Interim Report

Measuring and Reducing the Burden of Regulation

October 2012
The Authority wishes to acknowledge the contribution of the following staff to this report

Andrew Darvall, Alex Dobes, John Fallon, Dan Kelley, Sean Moroney and Ana Zolotic
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>ACCI</td>
<td>Australian Council of Commerce and Industry</td>
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<tr>
<td>ARI</td>
<td>Annual Recurring Interval</td>
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<tr>
<td>Authority</td>
<td>Queensland Competition Authority</td>
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<tr>
<td>BCC</td>
<td>Business Cost Calculator</td>
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<td>CCIQ</td>
<td>Chamber of Commerce &amp; Industry Queensland</td>
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<tr>
<td>CIE</td>
<td>Centre for International Economics</td>
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<tr>
<td>COAG</td>
<td>Council of Australian Governments (COAG)</td>
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<tr>
<td>EDO</td>
<td>Environmental Defenders Office</td>
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<tr>
<td>Ministers</td>
<td>Treasurer and Minister for Trade and the Attorney-General and Minister for Justice</td>
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<tr>
<td>NCP</td>
<td>National Competition Policy</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-Operation and Development</td>
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<td>OBPR</td>
<td>Queensland Office of Best Practice Regulation</td>
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<tr>
<td>QCA Act</td>
<td>Queensland Competition Authority Act 1997</td>
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<td>RCM</td>
<td>Regulatory Change Measurement</td>
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<td>RIA</td>
<td>Regulatory Impact Analysis</td>
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<td>RIS</td>
<td>Regulatory Impact Statement</td>
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<td>SCM</td>
<td>Standard Cost Model</td>
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<tr>
<td>ULDA</td>
<td>Urban Land Development Authority</td>
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<td>VCEC</td>
<td>Victorian Competition and Efficiency Commission</td>
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<tr>
<td>VMA</td>
<td>Vegetation Management Act</td>
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<tr>
<td>WSUD</td>
<td>Water Sensitive Urban Design</td>
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OVERVIEW

The Office of Best Practice Regulation (OBPR) was established in July 2012 in order to implement the Government’s target of a 20% reduction in the burden of regulation in Queensland over 6 years. This Interim Report recommends areas of regulation for immediate review; areas for medium term review; a method for measuring the burden of regulation and a regulatory management system designed to ensure on-going regulatory reform.

<table>
<thead>
<tr>
<th>Fast track areas for immediate review</th>
<th>Duration (months)</th>
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<tr>
<td>Harmonisation legislation that increases costs in Queensland (case-by-case assessment)</td>
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<td>Trading hours restrictions</td>
<td>Department of Justice and Attorney-General 6</td>
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<td>Vegetation management regulation that increases costs and prevents efficient use of property</td>
<td>OBPR 15</td>
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<tr>
<td>Water Efficiency Management Plan requirements on large water users that are burdensome or redundant</td>
<td>OBPR 6</td>
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Areas for medium term review

- Dam safety upgrade guidelines
- Government procurement regulations
- Health sector legislation
- Local government regulation and business activities
- Pharmacy ownership legislation and regulation
- Taxi licensing and regulation
- Water sensitive urban design requirements
- Water use and trading restrictions
The report recommends the following approach to measurement of burden and burden reduction:

(a) A British Columbia style of counting obligations to establish a base-line and measure progress towards the 20% reduction target;

(b) Measurement of the reduction in regulatory burden on a net basis;

(c) A requirement for zero net increase in regulatory burden after establishment of the new (reduced by 20%) base-line;

(d) OBPR to recommend reduction targets for individual portfolios, and report annually to Cabinet on progress;

(e) Individual regulatory proposals, including regulatory impact statements, to include a net benefit analysis; and

(f) Sunset clauses enforced for all regulations, with a RIS required for continuing the regulation.
TIMING, PROCESS AND CONTACTS

Key Dates

Receipt of terms of reference: 3 July 2012
Release of issues paper: 3 August 2012
Due date for submissions: 31 August 2012
Consultation with interested stakeholders: August – November 2012
Interim report for Government: by 1 November 2012
Final report for Government: by 31 January 2013

Process

The open consultation process adopted by Office of Best Practice Regulation (OBPR) will continue as the Government evaluates the Interim Report. The OBPR will meet with parties that have previously expressed an interest in participating in the consultation. Any other interested parties are invited to register their interest using the contact details below.

Contacts

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Any other inquiries or questions may be directed to:

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EXECUTIVE SUMMARY

The Queensland Competition Authority (the Authority) has been directed by the Treasurer and Minister for Trade and the Attorney-General and Minister for Justice (the Ministers) to investigate and report on a framework for reducing the burden of regulation in Queensland. The Direction Notice is attached as Appendix A. The matters to be considered include the following:

- Develop a methodology for measuring the regulatory burden of regulation, including appropriate regulatory burden benchmarks against which Queensland Government departments may be assessed by the Authority on an annual basis.
- Develop a process for reviewing the existing stock of Queensland legislation.
- Consider other Australian and international approaches for measuring and reviewing regulatory burdens, reviewing legislation and identifying priority review areas.
- Have regard to the costs of implementing possible frameworks for measuring regulatory burden, including costs associated with data collection and assessment.

The Direction also requires recommendations on:

...priority areas for targeted regulatory review having regard to the regulatory burden imposed by legislation.

This Interim Report provides the Authority’s recommendations for consideration by Government.

Consultation

The Authority released an Issues Paper for consultation on 3 August 2012. The Issues Paper addressed all of the issues covered in the Direction Notice from the Ministers. Written submissions were received from 34 stakeholders including large and small businesses, individuals, peak bodies, government departments, local governments and the local government association. Staff from the Office of Best Practice Regulation met with a number of individuals and groups to discuss the Issues Paper.

Measurement

The Authority considered the following methodologies for measuring regulatory burden:

(a) number of pages of legislation and associated regulations;
(b) number of actual requirements or prohibitions contained in the legislation and regulations;
(c) compliance and delay costs as calculated through the use of accounting models, such as the Treasury Compliance Cost Calculator;
(d) surveys of firms or individuals, and
(e) case studies of particular business sectors or regulatory regimes.

The first two methodologies – page counts of existing legislation and measures of requirements or prohibitions in legislation – are proxies for the burden of regulation. The remaining approaches attempt to measure the actual impact of regulatory burdens. Qualitative effects of regulation could also be considered.

There was general agreement that the number of pages of legislation is at best an imperfect proxy for regulatory burden. There was a great deal of support in the submissions for adopting the British Columbia approach of counting requirements contained in laws and rules to gauge the burden of...
regulation. The Authority recommends use of the British Columbia approach (modified to include both requirements and prohibitions) to measure progress towards the Government’s 20% regulation reduction target.

Any new regulation will be required to satisfy quantitative and qualitative analysis through the Regulatory Impact Statement (RIS) process.

**Net versus Gross Burden Measurements**

The Issues Paper considered a gross approach to regulatory burden measurement. A gross approach does not take account of new regulation in specifying reduction targets. Based on the comments, consultation and further investigation, the Authority recommends use of a net approach. A net approach requires a reduction in existing regulation for every new regulation introduced. The Authority considers a net target is necessary to ensure effective progress in reducing the burden of regulation.

**Process for Setting Regulatory Burden Benchmarks for Departments**

An outline of a proposed process for setting regulatory burden benchmarks for Departments is as follows:

(a) OBPR will undertake a count of regulatory obligations as of 23 March 2012. The count will include Acts, regulations, codes of practice and any other instrument imposing an obligation or prohibition. An independent count is necessary to avoid a potential conflict of interest that might arise if agencies are responsible for establishing their own base-line counts.

(b) The Director-General of each agency will sign off on the count establishing the base-line regulatory burden for that agency. Before sign-off, OBPR will ensure that the agency has input into the count and any possible adjustments based on the unique circumstances of the Department.

(c) Once the base-line is established, OBPR will recommend a reduction target for each agency. This is likely to be 20%, but may be adjusted if potential difficulties with an individual agency meeting the 20% target or scope for a higher target are identified. However, the overall 20% net reduction in regulatory requirements target across government will remain.

(d) Ministers who consider that the target proposed by OBPR is too onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% burden reduction target.

(e) OBPR will provide an annual report of progress towards the reduction target.

(f) OBPR will review the need for adjustment in targets, based on new information about specific burdens of regulation. If there is a need to adjust the targets, OBPR will recommend this change to Government in its annual progress review.

**Prioritisation**

The highest priorities for reform should be those regulations generating the largest net costs for the economy and people of Queensland as whole, and for which there is sufficient business and community support for reform. In particular, focus has been given to regulation that adversely affects economic growth, competition or productivity, especially for agriculture, tourism, resources, and construction.
Public Stocktake and Regulatory Reform Priorities

The Authority was tasked with developing a process for reviewing the entire stock of existing Queensland legislation and identifying priority reform candidates. During the course of the investigation, the OBPR developed a process for identifying potential priority reforms and conducted a high level review of the stock of Queensland legislation using the prioritisation criteria presented in the Issues Paper. The results of this review, together with information developed from submissions and consultation, enabled the Authority to develop a draft target list of potential candidates for both fast track and medium term reform.

Table 1 shows ten suggested fast track reforms (in alphabetical order), proposes which body would take the lead and suggests the time required for investigation and reporting. Some of these reform candidates have been targeted in other Government reform initiatives (see Appendix B). However, the Authority was tasked by the Direction Notice to recommend priority areas for targeted regulatory review irrespective of other government initiatives underway.

