Housing Industry Association

Submission

Taskforce on Reducing the Regulatory Burden on Business

November 2005

Table of Contents

Summary

Housing is a good that is not internationally tradeable. Therefore, the cost of housing is determined by domestic supply and demand factors. The Australian housing industry is a highly competitive industry and, as a result, is extremely efficient at responding to consumer demand at the lowest economic cost. However, as in many industries, the regulatory framework imposed on the housing industry is a major determinant of its cost structure and, hence, of the affordability of housing.

The 1980s and 1990s saw substantial improvements in the overall regulatory framework governing the housing industry. In particular, competitive markets were created in place of the former local government monopolies in respect of building inspections and approvals, a more flexible, performance oriented regulatory structure was put in place and a substantial degree of regulatory harmonisation was achieved.

However, recent years have seen a substantial expansion in both the scope and the stringency of building regulation, generating very significant cost increases to consumers. Particular areas of concern include energy efficiency, sound installation and occupational health and safety. There is also the looming prospect of further regulation to enhance housing accessibility for people with disabilities in the near term.

HIA believes that much of this regulation is unjustified. A fundamental problem is that the issues purportedly being addressed by these regulatory requirements go far beyond the core role of building regulation in ensuring the safety and durability of the built environment. Adequate justifications of these extensions to the ambit of building regulation have generally been lacking, while Regulatory Impact Statements (RIS) have, in most cases, substantially underestimated the costs associated with these regulations and, in many cases overestimated the benefits.

HIA believes that substantial changes to RIS requirements are needed to improve the rigour of these analyses and thereby ensure that new building regulation deliver real benefits. In particular, HIA is concerned that RIS processes are apparently unable to deal with the issue of "regulatory inflation", that is, the cumulative impact of the numerous discrete increases to regulatory burdens being applied to the same industry over a short period of time. In addition, we note that planning decisions taken by both state and local governments are among the major contributors to escalating regulatory costs facing the housing industry. These planning decisions are beyond the reach of the RIS process and are of major concern. At the State level, planning policies have, by significantly restricting the availability of land for new housing, greatly increased the land cost component in new house and land packages. These decisions, and decisions on related matters such as the application of development charges, are increasingly leading to major housing affordability problems.

There is a growing tendency for local government to use planning powers to address non-planning related issues, such as access, energy efficiency and sound installation. As well as representing an inappropriate use of powers such decisions create substantial problems of regulatory inconsistencies between local government areas and reduce predictability as to regulatory requirements. These factors can impede the operation of the building industry and significantly increase its costs.

This submission recommends that systemic responses to the above problems are essential. To this end, HIA proposes a range of specific improvements to RIS processes, to regulatory review processes, and to the legislative underpinnings of regulatory reform. HIA also emphasises the need for greater coordination between state and territory governments on regulatory reform issues and harmonisation of RIS requirements across Australia. HIA proposes that a strategic review be undertaken of the appropriate scope of building regulation. Specific measures should be adopted to address the widespread problem of regulatory inflation.

Key Recommendations

1. Industry issues

- HIA supports the Productivity Commission's recommendation for a moratorium on new energy efficiency regulations, pending an independent expert review to determine whether existing regulations deliver a significant net public benefit.
- The Commonwealth and State governments should immediately enact the proposed new intergovernmental agreement for the Australian Building Codes Board (ABCB). Governments should reaffirm their support for a single national building code and commit to minimise variations to this code.
- While welcoming harmonisation of Commonwealth and State regulations, HIA would stress that national consistency is less important to small businesses than appropriate, minimum effective regulation. Almost 99 per cent of small businesses operate in a single jurisdiction and would not benefit from harmonised but more onerous regulations. Occupational health and safety regulation is an important case in point.
- State governments should curtail the powers of local government to use planning and other controls as de facto building regulations. State legislation should be amended to prohibit local governments from imposing requirements on the industry which are additional to, or conflict with, the ABCB and State building regulations.
- All future building regulations should be subject to a thorough, public process of cost-benefit analysis, through the ABCB.
- The Commonwealth should use financial incentives, such as those offered through the Regulation Reduction Incentive Fund, to press local governments to implement reforms such as private planning certification and "as-of-right" development approvals.
- The Commonwealth and State governments should report each year (through the relevant COAG Ministerial Council) on progress to improve housing affordability. To facilitate this assessment, the Productivity Commission should develop a standardised costing tool to allow each jurisdiction to assess and report the cumulative effect of its regulation on housing affordability.
- The use of Australian Standards as effectively quasi-regulation needs to be reassessed to ensure that standards are not unnecessarily adding to the regulatory burden on small business. There are incentives in current arrangements which may lead to the development of standards for commercial gain.

2. Regulatory processes

- Regulation reform requires ongoing political support. A senior Commonwealth Minister should be responsible for leading reform. Regulation reduction should be made an explicit whole of government priority for all governments.
- The performance of regulatory agencies should be subject to annual review, with simplification and reduction of regulations a key performance indicator. The Office of Regulation Review should produce an annual report on the performance of each Commonwealth regulator.
- Consistent RIS standards and processes should be adopted in all jurisdictions to ensure that regulatory proposals are subjected to proper scrutiny.
- The first step in considering new regulation should be an open, accountable process to assess whether government intervention is appropriate. A regulator should be obliged to produce a public consultation document which identifies the issue to be addressed, assesses the range of possible non-regulatory and regulatory solutions and quantifies the likely costs and benefits of each option. Public comment should be invited for a set period of at least two months. The document should conform to a standardised format developed by the Office of Regulation Review. Before public release of the document, the Office should certify that the document is accurate and complete.
- Should a case be made for new regulation, the regulator should produce a second more detailed document similar to the existing Regulation Impact Statement for public comment. As far as possible, this statement should disclose the costings data used to prepare this document.
- Wherever possible, there should be a presumption that new regulations will not add to the net compliance burden on business. Regulators introducing new regulation should be obliged to withdraw existing regulations as an offset.
- An independent post-implementation review of major business regulation should be undertaken within two years of introduction to test the accuracy of the original cost-benefit analysis and to ensure that the presumed net benefits from regulation are being achieved. The post-implementation review should report directly to the responsible Minister; and a copy of the review should be released to the public.
- New regulations and standards should include sunset clauses (no more than 5 years) which trigger formal re-assessment of the appropriateness of the regulation rather than automatic renewal of the regulation.
- All States and Territories should introduce an accessible register of all business regulation, similar to the Commonwealth's register of legislative instruments. Regulations not included in this register by a set date will be void.

1. The Residential Building Industry

1.1 Australian Industry Productivity

Housing, as a good that is not international tradeable, has its costs determined by the efficiency with which the supply of housing stock is made available to buyers and the demand for the product itself. Unlike tradeable goods, housing is not subject to disciplines of import competition.

Prices therefore are determined by local or at best national supply and demand situations. They will vary according to:

- The pressure of demand on the existing stock which at any one time is unlikely to be able to be expanded by more than a few percent;
- The cost of expanding supply which in turn depends on:
    - The efficiency of the supply industry;
    - The regulatory arrangements that might increase its costs; and
    - The ability of the existing housing stock to be adapted and traded, itself a function of regulatory and taxation considerations.

In terms of efficiency of supply, Australia has the benefit of a home building industry that is highly competitive and, as a result, produces at low cost and readily adapts to provide consumers the product they want. Entry into the industry has been relatively easy and therefore competition is fierce. The industry's most marked organisational feature is independent businessmen.

According to Pavletich[1] the Australian construction costs for a new home are highly competitive on a world scale and considerably below those of New Zealand. He states:

> *"A standard new production home in Christchurch (example Stonewood Homes) will currently cost in the order of $NZ900 per square metre, whereas in Queensland (example – Metricon Homes) the cost per square metre is about $A550. Construction times are near half in Queensland in comparison with Christchurch."*

Similarly Peter Kirby the then CSR Managing Director said,

> *"The cost of **building** new homes is dirt cheap in Australia, relative to the rest of the world, nearly 20% cheaper than in the US and little more than half the price in Japan."*[2]

1 Pavletich, H. "Planning and process used for the Greater Christchurch urban development strategy" May 2005

[2] HIA, Restoring Housing Affordability, 2003. p.4
http://www.buildingonline.com.au/hia/media/housing_affordability_july03.pdf

The Australian house building industry, with efficiency levels that are inferior to none in the world, operates in stark contrast to the union controlled construction sector which is pregnant with outdated and inflexible work practices. Econtech compared the performance of the employee-dominated commercial construction industry with the efficiency of the housing industry where most work is performed by independent contractors. The results suggested that the trade contractors in the housing industry were 13 per cent more productive and their costs 19 per cent lower[3].

Despite, or perhaps because of, these measureable differences in productivity and costs, there has been a long campaign by the unions and sections of the ALP to have sub-contractors declared as "deemed employees", thereby making them vulnerable to the "no ticket, no work" regime that prevails in Australia's unproductive commercial building industry. The risk of such moves leading the housing construction sector down the more highly regulated and less productive path that characterises the commercial buildings sector is clear. The sector, being dominated by small business, is highly susceptible to costs associated with the administration of regulation, such costs having an exponential impact.

1.2 Regulatory Issues affecting the Construction of Dwellings

The industry has constantly struggled with regulatory issues that threaten to reduce efficiency levels. At the same time, it must be acknowledged that some important improvements have been made in the form and structure of building regulation in recent decades.

Some 20 years ago the *Australian Uniform Building Regulations Coordinating Council (AUBRCC),* the then coordinating body, embarked upon an important deregulatory approach converting the various state codes, then not uniform, into a plain English format instead of the legalese that they were then written in. AUBRCC sought to eliminate prescriptive regulation by developing "deemed to comply" guidelines which did not exclude alternative approaches. Through the efforts of the AUBRCC and other reform bodies, a performance-based regulatory code for the building industry was implemented, while a substantial degree of national regulatory harmonisation was also achieved through the adoption of the Building Code of Australia (BCA). Associated legislative reforms have also meant that the previous monopoly of local governments on building approvals processes has been widely replaced with a competitive market system, with substantial gains in terms of reduced delays and holding costs and, as a result, important efficiency benefits.

However, while these changes to the regulatory structure have yielded significant benefits in terms of flexibility and compliance costs, historically, this can be seen as a hiatus in a lengthy period during which regulatory requirements were steadily expanded. Originally conceived as a means to ensure acceptable standards of health and safety in houses, the building regulations have, from a relatively early time,

[3] source http://www.cfmeu.asn.au/construction/pdfs/ESCToner.pdf

migrated into areas in which they have no justifiable role. A case in point was the mandatory requirements on the amount of natural light that must be present in a room, a requirement that prevented approval where a room had no windows.

Pressures for more and broader regulatory requirements in building regulation continue unabated. Of particular concern is the tendency for the scope of the matters covered by building regulations to be expanded progressively. In recent times the original "core" of health and safety related regulatory requirements have been supplemented by new regulatory requirements that cover:

- environmental concerns, especially those concerned with energy conservation propelled over the past decade or so by greenhouse concerns;
- noise insulation regulations; and
- water storage regulations;

In addition, we are aware that active consideration is being given to the incorporation in the BCA of regulations to promote improved accessibility in houses for people with disabilities. This would mark a significant extension of the scope of regulations beyond public spaces to private homes, with costs being borne by persons who may never reap the benefit.

