



**TOWARDS  
A SEAMLESS  
ECONOMY**

MODERNISING  
THE REGULATION  
OF AUSTRALIAN  
BUSINESS

THE BUSINESS COUNCIL OF AUSTRALIA



**IS REGULATION  
KEEPING UP WITH THE  
CHANGING FACE OF  
BUSINESS?**

## LOOKING FOR ACTION

**AUSTRALIANS HAVE KNOWN FOR DECADES WHAT NEEDS TO BE DONE TO MODERNISE AUSTRALIA'S BUSINESS REGULATION. WHAT WE NOW NEED IS STRONG LEADERSHIP TO TURN THESE GOOD INTENTIONS INTO REALITY.**

'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.'

Bob Hawke, address to the Business Council of Australia, 1984.

'Australians are concerned about the differences that individual citizens and families often have to overcome when moving or working between states and territories.'

Communiqué of the Council of the Australian Federation, April 2007.

'A single Australian market is enhanced by the harmonisation of Commonwealth and state regulation of the Australian economy.'

*Australian Federalism: The Role of the States*, Federal-State Relations Committee, Parliament of Victoria, 1998.

'The most successful societies are notable for their unity, for the cooperative quality of all their relationships ...'

Paul Keating, 'Ministerial Statement: One Nation', February 1992.

'We've got to deal with the present system we have and we've all got to deal with history ... and we've got to try and make the system work. I think we do have a lot of layers of government in this country.'

John Howard in an interview with Radio 2DU, 2002.

'Australia cannot afford to waste resources due to [duplication] or have inefficient regulatory, taxation and service delivery arrangements ... I want to emphasise the need for jurisdictions to both co-operate and compete, while at the same time establishing one market in Australia for goods and services.'

Bill Scales in testimony to the Federal-State Relations Committee, Parliament of Victoria, 19 May 1997.

'... uncertainty and confusion arises when different laws ... attempt to deal with the same matter, even if in a slightly different manner only ... marketers should not need to consult up to nine different authorities to plan their compliance programs.'

Swanson Review of the Trade Practices Act 1976 (quoted in Productivity Commission, *Review of Australia's Consumer Policy Framework*, Draft Report, Canberra, 2007).

'... Our real concern should be the rights and needs, not as, say, Queenslanders or Tasmanians, but as Australians ... How sensible is it to shrink what is already a relatively small Australian market into separate state markets?'

Bob Hawke, 'Towards a Closer Partnership', speech to the National Press Club, 1990.

'... as ever more business activity occurs on a national if not global scale, there is an increasingly compelling case for introducing uniform regulation across Australian jurisdictions, except where it can be demonstrated that variations would generate net benefits.'

Regulation Taskforce, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Canberra, 2006.

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DESPITE THE UNIFIED IMAGE WE PRESENT TO THE WORLD, DOING BUSINESS ACROSS AUSTRALIA IS UNNECESSARILY CONFUSING, COMPLEX AND COSTLY DUE TO THE INABILITY OF GOVERNMENTS TO MAKE ADEQUATE PROGRESS IN HARMONISING AND RATIONALISING EXISTING REGULATION.

## EXECUTIVE SUMMARY

Australia has never been so connected to the rest of the world. The ever-closer union of world markets gives us an opportunity to boost our economic performance and increase our standing among our key competitors. But integration also exposes us to greater challenges and makes it easier for businesses and individuals to seek out jurisdictions more favourable to capacity building and innovation.

Over recent decades Australia's economy has been transformed from a condition of stagnation and relative isolation into a productive, integrated world player. Although many reforms held short-term challenges, the changes of the 1980s and 1990s had significant and beneficial flow-on effects, creating jobs and raising living standards across the board.<sup>1</sup>

However, as reform implementation has slowed, cracks have begun to emerge. Australia now represents a textbook case of a capacity-constrained economy in which demand is outpacing production, skills shortages are at record highs, and inflation is rising.<sup>2</sup> Failure to address these constraints risks a return to the boom and bust cycles of the past and places growth and prosperity in jeopardy.

While the attention of policymakers was focused on better integrating the economy into world markets, a number of issues in the domestic economy went unexamined. The gains from the more recognisable, externally focused reforms were so beneficial that they helped to breed complacency in respect of more politically challenging decisions. In particular, barriers and policy fragmentation between the federal government and the states and territories went unaddressed.



The result is an economy that is subject to nine regulatory regimes, with eight states and territories each seeking to regulate in their own way, overlaid and in some cases duplicated by national regulation imposed at the Commonwealth level. From a business perspective, Australia is not one market, it is nine.

Despite the unified image we present to the world, doing business across Australia is made unnecessarily confusing, complex and costly by the inability of governments to make adequate progress in harmonising and rationalising existing regulation.

The progress Australia has made in opening its economy and integrating with global markets is undermined by its inability to achieve a domestically integrated economy, which slows business processes, distorts resource allocation and dampens productivity.

At a time when our economy is pushing up against capacity constraints, it is all the more important that we address this challenge once and for all. By doing so, we can create the conditions to support growth in the future.

‘Genuine reform will require strong political leadership and follow-through across all jurisdictions. In this context, statements endorsing the desirability of harmonisation and uniformity in regulation are not enough. There is also a need for institutional mechanisms to monitor and enforce COAG agreements aimed at harmonising regulation. The Taskforce considers that action will be required on a number of fronts.’

*Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, January 2006.*

The year 2008 presents Australia with the greatest opportunity for regulatory reform in a decade.

With a new federal government indicating strong reform intentions and no state elections for twelve months, there is a window of opportunity to make concrete progress and deliver on previous Council of Australian Governments (COAG) commitments before political constraints once again derail the reform agenda.

If COAG is to achieve the stated objectives of its newly formed Business Regulation and Competition Working Group<sup>3</sup> then it must finally overcome past inertia and create a seamless economy for business regulation.

As the BCA has previously identified, resolving issues of overlap and duplication between different governments must be tackled by clarifying roles and responsibilities, institutionalising cooperation and reforming Commonwealth–state funding arrangements.

With this framework in mind, in order to achieve a seamless economy for business regulation in Australia, the BCA calls on COAG to:

1. Complete the implementation of a seamless economy for business regulation by 2010.

This means that by the end of 2010, Australia will have a business environment in which regulation is applied to all businesses consistently across Australia.

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2. As an immediate priority, complete harmonisation of the already identified ten COAG hotspots by the end of 2009, with remaining business regulations to be harmonised by 2010.
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3. Implement processes to maintain a seamless economy in the future.
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# 1. OVERVIEW

## Business regulation: Australia's fragmented economy

The Business Council of Australia (BCA) is an association of the CEOs of 100 of Australia's leading corporations with a combined workforce of one million people. It was established in 1983 as a forum for Australia's business leaders to contribute to public policy debates to build Australia as the best place in the world in which to live, learn, work and do business.

The BCA has set an aspirational goal for Australia to move into the top five of the world's economies (in terms of living standards) by 2012. BCA research indicates this can be achieved through reforms across a range of areas, such as federal–state relations, education, infrastructure, tax and business regulation, that will renew and modernise Australia's economy.