Table 1: Fast Track Reform Priorities

<table>
<thead>
<tr>
<th>What</th>
<th>Who</th>
<th>Duration (months)</th>
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<tr>
<td>Harmonisation legislation that increases costs in Queensland</td>
<td>OBPR</td>
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<td>(case-by-case assessment)</td>
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<tr>
<td>Housing restrictions</td>
<td>OBPR</td>
<td>12</td>
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<tr>
<td>Land sales and property development (including coastal development)</td>
<td>Assistant Minister for Planning Reform</td>
<td>TBD</td>
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<td>regulations that impose a significant red tape burden or restrict competition</td>
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<td>Mining development requirements that raise costs and delay investment</td>
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The Authority also identified the eight potential medium term reform priorities shown in Table 2 (in alphabetical order).
Table 2: Medium Term Priorities

<table>
<thead>
<tr>
<th>Reform Candidate</th>
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<tr>
<td>Dam Safety standards with costs exceeding benefits</td>
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<tr>
<td>Government procurement regulations that raise cost and restrict competition</td>
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<tr>
<td>Health care legislation that raises costs or restricts competition</td>
</tr>
<tr>
<td>Local government regulation and business activities that increase burdens or restrict competition</td>
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<tr>
<td>Pharmacy ownership legislation and regulation that restricts competition</td>
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<tr>
<td>Taxi licensing and regulation that restricts competition</td>
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<tr>
<td>Water sensitive urban design requirements that delay and raise the cost of development</td>
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<td>Water use and trading restrictions that raise costs and restrict competition</td>
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The Authority recommends that the Government consider these candidates for reform (and any candidates that are developed as a result of ongoing departmental and Parliamentary Committee reviews), confirm the priorities, amend the list as necessary, allocate responsibilities for reform and set an indicative timetable for reform.

Developing and Implementing Reform Priorities

The process by which departmental benchmarking towards the 20% reduction in regulatory burdens will be coordinated with implementation of the priority reforms is illustrated in Box 1. As noted above, OBPR will identify prohibitions and requirements in the regulations administered by each department, using the British Columbia approach. These totals will be adjusted and further regulatory burden reduction requirements will be determined after the priority reforms are implemented.
Box 1: Regulatory Reform Process

Long Term Reform – Whole of Government Regulatory Management System

The Authority recommends adoption of a whole of government structure for regulatory review and assessment. The objective is to ensure that minimisation of regulatory burdens becomes a central focus and enduring feature of government policy-making. There are several key components of an effective regulatory management system (and indeed any reform effort whether it be fast track, a comprehensive initial public stocktake or implementing long term structural reforms).

If regulation is to be minimised, departments, agencies and local governments require an appropriate organisational infrastructure and processes, robust measurement and evaluation tools, and strong capability for understanding problems and crafting solutions. Reforms to address these needs, together with strong incentives on government to confine regulation to those areas where public benefits exceed costs, will all contribute to a culture that will reward deregulation rather than more regulation.

Addressing incentives effectively is considered to be the most important feature of the proposed whole of government regulatory management system. Several incentive mechanisms needed to discourage unjustified growth of regulation and to facilitate reform of existing regulation where appropriate are proposed, in particular:

(a) measurable targets for departments;

(b) transparency in reporting on regulatory assessments and in progress on meeting target; and
(c) changing the onus of proof to require proponents of regulations to show that there is a clear net benefit from their adoption.

Progress in meeting the targets can be made part of the key performance indicators of senior departmental staff.

An effective RIS system will also be necessary to discourage unjustified growth in regulation. The critical elements for an effective RIS system include:

(a) independent, authoritative assessment of RISs by the OBPR,

(b) application of the onus of proof principle (to demonstrate a net public benefit);

(c) increased transparency; and

(d) early engagement with, and capacity building for, policy and rule makers.

In addition, the Authority recommends establishment of a formal permanent mechanism for reducing regulatory burdens. Stakeholders seeking regulatory relief would make submissions directly to the OBPR. The OBPR would investigate, consult with regulatory agencies and provide Government with recommendations for action.

**Summary of Major Recommendations**

The key elements of a regulatory reform plan are set out below. Detailed recommendations are provided at the end of each Chapter.

**Measurement of Burden and Burden Reduction Targets (Chapter 3)**

1. The base-line regulatory burden and progress in reducing the regulatory burden should be measured by using the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation).

2. Progress in reducing the regulatory burden should be measured on a net basis (which takes account of new regulation) using the British Columbia approach.

3. The burden reduction target should initially be allocated evenly across portfolios, with all portfolios having a 20% target, with exceptions approved by the Government.

4. Where specific circumstances show that a 20% reduction is not appropriate, a lower or higher target should be set, but with an objective of at least an overall government-wide 20% reduction in regulatory requirements.

5. The RIS process for new regulation should use quantitative measures of costs and benefits wherever possible.

**Regulatory Stocktake (Chapter 5)**

1. Use the OBPR regulatory stocktake that identified short and medium term priority reform candidates.

2. The OBPR should review all Parliamentary Committee and departmental regulatory reform proposals and evaluations that have been developed independently of the OBPR stocktake.

3. The Government should set reform priorities and task the OBPR to oversee the reform details in consultation with Departments, with subsequent approval by Government.
Whole of Government Regulatory Management System (Chapter 6)

Roles and Responsibilities

1. The Treasurer and Minister for Trade, in association with the Assistant Minister for Finance, Administration and Regulatory Reform, should be responsible for implementing a whole of government regulatory management system.

2. The role of the Treasurer and Minister for Trade should include:

   (a) ensuring clarity of roles and tasks;
   (b) ensuring capability to reduce and improve regulation;
   (c) confirming priorities and overseeing regulatory activity;
   (d) identifying scope for improvements; and
   (e) promoting the importance of improving regulation.

3. Each Minister should be responsible for regulatory reform in their departmental portfolio, subject to the Government’s agreed priorities and principles for regulatory review and reform and to OBPR review.

4. The Department of Treasury and Trade should provide a policy advisory and whole of government coordinating role.

5. The OBPR should provide advice on the details of reform proposals and undertake assessments of existing and new regulation as directed by government.

6. The OBPR should design and implement a permanent formal mechanism for firms and individuals to make a case for regulatory redesign and reduction.

7. The OBPR should report annually on:

   (a) RIS reviews as per an existing Ministerial Direction; and
   (b) progress in relation to meeting the 20% regulatory reduction target.

Objectives and Methodology

1. The overall regulatory objective should be to achieve a net public benefit taking account of economic, environmental and social benefits.

2. There should not be a presumption that any particular regulatory goal is taken as given regardless of its costs; there must be an overall net public benefit to the regulation.

3. The onus of proof in justifying the continuation of regulation or new regulation should be on the entity proposing a new regulation or the retention of existing regulation.

4. All regulation should be subject to sunset provisions.

5. The OBPR should work with each Department in establishing the details for implementation of reform priorities.
6. In assessing RISs, the OBPR should engage early with Departments to provide information and advice on how to undertake RISs and provide ongoing training for Departments.

7. RISs, OBPR assessments and relevant supporting documents should always be made public to ensure transparency and scrutiny.

Local Government Reform

1. Local government regulation, including codes and guidelines, should be subject to regulatory review and reform. Further investigation is needed to establish a manageable process and timetable for review. This issue has been identified as a medium term priority.

2. Full regulation impact analysis will often not be justified but some level of consultation with an opportunity for interested parties to consider and comment on proposals is considered to be feasible and appropriate for most local governments.

3. Each local government should be required to report annually to OBPR and in its annual budget on the progress of its program for reducing the burden of regulation. The OBPR reports would be submitted to Ministers and made publicly available.

4. The scope and extent of local government requirements should reflect the resources of individual Councils and the extent of their individual regulatory reform tasks.
1. INTRODUCTION AND BACKGROUND

The Queensland Competition Authority (the Authority) has been directed by the Treasurer and Minister for Trade and the Attorney-General and Minister for Justice (the Ministers) to investigate and report on a framework for measuring and reducing the burden of regulation. This Interim Report provides the Authority’s views for stakeholder comment and Government consideration.

1.1 Ministerial Direction Notice

The Ministerial Direction Notice was received by the Authority on 3 July 2012 (Appendix A). The Notice directs the Authority ‘to investigate and report on a framework for reducing the burden of regulation’. The investigation and report is to include the following elements:

(a) a proposed framework for measuring the regulatory burden of legislation, including appropriate regulatory burden benchmarks against which Queensland Government departments may be assessed by the Authority on an annual basis;
(b) a proposed process for reviewing the existing stock of Queensland legislation; and
(c) priority areas for targeted regulatory review having regard to the regulatory burden imposed by legislation.

The term ‘regulation’ refers to both legislation and regulation and the scope for government entities to set conditions or standards under legislative delegations.

The scope of the review includes local government laws and regulation. This is consistent with the definition of ’Act’ in the Acts Interpretation Act 1954 and Statutory Instruments in the Statutory Instruments Act 1992. The scope of the review was also confirmed with the Treasurer.

The regulatory burden of legislation refers to the total costs of regulatory intervention. This includes administrative and compliance costs, delay costs to business and other costs that affect the community as a whole. Regulations that unnecessarily restrict competition may impose costs that affect the community as a whole because higher consumer prices and reduced innovation are likely outcomes.

The Direction requires the Authority to:

(a) consider both quantitative and qualitative measures of regulatory burden;
(b) consider other Australian and international approaches for measuring and reviewing regulatory burdens, and
(c) have regard to the costs of implementing possible frameworks for measuring regulatory burden, including costs associated with data collection and assessment.

The Direction also requires the Authority to undertake open consultation processes with all relevant parties. Relevant parties ‘include business, the community and relevant government departments and regulatory agencies’. The consultation undertaken by the Authority is described in Chapter 2.

Finally, the Direction emphasises that the Government’s has targeted a 20% reduction in red tape and regulation.
1.2 Context and Rationale for Reviewing Regulation

A thorough review of the stock of regulation and establishment of the Office of Best Practice Regulation within the Authority is due to the wide-ranging and growing impact of regulation on individuals and business.

Excessive or poorly designed regulation can reduce the ability of the private sector to perform optimally and adapt to change. Consequently, regulatory reform has the potential to generate large economic and social benefits.

The Organisation for Economic Cooperation and Development (OECD) (2006a, p. 1) describes the motivation for regulatory reform in the following terms:

*Continual and far reaching social, economic and technological changes require governments to consider the cumulative and interrelated impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and robust, transparent, accountable and forward looking. Regulatory reform is not a one-off effort but a dynamic, long term multidisciplinary process.*

There is a strong tendency for regulation to grow and extend across a myriad of business and personal activities. This in turn can be reflected in a culture in government and the community that relies on regulation and resists regulatory reform.