A related concern is the considerable capacity for local authorities to impose additional *de facto* building regulations on builders through the use, and arguably abuse, of their planning powers. Experience to date indicates that local authorities have shown a particular willingness to use their planning powers to implement additional regulatory requirements in respect of sound installation and building accessibility for people with disabilities. In many cases these uses of local authority planning powers are indicative of the fact that there are relatively fewer constraints on the exercise of regulatory powers at local levels, vis-a-vis at state or federal levels. That is, while the existence of RIS type requirements at state and federal levels provide some discipline on the use of regulatory powers, local planning powers are often being used to circumvent these disciplines.

Several substantial problems arise:

- first, the lack of any rigorous impact assessment process means that the requirements adopted are often ill justified and likely to impose net costs on the community;
- second, the imposition of inconsistent requirements in different local government areas leads to substantial problems for industry as a result of the need to depart from standard designs and construction practices in certain areas; and
- third, planning requirements are often drafted in very general, and frequently ambiguous, terms and are open to often widely differing interpretations, creating significant uncertainty for industry.

Where local authorities do exceed the proper ambit of planning powers – a not uncommon occurrence, as indicated below – opportunities do, theoretically, exist for

developers, builders and other affected parties to obtain redress. However, a substantial constraint on the builder's ability to use these options arises in the form of the significant costs in terms of delays that must be borne: a cost that the local approval agency does not bear. Moreover, there is often considerable uncertainty as to the prospects of success in challenging planning provisions in these areas, particularly given that there is frequently little or no precedent for the use of the powers being challenged.

There appear to be some recent indications that the appeal bodies in relation to these matters are becoming more willing to act to constrain such misuses of planning powers. One development in this direction concerned a recent decision of the Victorian Civil and Administrative Tribunal (VCAT). VCAT recently refused Moreland City Council the authority to push regulatory demands beyond the State Government's costly 5 Star energy requirements for new houses[4]. VCAT concluded that it was inefficient for a council to act to expand such regulatory burdens at a local level. It also indicated that should a further case be brought along the lines of the one it dismissed, it would award costs against the respondent council.

However, notwithstanding these hopeful signs, it is our submission that action is required at State and/or Federal government level to ensure that more appropriate limits are placed upon the use by local authorities of their planning powers and thereby prevent their adoption as means of implementing additional, de facto building regulations.

It was noted above that the scope of the building regulations has continued to expand. Moreover, many of the recent changes to the building regulations are difficult or impossible to justify if rigorous benefit/cost analysis is applied. The following section discusses shortcomings in relation to recent incremental changes to building regulations in the specific areas of concern nominated above. However, an important additional theme, discussed first, is that of the cumulative effect on housing affordability of the range of additional measures recently added to the building regulations.

1.3 Cumulative Regulatory Impacts

The impact of individual regulatory proposals is usually assessed under Regulatory Impact Statement (RIS) requirements. However, the RIS process does not take account of the cumulative impact of numerous sets of regulatory requirements all weighing on the same industry sector. As the following discussion of individual areas of particular regulatory concern will show, the housing construction industry has, in recent times, been subjected to substantial regulatory inflation; that is, to substantial increases in aggregate regulatory burdens.

4 Hassan vs Moreland City Council VCAT reference no. p967/2005 permit application no. mps 2004/0716. the judgement actually said, "As this case was in the nature of a test case, we would expect responsible authorities to cease imposing like conditions on planning permits. It would be undesirable if a future applicant was forced to incur costs to overturn such conditions. Of course, in such circumstance, the tribunal may need to make an order that the responsible authority pay such costs."

This significant cumulative regulatory burden entails serious problems for both producers and consumers. For housing providers, the burden of simply keeping abreast of constantly changing regulatory requirements, involving identifying and analysing new regulatory arrangements, is substantial. Of greater significance, producers must determine how to implement new compliance requirements in ways that are best integrated with their normal productive processes. This can entail varying standard designs to accommodate new regulatory requirements and researching new materials and processes that may be required in order to achieve compliance at acceptable cost levels. This is in itself a cost to producers and suppliers.

From the consumer perspective, the accumulation of the regulatory requirements can have serious negative effects on housing affordability. While individual regulations may have been shown, via RIS analysis, to yield net benefits this clearly does not indicate that there will be no negative impact on affordability. There are several reasons for this:

- RIS analysis compares social benefits and costs, rather than taking the perspective of the private individual who is likely to bear most regulatory costs[5]. Frequently, many of the identified benefits accrue to parties other than the consumer, suggesting there will be significant net costs associated with the regulatory intervention, resulting in a disproportionate burden on the consumer.
- This effect is often exacerbated by the fact that RIS analyses typically use low discount rates which, while perhaps reflective of social opportunity costs, do not reflect the real cost of capital to housing consumers. Reference here should be had to the Report by the Productivity Commission on the Private Costs of Energy Efficiency.
- Lenders invariably impose minimum deposit requirements on borrowers. Thus, even where a regulatory requirement has a positive net benefit from the consumer's perspective, a reduction in affordability will result due to interaction of the price impact on the finished house and effective borrowing limits.

We note that the Productivity Commission's recent report on housing affordability has discussed these issues and underlined the fact that the accumulation of new regulatory initiatives imposed on the housing industry is such that this impact on affordability has been substantial, and risks becoming much greater again in the future.

In this respect we welcome the recent recognition by the Victorian Government of the need for a determined assault on planning regulations affecting a great many ancillary facets of the main building. The planning process has become congested with requirements for approvals for a great many minor features and it is encouraging that Victorian Planning Minister Rob Hulls has established a review, *Streamlining the Planning Permit Process: Cutting Red Tape*.

[5] In a competitive industry context, such as that of the house building industry, it must be assumed that, where additional costs are imposed on producers, these will largely flow through to consumers via price increases. Thus, consumers ultimately bear most regulatory costs in the areas under discussion.

To report by May 2006, this review aims to remove the need for planning permits for minor works such as shade sails, cubby houses and some fences and garden sheds. The objective is to cut the number of approvals by 20 per cent. Whilst this initially heralds a good start, it must extend much further to significantly assist the housing and construction industry.

2. Specific Building Regulatory Issues

2.1 Energy Efficiency Regulations

Two major public inquiries this year have examined the impact of mandatory energy regulation on the building sector. Both the Productivity Commission and the Victorian Competition and Efficiency Commission have confirmed there is no clear evidence that regulations in this area are delivering the expected environmental benefits. Desk-top modelling used to predict energy savings has been strongly challenged by many experts, notably because most models have been developed with little or no reference to the industry or to real data on actual energy usage patterns[6]. This type of modelling underpins existing regulations already in place in Victoria, and regulations proposed to be implemented nationally through the BCA in May 2006.

Already the BCA incorporates regulatory requirements for a "3.5 Star" energy efficiency standard. This entails costs that many consumers would prefer to forego. The justification for many current and proposed energy regulations rests increasingly on asserted benefits in terms of greenhouse gas reductions. However, even abstracting from the uncertain nature of such benefits, it must be underlined that these societal benefits are being purchased at the cost of the new home owner alone, without any consideration of capacity to pay. It is therefore discriminatory and moreover tends to impact on younger people buying their first home, who are likely to be among the less wealthy members of society and in many cases have lower than average incomes.

In justifying its regulatory approach, the ABCB argued that the main benefits would be gained by the consumer. It suggested that it was myopia on the part of the consumer, the existence of "split incentives" and perhaps ignorance on the part of the builder that led to efficient options not being sufficiently taken up. These assumptions fail to recognise other reasons that a consumer, behaving entirely rationally, might choose to forego such energy saving measures. In addition to the individual's failure to capture some benefits (e.g. greenhouse gas reductions), these include choosing to deploy limited borrowed funds (see above in relation to borrowing constraints) on features other than enhanced energy efficiency. As well, individuals are likely to apply higher private discount rates than the implicit "social opportunity cost of capital" based discount rates applied in RIS analysis. In addition to the above, pay-back periods for many of the suggested benefits is excessively long, being some 30 years in the case of the current Victorian requirements. As such, they fail to recognise that Australians move home on average every seven years.

[6] In fact, much of the modelling of energy consumption used in analysis of the benefits of energy efficiency regulation is based on engineering models and fails to "benchmark" the calculated results against real data on average energy consumption rates.

Though they may use other means, to meet the energy efficiency standards for houses builders normally adhere to the standard forms of construction prescribed in the Building Code, which includes a range of 'acceptable construction practices' relating to the:

- building fabric (including insulation, roofs, walls and floors);
- external glazing (including shading);
- building sealing (including construction of roofs, walls, floors, windows, doors and chimneys);
- air movement; and
- services.

However, the underlying intention of the BCA to provide a nationally harmonised set of building regulatory standards is undermined by the fact that several jurisdictions have gone still further than the BCA's 3.5 Star requirement: These provisions have been exceeded by the Victorian "5 Star" requirement and by the NSW BASIX requirements. The ACT has a "4 Star" requirement for new houses and also specifies that energy audits must be conducted prior to a house being sold.

Following a detailed examination, the PC's assessment of these regulatory requirements was expressed in finding 10.2:

> "*There is considerable uncertainty about the extent to which building standards have reduced energy consumption and emissions. In addition, it is doubtful that the net financial benefits predicted in regulation impact assessments have been achieved in practice. The limited available evidence suggests that the costs of current standards have been much higher than were predicted.*"[7]

The PC went on to recommend an "independent" evaluation of the various schemes.

The PC conducted particularly exhaustive analysis of the Victorian "5 Star" requirement since this had been subjected to more rigorous assessment than other schemes. It found

> "*The limited available evidence on outcomes under current standards suggests that actual costs have been very different from those predicted.*"

However, more comprehensive evidence gathered by the Victorian Building Commission indicates that, in many cases, cost increases have been much higher than predicted. The Building Commission had predicted that the cost of a new house would rise by 0.7–1.9 per cent due to the 5 star standard (Victorian Building Commission 2002). In contrast, a survey of 600 builders undertaken in February 2005 for the Building Commission (with assistance from the Housing Industry Association) found that actual cost increases have been in excess of three times the original Victorian Government predictions:

[7] http://www.pc.gov.au/inquiry/energy/finalreport/energy.pdf

> *The data suggest that residential building costs have increased as a result of builders achieving standards in this area, with the median estimate of such a cost increase in the range of 3 to 5 per cent … Excluding those that answered 'don't know', the mean additional cost incurred was 6.04 per cent. (Chant Link and Associates 2005).*

It should be noted that the Victorian experiment in building energy regulation was not subject to any formal RIS process, and therefore the result suffers from a lack of rigorous analysis in the developmental phase. The Victorian experience demonstrates the failures attributable to 'policy on the run'. Flawed policy often results in flawed regulation, raising the question of whether proposed policy should be subject to public scrutiny.

