlined below:

1. Fringe Benefits Tax (FBT)

The Institute has commissioned ATax, from the University of NSW, to review international precedents for the taxation of fringe benefits and to identify a best practice approach for Australia. The primary focus for the study is on developing a strategy to restore fairness and to make the tax simpler to administer.

The preliminary findings support an approach that makes fringe benefits taxable in the hands of individuals.

Whilst this approach would have a revenue cost to the Government, the reform has the potential to address an area of tax reform long sought by businesses and professional organisations. From the employee's perspective, this would allow for fringe benefits to be taxed at the employee's applicable marginal tax rate, rather than at the top rate and, as such, is more equitable.

2. Review of criteria for small business tax concessions and carve-outs

The Australian tax system provides significant tax concessions to encourage small business. Access is, however, governed by a myriad of different qualifying criteria, definitions of qualifying criteria and thresholds, resulting in unnecessary inconsistency and complexity and adding to the compliance burden for small business.

The Institute believes that a significant improvement in the law and reduction in this burden can be realistically achieved if there is focus on just one key aspect of the tax system – consolidating and simplifying the 'definition' of small business.

The Institute has therefore commissioned ATax, from the University of NSW, to analyse and report on the existing situation and develop an alternative and simpler 'definition' of small business, capable of consistent application to the maximum extent possible, throughout Australia's income tax (including Capital Gains Tax), FBT and Goods and Services Tax (GST) legislation.

3 ASIC financial statements

Companies that do not meet the small proprietary companies test in accordance with S45A (2) of the Corporations Act[2] are required to lodge financial statements with ASIC. In the past 10 years, these thresholds have not changed, meaning some businesses are now unintentionally caught up with this reporting requirement – with no corresponding benefit to the marketplace.

The Institute is conducting a survey of credit managers from major industrial and service organisations to determine the extent that they make reference to the financial statements lodged with ASIC when determining whether or not to supply goods and services on credit to small and medium business.

[2] S45A(2) small proprietary companies have to meet two of three criteria: consolidated gross revenue of less than $10 million; consolidated gross assets of less than $5 million; or less than 50 employees.

SPECIFIC ISSUES

The Institute has identified a number of specific areas where the Government can act to improve and address the regulation and compliance burden on business:

1. Tax Issues

(a) Standardisation of federal and state taxes

The Institute believes that enormous transaction and administrative costs are placed upon taxpayers and even revenue authorities by differing legislation covering basically the same matters across various taxes and jurisdictions.

The Institute does not believe that attempts to standardise tax rates or thresholds should necessarily be attempted. However, we believe much other standardisation could be attempted in a manner that is virtually revenue neutral for all authorities concerned. The standardisation should include all federal and state taxes, federal excises and duties and state duties, and could include state tax-like charges, such as workers' compensation premiums.

The Institute recommends that the priorities for standardisation should be as follows:

(i) Standardise administration across taxes and jurisdictions

The Institute believes that there is no logical reason why the following administrative aspects of taxation could not be standardised:

- **Time periods for retention of documents:** The retention period for record keeping for state taxes should be closely aligned with the record keeping requirements for income taxes and GST. The Institute suggests that this be five years

- **General interest charge (GIC) /interest penalty rates and remission regime:** The Institute recommends there should be a common GIC for all state and federal taxes and common remission policies, which approximately take into account the quirks of each tax in question

- **Time limits for assessments/reassessments:** The Institute recommends that the time period for assessments/reassessment for state taxes be aligned to the federal tax position, which is four years for medium and large businesses and two years for small businesses (with the exception where fraud or evasion has occurred)

- **Time limits for refunds** – The Institute suggests four years from the date of lodgement by the taxpayer

- **Registration of businesses:** The Institute suggests the design of a single form for new businesses to register for all federal and state taxes; a single form to add an

additional/new business registration; and a single form for termination of registration of any or all taxes.

(ii) Standardise pay-roll tax

It is a constant problem for taxpayers employing persons in more than one state or territory to administer pay-roll tax compliance when there are so many differences in the pay-roll tax legislation and associated administrative legislation in the different states and territories.

Ideally, the states and territories should work together to produce uniform legislation. Whilst the tax rates and thresholds may continue to be different, all of the definitional provisions and administrative provisions could be the same. Taxpayers could then approach their pay-roll tax compliance with confidence that getting it right in one state meant that they were also getting it right across Australia.