The Productivity Commission describes the growth of regulation and its causes in Australia as follows:

*Regulation has grown at an unprecedented pace in Australia over recent decades. As in other advanced countries, this has been a response to the new needs and demands of an increasingly affluent and risk averse society and an increasingly complex (global) economy. This regulatory accretion has brought economic, social and environmental benefits. But it has also brought substantial costs. Some costs have been the unavoidable by-product of pursuing legitimate policy objectives. But a significant proportion has not. And in some cases the costs have exceeded the benefits. Moreover, regulations have not always been effective in addressing the objectives for which they were designed… (2011, p. XI)*

In other words, some regulatory schemes may not be properly designed to achieve regulatory objectives in the most efficient manner or may have been put into place even though the costs of a properly designed and implemented scheme would exceed the benefits.

Good regulatory design requires attention to the economic incentives created by the regulation. ‘Command and control’ regulation invariably leads to adaptive responses by individuals and businesses. For example, safety regulation may create a perception that individuals are protected by the regulatory requirements with a net result that more risks are taken and injuries do not fall, or even increase. Regulatory reviews must be alert to unintended consequences.

The Productivity Commission (2011, p. 9) also notes that:

*Even regulation that is initially well made and cost-effective can require subsequent amendment as costs and benefits change over time due to changes in technology, demographics, preferences, relative prices and resource ownership — and the accumulation and interaction of regulations.*

Technological change is particularly important. Regulations that mandate particular technical solutions for compliance risk may prevent or delay lower cost solutions that may become available as technology changes. In some cases, technological advances may even eliminate the need to regulate.
The lack of harmonisation between regulation at different levels of government or between states or localities may also contribute to regulatory burdens. Duplicative or inconsistent regulation obviously needs to be addressed. There may also be lack of harmonisation among regulations administered by different departments within the State. For example, environmental regulation may require a regulated firm to take actions that are inconsistent with transport regulation. Subjecting businesses to the resulting risk and uncertainty comes with a cost.

Harmonisation of regulation across jurisdictions should not be an overarching objective. In some cases, harmonisation may increase the regulatory burden for certain jurisdictions and stakeholders without producing a net benefit. Harmonisation should be pursued only where there is a net benefit to Queensland.

It is clear that regulation that would no longer be justified under a cost benefit analysis may persist without frequent review and effective analysis and reform of the stock of regulation.

1.3 Growth of Regulation

The growth of regulation and maintenance of regulatory schemes, even when circumstances may have changed, has led to business and consumer concerns with the burden of regulation.

There is also a perception that businesses in Queensland are subject to more regulation and a higher rate of growth in regulation than other Australian jurisdictions. The Chamber of Commerce & Industry Queensland (CCIQ) reported survey results that indicate that a high proportion of Queensland businesses believed red tape had increased between 2002 and 2011 (CCIQ 2011, p. 3). The Property Council of Australia Development Assessment Report Card ranks Queensland’s planning and development assessment system seventh among Australian states and territories, which is a reduction from performance measured in 2010 (2012, p. 14).

Table 1.1 compares the number of pages of regulatory Acts and Statutory Rules in 2007, as compiled by the Productivity Commission.

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>SA</th>
<th>WA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acts</td>
<td>32,700</td>
<td>44,214</td>
<td>49,419</td>
<td>16,525</td>
<td>40,751</td>
<td>13,254</td>
<td>16,992</td>
<td>21,771</td>
</tr>
<tr>
<td>Statutory Rules</td>
<td>7,717</td>
<td>12,625</td>
<td>15,635</td>
<td>8,526</td>
<td>22,816</td>
<td>12,071</td>
<td>4,057</td>
<td>7,763</td>
</tr>
<tr>
<td>Total</td>
<td>40,417</td>
<td>56,839</td>
<td>65,054</td>
<td>25,051</td>
<td>63,567</td>
<td>25,325</td>
<td>21,049</td>
<td>29,534</td>
</tr>
</tbody>
</table>

Source: Productivity Commission (2008, p. 32)

Queensland led the states and territories in the number of pages of rules and regulations. As discussed in Chapter 3 below, comparisons among jurisdictions based on aggregate measures of the degree of regulatory burden such as these are problematic. For example, following reforms in the early 1990s, Queensland adopted an approach that focuses on making legislation easier to understand, but this may require more pages.

By any measure, the burden of regulation in Queensland is likely to be large. Savings to the Government from removing unnecessary regulation can be used to reduce debt, lower taxes or fund other more effective programs to benefit the community. Reducing regulatory burdens on business will likely lead to higher investment, with resulting employment and
productivity benefits. Business savings may also be reflected in lower costs for consumers as the benefits of cost reductions are passed through in the form of lower prices.

As a consequence, reducing red tape and reforming regulation is a priority for the Government. Creation of the Office of Best Practice Regulation within the Authority is a key part of the Government’s plan to achieve its target of a 20% reduction in red tape and regulation. The investigation leading to this Interim Report was designed to focus analysis and attention on ways to achieve this goal and to enlist the cooperation of businesses and consumers in identifying and measuring regulatory burdens and prioritising a reform agenda.

1.4 Prior Reviews

The Direction also requests the Authority to ‘consider other Australian and international approaches for measuring and reviewing regulatory burdens, reviewing legislation and identifying priority review areas.’ New South Wales and Victoria have been active in recent years in measuring and reducing the regulatory burden.

1.4.1 New South Wales

The New South Wales Government’s current red tape reduction policy includes (New South Wales Government 2012a):

(a) A gross reduction in regulatory burden of 20%, or $750 million, by 2015.

(b) A ‘one on, two off’ policy. The number of legislative instruments repealed must be at least twice the number introduced. Repeals can be ‘banked’ for later use, and can be swapped between portfolios.

(c) The regulatory burden imposed by new legislative instruments within each portfolio must be less than the regulatory burden removed by the repeal of instruments.

(d) Accountability at a senior level. Directors-General are required to report in writing annually to the Better Regulation Office on compliance with the ‘one on, two off’ policy, and progress against the red tape reduction target. Claimed red tape reductions are subject to independent verification, and are published in the Better Regulation Office Annual Update.

The Better Regulation Office has reported against outcomes of previous regulatory reform policy. Major savings resulted from simpler planning processes for commercial, retail and industrial premises and from the introduction of Joint Regional Planning Panels.

The Better Regulation Office has also reported some outcomes for the period immediately prior to the introduction of the new regulatory reform policy. For the final quarter of 2011, the Better Regulation Office reported savings from (New South Wales 2012b):

(a) streamlined trade tests for trainee electricians;

(b) electronic submission of reports from authorised vehicle inspection stations;

(c) abolition of certificates to operate machines such as backhoes; and

(d) reforms in water management regulations affecting property owners undertaking building work, drilling certain types of bores and similar.
1.4.2 Victoria

Victoria’s red tape reduction policy is stated in the Victorian Government’s Budget Paper No. 2 (2012, p. 29). Key points of this policy are:

(a) a gross reduction of 25%, or $715 million, in ‘the costs imposed by Victorian regulation on businesses, not-for-profit organisations, the economic activities of individuals and government services’;

(b) a particular concern with the impact of red tape on small business; and

(c) independent verification of red tape savings by the Victorian Competition and Efficiency Commission (VCEC).

Budget Paper No. 2 notes examples of initiatives, such as ‘simplified rules for new houses constructed on lots less than 300 square metres’, and states that ‘the Government is currently considering further opportunities to achieve its ambitious targets’.

Furthermore, a ‘regulatory performance reporting framework will also be in place by the end of 2012’, which will ‘reduce unnecessary costs imposed on regulated sectors and make regulators more accountable for the efficiency and effectiveness of their actions’.

Victoria’s previous regulatory reform policy was similar to that of the previous New South Wales policy, aiming to reduce red tape by $500 million (increased from $256 million) by July 2012. In September 2010, the Victorian Government (2010) reported that it had achieved savings from 1:

(a) reforms to food regulation;

(b) a range of projects in the building and construction industry; and

(c) simplified procedures for legal practitioners.

In its draft report on priorities for regulatory reform, the VCEC (2011a, p. 174) identified the highest priorities for regulatory reform as:

(a) environment protection and climate change;

(b) planning and land use regulation;

(c) vocational education and training regulation;

(d) taxi cab and hire car services regulation; and

(e) liquor licensing regulation.

Occupational Health and Safety and Workers’ Compensation was also identified as a potential priority area.

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1 The amount of savings to 2010 is mentioned in the archived media release from the then Victorian Treasurer, dated 30 September 2010, and available at http://archive.premier.vic.gov.au/newsroom/12081.html. The full report for that period, Reducing the Regulatory Burden Progress Report 2009-10, appears to be no longer available.
1.4.3 National Competition Policy

The most wide ranging legislative review effort made in Queensland and the rest of Australia related to the review of all legislation that restricts competition as part of the National Competition Policy (NCP).

A nation-wide agreement to review all legislation that restricts competition every 10 years was first signed in 1995 and the program of initial reviews spanned several years and was completed in 2005. The agreement was re-ratified by all Australian governments in 2007. However, although new legislation that restricts competition is reviewed as part of the Regulatory Impact Statement process, it is understood that there have been no major reviews of existing legislation that restricts competition in Queensland since 2005. It is understood that this is also typically the case in the rest of Australia.

1.5 Government-Wide Efforts to Reduce Regulatory Burden

The Authority's review of ways to measure and reduce regulatory burden is one element of a broader program by the Government to identify and reform unnecessary and inefficient regulation. The Authority has been allocated additional functions to help deliver the Government's program including:

(a) if directed by the Ministers, assessing the adequacy of proposed regulation using the Regulatory Impact Statement (RIS) System (Queensland Competition Authority Act 1997 (QCA Act) s.10(lb) and 3 July 2012 Ministers’ Direction Notice),

(b) if directed by the Ministers, investigating and reporting on any matter relating to competition, industry productivity or best practice regulation (QCA Act, s.10(e)); and

(c) if directed by the Ministers, reviewing and reporting on existing legislation (QCA Act s.10(lc)).

Appendix B provides a more detailed snapshot of the Government's wider program to reduce regulatory burden including:

(a) oversight;

(b) red tape reduction policies and mechanisms;

(c) cross-jurisdictional reform programs; and

(d) sector-specific reforms, reviews and inquiries in progress.

