



CHAMBER OF COMMERCE  
AND INDUSTRY  
WESTERN AUSTRALIA

# Regulation and Compliance: A Discussion Paper

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**Business Leader Series**

Prepared by the Chamber of Commerce and Industry of Western Australia

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# Table of contents

Table of Contents .....	1
Overview .....	2
Executive Summary .....	2
Definitions .....	4
Background .....	6
Competition Policy .....	7
Productivity Growth .....	9
Principles .....	10
Role of Regulation .....	10
Rationales for Regulating .....	12
International Comparisons and Context .....	14
New Zealand .....	15
United States .....	15
Poor Performing Countries .....	15
Improvement Strategies .....	16
Key Issues .....	17
Australian Regulation .....	17
Regulation Review and Reform .....	17
Australian Chamber of Commerce and Industry .....	17
Business Council of Australia .....	18
Taskforce Review .....	18
Council of Australian Governments (COAG) .....	21
Western Australia .....	24
Governing Framework .....	24
Government Reports .....	24
Compliance and Inconsistency (Commonwealth and State) .....	25
Discretionary Powers .....	27
Over-regulation and Regulatory ‘over-reach’ .....	28
Application of Regulation .....	29
Self-regulation .....	29
Safety Case .....	30
Reducing Regulatory Burden .....	30
Institutional Framework .....	30
Regulatory Impact Statements .....	31
Mutual Recognition .....	31
Regulatory Options .....	33
CCI Regulation Policy .....	34
Future Initiatives .....	34
Recommendations to Government .....	35
Appendix 1 .....	36
References .....	63
Endnotes .....	66



## Overview

### Executive Summary

Business regulation can enhance business but it can also constrain it. Effective regulation is a vehicle to ensure the government's social, environmental and economic objectives are met. The objective of regulation is to prohibit certain behaviour (anti-competitive conduct), restrict or require certain practices and reduce the risk of harm (safety/environmental controls).

This paper provides a regulatory policy to pursue in addressing and reducing government 'red tape'. It reports on the scope and manner in which regulations impact on business activity and addresses in some part the initiatives of the Federal Government over the past twenty years to diminish the impact of the regulatory burden.

The exact amount of regulation in place in Australia is unknown. It is believed to be growing at a rate of 10% per annum, around twice the rate of Australia's economic growth according to the Business Council of Australia.<sup>1</sup> The Australian Chamber of Commerce and Industry believes regulation costs the Australian economy approximately \$86.0 billion per year or 10.2 per cent of GDP.<sup>2</sup>

Costs are imposed on business by legislative, regulatory and taxation measures. This paper does not specifically address tax regulation or reform.

At the turn of the last century Australia is said to have had the highest per capita income in the world. By the 1980's the regulatory system was seen as unnecessarily complex, generating delays, inconsistencies and additional costs for business investment as well as inhibiting risk taking and enterprise.

The Federal Government established a four year national program of review and reform of existing legislation which potentially restricts competition in 1996. The Federal Government's reform agenda recognises prescriptive regulation becomes outdated, impracticable and detrimental to government policy and industry productivity. It also recognises the benefits of reducing the reliance on regulation and enforcement activity and encouraging personal responsibility and self generating effort through greater self-regulation.

In 2005, Australia fell from fifth in 2004 to sixth in the World Bank's annual report investigating the scope and manner of regulations that enhance business activity and those that constrain it. The report compares over 130 countries in the two major measures of actual regulation and regulatory outcomes.<sup>3</sup>

The ten year period of reform has removed many longstanding regulatory obstacles particularly in the areas of trade liberalisation, national competition policy, industrial relations and taxation. The economy has responded positively through higher rates of productivity and income growth.

Future regulation must provide a reasonable balance between protection and compliance costs. Its design should achieve competitive neutrality, transparency, minimal overlap and duplication and have an appropriate balance between efficiency and effectiveness.

To achieve its goal regulation must generate good practice. Poor regulation results in avoidance behaviour, inefficiencies, reduced innovation, lower productivity and high cost.



A National “Taskforce on Reducing the Regulatory Burden on Business” established in October 2005 to examine and report on areas where regulatory reform can provide significant immediate gains to business recently released its substantive report.

The Taskforce proposes the Australian Government adopt the following six principles of good regulatory process:<sup>4</sup>

- Governments should not act to address problems until a case for action has been clearly established.
- A range of feasible policy options including self-regulatory and co-regulatory approaches need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

CCI surveyed its membership in order to understand clearly how much time and effort the State’s business community spends in complying with various regulatory obligations.

Overall, the sheer number of regulations that businesses are required to comply with appears to be the biggest concern for the WA business community, while issues such as the cost of compliance and the severity of penalties for failing to comply are also key concerns.

In aggregating the time spent by respondents on complying with existing regulations, researching new or amended laws and/or changing internal systems to cope with new or changed laws, it was found that small businesses spent up to 18.5 hours every week in the past year dealing with these three aspects of compliance.

Medium-sized businesses spent up to 26.4 hours every week in the past year on these issues, while large firms spent an average of 70.3 hours on regulation issues in a working week.

Overall, the largest proportion of this time spent relates to labour related regulations (workplace relations, occupational safety and health, injury and claims management), followed by taxation matters.

In putting a dollar cost on this time, the average cost of compliance for small businesses was approximately \$24,500 per respondent, followed by medium-sized firms with an average cost of \$100,255. Large firms had the highest average compliance cost of all with a cost of around \$525,421 per respondent. However, removing outliers from the sample of large firms left this group with an average cost of \$180,788 per respondent.



Extrapolating these costs over the entire WA business community (weighted according to business size without removing outliers) yields a total cost of compliance of approximately \$2.1 billion in the past year in Western Australia. This accounts for almost 3.5 per cent of WA business income, or around two per cent of gross state product.

This report recognises the enormous burden regulation can place on industry. Most importantly, it specifically articulates the need to identify and address the root causes of excessive and poor quality regulation.

### **CCI Policy**

CCI adopts the following key principles to shape and inform Australian and West Australian regulatory activity:

#### **Government intervention**

Government intervention can range from market discipline to State ownership. It should be minimal and the least preferred option for achieving policy outcomes.

**Nationally consistent framework** requiring all governments to adopt consistent legislative and regulatory requirements which support efficiency, competition and innovation.

**Mutual recognition** requiring agreements amongst all jurisdictions to pass the necessary legislation enabling mutual recognition within relevant areas.

**Outcome based**, requiring regulations to specify outcomes rather than process.

**Prescription limited** to certain minimum requirements such as speed limits or health exposure levels.

**Sound social and economic purpose** requiring governments to fully assess all legislative and regulatory proposals against appropriate nationally consistent criteria (Regulatory Impact Statement).

**Removal of redundant regulation** requiring governments to establish an active regulatory monitoring and review program.

The following criteria for regulatory control should be applied:

- Demonstrated need for regulatory intervention.
- All regulatory proposals to be subject to a regulatory impact statement to guide policy determinations.
- Regulation should be time limited with a maximum limit of 10 years.
- Regulation should not discriminate between government and non-government entities.
- Regulation should not have differential application. The method of achieving compliance may be varied.
- Regulation should be readily intelligible.
- Elimination of arbitrary, ineffective or badly designed regulation.
- Adoption of a 'one in one out' approach to managing regulation.

Additionally, CCI supports the ACCI plan for regulatory reform.



## Definitions

**Regulation** is a binding requirement made by the Federal, State or local government.

**Cost of regulation** is the policy and administrative cost associated with regulatory requirements.

**Policy cost** is cost directly attributable to the policy goal. Costs include the capital expenditure and maintenance associated with regulatory compliance.

**Administrative compliance cost ('red tape')** is the time and resources spent by organisations to understand regulations, collect, plan, process, report, retain data and complete forms required by governments.

**Employment regulations** include hiring and firing of employees, complying with safety and health standards, worker's rights, consulting with worker unions or associations, statistical reporting of employment-related data, administering employment-related or payroll taxes, social security and pensions, and mandatory employee benefits (leave, workers' compensation).

**Environmental regulations** include licences, planning and environmental impact assessments; complying with emission discharge and hazardous substances requirements, process or product quality standards, pollution control and product regulations; environmental reporting and testing, record keeping and day-to-day administrative requirements related to the environment such as levies and taxes; eco-labelling of products or processes.

**Tax Regulations** include business profits tax/corporate income tax, other taxes on capital and assets, sales taxes including GST, tax deduction requirements such as PAYE.

**Information Obligation** is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data – or messages – that business have to report. Information may be required by a public authority such as corporate tax returns or by third parties such as Material Safety Data Sheets provided to purchasers with the supply of hazardous substances.



## Background

Business regulation can enhance business but it can also constrain it. This paper reports on the scope and manner in which regulations impact on business activity. It addresses in some part the initiatives of the Australian Government over the past twenty years to diminish the impact of the regulatory burden. Finally it provides a regulatory policy to pursue in addressing and reducing government 'red tape'.

The exact amount of regulation in place in Australia is unknown; the Business Council of Australia believes it is growing at a rate of 10% per annum, around twice the rate of Australia's economic growth.<sup>5</sup>

The Australian Chamber of Commerce and Industry estimates regulation costs the Australian economy approximately \$86.0 billion per year or 10.2 per cent of GDP.<sup>6</sup> The Australian Industry Group estimates manufacturers are spending over \$680 million per year on managing compliance with taxes, environmental management and other regulations. In particular, it estimates each manufacturer spends 102 hours per month on managing compliance - the equivalent of 1.79 hours per employee.<sup>7</sup>

In regard to a single national regulatory package, the Office of the Australian Safety and Competition Council recently released a report by Access Economics<sup>8</sup> showing the total annual cost to business and government in compliance with regulation associated with high hazard plant is around \$224 million.

Costs are imposed on business by legislative, regulatory and taxation measures. These direct and indirect costs include the cost of meeting the requirements of the regulation, and the administrative costs of compliance, including the cost to stay informed and the costs arising from the disincentives, distortions and duplication of regulation.

At the turn of the last century Australia is said to have had the highest per capita income in the world. A small population, abundant high priced natural resources and a set of British laws favouring productive endeavour underpinned the thriving economy.

Subsequently, a highly regulated regime built up, government monopolies were created, trade barriers were erected to foster domestic activity and trade favoured primary commodities.

According to Banks,<sup>9</sup> commodity prices in the 1970's commenced a long decline and imports began to rise. The resulting terms of trade deterioration began to expose the underlying problem of Australia's productivity performance. Between 1950 and 1973 Australia's annual productivity growth averaged 2½ per cent, compared to 3½ per cent for Organisation for Economic Co-operation and Development (OECD) countries as a group.

In terms of GDP per person, Australia was ranked 5<sup>th</sup> in the world in 1950, 9<sup>th</sup> by 1973, and 15<sup>th</sup> by 1980.

Serious concerns regarding the cost and complexity of regulation identified initially by the rising cost of social welfare prompted the then Labor government to consider reform.



Prime Minister Hawke, addressing the Business Council of Australia in September 1984, said:

'I am convinced that after eighty-four years of federation, we have accumulated an excessive and often irrelevant and obstructive body of laws and regulations. We will examine critically the whole range of business regulation, most importantly with a view to assessing its contribution to long term growth performance. We will maintain regulation which upon careful analysis, clearly promotes economic efficiency, or which is clearly an effective means of achieving more equitable income distribution. And we will abandon regulation which fails these tests'.

Reforms in the areas of tariff reductions, floating the Australian dollar and liberalisation of the finance sector headed the Hawke reform agenda. At the same time pressure was growing on reducing productivity costs to ensure Australia's competitive presence in international markets particularly in the absence of tariff protections.

The rising cost and negative effects of regulatory compliance on industry emerged as an important policy area for further reform in the early nineties. The Federal Government established a major reform agenda following the report of the Committee on Regulatory Reform to the Council of Australian Governments (COAG) in February 1994.

The report recognised the growing calls of industry for a major overhaul of the regulatory system if the nation is to compete successfully in world markets and attract overseas investment.

The regulatory system was seen as unnecessarily complex, generating delays, inconsistencies and additional costs for business investment as well as inhibiting risk-taking and enterprise.

The Federal Government established a four year national program of review and reform of existing legislation in 1996. In accordance with its obligations under the Competitive Principles Agreement, the Commonwealth Government announced 98 reviews, 13 of which were already under way. The reviews included regulation which potentially restricts competition and legislation which may potentially impose costs or confer benefits on business. In 2000, COAG extended the review period until 2002.

In 2005 approximately 76 per cent of the scheduled reviews had been completed or were underway. The Competition Policy Agreement provides for a systematic review at least once every ten years. As the program of review was commenced in 1996, a number of Acts are due for review again in 2006.

## **Competition Policy**

The body of available research on Australian competition reform indicates competition policy and microeconomic reform, particularly opening up to foreign trade, investment and enhanced domestic competition, have driven and enabled Australia's productivity growth.

The OECD Growth Study,<sup>10</sup> and other empirical work have shown that the strength of competition in product markets plays an important role in the economic growth process, as well as contributing to a more efficient allocation of resources in a static sense. More intense competition is likely to encourage stronger efforts of managers to improve efficiency and induce higher innovative activity, leading to higher multifactor productivity (MFP).



**Table 1**  
**Growth in Multifactor Productivity by Industry over Aggregate Productivity Cycles**  
**Per cent, per year**

Industry	1974-1975 <sup>11</sup> to 1981-1982	1981-1982 to 1984-1985	1984-1985 to 1988-1989	1988-1989 to 1993-1994	1993-1994 to 1998-1999	1998-1999 to 2002-2003
<b>Agriculture</b>	2.7	3.0	-1.6	4.2	4.2	-2.1
<b>Mining</b>	-3.8	5.7	2.4	2.3	0.1	0.6
<b>Manufacturing</b>	2.3	2.0	1.5	2.0	0.5	1.2
<b>Electricity, gas and water</b>	2.2	1.2	5.1	4.0	1.8	-2.0
<b>Construction</b>	2.7	-0.7	-0.3	-0.5	2.2	1.3
<b>Wholesale trade</b>	0.5	-2.5	1.8	-2.2	5.8	1.9
<b>Retail trade</b>	0.9	2.6	-2.6	0.7	1.4	0.5
<b>Accommodation, cafés and restaurants</b>	-0.5	-2.9	-1.4	-1.9	0.8	0.1
<b>Transport and storage</b>	3.4	1.9	1.4	1.3	2.3	3.4
<b>Communication services</b>	6.1	3.2	3.6	6.1	5.1	-1.0
<b>Finance and insurance</b>	-2.9	-1.2	1.5	0.0	1.3	-0.8
<b>Cultural and recreational services</b>	-0.5	-1.8	-4.6	-2.4	-4.0	-2.7
<b>Total market sector</b>	1.1	0.8	0.4	0.7	1.8	0.4

Source: Productivity Commission and ABS

Insufficient competition in the domestic economy is held to have accounted for much of the slippage in the growth in Australia's productivity and living standards in the 1970s and the first half of the 1980s, following the "Golden Age" of rapid economic growth after World War II.<sup>12</sup>

A large part of the recent economic slowing was attributable to the poor productivity record in infrastructure industries: for example, in 1990, productivity levels were less than one half of those of Australia's trading partners in ports, railroads and electricity generation, and productivity in Australia's telecommunications industry was the lowest in nine countries examined by the OECD.<sup>13</sup> Hence, Australia, which was near the top of 22 selected OECD countries in terms of per capita GDP in the 1950s, had fallen into the bottom third by 1990.<sup>14</sup>

Australian competition law was both unhelpful and largely unused since its introduction in 1906. The Trade Practices Act (TPA) introduced in 1974 provided a more sound footing prior to the creation of the Australian Consumer and Competition Council (ACCC) following the Hilmer Commission report on National Competition Policy. The TPA consolidated operations of the Price Surveillance Authority and consumer protection into the Trade Practices Commission.



The Council of Australian Governments (COAG) is responsible for co-ordinating and overseeing the National Competition Policy (NCP) and reform whilst the States and Territories are responsible for implementing the policy. Much of the financial return accrues to the Federal Government which provides competition payments to the States and Territories. The payments are linked to achieving satisfactory progress in meeting implementation obligations.

### **Productivity Growth**

The OECD<sup>15</sup> assumes the causal connections between structural reforms and economic performance is difficult to establish beyond doubt; the NCP and related reforms are believed to have directly contributed to Australia's GDP increase by 2.5 per cent. The growth is attributed to productivity and price changes in key infrastructure sectors in the 1990's. For example, the previously uncompetitive public sector monopolies of electricity, gas and water have been exposed to competitive pressures resulting in substantial price reductions for business.

The Productivity Commission<sup>16</sup> argues these structural reforms are likely to have been the principal contributors to the improvements in productivity growth for the five year period to 1998-99.

Whilst a number of service industries were not direct targets of microeconomic reform, there is growing evidence that general economic policies that have strengthened competition and enhanced productivity incentives have resulted in strong productivity growth in areas such as retail, construction, wholesale trade, transport and storage.



## Principles

### Role of Regulation

Effective regulation is a vehicle to ensure the government's social, environmental and economic objectives are met. Social regulations are intended to protect social values and rights; economic regulations are intended to improve the efficiency of markets, and administrative regulations control government information collection, funds allocation and compliance activities.

