



# Taskforce Issues Paper

## 1 Background to the Taskforce

Regulation is often necessary to help achieve the community's social, environmental and economic objectives. As the Prime Minister and Treasurer, in the Joint Press Release announcing the Regulation Taskforce, observed:

Regulation can help support business activities. It sets standards for corporate governance, helps ensure our safety and security, guards our freedom and choices and protects our environment.

Regulation also imposes costs on business, consumers, government and the wider community. The administrative expenses of 16 federal government regulatory agencies alone exceeded \$4 billion in 2003-04. The cumulative compliance cost of regulation to businesses, particularly small businesses, can also be significant. Indeed, while recent and precise data are not available:

- a 1998 study by Productivity Commission staff estimated regulatory compliance costs at \$11 billion in 1994-95 (Lattimore et al. 1998);
- a 2001 OECD study, compiled with the assistance of the ACCI, estimated that Australian taxation, employment and environmental regulations imposed some \$17 billion, in 1998, in direct compliance costs on small and medium enterprises (OECD 2001); and
- the Australian Government's 1996 Small Business Deregulation Taskforce found that the average small business owner spent 16 hours a week on financial accounts, invoices, tax and other compliance matters.

As well as imposing 'paper-burden' costs on business, regulation may cause businesses to adjust their production processes in ways that add to costs, and may make some commercial pursuits unviable or less attractive. Accordingly, the Joint Press Release stated:

[O]ver-regulation or inappropriate regulation acts to impede economic growth. It limits the scope for innovation, undermines entrepreneurial drive and reduces productivity and competition.

Although governments, both here and abroad, have begun implementing measures to limit and reform regulation, concerns remain about the perceived growth of regulation and its effects on the economy. For example, in releasing its Business Regulation Action Plan in May 2005, the Business Council of Australia stated:

... judging by what we do know, regulation at the Commonwealth and State levels is growing at around 10 per cent per annum, more than twice the rate of Australia's economic growth. Much of this regulation imposes costs on businesses and restricts the ability of businesses to respond quickly to market opportunities and threats. These costs are passed on to consumers or shareholders, or have to be offset by cost reductions in other areas, such as employment costs.

Many other countries have recognised the need to reform business regulation to keep their businesses competitive. If Australia does not match these efforts, we will fall behind and economic growth will slow. (BCA 2005, p. vi)

Against this background, reform of business regulation is being examined on a number of fronts at this time. These include the Council of Australian Governments' (CoAG) current review of National Competition Policy, the Board of Taxation's review of aspects of the taxation legislation and the Financial Services Reform Refinements project. In addition, the Australian Government has announced enhanced assessment processes for new regulations, and an annual review of the cumulative stock of Australian Government regulation.

This Taskforce's report will complement those actions by identifying priorities for immediate action and ways forward in areas that require further work. While it does not intend to duplicate the detailed work undertaken in the concurrent review processes, the Taskforce would welcome any information and views on these and other recent reviews and reforms of regulation.

## **2 What regulation is covered?**

For the purposes of this review, the Taskforce is defining regulation to include any laws or other government 'rules' which influence or control the way people and businesses behave. Under this definition, regulation is not limited to legislation and formal regulations; it also includes 'quasi-regulation' (such as codes of conduct, advisory instruments or notes etc). Box 1 provides a range of examples of regulation that affects business.

As reflected in the Joint Press Release, the Taskforce is to focus on Australian Government regulation. Regulation by State and Territory governments will be considered only insofar as it overlaps with Australian Government regulation.

To be examined by the Taskforce, a regulation may either be directly aimed at business or impose a compliance burden on business. This includes small and family-run businesses, as well as other incorporated or unincorporated businesses.

Box 1

## Some Australian regulations affecting business

ACCC authorisations (such as for collective bargaining)

Accounting standards (international financial reporting standards)

Aged care regulation (bed allocations, accreditation and certification standards)

Anti-dumping regulations

Biotechnology and Nanotechnology

Building and construction regulations

Built and Natural heritage (property rights restrictions, guidelines for conservation and fire risk management)

Centrelink compliance requirements (employee separation certificates, child support payments)

Industrial chemicals regulations

Childcare standards and regulations

Consumer protection regulations

Corporate governance regulation (including financial reporting and auditing requirements)

*Corporations Act 2001*

Customs procedures (prohibitions, restrictions and declarations)

Education requirements (VET, Technical colleges, private providers)

*Environment Protection and Biodiversity Conservation Act 1999*

Food standards

Government procurement guidelines

Government program/funding application requirements (New Apprenticeship scheme, drought assistance)

Intellectual Property requirements (application and protection requirements)

Manufacturing standards (ISO)

Meat export and import regulations

Mining regulations

Native animal export controls

*Native Title Act 1993*

Occupational Health and Safety requirements

Petroleum retailing regulations

Pharmaceuticals regulation

*Privacy Act 1998* (employee and client disclosure requirements, marketing databases)

Private health insurance regulations

Private hospital regulations (including code of conduct for hospital purchaser provider agreements)