In the Chant Link research undertaken by the Building Commission and the HIA, only 27 per cent of the 600 builders contacted said they needed to make no changes to their designs as a result of the regulation. Of the rest, the most frequently made technical changes to address the Star rating energy efficiency standards were:

- Increase insulation (mentioned by 46% of the sample).
- Use of double glazing (28%).
- Modifying window sizes (24%).
- Changing the building orientation (22%).
- Changing building materials (15%).
- Making water savings (12%).
- Replacing timber floors with concrete slab on ground (11%).
- Over one quarter (27%) said no changes were needed to the home designs they were building prior to the introduction of 5 Star ratings.

It should also be noted that the quantified cost impacts under discussion capture less than the sum total of the real costs of regulation in this area. Achieving compliance at "minimum acceptable cost" also involve some substitution of building design elements in ways that make the resulting product less preferred from the consumer perspective. For example, the reduced window sizes adopted in 24% of the cases surveyed above would generally be less preferred by consumers than the original larger window sizes. Similarly, substitution of different materials (e.g. from timber floors to concrete slabs in 11% of cases) is likely to yield a less preferred result for many consumers.

In sum, this substitution is adopted because builders make judgments that the strength of consumer preferences for, say, larger windows is less than the cost of maintaining these features while meeting the energy efficiency standard. However, it must be recognized that the full cost of compliance with the standard includes both the additional cash cost of the average house and the unquantified cost of the reduction in consumer satisfaction from the resulting house.

Ex ante vs ex post analyses

The substantial differences between the results of *ex ante* benefit/cost analysis and actual *ex post* outcomes cited above are likely to reflect deficiencies in the RIS process to a significant degree. This issue is discussed further below, however, it is sufficient to point here to a dynamic that sees most RIS on this kind of far-reaching regulatory requirement being completed by commercial consultants who have strong incentives to provide the answers their Departmental clients are seeking, answers about which the PC has expressed considerable scepticism.

Contrary to initial estimates, it is clear that the Victorian "5 Star" standard is very onerous. Based on its consultant's report the Building Commission had originally put the cost of the regulations at $3,300 per home. The VCEC put the cost at about three times the BC estimate, (drawing from the Chant Link survey). Another estimate, drawing on specific designs of members of the Master Builders of Australia, has put the cost even higher, at $13,000-$16,000 per house depending upon location.

To put this in a national perspective, if the costs per new house were to be $10,000 the overall economy-wide annual cost would $1,500 million. Considered alternatively, a cost increase of $10,000 is equivalent to a 5% increase in the total cost of a $200,000 house and land package – simply as a result of one specific regulatory requirement. Victorian consumers have, moreover, been saddled with a range of other substantial regulatory impediments within a very few years: for example, new housebuyers are also required to install either a solar hot water system or a rain water tank at costs averaging several thousand dollars in addition to the above. The purported benefit/cost analysis contained in the RIS for this measure resorts to Keynesian multipliers of the economic benefits of constructing solar hot water systems within Victoria to attempt to show a net benefit from these measures, while admitting that the benefit to the purchaser of a rainwater tank would amount to only several dollars per annum.

Although HIA's prime concerns are with measures that impact upon the family home we note the evidence brought forward by the PC which illustrates the fertile field energy has become for more intensified regulatory action across the board, action that has been introduced with little or no appraisal of its effects. The costs are considerable and, at least in the case of housing, they impact upon those least able to afford them.

In addition, state specific measures like 5 Star Energy requirements introduce regulatory restraints to trade which would doubtless deter some firms, especially those for which Victoria is not presently a major market, from offering their product in the State. Not only does the cost increase result in a re-arrangement of competitive profiles and a diminution in consumer benefit, but it tends to reduce the competitive activity within the economy, an outcome of which will likely be higher prices and reduced innovation.

HIA is concerned that conflicting State, Territory and local government regulations are damaging the capacity of the industry to deliver compliant homes at minimum cost. The competitiveness of local manufacturing is being damaged by regulations which fragment the Australian market into small niche markets. Australian

manufacturing cannot achieve economies of scale if it has to tailor production to comply with different regulatory regimes.

The ABCB is now examining changes to the Building Code to increase the stringency of the energy efficiency requirements. The ABCB itself has expressed concern about the inadequacy of the data used to develop energy efficiency standards for buildings. In its submission to the Productivity Commission review, it said:

> *…in developing the BCA energy efficiency measures, some technical and policy decisions have had to me made on limited or anecdotal evidence due to the lack of energy data…. From a government perspective, better co-ordination and targeting of funding is essential to ensure that* ***reliable data*** *is available for informed policy decisions to be made.*

Whilst the ABCB, typically for a government agency, seeks an expansion of its own budget, the statement is an important recognition of the deficiencies in data on which the regulatory settings are made. The reductions in energy consumption estimated to result from the adoption of the more stringent requirements bear no close relationship to reality, since measurement of energy efficiency under the Building Code is simulated rather than measured directly. Moreover, the simulations are, as the PC has demonstrated, based on highly optimistic assumptions about the conditions under which the measures will operate.

It appears that the minimum star rating under the Building Code has been driven in large part by a desire to catch up to the most stringent State or Territory standards and thus minimise "breakouts" by States and Territories adopting their own standards. This apart, adopting rules to standardise the Code at the most onerous level, set by the jurisdiction which imposes the greatest cost, is a travesty of the Code's intent in facilitating an efficient building industry.

The fiasco of setting energy efficiency standards in response to rivalry between different state agencies to adopt populist regulations underlines the need to put in place much more rigorous cost/benefit requirements prior to introducing new regulations.

Moreover, the process is continuing apace: new energy based regulatory measures are in train even as this review is progressing. Thus, the Energy Efficiency Opportunities Bill 2005 implements the government's policy, outlined in the Energy White Paper, to require large energy users to undertake assessments of energy efficiency opportunities every five years. In fact, clause 18(7) specifying requirements for an assessment plan, obliges relevant corporations to lodge a plan every five years but adds, 'The assessment plan must meet any extra requirements set out in the regulations'. This is somewhat open ended. In addition, there are provisions in the Bill that allow criminal charges to be brought against non-compliant firms, charges that are to be applied to the firm's Chairman.

The extraordinary "regulatory overkill" that this represents only underlines the urgency of the plea that the HIA has previously made for a moratorium on further energy regulations pending a review to determine the merits of the PC's findings and other evidence on its usefulness.

2.2 Sound Insulation Regulations

Aircraft noise is a *cause celebre* in many cities throughout the world. The conurbation expands to the fringe area on which airports are built, partly attracted by the work opportunities they entail, and the houseowners then campaign to have the airport quietened. Other major noise sources in the urban context are traffic noise and, more generally, the conjunction of noise sources associated with city centre living. Recent changes to the building regulations have sought to address noise issues, particularly in relation to attached dwellings. However, some of the assumptions underlying regulatory action in this area must be questioned:

According to a study by Nova, updated in March 2004[8],

> *"Currently the Australian Building Codes Board is considering strengthening the sound insulation provisions of the BCA. Any changes would almost certainly strengthen the sound insulation requirements for internal walls of buildings.*
>
> *"Good sound insulation is expensive. The proposed changes are expected to add an extra 2 per cent to the construction costs of a building. Also, the extra thickness of walls, floors and ceilings would mean that 3 per cent fewer dwellings could be fitted onto a development site. Developers would therefore need to charge more for each dwelling to maintain their profit margins. Nationally, the changes could cost the building industry an estimated $115 million a year."*
>
> Marshal Day[9] illustrates one aspect of the change as follows:

Wall construction required to meet old BCA requirements:

110mm thick concrete brickwork

or

2 x 16mm thick plasterboard
64mm steel stud
2 x 16mm thick plasterboard

Wall construction required to meet new BCA requirements:

150mm thick plain off form concrete

or

1 x 13mm thick plasterboard
100mm concrete panel
64mm steel stud with 50mm thick insulation in cavity (min density 11kg/m³)
2 x 13mm thick plasterboard

[8] http://www.science.org.au/nova/072/072box05.htm

[9] http://www.marshallday.com/downloads/2a_Recent_changes_to_the_Building_Code_of_Australia_ver_3.0.pdf

The regulations discussed above came into effect in May 2004. More intensive regulations are also being introduced or mooted especially for high noise areas. A recent case is for the Fortitude Valley/New Farm area of Brisbane. Overseas, with respect to city centre living, there have been several calls for increased insulation and a number of new requirements have been introduced in recent years.

However, studies covering Manchester, Liverpool and Dundee in the UK[10] have indicated

- City centre living has grown massively and seems to have reduced but not reversed longer run trends toward suburban living;
- It is dominated by students who mainly live there only for a few years before setting out on the property ladder – there are very few families with children and hardly anyone over 40. So far, the expected "empty-nester" demand has not eventuated;
- It's heavily consumerist - there's lots of shopping and clubbing. There's no conflict with the evening economy - people move in for the nightlife, not despite it;
- City centres aren't seen as family-friendly. Noise, pollution, lack of space and lack of public services all become big problems when children arrive on the scene. These attitudes are firmly entrenched and have a long history;
- There's little point trying to put families into city centres - it would be expensive and might not work, and city cores basically work well for their existing residents. Better to encourage families into the inner ring neighbourhoods nearby, (which would describe Brisbane's New Farm) that are better set up to meet families' needs.

As with a great many regulations ostensibly targeted at preventing consumer deception, noise control is one of many issues best left to the mutual agreement of the buyer and the seller. The need for such measures is dependent both on individual preferences and on highly specific locational facets. Some buyers will see noise reduction features as important, others will regard them as unnecessarily costly, still others may wish to retro-fit in the light of experience with the home or developments in traffic etc.

2.3 Disability Access Regulation

The ABCB is well advanced toward the incorporation within the BCA of the Disability Standard for Access to Premises. The requirements of this standard would apply to all publicly accessible buildings, and so excludes private housing. However, the draft RIS relating to the standard, which was published in February 2004, clearly indicates the magnitude of the potential regulatory costs of adopting regulatory requirements in this area.

[10] See Max Nathan, www.ippr.org/centreforcities

The proposed Premises Standard would include specific requirements aimed at providing greater access to premises for people with mobility disabilities, as well as people with vision and hearing impairments. Matters that would be regulated include ramps and doorways, corridor widths, lifts, sanitary facilities, seating spaces in auditoria, car parking spaces and provision of signage.

The RIS estimates that the proposed Standard would impose costs of $1.8 billion per annum on the building industry Australia wide. This is equivalent to an increase in the costs of construction of new buildings of 4.6% and an increase in the costs of building upgrade works of 10.3%. Moreover, the submissions made in response to the draft RIS by stakeholders such as the Property Council of Australia suggested that even these estimates fell substantially short of the likely true costs of complying with the proposed standard[11].

HIA believes that the standard, if adopted for commercial buildings would lead to unjustifiably large costs, given the relatively small size of the core beneficiary groups, and mean that many buildings would be less useful as a result of the spatial and access reorganisation that would be required of new buildings and buildings subject to refurbishment.