When viewed on its own, business regulation can seem relatively insignificant in the context of a trillion-dollar economy. But international research shows that burdensome regulation can be a significant constraint on economic growth.<sup>4</sup> In Australia, the burden of business regulation is compounded by the fact that we have nine regulatory regimes in operation. In global terms, Australia is a geographically remote, medium-sized economy and it is critical that our regulatory system operates in a way that strengthens our position in the world, rather than creates another burden to be overcome.



'As a relatively small scale, trade dependent economy, lacking proximity to major markets, we need to do whatever we can to drive any unnecessary costs out of our economy. The fact that many other countries are now pursuing reform themselves only adds to this need.'

Gary Banks, Chairman of the Productivity Commission and of the Taskforce on Reducing Regulatory Burdens on Business, 'Reducing the Regulatory Burden: The Way Forward', public lecture to the Monash Centre for Regulatory Studies, Melbourne, 17 May 2006.

As the BCA highlighted in its 2006 research paper, *Reshaping Australia's Federation: A New Contract for Federal–State Relations*, with the economy operating at full capacity, the costs of dysfunctional federal–state relations have become more significant and far-reaching.<sup>5</sup> The costs to business of inefficiencies in federal–state relations are difficult to ascertain, but all estimates number in the billions of dollars. Businesses are the unwilling recipients of the additional red tape created as a result.



There have been a number of studies identifying areas of overlap and duplication in business regulation. For example, in a submission to the Taskforce on Reducing Regulatory Burdens on Business (the Banks Taskforce) in December 2005, the BCA identified 35 examples of state/state overlap and duplication, and 18 examples of Commonwealth/state overlap and duplication.<sup>6</sup> In its final report, the taskforce identified around 100 specific reforms, many of which arose directly from overlaps and inconsistencies between governments. Similarly, the BCA's 2007 report, *Tax Nation: Business Taxes and the Federal-State Divide*, identified 28 different state and territory taxes that were levied by more than one government under differing regimes.<sup>7</sup> Governments have also come up with their own regulatory reform lists, such as the 10 regulatory 'hotspots' developed by COAG.

None of these lists are exhaustive, and many overlap. But they are all illustrative of one thing: the problems are clear, but governments have not been willing to put their electoral interests aside to make genuine headway in addressing them. While some items from these lists have been progressed or resolved, most appear to have been put in the political 'too-hard basket'.

A major concern to business is the lack of transparency around these reform processes, which makes it almost impossible to assess what progress is being made. A good starting point would be completing work on the ten 'hotspots', which have been priorities since 2006. These are:

- rail safety regulation;
- occupational health and safety;
- national trade measurement;
- chemicals and plastics;
- development assessment arrangements;
- building regulation;
- environmental assessment and approvals processes;
- business name, Australian Business Number and related business registration processes;
- personal property securities; and
- product safety.

As Australian businesses respond to the challenges of global competition by growing and expanding their operations across state and national borders, they are doing so despite the drag of an outdated and inefficient national regulatory system (see Exhibit 1).

## EXHIBIT 1

### OUR FRAGMENTED ECONOMY: JUST WHO IS AFFECTED?

Anyone can think of companies that operate in every state and territory. Our largest retailers, banks, airlines and telecommunications companies operate around the nation. The 92 large Australian businesses that participated in the BCA's 2007 report *Tax Nation: Business Taxes and the Federal–State Divide*, for example, operated in an average of six states and territories.

But the exposure to multi-jurisdictional regulation is much broader than just Australia's largest companies. It goes to a small family business in a regional town alongside a state border, or a single-person operation selling services over the internet to customers in other states.

As the economy grows and markets consolidate, it is becoming increasingly common for businesses to operate across state borders and, even more so, to operate nationally.

According to the Australian Bureau of Statistics, at the end of the 2007 financial year **more than 31,700 Australian businesses** were operating in more than one state or territory. Of these, **more than 4,300 businesses were operating in every state and territory**, meaning they deal with nine different regulatory regimes.

By far and away, the highest rate of growth in the Australian business count is in businesses operating nationally. **Since 2003, the number of businesses operating in every state and territory has increased by over 70 per cent**, up from just over 2,500.

For every additional jurisdiction an expanding business has to deal with, the regulatory burden grows dramatically.

All of which begs the question: is Australia's regulatory environment keeping up with the changing face of Australian business?

Source: ABS Catalogue No. 8165.0, *Counts of Australian Businesses*, December 2007.



Unnecessarily complex business regulation means that businesses continue to face needless delays, increased compliance costs, more expensive inputs, and difficulties in transferring qualified staff to the places they are most needed.

These differences create barriers to growth by making businesses more expensive to run, less able to expand, less inclined to develop new products and markets, less able to compete effectively and, ultimately, less profitable. In turn, Australians face higher prices, fewer choices and more restricted employment opportunities than might otherwise be the case. And the increased cost of administration for governments raises the tax burden for everyone.<sup>9</sup>

When all of this is added together, it is clear that our current regulatory systems help prevent the Australian economy from operating at its potential. They represent an antiquated and anachronistic framework that stands in direct contrast to Australia's moves to reduce international regulatory barriers through the pursuit of its free trade agenda and other international economic agreements.

As we search for new ways to prolong economic growth and enhance Australia's social prosperity, business and the wider community have increasing expectations of governments to deliver tangible outcomes.



'The two biggest threats to economic reform in Australia are an aversion to the logic of markets and stubborn parochialism. Neither of these threats is new ... These enduring threats to economic reform pose substantial risks to the cost structure of Australian producers facing increasingly intense competition from the dynamic emerging economies of China and India. And unless tackled courageously, they will consign us to a permanent productivity gap with the top half of the OECD – and a reversal of the recent narrowing of the GDP per capita gap.'

Ken Henry, Secretary to the Treasury, 'Time to "Get Real" on National Productivity' in *Productive Reform in a Federal System*, Roundtable Proceedings, Productivity Commission, October 2005.

While history may provide the reason for the overlap and duplication that currently exists, it should no longer be used as the excuse for inaction.

**EXHIBIT 2****REGULATORY OVERLAPS IN AUSTRALIA: JUST HOW MANY ARE THERE?**

With nine regulatory regimes in operation, keeping track of changing business regulations is difficult. In December 2005, for example, the BCA compiled the following list of areas of overlapping regulations after extensive discussions with member companies. Some of these overlaps may have been minimised or removed since that time. In certain cases, like payroll tax, some states are working to harmonise their regulatory systems. Anecdotal evidence suggests that many of these overlaps persist.

**State/State Overlap**

- Stamp duty
- Payroll tax (and workers' compensation)
- Payroll (and fringe benefits tax)
- Workers' compensation
- Employment related regulations
- Statutory trusts
- Trade promotions legislation
- Third party trading stamps legislation
- Consumer protection regulation
- Debt collection
- Unclaimed monies
- Finance broker regulation
- Conveyancing laws
- Energy market inconsistencies
- Essential Services Acts
- Approval standards for fire safety design in new developments
- State plant health restrictions in Victoria
- State gas safety regulations
- Installation of metal roofing
- Road transport
- Telemarketing
- 'Door to door' sales legislation
- Shop trading hours
- Retail leasing
- Retailing products laws
- Transfer of title
- Trust accounts

- Garnishee orders
- Powers of attorney/guardianship orders
- Deceased estates
- Maritime
- Names and places regulation in Queensland
- Business Names Act

**Commonwealth/State Overlap**

- Occupational health and safety
- Privacy Act and workplace surveillance
- Food laws and regulation
- Trade Practices Act
- Terrorism
- Electronic communications
- Computer generated documents for evidence
- Tax and insurance
- Environmental laws
- Environmental approvals processes
- Trust laws
- Greenhouse trigger
- Contaminated sites legislation
- Energy efficiency regulation
- Liquor legislation
- Tobacco legislation
- Safety and performance standards for electricity infrastructure
- Greenhouse gas and emissions reporting

Source: BCA submission to the Banks Taskforce review (2005). This list was compiled from a survey of BCA Members and their particular interests. It is indicative only and not an exhaustive list of regulatory overlaps in Australia, nor a 'wish list' of immediate priorities for reform.