Taxation is frequently seen as regulation. Indeed it serves the same purpose. Taxation is a prescriptive mechanism to transfer resources from the private sector to the public sector to enable the government to operate. This paper does not address specific tax issues but rather concentrates on the other types of regulation.

The objective of regulation is to prohibit certain behaviour (anti-competitive conduct), restrict or require certain practices and to reduce the risk of harm (safety/environmental controls).

Regulation must provide a reasonable balance between protection and compliance costs. Its design should achieve competitive neutrality, transparency, minimal overlap and duplication and have an appropriate balance between efficiency and effectiveness.

Government policy objectives should determine the intensity of regulation. Ideally regulations should foster competition, economic growth, innovation and prime social objectives. Contemporary regulations should focus on outcomes and flexibility rather than detailed compliance with prescriptive requirements.

Government regulation takes a number of forms including legislation, statutory rules and regulations, by-laws, standards, codes and ordinances. Other measures of control include government instruments such as tender requirements and 'improvement notices' that require a particular action or non-regulated standard.



**Table 2 Some Australian regulations affecting business**

ACCC authorisations (such as for collective bargaining)	Intellectual Property requirements (application and protection requirements)
Accounting standards (international financial reporting standards)	Manufacturing standards (ISO)
Aged care regulation (bed allocations, accreditation and certification standards)	Meat export and import regulations
Anti-dumping regulations	Mining regulations
Biotechnology and Nanotechnology	<i>Native Title Act 1993</i>
Building and construction regulations	Occupational Health and Safety requirements
Built and Natural heritage (property rights restrictions, guidelines for conservation and fire risk management)	Petroleum retailing regulations
Centrelink compliance requirements (employee separation certificates, child support payments)	Pharmaceuticals regulation
Industrial chemicals regulations	<i>Privacy Act 1998</i> (employee and client disclosure requirements, marketing databases)
Childcare standards and regulations	Private health insurance regulations
Consumer protection regulations	Private hospital regulations (including code of conduct for hospital purchaser provider agreements)
Corporate governance regulation (including financial reporting and auditing requirements)	Product labelling requirements
<i>Corporations Act 2001</i>	Product liability laws
Customs procedures (prohibitions, restrictions and declarations)	Professional certification and licensing regulations
Education requirements (VET, Technical colleges, private providers)	Prudential standards
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Quarantine requirements
Food standards	Skilled migration (business visa requirements, skills in demand)
Government procurement guidelines	Superannuation regulations
Government program/funding application requirements (New Apprenticeship scheme, drought assistance)	Taxation provision (including BAS requirements, ATO rulings and payroll tax definition issues)
	Workers' compensation requirements
	Workplace relations laws

Source: Australian Government Regulation Taskforce – Taskforce Issues Paper

Some evidence suggests governments are increasingly relying on non-government institutions to achieve policy objectives. Additionally the growth in outsourcing and the need for principals to ensure regulatory compliance by contractors is one driver which may result in contractual arrangements imposing greater requirements and costs on contractors than government regulation.



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## **Rationales for Regulating**

According to the Institute of Public Affairs, one way to judge regulation is whether it makes life simpler or more complex. Does it raise the cost of interactions and exchanges or does it lower them? If it increases cost, if it makes life more difficult, then it is very unlikely to be of social benefit.<sup>17</sup>

To achieve its goal, regulation must generate good practice. Poor regulation results in avoidance behaviour, inefficiencies, reduced innovation, lower productivity and high cost.

Governments are energised by what they should do and restricted by what they can politically do. The challenge for government is the balance between sound regulation making rationale and maximising community benefit through regulation.

A frequently argued rationale for regulation is to control 'market failure'.

Governments in particular appear to support the theory that unregulated markets can produce undesirable outcomes such as inequity, anti-competitive behaviour, market misconduct, information asymmetry and systemic instability. Whilst market failure ranging from monopoly power to externalities such as pollution is a strong case for regulatory control, it should not be the sole justification for regulation.

Where private markets are functioning well, competition is considered to be a substitute for regulation.

A number of rationales should and do exist for regulating. A summary of the most common rationales is listed in the following Table.



**Table 3 Rationales for regulating**

<b>Rationale</b>	<b>Main aims of regulation</b>	<b>Example</b>
Monopolies	Counter tendency to raise prices and lower output.	Regulation of the price and behaviour of monopolies.
Natural monopolies	Facilitate competition, while harnessing benefits of economies of scale, by providing third party access to natural monopoly infrastructure.	The introduction of competition in energy, telecommunications, water and rail, via third party access regimes and other market arrangements.
Externalities	Compel producer of consumer goods to bear full costs of production or consumption rather than pass on to third parties or society.	Regulation of environmental performance/impact.
Open-access externalities	Create property rights to promote conservation of scarce natural resources.	Tradeable rights to a share of: the total allowable catch of a fishery; bulk water from a dam.
Information inadequacies	Advise consumers to allow informed decisions (and hence the efficient functioning of the market).	Labelling of pharmaceuticals, food, drink, cigarettes, and fuel economy of cars.
Continuity and availability of service	Ensure socially desired level of 'essential' service.	Requirement for minimum transport, telecommunication, energy and water services to remote regions.
Anti-competitive behaviour (eg, predatory pricing, collusion)	Prevent anti-competitive behaviour and protect consumers from the ill-effects of market domination.	Regulation of 'predatory pricing' and collusion.
Unequal bargaining power	Protect vulnerable interests where markets fail to provide for equal bargaining power.	Occupational health and safety regulation.
Scarcity and rationing	Public interest allocation of scarce resources.	Petrol rationing to essential services during a fuel shortage.
Distributional justice and social policy	Distribute according to public interest.Prevent undesirable behaviour or results	Regulate to redistribute wealth or to transfer resources to victims of misfortune (eg, injured parties).Regulate to prevent discrimination based on race, sex or age.
Planning	Protect interests of future generations.Coordinate altruistic intentions.	Environmental regulation.

Source: Baldwin R and Cave M, 1999, *Understanding Regulation – Theory, Strategy and Practice*, Oxford University Press, UK, p 17.

Additionally, four general perspectives are offered by Llewellyn<sup>18</sup> in addressing the economic rationale for regulation albeit in financial services.

Firstly a distinction needs to be made between regulation (the establishment of specific rules of behaviour), monitoring (observing whether the rules are obeyed), and supervision (the more general observation of the behaviour of financial firms).



Secondly, regulatory agencies can be viewed as supplying regulatory, monitoring and supervisory services to various stakeholders. However complications arise because, unlike most other goods and services, they are not supplied through a market process, but are largely imposed by the regulator even though there may be a process of consultation.

This leads to several problems: valuable information is lost about what type and extent of regulation consumers demand and about how much consumers are prepared to pay for regulation. A problem also arises in that consumers are not a homogeneous group and yet their different demands cannot be signalled through a market process. Above all, regulation is largely perceived as being a free good as, absent a market for regulation, no market price is generated.

This leads to the third perspective: if regulation is costless and combined with risk-adverse regulators, there is an evident danger of regulation being over-demanded by consumers and over-supplied by regulators. A major issue, therefore, is how to guard against demand or supply driven regulation.

A fourth perspective is that, in the final analysis, regulation is about changing the behaviour of regulated institutions. One of the key questions that arises is the extent to which behaviour is to be altered by way of externally imposed rules or creating incentives for firms to behave in a particular way.

A major issue, therefore, is whether regulation should proceed through externally imposed, prescriptive and detailed rules, or as a result of the regulator creating flexible incentives for appropriate behaviour.

### **International Comparisons and Context**

In 2004, the World Bank commenced a series of annual reports investigating the scope and manner of regulations that enhance business activity and those that constrain it. The reports compare over 130 countries in the two major measures of actual regulation and regulatory outcomes.

Australia has fallen from fifth in 2004 to sixth in 2005.

**TABLE 4 Top 20 economies on the ease of doing business**

1	New Zealand	11	Ireland	21	Malaysia
2	Singapore	12	Iceland	22	Puerto Rico
3	United States	13	Finland	23	Mauritius
4	Canada	14	Sweden	24	Netherlands
5	Norway	15	Lithuania	25	Chile
6	Australia	16	Estonia	26	Latvia
7	Hong Kong, China	17	Switzerland	27	Korea
8	Denmark	18	Belgium	28	South Africa
9	United Kingdom	19	Germany	29	Israel
10	Japan	20	Thailand	30	Spain

*Note:* The rankings of all economies are benchmarked to January 2005 and reported in the Country tables. The ease of doing business averages country rankings across the 10 topics covered in *Doing Business in 2006*. This year's rankings are not comparable to last year's as three new sets of indicators – on dealing with licenses, paying taxes and trading across borders – have been included. See the Data notes for details.

Source: Doing Business database.



All countries regulate business, the top ranking countries do so in less burdensome ways.

### **New Zealand**

The top performer, New Zealand, recognised the need to decrease regulatory barriers that prevent innovation and enterprising behaviour from occurring. A number of government initiatives have occurred including the *Innovation Framework* and the work of the Science and Innovation Committee.

The New Zealand Government in particular appears to have placed emphasis at a micro level and attempted to understand the issues from a firm perspective rather than just following the international approach of focussing at a macro or industry level.

Whilst New Zealand has identified and attempted to address the major regulatory issues of taxation, environment, occupational health and safety and employment law, barriers to export are rated highly in a 2003 report to the Ministry of Economic Development. In particular, compliance with overseas regulation on exported products acts as a major disincentive to pursue overseas markets.

The report identified five major constraints on productivity and growth as GST, PAYE, fair trading, taxation and health and safety. Factors that were seen to have higher costs than benefits include dismissal arrangements, tax, ACC insurance levies and providing statistics to government agencies.<sup>19</sup>

### **United States**

Ranking third, the United States has a long history of deregulation moving to a more participatory regulatory style and pro-competitive regulatory content. The OECD<sup>20</sup> reports that particular features of the US regulatory environment continue to cause frictions with trade and investment partners.

The complexity of the national regulatory system, the interplay of federal, state and local regulatory activities and the fact that certain areas of the economy remain heavily regulated present both domestic and foreign firms with formidable challenges regarding regulatory coherence, cost of regulatory compliance and transparency.

### **Poor Performing Countries**

Businesses in poor countries face significantly higher administrative costs and twice as many bureaucratic procedures and delay, with half the protections of property rights of rich countries, according to the World Bank.<sup>21</sup>

The poorer performing countries have a number of common themes:

- The government's regulatory regime restricts the operation of business.
- Regulation provides insufficient protection for investors.
- Lack of procedures to enforce contractors.
- Legal rights for borrowers and lenders are not protected.
- Delays in starting a business due to constraints in registration and licensing.
- High unemployment.

The benefits of regulatory reform are likely to be much greater in developing countries, yet their governments appear to lack the appetite for regulatory rationalisation and simplification.



## **Improvement Strategies**

Literature from the better performing countries generally supports the theory that efficient regulation can both support legitimate domestic objectives and encourage innovation, competitiveness and yield economic benefits.

The OECD<sup>22</sup> identifies non-compliance as a significant contributor to regulatory cost and suggests that inadequate compliance underlies many of the dramatic regulatory failures. A number of strategies to improve compliance and regulatory effectiveness are proposed.

The strategies include:

- Problem identification and use of non-regulatory instruments.
- Regulation that maximises regulatory compliance.
- Rewards/incentives for high regulatory compliance.
- Nurture compliance capacity in business.
- Targeting for low compliance.
- Restorative justice when voluntary compliance fails.
- Responsive enforcement when restorative justice fails.

The principles underpinning many of the strategies have been adopted in the Australian reform process.

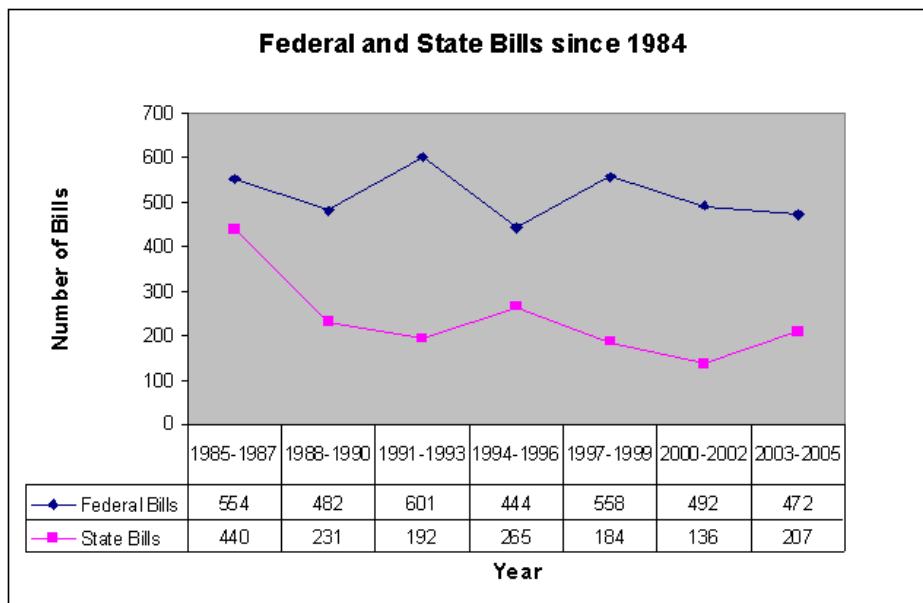


# Key Issues

## Australian Regulation

The volume of regulation in Australia continues to escalate. In the four years 2000 to 2003, the Federal Parliament passed as many pages of legislation as were passed from 1901 to 1969 inclusive. It seems remarkable that four years marked by no great crises apparently required the same volume of legislation as the creation of the Commonwealth, two world wars, the great depression, post-war reconstruction and the changes of the 1960's combined.<sup>23</sup>

Since Prime Minister Hawke articulated his intention to reduce regulation in 1984, the volume of primary legislation has increased by 3778 with an average of 172 new Acts per annum.



The Australian Chamber of Commerce and Industry and the Business Council of Australia have recently called for further regulatory reform.

## Regulation Review and Reform

### Australian Chamber of Commerce and Industry

The ACCI released its Position Paper *Holding Back The Red Tape Avalanche, A Regulatory Reform Agenda For Australia* in November 2005.<sup>24</sup> The Paper attempts to rationalise the government's reform agenda within an Australian and international context and provide recommendations for further policy initiatives.

ACCI believes 'Governments have provided various structures to attempt to achieve considered and careful regulation. However, these have not delivered a simple, standardised and manageable regulatory regime. Systemic processes to first streamline and then enforce these structures must be established'.

The four part plan presents a number of strategies relating to regulatory transparency and accountability, enforcement, stringency and consistency, dealing with existing regulation and simplifying the system.



Specifically ACCI is calling for the Prime Minister to present to Parliament a transparent regulatory budget including a cost benefit analysis of all enacted regulations and all government and departmental regulatory agendas for the year ahead. Regulations not passing the cost benefit process should not be allowed to proceed.

Additionally, ACCI recommends a regulation rationalisation program through a grading model based on economic significance. Areas regarded as economically significant would provide the 'beachhead' with which to begin the larger reform process. The program involves simplification and harmonisation of State regulation and simplifying the system, including a reduction in regulation and regulators.

### **Business Council of Australia**

The Business Council of Australia's (BCA) Regulation Action Plan quantifies the amount and cost of regulation on large and small business and outlines a solution to curtail the tide of government red tape. It has found the problem of escalating regulation is occurring Australia wide.

Specifically the BCA proposes all Governments adopt eight basic principles in developing, administering and reviewing business regulation.<sup>25</sup>

- Regulation should be the last, not first, response of government and the benefits of proposed regulation should always be shown to outweigh the costs of administration and compliance.
- Regulation should set a framework, not try to cover the field.
- Regulation has a use-by date, after which it may no longer be necessary or appropriate.
- The current law should always be tested and enforced before more law is added.
- Governments should not impose regulation upon private persons or companies that they are themselves not prepared to adopt.
- All businesses, whether large or small, private or public, should be treated equally.
- Where property rights are affected by regulation, there should be just compensation.
- There must be full transparency and accountability around the processes for making and administering regulation.

The BCA challenges the Federal Government to lead the reform and provide the model for the states to follow.

### **Taskforce Review**

A National '*Taskforce on Reducing the Regulatory Burden on Business*'<sup>26</sup> was established in October 2005 to examine and report on areas where regulatory reform can provide significant immediate gains to business.

The substantive report was released on 7 April 2006 and makes 178 recommendations, 86 of which have received a Federal Government response. In August 2006, the Federal Government in its final response agreed in full or in part to 158 of the recommendations.



The Taskforce report identified a number of priority areas for reform to existing regulation:

- *Excessive coverage, including ‘regulatory creep’*  
Includes regulations which appeared to catch more activity than originally intended or warranted, or where the coverage of smaller business had become more extensive over time.
- *Overlapping and inconsistent regulatory requirements*  
Mainly occur across jurisdictions and impose significant costs on national companies.
- *Regulation that is redundant or not justified by policy intent*  
Regulation that is badly designed or has become ineffective or unnecessary resulting in compliance costs for no good reason.
- *Excess reporting or recording burdens*  
Includes overlapping information demands and other unnecessary or excessive demands.
- *Variations in definitions and reporting requirements*  
The differences create confusion and extra work for many businesses.

The following Table shows an *example* of the very comprehensive set of priority reforms recommended by the review.