(iii) Standardise definitions that form the indirect tax bases

There are many definitions in the various taxation and duty acts that, viewed objectively, are attempting to establish the boundaries of much the same tax base. Each jurisdiction should of course have the authority to change their tax base; however, the Institute recommends that they should attempt to do so using a common available definition and to do so from the same point in time.

Examples where identical definitions could be included in the various versions of Commonwealth and state legislation include:

- **Standardise the pay-roll base across state and federal taxes**

General Pay-roll Base

The 'salary' and 'wages' definition forms the underlying base used to calculate the liability for pay-roll tax, workers compensation, Pay As You Go (PAYG) withholding, and superannuation purposes. Yet, there currently exists a different definition for what encompasses 'salary'" and 'wages' for these various state and federal taxes and liabilities. The variations in the definition of the base plus the various inclusions and exclusions create an enormous administrative burden for organisations that operate in more than one jurisdiction.

The Institute is concerned that employers may be following the legislative requirements correctly in one state, however be breaching the legislation in another state merely by assuming that the definition is consistent and the same across all jurisdictions.

The definition of 'salary' and 'wages' is different again for income tax purposes and superannuation. Taxation rulings offering guidance for income tax purposes cannot be applied for pay-roll tax purposes.

Contractors

The pay-roll tax concepts for contractors are different for income tax/PAYG withholding purposes. The tests contained in taxation rulings offering guidance for income tax purposes cannot be applied to pay-roll tax.

- **Standardisation of the interest and penalties and remission policies in relation thereto**

At present, the states and Commonwealth impose different interest and penalty charges for late payments of tax and have different policies for remission of such interest and penalties. These variations increase the administrative burden on taxpayers and practitioners in dealing with these matters.

While the Institute recognises that the nature of different taxes may call for different remission policies, the Institute recommends that there should be a common general interest charge ('GIC') for all state and Commonwealth taxes and common remission policies that appropriately take into account the quirks of each tax in question.

- **Standardisation of principal place of residence tests**

Many Commonwealth and state tax acts and legislation providing grants include a main residence or principal place of residence concession.

For example, these include the Commonwealth CGT, state land taxes, state first homeowner grants and the NSW vendor duty.

The definition of 'main residence' and 'principal place of residence' differs in every piece of Commonwealth and state legislation. Having different tests in each act for what is essentially the same concession in principle creates an administrative burden for businesses, advisors and, increasingly, individuals. The Institute submits that there are insufficient policy reasons of substance to require the vast majority of those differences.

A table outlining these differences can be viewed at Attachment A.

(b) Review of criteria for small business tax concessions and carve-outs

The Australian tax system provides significant tax concessions to encourage small business. Access is, however, governed by a myriad of different qualifying criteria, definitions of qualifying criteria and thresholds, which results in unnecessary inconsistency and complexity, adding to the compliance burden for small business.

The Institute believes that a significant improvement in the law and reduction in this burden can be realistically achieved if there is focus on just one key aspect of the tax system – consolidating and simplifying the 'definition' of small business.

The Institute has therefore commissioned ATax, the University of NSW, to analyse and report on the existing situation and develop an alternative and simpler 'definition' of small business, capable of consistent application, to the maximum extent possible, throughout Australia's income tax (including CGT), FBT and GST legislation. A detailed submission, based on the final report of ATax, will be forwarded to the Treasury in the near future.

2. Superannuation issues

(a) Reducing accounting and auditing compliance costs on superannuation funds

There is currently unnecessary duplication for licensed trustees of superannuation funds between their obligations to lodge reports with the Australian Securities & Investments Commission (ASIC) and those required to be lodged with the Australian Prudential Regulatory Authority (APRA).

The Institute has prepared a matrix setting out our suggestions as to areas where duplication could be reduced in order to reduce compliance costs for superannuation fund members. See Attachment B.

These suggestions would see the regulators working together to collect information through the APRA reporting process and this information being shared by APRA with ASIC. It would also facilitate a reduction in the number of audit reports required and greater reliance placed on the declarations of the trustee.

(b) Burdens on the accumulation of retirement or superannuation assets

A recent poll by the Institute of members found that taxation laws were considered the biggest regulatory burden hindering the accumulation of retirement or superannuation investments.

Sixty-seven per cent of respondents elected taxation laws as the biggest regulatory burden, with the major impediments highlighted by respondents being the 15 per cent tax on superannuation, the taxing of contributions 'on the way out', and the fact that thresholds have not kept pace with wages growth.