### Why we should move to a seamless economy

Regulation has an essential role to play in achieving social objectives and correcting market failures. However, where regulation with similar objectives is imposed inconsistently or in duplicate, it creates distortions and barriers to resource flows that result in a materially detrimental effect on the nation's economic performance.

Businesses should be able to go about their day-to-day operations without being diverted by unnecessary red tape and administration, most of which has no benefit to business, consumers or the economy as a whole.

The BCA is calling on all governments to consign these anomalies to history and create a **seamless economy** – one where business can operate within a single set of rules anywhere within Australia (see Exhibit 3).

A seamless economy should not be seen as a back-door way to eliminating the states or transferring all substantive power to the Commonwealth. There is a range of alternative models for ensuring shared responsibility that could be accommodated within a seamless economy.<sup>9</sup> The states in particular have a responsibility to harmonise business regulation in areas that are clearly state responsibilities. Australia has already achieved this principle in some areas, for example, with corporations law. It is now time to target other major areas of business regulation, including occupational health and safety, product standards, trade and professional licensing, securities, and environmental laws.



### A seamless economy is indispensable to Australia's economic modernisation

It is clear that many elements of the economy have moved beyond the local or regional spheres and have taken on a stronger national character. For example, transport infrastructure, water and utilities were once seen as state responsibilities, but it is clear that these matters are now of national importance. However, many of these issues continue to be managed, often inefficiently, by different governments that are yet to demonstrate the capacity to cooperate effectively.

#### The risk to our economic competitiveness

Australia's domestic market is too small, too dispersed and too far removed from other major markets to carry the additional weight that differing regulatory regimes engender.

There is a wealth of research, both internationally and domestically, to show that unnecessary barriers put our ability to maintain prosperity at risk. And as barriers to international trade and investment fall, the relative impact of internal trade barriers increases.

With such a small population, Australia's domestic market is considerably smaller than those in Germany, France, and the United Kingdom. However, in many areas of regulation, Australia's 20 million residents face greater duplication and overlap than Europe's 457 million residents.<sup>10</sup>

Some may argue that removing Australia's internal barriers, developed over the course of a century, is simply too difficult. So how, in the space of just 50 years, have 25 sovereign nations, from vastly differing linguistic, cultural, economic and political backgrounds, combined to create the European Union?

**EXHIBIT 3****WHAT IS A SEAMLESS ECONOMY? THE PERSPECTIVE OF BUSINESS**

In practice, a seamless economy is one where the regulatory requirements placed on a business are not determined by geographical location but are consistent across the country.

It means that the location of a business, or its presence in multiple locations, should not affect the way it is regulated.

For example, businesses would be able to:

- Transfer willing employees to areas where they are needed, without worrying about whether their qualifications are transferable or their children will be disadvantaged because of different school regimes.
- Provide a uniform level of occupational health and safety, workers' compensation, and equal opportunity for their employees, regardless of where they are located.
- Manufacture goods to meet one uniform set of product safety and labelling standards.
- Seek development approval for a major infrastructure project once, instead of at the federal, state and, often, local levels.
- Conduct the same business in different states without having to reapply for the same licences.
- Maintain a single database for their accounting and tax information, instead of having to reconstruct different accounts to include in different state calculations.

A seamless economy creates an efficient operating environment by removing unnecessary regulatory barriers to growth, thereby allowing Australian businesses to maximise their productivity and output.

It is about encouraging states to compete beneficially and encouraging all levels of government to consider the policies that benefit the nation, not short-term electoral cycles.

A seamless economy is a critical factor in lifting the long-term productive capacity of the economy.

It is not about:

- abolishing the states;
- abolishing all regulation;
- undermining the capacity of states to raise revenue; or
- moving responsibility for all regulation to the federal government.

A seamless economy does not require that every aspect of the regulation of trade and commerce be identical across Australia. There is no reason, for example, why states should not impose different rates of payroll tax and stamp duty while at the same time harmonising the base on which those taxes are calculated, and recent efforts by some states in that direction are to be applauded.

A seamless economy is not dependent on a complete reworking of intergovernmental financial arrangements. The division of finances is fundamentally important to better long-term relations between the federal government and the states, providing better national planning and accountability for critical national infrastructure, and the provision of critical national services. However, failure to address the regulatory issues that create barriers to a seamless economy often stem from a lack of political will, rather than complications over financial resources.

## EXHIBIT 3

### WHAT IS A SEAMLESS ECONOMY? THE PERSPECTIVE OF BUSINESS *Continued*

From the perspective of business, a seamless economy means there would be one set of rules, dramatically reducing the regulatory burden and freeing up time and resources to devote to more productive tasks. Some examples of the practical improvements a seamless economy could make are as follows.

#### **Example 1: Business Taxation**

Nowhere is the level of regulatory overlap and duplication clearer than in business taxation. The BCA 2007 report, *Tax Nation: Business Taxes and the Federal–State Divide*, detailed the taxes paid by 92 major Australian businesses, which operated across an average of six states and territories.

Alarming enough was that the report found there were 56 separate business taxes levied in Australia, including 21 federal, 33 state and territory and 2 local taxes.

But the situation is far worse when considering the myriad differences in the way those taxes are applied by different states and territories. These differences mean that businesses must calculate their tax obligations separately for each state, factoring in different rules and requirements. When taking account of these differences, the number of potential taxing points identified was 182.

Adding to the complexity, corporate income tax raised almost 66 per cent of the total tax directly paid by business. This meant that the remaining 34 per cent was raised through an array of 50 other taxes, including 28 state and local taxes that raised just 2.5 per cent of the total – again without counting the number of times those taxes were levied under different rules by different states.

This immediately raises questions about the efficiency of many of these taxes.

A seamless economy would remove interstate differences between taxes and definitions, while allowing states to compete on tax rates and thresholds. Removing these differences would dramatically reduce administration and compliance costs as well as reducing the risk of error in compliance.

#### **Example 2: Occupational Health and Safety**

Differing occupational health and safety legislation continues to be a particular drain on business resources. Despite being one of the ten COAG ‘hotspots’, little apparent progress has been made towards harmonising these regimes. In a seamless economy, businesses should be able to comply with one set of laws applying equal protection standards to all employees around Australia.

The Productivity Commission has previously highlighted some business estimates of the direct costs of multiple workers’ compensation and OH&S frameworks around Australia.

- Optus estimated that, if it received a single national self-insurance licence, it would expect savings of up to \$2 million per annum of its \$6 million annual workers’ compensation costs. It estimated that the cost of complying with multiple workers’ compensation and OH&S arrangements adds about 5 to 10 per cent to the cost of workers’ compensation premiums.
- CSR estimated the cost of maintaining and renewing five self-insurance licences at over \$700,000 per annum, compared to \$200,000 for a single licence.