**Table 5 Examples of Priority Reforms to Existing Regulation**

Issue	Reform Proposals
Excessive coverage	<ul style="list-style-type: none"> <li>- Raise thresholds for the superannuation guarantee exemption, FBT minor benefits, PAYG withholding, etc</li> <li>- Change definition of ‘large proprietary company’</li> </ul>
Overlap/inconsistency	<ul style="list-style-type: none"> <li>- Implement national OH&amp;S standards (especially ‘duty of care’)</li> <li>- Conclude bilateral agreements under the EPBC Act</li> </ul>
Not justified by policy	<ul style="list-style-type: none"> <li>- Freeze country of origin food labelling</li> <li>- Implement remaining GP red tape reforms</li> </ul>
Excessive reporting/recording	<ul style="list-style-type: none"> <li>- Develop a whole-of-government business reporting standard</li> <li>- Allow website annual reporting unless hard copy requested</li> </ul>
Variations in definitions/criteria	<ul style="list-style-type: none"> <li>- Align definition of ‘employee’ for SG and PAYG purposes</li> <li>- Ensure consistency with international standards for chemicals and other products</li> </ul>

Source: Report of the Taskforce on Reducing the Regulatory Burdens on Business 2006



The Taskforce proposes the Australian Government adopt the following six principles of good regulatory process:

- Governments should not act to address problems until a case for action has been clearly established.
- A range of feasible policy options including self-regulatory and co-regulatory approaches need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are needed to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

The principles provide a sound basis to commence a more vigorous and substantial regulatory rationalisation process.

In addition, the Report raises a number of generic issues that apply across all levels of government and specifically comments on a number of program or portfolio issues including health, labour market, consumer, environmental, financial, tax, superannuation and trade related regulation.

Initial changes announced by the Federal Government include increasing the minor fringe benefits exemption threshold and the fringe benefits reporting exclusion and a halving of the incorporation fee.

In its final response, the Government further commits to addressing the regulatory burden across a wide range of sectors and business activities. Action in specific areas includes:

- tougher rules for making new regulation, including cost benefit analysis;
- screening of all regulation at least every five years;
- work to harmonise State and Territory conveyancing laws;
- work towards a single regulator for mine safety;
- an FBT reporting exclusion for pooled motor vehicles;
- improved education and advice for occupational health and safety;
- a review of the thresholds for the definition of a large proprietary company;
- a simplified accounting method to be developed for small restaurants, cafes and caterers;
- commencement of work on the national streamlining of business names through the ABN/ABR system;
- alignment between definitions of small business, employer and associate; and
- aligning training, licensing and mutual recognition of occupational licensing.



The Council of Australian Governments has been asked to give high priority to developing national consistency in occupational health and safety standards and directly overseeing the implementation of a national mine safety framework. Additionally it will endeavour to streamline eight different business regulation processes and to harmonise administration of a range of State and Territory taxes and charges.

The Productivity Commission is to be requested to undertake an inquiry into the consumer policy framework with a view to promoting national consistency in the area and reduce regulatory burden.

Overall the report recognises the enormous burden regulation can place on industry. Most importantly it specifically articulates the need to identify and address the root causes of excessive and poor quality regulation.

### ***Financial Sector Regulation***

The Federal Government Parliamentary Secretary has released a consultation paper outlining 56 issues relating to financial sector regulation. The paper focuses on the following, placing particular emphasis on achieving continued consumer protection, minimised compliance costs, access to capital and enhanced accountability of regulators:

- further refinements to Financial Services Regulation;
- company reporting obligations;
- auditor independence;
- corporate governance;
- fundraising;
- takeovers;
- collective investments;
- dealing with regulators.

### **Council of Australian Governments (COAG)**

At the COAG meeting in February, 2006, all Premiers committed to “establish and maintain effective arrangements at each level of Government that inter-alia maximise efficiency and avoid unnecessary compliance costs”.

In respect of cost and impact of regulation, COAG has agreed on the following initiatives:

### ***National Competition Policy Review***

COAG endorsed a new National Competition Policy (NCP) reform agenda aimed at providing a supportive market and regulatory framework for productive investment in energy, transport and other export-oriented infrastructure, and its efficient use, by improving pricing and investment signals and establishing competitive markets.

Empirical evidence on Australian competition reform indicates competition policy and microeconomic reform, particularly opening up to foreign trade, investment and enhanced domestic competition, have driven and enabled Australia’s productivity growth.



### ***Energy***

COAG has agreed to improve price signals for energy consumers and investors, residential users and in accordance with an implementation plan. The plan will have regard for costs and benefits and take account of different market circumstances in each State and Territory.

### ***Transport***

COAG has agreed to improve the efficiency, adequacy and safety of Australia's transport infrastructure by committing to high priority national transport market reforms.

### ***Infrastructure Regulation***

COAG signed a Competition and Infrastructure Reform Agreement to provide for a simpler and consistent national system of economic regulation for nationally significant infrastructure, including for ports, railways and other export-related infrastructure. The agreed reforms aim to reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure and to support the efficient use of national infrastructure.

### ***Reducing the Regulatory Burden***

The regulatory reform stream of the COAG National Reform Agenda focuses on reducing the regulatory burden imposed by the three levels of government. COAG agreed that effective regulation is essential to ensure markets operate efficiently and fairly, to protect consumers and the environment and to enforce corporate governance standards. However, the benefits from each regulation must not be offset by unduly high compliance and implementation costs.

COAG agreed to a range of measures to ensure best-practice regulation making and review, and to make a 'down payment' on regulatory reduction by taking action now to reduce specific regulation 'hotspots'. It is expected that further action to address burdensome regulation and red tape will be taken as the Commonwealth considers and responds to the report of the Taskforce on Reducing the Regulatory Burden on Business, and as State, Territory and local governments undertake their own regulation review processes.

COAG agreed that all governments will:

- establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition;
- undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community;
- identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and
- in-principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden.



COAG also agreed to address six priority cross-jurisdictional 'hot spot' areas where overlapping and inconsistent regulatory regimes are impeding economic activity:

- rail safety regulation;
- occupational health and safety;
- national trade measurement;
- chemicals and plastics;
- development assessment arrangements; and
- building regulation.

The COAG agenda provides some insight into and action for a growing Federal Government concern with the burden of legislation impacting on industry and the complex and often convoluted route to compliance.

### **Food and Beverage**

One area of complex and overlapping legislative requirements not addressed specifically by COAG is food and beverage manufacturing.

Australia's food and beverage manufacturing industry forms a significant part of the Australian economy. According to *Australian Food Statistics 2005* the food and beverage manufacturing industry employed over 194,000 people in 2004-2005.<sup>27</sup> The most recent statistics available document that

'In 2002-03, the industry's total sales and service income was around \$66 billion and industry value added nearly \$17 billion. The food and beverage sector is the largest in the Australian manufacturing industry, providing almost 20 per cent of industry value added and 22 per cent of total sales and services income in 2002-03. The food and beverage sector also consistently accounts for about 20 per cent of employment in Australia's manufacturing sector'.<sup>28</sup>

Despite this significant contribution to the Australian economy, the sector continues to be stymied by a complex, sluggish regulatory system. Frustratingly, these problems were investigated, and solutions were offered in 1998 by *Food a growth industry: The report of the Food Regulation Review* (the *Blair Review*), yet little progress has been made to remedy the system.

The *Blair Review*, released in August 1998, stated the following about the Australian food regulation system:

The food regulatory system in Australia is considered to be complex, fragmented, inconsistent and wasteful.

The food industry incurs costs due to duplication of effort between regulatory agencies, overlap of legislation and functional responsibilities, inconsistency of regulatory approaches between jurisdictions and difficulty in dealing with the large number of agencies and food laws involved.<sup>29</sup>

ACCI considers that little has changed since August 1998 and is calling on the Federal Government to address the industry concerns.

### **Small Business**

In 2005, the Federal Government made \$50 million available initially through 31 Federal Government funded projects to cut compliance costs at the local government level. Councils are expected to streamline and simplify procedures particularly in regard to development applications and licensing.



## **Western Australia**

### **Governing Framework**

WA Businesses are governed by Federal, State and local government regulation. Generally local government is empowered to assist in monitoring and enforcing State Government regulation.

More than nine hundred State Acts of Parliament are currently in force in Western Australia. The total does not include subsidiary instruments such as regulations, rules, codes and standards. The Government introduced the Statute Law Revision Bill in late 2005 to repeal 80 pieces of legislation, 14 of which were passed prior to 1900.

In the five years from 2001, the WA Parliament passed 302 Acts whilst the Federal Parliament passed 709 Acts. Not all of the legislation applies to businesses. The Acts are administered by 32 departments and 493 entities including Commissions, Boards, Trusts, Authorities, Offices, and Committees.

### **Government Reports**

The State Government has commissioned a number of reviews on specific areas of governance and regulation; however none have specifically addressed the overall cost or impact of regulation in the State.

Two recent reviews giving most insight into the enormity and complexity of State legislation and governance are:

#### ***Government Structures for Better Results***

The cost and inefficiency of government regulation and enforcement place considerable financial and productivity restraints on the private sector.

The Labor Government commissioned a report on the machinery of government that was delivered in June 2001.<sup>30</sup> The report made a number of recommendations for a more efficient and effective public sector. The review resulted in a number of departmental amalgamations.

According to the report 'Western Australia has an excessive number of overlapping Government agencies. The diverse and fragmented nature of the State's public sector compromises its ability to deliver services effectively and efficiently. Despite a range of expert and independent reviews, Western Australia's machinery of government has continued to grow in a haphazard fashion, offering no cohesive support for the delivery of Government priorities'.

The Government has not released public information on gains from implementing the recommendations or a status report on the change program.

#### ***Review of the Project Development Approvals System***

In commissioning the review in April 2002, the Government went some way to recognising the enormous hurdles to gaining project approval for major resource projects in particular, in Western Australia. The approval process was complex, uncertain, uncoordinated, involved approvals from a number of government departments which were not bound by timelines and subject to varying interpretations of the regulatory requirements.

Consequently industry was unable to plan commencement of the project with any certainty.



The report did not find a significant regulatory requirement that was unnecessary. It formed the view that problems were associated with a system that has grown in response to demand of the day, rather than to a plan.

The report makes 56 recommendations on ensuring timeliness of approvals and developing improved accountability, removal of overlap and duplication, native title and Aboriginal heritage, transparency and simplicity of approvals information, resourcing of agencies, integration of State and Commonwealth approvals, outcome based conditions of approval, and sustainability.

The Government has actioned a number of the report recommendations in describing and mapping processes related to regulatory approvals. State Government departments which have been particularly involved in mapping processes related to issuing their own approvals and licenses include:

- Office of Development Approvals Co-ordination (ODAC- within Department of Premier and Cabinet).
- Department of Consumer and Employment Protection (DOCEP) – WorkSafe, Resources Safety and Energy Safety.
- Fire and Emergency Services (FESA).
- Environmental approvals – Environmental Protection Authority, Department of Environment, Conservation and Land Management.
- Land Use planning – Department of Planning and Infrastructure, Department of Indigenous Affairs.

In accordance with recommendations, the work by authorities listed above particularly focuses on processes for new investment, but ongoing licensing is also addressed to varying degrees by most Departments.

Both ODAC and the Department of Environment are preparing regulatory maps that will provide greater transparency to their requirements and should identify overlaps.

By contrast with the substantial progress made by Departments listed above, there are some authorities which do not appear to have undertaken this work. Significant amongst these are Local Government, Department of Water, Department of Health and Economic Regulation Authority.

The process has provided valuable information for industry on the approvals process; however it is limited to approvals for major projects and provides limited insight into other significant compliance areas for operators or the extent of any other major overlaps.

The project approval process remains extremely complex, costly, and subject to delays. The ultimate goal should be the provision of a one-stop approval process, providing clear and objective approval criteria with appropriate time constraints.

### **Compliance and Inconsistency (Commonwealth and State)**

The cost and difficulty of regulatory compliance is a major feature in almost all surveys conducted by industry bodies and associations. Compounding the compliance burden is the significant amount of regulatory overlap and inconsistency in respect to Federal, State and local Government requirements.



The Australian Constitution prevents States and the Commonwealth from creating legislation that is strictly inconsistent with the other, stating ‘when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid’.

In practice the opposite can apply. The National Road Transport Commission (NTC) is developing a Rail Safety Bill that will incorporate duty of care provisions. The State Occupational Safety and Health Act 1984 contains similar provisions. The NTC has advised that where inconsistencies exist, the State OSH Act will prevail.

Inconsistent regulation often results from the uncoordinated way in which regulation is developed by governments. The outcome is a blurring of the boundaries and uncertainty as to how best to meet the requirements of multiple regulatory regimes.

The fragmentation of regulation and its administration also makes the task of harmonising requirements across State borders and internationally, extremely difficult. The lack of harmonisation impacts upon national and international trade. For example, different transport requirements such as the load capacity of a vehicle can delay entry into a jurisdiction and overseas exporters may face different product labeling requirements.

Overlaps and inconsistencies can occur in both in the regulation itself and also in the way in which the government personnel interpret and enforce the requirements.

The full extent of regulatory overlap in Western Australia is not known. Areas where it is known to exist include hazardous substances, land use planning, food and beverage, transport and health.

In government enforcement, it is not unusual for a number of different agency inspectors to visit any one workplace. For example, the purchase and use of a chemical may attract several sets of regulations. The outcome may mean enforcement activity from WorkSafe if it is a hazardous substance, the Department of Consumer and Employment Protection Resources Safety Branch if it meets the dangerous goods criteria, the Health Department if it is a poison and the Environmental Protection Authority if in any way poses a public risk. Local government may also have an interest.

Another example is land use. Both the EPA and local government will have an interest. However local government is not bound by the Environmental Act and may impose inconsistent requirements or present further barriers to potential use.

Inconsistencies between Federal and State requirements are not uncommon. A classic example is the inconsistency between the WA Occupational Safety and Health Act and the Commonwealth Trade Practices Act.

The Occupational Safety and Health Act places certain responsibilities on principals to ensure so far as is practicable a safe workplace. The principal expects contractors to assist by having established safety management systems. The principal’s tender and monitoring processes seek to determine the quality of the system.

Certain screening processes for ensuring adequate and appropriate safety management systems may breach the Trade Practices Act (TPA). Under the TPA, it is unacceptable for a principal to require a contractor to use a particular system, gain OSH system accreditation from a nominated third party or engage a principal nominated training or OSH consultant to undertake any work to meet the requirements of the system or the OSH legislation.



The inconsistency raises a separate issue of implied conditions that place a strain on employers to ensure that their staff do not, in the course of their business dealings, imply a certain condition or requirement in regard to a contract or the employment of a person. For example, discrimination laws prohibit denial of employment on the basis of a medical condition unless that condition limits the person's ability to work safely in performing the role. Employers need to exercise extreme care in assessing the person's fitness for the role and not implying the medical condition is the only reason for denying employment.

Another example is the prohibition on principals intimating to contractors that they require the contractors to become incorporated for the purpose of obtaining workers' compensation coverage. Employers and principals must be particularly vigilant in their communications with potential contractors.

Additionally, the changing nature of work and workplaces means some employers will have multiple and overlapping responsibilities. An organisation may use labour hire workers, import plant, use plant, require subcontractors to use plant on premises occupied by someone else and dispose of plant. For the purposes of the Occupational Safety and Health Act the organisation will assume additional responsibilities as hirer of labour, importer, supplier, owner and user of plant and occupier of premises

CCI is currently undertaking some work in collating process maps developed within government and formulating strategies to address overlaps. The work is concentrating on project approvals, chemical handling and storage and to a lesser extent, food and transport.

### **Discretionary Powers**

An emerging concern is the increasing use of discretionary powers by regulating agencies. The applicable Act or regulations may provide for an agency to waiver compliance with either a specific or complete set of regulations without a transparent or structured operational process.

The following example demonstrates the concern:

- **Workers' Compensation – Dispute Resolution Rules**  
The rules provide a comprehensive process for the resolution of workers' compensation disputes. Employers must individually or through their insurers meet all of the requirements of the rules prior to the dispute being considered. Rule 5 allows the WorkCover arbitrators to set aside all of the rules when dealing with a dispute at any time during the dispute.

The exemption for government in complying with the rules is discriminatory, provides uncertainty for industry in preparing its case and can result in significant costs on industry without any avenue of appeal or compensation.

In more acceptable circumstances the exemption is provided within a very structured framework that provides a sound level of certainty for both business and government in dealing with difficult compliance issues. An example is the ability for an employer to apply to the WorkSafe Commission for an exemption from a regulation where substantial compliance exists or compliance is unnecessary or impracticable. Domestic lift suppliers have been able to gain an exemption from compliance with the relevant Australian Standard as the lifts are imported and comply with a recognised international standard.



## **Over-regulation and Regulatory ‘over-reach’**

Some industries are governed by an inordinate number of regulations. The resource required to be aware of the existence of the requirements, the interpretation of the regulation and ensuring compliance is enormous, particularly for small business.

As an example, the Health industry is governed by around 50 Acts, 27 subsidiary instruments and 238 applicable Australian Standards. Federal, State and local governments have an interest in health.

The main piece of health legislation in Western Australia is the Health Act 1911 that the State Government views as outdated and inadequate in protecting, promoting and preventing risks to public health. CCI shares the government view and has raised further concerns in regard to compliance with a large amount of redundant prescription and detail.