Moreover, there is a substantial question as to whether many of the benefits sought would actually be achieved in practice. The RIS suggests that important benefits would arise from increases in the currently low employment participation rate of wheelchair users[12]. However, as that document itself notes, the United States experience is that the adoption of equivalent legislation (the Americans with Disabilities Act) did not lead to any increases in participation. Deleire compared the employment rates of men with and without disabilities in the periods 1985-90 and 1991-1995 (the latter period falling after the passage of the Americans with Disabilities Act on which Australian proposals are modelled) and found that the employment rate of men with disabilities had actually dropped by 7.8 per cent, relative to that of men without disabilities, between these two periods. This relative fall was observed in all age groups, employment categories and disability classes, though it was found to be least pronounced among those with more education, those with a physical disability and older age groups[13]. Other research has tended to corroborate these findings (e.g. see the National Organization on Disability/Harris[14] estimates).

The reasons for this may be that employers informally avoid employing disabled people fearing that this will require them to incur additional costs. It may be that in

---

[11] In fact, the Property Council argued that the aggregate costs of adopting the Standard as proposed were likely to be more than twice as high as those estimated in the RIS.

[12] Frisch estimates that the participation rate of this group is only around half of that of the general population. The RIS suggests that significant increases in employment participation would be likely to result from improvements in building accessibility. See *The Benefits of Accessible Buildings and Transport: An Economist's Approach*, Dr Jack Frisch

[13] Thomas DeLeire**,** *The Unintended Consequences of the Americans with Disabilities Act*, Regulation, Vol. 23 N. 1 http://www.cato.org/pubs/regulation/regv23n1/deleire.pdf. In 1997, DeLaire was awarded a PhD from Stanford for his thesis on Wage and Employment Effects of the Americans with Disabilities Act.

[14] Chartbook on Work and Disability, National Institute on Disability and Rehabilitation, http://www.infouse.com/disabilitydata/workdisability_2_9.html

the US disabled workers were discouraged from working because the jobs available to them were lower paid jobs. This is less likely in Australia where minimum wages are much higher, relative to average wages, than in the US.

The RIS for the proposed Premises Standard suggests that this regulatory proposal is an inevitable result of the pre-existing legislative requirements imposed via the *Commonwealth Disability Discrimination Act*[15]. Private housing is beyond the scope of the DDA, and so does not face the same (arguable) imperative toward regulatory action. Nonetheless, the ABCB, together with the Victorian Building Commission, has since commissioned research on the issue of increasing the supply of accessible housing, including consideration of the merits of adopting regulatory standards for private housing in pursuit of this goal.

HIA is deeply concerned at the potential for regulatory action in this area to impose further, substantial pressures on housing affordability. Many advocates argue that better design inputs can deliver accessibility at no additional cost compared with current practices. However, consideration of the specific features required to achieve high levels of accessibility clearly indicates that this will rarely be the case.

The sort of features that are valued to promote accessibility include wider passageways, step-less entry, flat floorplans, wider doors, larger bathrooms with grab handles, graded pathways and other features that facilitate wheelchair use. Often these features are easier to incorporate into larger dwellings and Australian single storey houses makes many of the required features, particularly the need for a downstairs toilet, automatically easier to accommodate than in most other countries.

Even so, the experience of public housing authorities in modifying their housing designs to incorporate accessibility features is that significant additional costs are incurred. These have typically been reported as being 3 – 4% of initial construction costs to provide a basic suite of adaptability features and 15 – 20% to build to full compliance with the relevant Australian Standard (AS4299 Part C). Proportionate costs appear likely to be highest in respect of smaller dwellings, such as those typically constructed by public authorities.

As the above cost estimates suggest, regulatory standards in this area have substantial potential to further increase the cost of housing and so reduce housing affordability. Moreover, it is clear that the benefits of such measures accrue to a very small proportion of the population. ABS data show that only around 53,000 wheelchair users Australia wide reside in private housing. Yet, this group constitutes the core beneficiaries of accessibility regulation, notwithstanding the attempts of advocates to highlight the more marginal benefits that may accrue to larger sections of the population.

It is not clear that there is a substantial undersupply of accessible housing. Certainly, for many people with accessibility needs, the option of using private resources to satisfy those needs is a practicable and feasible one. Moreover, to the extent that a case for public policy intervention can be mounted, it is clear that a wide range of

[15] That is, the Standard is presented as a codification of the DDA's general duty not to discriminate, *inter alia* in the provision of services.

policy options exist. Many of these policy options are likely to be able to be better targeted toward areas of need, and to be more cost-effective and efficient means of achieving policy objectives in this area.

Despite this, strong lobbying is already underway from a range of disability advocacy groups who see a regulatory response as being the only acceptable solution. As indicated above, there are clear signs that the ABCB and many state regulatory agencies are also inclined toward regulatory responses in this area.

One perspective underlying the push toward regulation by many groups is a view that high retrofitting costs for installation of accessibility features in existing housing are being incurred because consumers are insufficiently rational; being too myopic to foresee and act upon their likely need for such features at some time in the (probably far distant) future. As with the energy efficiency discussion included above, however, there are strong reasons for believing that a rational consumer would choose to forego such features and that regulatory intervention to prevent a choice would be welfare-reducing.

In fact, a house is among the most important purchases that we make. If we do not weigh up the various options available to us and the budget constraints facing us with this purchase we can never hope to do so for others. In abandoning consumer choice and substituting the decisions of "experts" we are abandoning the free market. Moreover, as with so many features impacting upon housing, the impact is on the new home owner. Not only is this segment of demand less affluent than others but it would also be less likely to value the costs that make housing more accessible or liveable to those with disabilities.

HIA believes that there is little reason to expect that the RIS process would substantially inhibit moves to adopt regulatory responses, notwithstanding the apparent existence of better options for meeting the accessible housing needs of people with disabilities. We note, in this context, that the Premises Standard RIS adduced a number of highly speculative quantitative benefit estimates in support of the proposal. Despite this, it indicated that quantified benefits fell well short of the identified and quantified costs associated with the proposal and sought to argue the merits of the proposal largely via reliance on a range of purported "intangible" benefits.

2.4 Conclusion

The preceding discussion has identified three specific new areas into which building regulation has recently delved, or which there are strong signs that it will shortly embrace. In each case, it has clearly been shown that existing or likely future regulatory standards have the potential to add very substantially to housing costs and to reduce affordability, while in most cases there is little, if any, evidence of substantial private benefits or of any clear demand from housing consumers for improved standards.

Clearly, existing RIS disciplines are proving insufficient to stem this apparent tide of regulatory inflation. We consider further the issue of specific deficiencies in existing RIS requirements in the following sections of this submission.

In fact, a house is among the most important purchases that we make. If we do not weigh up the various options available to us and the budget constraints facing us with this purchase we can never hope to do so for others.

3. Adoption of Australian Standards in Regulation

Another area of substantial concern in terms of regulatory compliance burdens is the continuing tendency to adopt "by reference" in legislation and regulations large numbers of Australian Standards and other detailed, technical requirements. This issue has long been recognised by regulatory experts and yet little worthwhile action has been taken to address the range of issues identified. A paper presented to the *Fourth Australasian and Pacific Conference on Delegated Legislation and First Australasian and Pacific Conference on the Scrutiny of Bills*[16] summarised the issues and possible directions for reform in the following terms:

> *"…the lack of any guidance as to the use of third party documents in legislation has led to their overuse by regulators, both as a matter of convenience and as a means of avoiding proper scrutiny.*
>
> *The relative absence of scrutiny associated with these instruments has led to the use of inappropriate instruments while their ease of adoption has led to an explosion in the volume of law beyond that which can hope to yield efficient outcomes.*
>
> *The appropriate responses appear to lie in an enhancement of processes of scrutiny of such instruments together with the issuance of guidance or formal limitations as to the circumstances of their use.*
>
> *Contact with major third party authors of such documents aimed at fostering an understanding of their role and of the requirements of the legislature may also prove helpful in ensuring that they perform their legitimate function as efficiently as possible.*

The OECD has also identified a range of problems arising from the greatly increased use of technical standards and other "quasi-legal measures" within the regulatory structure, including issues of transparency, enforceability and regulatory inflation[17].

It is now estimated that over half of the more than 5000 Australian standards in force at any given time are incorporated "by reference" in one or more legislative instruments in Australia. This means that these standards form a substantial element of the effective body of law in Australia. Despite this, few quality controls are in

[16]Deighton-Smith, R. *Incorporation of Third Party Documents in Regulation: Issues of Accessibility, Compliance and Accountability* . Conference held at Parliament House, Melbourne, 1993.
[17] See *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance.* OECD, Paris (2002), p171.

place to ensure that these standards are developed and drafted in ways that are consistent with their use as quasi-regulation.

A particular issue is that Standards have historically been, and largely continue to be, attempts to codify "best practice". By contrast, the role of regulation is to identify minimum acceptable practice. While, in some areas, there may be relatively little difference between these two concepts, in others the difference will be substantial. Thus, regulating via the use of instruments that reflect best practice is likely to result in potentially significant losses of economic welfare, particularly due to the elimination from the market of various kinds of low price/low quality combinations.

Moreover, most standards are extremely lengthy and are highly technical in their drafting. Particularly where numerous standards are specified in a single set of regulations, their use inevitably becomes a major contributor to regulatory inflation. That is, the volume and complexity of regulatory requirements are vastly expanded because of the uncritical use of technical standards by regulators. The effective compliance burden, embracing the need to maintain awareness of what standards are referenced, which are the current editions of each standard and what are the substantive requirements of each of those standards, is clearly unfeasibly large in the building industry context, as in much of the rest of the economy.

In effect, the total volume of regulation in force has far exceeded the level at which systematic and deliberate compliance is practically feasible. This, in itself, argues powerfully against the continued use of standards in the current manner. Clearly, regulation can only be effective to the extent that higher levels of practical compliance can be assured.

A fundamental element of the problem associated with the use of standards in regulation appears to be that there is little or no acceptance within the Standards Association of Australia that the business of standards setting has become, in essence, a part of the regulatory process. This issue was identified as long ago as 1995 in the Kean Report[18]. However, little progress appears to have been made since in implementing the recommendations of that report or in adopting other approaches to resolving these issues.

It is of fundamental importance to regulatory reform policy that regulators be subjected to clear controls over the use in regulation of Australian Standards and other technical materials. Regulators must be required to adopt more critical approaches to incorporating technical material, for example referencing only limited and highly relevant elements of a standard, rather than the whole document. They should also be required to consider setting technical standards in regulation, rather than via the use of SAA standards. Such approaches would contribute to a refocusing of regulation on minimum acceptable standards, rather than "best practice".