- Insurance Australia Group estimated that the existence of multiple schemes added \$10.1 million to the cost of setting up a single national IT platform. In total, it estimated that having to comply with multiple jurisdictions adds about \$1.7 million to IT costs annually. Further, it estimated that a national scheme could offer overall operating cost savings to the group of \$1.2 million per annum and reduce actuarial costs by \$400,000 per annum.
- BHP Billiton estimated that it costs in the vicinity of \$50,000 to purchase a system to manage and supply information for each state and territory OH&S regime.
- Skilled Engineering estimated that the annual cost saving from operating under a single set of national OH&S and workers' compensation rules would be in excess of \$2.5 million, or some 15 per cent of the company's annual costs of OH&S and workers' compensation.

Source: Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks*, March 2004; Productivity Commission, *Reform of Building Regulation*, November 2004.

Recent international research highlights the effectiveness of single markets in allowing economies to compete effectively in a dynamic global environment. Studies conducted in federations like the European Union and Canada highlight the importance of considering internal markets within a global context, and the importance of having well-integrated internal markets to support external trade and investment policies. Recent research also suggests the lack of a seamless economy can stifle innovation policies and practices.<sup>11</sup>

This issue has been recognised for some time now. For decades, many of our business and public sector leaders have been calling for a 'single market' for Australia. But we have not seen the political will or effort to make this objective a reality. A small market such as Australia, with a single official language, single currency, and relatively short economic history should be able to do better.

## EXHIBIT 4

### NOT SOLELY AN AUSTRALIAN PROBLEM, BUT A SIGNIFICANT PROBLEM FOR AUSTRALIA

The debate over the effectiveness of overlapping and inconsistent regulation is also underway in other federations. Businesses in other federal systems, such as the United States and Canada, also find that regulatory overlap and duplication is raising costs and placing them at a competitive disadvantage internationally. While the specific issues may differ according to each federal system, there are links between overlapping regulation and economic performance.

The fact that some of the world's global cities like New York are raising similar concerns should be particularly telling for Australia. If major international economic hubs are considering these issues, can a country like Australia, with its inherent disadvantages, such as its distance from world markets and small, dispersed population, afford to ignore them?

#### United States

A report commissioned by New York Mayor Michael Bloomberg and United States Senator Charles Schumer on the competitiveness of New York's financial services industry highlighted concerns among governments and business leaders that the city was losing its competitive advantage to increasingly strengthening European markets, notably London. In particular, the report highlighted that a significant factor in this decline was the patchwork of regulation in the United States compared to the significantly simpler regime in the United Kingdom.

According to the report, the 'increasingly heavy regulatory burden and a complex, cumbersome regulatory structure with overlaps at the state and national levels [is] causing an increasing number of businesses to conduct more and more transactions outside the country.'

A survey of CEOs conducted as part of the report showed that the attractiveness of the regulatory environment was considered 'the single most important issue determining the international competitiveness of a financial market.' Further, they increasingly perceived the United Kingdom's single, principles-based financial sector regulator, the Financial Services Authority (FSA), as superior to what they saw as 'a less responsive, complex US system of multiple holding company and industry segment regulators at the federal and state levels.'

#### Canada

The Canadian Conference Board has issued a number of reports examining the effects of 'internal trade barriers' imposed by Canadian provincial governments on business performance. Its 2006 report, *Death by a Thousand Paper Cuts: The Effect of Barriers to Competition on Canadian Productivity*, found that a daunting number of domestic non-tariff barriers (NTBs) remain in place:

'The list of NTBs in Canada is daunting. Given the federal system of government, many of these barriers are internal rather than international, and their nature is often opaque. Protection of local interests and the complex negotiations required to lower internal NTBs make achieving an open economic union within Canada a serious challenge.'

In addition to compliance costs, businesses highlighted the detrimental impact of domestic regulatory barriers on innovative capacity and size of operations. Respondents identified a number of strategies they have developed to deal with these barriers, including 'abandoning certain markets altogether'.

Sources: Information in this exhibit related to the United States is sourced from a report titled *Sustaining New York's and the US' Global Financial Services Leadership* (p. 17). Information in this exhibit related to Canada is derived from a report published in 2006 by the Conference Board of Canada titled *Death by a Thousand Paper Cuts*, (p. 47). The non-tariff barriers listed in the Canadian report include quotas, technical standards, procurement restrictions, licensing and certification requirements, and restrictions on foreign ownership. It should be noted that many, but not all, of these restrictions apply across Australia's state and territory jurisdictions.

## 2. A SEAMLESS ECONOMY: FUNDAMENTAL TO PROSPERITY

Regulation affects everything we do, everything we make, and everything we buy. As the BCA noted in its 2005 *Business Regulation Action Plan*:

‘Regulation affects every aspect of our daily lives. The homes we live in, the products we use, the entertainment we enjoy and the work we do are all governed by regulation. Similarly, every aspect of running a business is controlled by regulation. Whether it is a small business or a large corporation, regulations govern how people work, the goods they make, the services they provide and the ways in which those goods and services can be marketed and sold. Regulation is pervasive, yet it is also vital to the running of complex economies and societies and much regulation has laudable policy objectives. But even where regulation has been put in place for apparently sound reasons, there is no guarantee that it is good regulation. Nor should we assume that regulation is the best way to achieve our goals, nor the best response to every problem or potential problem we see. Regulation is in fact a high-cost option. Every regulation imposes a cost: on the government administering it; on those regulated; and on the economy as a whole.’<sup>12</sup>

In Australia the costs of regulation are compounded by the duplication and overlap that stems from allowing state-based regulation to persist in a manner that is no longer consistent with the needs of a modern economy and society.

In a capacity-constrained economy, governments need to adopt a light touch (see Exhibit 5). These tenets of good governance need to be taken seriously by all levels of government when it comes to business regulation.



## EXHIBIT 5 GOOD GOVERNANCE IN A CAPACITY-CONSTRAINED ECONOMY

In a capacity-constrained economy, the basic tenets of good government become even more important, namely:

- Using resources efficiently and effectively and only where necessary.
- Undertaking activities in as streamlined a manner as possible to minimise the burden of administration and compliance.
- Being accountable for outcomes.
- Working effectively with other governments to avoid duplication and policy inconsistencies.

Source: *Budgeting for Prosperity*, BCA submission to the 2008–09 Budget, February 2008.

Over 100 years ago, when Australia was a group of colonies with far less interstate commerce, such differences were understandable, if undesirable. The reality is that today's businesses operate in an increasingly global marketplace, whether through increased competition from imports or through expanding to take advantage of opportunities overseas.

While our states are important domestically in terms of service delivery and regional administration, in the global business environment, our state borders are largely an irrelevance. Within Australia, businesses cannot afford red tape that increases production costs and limits their ability to compete.

Supporters of the status quo argue that Australia's federal system confers a number of important benefits, including that it creates a system of checks and balances, provides a competitive environment for policy innovation to occur and allows governments to more closely match policy to local preferences. Although we need to recognise the benefits of jurisdictional competition, we also need to take a sensible view about the costs of such a system and whether governments are delivering policy outcomes that are in the national interest.

In fact, far from providing the policy innovation that competitive federalism is said to engender, the duplication and overlap of inter-jurisdictional business regulation serves only to restrict business growth (see Exhibit 6).