The Act is currently under review and it is likely the Act will be limited to public health matters. Other matters covered by the current Act will be addressed by either a separate Act or amendments to existing Acts.

The Hospital and Health Services Act (currently being amended) is a good example of over-regulation and public/private sector discrimination in that it imposes higher approval and operating standards on private hospitals than public hospitals.

Access Economics<sup>31</sup> identifies a common mistake of regulators is ‘regulatory over-reach’. Regulators overestimate their ability to influence outcomes through regulation that aims to achieve more than is achievable, resulting in worse outcomes than in deregulated markets.

Other areas where CCI has recently called for reform to burdensome regulation include:

- *Sustainability*  
CCI has continued to have input into the State Government’s Sustainability through submissions and government consultation. CCI remains concerned about the overly prescriptive nature of the State Sustainability Strategy and Government’s interventionist role.
- *Environment*  
New regulations - such as the Unauthorised Discharges Regulations, Controlled Waste Regulations and Native Vegetation Clearing Regulations - have caused considerable angst due to unintended impacts and the creation of technical non-compliances that are impossible for some businesses to avoid. The proposed Annual Compliance Statements have also caused considerable concern to members. CCI was able to broker some changes.
- *Water*  
CCI’s submission to the Economic Regulation Authority’s inquiry into urban water and wastewater pricing highlighted impediments to competition in the water sector.
- *Energy Reform*  
CCI is a strong supporter of the need for reform of the electricity sector in Western Australia. Continuing reform of the electricity sector is critical to underpinning the growth of the WA economy.
- *State Tax Review*  
CCI has called for a comprehensive review of the State tax system, reductions in certain taxes, abolition of stamp duty on some transactions and changes to the way in which some taxes are levied.



## **Application of Regulation**

Australia has a multiplicity of structurally diverse industries characterised by corporate complexity and a myriad of operational goals and pressures. Individual organisations range from large multinationals with diverse national operations to sole traders.

Traditionally, regulation in Australia has followed the early British model of a prescriptive and detailed approach having its roots in a different social context. In some respects the regulation has developed in a piece-meal fashion and often introduced following an unforeseen adverse event or behaviour.

The social context in which regulation is made has changed significantly in the past decade. Those impacted by regulation now have an expectation of involvement in the development and application of regulation.

Research shows the prescriptive approach has been effective in the context of prohibitive behaviour or where specific standards such as human exposure levels to toxic substances are accepted nationally or internationally.

The prescriptive and detailed approach has been less effective where regulatory control is not absolute. Prescriptive regulation is never complete; the rapid growth of technology, improved productivity processes and establishment of new markets and services causes a lag in the regulation.

The sheer inability to frequently extend and elaborate the body of detailed law makes the empirical approach outdated in the more contemporary environment. Additionally, such regulation dampens management initiative to find more appropriate ways to meet government policy expectations rather than complying with a prescriptive regime.

The Federal Government's reform agenda recognises prescriptive regulation becomes outdated, impracticable and detrimental to government policy and industry productivity. It also recognises the benefits of reducing the reliance on regulation and enforcement activity and encouraging personal responsibility and self-generating effort through greater self-regulation.

## **Self regulation**

Self regulation requires a duty holder to determine how to comply with a government policy, generally in the form of a desired outcome. Self regulation is quantified within legislation as general duties on relevant parties. The legislation generally does not focus on how a particular outcome will be achieved and therefore provides greater flexibility to cope with change such as new technology.

Researchers tend to qualify general duties under the categories of 'principle based', 'effects based' or 'target based'. General duties have a very broad scope and without guidance the boundaries are uncertain for duty holders. General duties can also provide for inter-organisational relationships such as extending duties up or down a supply chain.

For example, the transport regulator recently requested the OSH regulator to apply duties to the person consigning the goods as well as the person transporting the goods. In particular, the transport authority proposed the consignor take some responsibility for ensuring load limits and reasonable cartage timelines.

The most common areas for self regulation are environmental and occupational safety and health. Safety regulation formulates the duty of care into a risk management framework requiring the identification of hazards, assessment of risk and implementing risk control strategies.



The documentation required to explain the risk management process in regard to a diverse set of hazards has resulted in a proliferation of subordinate regulations, standards, codes of practice and guidance material that reintroduces an enormous amount of prescription with which duty holders will be expected to comply or alternately justify their reasons for not following the guidance documents.

The uncertainty of self regulation can motivate some employers to go to extremes to ensure compliance particularly when penalties are high and the risk of reputation damage is acute.

Self regulation places pressure on enforcement agencies to change their compliance practices. Instead of monitoring compliance with a prescriptive and often exact requirement, the enforcement agencies are required to make a far more subjective assessment of how well the employer has carried out the risk management process and how effective is the outcome.

Self regulation does weaken the government's ability to successfully prosecute in the absence of harm. The breach of a prescriptive regulation is clear, whilst breach of a duty of care without an adverse outcome is difficult to prove.

### **Safety Case**

The safety case is a self-regulatory regime with an additional licensing component. The major area of use is for major hazardous facilities, however it is being seriously considered by industry and regulators for greater use in the mining sector.

The duty holder is expected to identify and document the nature of their operations, the major hazards and associated risks and establish appropriate controls and monitoring processes. Regulators have the option of accepting the safety case and, on acceptance, enforce compliance with the specified regime. The amount of detail in the safety case is expected to be proportional to the complexity of the operation working under a safety case.

The major disadvantage of a safety case is its resource intensiveness both to the duty holder in establishing and maintaining the system and the enforcement agency in monitoring compliance.

### **Reducing Regulatory Burden**

#### **Institutional Framework**

A number of common themes emerge in the substantial body of research and information on regulatory compliance and reform. Most importantly the regulatory regimes need to be transparent, coherent and comprehensive with an appropriate institutional framework that improves regulatory quality, advocates and enforces competition policy, supports innovation and economic growth.

The structure and operations of Australian industry, the nature of work performed, employment arrangements and technology have significantly changed over the past quarter century. The changes have resulted in a rationalisation of regulation and the way in which regulation is established and enforced.

The challenge for government in reducing the regulatory burden is to ensure flexible regulatory regimes that achieve desirable economic and social outcomes whilst creating a sense of not being over-regulated.

To achieve the goal, Australia is likely to be governed by a combination of regulatory options. The challenge for industry is to ensure the most appropriate regulatory option for both existing and proposed regulation.



## Regulatory Impact Statements

All proposals for new and amended regulation should be subject to a regulatory impact statement.

Regulatory Impact Statements (RIS) are a requirement by the Federal Government for most proposed new or amended regulation that may have an impact on business. The statements are also required by a number of State governments excluding Western Australia.

The RIS test the proposals against defined criteria to estimate the cost of compliance against the expected positive outcome. It also endeavours to provide alternative options. The RIS process involves public consultation, collection of information from industry and frequently considers the particular impact on small business.

However the RIS is generally developed at the end of the process and can be seen as justifying rather than influencing policy decisions. As an example, the RIS for the national high hazard plant standard commissioned by the Office of the Australian Safety Council attempts to justify the annual \$224 million cost of regulation for high hazard plant against the \$1 billion per annum cost of Australian accidents and the loss of a healthy life at \$3.2 billion.

Ideally the RIS should be prepared early in the process and updated as necessary before the regulation is referred to the Parliament.

In a recent and welcome move in Western Australia, the Minister for the Environment instigated a regulatory impact assessment to be prepared on the draft Environmental Protection (Swan Coastal Plain Wetlands) Policy and Regulations.

## Mutual Recognition

The purpose of mutual recognition is to promote economic integration and increased trade between participants. It is one of a number of regulatory techniques available to governments to reduce regulatory impediments to the movement of goods and provision of services across jurisdictions.

The Commonwealth, States and Territories were jointly responsible for implementing the mutual recognition principle in the law of Australia, following the realisation that the existence of multiple regulatory environments across the States and Territories was impeding freedom of trade, and compromising the ability of the nation to compete in the international economy.

The Prime Minister, Premiers and Chief Ministers signed the Intergovernmental Agreement on Mutual Recognition at their meeting on 11 May 1992. The States and Territories chose to implement the mutual recognition scheme through legislation, either referring their power to enact mutual recognition legislation to the Commonwealth Government, or adopting the Commonwealth legislation. All jurisdictions chose to implement mutual recognition legislation.

The aim of the mutual recognition legislation was to create a national market for goods and services, establishing a regulatory environment which would encourage enterprise, enable business and industry to maximise their efficiency, and promote international competitiveness.

The effect of mutual recognition legislation is that goods which are legally saleable in one jurisdiction are satisfactory for sale throughout the country, and people who work in a registered occupation in one jurisdiction can freely enter an equivalent occupation in other jurisdictions.



The Mutual Recognition Agreement (MRA) came into effect in 1993. A COAG evaluation of the scheme in 2004 found the schemes have generally been effective in facilitating trade, lowering business compliance costs and enabling freer movement of people in registered occupations across the Tasman. The MRA and Trans Tasman MRA are contributing to the integration of the economies of Australia and New Zealand.<sup>32</sup>

Mutual recognition provides for the recognition of a qualification rather than the registration of the profession. The principles of mutual recognition are being recognised in the work of a number of areas.

The overhaul of the vocational education and training system (VET) by introducing more formal trade packages is reducing the need for, and benefit of, trade registration schemes. In future, trade competence will be demonstrated through a VET qualification rather than a board registration.

The cumbersome process associated with mutual recognition of professional registration is still limiting cross border movement of some professionals. Following the cyclone damage to Innisfail, Queensland, the local hospital immediately required additional registered nurses to deal with casualties. The requirement for State registration and the high cost of registration restricted the hospital's ability to recruit outside of the State of Queensland.

Professional registration requires a national database where a person registered under a professional category in one jurisdiction is accepted as a registered practitioner in all jurisdictions. Such a database does exist in a limited form for persons holding certificates of competency for high hazard plant.

Mutual recognition has assisted in driving a consistent requirement for chemical safety. Manufacturers are working with governments to harmonise safety requirements for all chemicals through a global harmonisation strategy.

Australia's adoption of international chemical labeling requirements will reduce the burden of multiple labels for national and international trade. The new dangerous goods code is the first major piece of Australian regulation to adopt the harmonisation strategy.

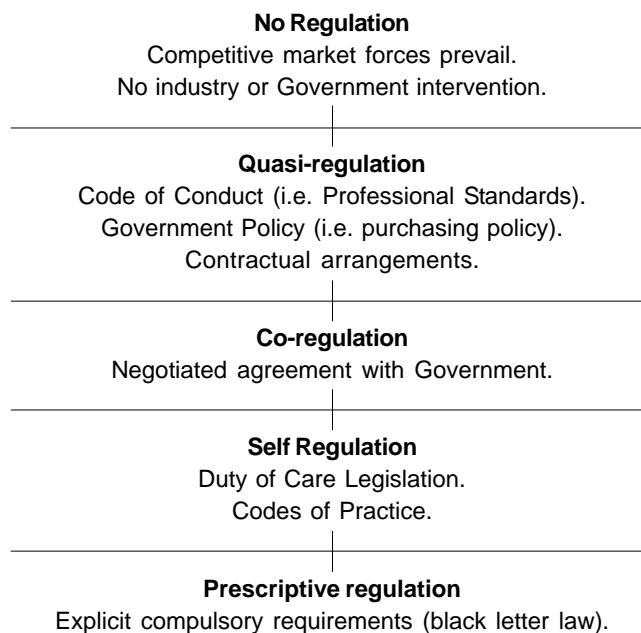


## Regulatory Options

A number of options are available to government in pursuing their policy objectives. The body of research supporting a flexible approach with greater community involvement in attaining the desired outcomes is increasing. Clearly, if the community and in particular, the business community, is provided with the opportunity to have greater ownership of and commitment to the regime then its chance of success is considerably increased.

The following hierarchy provides a basis to guide CCI policy in pursuing the least intrusive form of regulation or desired behaviour to ensure adequate and appropriate control.

**Figure 2 Regulatory Options**



Source: Guidelines on Alternatives to Prescriptive Regulation (Queensland Government)

CCI surveyed its membership in order to clearly understand how much time and effort the State's business community spends in complying with various regulatory obligations. The survey was undertaken between 19 July, 2006 and 22 September, 2006 and received 320 responses.

The sheer number of regulations that businesses are required to comply with appears to be the biggest concern for the WA business community, while issues such as the cost of compliance and the severity of penalties for failing to comply are also key concerns.

More specifically, laws relating to industrial relations, federal and state taxation, occupational health and safety and workers' compensation are the most problematic for businesses in terms of the complexity of these regulations and the cost of compliance.

Overall, the survey shows that the degree to which regulation affects businesses - and the subsequent time and cost it takes to deal with such matters - differs according to the size of firms. In general, large businesses appear to be more negatively affected than medium and smaller operators, and hence large firms tend to devote more resources to compliance.



Aggregating the time spent on these three aspects of regulation, respondents spent a total of 8,911 hours per week on regulation matters in the past year.

In total, respondents spent \$35,086,270 in the past 12 months alone. This equates to an average cost of compliance cost of \$115,417 per respondent, although there were significant differences in cost according to business size.

Eight of the 320 respondents estimated that the cost of complying with regulation in the past year had cost their business \$1 million or more. Five of these firms were large businesses, while three were medium-sized entities.

Extrapolating these costs over the entire WA business community (weighted according to business size without removing outliers) yields a total cost of compliance of approximately \$2.1 billion in the past year in Western Australia. This accounts for almost 3.5 per cent of WA business income, or around two per cent of gross state product.

The full survey report is at Appendix 1.

### **CCI Regulation Policy**

CCI adopts the following key principles to shape and inform Australian and West Australian regulatory activity:

- **Government intervention**

Government intervention can range from market discipline to reliance on courts and litigation to regulation, to State ownership. It should be minimal and the least preferred option for achieving policy outcomes.

- **Nationally consistent framework** requiring all governments to adopt consistent legislative and regulatory requirements which support efficiency, competition and innovation.
- **Mutual recognition** requiring agreements amongst all jurisdictions to pass the necessary legislation enabling mutual recognition within relevant areas.
- **Outcome based**, requiring regulations to specify outcomes rather than process.
- **Prescription limited** to certain minimum requirements such as speed limits or health exposure levels.
- **Sound social and economic purpose** requiring governments to fully assess all legislative and regulatory proposals against appropriate nationally consistent criteria (Regulatory Impact Statement).
- **Removal of redundant regulation** requiring governments to establish an active regulatory monitoring and review program.

The following criteria for regulatory control should be applied:

- Demonstrated need for regulatory intervention.
- All regulatory proposals to be subject to a regulatory impact statement to guide policy determinations.
- Regulation should be time limited with a maximum limit of 10 years.
- Regulation should not discriminate between government and non-government entities.



- Regulation should not have differential application. The method of achieving compliance may be varied.
- Regulation should be readily intelligible.
- Elimination of arbitrary, ineffective or badly designed regulation
- Adoption of a 'one in one out' approach to managing regulation

In addition, support the ACCI plan for regulatory reform.

### **Future Initiatives**

This paper has not attempted to review or define the specific regulatory burdens in the areas identified by a number of business surveys. The areas include taxation law, workers' compensation, occupational safety and health, industrial relations, superannuation and licensing. These areas have received consideration by the *Taskforce on Reducing the Regulatory Burden on Business* providing the opportunity for CCI to separately determine an appropriate response strategy.

CCI has already undertaken considerable work in the areas of industrial relations, workers' compensation, OHS, infrastructure reform and taxation. A current project will identify overlaps and inconsistencies relating to project licensing and a proposed project will examine Greenhouse Gas Emissions Trading.

CCI will conduct a member survey to identify unnecessarily burdensome regulations. The report will underpin the following recommendations to government.

### **Recommendations to Government**

CCI recommends government establish a legislative program to reduce the West Australian regulatory burden on industry.

CCI recommends the program address unnecessary regulatory restrictions to future business development and current operations.

CCI recommends the program be initiated through a Taskforce that identifies regulatory restrictions, redundant regulation and considers a whole of government structured and disciplined approach to future regulation making.



## Appendix 1

# CCI Survey of Regulation & Red Tape

### Executive Summary

For some time now, the Chamber of Commerce and Industry of Western Australia (CCI) has been concerned about the regulatory compliance burden on WA businesses. That is, the costs incurred by businesses in complying with government regulation and red tape.

As part of its *Regulation and Compliance Discussion Paper*, CCI surveyed its membership in order to clearly understand how much time and effort the State's business community spends in complying with various regulatory obligations.

The survey was undertaken between 19 July 2006 and 22 September 2006 and received 320 responses.

Overall, the sheer number of regulations that businesses are required to comply with appears to be the biggest concern for the WA business community, while issues such as the cost of compliance and the severity of penalties for failing to comply are also key concerns.

More specifically, laws relating to industrial relations, Federal and State taxation, occupational safety and health and workers' compensation are the most problematic for businesses in terms of the complexity of these regulations and the cost of compliance.

Overall, the survey shows that the degree to which regulation affects businesses - and the subsequent time and cost it takes to deal with such matters - differs according to the size of firms. In general, large businesses appear to be more negatively affected than medium and smaller operators, and hence large firms tend to devote more resources to compliance.