In advancing the above views, we nonetheless recognise that there are sound reasons for adopting recognised technical standards in regulation in many instances. In particular, the use of internationally harmonised standards can be an important means

[18] *Report Of The Committee Of Inquiry Into Australia's Standards And Conformance Infrastructure*. Parliament of Australia, 1995.

of minimising barriers to trade. As well, standards can appropriately be used as "Deemed To Satisfy" material to provide guidance on compliance with performance based regulation. However, this does not detract from the contention that a far more critical approach to the use of Standards in regulation is required.

3.1 Registration of Builders

The career development from unskilled labourer or skilled tradesman to house builders of substance has created hundreds of Australian success stories. And it has done so concurrently with – indeed has contributed to – the impressive efficiency found in the house building industry. The system of sub-contracting greatly facilitated this progression.

More recently regulatory standards have brought forth a rise in credentialism. Unlike in the past, builders now must take written tests and demonstrate to the authorities a knowledge of building procedures and laws, business and other matters. This level of credential testing has not proved to be necessary in the past.

It is true that, historically, much new regulation in this area arose in conjunction with the positive changes in building legislation discussed above. In particular, provision for the greater participation of the private sector through the development of competitive markets for building approvals was associated with moves to increase the degree of accountability of builders, involving the establishment of compulsory insurance requirements and expanded registration schemes.

However, there have been continuing pressures toward expansion of the system of registration of building trades visible in all States and Territories. For example, the Victorian Building Commission is understood to be considering the possibility of registering carpenters, bricklayers, concreters and plasterers. Such proposals are being advanced notwithstanding the fact that they would do nothing to improve the position of consumers, while serving to restrict competition within these trades and impose substantial additional regulatory costs. There is little evidence of a clear focus by regulators on the need to establish a clear case that such proposed regulatory responses would be able to address substantial consumer harms in a cost-effective manner.

One outcome of increasingly stringent regulation in these areas has been substantial increases in people purporting to be “owner-builders” to escape the regulatory restraints. This is turn has led to a vast expansion in so-called owner builder applications which accounted for 37 per cent of building permit applications in Victoria last year. Rather than addressing the underlying problem, the authorities in all Australian jurisdictions have sought to counter this by imposing limitations on the ability of an owner-builder to construct new houses and major extensions.

These provisions have no effect in terms of the safety or functionality of the work (mandatory insurance is necessary in any case and there is no evidence that owner builder work is any less satisfactory than that built by registered builders). Owner-builders operate on the same sub-contracting principles that prevail throughout the industry. The owner or the head builder is unlikely to be the actual roofer or

carpenter undertaking the work. It is the sub-contracting system that has made the industry so efficient and responsive to the consumers' needs and, incidentally, to allowing the cost impositions introduced by building regulatory requirements to be minimised.

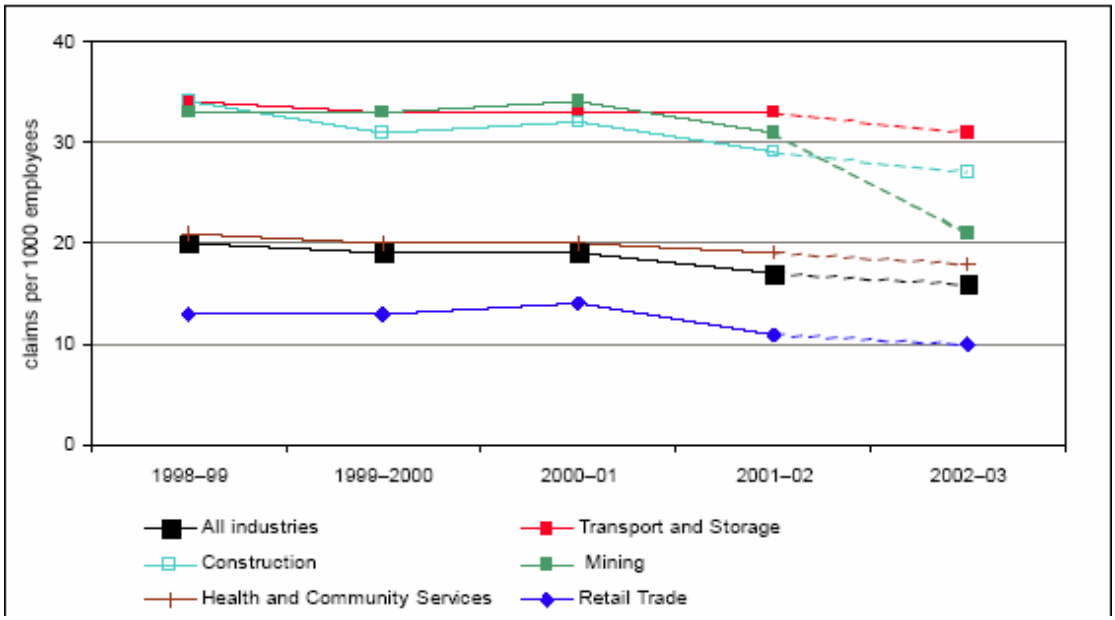
The sub-contractor turned major contractor is the way by which the industry has been able constantly to renew itself and to ensure incumbents maintain their competitive edge. Re-creating a medieval guild system that freezes out new players would be highly detrimental to its vibrancy and resilience.

3.2 Occupational Health and Safety Measures

Injury rates in construction have been falling over time. Though they remain relatively high, being almost twice the economy-wide average, the relative difference between injury rates in construction and the economy as a whole has narrowed. However, some work will always be intrinsically more likely to lead to injury than other. HIA notes that there has not been formal segregation of incident rates for the housing construction sector from other forms of construction, although the evidence to date supports the view that housing incident rates are significantly less than those for other construction areas. Nonetheless, the nature of work in the building industry may mean it will be unlikely that the industry can reduce its injury rate to the level of the economy-wide average.

Nevertheless, as the graph below illustrates, the construction industry has made tremendous gains in its safety record. According to NOHSC data, 43% of the industry's compensation claims are represented by sprains and strains[19].

Incidence rate of injury and disease claims for selected industries



[19] http://www.nohsc.gov.au/Statistics/publications/Docs/Constructionprofilesummary.pdf

The housing industry is largely comprised of small businesses (predominantly sole traders and partnerships), and a highly skilled work force of capable and experienced contractors. It is a significant driver of the national economy. Contractors, who comprise 85% of workers in the industry, are frequently the only trade working on site at any one time. The builder/supervisor manages safety by making frequent checks, primarily to monitor the progress and quality of the construction process at the work site. Small businesses are more adversely affected by regulation, due to their lack of resources, time and money. Extra resources diverted away for record keeping can only result in reduced real safety.

Generally, any paperwork is done off-site as offices are rarely located on the building site. The need for the supervisor to leave the site to attend to paperwork can only increase the chance of accidents on the site – leading HIA to question the value of additional paperwork imposed by regulation. Our members repeatedly tell us of the daily struggle to manage the paperwork and continuously changing regulations originating from all levels of government.

It is proposed that obligations and requirements on small business be significantly increased by the implementation of the National Construction Standard. The Standard has been developed in the pursuit of national consistency. The Housing sector has 19% of all small businesses in Australia. 98.9% of small businesses do not conduct business across state and territory borders. As such, nationally consistent regulation as a benefit is for the benefit of about 1% of small business. National consistency is not a goal that should be pursued to the detriment of small business and the economy, and for the benefit of a few larger businesses.

HIA opposes this Standard as it seeks to implement new design obligations and to ramp up paper work by imposing NSW requirements on all States. The States have agreed to implement the Standard by regulation in each State. While it improves national consistency, it does so at a high price. Importantly, it fails to recognise the different structures and management which are used for different projects. These differences are most easily recognised between commercial construction and housing construction.

The Standard will make complex paper based Management Systems and tailored job specific safe work methods statements mandatory for all housing sites. The Safe Work Method Statements have to be given by each contractor, and average approximately 15 to 20 statements per house. All projects where more than 5 people may be working at any time would require the development of a complex, paper-based management plan. This is currently only required for work valued over $80,000 in Queensland and $250,000 in NSW. It is not required in any other State, and yet there is no evidence of lower accident rates in construction in Queensland and New South Wales. The Standard requires everyone to keep detailed records, including training records, for years.

These documents are simply that – paperwork for the purposes of administrative convenience on the part of the regulator. A safe work method statement has never saved a life or prevented an injury. This is clearly demonstrated by making a comparison between NSW and Victorian statistics. Specifically, despite increased

stringency of regulation, NSW figures are worse than those for Victoria in reported workers' compensation cases or fatalities[20]:

Figure 2: Worker's compensation cases reported, 1992–93 to 2002–03[23]

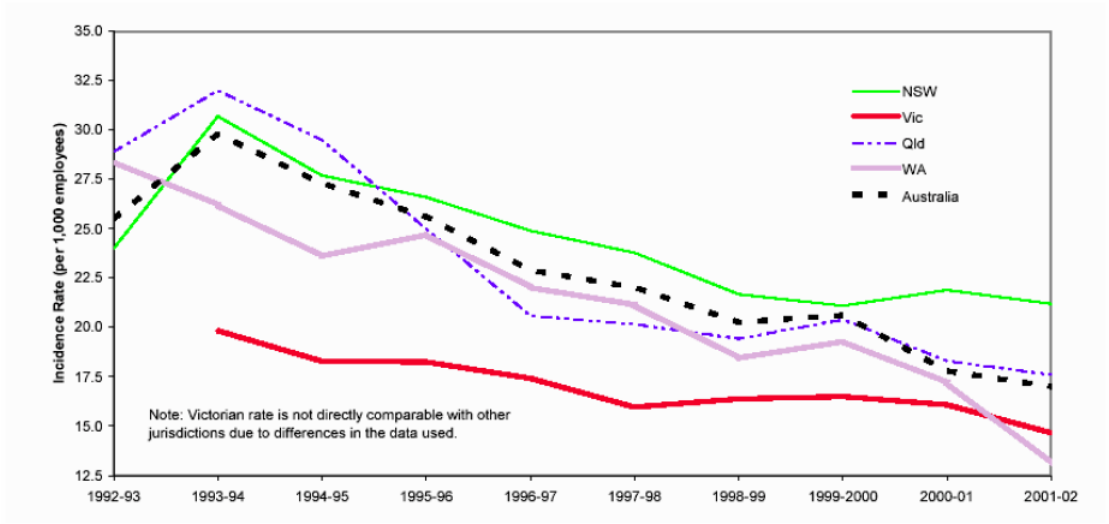
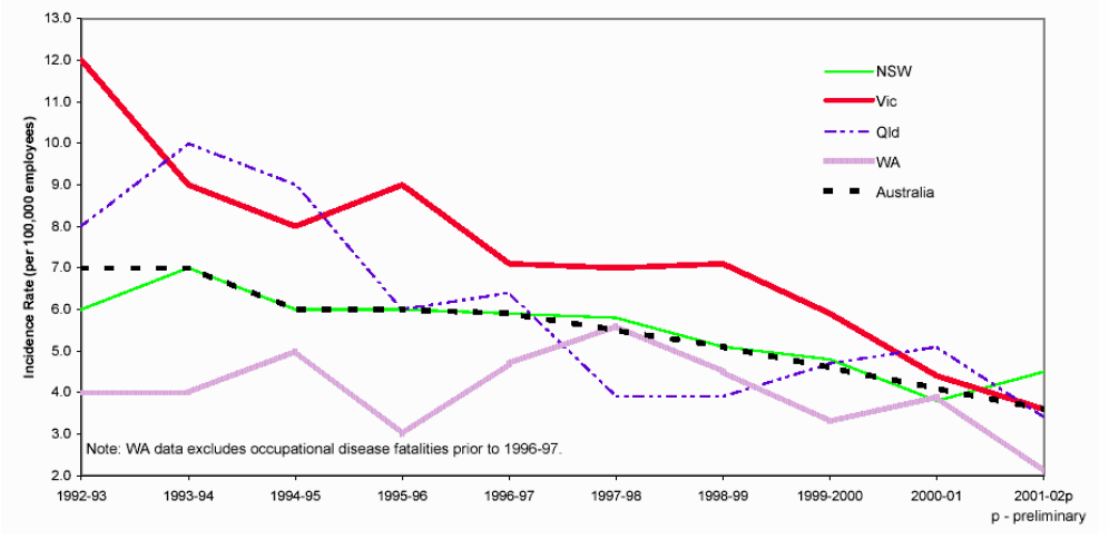