1.6 Regulatory Alternatives

The growth of regulation is well documented and the costs of excessive regulation are well understood. Once a regulation that is in need of reform has been identified, the next step is to decide how to implement reform. The correct decision will depend on a number of factors.

1.6.1 Costs Exceed Benefits

The easiest cases involve regulations that serve no useful purpose because they are obsolete, redundant, or were imposed inappropriately in the first place. The regulations provide no benefits and only impose costs. These regulations can be removed and the costs of enforcing and complying with them eliminated.
Another case is where the regulation may provide benefits but the costs exceed the benefits. If there are no alternatives to the existing approach to regulation, then the regulation does not pass a public interest case and should be removed.

A problem could arise where the costs are imposed on one set of firms or individuals but the benefits accrue elsewhere. Eliminating the regulation will increase the economic welfare of the former group but reduce the economic welfare of the latter group.

In some cases, investment decisions may have been made with the expectation that specific regulation would continue. Those who have made the investments may suffer financial losses if the regulation is eliminated. All business decisions are subject to risk but, if the perception is that government policy is not stable, investment could be deterred.

If perceived fairness issues arise, the government may decide to phase out regulation over time rather than change regulation overnight. Alternatively, compensation may be awarded to the parties that experience a reduction in economic welfare. This may be particularly relevant where significant investments have been made based on prior regulatory regimes. However, by definition, continuation of the regulation imposes costs on the broader community and the long term benefits of removal may exceed short term disruption costs.

### 1.6.2 Effective Alternatives to Regulation

Yet another case is where the costs of existing regulation exceed benefits but alternatives to the existing form of regulation can be used to bring the costs down to the point where net benefits are achieved. If the objectives of the regulation can be achieved with lower cost, then reform can preserve the benefits. For example, requiring reporting only when conditions have changed (instead of monthly or annually) or eliminating extraneous or duplicative paperwork may achieve regulatory objectives while reducing compliance costs.

Another approach to reducing the cost of regulation is to rely on market forces instead of regulatory command and control. Emissions trading schemes are an example. Firms are given emission caps but are allowed to buy and sell emissions credits. More efficient firms are rewarded by the ability to increase profits by selling unused credits. Less efficient firms can postpone costly investments in pollution abatement by purchasing credits, but would have an economic incentive to improve their performance.

In some cases, the ability to purchase credits may allow the firm to avoid shutting down the facility and thereby preserve jobs. Under emission trading schemes, the government sets the pollution cap and then lets the market sort out the most efficient way to achieve it.

### 1.6.3 Alternative Forms of Regulation

Traditional command and control or rules-based regulation sets a regulatory objective and then prescribes how the firm must comply. For example, an emissions regulation may specify the technology a firm must use to reduce emissions. Performance based regulation allows the firm to find the most efficient means to achieve a regulatory objective.

Performance based regulation has been suggested as an alternative to detailed occupational health and safety regulations. For example, firms could be allowed to devise their own training and safety measures to prevent accidents. Stricter rules or fines would be triggered if performance fails to improve. However, it may be necessary to change the legal liability rules to enable the introduction of performance based regulation for occupational health and safety regulation.
Some stakeholder submissions noted that an advantage of rules based regulation is that businesses can be assured that they are in compliance as long as the rules are followed (even if the public policy objective is not met). An alternative is to allow firms to opt in to a performance based scheme. If the potential compliance cost savings are large, the firm will be willing to take the compliance risk (assuming penalties are set appropriately).

These alternative approaches should not be limited to cases where costs of regulation exceed the benefits. They can and should be applied even in cases where initial benefits exceed initial costs because net benefits can be increased by doing so.
2. ISSUES PAPER AND CONSULTATION

Consistent with the Ministerial Direction, the Authority undertook an extensive open consultation process with interested parties.

2.1 Issues Paper

The Authority prepared an Issues Paper for consideration by stakeholders. The Issues Paper presented a summary of the Authority's review of prior investigations into measuring and reducing regulatory burdens, including reports produced by the Queensland Government as well as reports prepared by the Commonwealth, the Council of Australian Governments (COAG), the Productivity Commission, other states, other countries, and international organisations such as the Organisation for Economic Co-Operation and Development (OECD).

The Issues Paper explored a wide variety of topics, including:

(a) the context and rationale for reviewing regulation;
(b) the nature and extent of the regulatory burden;
(c) approaches to identifying and measuring regulatory burden;
(d) approaches for conducting reviews of the existing stock of legislation;
(e) methods for identifying and prioritising areas for regulatory review,
(f) essential components of a regulatory management system for reducing and improving regulation, and
(g) examples of two significant regulatory regimes (native vegetation regulation and water sensitive urban design).

For each of these topics, the Authority reviewed the results of prior studies and presented alternative views. For example, several approaches to measuring regulatory burden were identified. These included using page counts of legislation and regulation, counts of specific compliance requirements contained in legislation, measuring days of delay, and monetary estimates of costs derived from costing models.

Chapter 1 of the Issues Paper proposed a complete framework for reducing the burden of regulation – including a management system covering roles and responsibilities, accountability arrangements and timing issues. The intention behind outlining a complete framework was to facilitate understanding and stakeholder comment.

Submissions were requested from the public through notices posted in Queensland and National newspapers and the Authority’s public mailing list. The Assistant Minister for Finance, Administration and Regulatory Reform released a statement on the paper, which was reported by many regional news outlets. The Authority also invited Queensland Government departments to provide responses.

Questions for comment were included at the end of each Chapter of the issues paper. Stakeholders were encouraged to address these questions and provide any other input.
2.2 Submissions

Written submissions were received from 34 stakeholders including large and small businesses, individuals, peak bodies, government departments, local governments and the local government association. Copies of the public submissions are posted on the Authority’s website at http://www.qca.org.au/OBPR/rbr/.

2.3 Stakeholder Meetings

Staff from the Office of Best Practice Regulation met with a number of individuals and groups to discuss the Issues Paper. Organisations representing the four pillars in the Government’s economic policy were contacted along with the Environmental Defender’s Office and other interested parties.

Presentations were made to AgForce, Australian Industry Group, Chamber of Commerce and Industry Queensland, Master Builders, Queensland Resources Council, The Property Council of Australia and the Agriculture, Resources and Environment Parliamentary Committee and Secretariat (which is reporting on methods to reduce regulation).

Meetings were held with several stakeholders in regional centres (Biloela, Cairns, Charleville, Gladstone, Sunshine Coast and Townsville).

Meetings were also held with the Departments of Environment and Heritage Protection, Local Government and Planning, Natural Resources and Mines, Treasury and Trade, Premier and Cabinet, State Development Infrastructure and Planning, the former Office of the Queensland Business Commissioner, Townsville City Council, and the Queensland Commission of Audit.

Once this Interim Report is presented to Government, the Office of Best Practice Regulation will contact stakeholders who expressed an interest in the consultation process to seek their views on it. Comments will be welcome from all stakeholders.
3. MEASUREMENT OF BURDENS AND BENCHMARKING

The measurement of burden (and burden reduction) can have a strong influence on outcomes. All types of measurement have inherent distortions and inaccuracies. The key is to choose a measurement method that can be understood and applied in daily decision making, and whose application facilitates the best regulatory outcomes.

3.1 Approaches to Measurement

The Ministerial Direction categorised regulatory costs as follows:

(a) administrative and compliance costs;
(b) delay costs to business, and
(c) other costs that affect the community as a whole.

The Issues Paper highlighted some possibilities for measuring these costs and the associated burden of regulation:

(a) number of pages of legislation and associated regulations;
(b) number of requirements as represented by words such as “must” and “shall” (the British Columbia approach);
(c) the dollar cost of reporting, compliance, delay and the costs to business and consumers of missed opportunities due to restrictions on behaviour (with different options for including all or some of these components).

An important distinction here is that some approaches use a proxy measure (such as number of pages of regulation), while others seek to arrive at an actual dollar cost estimate. Generally speaking, proxy measures are most useful when actual measures are disproportionately costly to obtain.

3.1.1 Proxy Measures

The proxy measures discussed in the Issues Paper (page count, and number of requirements) are easily understood, and they are easily applied to any suggested change in regulation. However, it is necessary to consider their disadvantages.

The Authority considers that page count in particular is a measure with severe limitations. Page count is influenced by irrelevant (non-regulatory) factors such as format and layout, and a simple page count gives no indication of the nature of the regulation. The page count measure has negligible stakeholder support.

The proxy measure of number of requirements is a more effectively focussed measure, but also needs to be applied with awareness of its limitations. The major (and obvious) limitation is that a trivial requirement imposing a minimal cost on a small group is counted with the same weight as an onerous requirement imposing a major cost on a large number of people. For that reason, this measure should not be used by itself when comparing the burdens of different regulatory options.

Page counts and counts of restrictions do not provide a measure of the net economic effect of regulation.
3.1.2 Value Measures

Dollar value measures of regulatory burden have a number of advantages. They can allow:

(a) full balancing of costs and benefits;
(b) quantitative comparison of burdens under different regulatory options, using indicators such as sector profits or general economic activity, for example Gross State Product; and
(c) recognition of the loss arising from economic activity that would otherwise take place, for example sales and purchases that do not take place because of restricted trading hours.

The disadvantages of dollar value measures include:

(a) the large effort and uncertainty involved in estimating the impact of regulatory measures, particularly where impacts (both costs and benefits) can ripple through many parts of the economy, and interact with other changes taking place;
(b) large scope for disagreement on the impacts of regulation, particularly where different stakeholder groups have opposing interests;
(c) disagreement about precisely which costs should be included in value measures.

As mentioned above, there is some disagreement on the components that should be included in value measures. Queensland (Queensland Treasury (undated)) currently has broad and flexible guidelines on this issue. This flexibility has advantages. However, greater precision and rigour is necessary in order to ensure a greater focus on burden reduction.

The quantification approaches used in New South Wales (New South Wales Government 2012a) and Victoria (VCEC 2009a) are a useful guide. The two approaches are similar, with the major difference being that Victoria does not count fees and charges or costs imposed on private individuals.