In aggregating the time spent by respondents on complying with existing regulations, researching new or amended laws and/or changing internal systems to cope with new or changed laws, it was found that small businesses spent up to 18.5 hours every week in the past year dealing with these three aspects of compliance. Medium-sized businesses spent up to 26.4 hours every week in the past year on these issues, while large firms spent an average of 70.3 hours on regulation issues in a working week.

Overall, the largest proportion of this time spent relates to labour related regulations (workplace relations, occupational safety and health, and injury and claims management), followed by taxation matters.

In putting a dollar cost on this time, the average cost of compliance for small businesses was approximately \$24,500 per respondent, followed by medium-sized firms with an average cost of \$100,255. Large firms had the highest average compliance cost of all with a cost of around \$525,421 per respondent. However, removing outliers from the sample of large firms left this group with an average cost of \$180,788 per respondent.



Extrapolating these costs over the entire WA business community (weighted according to business size without removing outliers) yields a total cost of compliance of approximately \$2.1 billion in the past year in Western Australia. This accounts for almost 3.5 per cent of WA business income, or around two per cent of gross state product.

## **Demographics**

The survey was undertaken between 19 July 2006 and 22 September 2006 and received 320 responses.

By size, the largest number of responses (174) came from small businesses,<sup>1</sup> which made up 54 per cent of all respondents. This was followed by medium-sized enterprises (99), which made up 31 per cent of responses and large businesses (42) which accounted for 13 per cent of responses.

Five respondents did not provide any measure of their workforce, while two businesses did not employ any staff. For the purposes of analysis, non-employing firms were included as small businesses.

By industry, the largest response came from the services sector (174), which made up 54 per cent of responses.

Within this group, the highest number of responses came from the property and business services sector (52), which made up 16 per cent of all survey responses, while retail and wholesale traders (47) were not far behind, making up 15 per cent. Some 11 per cent of responses received were from businesses in the health and community services sector (35).

Manufacturers (78) made up around 24 per cent of responses, while 59 responses were received from firms in the production sector (mining, agriculture, utilities and construction), accounting for 18 per cent of all respondents.

Within this group, the mining sector (23) was the largest sub-group, accounting for seven per cent of all survey responses. Four respondents did not provide any detail on which industry they operated in.

In terms of main target market, the majority of respondents (60 per cent) were focused toward the Perth metropolitan area. Nearly 28 per cent said they were mainly geared toward markets in regional areas of Western Australia, while nine per cent said they were focused on markets interstate, and 2.5 per cent said overseas markets were their main focus.

With regard to ownership structure, the majority of respondents were private companies (73 per cent). Some 14 per cent of respondents were public companies and 6.5 per cent operated in partnerships. Only five per cent of respondents were sole traders.

## **Broad Regulatory Issues**

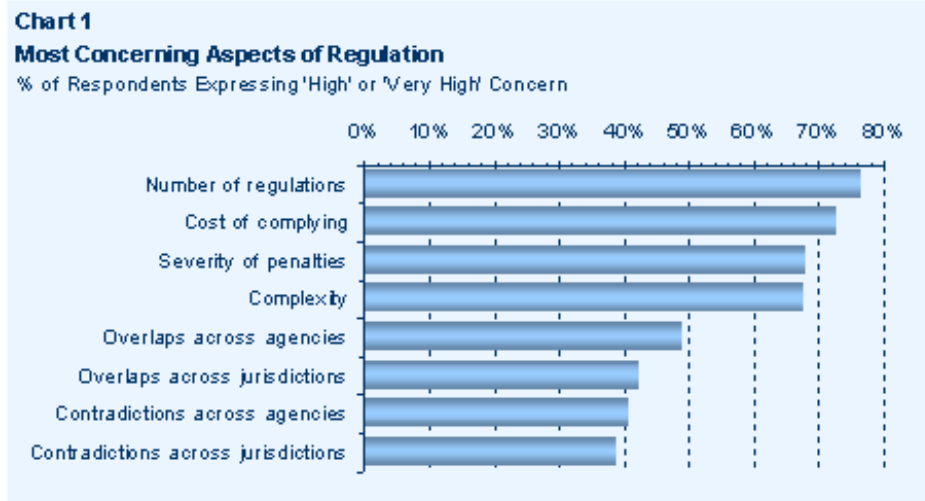
### **Characteristics of Regulation**

The first part of the survey dealt with broad regulatory issues. Firstly, respondents were asked to rate their level of concern with regard to broad characteristics of government regulation and red tape, such as overall complexity of regulation and severity of penalties for failing to comply (Chart 1).

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<sup>1</sup> Small businesses are classified as those employing 1 to 20 people. Medium-sized firms are those employing 21 to 99 persons and large firms employ 100+ people.





The most concern (i.e. 'very high' or 'high' concern) was expressed in relation to the number of regulations which businesses need to comply with. This was sighted as a very high or high concern by 246 respondents (or 77 per cent). Around 100 respondents said this was a very high concern for them.

Unsurprisingly, the number of regulations to comply with was more of an issue for medium and large businesses, with 83 per cent of medium-sized firms and 93 per cent of large businesses sighting this issue as being of high or very high concern. This compares to 75 per cent of small businesses.

The next most concern was expressed with regard to the cost of complying with regulation. Over 230 respondents (or 73 per cent) sighted this as a very high or high concern, although in contrast to concerns over the number of regulations, only 84 respondents said the cost of compliance was of very high concern to them.

The cost of compliance was also more of an issue for larger businesses, which is perhaps a function of the higher number of regulations which bigger firms are required to obey by way of their size.

The next most pressing issue for all businesses is the severity of penalties for failing to comply with regulation. Around 218 respondents (or 68 per cent) said this was of very high or high concern to them, with 102 respondents sighting this issue as being of very high concern to them – the highest of any other issue.

Small businesses were most concerned about the severity of penalties, with 72 per cent sighting this as a very high or high concern for them. This is not surprising as smaller firms often have fewer resources to devote to compliance and less capacity to pay and absorb penalties.

Not far behind penalties, some 217 of all survey respondents (also 68 per cent) said the complexity of regulations was of very high or high concern to them. Around 89 businesses sighted complexity as being of very high concern.

Complexity was more of an issue for larger firms than smaller ones. Again, this might reflect the fact such firms are usually required to comply with more regulations because of their size.

These four issues appear to be the key areas of concern to business in terms of broad regulation.

The level of concern with regard to other issues, such as overlaps and contradictions in regulatory requirements across jurisdictions and agencies, appears to be far less pervasive.



Less than half of all respondents expressed very high or high concern in relation to overlaps across agencies and jurisdictions, while less than 40 per cent said contradictions across agencies and jurisdictions was of material concern.

However, there were marked differences in responses by size of business, with large firms much more likely to express concern with regard to these issues. For example, over half of all large businesses sighted concern over contradictions in regulation compared to fewer than 40 per cent of small firms.

Overall, the least concern was expressed in relation to contradictions in regulations across jurisdictions, with nearly 29 per cent of respondents marking this as being of low, very low or no concern to them.

Rather than implying that inter-jurisdictional regulatory contradictions are few, the low level of angst in relation to this issue might reflect the fact that the survey responses are concentrated among small and medium-sized business, which are less likely to operate in multiple locations around the country.

By sector, manufacturers appear to be the least concerned with these broad issues. Some 70 per cent of manufacturing firms highlighted the number of regulations as being of high or very high concern to them, compared to 77 per cent overall.

In addition, only 62 per cent of manufacturers said the cost of compliance was of similar concern compared to 73 per cent across the sample overall, while a lesser proportion of manufacturers also singled out the severity of penalties and the complexity of laws as being of concern relative to the sample overall.

Only a handful of respondents failed to answer these questions relating to broad characteristics of regulation and red tape, indicating that most have a good idea as to the overall effects of regulation on their operations.

### **Complexity and Cost of Compliance**

The number of regulations and the severity of penalties for failure to comply were the two most pressing issues for businesses in relation to the characteristics of regulation and red tape.

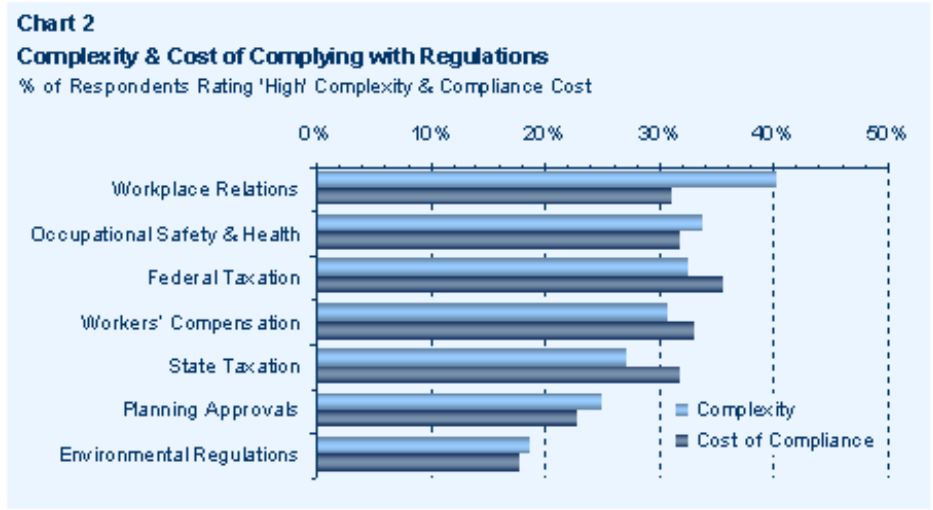
However, the impact of regulation could be contained, even with a large number of laws and severe penalties, if laws were to be made less complex, hence reducing the compliance burden.

In this regard, businesses were asked which types of regulations had affected their operations the most in the past year in terms of their complexity and cost of compliance (Chart 2).

In terms of *complexity*, some 40 per cent of businesses identified workplace relations laws as having a high impact on their operations. Problems related to the complexity of these laws are likely to stem from the overlaps between the State and Federal systems of industrial relations, as well as the transition to the new 'Work Choices' system Federally, given that over 60 per cent of respondents operated under the Federal system alone, or under both the State and Federal regimes.

Following workplace laws, occupational safety and health was the next most complex suite of regulations, with 34 per cent of respondents highlighting these laws as having a high impact on their businesses.





This was followed by Federal taxation laws (33 per cent), workers' compensation (31 per cent) and State taxation law (27 per cent). Meanwhile, planning approvals were identified by around one quarter of respondents as having a material impact in terms of complexity.

Environmental laws appear the least complex, as 37 per cent of respondents said such regulations had only a minor effect on their operations.

In general, most of the laws highlighted above appear to have had a more significant effect on the operations of large businesses than smaller ones in the past year, but particularly in relation to workplace relations (sighted by 50 per cent of large firms as having a high impact compared to 35 per cent of small firms), occupational safety and health (50 per cent compared to 25 per cent), planning approvals (48 per cent compared to 18 per cent) and environmental regulations (33 per cent compared to 15 per cent).

With regard to *cost of compliance*, Federal tax law was selected by 36 per cent of respondents as having a high impact on their business. This is not surprising as such laws affect all businesses, and often require external assistance to ensure adequate compliance.

Federal tax law was followed by workers' compensation regulations (33 per cent), State taxation (32 per cent), workplace relations (32 per cent) and occupational safety and health (32 per cent) as the highest impact regulations in terms of cost of compliance.

There were some differences with regard to cost of compliance across business sizes and sectors, particularly in relation to occupational safety and health where nearly 55 per cent of large firms sighted such laws as having a high impact on their business compared to 26 per cent of small firms and 33 per cent of medium-sized firms.

Not surprisingly, occupational health and safety laws were also high on the agenda of firms in the production sector (mining, agriculture, construction and utilities), with nearly half of all firms within this group highlighting the issue as entailing high complexity and compliance costs.

Meanwhile, workplace relations laws stood out in the services sector in terms of high complexity and cost of compliance relative to the sample of respondents overall.



Response rates for these questions were high, although around four per cent of firms failed to answer questions about the cost of compliance relating to Federal and State taxation, environmental regulations and planning approvals, which may suggest some difficulty in measurement of these issues.

### **Red Tape by Level of Government**

Respondents were also asked to rate the difficulty they faced in complying with regulation and red tape by level of government. Overall, businesses tended to report greater difficulty with regard to State and Federal government regulations than local government.

Around 57 per cent of respondents sighted a very high or high degree of difficulty in complying with Federal government regulation, while 52.5 per cent said the same of State government regulation.

Just over one-third of respondents sighted a very high or high degree of difficulty in complying with local government laws, and 25 per cent of respondents sighted low, very low or no difficulty in dealing with local government regulations.

These results were broadly similar across respondents of all sizes and of all industry sectors, although a slightly higher proportion of large and medium-sized entities tended to report difficulty in complying with Federal government laws than smaller firms.

### **Time Spent on Regulation**

Respondents were also asked to estimate how much time had been spent within their business<sup>2</sup> each week over the past year on: (i) complying with existing regulation; (ii) researching new and amended laws; and (iii) changing internal systems to cope with new or amended laws.

In aggregate, respondents spent 5,200 hours each week complying with existing regulations in the past year. Across all respondents, this equates to 16.2 hours being spent on compliance related matters each week per respondent, or 3.24 hours every day of the working week. This length of time might include the aggregate time spent by a number of staff within the organisation on regulation related matters.

The time burden was highest among large firms, who spent an average of 43.1 hours each week complying with existing regulation. This compares to an average of 10.3 hours per week among small firms and an average of 15.1 hours each week among medium-sized businesses.

The difference between times spent on existing regulations by firm size reflects the fact that larger firms often have to comply with more laws and regulations. Hence, large firms have a greater tendency to employ staff specifically to deal with regulatory issues.

In terms of researching new and amended laws, respondents spent a total of 1,801 hours each week over the past year on such issues, or an average of 5.6 hours each week per respondent. This averages to around 1.1 hours each day of the working week being spent on researching new or amended laws.

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<sup>2</sup> Time spent within the business refers only to time spent by either the business owner or employees of the business, and includes any time spent on preparing documents for external advisors such as accountants, lawyers who may assist firms in dealing with regulatory matters. The cost of engaging such advisors is gauged in later questions.



Again, the time spent differed significantly by size of business, with small firms spending around 4.1 hours each week, medium firms around 6.1 hours each week and large businesses some 11.1 hours every week.

With regard to the time spent on changing internal systems to cope with new or amended laws, a total of 1,940 hours was spent by all respondents on this in the past year. This averages out to six hours per week per respondent, or around 1.2 hours every day of the working week.

This figure may be higher than normal due to the new workplace relations laws introduced in the past 12 months, which have required many firms to modify internal systems.

Smaller firms again spent the least amount of time, with an average of 4.1 hours each week. Medium-sized firms spent 5.2 hours each week, while large firms spent around 16 hours every week.

Aggregating the time spent on these three aspects of regulation, respondents spent a total of 8,911 hours per week on regulation matters in the past year.

Calculating time spent according to business size shows that small businesses spent up to 18.5 hours every week in the past year either complying with existing regulations, researching new or amended laws and changing internal systems to cope with new or changed laws.

This means small firms spent an average of 3.7 hours each day of the working week attending to various regulatory matters in the past 12 months.

Medium-sized businesses spent up to 26.4 hours every week in the past year in dealing with these three aspects of regulation (5.3 hours each day), while large firms spent an average of 70.3 hours on regulation issues in a working week (14.1 hours each day).

By sector, manufacturers appear to spend the least amount of time each week managing regulatory obligations. On average, such firms spent around 16.6 hours each week on the three aspects of regulations outlined above, compared to 29.8 hours per week in the services sector, and 38.2 hours per week in the production sector.

The less time spent on regulatory matters by manufacturing firms is consistent with their lower levels of concern with regard to issues such as the number of regulations and the cost of compliance and complexity (see *Characteristics of Regulation* above).

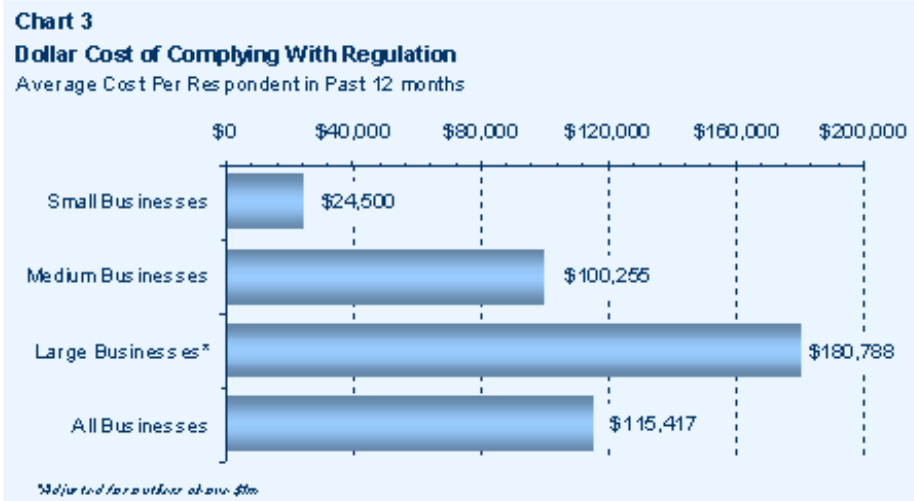
### **Dollar Cost of Regulation**

Having quantified the time required to attend to regulation, respondents were also asked to estimate the total cost to their business with regard to the time spent on each of these three aspects of regulation in the past 12 months (i.e. complying with existing laws, researching new or amended laws and changing internal systems to cope with new or amended laws).