Product labelling requirements

Product liability laws

Professional certification and licensing regulations

Prudential standards

Quarantine requirements

Skilled migration (business visa requirements, skills in demand)

Superannuation regulations

Taxation provisions (including BAS requirements, ATO rulings and payroll tax definition issues)

Workers' compensation requirements

Workplace relations laws

### 3 The Taskforce's approach

The primary motivation for the Taskforce is to reduce the regulatory *compliance burden* on business, rather than to reduce regulation per se. Of course, regulation that is clearly redundant should be abolished, and overly complex or burdensome regulation should be simplified or reformed. However, as indicated in the Joint Press Release, regulation is necessary in many cases to help achieve the community's social, environmental and economic objectives. For example, it can help to mitigate accident and security risks, limit pollution, prevent fraud or anti-competitive conduct and set standards for corporate governance. Some compliance burden on business associated with such regulation is unavoidable.

Thus, where an area of regulation serves legitimate social, environmental or economic goals, identification of a compliance burden — even a significant compliance burden — associated with the area of regulation will not *of itself* be sufficient for the Taskforce to recommend reform in that area. Rather, the key question for the Taskforce is whether the regulation and/or its implementation imposes an *unnecessary*, and therefore avoidable, burden on business; that is, could the policy goals underlying the regulation be achieved in a way that does not impose as high a burden on business? In particular:

- Are there regulatory requirements on business that are unnecessary? For example:
  - are businesses required to keep records or submit reports on matters that are not necessary for attaining the regulation's goals?
  - are businesses required to undertake, or prevented from undertaking, certain activities that are not necessary for attaining the regulation's goals?
- Could alternative approaches, such as less complex regulation, government information campaigns or industry self-regulation, satisfactorily achieve the underlying goals, at less cost to business?

As the report is due by 31 January 2006, the Taskforce clearly will not be able to critically assess each individual piece of Australian Government regulation that affects business. Rather, in broad terms, the Taskforce aims to:

- recommend reform to some key areas of regulation (and possibly to some individual regulations) which warrant immediate action;
- identify other areas of existing regulation where there appears to be a case for abolition or modification, but for which further examination is warranted; and
- discuss mechanisms to deal with compliance burden problems arising from new or amended regulation.

## 4 Information requirements

How much the Taskforce is able to accomplish within its timeframe, including the scope for identifying practical measures for reducing unnecessary or unnecessarily burdensome regulation, *will depend in large measure on the quality of information provided to it in submissions and in its consultations with stakeholders*. In particular, the Taskforce is seeking not just an indication of areas of regulation that impose a burden on business; it also seeks information and evidence as to why the burden is ‘unnecessary’ in light of the policy objectives underlying the regulation, and practical options for reform. Guidance on the type of information sought by the Taskforce is summarised in Box 2, and set out in more detail in the sections below.

That said, the Taskforce also invites briefer submissions, for example from small and family-run businesses, which highlight particular areas of regulation that are of concern to their business or which provide information about problems experienced by business in complying with regulations. *Thus, it is not necessary to address all or even most of the following points in order to make a submission.*

### Box 2 What information is needed?

In broad terms, the Taskforce is seeking information on:

- areas of Australian Government regulation (or individual regulations) that impose unnecessary compliance burdens on business;
- the way in which the regulation is *unnecessarily* burdensome or complex, redundant or duplicated by other regulation;
- possible solutions that allow legitimate policy objectives underlying the regulation to be achieved at less cost to business; and
- areas of regulation where greater consistency and uniformity across jurisdictions may alleviate burdens on business.

### General information and comments on regulation

To inform the Taskforce’s report, comments and evidence on the extent of regulation, the burden it imposes on business, and the effects of that burden (for example, on employment and investment) are sought. What areas of regulation impose the largest avoidable and unnecessary burden on business?

Are there any general approaches to regulation that tend to involve lower compliance costs for business? Are there any examples of recent reform initiatives that have been particularly effective in reducing the compliance burden on business — which might provide a model for reform in other areas? Likewise, are there any specific examples of regulation or its implementation that may provide a model for good regulation?

## Information on specific areas of regulations (or individual regulations)

A key Taskforce task is to identify specific areas of regulation which are ‘unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions’. The Taskforce has also been requested to indicate those areas in which regulation should be removed or significantly reduced as a matter of priority.

### *Unnecessarily burdensome or complex regulation*

Where an area of regulation (or an individual regulation) is thought to be unnecessarily burdensome or complex, the Taskforce seeks the following information:

- What is the relevant regulation or area of regulation, and the Government agency which administers it?
- If known, what is the underlying objective of the regulation? Does it achieve this objective?
- In what ways does the regulation impose a burden on business? (For example, does it require management or staff time, training or IT resources to meet paperwork requirements, or the use of specialised external advisory services; and/or does it require the business to use more costly production processes or inputs?)
- Insofar as it can be determined, what is the annual cost to business created by the regulation? (Ideally, cost estimates should include an estimate of the dollar cost, but costs may also be expressed in other terms, such as time or ‘lost opportunities’.)
- Who pays these costs? Are they absorbed by the business, passed on in higher prices or does the Government reimburse (in full or part) the compliance costs incurred by businesses and individuals? Does the Government levy a fee on the businesses subject to the regulation — for example, a licensing or inspection fee?
- In what way is the burden imposed by the regulation *unnecessary*, or in what way is the regulation *unnecessarily* complex, taking into account the objectives of the regulation? (For example, are there requirements in the regulation that, if not met, would not materially affect the success of the regulation? Or do businesses need to provide the same information to different regulatory agencies?)
- Could the regulation and/or its administration be reformed or simplified to reduce the compliance burden on business, while still allowing the underlying policy objective to be achieved? If so, how?
- Could any alternatives (for example, self-regulation, government information campaigns or financial incentives or penalties) achieve the underlying policy objective while imposing less of a burden on business? If so, how? (Box 3 provides some guidance on forms of regulation and alternative approaches for pursuing the community’s social, environmental and economic objectives.)

### Box 3      **Regulation and its alternatives**

When considering measures to achieve social, environmental or economic objectives, there is a spectrum of action available to governments, from:

- *no regulation* (that is, rely on the market in conjunction with existing laws);
- *self-regulation* (such as a code of practice initiated and enforced purely by industry);
- *quasi-regulation* and *co-regulation* (involving different degrees of both industry and government initiation and enforcement); and
- *pure government regulation* (involving explicit 'black letter' law).

At a different level, there are a variety of alternative instruments that could be considered:

- no specific action;
- information provision and education campaigns (including product labelling requirements, use of public information registers and media campaigns);
- market-based instruments (including taxes, subsidies, allocation of property rights, tradeable permits and performance bonds);
- pre-market assessment schemes (such as listing, certification and licensing of professionals, products or processes);
- post-market exclusion measures (such as bans, recalls, license revocation provisions and 'negative' licensing);
- service charters;
- voluntary or mandatory standards, including:
  - principles-based standards, such as a 'duty of care';
  - 'performance-based standards', such as renewable energy usage targets; and
  - 'prescriptive rules', such as rules specifying types of technology to be used in a product or process; and
- other mechanisms, such as mandatory audits and quality assurance schemes.

*Source:* Based on ORR (1998, pp. B2-B3).

### *Redundant regulation*

Where an area of regulation (or an individual regulation or requirement) is seen as redundant, the Taskforce seeks basic information on the nature of the regulation and the reasons for its redundancy. Reasons may include that the regulation or requirement:

- no longer applies or has been superseded (or overridden) by other regulations;
- is not enforced;
- is duplicated by another regulatory agency or area of regulation; or
- remains even though the government's policy in the area has changed.

### *Regulations duplicated in other jurisdictions*

Where Australian Government regulation is thought to duplicate other regulation, the Taskforce seeks the following information:

- What is the regulation or area of regulation, and which government agency administers it?
- If known, what is the underlying objective of the regulation? Does it achieve its objective?
- Which other government regulation(s) does it duplicate, and how does the duplication occur? (For example, are the regulatory requirements replicated at different levels of government; or are multiple agencies from the one government involved in regulating the same matter; or do businesses find themselves needing to provide the same information to different regulatory agencies (perhaps regulating different matters)?)
- Have there been attempts to address this duplication in the past? If so, why have they been unsuccessful?
- What solutions might there be?

More generally, the Taskforce is seeking information and views on how best to reduce duplication and increase harmonisation within existing regulatory frameworks.

As well as comment on duplication and harmonisation within the Australian Government sphere, the Taskforce would also welcome any views or suggestions on the need and general mechanisms to reduce duplication and increase harmonisation of Australian and State and Territory government regulation. In addition, are there areas of regulation where greater consistency or uniformity across jurisdictions may also alleviate burdens on business?

The Taskforce also seeks information on any areas in which Australian Government regulation duplicates *international* regulation. For example, are there any Australian licensing or vetting procedures for production processes, products or professionals that duplicate similar or equivalent licensing or vetting procedures conducted by foreign regulatory agencies? If so, is there scope for mechanisms, such as the 'recognition' of foreign qualifications and certifications, to reduce or eliminate the Australian regulatory requirements?

## **Practical options for alleviating red-tape**

The Taskforce invites comment on practical options for alleviating the Australian Government's regulatory compliance burden on business, including small and family-run businesses.

While the Taskforce's main focus will be on reforms to existing areas of regulation, it is also important that problems do not simply re-emerge when new regulations are made. Accordingly, if participants have views on existing mechanisms for making regulation, including the extent to which recent reforms may have adequately dealt with problems of limiting unwarranted or overly burdensome new regulation, they should be included. Comment could also be made on the need and form of any additional mechanisms to improve the quality of new regulation and the way regulations are handled by regulators once they are in place.

## **5 References**

Business Council of Australia 2005, *Business Regulation Action Plan*, Melbourne.

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Lattimore, R., Martin, B., Madge, A. and Mills, J. 1998, *Design Principles for Small Business Programs and Regulations*, Productivity Commission Staff Research Paper, AusInfo, Canberra.

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Office of Regulation Review 1998, *A Guide To Regulation*, Second Edition, Canberra.