**EXHIBIT 6****MAKING FEDERALISM WORK: WHAT IS SO COMPETITIVE ABOUT INCONSISTENT BUSINESS REGULATION?**

The sheer volume of overlap and duplication demonstrates that competitive federalism is not working in the context of business regulation.

The usual arguments in support of jurisdictional competition – the importance of the checks and balances of our federal system, the benefits of policy innovation from inter-jurisdictional competition and the benefits of local decision making reflecting local preferences – do not have to be compromised by a national approach to business regulation.

Firstly, preserving the checks and balances in our system while pursuing better business regulation are not mutually exclusive outcomes; regulatory harmonisation does not need to be at the expense of our federal system's power balance. Federal, state and territory governments have demonstrated this in the past (albeit all too rarely) by willingly collaborating in the interest of the greater good at no cost to their independence, such as with changes to the corporations law.

Secondly, competition across Australian governments is arguably a diminishing source of policy innovation. As information on the policy experience in other parts of the world has become more accessible, governments at all levels in Australia are increasingly able to set policy in relation to global benchmarks, not merely the policies of their fellow Australian governments. This global referencing is a practice to be encouraged, for as business faces an environment that is more global, international standards, not the standards of other Australian states, should increasingly provide the appropriate reference points for best practice business regulation.

A trend towards greater global convergence is also evident at the national level of government in many areas of business regulation, including, for example, free trade agreements and tax treaties.<sup>(a)</sup>

Some commentators make a point of emphasising the benefits of policy competition. More needs to be done, however, to demonstrate and quantify these benefits and to consider them against the direct and indirect costs of jurisdictional competition which, by comparison, tend to be widely recognised and accepted.

## EXHIBIT 6

### MAKING FEDERALISM WORK: WHAT IS SO COMPETITIVE ABOUT INCONSISTENT BUSINESS REGULATION? *Continued*

Finally, arguments about the need to reflect local preferences can be accommodated, for example, in the application of generic business laws. The Productivity Commission argues that: 'a nationally-based, appropriately resourced and focused, policy regime can still provide for tailored enforcement and the capacity to respond quickly to local issues.'<sup>(b)</sup> Preference matching is difficult to achieve in practice as, even if an individual might prefer a set of regulations that exists elsewhere, it is usually either very difficult, costly or simply not worthwhile for consumers to uproot and move to another jurisdiction. Further, as the Productivity Commission said recently in relation to consumer protection regulation in Australia: 'it is hard to see how the interests of most consumers in most situations are assisted by multiple, and somewhat divergent, policy regimes. Indeed, a consequence of the current division of responsibilities is that the protections and redress options for consumers confronting the same problem can depend on where they live.'<sup>(c)</sup>

There are a number of other disadvantages inherent in our regulatory system for which there are no obvious offsetting benefits. For example:

- A greater number of jurisdictions means a greater chance of 'capture' by special interests potentially leading to regulatory concessions and distortions in each jurisdiction.
- It can also lead to what is commonly referred to as a 'race to the bottom' where competition between jurisdictions leads to a convergence towards poor policy.
- It means that economies of scale and access to the very best expertise, which would both occur under a more harmonious or centralised system, do not form part of the regulation making process, thus affecting both administration cost and regulation quality.<sup>(d)</sup>

Sources: (a) For instance, the Conference Board of Canada has said that important gains in economic efficiency would arise from the alignment of Canada's regulatory frameworks with the United States (see *Death by a Thousand Paper Cuts*, p. 48); (b) Productivity Commission, *Review of Australia's Consumer Policy Framework*, Draft Report, Canberra, 2007, p. 51; (c) *ibid*, p. 17; (d) R. Hain, A. Layne-Farrar and P. Passell, 'Federalism and Regulation', *Regulation*, Winter 2003–04.

### 3. THE COSTS OF REGULATORY FRAGMENTATION

#### **An unnecessary burden on Australians**

Australia's future prosperity is inextricably linked to its long-term productivity and the performance of its businesses in global markets. The increasingly competitive nature of those global markets demands that our businesses must operate to the best of their ability to be successful. It is only through sustained productivity improvement and international success that we can raise standards of living through higher shareholder returns and higher real wages over time.

Regulation has an essential role to play in correcting failures in markets and achieving broader social objectives. However, where regulation unnecessarily creates distortions and barriers to resource flows or affects business decision making, it results in a materially detrimental effect on the nation's economic performance. This occurs, in particular, where regulation with a similar purpose is imposed inconsistently or in duplicate across multiple jurisdictions.

These costs spread throughout the economy and affect us all. For consumers they lead to higher prices and less product choice. For employees, they lead to any number of substandard outcomes such as less employment, lower productivity and lower real wages. For shareholders, including retirees, they lead to lower returns on investment and lower funds for retirement.

Three main types of costs are typically identified with overlapping and inefficient regulation:

- Government administration costs borne by taxpayers.
- Compliance costs borne by businesses and consumers.
- Economic costs borne by all.

These costs are outlined in detail in this section.



The total cost of overlapping and inconsistent regulation is notoriously difficult to quantify (as are attempts to quantify the regulatory burden in general).<sup>13</sup> Two recent reports that attempt to estimate this cost acknowledge this difficulty but make strong conclusions that the costs are a significant impost on the national economy:

- The Productivity Commission’s assessment of the potential gains from the competition and regulation stream of the National Reform Agenda, which included reduction in overlapping and inconsistent regulation, calculated a benefit from the reduction in regulatory compliance costs of \$8 billion per annum or 0.8 per cent of GDP.<sup>14</sup> It also said that those potential savings do not include efficiency gains resulting from regulatory reform and that these alone could be more than the direct savings from reduced compliance costs. If this were the case then total economic benefits would be more than \$16 billion, or 1.6 per cent of GDP.

- The 2006 Taskforce on Reducing Regulatory Burdens on Business said that estimating the costs of unnecessary regulation was difficult, but could be in the order of \$3 billion per year, at least some of which is purely attributable to overlapping and duplicate regulation across jurisdictions. The taskforce concluded there was ‘no doubt ... there are considerable national benefits to be had from reducing unnecessary regulatory burdens on business’.<sup>15</sup>

#### **Administration costs borne by taxpayers**

These are the costs associated with unnecessary government administration (mostly from hiring additional staff), including the costs of designing, implementing and enforcing regulation in areas that duplicate or overlap with other governments. Higher taxes are ultimately required to pay for these costs<sup>16</sup> (see Exhibit 7).

## **EXHIBIT 7**

### **HOW MANY REGULATORS DOES AUSTRALIA NEED?**

In the Productivity Commission’s assessment of the economic benefits of the national reform agenda, it identified the existence of:

- Sixty Commonwealth Government regulators and national standard-setting bodies.
- Forty ministerial councils.
- Up to 1300 regulators across the three levels of government taking into account state and territory organisations and some 700 local governments.

Many organisations at the state and territory level perform the same function. The cost of running all of these organisations is a major impost on taxpayers. There is clearly an opportunity to rationalise the number of regulatory organisations in Australia.

Source: Productivity Commission, *Potential Benefits of the National Reform Agenda*, report to the Council of Australian Governments, Canberra, 2006, p. 134.