3.2 Measurement Application to Example Areas of Regulation

The Issues Paper noted two example areas of regulation where the Authority proposed to investigate the British Columbia requirements approach and dollar value approaches to estimating the burden of regulation:

(a) Native Vegetation Regulation; and
(b) Water Sensitive Urban Design (WSUD).

The focus of the investigations was a comparison of value measures and British Columbia style measures as applied to the two example areas of regulation. The findings are provided in separate reports available from the Authority’s website (Mainstream Economics and Policy 2012 and Synergies 2012). A summary of findings is as follows:

(a) The British Columbia approach to measurement is relatively easy to apply. However, some level of judgement is required in counting restrictions.
(b) The British Columbia approach does not address fundamental issues of net benefit and regulatory efficiency, so it needs to be applied with awareness of its limitations.
(c) It is possible to modify the British Columbia approach, to provide more information. However, more information requires more resources for measurement, and it is not clear that the extra information is worth the cost.

(d) The dollar value method is onerous and information-intensive, even when applied to a limited area of regulation. In some cases, a reasonably accurate result requires use of information subject to concerns about privacy and commercial confidentiality.

3.3 Accountability for Burden Reduction Targets

The terms of reference for this review require a proposed framework for measuring the regulatory burden and regulatory burden benchmarks for Queensland Government departments. The Government has announced that the regulatory burden will be reduced by 20% over a six year period.

Achievement of this target requires responsibility to be allocated across portfolios, so that individual Ministers and Directors-General are aware of how they should contribute to the overall goal. The Authority’s Issues Paper did not directly address how the burden reduction target should be allocated across portfolios. Chapter 8 of the Issues Paper noted the importance of targets for creating incentives in reducing regulation.

Options for allocating the regulatory burden target include:

(a) a straight 20% reduction target for each portfolio;
(b) a reduction target tailored to take account of factors such as the type of legislation administered in the portfolio; or
(c) a reduction target tailored to take account of priority areas for regulatory burden reduction.

Allocation of targets is an important element of accountability. An equally important element is reporting. The Issues Paper did not address the issue of reporting in detail.

3.4 Net versus Gross Measures of Burden Change

In the Issues Paper, the Authority noted the relative merits of net and gross measures of regulatory burden reduction. Despite the theoretical advantage of a net measure, most jurisdictions use a gross measure, avoiding a potential barrier to regulatory innovation, which could be an outcome of new regulation requiring a similar cut in existing regulation.

A related topic is future growth in regulation. A gross measurement approach requires a separate restriction to control additional regulation. Net measurement automatically takes account of both existing and new regulation.

3.5 Submissions

The method of measurement is at first glance a theoretical issue, without immediate relevance to the regulatory burden faced by stakeholders. As such, measurement was not a major part of most stakeholder submissions. Nevertheless, stakeholders presented a range of interesting viewpoints.
The Environmental Defenders Office (EDO) noted the inherent uncertainties of placing a dollar value on the costs and benefits of regulation (p. 18)\(^2\). The EDO highlighted as an example the costs of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, which are estimated to be in the range of $270 - $820 million. It noted that delay costs are sometimes given as $170 million, but could be as low as $6.8 million. The EDO considers that the sheer range of these estimates permits misrepresentation by specific stakeholders, and the apparently high costs are not in fact reflected in the observed decision making of companies seeking to make investments.

Chamber of Commerce and Industry Queensland (CCIQ), reflecting its longstanding focus on measurement of regulatory burden, made a number of broad points, including about the connection between measurement and action (pp. 3-5):

(a) CCIQ prefers the British Columbia approach to measurement.

(b) The CCIQ’s view is that lack of measurement has masked the extent of the problem. Establishment of a baseline is a necessary first step in establishing the imperative for action:

\textit{Regardless of the measure, the process of establishing a baseline and moving forward with a reform program is a critical success factor.}

(c) To ensure that the efforts of de-regulation and simplification are not lost as new regulation is proposed in response to emerging public issues, a ‘zero net growth’ or ‘regulatory offset’ approach should be adopted as it ensures the role of Government in providing public safeguards and protection can be consistent with a significant regulatory reform agenda.

(d) The Government should report annually on progress against the burden reduction target:

\textit{Real accountability requires ongoing and regular measurement and reporting. It allows progress to be tracked over time and raises the profile and understanding of costs both for regulators themselves and the community.}

Master Builders Queensland (pp. 2-3): expressed an order of preference on methods of measurement. Master Builders supports a dollar value for measuring compliance cost of regulation, and it prefers counting the number of restrictions to counting the number of pages. Master Builders is also in favour of alternative measures, such as days required to comply with regulatory requirements.

Stanwell Corporation (p. 4) considered that:

\textit{It is important that the methodology used to measure regulatory burden encompasses a number of features: has sufficient flexibility to address the gamut of existing regulations and provides sufficient transparency for those that are impacted or may be impacted into the future. The decision to retain legislation should result from an analysis of the benefits relative to effort, rather than on arbitrary inputs such as money and time.}

The Property Council of Australia, Queensland Division (pp. 20-21) noted a number of measurement methods used in other jurisdictions. One aspect of this was cost models, used

\(^2\) The EDO did not make a full submission to the Authority, due to time and resource constraints. However, the EDO informed the Authority that it had made relevant points in a joint submission with the Environmental Defender’s Office of northern Queensland to the Agriculture, Resources & Environment Committee of the Queensland Parliament. The EDO’s submission to the Committee is available at \url{http://www.parliament.qld.gov.au/documents/committees/AREC/2012/QldARIIndustries/submissions/24-EDO.pdf}, and the Authority has drawn on this submission as a guide to the EDO’s viewpoint.
in the Netherlands and some Australian jurisdictions. Another aspect was the Danish approach of Test Panels (500 enterprises), Focus Panels (100 enterprises) and Test Groups (small number of affected enterprises). These panels/groups assess the likely impacts of regulatory proposals using both a qualitative and quantitative approach.

**Taste South Burnett noted (p. 1):**

Cost/benefit analysis should also be used as a metric for determination of the worthiness of regulations, taking into account the true benefit, including long term environmental and social factors, not just the short term economic benefits. 2)

**Taste South Burnett also made the point that (p. 2):**

Sometimes I feel that it is not the actual regulation/legislation that causes the burden, but the method that the regulation is applied or complied with that increases the burden. Departments at all levels, whether they be Federal, State or Local, need to ensure that the processes involved with complying with regulation be as streamlined as possible before making the decision to remove the regulation itself.

The Queensland Consumers Association (p. 1) suggested that a balanced assessment of existing and proposed regulation should pay particular attention to impacts on consumers, and should:

- be very transparent
- allow adequate time for effective consultation with stakeholders, including consumers and consumer organisations
- recognise the need to pay particular attention to impacts on consumers and the difficulties in measuring these relative to impacts on businesses
- recognise and take account of the imbalance in resources between business and consumers groups to participate in and provide information for consultations on regulatory proposals/reviews
- be prepared to undertake publicly funded surveys of consumers to obtain information on costs and benefits.

**Queensland Farmers’ Federation (p. 4);**

A process for measuring the compliance cost of regulation based on the principles developed by Qld Treasury and outlined in Table 5.1 should provide a basis for measuring regulatory burdens. However the development of cost models must take into account the costs of gathering data and the likely benefits to be achieved in using the analysis to reduce regulatory burden. Surveys and case studies should help in assessing these issues and the design of cost models.

Tracking the time taken for approvals is considered useful and this form of monitoring should be able to be conducted cost efficiently as an integral part of the implementation of regulation. Also some effort should be directed maintaining an overview of both net burden and gross burden reduction in monitoring achievement of reduction targets. It is recognised that strict adherence to a net burden target could be an obstacle to required regulatory reform.

While maintaining a count on pages of regulation would be cheaper it is far too rough as a measure of regulatory burden. The approach in British Columbia of requiring ministries to count only those regulations that require businesses to take action or provide information is worthy of a trial. (2012, p. 4)
3.6 Discussion

3.6.1 Components of Value Measures

The Authority considers that the NSW approach, with minor modification, is generally suitable for the purposes of assessing the costs of individual regulatory proposals for purposes of an initial RIS or sunset review. The NSW approach categorises regulatory costs as follows:

(a) administrative costs;
(b) substantive compliance costs;
(c) fees and charges; and
(d) delay costs.

The NSW approach omits the cost of opportunities that are not realised because of regulation. The Authority considers that omission fails to capture an important aspect of regulatory burden. A simple example concerns shop trading hours. If shop trading hours are severely restricted, there is a loss to both sellers and buyers, due to transactions that do not take place. A relaxation of restrictions will allow these extra transactions and this should be recognised in the measure of the benefits from reducing regulation. However, the NSW methodology would not capture this benefit.

The Authority therefore considers that a modification to include the cost of missed opportunities will improve the New South Wales method of analysis. One reason many jurisdictions exclude this cost is that its estimation is subject to even more inaccuracy than other components of dollar value estimates. This can become a problem when dollar value is used for estimates of overall burden and burden reduction, and can distort outcomes. However, the Authority is only proposing that dollar value be used for evaluating individual regulatory proposals. In this case, the cost of missed opportunities can be better refined, and will be subject to closer scrutiny.

The NSW approach includes fees and charges payable to the Government or a public agency. From an overall economic perspective, fees and charges are a transfer from those who are regulated to government and not a net regulatory burden to the economy. The regulatory burden comprises the compliance costs, the administration costs, delay costs and the value of opportunities that cannot be realised because of the regulatory restriction. However, fees and charges can be a proxy for certain administrative costs, provided these are not already measured.

The Authority considers that the most appropriate method of assessing the net benefit of regulatory proposals is the New South Wales approach, modified to include the cost of missed opportunities.

3.6.2 Combination of Value and Proxy Measures

Value and proxy measures clearly have different strengths and weaknesses. The Authority considers that the best way to exploit the strengths of the two approaches is to apply them in different areas depending on objectives and capacity to implement them. Specifically, the Authority considers that the two approaches should be applied as follows:

(a) A baseline measure of regulatory burden should be established using the British Columbia approach. This exploits the advantages of the British Columbia approach being easy to apply with minimal resources and easy to understand.
(b) Progress measures of burden reduction should also utilise the British Columbia approach. Once again, this requires minimal resources. It also ensures that the burden reduction measurement is consistent with the baseline measurement.