Thirty-two per cent of respondents voted the 'complexity of the superannuation framework' was the most pressing issue, citing aged based limits on super, bias against self-employed and overly burdensome compliance requirements from APRA as examples.

3. Financial reporting issues

(a) Unnecessary financial reporting by small to medium enterprises (SMEs) and non-listed companies generally

The Corporations Act sets the benchmark for financial reporting by companies, with companies listed on the Australian Stock Exchange (ASX) being required to report financial information that is consistent with world's best practice. The Institute has long argued that Australian Accounting Standards should be brought into line with International Accounting Standards (IFRS), and in 2003 the Financial Reporting Council directed the Australian Accounting Standards Board (AASB) to amend the existing Australian Accounting Standards so that they would be consistent with International Accounting Standards by 2005.

However, the International Accounting Standards are primarily designed to be used by companies whose shares are traded on public stock exchanges and, like the former Australian Accounting Standards, the level of complexity involved in IFRS is generally not needed for smaller sized companies, family held companies and, one could argue, most companies whose shares are not listed on the ASX.

In 1995 the Government relieved the requirement to prepare financial statements for defined small proprietary companies (size tests being where two of three are met: consolidated gross operating revenue less than $10 million, consolidated gross assets less than $5 million and less than 50 employees), many of which are family owned, and the AASB had previously excluded non-public interest companies from most of the requirements of Australian Accounting Standards, apart from basic balance sheet and profit and loss statement information

However the 'size tests' requirements to prepare and lodge financial statements with ASIC have not changed since 1995, and they should have at least been indexed.

It would also appear reasonable to assert that the costs of providing dated historical financial information that is at least six months old by the time it is lodged with ASIC exceeds the benefits of having this information publicly available, as banks and major creditors already get their own information direct from the company.

A position could be put that, except for listed public companies, there is little benefit in companies providing detailed financial information that is required to be provided by listed companies, and therefore there should not be a mandatory requirement for other than the listed companies to produce and file with ASIC annual financial statements that in most cases have to be audited. This would result in significant savings to SMEs and larger businesses.

(b) CLERP 9 – audit independence

The Institute welcomes the thrust of CLERP 9, which is designed to enhance auditor independence.

We do however suggest that some amendments to CLERP 9 are necessary to ensure that it is workable in practice, particularly having regard to the size of the Australian capital market and the geographic spread of Australian business.

Auditor rotation for smaller listed companies and audit firms

The current proposal for both lead engagement and review partners to be rotated every five years (or seven in very limited circumstances) could, we believe, result in most listed company audits only being done by the major audit firms. Whilst the CLERP 9 provisions defined a review partner as one who 'plays a significant role in the audit of a listed company', there is a concern in the marketplace that at least three audit partners are needed to audit a listed company due to rotation issues. This may result in most audits reverting to the major auditing firms, and also has some anti-competitive complications.

As the review partner role for smaller audits is mainly a checking function and not involved in the day-to-day operation of the audit, we believe that review partners should not be subject to rotation. That way a two-audit partner firm could continue to audit smaller listed companies. As with the ASX independent audit committee requirements (which only apply to the top 300 listed companies), we recommended that rotation of review partners only be required for the top 300.

ASX statistics indicate that 92 per cent of audits for the top 300 are conducted by the Big 4, compared to 55 per cent for all listed companies. For the top 300, there are nine national (excluding Big 4) and four small firms, for all listed companies, there are 12 national and 97 small firms.

The impact on review partner rotation will be particularly felt in 'rural and regional' Australia with, by way of example, Perth, where the Big 4 audit 51, the national firms audit 77 and the small firms audit 42 listed companies.

(c) Multiple former audit firm partner restriction

We believe that it is not practical in the Australian environment to limit companies to being able to employ only one former partner of an audit firm in a senior management position or as a director of the company being audited. We would support such a restriction on a former partner involved in the audit of the company, but not for former partners not associated with the audit of that company.

4. Government procurement issues

Many accounting firms provide financial and consulting services to Government. Whilst appreciating the need for government agencies to obtain value for money for their tenders, the Institute believes there are areas of government procurement practice that need reform. These include:

(a) Liability issues

The Government procurement regimes of federal and state jurisdictions vary in terms of the conditions and obligations placed on tenderers.

A significant issue is the liability caps placed on contracts. In many cases, the liability required is significantly out of proportion with the scope of the tender (for example, unlimited liability). This can have the net result of excluding many potential tenderers from participating in a tender (such as SMEs) and also increases the cost of the tender to the Government, as the high liability caps are absorbed into the tender pricing.