Figure 3: Workers' compensated fatalities, 1992–93 to 2001–02[24]



In relation to Safe Design there is a new duty being imposed regarding to eliminate or reduce the risk of injury in the construction of the design. The safe design obligations in the standard are modelled on UK requirements which, despite having been in place for over a decade, have not obviously improved safety. These requirements do, however, cost the UK about $200 to $400 million a year. They represent a misplaced theory that more paperwork equals more safety. The RIS for the Construction Standard itself shows the benefits are negligible (essentially being increased OH&S awareness). This conclusion was also found in an earlier comprehensive NOHSC study in 2002 that stated that Building Codes, improved education and awareness, not OH&S laws, were the better option.

[20] Research Brief, Parliamentary Library, Workplace deaths and serious injury: a snapshot of legislative developments in Australia and overseas. 29 November 2004. No. 7 2004 – 2005 ISSN 1832-2833

There is growing concern in the industry that increasingly unwarranted importance is being placed by regulators on prosecuting non-compliance and creating a blame culture. A comparison between Victoria and NSW shows that in the period 2002 to 2003, despite having identical numbers of active inspectors in the field, NSW prosecuted nearly 60% of the all prosecutions resulting in conviction in Australia. (Victoria had only 14.2%). NSW imposed 69.4% of all fines awarded by courts in Australia, (Victoria imposed only 16%).[21] The NSW culture of blame and prosecution, where a reverse onus of proof, absolute liability, and high fines are the norm, fails to translate to better safety. In comparison, in Victoria where the regulator works more closely with industry and the duties on employers are not absolute, the safety record is much better by far.

HIA is also concerned at the increasing fines and imposition of jail terms where serious injury or death occurs in the workplace. There is an increasing culture of blame, with employers being portrayed as criminals through the spread of criminal penalties where workplace serious injuries or deaths occur. Such provisions are already in law in the ACT, NSW, Victoria and Queensland. The web of OH&S regulation, combined with the possibilities of criminal conviction, significant fines and possible jail time make for sleepless nights for many employers (particularly small businesses in construction), who can never be sure to have covered all the bases. These laws only isolate business from safety and have not been demonstrated to show better outcomes. HIA queries the benefit of placing such additional strain on employers and head contractors when the benefits of the increased paperwork and stringent regulation are questionable in light of the figures at hand.

In the UK, there is a current debate that society has become too risk averse, and that too many resources are devoted to prevent remote injury. Australia has reached this threshold, and the current weight of OH&S regulation threatens business, business initiative and ultimately, the Australian economy.

3.3 Planning Laws and Housing Affordability

The Demographia International Housing Affordability Ratings for new houses examine about 80 different locations in North America, Australia and New Zealand[22]. It constructs an affordability index based on conversion of average housing prices to a multiple of average earnings. All seven of Australia's major capital cities rank in the upper fifth of the listing in terms of unaffordability. This clearly indicates a strong likelihood that Australian home ownership levels, which have long been among the highest in the world, will come under major pressure in future years: a conclusion for which recent observations of lower than ever proportions of first homebuyers among housing purchasers provide strong support.

[21] Workplace Relations Ministers' Council: Comparative Performance Monitoring, Sixth Report. Australian & New Zealand Occupational Health and Safety and Workers' Compensation Schemes November 2004, pp 51 and 53.
[22] http://www.demographia.com/dhi-rank200502.htm

Table 1: Demographia International Housing Affordability Ratings

	Least Affordable Cities	House Price	Ratio	"Smart Growth" Policy?
USA	Los Angeles	649,450	10.1	YES
Australia	**Sydney**	**505,000**	**8.8**	**YES**
USA	Honolulu	460,000	8.1	
USA	San Francisco	646,800	7.9	YES
USA	Miami	281,400	7.3	YES
USA	New York	398,800	7.1	
Australia	**Melbourne**	**373,800**	**6.9**	**YES**
Australia	**Adelaide**	**248,800**	**6.2**	**YES**
Australia	**Hobart**	**242,300**	**6.2**	**YES**
Australia	**Brisbane**	**300,000**	**6.0**	**YES**
NZ	Auckland	352,000	5.9	YES
USA	Las Vegas	276,550	5.8	NOTE
USA	Sacramento	319,200	5.6	YES
USA	Sarasota	267,600	5.6	
Australia	**Canberra**	**361,900**	**5.6**	**YES**
Australia	**Perth**	**255,700**	**5.4**	**YES**

As the table illustrates the ratio of home prices to household income topped 10 in LA which was closely followed by Sydney. The final column refers to whether or not there are "smart growth" urban consolidation policies limiting access to housing land. Most cities in this group had such policies.

The following table is of the most affordable cities. These have new house prices that are effectively half and in some cases one quarter of the least affordable group.

Table 2

	Most Affordable Cities	House Price	Ratio
USA	Dayton	119,100	2.6
USA	Dallas	140,650	2.6
USA	Toledo	115,400	2.6
USA	Omaha	133,650	2.5
USA	Pittsburgh	116,150	2.4
USA	Tulsa	114,550	2.4
USA	Indianapolis	127,200	2.4
USA	Columbia	120,700	2.4
USA	Little Rock	110,650	2.4
USA	St. Louis	132,400	2.4
USA	Wichita	106,250	2.2
USA	Rochester	110,000	2.2
USA	Buffalo	95,600	2.1
USA	Syracuse	98,700	2.1
USA	Fort Wayne	99,150	2.1

This affordability spectrum is not purely a matter of income levels. In the US, Miami, where houses are unaffordable, is not a particularly high income city. On the other

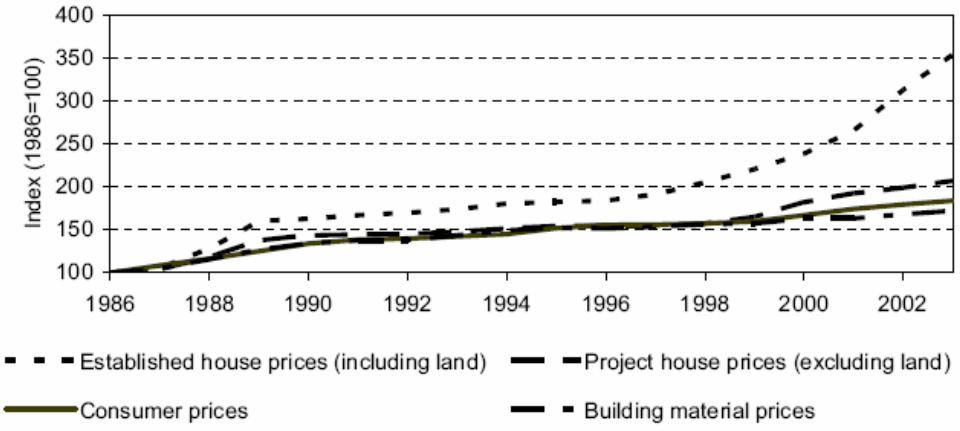
hand Dallas and St Louis are two relatively high income cities with highly affordable house prices.

Nor is it a matter solely of pressure on resources. Though cyclical price rises and falls occur in the industry, two of America's most affordable cities, Little Rock and Dallas are also seeing high urban growth. The experience of South East Queensland during the mid-1990s also demonstrates that high growth is not necessarily associated with major reductions in affordability: A rapid increase in the demand for housing in South-East Queensland due to inter-state migration was accompanied by a supply response made possible by the availability of land for development. The net result was a major jump in new housing activity with little pressure on prices either in the new or established housing markets, especially on the urban fringe.

The distinguishing feature of all the most affordable cities is that they have none of the major planning restraints that are characteristic of the unaffordable group.

Clearly Australia is in a situation of high cost housing when measured against the US and Canada. How did this come about and has it always been with us? The Productivity Commission presented evidence on this issue in its First Home Ownership Inquiry Report, from which the following chart is reproduced:

Figure 1



Data sources: ABS (*Consumer Price Index, Australia*, Cat no. 6401.0; *House Price Indexes: Eight Capital Cities*, Cat. no. 6416.0).

As the figure shows, house prices have outpaced inflation. In real fact new house/land package prices have doubled over the period with all of this increase due to the higher costs of land, taxes and development requirements.

The HIA has assembled the following data on price trends:

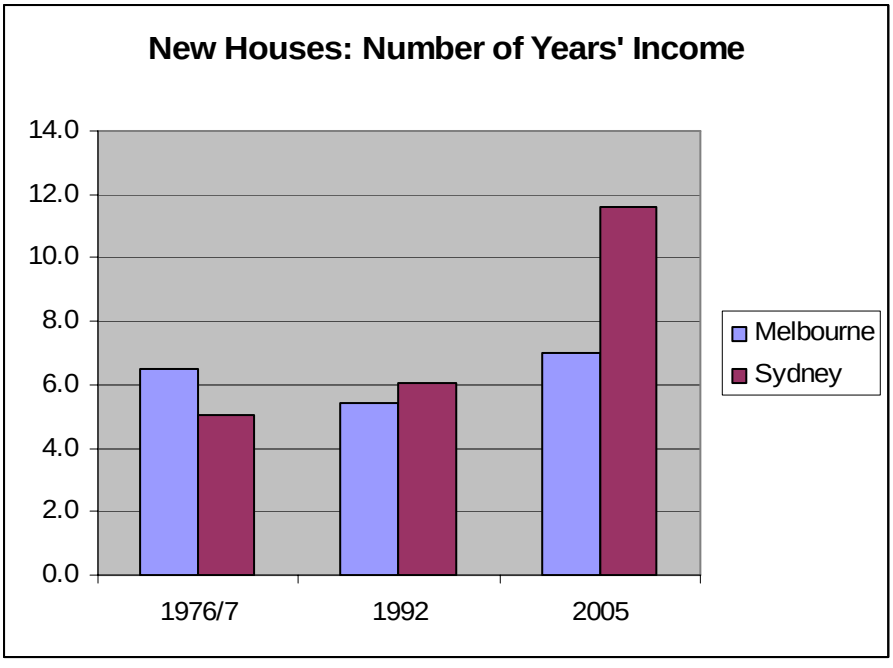
Table 3

Typical New House and Land Prices by Capital City, 1976 to 2005

		1976-77	1992	2005
Sydney				
	House	$49,010	$189,800	$565,000
	Land	32%	44%	62%
Melbourne				
	House	$63,200	$169,000	$340,000
	Land	24%	24%	38%
Brisbane				
	House	$46,280	$164,690	$362,000
	Land	21%	39%	41%
Adelaide				
	House	$53,970	$125,970	$272,000
	Land	16%	26%	44%

When we examine this data against real wage trends, the overall deterioration in affordability is not quite as serious, at least outside of Sydney. In gross wage terms an average new house in Melbourne requires seven years income which is a little higher than in 1976/7 and 1992. In the case of Sydney a strong increase in prices is clear – house prices have gone from five and a half times annual earnings to 11 and a half times. (The numbers differ from those estimated by Demographia largely because the latter uses household income).