(c) The British Columbia approach should be applied with one major modification. The British Columbia approach does not count an absolute prohibition as a restriction. The Authority considers this anomalous, since an absolute prohibition is usually a greater barrier to economic welfare and development than a qualified restriction.

(d) Assessment of individual regulatory proposals should utilise a value measure, which should include the welfare effects (net overall impact on the community) of the regulation arising from reducing economic activity from what it otherwise would be. This will enable a proper net benefit analysis, and a quantitative comparison of different regulatory options.

(e) The value measure should apply the modified NSW approach, which includes costs arising from missed opportunities and estimates of the benefits of regulation.

### 3.6.3 Accountability for burden reduction targets

The regulatory burden reduction target must be allocated to individual portfolios. As indicated earlier, the allocation can be achieved in a number of ways. The simplest method of allocation is to specify a 20% reduction for each Ministerial portfolio. Another approach is to take into account the different profile of each portfolio, with some having an inherently greater or lesser regulatory burden. This was previously done under the Smart Regulation Reform Agenda. Under that program, agencies were categorised as having a low, medium or high regulatory burden. Based on its category, each agency was assigned a burden reduction target of $5 million, $10 million or $20 million.

Under the previous regulation reform program, the burden reduction target was expressed as a dollar value target. In that case, the three category system was a useful way around the inaccuracy of dollar estimates, and side-stepped the impossibility of obtaining an accurate base-line burden estimate for each portfolio.

In the current situation, the Authority is recommending a burden reduction based on a count of obligations (regulatory restrictions). A base-line estimate would be established for each department or agency as of the date of the election (24 March 2012). However, a number of factors may still lead to inaccuracies and distortions, requiring a move away from a straight 20% target for each portfolio:

(a) The obligations count may not be proportionate to the net economic cost of regulations. This could occur, for example, because an onerous obligation is counted with the same weight as a trivial obligation.

(b) Some portfolios may turn out to have a disproportionate number of obligations exempt from review. Section 5.1 outlines possible criteria for exemption. However, it may still be appropriate to specify a 20% reduction target for the non-exempt obligations.

(c) Some departments may have been previously more active in reducing regulatory burden, in which case they would be unfairly penalised for their efforts. For these portfolios, ideally the target reduction should be less than 20%.

(d) Some departments may have a large stock of redundant legislation and regulations, never utilised in practice. In this case, removing anachronistic requirements could satisfy the target of a 20% reduction without actually materially reducing the day-to-
day regulatory burden faced by Queenslanders. For these portfolios, ideally the target reduction should be more than 20%.

The Authority recommends an initial straight 20% reduction target for each portfolio. However, the uncertainties outlined above mean that some caution is warranted. The count of obligations, and establishment of the base-line, will remove a large degree of uncertainty, and allow discussion of specific anomalies. The Authority suggests that the best way to proceed is to signal a likely reduction of 20% in each portfolio, with the actual target to be finalised once more information becomes available. This should not delay the burden reduction effort, since departments and agencies can, in the meantime, continue to work on burden reduction in priority areas identified in this Interim Report, or identified by other means. However, there would still be an overall 20% net reduction target for all regulation across government.

Regulatory reform requires significant resources, and involves exposure to major risks and unintended consequences. Agency buy-in, particularly at a senior level, will require an allocation process that is seen to be accurate and related to actual regulatory burden. The Authority considers that this will be best achieved through a combination of assessment that is both independent of departments and agencies (and possible conflicts of interest) and achieved through a reasoned dialogue. An outline of such a process is as follows:

(a) OBPR will undertake a count of regulatory obligations. The count will include Acts, regulations, codes of practice and any other instrument imposing an obligation. The count will also have a broad categorisation of obligations, so that it is clear which obligations are archaic, exempt from review, or in some other relevant category. This will allow the possible inaccuracies identified above to be addressed. An independent count is necessary to avoid a potential conflict of interest that might arise if agencies are responsible for establishing their own base-line count. The count will establish the baseline as at 23 March 2012.

(b) The Director-General of each agency will sign off on the count, establishing the base-line regulatory burden for that agency. Before sign-off, OBPR will ensure that the agency has input into the count and categorisation.

(c) Once the base-line is established, OBPR will recommend a reduction target for each agency. This is likely to be 20%, but may be altered if the count identifies significant distorting factors. The presumption will be for an even distribution of burden reduction, since a reduction in one area will require a more onerous target in another area.

(d) Ministers will sign off on the reduction target for their portfolio, and Cabinet will approve the final specification of targets. Ministers who consider that their proposed target is too onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% target. The final target agreed by Cabinet will be included in the performance agreement of each Director-General.

(e) Progress towards achieving targets will become part of the key performance indicators of senior departmental and agency staff.

(f) OBPR will provide an annual review of progress towards the reduction target in a report to Government.

(g) OBPR will undertake an annual review of any need for adjustment in targets, based on new information about specific burdens of regulation. If there is a need to adjust the
targets, OBPR will recommend this change to Government at the same time as providing its annual progress review.

Generally speaking, the process of reporting on regulatory burden reduction can run in parallel with the annual reporting process for Departments. OBPR would present its first progress report in October 2013, which will track burden reductions up to 30 June 2013. This progress report would include the reductions achieved by numerous Government initiatives outside the OBPR process (see Appendix B).

An indicative timeline to achieve the establishment of reduction targets, and the first report on progress in reduction, is set out below:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Target date</th>
</tr>
</thead>
<tbody>
<tr>
<td>OBPR conducts baseline count as at 23 March 2012</td>
<td>20 Dec 2012</td>
</tr>
<tr>
<td>Directors-General sign off on baseline count</td>
<td>13 May 2013</td>
</tr>
<tr>
<td>OBPR recommends reduction for each portfolio</td>
<td>11 Jun 2013</td>
</tr>
<tr>
<td>Ministers sign off on proposed reduction, or propose alternative reductions</td>
<td>8 Jul 2013</td>
</tr>
<tr>
<td>Cabinet approves final reduction plan, including specific portfolio reductions</td>
<td>13 Aug 2013</td>
</tr>
<tr>
<td>Agencies report to OBPR on reductions in burden up to 30 June 2013</td>
<td>20 Aug 2013</td>
</tr>
<tr>
<td>OBPR reports on reduction progress to the Government, and notes any suggested adjustment in targets</td>
<td>15 Oct 2013</td>
</tr>
</tbody>
</table>

### 3.6.4 Net versus Gross Measures of Burden Change

In the Issues Paper, the Authority expressed a preference for a gross target. The Authority previously considered that a net target was unnecessarily strict, and that the regulatory burden could be kept in check by ensuring that new regulatory proposals passed a strict net benefit hurdle. However, experience shows that there is a strong regulatory impulse in most jurisdictions to find a way around any test, such as net benefit, with an element of subjectivity. The Authority considers that a strong and unambiguous rule along the lines of British Columbia’s “zero net increase” can prevent the unnecessary growth of regulation. The relative accuracy of an obligations count (as opposed to a dollar value estimate) makes such an approach easy to understand and enforce within a British Columbia style of burden measurement.

In its response to the Issues Paper, the Chamber of Commerce and Industry Queensland (CCIQ) expressed a preference for a net measure, within the framework of the British Columbia approach.

Net measurement has been a feature of the British Columbia system. British Columbia initially set a net reduction target and a “zero net increase” policy after the target is met.

The Authority understands that the approach has had a positive impact, and that the British Columbia regulatory culture has changed so that officials now automatically search for offsetting reductions when proposing new regulation.

One point to note is that British Columbia’s requirement for a zero net increase is applied to each portfolio – it is not possible to offset increases and decreases across portfolios. The
Authority recommends that Queensland should allow trade across portfolios. This would increase the Government’s freedom of action.

### 3.6.5 Cost Models

As set out in section 5.1.2 of the Issues Paper, a number of jurisdictions, including Queensland, have created on-line cost models for estimation of regulatory burden. The models can be useful for a preliminary assessment of a proposal, but their scope is too limited for a full assessment. Regulation and regulation reform produce complex impacts and uncertainties, as noted in the section above on Value Measures. This complexity cannot generally be captured in a pre-existing computerised calculation. Cost models also have the weakness of not being able to provide a proper assessment of the benefits of any specific regulatory reform. As a result, they do not provide a broad net benefit calculation.

The Authority does not envisage a comprehensive role for online cost models. A quick assessment can be done using a British Columbia style count of obligations. However, a full RIS will be required for each proposal for new regulation and for sunset reviews.

### 3.7 Recommended Approach

#### 3.1 Measurement of burden and burden reduction

- A regulatory burden base-line should be established using the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation). The base-line will measure the regulatory burden as at 23 March 2012.
- Progress in regulatory burden reduction should be measured using the same (modified British Columbia) approach used in establishing the regulatory burden.
- Progress in regulatory burden reduction should be measured on a net basis.
3.2 Departmental Targets

- OBPR will propose reduction targets for individual portfolios based on a 20% benchmark, with specific portfolio targets to be adjusted for any unique distorting factors, but with the overall target maintained at an overall 20% reduction in regulatory requirements across government over six years.

- The reduction target for each portfolio should then be signed off by the responsible Minister and approved by Cabinet and included in the key performance indicators of Directors-General. Ministers who consider that their proposed target is too onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% target.

- Progress towards achieving targets should become part of the key performance indicators of senior departmental and agency staff.

- When agencies and portfolios are re-organised, the regulatory base-line and regulatory burden reduction target for each portfolio should reflect that re-organisation.

- OBPR should present an annual report to Government on progress towards the regulatory burden reduction target.

- As part of its annual report to Government, OBPR should present any necessary recommendations for a re-balancing of the regulatory burden reduction target.

- Once a reduced (by 20%) regulatory burden level is achieved, there should be requirement for a zero net increase in this burden across government, with an increase in one portfolio balanced with a decrease in another portfolio if approved by Cabinet.

3.3 New Regulatory Proposals and Sunset Reviews

- New regulatory proposals and sunset reviews should be subject to a dollar value assessment showing a positive net benefit.