### Compliance costs borne by businesses and consumers

These are direct costs to business of complying with overlapping regulation and include the costs of:

- The staff and management time spent ensuring the company complies with, and regularly monitors and updates, its regulatory obligations. This includes additional on-costs such as travel, attendance at industry or consultation forums, etc.
- Maintaining and developing up-to-date regulatory information and reporting systems.
- Regular reporting to government regulators (often at different times and in different formats).
- Obtaining professional compliance advice where necessary (legal, financial, strategic, etc.).
- Implementation of company-wide compliance programs and education of the broader workforce about the company's regulatory obligations.

- In some cases, the cost of multiple licence fees and inspection and audit fees.

These costs grow directly in line with the stock of regulation, the extent to which differences occur across jurisdictions and the frequency of changes to regulation (see Exhibit 8).

The 'regulatory risk' faced by companies (i.e. the risk of non-compliance leading to government-imposed penalties and sanctions, but also the risk to commercial performance that can follow from a sudden change in regulation) also rises with the number of regulatory controls on business. And while these costs affect the competitiveness of all businesses, the costs are particularly high for small to medium sized businesses for which they constitute a greater proportion of total costs.

Consumers also bear the costs where a significant amount of time and effort is required to understand product legislation, including the cost of obtaining professional advice.

## EXHIBIT 8 CONFUSION AND FRUSTRATION

Confusion and frustration with our outdated system of business regulation is no less irritating for Australian businesses and consumers.

An OECD report found that Australia fared poorly in the area of 'the quality of contacts with government authorities to obtain permissions or decisions' in comparison to 10 other countries. A significant reason for this was that an overwhelming number of businesses found it is 'not clear who is responsible for the decisions' and that the process is seen as 'inflexible and bureaucratic'.

Source: OECD, *Businesses' Views on Red Tape*, 2001, p. 120. Almost 1,200 small and medium-sized Australian businesses participated in the survey.

### **Economic costs borne by all**

These costs are the opportunity costs of foregone business activity. They include opportunities foregone from project delays due to overlapping regulatory processes (particularly between state and Commonwealth processes) and disincentives to invest, innovate or expand across jurisdictions.

They also include opportunity costs for consumers. For instance, where consumer protection legislation is complex or difficult to understand, some customers might forego a purchase on the grounds that they do not feel adequately protected or that it is simply not worth the time and effort.

Access Economics has referred to economic costs as: 'typically the largest costs and most well-hidden costs of regulation. Moreover, they are often incurred by policymakers with the best intention, but with less than perfect information, and less than adequate assessment, so that regulators end up enforcing less than optimal outcomes.'<sup>17</sup>

Some of the more obvious economic costs are considered below.

#### **Effects on business decision making**

Australian businesses have, over recent years, made a large number of submissions to various reviews conducted by government on reducing the regulatory burden. Some of the many examples identified by BCA Members where regulation has affected decision making to the detriment of economic performance – and ultimately, to national prosperity – are listed as follows:

- Where different state rules on resource exploration can distort and delay decisions to explore.

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- Where different retailing laws affect the way that a national business designs its retail outlets in each state.

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- Where delays associated with the application for multiple permits and environmental approvals processes hold up business investment and/or service provision.

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- Where requirements for multiple audits of the same infrastructure project by local, state and federal bodies, in some cases requesting the same information, can delay a project.

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- Where slow responses by government bureaucracies to proposals by industry to improve or reduce business regulation defers economic benefits and discourages business involvement in regulatory reform.

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- Where different planning legislation and differing local government legislation create a wide range of varying rules and requirements that delay or deter economic development and job creation.

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#### **Harmful to innovation and knowledge diffusion**

The diffusion of technologies and new ideas, key drivers of growth in an innovative economy, has been shown to be limited by regulatory barriers.

Overly restrictive product market regulation limits the flow of productivity gains across economies, even in countries that have less restrictive regimes. The OECD found that countries can benefit by aligning their regulatory regimes with those of less restrictive countries.<sup>18</sup>

A recent IMF working paper attributed much of Australia's recent productivity growth to greater product and labour market flexibility since the 1990s. This deregulation enabled the diffusion of technology through the economy at a scale greater than that experienced in other OECD countries.<sup>19</sup> This finding gives weight to the BCA's case that further reform through the removal of regulatory inconsistency and overlap will lead to even greater gains in the future.

In two recent reports on innovation by the BCA, businesses have argued that Australian companies' efforts to successfully meet higher performance standards are not advanced by additions to the existing stock of prescriptive and often dysfunctional regulation. Firms have expressed increasing concern that the overall regulatory environment in Australia is working against entrepreneurial risk taking and business transformation.<sup>20</sup>

**A seamless economy would further remove regulatory barriers to innovation and knowledge diffusion**

#### **Holding back our best performers**

As identified above, it is Australia's strongest performing sectors and companies, the ones we need to lead advances in economic production, that are particularly affected by overlapping regulation. Particularly affected are:

- Successful home-grown companies that are growing and expanding interstate.
- Foreign companies seeking to invest in Australia across all states and territories.

Many businesses are growing and extending their reach throughout Australia. As shown in Exhibit 1, the number of businesses operating in every state and territory has risen by over 70 per cent since 2003.

As these businesses expand they are doing new things in different jurisdictions, which means they are coming up against new and additional regulatory constraints. They cannot automatically apply the systems, knowledge and compliance programs derived from working in their respective home states to other states.

These unnecessary regulatory imposts add costs and make it more difficult for companies to compete in international markets against companies from countries that have comparatively less onerous regulatory systems.

Increasing national prosperity at a time of intensifying global competition depends on the success of these expanding businesses. Sometimes the added burden will be merely a nuisance. At other times it will require substantial business investment in compliance. Of greatest concern is where the impost is sufficiently large to make businesses think twice and forego or defer expansion, resulting in an 'opportunity cost' of economic activity foregone.

Through greater will and effort, governments can cooperatively establish a seamless regulatory environment that both delivers social objectives and allows Australia's businesses – and, critically, its best-performing businesses – to reach their potential and compete internationally.

## 4. REGULATION REFORM: PROGRESS TO DATE

Throughout 2005 and 2006 the Business Council of Australia published a series of detailed reform proposals covering a range of policy areas critical to creating and sustaining economic prosperity. These included extensive research in areas such as infrastructure, innovation, workplace relations and taxation.

This work revealed one key factor underlying the issues in all policy areas: the dysfunctional relationship between state and federal governments and the costs that this relationship imposes on the Australian economy. Many of these costs are regulatory, and stem from our lack of a seamless economy.

In May 2005, the BCA published its *Business Regulation Action Plan*. The action plan found that the level of red tape in Australia was **growing three times as fast as the rate of economic growth**, and that much of Australia's business regulation was uncoordinated.

The report found that comprehensive red tape reform, including improving red tape making processes, was essential if the burden of business regulation was to be reduced. It outlined three steps to better business regulation:

### Step One: **Improve future regulation**

Improve the process of regulation making to ensure regulation is introduced only where it is necessary, where it minimises unintended consequences, and is introduced in the most cost-effective way.

### Step Two: **Improve existing regulation**

Review the stock of existing business regulation, testing each piece of regulation against criteria such as: Is the regulation still needed? How will the market respond if it is removed? Are there more cost-effective ways of achieving the policy outcome?