Figure 2



In the case of Sydney, had land prices and associated land development charges been kept to the real level that they were in 1976/7, instead of a house land package of $565,000, we would now be seeing prices of under $400,000. Had prices for land and its development increased along the lines of the consumer price index, as they did in

the lower cost US cities, both Melbourne and Sydney would now be far more affordable.

Placed in simple terms, the key aspects of the increased costs are the scarcity value created by urban planning and the imposts heaped on developers by government regulations. Over the past thirty years the share of land in the housing package costs in Sydney has increased from 32 per cent to 62 per cent and in Adelaide from 16 per cent to 44 per cent, with other states showing comparable increases. The pure house price has moved in line with the Consumer Price Index. The basic house itself has increased in size and in its features. Material input prices have fallen slightly but it is the labour arrangements within the industry that have kept down costs and prices.

The urban planning system is the chief driver of higher prices. For Melbourne the 2030 Strategy has essentially replaced zoning as the determinant of costs. Soon after this was introduced land inside the Urban Growth Boundary, say around Whittlesea, could be seen to be selling at some $600,000 per hectare with comparable land outside the area selling at $150-200,000 per hectare. At 15 houses per hectare – the government's targeted density – this escalates the basic land cost from $10 - $13,000 to $40,000. At 11 houses per hectare – the density actually being achieved – the impact is still greater, with the cost escalation being from $13,600 - $18,200 to around $54,500 per block. Moreover, the value of land immediately outside of the residentially zoned area already had a premium due to speculation that the area would eventually be zoned residential. Indeed, the value of the land without such an expectation would be likely to be of the order of $4,000 per hectare.

On top of this are mandatory charges for development. Many of these would be required in any event but some are clearly extortionate.

One builder has provided evidence that the increased documentation required for new house building in NSW cost an additional $9,958 per dwelling over the past few years. The HIA has estimated that the regulatory "tax" on new subdivisions in western Sydney is $60,000. Though some of this is arguably for infrastructure directly contributing to the value of the subdivision, much of it is for social infrastructure like "affordable housing contributions", local community facilities, public transport contributions and the employment of community liaison officers.

One outcome, in addition to lower new home building activity per se, must be a reduction in levels of home ownership as a result of the increased cost impositions. As well as distorting consumer choice, this might have a wider adverse community impact so far as home ownership is a great force for social stability and the creation of an aspirational society that has done much to transform living standards over recent times.

High new home prices are not because of building costs - building the house itself has remained affordable. The culprit is the land component. For a typical new home this is $112,000 compared with $15,000 30 years ago.

The price escalation is purely due to urban planning restraints on land use - indeed, the dollar value of land prices would be a fifth of their present level if it were not for the planning system ramping up prices. Urban planners, supported by impressionable

urban greens, have produced regulations that prevent outer-urban land developments. These elites have little conception of how land development restrictions raise prices. In many cases, they share a sharp disdain for the aspirationals and outer suburbanites who suffer the consequences.

The outcome of planning systems on new home prices was demonstrated in recent research on housing, "Bigger Better Faster More", by Policy Exchange in Britain. This offers firm evidence of the causes of the problem and its effects. It compares Germany, where there is a pro-housing planning approach, with Britain where, like Australia, there is a restrictive approach to the availability of land for houses.

In Germany, houses are a third bigger than those in Britain and, over the past 30 years, prices in real terms have shown a negligible increase compared with a doubling in Britain.

This is entirely due to the different approaches to allowing land to be made available for home building. In Germany, landowners have much greater rights to use their land for the purposes they favour, including developing it for housing. This is derived from Article 14 of the Basic Law and is called *Baufreiheit* (Freedom to Build). In Britain and Australia, land use is dictated by planning agencies such as Victoria's Department of Sustainability and Environment, which severely restricts the areas where housing may be built. German local authorities also have a strong interest in development since as well as their rates, their share of federal income tax and state government grants is linked directly to the local tax revenue and the number of inhabitants.

3.4 The Future of Planning Laws

Developer-builders are in an intensely competitive system and they need no prodding by socially active regulators to press them in directions that their customers want.

Some means is urgently required to sharply curtail the discretionary powers held by local officials and counsellors over new developments. The difficulty of changing course is that once regulatory measures re-arrange wealth, even though that rearrangement is clearly negative in net terms, political pressures are set in train which tend to prevent the measures being unravelled. This was observed in the process, a 30 year war, to remove tariff protection. It is seen still in the continued restrictions on taxi plate numbers and some agricultural marketing arrangements.

In the case of development approvals, winners are created as a result of the zoning system. In order to plan their business futures, house builders and land developers take positions and buy land at the inflated prices the regulations create. They then have a vital interest in ensuring that the regulations do not leave them with an asset that is reduced in value at the stroke of the same administrative pen that brought the inflated value. These forces are aided and abetted by very prosperous individuals living in areas that are relatively close to major urban areas but have features of remoteness and exclusivity that would be disturbed by influxes of new homes.

Land regulations, in particular zoning laws, also pose considerable dangers to the integrity of the political process. When vast profits can be made by a politically directed and essentially arbitrary reclassification there are grave dangers of political

corruption. Those dangers extend beyond individuals' cupidity and can infect the political process by providing funds for political parties to use for electoral purposes. In such cases, the community would be seeing its net real income levels reduced by a regulatory tax, with part of the proceeds diverted to the re-election of those purporting to represent their interests.

Unfortunately, the administration of planning regulations has become infested by elected busybodies and appointed experts who are determined to tell consumers what is good for them and to prevent them from doing anything else. Although these regulatory trends have not yet escalated the costs of the house building itself, they are poised to do so. We have cost impositions requiring water storage, heating measures, room layouts and even the growth of credentialism which is stopping entry into the industry. The restraints on supply together with the imposts placed on developers have clearly been the major if not the only factors in pushing up the prices of housing.

All this is at the expense of the weakest and poorest members of society – the mainly young first home buyer.

The restoration of low costs for the home building industry requires measures like:

- Relaxation of restraints on where homes may be built, probably involving restricting restraints only to areas of high conservation value, even if this means compromising policy-makers' ability to reduce the rate of urban sprawl;
- curtailing requirements on builders to set aside land for public use; and
- restraining the demands that can be placed on developers for expenditures on infrastructure by redefining infrastructure to mean such essential features as water and sanitation, and local roads and by recognising that much of the expenditure for these services should be funded out of general state and local charges.

It is encouraging to see the Prime Minister recognising this problem when, at a recent HIA function, he said about the solutions to lower cost housing provision in Sydney and elsewhere, "Some of them I believe lie with more adventurous land release policies and rather more realistic development policies to be adopted by State and Federal Governments."[23]

The Victorian Government also is showing some determination to tackle over-regulation in house building. It has announced that it is releasing more parcels of land. This may be expected to reduce the premium caused by scarcity resulting from its planning policies. However at the same time it is to impose a new tax of $8,000 per house allegedly to pay for infrastructure. This totally unwarranted new charge will offset the benefits of greater land availability and divert some of the regulatory "rents" from the price boosting outcome of the shortages its policies create into the state's own revenue base.

[23] http://www.pm.gov.au/news/speeches/speech1681.html

4. Enhancing Regulatory Quality through Better Regulatory Reform Processes

The earlier sections of this submission highlight a number of policy areas in respect of which recent regulatory changes have imposed substantial additional costs on the housing industry and its customers while, in many cases, providing doubtful benefits. We have suggested a number of specific explanations for the pursuit of regulations of such doubtful value. However, any long-term approach to the avoidance of regulatory inflation and ensuring that only the most efficient and cost-effective regulation is made must be systematic in nature.

Australian Governments, at Commonwealth, State and Territory levels have pursued regulatory reform policies since the mid-1980s. While the specific objectives underlying these policies have varied, seeking to ensure systematically the quality of regulations is a common element. Regulatory Impact Analysis requirements have existed throughout this period at Commonwealth level, and in Victoria, and also have lengthy histories in most other States and Territories. However, some states, such as WA, do not have a RIS process. This allows for unsubstantiated regulation on the basis of political whim.

The RIS process is specifically directed toward ensuring the quality of new regulation. Despite this, and the lengthy experience to date with the implementation of RIS requirements, the above critique clearly indicates that these processes frequently fail to provide an adequate check on poorly justified regulatory proposals. These observations necessarily lead to the question of how RIS requirements can be strengthened in order to better achieve their underlying objectives.

It must be recognised that there are substantive differences between the different RIS processes in place. In fact, nine different RIS processes can be identified: seven States and Territories each have a separate RIS process, the Commonwealth government has its own RIS process and a further process is mandated for use in respect of regulatory harmonisation schemes under the auspices of the Council of Australian Governments. Given this, we believe it is beyond the ambit of this submission to provide a detailed critique of each of the applied RIS processes. Instead, we confine our observations to the identification of specific features which we believe would be able to improve any of these RIS processes were they to be applied, as well as a broader range of recommendations that would improve the effectiveness of regulatory management and reform policies more generally.

4.1 Independent Boards

We note that the Victorian government created, in 2004, the Victorian Competition and Efficiency Commission. The VCEC is a statutory body, established under the *State Owned Enterprises Act*, which has the role of acting as the government's primary source of advice on regulatory reform policy. Three Commissioners have statutory appointments and are therefore independent of the government. This model clearly strengthens the Commission's role in assessing the adequacy of RIS by granting ultimate authority for the function to these independent statutory appointees.

We believe this is a model unique among the State and Territory regulatory reform authorities. It is arguable that the Commonwealth government has in place a broadly similar structure, insofar as the Office of Regulation Review is formally a part of the Productivity Commission and that Commissioners have a similar status. Indeed, the Productivity Commission appears to have functioned as a model for the Victorian government in the creation of the VCEC.

Recent indications are that VCEC has made substantial advances in improving the rigour of RIS assessment in Victoria, suggesting that other States and Territories should give serious consideration to adoption of this model, together with the provision of adequate resources for the conduct of a credible regulatory reform policy.