- The method of measurement for individual proposals should be the NSW method of measurement, modified to include the value of missed opportunities.
4. PRIORITISING THE REFORM OF REGULATIONS

Businesses, organisations of all types and individuals must comply with countless existing regulatory requirements. The Ministerial Direction requires the Authority to propose a process for reviewing the existing stock of Queensland legislation and identifying priority areas for targeted regulatory review.

4.1 Classification of Legislation and Regulations

The Issues Paper (Appendix B) reported the number of pages of Queensland State Legislation as of July 2012. An updated page count as of 23 March 2012, the day before the current State Government was elected, was provided by the Office of the Queensland Parliamentary Council. As of that date, there were 72,436 pages of Queensland (primary and subordinate) legislation.

A separate report documenting the page count and classifying the legislation can be found on the Authority’s web site (QCA 2012a). The page count does not include codes and standards that are not subordinate legislation, nor does it include local government legislation or regulation.

The Issues Paper proposed a two stage process for determining priorities for review of legislation. This two stage process was applied to all Queensland legislation in the preparation of this Interim Report. First, each piece of legislation was placed into one of nine broad categories. The initial assumption was that some categories could be excluded from the regulatory burden review process. Second, a set of criteria for prioritising legislation within the remaining categories was applied (described in the following Section). The results are set out in Chapter 5.

The broad classification categories are:

(a) Economic regulation of infrastructure businesses or monopoly activity. This category is focused on ensuring that businesses with market power operate efficiently and do not exploit users of their services.

(b) Professional and business licensing regulation. This category of regulation was part of the most comprehensive legislative review program (the National Competition Policy program) in Australia’s history over the period from 1995 to 2005. A commitment was made by the Commonwealth, State and Territory governments to review legislation that restricts competition every 10 years.

(c) Environmental, natural resource use and building regulation. Regulation can be important in addressing harmful effects on the environment that are not taken into account in unregulated commercial and personal activity. However, the compliance costs for business, government and the community (‘green tape’) and other impacts on the community can be significant.

(d) Workplace and labour regulation. This category includes regulation covering workforce training, workers compensation insurance, occupational health and safety and workforce conditions. State-based workplace and labour regulation can create a significant compliance burden for business, government and the community, can overlap with national regulation and can involve restrictions on competition (for example, for workers compensation insurance).

(e) Health, safety, transport and consumer standards regulation. Health, safety, transport and consumer standards regulation is extensive in the Queensland and
Australian economies. Some health, safety and consumer standards regulation is clearly warranted given public objectives. However, some regulations can be of questionable benefit and quite intrusive and restrictive in their form. They can also impose a substantial compliance burden for business, government and the community. Some transport regulation can also reduce productivity or restrict entry and reduce competition.

(f) **Regulation affecting the start up or efficient operation of a business or market.** This category can be based on a wide array of objectives about the need to control business behaviour or market outcomes (some of which is covered by other categories) and can deter investment and result in a substantial compliance burden for existing businesses (‘red tape’). Licensing requirements are typical means of restricting economic activity for this category.

(g) **Justice and policing regulation.** This category is designed to address public goods. It is unlikely to be a priority in a legislative review program focused on reducing the direct regulatory burden for business.

(h) **Social regulation.** There are various social objectives and functions covered by regulation. This can relate to child care, aged care, education, not for profit activity, gambling, housing, and the need to prevent discrimination. This category of regulation is unlikely to be a priority in a legislative review program focused on reducing the regulatory burden for business, although it may create a regulatory burden for the community. The exception, in relation to business, could be regulation that results in an unjustified restriction on competition or imposes unnecessary licensing requirements.

(i) **Administration of government and parliament and taxation.** This category covers a wide range of functions concerning the operation of government and the Parliament. Unless there are collateral impacts on business, legislation in this category was considered less likely to impose a compliance burden for business. However, there can be exceptions, for example red tape associated with taxation compliance. Some exceptions that were identified are discussed in section 5.2. Changes in this type of regulation may be necessary to implement a regulatory management system for reducing and improving regulation.

Some legislation can be placed in more than one category. The first six categories obviously have a direct impact on the burden of regulation while the last three are less likely to contain legislation that may impose burdensome regulatory requirements.

### 4.2 Criteria for Prioritisation of Regulatory Reviews

The Issues Paper proposed that regulations that are likely to be generating the largest net costs for the economy and people of Queensland as whole, and for which there is sufficient business and community support for reform, should have the highest priority for reform. Particular focus was proposed for regulation that adversely impacts on economic growth, competition or productivity, especially in the areas of agriculture, tourism, resources, and construction. However, this does not mean that other sectors (for example, manufacturing) are excluded in establishing priorities because the most important criterion that is proposed is the net benefit from reform. Considerations in relation to practicability of reform also affect prioritization and sequencing.

Useful criteria for filtering proposals for regulatory reform have been developed by:
Based on these studies and other research, the Issues Paper suggested that high priority be assigned to reforming regulatory schemes that meet the following four general criteria:

(a) Regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit. This would include regulation where the red tape burden is substantial and can be readily changed without compromising the accepted policy objectives or raising fundamental policy issues and regulation that is redundant or expected to be redundant soon.

(b) Regulation where there is significant ‘reach’ in terms of interaction between business and the community and government agencies. The concept of reach refers to the extent to which businesses and the community interact with the government in terms of regulatory requirements as opposed to the regulatory burden within government. This criterion is considered useful given the Government’s policy focus. It has been used, with good effect, by the Better Regulation Office in New South Wales.

(c) Regulation where there are potentially large net benefits from reform, including direct reductions in red tape but also wider benefits for business, government and the community. The scope to reduce red tape is important but in many cases there are wider benefits to be realized from reform:

   (i) where regulation restricts the scope for efficient economic activity and innovation;

   (ii) where regulation adversely impacts on competition and/or productivity; or

   (iii) where regulation is strongly intrusive with respect to individual behaviour.

The scale and sustainability of the benefits from reducing regulation would be important along with the implementation and other costs of reform. The cost of reform includes the time and financial cost of investigating, designing and implementing the reform as well as costs to the community, for example increased risks that may arise as regulation is reduced or removed.

(d) Regulation where the need for reform is well understood or where changes are likely to receive community acceptance if they are made aware of the net benefits from reform.

On the other hand, lower reform priorities may be assigned to two categories of regulation:

(a) Regulation that has been recently enacted or is yet to be effectively implemented or is planned should generally not be considered unless there is clear evidence of substantial burdens on business or the community.

(b) Regulation that has social or public good objectives where it is difficult to establish the need for change should generally not be considered unless there is clear evidence of substantial burdens on business or the community.
Information relevant to these general criteria can be obtained from previous reviews and studies of reforms, in-depth case studies of current circumstances, principles-based analysis, simple quantitative estimates, detailed specific reviews, and consultation processes and surveys. As discussed below, the consultation process for this report has been an important means of identifying the priorities for reform in Queensland.

### 4.3 Submissions

The Master Builders submission endorsed the criteria and indicated that the three most important criteria should be (p6):

(a) unnecessarily burdensome regulation;

(b) the ‘reach’ of the regulation to the business community and the wider public; and

(c) the substantial net benefit from reform, including wider benefits for business, government and the community.

In addition to supporting the prioritisation criteria, the Queensland Resources Council (QRC) suggested calculating the relative contribution to the economy of the sector being regulated to identify priority areas for immediate regulatory reform (p.3):

> For example, QRC’s estimates are that around 20% of economic activity in Queensland originates from resource sector activity - which would suggest that reforming resource sector regulation is likely to yield real returns.

The Chamber of Commerce and Industry Queensland (CCIQ) raised concerns that the process of prioritisation of individual regulation may not consider the overall (cumulative) impact of regulation on businesses and may limit the opportunities for regulatory reform (p.10):

> CCIQ are concerned that the proposed prioritisation criteria does not acknowledge the fact that it is the cumulative effect, not specific and individual aspects of regulation that cause the most burden for Queensland businesses. Indeed both regulators and businesses acknowledge the difficulty in isolating individual regulations or aspects of regulation that are on their own considered complex, excessively burdensome or duplicative.

CCIQ explained (p27):

> The process of trying to isolate individual or specific aspects of regulation that are “unnecessarily burdensome, excessive or complex” is often more difficult than first assumed and meets significant drawback from agencies who in many if not most cases will be able to justify the need or public benefit of such areas or aspects of regulation.

> CCIQ believes everything and anything should be up for review and agencies should develop priority lists or hot spots following consultation with industry.

However CCIQ agrees that regulations that have broad coverage across business and industry sectors or which have been identified as impacting on business growth and competitiveness should be considered of highest priority.

Finally CCIQ believed a degree of caution should be exercised in setting a framework that allows regulation with some degree of social or public good objectives to be excluded, especially if these areas impose significant cost on businesses to achieve these objectives. A review may indeed highlight more effective or efficient mechanisms for achieving the same or similar outcome.

Taste South Burnett (p.1) expressed concern about the criteria used to exclude regulation for initial review. Taste South Burnett (p.1) noted:
... there should be an increased scope to "the criteria that would be used to exclude regulation for initial review" to also include regulation that has significant environmental, ecological and cultural benefit, or a protection that any regulation amended would not have serious detrimental effect to the environment or undermine sustainable practices for short term economic gain, in lieu of good social, environmental or cultural stewardship.

4.4 Discussion

There was considerable support from stakeholders for the prioritisation criteria discussed in the Issues Paper.

A prominent concern in the submissions is that identifying priorities from among the total stock of regulation may result in inadequate attention to areas not identified for priority reform. The Authority agrees that the cumulative effect of regulation is significant. The Authority considers that comprehensive regulatory reform requires attention to both the broad reach and economic impact of major regulatory programs and the cumulative impact of scores of individual regulatory requirements. However, the process for reform must begin with identifying and reforming individual regulations. In addition, the Authority is recommending that a permanent mechanism be established for making a case for regulatory reform. This will enable identification of reform candidates not identified by the process applied in this Interim Report. The permanent mechanism for making a case for regulatory reform is discussed in Chapter 6.