A number of tenders also require the tenderer to undertake liability that is outside of their professional association capping schemes, which is contrary to government policy to support such schemes.

(b) Lack of consistency in procurement practices

There is a generally a significant cost to the tender in preparing tender documentation for government tenders. This is magnified by the various state and Commonwealth governments having differing requirements for their various tender processes.

Whilst the Commonwealth has procurement guidelines for its government agencies, these are only guidelines and the procurement processes of government agencies can vary significantly. This increases the costs of tendering for organisations that tender to a range of agencies.

The Institute believes that the Commonwealth should have consistent procurement processes across agencies.

(c) Viability requirements

Currently, tenderers are required to establish their financial and corporate credentials for every government tender. This can create a significant cost (both resources and time) for both the tenderer and the agency.

The Institute suggests that larger organisations which regularly participate in and win government tenders (such as Big 4 accounting firms or large IT companies), be required to undertake a rigorous assessment of their credentials on an annual or bi-annual basis, and that this assessment be accepted on a ‘whole of government’ basis for every tender process in that time period.

ATTACHMENT A

The main residence and principal place of residence ("PPR") concessions are available in the following circumstances:

Legislation	Basic test	Changing residence	Absence from residence	Constructing residence
Commonwealth Capital Gains Tax	No minimum period of use and occupation (establishing a dwelling as the taxpayer's main residence is dependent on the facts of each case – see TD 51).	Both existing and new dwelling can be treated as main residence for up to six months. Existing main residence must have been main residence for at least three months in the 12 months before it was sold (sec 118-140 Income Tax Assessment Act 1997 ('ITAA 1997')).	Can be absent from main residence for six years. No minimum period that it must be occupied prior to or after absence. Must not use any other dwelling as main residence during the period (sec 118-145, ITAA 1997)	Dwelling that you construct becomes your main residence as soon as practicable after work is finished and continues to be so for three months. Concession available for up to four years before dwelling becomes your main residence (sec 118-150 ITAA 1997)
Victorian Land Tax	Must have been used and occupied as PPR since the previous first of July (six months) or since a later date if purchased after the previous first of July or if the Commissioner is satisfied that the land is intended and then is continuously used and occupied as a PPR (section 13A & 13B, Victoria (VIC) Land Tax Act 1958 (LTA 1958).	Both existing and new dwellings can be treated as PPR if the new dwelling was acquired in the previous 12 months, has not been occupied as PPR at the assessment date and the landowner continuously uses and occupies the new dwelling as a PPR for at least six months commencing within 12 months of its purchase. Additionally both new and old dwellings can be treated as PPR if the new dwelling	Commissioner must be satisfied that the absence is temporary and the person intends to resume use and occupation of the land as their PPR. Can be absent from PPR for up to six years after a period of at least six months during which the land was used and occupied as PPR. No specific period for which he must resume actual use and occupation (section 13C, Vic LTA 1958).	No up front exemption. Rather, if the land is continuously used and occupied as PPR, the landowner can claim refunds of land tax paid on the unoccupied land within the past year if the landowner has been claiming another PPR (and three years if they have not) (section 13H, Vic LTA 1958)

Legislation	Basic test	Changing residence	Absence from residence	Constructing residence
		is occupied as PPR and the old dwelling is sold by the end of the assessment year (section 13F & 13G, Vic LTA 1958).		
NSW Land Tax	Must have continuously used and occupied land for residential purposes since the previous first of July (six months) or, if purchased after that date, the Chief Commissioner must be satisfied that the land has been used and occupied as the person's PPR (Clause 2, Schedule 1A, NSW Land Tax Management Act 1956 ("NSW LTMA 1956").	Both existing and new residence can be treated as PPR if the new residence was acquired in the previous six months, has not been occupied as PPR at the taxing date, the landowner does actually use and occupy the new residence by the next taxing date (12 months) and disposes of the former residence within six months of the relevant taxing date (Clause 7, Schedule 1A, NSW L TMA 1956).	Can be absent from PPR for up to six years after a period of at least six months during which the land was used and occupied as PPR. Must resume actual use and occupation for at least six months (Clause 8, Schedule 1A, NSW LTMA 1956)	Chief Commissioner must be satisfied that the owner intends to use and occupy the land solely as PPR. Exemption applies for the two tax years immediately following the year when the land was acquired provided the owner commences to actually use and occupy the land as PPR for six months during that period and owns no other land worldwide that they use and occupy as their PPR (Clause 6, Schedule 1A, NSW LTMA 1956).
NSW Vendor Duty	Must have used and occupied the land continuously for the last two years, for three out of the last five years or since the vendor became owner of the land (section 162B, NSW Duties Act 1997)	Existing residence can be treated as PPR if owner has used it as PPR within six months of entering an agreement to sell it (Clause 4, Schedule 2, NSW Duties Act 1997).	Can be absent from PPR for up to six years after a period of at least two years during which the land was used and occupied as PPR. (Clause 5, Schedule 2, NSW Duties Act 1997)	See basic test