### Step Three: **Rationalise Commonwealth-state regulation**

Where an area of regulation is a shared responsibility between jurisdictions, particularly between the Commonwealth and the states, there should be a move towards a single, consistent national regime. We have achieved this already with corporations law and with competition law; it is now time to target other major areas of regulation such as workplace relations law, occupational health and safety law, product standards, trade and professional licensing, securities, and environmental laws.

The BCA *Business Regulation Action Plan* examined the first step in detail (options for improving future regulation), which saw the launch of a number of key reviews of the way regulations are developed and implemented in Australia.

Overlapping and duplicated business regulation was also identified as a major impediment to economic prosperity in the BCA paper *Reshaping Australia's Federation*. This paper raised the possibility, where states cannot or will not agree on harmonisation of key legislation, of the development of so-called 'national business schemes' that allow businesses to 'opt in' to national (Commonwealth) legislation. Those corporations that elect to join the national scheme would not be subject to state-based legislation in the areas covered by the national scheme.

#### National Business Schemes

If states cannot agree on harmonisation of the ten hotspots by the end of 2008, the BCA reiterates its call for the federal government to step in and create national business schemes that allow businesses to 'opt in' to national (Commonwealth) legislation by the end of 2009.

National business schemes should be developed for any areas that have significant effects on business but where current COAG processes have failed to deliver timely and effective harmonisation.

The advantage of national business schemes is that they would allow nationally operating businesses to be covered by just one set of regulatory requirements across Australia, reducing business operating costs and improving the efficiency of the economy.

They are also consistent with competitive federalism in a way that current overlap and duplication is not, as they increase the choice businesses have about where and how they are regulated, putting competitive pressure on state regulatory schemes. National business schemes could be introduced by the Commonwealth either in agreement with the states or unilaterally.

As the BCA's *Business Regulation Action Plan* highlighted, the key to creating a seamless economy that supports business growth and competitiveness is to improve existing business regulation and rationalise Commonwealth–state regulation. With a newly elected federal government and no state elections for the next twelve months,<sup>21</sup> this is an ideal time to achieve progress in this fundamental area of reform.

## EXHIBIT 9

### HOTSPOTS: A REPORT CARD

There has been a lot of talk over the years about the need to reduce the overlap and duplication that persists in Australia's business regulatory environment.

Since the BCA published its *Business Regulation Action Plan* in 2005, many priorities for reform have been identified, but as the history of COAG's ten regulatory 'hotspots' shows, even those reforms that receive broad government support more often than not enter a state of 'permanent commitment.' Assessment of genuine progress is made more difficult by a lack of transparency in reporting.

#### COAG February 2006

Identification of priority cross-jurisdictional hotspot areas where 'overlapping and inconsistent regulation is impeding economic activity'.

##### Commitments

Hotspots:

- Occupational health and safety
- Rail safety
- National trade measurement
- Chemicals and plastics
- Development assessment
- Building regulation

#### COAG July 2006

The hotspots are *recommitted* to and added to. Officials are requested to develop specific reform proposals by the end of 2006.

##### Commitments

Hotspots:

- Occupational health and safety
- Rail safety
- National trade measurement
- Chemicals and plastics
- Development assessment
- Building regulation
- Environmental assessment and approvals
- Business name registration
- Personal property securities
- Product safety

**BCA assessment against commitments made by COAG in February 2006**

**X NOTHING COMPLETED**

**BCA assessment against commitments made by COAG in February and July 2006**

**X NOTHING COMPLETED**

\* The BCA welcomes commitments to reform as a necessary first step in improving regulation. But there remains a persistent lack of information for both business and other stakeholders about the performance of governments in terms of delivery against reform commitments, without which the development of a seamless economy remains elusive. The lack of transparency makes it difficult to assess genuine progress. This exhibit reflects an assessment of progress based on the perspective of business as an end-user of the regulatory process.

**COAG April 2007**

COAG *commits* to developing a range of plans and proposals to address the hotspots, such as:

**Commitments**

- A plan for rail safety implementation to be completed by mid-2008.
- Proposals for a more harmonised system of environmental assessment.
- Developing a plan for national business registration by the end of 2007.
- The adoption of a uniform approach to product safety within 12 months.

Three hotspots (rail safety, trade measurement, and building regulation) referred to the COAG Reform Council for monitoring of progress and assessment.

Responsibility for trade measurement is referred to the Commonwealth, with a transition to be completed by 2010.

Subject to further consideration of funding, states agree to refer legislative power for personal property securities to the Commonwealth, with the establishment of a national system by 2009.

**BCA assessment against commitments made by COAG in February and July 2006**

**X NOTHING COMPLETED**

**COAG December 2007**

The cycle begins again with a new government.

**Commitments**

COAG commits to a broader reform agenda, including accelerating and delivering the agreed hotspots agenda. New regulation working group established to oversee progress.

The working group is given the task of identifying plans for a first tranche of new regulatory reform initiatives. Priority areas for further or new action could include occupational health and safety, payroll tax administration, building codes, trade and professional recognition, simplified accounting methods for the hospitality sector and Business Activity Statement simplification.

**BCA assessment against commitments made by COAG in February and July 2006**

**X NOTHING COMPLETED**

**February 2008: State of Play**

Does business have a seamless operating environment in the ten hotspot areas?

**OVERALL ASSESSMENT: X NOTHING COMPLETED**

## 5. FROM FRAGMENTED TO SEAMLESS

### **The logical next steps: improving and rationalising**

As our research has shown, improving regulation making processes is only the first step to creating a world-class regulatory environment. To go further and create a seamless economy requires us to both improve existing regulation and remove the duplication and overlap that exists between state and federal regimes.

All business regulation, whether at the local, state, or federal level, needs to be tested to ensure it still serves an appropriate purpose from the perspective of all those affected, not just a particular government's policy or political perspectives.

Priorities also need to be set, particularly targeting those regulations that restrict competition and business innovation or where there is a clear imbalance between the benefits of the regulation and the costs it imposes.

Inconsistent and overlapping regulation between jurisdictions is one of the greatest frustrations for business. At a time when Australia's best and most successful companies are looking to expand globally and compete with the best in the world, having to deal with duplicated, state-based regimes is, at best, an unnecessary frustration, and at worst, a significant cost.

The BCA has long advocated the principle that, where an area of regulation is a shared responsibility between jurisdictions, there should be a move towards a single, consistent national regime. This is particularly the case where responsibility is shared between the Commonwealth and the states or between different states.

The BCA welcomes the federal government's moves to set such a process in train, starting with the establishment of a new, cabinet-level ministry dedicated to deregulation, and the announcement of a coordinated national strategy for tackling the regulatory burden on business.<sup>22</sup> Such a reform program must be led at the federal level, and the BCA supports the federal government's proposal to offer financial incentives to compensate states for reforms where appropriate.<sup>23</sup>

However, a reform program should not be seen as a funding grab. For lasting gains to be made, it is imperative that the states genuinely participate in, and fully support and be accountable for, the reform process.

As the BCA outlined in its publication, *A Charter for New Federalism*, state and federal governments must institutionalise the arrangements for their ongoing engagement and cooperation, and improve the accountability of that engagement.<sup>24</sup>

The BCA has acknowledged in previous publications that many states have made worthwhile commitments on regulatory reform. Similarly, some states have agreed to move forward in the tax sphere, with New South Wales and Victoria in particular agreeing on a payroll tax harmonisation project.<sup>25</sup> However, more than two years on, many of the promised reforms remain incomplete.