In total, respondents spent \$35,086,270 in the past 12 months alone. This equates to an average cost of compliance cost of \$115,417 per respondent (Chart 3), although there were significant differences in cost according to business size.

Around 29 respondents (nine per cent of the sample) did not provide any estimate of their cost compliance.





Eight of the 320 respondents estimated that the cost of complying with regulation in the past year had cost their business \$1 million or more. Five of these firms were large businesses, while three were medium-sized entities.

Therefore, by size, the average cost of compliance for small businesses was well below the overall average at \$24,500 per respondent. The maximum compliance cost within the group of small firms was \$255,000.

Among medium-sized respondents, the average cost was \$100,255 per respondent. However, removing the three respondents with costs over \$1 million, the average cost among medium firms dropped to \$60,263 per respondent.

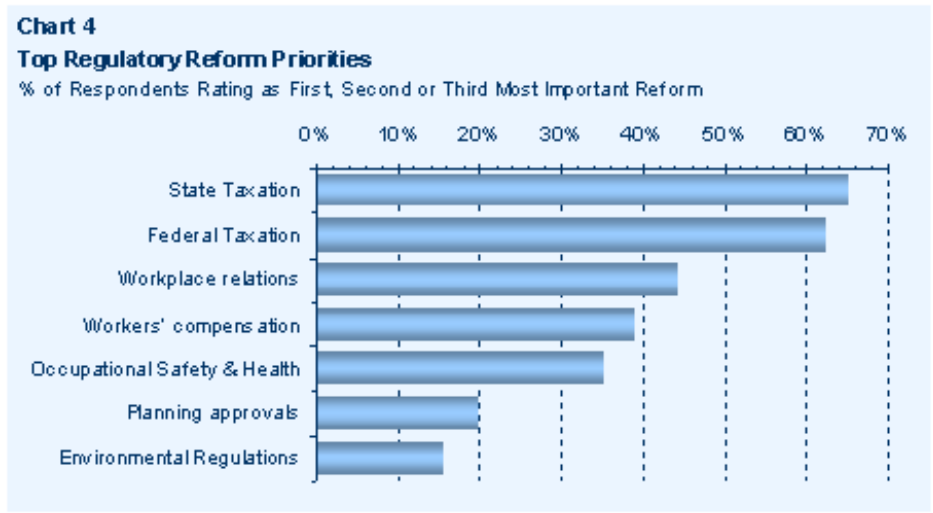
Meanwhile, large firms had a high average compliance cost of \$525,421 per respondent, although caution should be exercised in interpreting this figure, as the survey contained a relatively small sample of large businesses (42 in total), and five reported costs of \$1 million or more, including two with a cost of \$5 million.

Notably, both of the firms who reported a compliance cost of \$5 million were engaged in the mining sector.

Removing those large businesses with a cost of \$1 million or more from the mix of all large firms in the survey sample still leaves this group with the highest bill for compliance, with an average of \$180,788 per respondent. This is consistent with previous results that show larger firms tend to have to deal with more regulations and spend more time managing compliance.

Extrapolating these costs over the entire WA business community (weighted according to business size without removing outliers) yields a total cost of compliance of approximately \$2.1 billion in the past year in Western Australia. This accounts for almost 3.5 per cent of WA business income, or around two per cent of gross state product.





**Reform Efforts**

With compliance costs quantified, respondents were then asked where reform efforts to reduce the regulatory burden should be focussed (Chart 4).

Reflecting the high cost of compliance related to Federal tax laws, most businesses (30 per cent) selected this as being the regulation most in need of reform (i.e. their number one choice).

Notably, this was followed by State tax laws, with 26 per cent selecting this as their number one reform priority, even though such laws had not appeared to have a material effect on most businesses in terms of cost of compliance or complexity.

In contrast, workplace relations laws - which were identified as being complex by 40 per cent of respondents - were selected by only 13 per cent of respondents as a first priority reform.

This might suggest that the recent changes to the Federal industrial relations system have been embraced by businesses, even though its interpretation may be proving difficult (over 60 per cent of survey respondents operated under the Federal system alone or under both the State and Federal regimes).

In aggregating respondents' first, second and third priority reforms, State tax laws emerged as the most urgent reform priority for WA businesses.

Some 210 respondents (or 65 per cent) selected this issue as being either their first, second or third most important reform. This was followed by Federal taxation (62 per cent), workplace relations (44 per cent) and workers' compensation (39 per cent).

State tax reform is a key priority for small businesses in particular, with 71 per cent of small firms selecting State tax laws as one of their top three reform objectives.

Despite occupational safety and health being a key issue for larger firms in regard to cost of compliance, this was not a major reform priority for them, with only one third of large firms selecting this issue as one of their top three reform objectives, which is a broadly similar proportion to small (34 per cent) and medium businesses (41 per cent).

However, large and medium-sized firms stood out in relation to environmental regulation and planning approvals, where a far high proportion viewed these as reform priorities compared to small entities.



By sector, reform of State taxation was more of a priority for those in the services and manufacturing industries compared to the production sector. Over two-thirds of respondents in the former sectors highlighted this issue as one of their top three reform priorities compared to 54 per cent of respondents in the production sector.

Meanwhile, manufacturers stood out with regard to workers' compensation, with 56 per cent ranking this issue as one of their top three reforms, compared to 34 per cent of service sector operators and 27 per cent of those in the production sector.

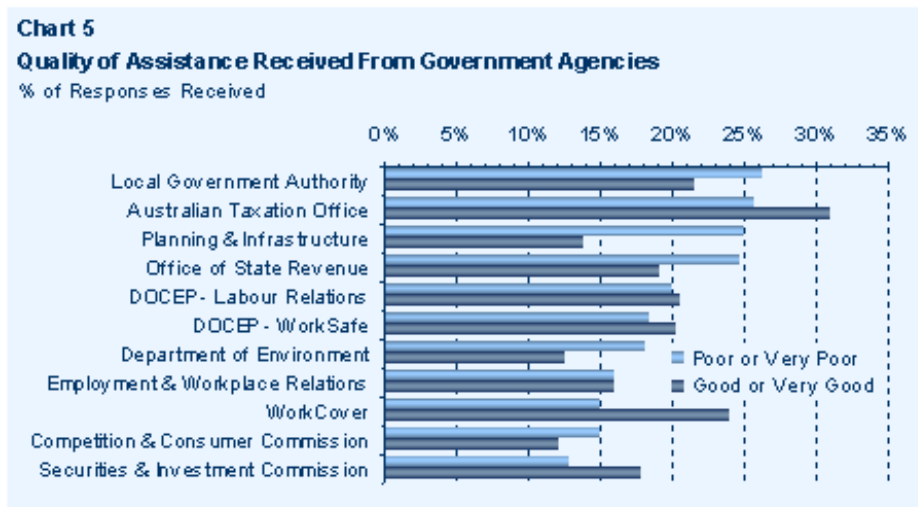
### Quality of Government Assistance and Information Sources

Government assistance to industry in terms of advice and information about regulation plays an important role in reducing the compliance burden.

In this context, respondents were asked to rate the quality of assistance generally received from particular government agencies with regard to matters such as the knowledge of agency staff, explanation of laws, level of information received etc.

The agencies about which information was sought included both State and Federal authorities, and specifically those departments responsible for administering key business regulations, such as the Office of State Revenue, WorkCover WA, the Department of Consumer and Employment Protection (WorkSafe and Labour Relations specifically) and the Australian Taxation Office.

In general, the feedback received about the quality of government assistance was positive. For each agency highlighted in the survey, the number of respondents describing the quality of assistance received as satisfactory, good or very good outnumbered those describing it as poor or very poor (Chart 5).



Indeed, around one quarter or less of all respondents rated any agency as very poor or poor. In this regard, the most poorly performing authorities were local governments, with 26.3 per cent of respondents rating the quality of assistance received from their local authority as being very poor or poor.

This was followed by the Australian Taxation Office, with 25.6 per cent rating their quality of assistance as being very poor or poor. Meanwhile, one quarter of respondents rated the quality of advice from the Department of Planning and Infrastructure and the Office of State Revenue as being poor or very poor.



The best performing agencies (i.e. 'very good' or 'good' ratings) included the Australian Taxation Office (31 per cent), WorkCover (24 per cent) and local governments (22 per cent).

Overall, most respondents believed the agencies highlighted in the survey performed in a satisfactory manner in relation to the quality of assistance received.

Results were broadly similar across all sizes and industries, although firms in the production sector (mining, agriculture, construction and utilities) tended to be more critical in their assessment. Among these respondents, nearly 40 per cent singled out local governments as providing poor or very poor assistance, followed by the Department of Planning and Infrastructure (34 per cent) and Department of Environment (32 per cent).

Overall, a high proportion of respondents noted that many of the agencies highlighted were not applicable to the operations of their business.

This was especially so with the Australian Competition and Consumer Commission (37 per cent had nothing to do with this agency), Department of the Environment (33 per cent) and the Australian Securities and Investments Commission (30 per cent). The lack of consultation with these authorities mainly reflects the concentration of smaller businesses among the sample of respondents.

Although most firms reported a fairly satisfactory level of assistance from government agencies, many do not appear to consult with agencies in the first instance when seeking information on business regulation.

In fact, less than ten per cent of respondents said that government agencies were their main source of information when seeking assistance with regard to regulation.

Just over half noted that the Chamber of Commerce and Industry of WA (CCI) was their main source of advice in relation to regulation, while 30 per cent consulted external professional advisors (such as accountants, lawyers and HR advisors). Some five per cent said they consulted business associations other than CCI. Unsurprisingly, large businesses tended to use external advisors (38 per cent) more widely than smaller firms (27 per cent), reflecting the more complex nature of their regulatory issues, and the greater availability of resources for larger entities relative to smaller ones.

### **Tax Regulations**

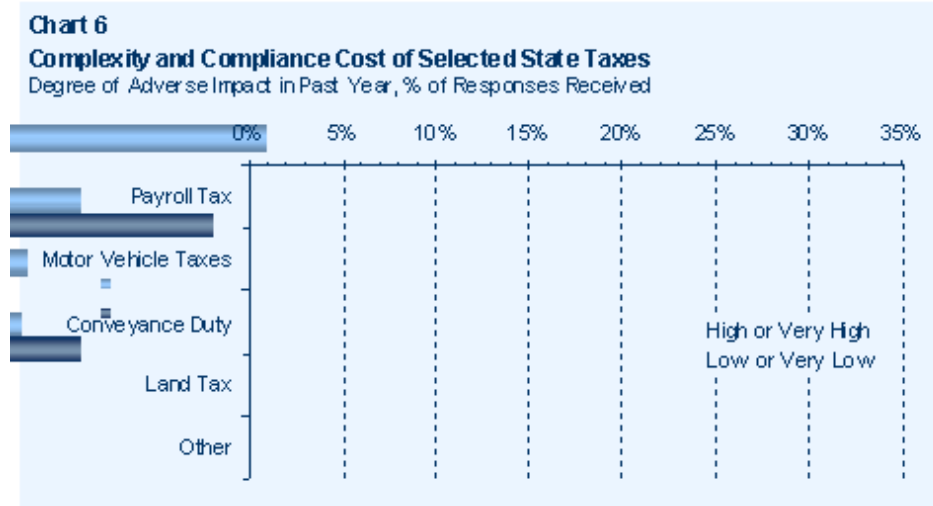
State and Federal taxation laws were highlighted by respondents as the regulations most in need of reform. This section focuses specifically on tax related compliance issues.

#### **State Taxes**

Respondents were asked to rate how adverse an impact particular State taxes had on their operations in terms of their complexity and cost of compliance in the past 12 months (Chart 6). Feedback was sought on the key State taxes which impact upon businesses (i.e. payroll tax, land tax, motor vehicle duties and conveyance duty).

A large proportion of respondents reported no effect or no applicability to many of the taxes in the past year. This reflects the fact that many firms do not incur State taxes and charges on a regular basis (i.e. conveyance duty), or are exempt from some taxes (i.e. payroll tax).





Overall, payroll tax had the most adverse effect, with almost one-third of respondents selecting it as having had a very high or high impact on their operations in the past year. Only 12 per cent of respondents said that it had a low or very low effect on their operations.

Around 31 per cent said payroll tax had no effect on their operations, or was not applicable to their business. Not surprisingly, most of these (80 per cent) were small businesses. Indeed, around 45 per cent of small operators signalled that they were not liable for payroll tax, or that it had no effect of their operations.

Therefore, the impact of payroll tax was higher among larger firms, with 48 per cent of medium-sized respondents indicating that it had a very high or high impact on their operations, while 40 per cent of large businesses said the same.

Taxes and charges relating to motor vehicles were the next most burdensome to business, although in net terms, more respondents said that these taxes had a low or very low adverse impact on their operations (30 per cent) compared to those who said it had a very high or highly adverse effect (23 per cent).

Only 18 per cent of respondents said motor vehicle taxes did not affect them.

Notably, motor vehicle charges were more burdensome to smaller firms, with 23 per cent indicating that it had a very high or highly adverse effect on them, compared to 14 per cent who said it had a low or very low impact.

Land taxes similarly received a net response in favour of a low or very low impact, with 19 per cent saying it had a very high or highly adverse effect, compared to 23 per cent who said it had a low or very low effect. Some 35 per cent of respondents said land taxes had no effect on their business in the past year.

Conveyance duty was selected by 20 per cent of respondents as having a high or very high impact on them, while 17 per cent said it had a low or very low effect. Some 44 per cent of respondents said conveyance duty had no effect on them in the past 12 months. Conveyance duty appears to be a larger impost on smaller firms, with 22 per cent of small operators saying it had had a high or very high effect on them in the past 12 months.

Outside of these taxes, few businesses highlighted other State taxes and charges as having an impact on their operations.

With payroll tax established as having the most adverse effect on WA businesses, respondents were then asked how much time they spent on paperwork related to payroll tax, and what aspects of it were the most complicated and costly.



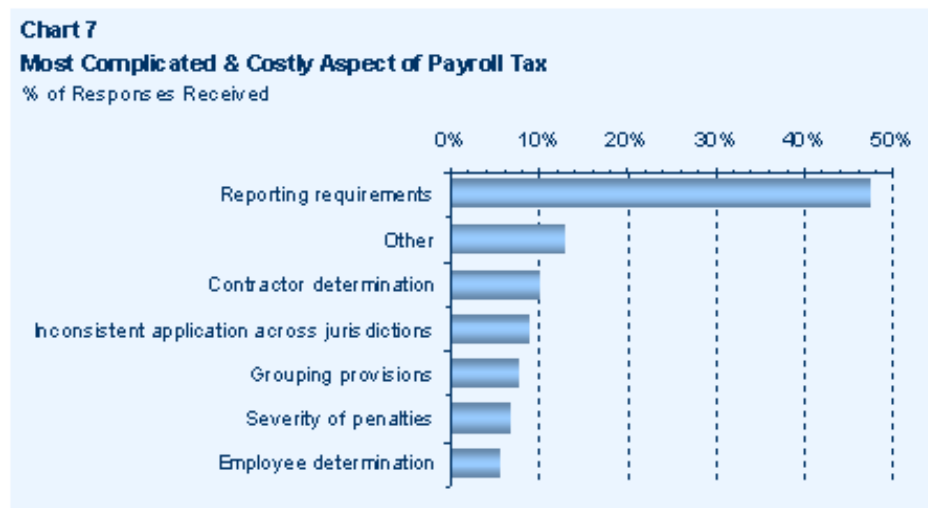
Around 31 per cent of respondents indicated that they spent no time on this issue, as their business was not liable for payroll tax. Of those who were liable for payroll tax (220 in all), most said they remitted the tax on a monthly basis (66 per cent), while 15 per cent remitted on a quarterly basis and 12 per cent on an annual basis.

In total, respondents spent an average of 13,305 hours each year on paperwork relating to payroll tax.

The time spent on payroll taxes varied markedly according to the size of the respondent, with smaller firms spending an average of 32 hours per annum on payroll tax, while medium-sized firms spent an average of 51 hours each year. In contrast, large firms spent an average of 156 hours each year on payroll tax related paperwork.

This figure was skewed by one respondent who reported spending an average of 100 hours each month in remitting payroll tax. Removing this outlier, larger firms still spent a significant amount of time on payroll tax paperwork each year (123 hours).

Respondents were also asked to identify which aspects of payroll tax regulations were the most complicated and costly to understand (Chart 7). Respondents were given the option of reporting requirements, contractor/employee determination, severity of penalties, inconsistent application across jurisdictions, and grouping provisions. Other issues were also invited.



Although 31 per cent of respondents highlighted that they were not liable for payroll tax, only 23 per cent did not answer the question relating to the most complicated and costly aspect of payroll tax regulation. This might indicate that even though firms may not be liable for payroll tax, they are nonetheless familiar with its provisions, perhaps in order to avoid becoming liable.

In terms of the most complicated and costly aspects of payroll tax regulations, the highest proportion of respondents (48 per cent) selected the reporting requirements related to payroll tax as the biggest impost.

Around 13 per cent of respondents highlighted other issues as being the most complicated and costly. Of these, most of the issues related to wider considerations, particularly the disincentive the tax creates to hiring more staff, the inequity it raises between businesses, and the fact that it places many firms competing internationally on a less competitive footing.