ATTACHMENT B

Audit reporting for super funds

Form	Current requirements	Proposed amendments
ASIC licensed trustee – Trustee Requirements		
1.	Trustee: Prepares financial statements for the trustee company Financial Statements are prepared in accordance with Australian equivalents to International Financial Reporting Statements Auditor: Conducts audit in accordance with Corporations Act and Australian Auditing Standards	For non operational trustee companies, e.g. a $2 company used for the purpose of complying with the Superannuation Industry (Supervision) Act regulatory requirements, an exemption from accounts preparation should be granted.
2.	Trustee: Prepares Form 70 this is lodged with the above financial statements Includes a certification that the trustee has met the licence financial requirements and conditions of the AFSL licence Lodgement dates: individual trustees 31/8 company trustee (disclosing entity) 30/9 company trustee (non-disclosing entity) 31/10 Auditor: Prepares FS71 The opinion is not tailored for the superannuation trustees as a result there are some inappropriate reporting requirements. The auditors report considers a number of regulations including compliance with specified licence conditions. While no development of audit requirements for APRA licensed entities has occurred, other than for RMS / RMP below, any requirements are likely to focus around a certification as for the ASIC requirements.	The Form 70/71 requirements should be incorporated into APRA reporting mechanisms enabling trustees to report to the one regulator. This would be achieved by enabling financial statement reporting required by form 70/71 to be incorporated in to APRA reporting requirements. This is an opportunity for APRA and ASIC to develop combined certification requirements to avoid introducing further duplication in reporting The introduction of materiality into audit reporting of ASIC breaches would result in consistency between regulators.

	This audit report requires all breaches to be reported to ASIC. There is no materiality applied.	
Not licensed by ASIC		
N/A	Only prepares financial statements for the trustee company if required by the Articles of Association or if the trustee is an approved trustee. An audit is only conducted if required by the Articles of Association.	No change
APRA licensed entity requirements – Fund requirements		
3.	<u>Trustee:</u> Prepares financial statements for the superannuation fund. <u>Auditor:</u> Audits financial statements and compliance as provided by the circular (Superannuation Circular no IV.A.6: Responsibilities of the approved auditor) However, this is subject to materiality – that is a single instance is not be required to be reported by the auditor. Issue to be addressed: The Corporations Act sections and regulations in the audit report are not subject to SIS reporting obligations and, therefore, are not required to be reported to any regulator. While reporting is usually performed by the auditor this can lead to disputes with the trustee.	Amend the SIS legislation to ensure the reporting of material breaches occurs for breaches of the Corporations Act contained in the APRA audit report.
4.	<u>Trustee:</u> Prepares financial statements <u>Auditor:</u> Prepares audit report on return Covers content of the forms Requires consideration of the effectiveness of management systems, processes and internal controls over financial and other information reported, but not assurance on these systems	No change

5.	Trustee: Where a fund invests in derivatives or is an approved trustee, a statement certification regarding derivative risk statements is required Auditor: Prepares audit report in relation to the certification	Consider including a specific requirement to incorporate the detailed derivative risk management systems, as set out in the APRA circular, in the funds Risk Management Strategy and remove the separate derivative risk management statement certification and audit signoff. This could be addressed in the risk management strategy requirements at 9,10 below.
6.	Trustee: Prepares Net Tangible Assets Certification for APRA Auditor: Signs off that the assets supported by the certification are held This is also a function of the ASIC signoff	Incorporate NTA signoffs into trustee financial accounts as appropriate. This would be achieved by requiring the trustee to disclose the NTA requirements of the funds it acts as trustee for and how the requirement is met. This would then be audited as a part of the audit of the financial statements as indicated in 2 above. These requirements should be consistent between ASIC and APRA.
7, 8.	Trustee: Prepares Risk Management Plan Auditor: Signs two reports on the Risk Management Plan Audit of compliance with the plan Review report on systems to manage and monitor future compliance with Risk Management Plan	No change
9, 10.	Trustee: Prepares the Risk Management Strategy Auditor: Signs two reports on the Risk Management Strategy Audit of compliance with the strategy Review report on systems to manage and monitor future compliance with Risk Management Strategy	No change