4.2 Ex post Verification of Impact Analyses

RIS analyses are necessarily undertaken in an *ex ante* manner, a factor which introduces a substantial element of uncertainty to the analysis. This uncertainty allows for the possibility of the systematic overestimation of likely benefits and, equally, the systematic underestimation of likely costs, where the incentives operating on regulatory agencies so dictate. Experience shows that attempts at quality control by regulatory reform bodies have limited effectiveness in this regard.

Systematically requiring follow-up analyses to be undertaken, drawing on the experience of the first of three or four years of operation of the regulations, would be likely to do much to redress that this problem. At the least, it would provide a means of revisiting regulations in the short to medium-term, with a view to modifying or abandoning those that have been found wanting. It is also probable that the existence of such a requirement would constitute a quite powerful disincentive to any tendencies to bias the results of *ex ante* analyses systematically, as suggested above.

4.3 Independent Preparation of RIS

We have referred to the significant incentives that exist for RIS to be completed in a biased manner that overestimates likely benefits and/or underestimate costs. If the RIS is prepared internally by the regulatory agency it is clear that the sponsor of the proposed regulation has powerful incentives to ensure that it proceeds. Similarly, where that agency contracts external consultants to undertake the RIS analysis, those consultants necessarily face similar incentives: they will be conscious of the need to satisfy a client whose interest consists in the successful making of the regulation.

It is possible to envisage an alternative in which RIS analysis was undertaken by independent contractors, perhaps employed by regulatory reform agencies. Such a model would do much to remove the perverse incentives identified above and ensure that more objective analyses were produced systematically.

4.4 Improved Methodological Guidance and Stricter Acceptability Criteria

While some guidance material on acceptable RIS methodologies is produced in all jurisdictions, there is clearly room for substantial improvement in this respect. In particular, clear policies are required on issues such as:

- The "threshold test" to be satisfied in order to make the case in general terms that regulatory action is required and justified. Such a test should include identification of the problem, consideration of alternatives and impact on business;
- Reviewing the cost burdens to be imposed by the proposed regulations against the background of other regulatory burdens already imposed on the affected parties (i.e. addressing the issue of cumulative regulatory burdens);
- clearly establishing a strong presumption that regulations should not proceed unless substantial net benefits, and no disproportionate burden, can be demonstrated in quantitative terms;
- establishing other criteria to be satisfied in those circumstances where it is proposed to proceed with the making of a regulation in the absence of clearly demonstrated quantifiable net benefits;
- clearly specifying other decision criteria to be satisfied in order to ensure that there is a high level of confidence that net benefit will result, in practice, from the adoption of the regulations. In particular, this might involve a requirement that the benefit/cost ratio must exceed a given value (i.e. one that is greater than the minimum that the threshold a ratio of 1:1 that is the minimum consistent with the achievement of a positive net benefit); and
- requiring that regulatory impact analyses give sophisticated consideration to the dynamic implications of adopting regulatory requirements. That is, RIA must take account of the medium to long-term implications of proposed regulations for issues of such as competition in the affected markets and product and service innovation.

Moreover, while improvements in the above areas of provision of specific guidance are certainly important, the larger issue remains that of providing policy-making officials with a clear understanding of the larger implications of regulation for the economy and of the need to consider new exercises of regulatory power against the background of the pre-existing regulatory structure.

This issue points to the need for regulatory reform authorities to take a broader role than that defined by their current functions of assessing RIS and undertaking specific regulatory inquiries in relation to terms of reference received from government. We believe that reform authorities, such as the Office of Regulation Review and the Victorian Competition and Efficiency Commission, are best placed to undertake the kind of educative role proposed above.

4.5 Addressing Regulatory Inflation

The issue of regulatory inflation is widely acknowledged in Western countries and has been discussed at length by the OECD[24]. Broadly speaking, this literature demonstrates that the constant expansion in the scale, the scope and complexity of regulation, to which we have referred above, can be observed throughout the entire regulatory structure. The OECD offers a range of factors as the driving forces underlying the phenomenon of regulatory inflation. Reforms such as those proposed in the preceding sections can be expected to have a real impact on the issue of regulatory inflation. However, the size and significance of regulatory inflation is such that it will only be adequately addressed by farther reaching and more systemic innovations. The following constitutes a non-exhaustive list of innovations which, we believe, should be given serious consideration as part of a larger strategy to address the issue of regulatory inflation:

- ***Gatekeeper role to ORR.*** Office of Regulation Review, or similar federal body, be given an effective 'gatekeeper' role for regulatory assessment and regulatory reform in a similar manner to the Victorian Competition and Efficiency Commission;
- ***Sunset clauses.*** Sunset clauses automatically revoke regulation after a set period. This triggers a formal reassessment of the appropriateness of the regulation, if it is to be replaced, including the application *de novo* of RIA. Sunset clauses are widely used in the States and Territories in relation to subordinate legislation and were recently introduced at Commonwealth level via the *Legislative Instruments Act 2003*. We believe that consideration needs to be given to extending the application of this tool to include other subordinate instruments (i.e. beyond "regulations" per se) and, potentially, to its application to primary legislation, at least in some areas.
- ***"One in, one out" strategies.*** A direct means of controlling regulatory inflation is to require proponents of any new regulation to identify an existing regulation that will be removed by way of an offset. This approach has recently been adopted in the Netherlands. A farther reaching and more formal variant of this concept is known as "Regulatory Budgeting". Regulatory Budgeting is based on recognition that regulation making, in common with taxing and spending through the budgetary process, involves of the diversion of private resources to public ends. Given this regulation making, like taxing and spending, should be accompanied by the use of transparency and accountability mechanisms and the establishment of clear limits on the overall size of the regulatory burden.
- ***Establish clear Ministerial responsibility for regulatory reform.*** OECD best practices in respect of regulatory reform included the allocation of responsibility for reform outcomes to a specific Minister. Current Australian practices are inconsistent with this. At Commonwealth level, responsibility is allocated to a Parliamentary Secretary, rather than to a Cabinet Minister, with the result that regulatory reform lacks a powerful advocate within the government. In most States the situation is still less satisfactory, as there is no

[24] For a discussion of the roots of regulatory inflation, see OECD (2002), op.cit, p21.

direct ministerial accountability for delivering regulatory reform policy whatsoever. Current Australian practice can be compared with those of the United States, where the Office of Management and Budget constitutes a powerful agency within in the Executive Office of the President

- ***Adoption of a legislative basis for RIS requirements at Commonwealth level.*** We note that the Chairman of the Productivity Commission, Mr Gary Banks, has recently indicated his view that the lack of a legislative basis for Commonwealth RIS requirements has been a significant limiting factor in terms of the quality of the outcomes achieved. We agree that the lack of a legislatively determined set of standards for RIS analysis is inconsistent with good practice. We believe that in this case, the Commonwealth stands in unfortunate contrast to the States and Territories, where RIS requirements are legislatively established in almost all cases. The recently passed *Legislative Instruments Act 2003* clearly constitutes an appropriate vehicle for the implementation of such requirements. We note that earlier proposals for this Act did incorporate RIS requirements, and would urge that the Act be amended as a matter of priority to adopt such requirements.
- ***Building Code State Amendments to be subject of RIS.*** A 'loophole' currently exists whereby State variation to the BCA is not subject to a RIS. This allows States to 'ratchet up' standards within their own jurisdiction such as was the case for the Victorian 5-Star regulation. All building regulation cited in the BCA needs to be subject to a RIS.
- ***Improved transparency and accountability.*** Disciplines on regulatory agencies can be improved by making them more accountable for their individual performances in relation to regulatory inflation. Regulatory reform agencies could be required to publish, on an annual basis, a report showing annual changes in the numbers of Acts and regulations in force for which each agency is responsible and providing appropriate critical commentary on the practical importance (in terms of the regulatory compliance burdens) of each. Thus, regulators responsible for substantial new regulatory requirements would be better able to be held accountable. Requiring such a report to be presented to Parliament, and potentially debated, would further enhance the effectiveness of the mechanism.

4.6 Commonwealth / State Cooperation

Building regulatory issues

As stated earlier, we are strong supporters of the changes made to the system of building regulation during the 1990s, which have seen the adoption of more flexible, performance oriented regulation along with a substantial element of regulatory harmonisation, through the adoption of the Building Code of Australia, along with more consistent legislative frameworks based on a model Building Act.

That said, we are concerned that the achievement of regulatory harmonisation under the BCA appears progressively to be breaking down over time. In increasingly numerous instances, such as the example of energy efficiency regulation cited above,

states appear to be acting unilaterally to implement more stringent requirements, rather than accepting the need to reach a consensus standard. The larger issue, discussed above, is that of the continuing increase in the scope of building regulation beyond its core role in ensuring individual and public safety, and the substantial negative impacts on housing affordability that have resulted.

We believe that there is a clear need for federal/state cooperation on this issue. Agreement should be reached on the appropriate scope of building regulation, and on the underlying rationale for determining this scope. Moreover, there is a need to reaffirm States' and Territories' commitment to regulatory harmonisation, including a strong presumption against of the use of "state variations" other than in accordance with limited, identified criteria.

Regulatory reform issues

We have noted substantial shortcomings in terms of regulatory review and reform policy, resulting in the limited effectiveness of regulatory review authorities in constraining regulatory inflation. While almost all State and Territory governments, as well as the Commonwealth government, have in place regulatory reform policies and associated institutions, the level of cooperative action and even information exchange between them appears to be very limited.

One explanation for this appears to lie in the low level of funding accorded to most of the regulatory reform bodies[25]: a matter which clearly requires redress. However, it is clear that more concentrated, cooperative action by regulatory reform authorities would be likely to multiply their practical effectiveness. Such cooperation would appear to be essential in a context in which regulatory agencies themselves increasingly act in concert.

We would particularly urge that consistent RIS standards and processes should be adopted in all jurisdictions so that regulatory proposals are subjected to the same scrutiny, regardless of where they are adopted. This would also favour the development of more robust RIS scrutiny and assessment practices and the achievement of more rigorous standards.

The Commonwealth in association with State Governments could consider some additional changes. These might include:

- Creation of a National Regulation Gatekeeper to provide guidance to Federal and State governments on the development of efficient and effective regulation, and to act as a safeguard, ensuring that regulation meets its objectives;
- Requirements for regular reports to be prepared summarising measures taken to achieve net reductions in the administrative costs of compliance with regulation, in line with Commonwealth Government policy;
- Use of the $50 million Regulation Reduction Incentive Fund to address the regulatory burden imposed on small business, in particular, by local

[25] See *Regulation And Its Review 2004-05*, Productivity Commission (2005), p91.

government, including the possibility of running “test cases” challenging unreasonable regulatory requirements;

- Review of the planning laws so that the land owner obtains greater influence over the land he or she owns and the planning authorities correspondingly less.
- Advising planning tribunals that costs should be imposed against local authorities bringing actions on matters that the law has previously settled.