With a new mindset and cultural change, backed by governments committing to a concrete reform program – rather than simply repeating the promises of the past – we have an unparalleled opportunity to make substantial headway towards achieving a seamless economy.

In particular, business welcomes the federal government's nomination of a five-year deadline for improvement. Harmonising regulations around the country will be no easy task, and a thorough reform program that makes lasting rather than cosmetic change will take several years to complete.

We now need the political will, effort and leadership to turn these intentions into reality.

### Recommendations

The year 2008 presents Australia with the greatest opportunity for regulatory reform in a decade.

With a new federal government indicating strong reform intentions and no state elections for twelve months, there is an important window of opportunity to make concrete progress and deliver on previous commitments before political constraints once again derail the reform agenda.

If COAG is to achieve the stated objectives of its newly formed Business Regulation and Competition Working Group and deliver significant improvements in Australia's competition, productivity and international competitiveness, then it must finally overcome past inertia and create a seamless economy for business regulation.

The BCA has previously identified that resolving issues of overlap and duplication between different governments must be tackled by clarifying roles and responsibilities, institutionalising cooperation, and resolving any funding requirements.

With this framework in mind, in order to achieve a seamless economy for business regulation in Australia, the BCA calls on COAG and through it, Australia's governments to:

**1. Commit to completing the implementation of a seamless economy for all business regulation by 2010.**

This means that by the end of 2010, Australia will have a business environment in which regulation is applied to all businesses consistently across Australia.

Governments must:

- Avoid any further reviews. Given its significant business support, governments should adopt the recommendations of the Taskforce on Reducing Regulatory Burdens on Business on avoiding overlap, duplication and inconsistency and use these as a basis for their forward work programs.
- Cease the use of 'opt out' clauses from regulatory reforms and demonstrate a willingness to cooperate and achieve constructive outcomes.

**2. As an immediate priority, complete harmonisation of the already identified ten COAG hotspots by the end of 2009, with remaining business regulations to be harmonised by 2010.**

This means governments must:

- Agree on clear reform targets in all areas and begin harmonisation by the end of 2008.
- Publish a work program, with clear deadlines, that outlines the schedule of harmonisation in all areas and identifies the departments and governments responsible for each task. Regular updates of progress against each task should be made publicly available.

States have already had more than two years to progress work on the ten COAG hotspots. If states cannot agree on harmonisation of the ten hotspots by the end of 2008, the BCA reiterates its call for the federal government to step in and create national business schemes that allow businesses to 'opt in' to national (Commonwealth) legislation by the end of 2009.<sup>26</sup>

### 3. Implement processes to maintain a seamless economy in the future.

This means that:

- Where legislation is required to give effect to reforms, the Prime Minister and premiers/chief ministers should commit to taking legislation to their respective parliaments in the form agreed to by COAG and within an agreed timeframe.
- Two years after completion, harmonised reforms should be referred for independent assessment. These reviews should examine the broad economic and social outcomes of the changes and establish whether there are gaps to be addressed. Reviews should also consider the latest developments in international best practice, the potential impact on Australia's competitiveness, and whether there are new policy innovations that can be adopted.
- Once regulations are harmonised, any further changes to the harmonised *regulatory structures* must be agreed by all governments. In the case of taxation legislation, governments should remain free to set the thresholds and rates that are applied to the harmonised regulatory structure (i.e. the tax base).
- These processes should be fully transparent and accompanied by regular, timely public reporting.

The implementation of a seamless economy will be undermined if future regulation is implemented in the same inconsistent manner as the past. Governments should seek ways to actively collaborate on future areas of regulation to ensure they meet best practice principles.

# NOTES

- 1 Business Council of Australia, *Locking in or Losing Prosperity: Australia's Choice*, August 2005, p. 7.
- 2 For further discussion of Australia's economic transition, see the BCA's submission to the 2008–09 Budget, *Budgeting for Prosperity*.
- 3 These objectives are outlined in the COAG communiqué of 20 December 2007.
- 4 See for example the Conference Board of Canada report, *Death by a Thousand Paper Cuts* (April 2006), and the OECD report, *Product Market Regulation in OECD Countries: 1998 to 2003* (April 2005).
- 5 Business Council of Australia, *Reshaping Australia's Federation: A New Contract for Federal–State Relations*, October 2006.
- 6 See Attachment A of the BCA submission to the Taskforce on Reducing Regulatory Burdens on Business, December 2005.
- 7 Business Council of Australia, *Tax Nation: Business Taxes and the Federal–State Divide*, April 2007.
- 8 See 'Benefits and Costs of Regulation', a report by Access Economics incorporated in the BCA publication, *Business Regulation Action Plan*, pp. 1–2 and 22.
- 9 See, for some examples, the models for shared responsibilities that were outlined in *Reshaping Australia's Federation* (p. 31) in relation to the health system.
- 10 *Reshaping Australia's Federation*, p. 10.
- 11 Business Council of Australia, *New Concepts in Innovation: The Keys to a Growing Australia*, 2006, pp. 13 and 23.
- 12 See p. 2 of the BCA *Business Regulation Action Plan*.
- 13 A report on federalism published in 2007 by the Australian National University (*Federalism and Regionalism in Australia*) observes that 'there remains considerable scope for further research in this area' (p. 216).
- 14 Productivity Commission, *Potential Benefits of the National Reform Agenda*, report to the Council of Australian Governments, Canberra, 2006, p. 156. The commission estimate is based on a 20 per cent reduction in total regulatory compliance costs, which it says may be as high as \$35 billion or 4 per cent of GDP.
- 15 *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and Treasurer, Canberra, p. 13.
- 16 This section draws on a report by Access Economics titled 'Benefits and Costs of Regulation', incorporated in the BCA's *Business Regulation Action Plan*, 2005.
- 17 See Access Economics, 'Benefits and Costs of Regulation', p. 22.
- 18 The OECD found that over the period 1995 to 2003, 'if OECD countries had aligned the form and operation of regulation in non-manufacturing sectors to that of the least restrictive OECD country, the increase in annual productivity growth due to faster catch-up is estimated to range from 0.2 percentage points in the United Kingdom, which has one of the least restrictive regulatory environments according to OECD indicators to 1.8 percentage points in Greece.' See OECD Working Paper No. 509, *Regulation, Competition and Productivity Convergence*, September 2006.
- 19 International Monetary Fund, *Does Technological Diffusion Explain Australia's Productivity Performance?*, Working paper 08/4, January 2008.
- 20 Business Council of Australia, *New Concepts in Innovation: The Keys to a Growing Australia, and New Pathways to Prosperity, A National Innovation Framework for Australia*; 2006.
- 21 The only state election scheduled for 2008 is the Australian Capital Territory, in October. This will be followed by elections in Western Australia and Queensland in February and September 2009, respectively.
- 22 Australian Labor Party, *Fresh Ideas: Manufacturing Roundtable Background Paper*, 10 September 2007.
- 23 K. Rudd in an interview on the ABC Television '7.30 Report' program, 27 November 2007; COAG communiqué, December 2007.
- 24 Business Council of Australia, *A Charter for New Federalism*, December 2007.
- 25 *Tax Nation: Business Taxes and the Federal–State Divide*, p. 11.
- 26 *Reshaping Australia's Federation*, p. 27.



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