Audit reporting for super funds

The Institute of Chartered Accountants in Australia

Form	Current requirements	Proposed amendments
ASIC licenced trustee – trustee requirements		
1	**Trustee** Prepares financial statements for the trustee company Financial statements are prepared in accordance with Australian equivalents to International Financial Reporting Standards **Auditor** Conducts audit in accordance with Corporations Act and Australian Auditing Standards	For non operational trustee companies, for example a $2 company used for the purpose of complying with the Superannuation Industry (Supervision) Act (SIS Act) regulatory requirements, an exemption from accounts preparation should be granted.
2	**Trustee** Prepares Form 70 this is loged with the above financial performance statements Includes a certification that the trustee has met the licence financial requirements and conditions of the AFSL licence Lodgement dates: > Individual trustees 31/8 > Company trustee (disclosing entity) 30/9 > Company trustee (non-disclosing entity) 31/10 **Auditor** Prepares FS71 The opinion is not tailored for the superannuation trustees – as a result there are some inappropriate reporting requirements The auditors report considers: > A number of regulations including compliance with specified licence conditions. While no development of audit requirements for APRA licenced entities has occured, other than for RMS/RMP below, any requirments are likely to focus around a certification as for the ASIC requirements This audit report requires all breaches to be reported to ASIC. There is no materiality applied.	The form 70/71 requirements should be incorporated into APRA reporting mechanisms enabling trustees to report to the one regulator. This would be achieved by enabling financial statement reporting required by form 70/71 to be incorporated in to APRA reporting requirements. This is an opportunity for APRA and ASIC to develop combined certification requirements to avoid introducing further duplication in reporting The introduction of materiality into audit reporting of ASIC breaches would result in consistency between regulators.
Not licenced by ASIC		
N/A	Only prepares financial statements for the trustee company if required by the Articles of Association or if the trustee is an approved trustee An audit is only conducted if required by the Articles of Association.	No change
APRA licenced entity requirements – fund requirements		
3	**Trustee** Prepares financial statements for the superannuation fund **Auditor** Audits financial statements and compliance as provided by the circular (Superannuation Circular no IV.A.6: Responsibilities of the approved auditor) However, this is subject to materiality – that is a single instance is not be required to be reported by the auditor. **Issue to be addressed:** The Corporations Act sections and regulations in the audit report are not subject to SIS reporting obligations and, therefore, are not required to be reported to any regulator. While reporting is usually performed by the auditor, this can lead to disputes with the trustee.	Amend the SIS legislation ensure the reporting of material breaches occurs for breaches of the Corporations Act contained in the APRA audit report.
4	**Trustee** Prepares APRA return **Auditor** Prepares audit report on return Covers content of the forms Requires consideration of the effectiveness of management systems, processes and internal controls over financial and other information reported, but not assurance on these systems	No change
5	**Trustee** Where a fund invests in derivatives or is an approved trustee, a certification regarding derivative risk statements is required **Auditor** Prepares audit report in relation to the certification	Consider including a specific requirement to incorporate the detailed derivative risk management systems, as set out in the APRA circular, in the funds Risk Management Strategy and remove the separate derivative risk management statement certification and audit signoff. This could be addressed in the risk management strategy requirements at 9,10 below.
6	**Trustee** Prepares Net Tangible Assets Certification for APRA **Auditor** Signs off that the assets supported by the certification are held This is also a function of the ASIC signoff	Incorporate NTA signoffs into trustee financial accounts as appropriate. This would be achieved by requiring the trustee to disclose the NTA requirements of the funds it acts as trustee for and how the requirement is met. This would then be audited as a part of the audit of the financial statements as indicated in 2 above. These requirements should be consistent between ASIC and APRA.
7,8	**Trustee** Prepares Risk Management Plan **Auditor** Signs two reports on the Risk Management Plan 1. Audit of compliance with the plan 2. Review report on systems to manage and monitor future compliance with Risk Management Plan	No change
9,10	**Trustee** Prepares the Risk Management Strategy **Auditor** Signs two reports on the Risk Management Strategy 1. Audit of compliance with the strategy 2. Review report on systems to manage and monitor future compliance with Risk Management Strategy	No change
The implementation of these recommendations will result in four audit reports and the supporting documents.		