The next most costly aspect was related to contractor determination, although this was highlighted by only 10 per cent of respondents. A similar proportion pointed to the inconsistent application across jurisdictions as being the most costly aspect.

Again, there were differences in the responses according to the size of the business. In particular, the inconsistent application of payroll tax law across jurisdictions was more of an impost for large businesses, as were contractor determination and grouping provisions.

Respondents were also asked to identify how much time they had spent in the past year on paperwork relating to State taxes apart from payroll tax. Over 60 per cent of respondents indicated that they had spent some time on such issues, while 37 per cent did not answer the question or said that no time had been spent.

In total, nearly 9,924 hours had been spent in the past 12 months on paperwork related to non-payroll tax State charges.

Again, the paperwork burden was much higher for large firms (165 hours per annum) compared to small (24 hours) and medium (30 hours) firms. The time spent by large businesses was skewed by one respondent who reported spending 1,250 hours on non-payroll state tax issues in the past year. Removing this outlier, large firms still spent 132 hours on paperwork relating to non-payroll State taxes.

In sum, the responses to these questions suggest that small businesses spend an average of 56 hours each year completing paperwork related to State taxes and charges (payroll taxes and other charges). This equates to an average of 1.1 hours per week.

In the section *Time Spent on Regulation* it was found that small businesses spent an average of 18.5 hours per week in complying with existing laws and regulations, researching new or amended laws and changing internal systems to deal with new or amended laws. This means that paperwork related to State taxes and charges make up around 5.8 per cent of the total compliance burden for small firms in terms of time.

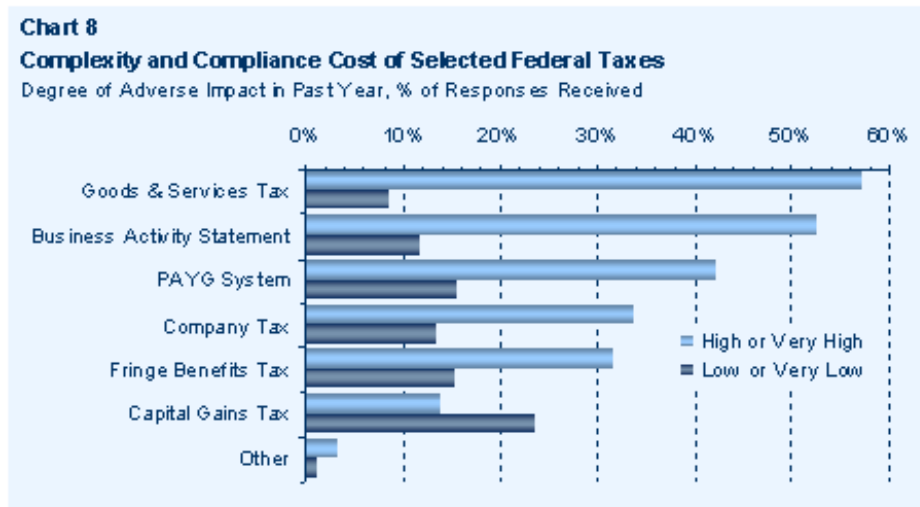
Medium-sized firms spend an average of 81 hours each year completing paperwork related to State taxes and charges, which equates to an average of 1.6 hours per week. This makes up around six per cent of the total compliance burden for medium-sized firms (total time burden of 26.4 hours per week)

For large firms, an average of 321 hours are spent each year in completing paperwork related to State taxes and charges, which equates to an average of 6.2 hours per week. This makes up around nine per cent of the total compliance burden for large firms (total time burden of 70.3 hours per week).



**Federal Taxes**

Respondents were asked to rate how adverse an impact particular Federal tax requirements had on their operations in the past 12 months in terms of their complexity and cost of compliance (Chart 8).



Feedback was sought on key elements of Federal taxes which impact upon businesses (i.e. company tax, capital gains and fringe benefits tax, GST, the PAYG system and business activity statements).

Not surprisingly, only a small proportion of respondents reported no effect or no applicability to many of the Federal taxes, in contrast to the same question on State taxes. The aspects of Federal taxes which received the highest proportion of ‘no effect’ or ‘not applicable’ responses related to issues such as capital gains and fringe benefits tax, which do not effect all firms.

According to respondents, requirements regarding the goods and services tax were the most complex and costly to comply with. Nearly 60 per cent of respondents described this as having a very high or highly adverse impact on their operations in the past year. Just 10 per cent of respondents said GST requirements had a low or very low effect on their operations.

Medium-sized firms and those in the services sector appear worst off, with 65 per cent of medium-sized firms and 62 per cent of service sector respondents indicating that the GST has had a negative effect on their operations in terms of the complexity and cost of complying with the legislation.

The Business Activity Statement was the next most burdensome aspect of the Federal tax regime. Nearly 53 per cent of respondents said the BAS had a very high or highly adverse effect on their operations compared to just 12 per cent who said it had a low or very low effect.

The difficulties associated with completing and lodging activity statements appear to be a much higher burden on small and medium enterprises than large businesses. Around 55 per cent of small and medium firms singled out this issue as having a very high or highly adverse effect on their operations, compared to less than 40 per cent of large businesses.

Following the GST and activity statements, the PAYG system was the next highest source of discomfort for firms. Some 42 per cent of respondents highlighted this issue as having a negative effect, compared to 16 per cent who said that it had a low or very low impact on their business.



This was followed by requirements surrounding company taxes, where 34 per cent said it had a high or very high effect compared to 13 per cent who said it had low or very low effect.

Around 32 per cent also highlighted fringe benefits tax as having a high degree of complexity and cost of compliance, while only 15 per cent said this issue had low or very low impact on their operations. Meanwhile, capital gains tax was a major issue for only 14 per cent of respondents, with the majority indicating that it was not applicable to their business or had no effect on them in the past 12 months.

Businesses were also asked to estimate how much time was spent on preparing company tax returns and business activity statements in the past 12 months, as these encompass most of a business's reporting requirements to the Federal Government.

Among those respondents who had lodged a company tax return (about 234 in all), a total of 21,171 hours had been spent in the past year preparing the return. This equates to around 90.5 hours per respondent in the past 12 months.

Small businesses spent around 60 hours in the past year preparing a company tax return, while medium-sized firms spent 76 hours. Large firms spent an average of 264 hours each in the past year working on company tax returns, although this result was skewed by three respondents who reported spending 1,000 hours or more. Removing these outliers, large firms spent an average of 147 hours in the past year preparing company tax returns.

Activity statements encompass a business's obligations and entitlements related to GST, PAYG amounts withheld and installed, and fringe benefits tax instalments. On average, businesses spent a total of 18,921 hours in the past year preparing their activity statements. This equates to an average of 62.2 hours per respondent.

Again, the burden imposed on small (49 hours in the past 12 months) and medium-sized firms (64 hours) were lower than that on larger businesses (116 hours).

In sum, the responses to these questions suggest that small businesses spend an average of 109 hours each year completing paperwork related to activity statements and company tax returns. This equates to an average of 2.1 hours per week.

In the section *Time Spent on Regulation* it was found that small businesses spent an average of 18.5 hours per week in complying with existing laws and regulations, researching new or amended laws and changing internal systems to deal with new or amended laws. This means that paperwork related to activity statements and company tax returns make up around 11 per cent of the total compliance burden for small firms in terms of time.

Medium-sized firms spend an average of 140 hours each year completing paperwork related to activity statements and company tax returns, which equates to an average of 2.7 hours per week. This makes up around ten per cent of the total compliance burden for medium-sized firms (total time burden of 26.4 hours per week)

For large firms, an average of 380 hours are spent each year in completing paperwork related to activity statements and company tax returns, which equates to an average of 7.3 hours per week. This makes up around ten per cent of the total compliance burden for large firms (total time burden of 70.3 hours per week).



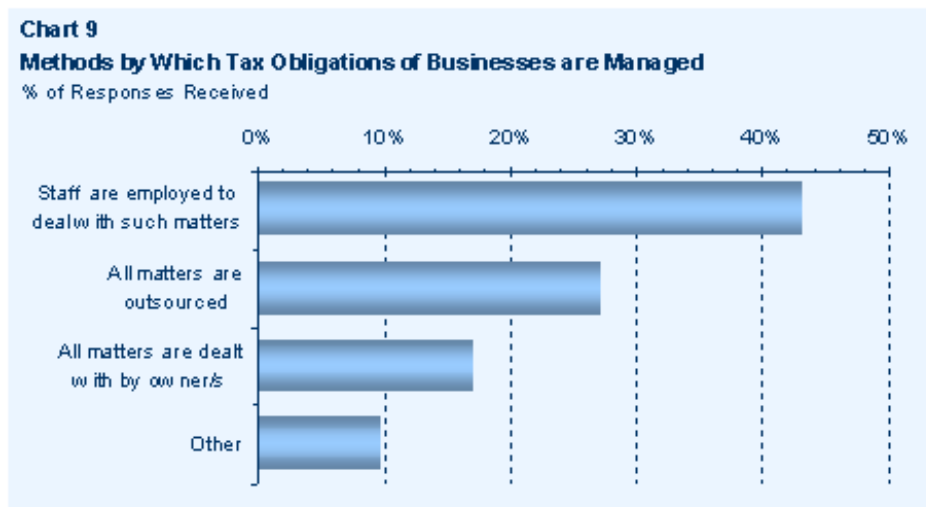
### Cost of Complying with State and Federal Tax Laws

In total, approximately 1,217 hours were expended each week by survey participants in complying with State and Federal tax laws in the past year. This accounts for around 14 per cent of the total time spent on regulation compliance each week by participants (8,911 hours in total).

Hence, it is evident that the time spent on paperwork related to State taxes and charges and/or in preparing company tax returns and activity statements account for a large share of the regulatory burden on businesses.

This is consistent with the views of participants in this survey that reform efforts should be focussed on State and Federal tax laws as a priority.

Given the large burden posed by taxation laws, respondents were also asked how the tax obligations of their businesses are managed (Chart 9).



Most businesses (43 per cent) indicated that they employ staff specifically to deal with such matters, and these respondents were asked to estimate how many of their current staff are employed to manage such issues. Among the survey respondents, a total of 716 staff members were employed to manage tax issues. This equates to an average of almost four staff members per respondent.

Around 34 per cent of small firms said they hired staff to deal with tax issues, with each hiring an average of 1.6 employees to deal with such matters. Nearly half of all medium-sized firms hired staff to manage tax affairs, employing an average of almost three people each to handle such matters.

Meanwhile, almost 70 per cent of large businesses indicated that they had hired staff to manage tax issues, with each employing an average of 11 people in their business to deal with such matters. However, this figure is skewed by one respondent, which currently employs 200 staff to manage its tax issues. Omitting this response, the average number of people employed by large respondents to manage tax affairs fell to almost five per respondent.

Following the hiring of staff to manage tax issues, the next most prevalent option was to outsource all tax matters to external advisors, such as accountants and bookkeepers. Over 27 per cent of respondents indicated that this was the main method by which their business's tax affairs were managed.



In contrast, some 17 per cent of respondents said the owners of the business personally managed the tax affairs of the business. Not surprisingly, most of these respondents (70 per cent) were small businesses. In all, around 23 per cent of small businesses said the owner managed the tax obligations, compared to just 13 per cent of medium-sized firms and only one large business.

The lower use of external advisors and staff to manage tax issues among small businesses reflects the cost sensitivity of smaller firms, as well as the less complex nature of their tax affairs relative to larger operators.

In this context, respondents who engaged the services of external advisors were also asked to estimate what this service had cost their business in the past 12 months. Notably, some 77 per cent of respondents provided an estimate for this question, even though only 27 per cent said they outsourced all of their tax matters to external advisors.

This indicates that many firms engage the assistance of external parties (at some point in time) in the management of their tax affairs, and is reflective of the complexity often entailed in such laws.

In total, respondents spent \$17,950,280 in the past year on engaging external parties to assist in the management of their tax affairs.

The average cost to smaller firms was around \$13,783 each, with medium-sized businesses incurring a cost of \$31,701. Removing the \$9 million outlier among larger businesses yielded an average cost of \$146,034 among this group. This figure remains high because 12 of the 42 large businesses did not provide an estimate of this cost.

### **Labour Regulations**

Labour laws were also highlighted by respondents as being urgently in need of reform, particularly workers' compensation and workplace relations. This section focuses specifically on labour related compliance issues.

### **Workplace Relations**

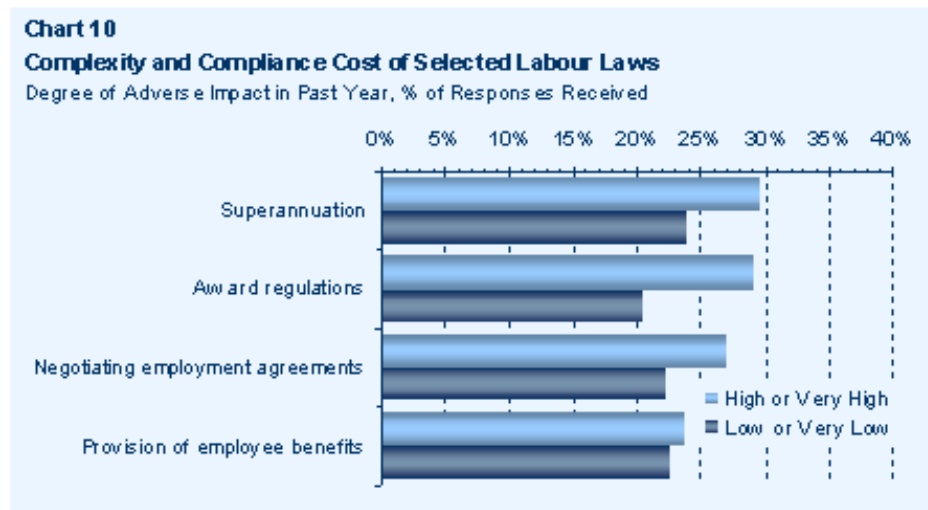
Around 36 per cent of survey respondents operated under both the State and Federal systems of industrial relations, while 24 per cent operated solely under the Federal system, and 19 per cent were solely under the State system.

Some 16 per cent of respondents said they were unsure as to which system they operated under, while 12 respondents said neither was applicable.

Respondents were then asked how adverse an impact particular requirements of workplace relations laws had on their business in the past 12 months in relation to complexity and cost of compliance.



Feedback was specifically sought with regard to the provision of employee benefits, deciphering award regulations, negotiating employment agreements and adhering to superannuation requirements (Chart 10).



Of these, deciphering award regulations was the issue of most concern. Around 29 per cent of respondents said this has had a very high or highly negative effect on their operations in the past 12 months, compared to 20 per cent who said it had a low or very low impact.

Superannuation requirements were also an inconvenience, with almost 30 per cent of respondents highlighting these requirements as having a high or very high adverse effect on their operations in the past 12 months. This might reflect the introduction of the Federal Government’s ‘Super Choice’<sup>3</sup> policy, which was implemented by businesses over the past year, and became applicable from 1 July 2006. Around 24 per cent of respondents said superannuation requirements had a low or very low impact on their business.

Negotiating employment agreements was also an impost on businesses. Around 27 per cent of respondents said this process has had a very high or highly adverse effect on their operations in the past 12 months, while 22 per cent said that this had only a low or very low effect on them.

With regard to provision of employee benefits, almost 24 per cent highlighted this as having a negative effect on their business in the past year. However, this was almost counterbalanced by 23 per cent of respondents who said this had had a low or very low effect on their operations.

There was little difference in the responses to this question by size or by sector. Perhaps the most pointed differences in this regard were that difficulties complying with workplace relations laws appeared far less of an impost among manufacturers than among firms of other sectors.

Across all of these issues, an average of 17 per cent of manufacturers said the various aspects of workplace relations law highlighted in the survey had a very high or highly negative effect on their operations. This compares to an average of 30 per cent among those in the production sector, and 29 per cent in the services sector.



<sup>3</sup> Super Choice allowed employees working for corporations who previously could not choose a fund because they were employed under a State award will be able to choose a fund. These employees are now covered under a Federal workplace agreement called a ‘notional agreement preserving State awards’.

This result is consistent with previous results showing that manufacturers appeared to be the least concerned with issues relating to broader regulatory imposts, such as the number of regulations and the cost of compliance.

There were some differences in the responses according to the system of industrial relations each respondent was operating under. Overall, those operating under both the State and Federal systems appeared to experience a slightly greater burden in terms of complexity and cost of compliance than those operating under the State or Federal systems alone.

This was particularly so in terms of deciphering award regulations (35 per cent of those operating under both systems experienced difficulty in doing this in the past 12 months) and negotiating employment agreements (36 per cent).

Those operating solely under the Federal system also experienced a slightly higher degree of difficulty in terms of provision of employee benefits (28 per cent cited hardship) and deciphering award regulations (33 per cent) than those under the State system alone (22 per cent and 25 per cent respectively). This might be down to the initial uncertainty created by the introduction of 'Work Choices' in March 2006.

Businesses were also asked to estimate how much time they spent complying with award requirements in the past 12 months. In total, respondents spent a total of 1,739 hours working through award requirements.

By system of industrial relations, those solely operating under the State system spent an average of 4.2 hours per week complying with award requirements, compared to just over seven hours spent by those under the Federal system only, and seven hours by those under both systems. Again, this is likely to be due to the initially higher amount of work required under the recent introduction of 'Work Choices'.

The time spent on this regulation also differed according to the size of the respondent. Small businesses spent an average of 2.6 hours per week, which accounts for 14 per cent of the total time spent by such firms working through regulation (average of 18.5 hours per week).

Meanwhile, medium-sized firms spent around 6.8 hours each per week, which makes up 26 per cent of the total time spent by such firms working through regulation (average of 26.4 hours per week). Large firms spent an average of 18 hours per week complying with award requirements, with one large business saying they spent an average of 150 hours on awards each week across their business in the past year. The 18 hours spent by large firms on this issue accounts for around 26 per cent of their total compliance burden (average of 70.3 hours per week).

These shares are high compared to the share of time taken to work on tax related matters specifically. However, it should be noted that industrial relations matters tend to be handled exclusively by owners or staff within the organisation whereas many firms seek some external assistance with tax matters.

Only 10 per cent of respondents did not provide an estimate for the time spent on award requirements in the past year. This would indicate that most businesses have a handle on the time costs involved with this particular aspect of workplace law.

As a side issue, respondents were also asked to estimate how much time they spent each week on dealing with or avoiding unfair dismissal claims prior to the introduction of 'Work Choices' in March.



In total, respondents spent 921 hours each week on this issue, which equates to around 3.4 hours per respondent. However, less than half of all respondents were affected by this issue, while 40 per cent said they spent no time on it. Some 14 per cent of respondents did not attempt the question.

### **Workers' Compensation**

Respondents were also asked to estimate how much time they spent on labour regulations relating to workers' compensation laws.

Specifically, respondents were asked to estimate how much time they spent on paperwork related to workers' compensation the last time their premium was renewed, and how much time they spent each week on complying with claims and injury management regulations in the past year.

In relation to workers' compensation premiums, respondents spent a total of 2,541 hours on paperwork. Around 87 per cent of respondents spent some time on this issue, while six per cent said they spent no time whatsoever, and seven per cent did not attempt the question at all.

By size, small businesses spent an average of four hours on this issue, followed by medium-sized firms at 7.9 hours and large businesses at 8.9 hours.

By industry, firms in the production sector spent an average of 14.3 hours on paperwork relating to their workers' compensation premium, while firms in the manufacturing and services sectors each spent an average of 5.2 hours.

In terms of complying with claims and injury management regulations, respondents spent a total of 1,202 hours each week on this issue in the past year. Notably, only 61 per cent of respondents reported spending some time on this issue, while 31 per cent spent no time on it, and nine per cent did not attempt the question.

Again, the burden of these regulations fell more on larger firms (11 hours per week) compared to small (2.7 hours) and medium enterprises (3.6 hours).

By sector, manufacturers spent the most time on this issue than other sectors, with an average of 9.5 hours per week compared to 5.1 hours per week spent by firms in the production sector and 3.9 hours per week in the services sector.

### **Occupational Health and Safety**

Respondents were also asked to estimate how much time they spent each week on occupational Safety and Health (OSH) requirements in the past year.

In total, respondents spent around 3,035 hours each week on such laws. This estimate was skewed higher by one respondent who reported having spent 480 hours each week on OHS laws.

Unlike claims and injury management regulations, OHS laws appear to have wider applicability to businesses, as 82 per cent of respondents provided some estimate of the time spent. Around 11 per cent said they spent no time on it, while seven per cent did not attempt the question.

Smaller businesses spent an average of 4.1 hours per week on this issue (adjusted for the 480 hours estimate) which accounts for around 22 per cent of their total compliance burden (average of 18.5 hours per week). Meanwhile, medium-sized enterprises spent around 7.9 hours each week, accounting for 30 per cent of their total compliance burden (26.4 hours per week in total).

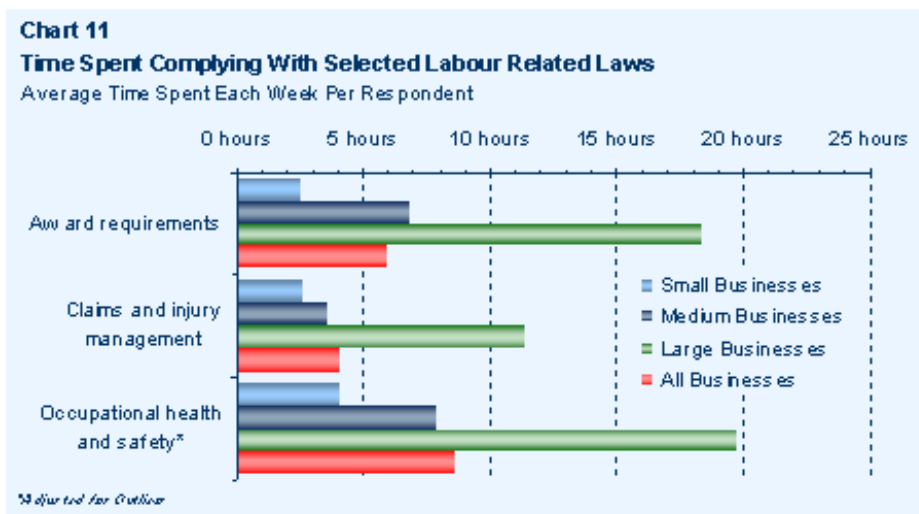


Larger firms spent an average of 22.4 hours per week on this issue, although there were no notable outliers within this group. This makes up around 32 per cent of their total compliance burden (70.3 hours per week on average).

By sector, those in the production sector spent the highest amount of time on OSH regulations at 13.5 hours each per week (also adjusted for the 480 hours estimate). Meanwhile, manufacturers spent around 9.4 hours each week, while those involved in services spent around seven hours per week.

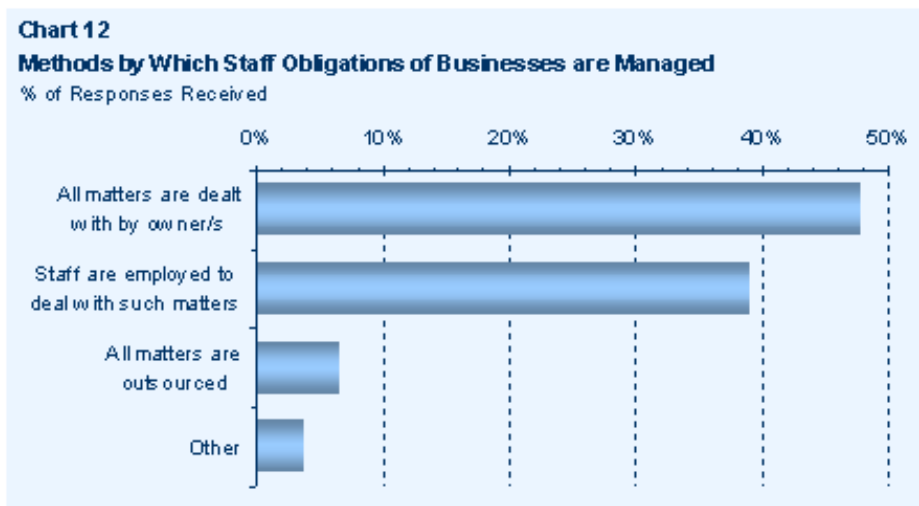
**Cost of Complying with Labour Related Laws**

In total, WA businesses spent approximately 5,975 hours per week on specific regulations related to labour (Chart 11), including award regulations, injury claims and management and OSH laws. This means that around 67 per cent of the total time taken each week by businesses in complying with *all* existing laws (8,911 hours per week in total) is accounted for by the above labour related matters specifically.



This is a substantial share of the regulatory burden on businesses – even larger than taxation (14 per cent in total). This large share may be down to one-off effects, such as the introduction of ‘Work Choices’, which may have required more time to be spent on labour issues than in the past.

Given the large burden posed by labour laws, respondents were also asked how the human resource obligations of their businesses are managed (Chart 12).



Most businesses (48 per cent) said that the business's owner/s dealt with such issues, which is in contrast to taxation where only 17 per cent of respondents said owners solely dealt with the tax affairs of the business.

Around 40 per cent of respondents said they hired staff specifically to deal with human resource matters, which compares to 43 per cent who indicated that they employ staff specifically to deal with tax matters.

Respondents that employed staff to deal with human resource obligations were asked to estimate how many of their current workforce is employed to manage such matters. Among the survey respondents a total of 348 staff members were engaged to deal with staff obligations, which equates to an average of almost three staff members per respondent. This compares to the total of 716 staff members engaged by respondents to manage tax issues within their businesses, or an average of almost four staff members per respondent.

Only seven per cent of respondents indicated that all of their staff obligations are handled by external consultants, which compares to around 27 per cent of respondents who said they hired external professionals to handle their tax obligations.

There were also marked differences in responses according to the size of each respondent. For example, owners of smaller firms were much more likely to manage staff obligations (67 per cent said this was the main means by which obligations were managed) than medium-sized firms (29 per cent) and large businesses (17 per cent).

In contrast, medium (56 per cent) and large enterprises (70 per cent) were more likely to hire staff to deal with such matters compared to smaller operators (21 per cent).

The lower use of staff to manage staff issues among small businesses reflects the cost sensitivity of smaller firms, as well as the less complex nature of their tax affairs relative to larger operators. It also underscores the difficulty faced by many small operators in interpreting and complying with labour laws given that the owner/s often handle such matters.

Respondents who engaged the services of external advisors were also asked to estimate what this service had cost their business in the past 12 months.

Notably, only 30 per cent of respondents provided an estimate for this question, given that the owners of most firms in this survey handled such matters themselves, or hired staff to deal with these issues.

Although only a few respondents utilised external advisors, those that did spent a total of \$7,409,373 for these services. This compares to a total of over \$17 million spent on tax advisors by 77 per cent of respondents.

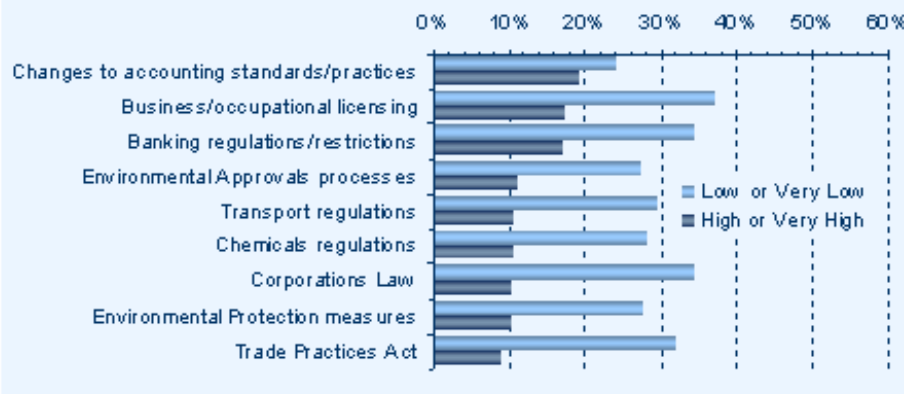
### **Operational and Industry Regulations**

While taxation and labour related regulations dominate the agenda in terms of complexity and cost of compliance for businesses, many industry and operational regulations also impinge upon businesses.

In this context, respondents were asked to describe what effect a suite of various industry and operational specific laws had on their businesses in the past 12 months with regard to their complexity and cost of compliance (Chart 13).



**Chart 13**  
**Complexity and Compliance Cost of Industry/Operational Laws**  
Degree of Adverse Impact in Past Year, % of Responses Received



Feedback was sought on a number of issues, including the Trade Practices Act, the Corporations Law, business licensing, environmental protection, transport and chemicals regulations, changes to accounting standards and banking regulations.

Overall, very few respondents said that any of these issues had a very high or highly adverse effect on their operations. Most firms indicated that these issues had a low, very low or no effect at all on their operations in the past year.

The most angst related to changes in accounting standards and practices, which was highlighted by 19 per cent of respondents as having a very high or highly adverse effect on their operations in the past year. This was followed by business and occupational licensing (17.5 per cent) and banking regulations and restrictions (17.2 per cent).

There was little difference in the responses according to size and sector. Around 30 per cent of large businesses pointed to banking regulations as having an adverse effect on them, while environmental protection measures and approvals processes had a negative impact on over 20 per cent of firms in the production sector, which was their biggest issue along with business licensing.

The low adverse effects of such industry and operational laws on the sample of survey respondents might be due to the fact that most were smaller businesses, although the effect of these laws was quite small even among the medium and large sized respondents.

Respondents were also asked to elaborate on any problems faced with regard to industry or operational regulations.

Some respondents highlighted concerns over the speed of the approvals processes in the Environmental Protection Agency, while others pointed to the difficulty in gaining permits and licenses for transportation of goods and the overlap and contradictions in transport regulations across jurisdictions.

Some respondents also emphasised the frustration of changes to accounting standards, saying it was costly for their businesses to engage external advisors and that regular changes make compliance more difficult.

Food regulations were also highlighted by some, specifically issues relating to changes in labelling requirements and the differences and inconsistencies in food laws across jurisdictions.



One respondent also raised concern over the role of Work Safe, suggesting they are quick to prosecute businesses rather than focussing on improving their OSH performance and that they are reluctant to give advice on specific issues for fear of legal accountability.

Some Federal bodies also came under criticism, with one respondent saying that the ambiguity and variable interpretation by the Australian Securities and Investments Commission of financial services law (including license conditions) was a major headache for their business.

Another respondent, also holding a financial services license, noted that many requirements of the Australian Prudential and Regulatory Authority and those of the Australian Securities and Investments Commission overlap.

Some respondents also highlighted the difficulties with reporting required by the Australian Bureau of Statistics. One respondent said the timeframe for response was too short, while another expressed concern over the threat of penalties for not participating in surveys.

One respondent highlighted the specific impost on their business caused by changes to accounting standards relating to not for profit entities. Because the changes were backdated, the previous two years worth of data, which was collected and recorded using different methodologies, required complete re-working.

#### **Further Comments on Regulation and its Impact**

Respondents were also asked for feedback on specific instances of regulation and red tape frustrating or hindering the conduct of their businesses in the past year. Some comments are reproduced below.

- *“The Office of State Revenue and the Valuer General’s Office are extremely slow in assessing contracts, resulting in penalty interest on settlements.”*
  - a medium-size firm in the property and business services sector.
- *“Department of Immigration and Multicultural Affairs (DIMIA) with regard to the time it takes to get paperwork and approvals through the system. It has now been 4 months since we lodged our application. We still have not had any word.”*
  - a medium-size firm in the manufacturing sector.
- *“Complexity of payroll tax including receiving incorrect assessments.”*
  - a medium-size firm in the transport and storage sector.
- *“Local government inadequacies and incompetence. Also, GST and BAS statements and returns are an incredible and recurring headache.”*
  - a large firm in the construction sector.
- *“Land development for industrial use has been held up while EPA considers reserving part of the land for an eco-link. EPA did not advise of this until land development proposals were well underway.”*
  - a small business in the mining sector.



- *“We were informed in our last GST audit that our method of converting USD GST was incorrect. Subsequent to that, we came to know of the existence of a Tax Ruling (GSTR 2001/2) which validated our original method.”*
  - a medium-sized operator in the retail and wholesale business.
- *“Australian Bureau of Statistics annual return - with only two members of staff, last year we employed an external accountant to attend to this at a cost of \$2,000.”*
  - a small retail business.
- *“In regards to planning approval for developers to complete their projects, the local council is very unhelpful and totally incompetent.”*
  - a small business in the property and business services sector.
- *“Planning approvals and building licences require speedy reform - approval processes are currently too... slow. Approval processes for dangerous goods licences are also too slow.”*
  - a medium-sized firm in the agricultural sector.
- *“Major issues relate to gaining planning approval for construction and re-development. Excruciatingly slow and complex. In some cases, evaluation of submitted material undertaken using subjective analysis.”*
  - a large business in the health and community services sector.
- *“From 1 January 2007, the Federal Government requires anyone working in the secure areas of a port to display a new ID card known as the ‘Marine Security Identification Card’. A Federal police check is required to get this card at a cost of \$200.”*
  - a small operator in the construction sector.
- *“My biggest bugbear has been the introduction of Workplace Agreements followed by their abolition, followed by the huge workload and short introduction of Work Choices, and now the threat of their removal if the Federal Government changes again.”*
  - a small business in the property and business services sector.
- *“Trying to be issued with a building licence for our new premises was a debacle. The council has made this process difficult and frustrating to the point that we were not going to proceed.”*
  - a small business in the retail and wholesale trade sector.
- *“The Office of State Revenue charges us payroll tax on payments to suppliers by deeming them to be employees when they are not. The costs and potential penalties for challenging this injustice are so excessive it is dangerous to do so.”*
  - a small business operator.
- *“Delay in the time Main Roads get ‘Extra Mass Permits’ processed. This can hold up road movement by one or two days, which is a lot of time for a small business and may mean losing jobs.”*
  - a small business in the agriculture sector.



- *We have to pay different payroll tax rates and use different reporting systems for each of our branch offices in Victoria, New South Wales and Queensland. Our head office is in Perth.*
  - a medium-sized business in the manufacturing sector.



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## Endnotes

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- <sup>9</sup> Banks, 2004
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- <sup>11</sup> Because of lack of industry data for 1973-74, the 1970 cycle in this table begin in 1974-75
- <sup>12</sup> Productivity Commission, 1999
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