This Interim Report recommends that the Government’s 20% burden reduction target should be achieved through a parallel two-step process. First, OBPR would identify restrictions in each Department’s portfolio, which would then be subject to a net reduction requirement (see Chapter 3). Second, there would be fast track and medium priority reviews of major regulatory programs identified by application of the prioritisation criteria proposed in this report (see Chapter 5). The combination of major reforms of regulatory programs and elimination of individual restrictions across the entire stock of regulations in the Departmental portfolios will count towards the 20% reduction target in the burden of regulation as measured by the number of regulatory restrictions.

There was also concern expressed about excluding regulation with some degree of social or public good objectives from priority review. The Authority agrees that these regulations may impose significant costs and that there may be ‘more effective or efficient mechanisms for achieving the same or similar outcome’. The proposal was not to automatically exclude these categories. To the extent that specific examples are brought forward and explained, they would be considered for review. In any event, regulations with social or public good objectives would be included in the measurement of regulatory restrictions (see Chapter 3).

There was a view expressed in the submissions that regulation that has significant environmental, ecological and cultural benefit should be excluded from review. This perspective is not consistent with recognising that environmental and cultural benefits and costs should be considered along with economic effects as part of the net public benefit of a policy or regulation. The Authority considers that the net public benefit should be the overall criterion for assessing public policies and that regulation with significant environmental, ecological and cultural benefit should not be excluded from review.

While it is accepted that environmental impacts may in some cases be difficult to quantify, this should not be an excuse for ignoring the question of whether the benefits from regulation exceed the costs. Rigorous cost benefit analysis should be applied to any new regulation. Existing regulation that cannot be demonstrated by its proponents to provide a net overall public or community benefit should be revised or removed.
The Authority agrees that environmental protections should not be eliminated for short term economic gain. A comprehensive assessment of costs and benefits of regulation must consider long term impacts to the environment.

The suggestion that the relative contribution to the economy of the sector being regulated be used to identify priority areas for immediate regulatory reform is in effect incorporated in the criterion that relates to large net benefits.

### 4.5 Recommendations

#### 4.1 Criteria for Prioritising the Reform of Regulations

- The Authority should use four criteria to assess reform priorities:
  
  (a) Regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit.
  
  (b) Regulation where there is significant ‘reach’ in terms of interaction between business and the community and government agencies.
  
  (c) Regulation where there are potentially large net benefits from reform including direct reductions in red tape but also wider benefits for business, government and the community.
  
  (d) Regulation where the need for reform is well understood and changes are likely to receive community acceptance if they are made aware of the net benefits from reform.

- Regulation that has significant environmental, ecological and cultural focus should not be excluded from review.
5. IDENTIFYING PRIORITY AREAS FOR TARGETED REGULATORY REFORM

The Ministers’ direction notice requested a proposed process for reviewing the existing stock of Queensland legislation and a framework for identifying priority areas for targeted regulatory review. Based on information collected in the course of the investigation the Authority has identified a number of fast track and medium term reform candidates.

5.1 Review Process

There are various approaches to reviewing the stock of regulation. The inventory of regulatory restrictions discussed in Chapter 3 is a form of regulatory stocktake and helpful in establishing a broad benchmark of the burden of regulation and useful for setting easily understood targets for reform. It is proposed as the primary measure to track progress in reducing the regulatory burden. Upon completion of the stocktake, it is proposed that the OBPR will, in consultation with Departments, recommend individual targets for the elimination of restrictions in order to meet the Government’s overall 20% regulation reduction target.

However, when actually reviewing regulation, it is desirable to focus on regulation that is likely to entail a significant regulatory burden, as regulatory restrictions by themselves do not measure the economic burden of regulation.

In order to initiate the review process, as required by the Direction, the Authority developed and applied an approach to reviewing the existing stock of regulation, using the prioritisation criteria set out in Chapter 4, to identify reform candidates.

The Authority’s approach began with a high level survey of all Queensland legislation and companion regulations (catalogued in Appendix B of the Issues Paper (QCA 2012b) and updated in a separate Information Paper (QCA 2012a). As noted in section 4.1 above, the Authority placed the legislation (and subordinate legislation) into nine categories. This step was helpful for organising information and identifying some legislation and regulation that was not a priority for reform. In addition, Queensland legislation that implements national regulation was treated as a separate category as harmonisation of regulation may increase regulatory burdens in Queensland.

During the course of the investigation, it was determined that there are potential reform targets in each category. For example, government procurement regulations that restrict competitive opportunities and raise the costs of government were classified as legislation associated with the administration of government, but these regulations do have significant effects on business. Therefore, every piece of legislation in every category was assessed, at least at a high level.

The following criteria were used to exclude legislation for review:

(a) Regulation that has social or public good objectives and where it is difficult to establish the need for change (for example, consumer protection legislation with broader public objectives). This included legislation related to the administration of justice and policing and other social regulation;

(b) Regulation that has limited scope and reach – for example legislation that applies to a small geographical area and has limited impact on the broader Queensland community and business (the Mt. Gravatt Showgrounds Act 1988 for example); and

(c) Regulation that has recently been enacted or recently reformed.
It was considered that legislation in these categories was unlikely to satisfy all of the prioritisation criteria.

Where appropriate, the legislation remaining after these exclusions was then grouped into broader categories according to the type of regulation. For example, all legislation affecting occupational and business licensing was aggregated into a single category. At this point, the remaining legislation was assessed against the prioritisation criteria (a) to (d) presented in section 4.2 above.

While the assessment was conducted at a high level, the intent and scope of each piece of legislation can usually be discerned from a review of part 1 or part 2 of the relevant Act. Documentation provided by Queensland Treasury and Trade on the status of National Competition Policy reviews was also helpful in providing information to establish priorities. Each piece of legislation was scored by assigning a one or a zero for each of the four prioritisation criteria depending on whether it was considered the criterion was met. Information obtained from submissions and consultations was also used to establish priorities. For example, a variety of restrictions on housing construction were identified as potential candidates for fast track reform during the course of consultation and these were added to the fast track priority list. The Authority also reviewed reform initiatives undertaken by the VCEC and IPART for suggestions for priority reform areas (see section 1.4). The harmonisation issue discussed above was considered a priority item given that it affects a number of sectors.

The Centre for International Economics (CIE) was also tasked with independently assessing a number of the reform priorities identified in this high level review against the four prioritisation criteria developed by the Authority. CIE developed its own assessments of regulatory burden, reach and benefits from reform. CIE also considered whether the need for reform was well understood. Their conclusions have been reflected in the discussion of the actual reform candidates identified and discussed later in this Chapter.

A number of potential reform candidates were identified through this process. These candidates were put into two broad groups: fast track reforms and medium term reforms.

Fast track reforms are those that met each of the four criteria and did not appear to face barriers that would preclude quick action. Identification of fast track reforms responds to the Ministerial Direction and is consistent with a request by Assistant Minister for Finance, Administration, and Regulatory Reform for a list of five to 10 specific priority areas for immediate regulatory reviews to be included in this Interim Report.

Medium term reform candidates are those that met all or most of the prioritisation criteria but would not be candidates for quick reform for example because the review task would be substantial and time-consuming or because there could be significant resistance from stakeholders that benefit from the existing regulations.

As discussed in section 1.5 the Government has initiated Departmental level reviews of regulatory burdens. Some items on the priority lists developed by the Authority may overlap with initiatives resulting from those reviews.

Additional reform candidates identified by the ongoing departmental reviews and Parliamentary Committees and Inquiries can be added to the list of suggested reform candidates. In addition, if a permanent formal mechanism for firms and individuals to seek a reduction in specific regulatory burdens (discussed in Chapter 6) is adopted, individuals and businesses can propose areas for reform that have not been identified to date.
The review of legislation did not encompass local regulation. However, review of local regulation is identified as a medium term priority.

5.2 Fast Track Reform Candidates

The stocktake process described in the previous section was used to identify 10 candidates for fast track reform investigation. The potential candidates for fast track priority review as a result of this multi-stage screening process are shown in Table 5.1.

The basis for including each of the 10 candidates is described below. As noted above the CIE (2012) also provided information on many of the reform priorities.

Table 5.1: Fast Track Reform Candidates and Criteria for Prioritisation

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Unnecessarily burdensome, complex, redundant or questionable benefit</th>
<th>Reach</th>
<th>Potential for large net benefits from reform</th>
<th>Need for reform well understood</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmonisation</td>
<td>Questionable benefit</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Yes (Industry and Government)</td>
</tr>
<tr>
<td>Housing Restrictions</td>
<td>Questionable benefit</td>
<td>Moderate</td>
<td>Moderate — $23-$86 million/year</td>
<td>Yes</td>
</tr>
<tr>
<td>Land Sales and Property Development Restrictions</td>
<td>Unnecessarily burdensome</td>
<td>High</td>
<td>High</td>
<td>Yes, priority for review</td>
</tr>
<tr>
<td>Mining Development Restrictions</td>
<td>Unnecessarily burdensome</td>
<td>Moderate</td>
<td>High — ~$125 million/year</td>
<td>Yes</td>
</tr>
<tr>
<td>OH&amp;S and Workers Compensation</td>
<td>Overly complex (in part)</td>
<td>High</td>
<td>High</td>
<td>Yes</td>
</tr>
<tr>
<td>Queensland Gas Scheme</td>
<td>Possibly redundant</td>
<td>High</td>
<td>Small to Moderate — $12-$53 million/year</td>
<td>Yes</td>
</tr>
<tr>
<td>Tourism Restrictions</td>
<td>Overly complex (in part)</td>
<td>Moderate</td>
<td>Small</td>
<td>Yes, in part</td>
</tr>
<tr>
<td>Trading Hours Restrictions</td>
<td>Redundant</td>
<td>High</td>
<td>High — ~$200 million/year</td>
<td>Yes</td>
</tr>
<tr>
<td>Vegetation Management</td>
<td>Redundant</td>
<td>High</td>
<td>Moderate/high</td>
<td>Yes</td>
</tr>
<tr>
<td>Water Efficiency Management Plans</td>
<td>Burdensome and Redundant</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Yes (industry)</td>
</tr>
</tbody>
</table>

Source: CIE and Authority

Harmonisation

COAG has made harmonisation of laws affecting business a priority area. If harmonisation reduces barriers to entry into Queensland markets or reduces red tape for Queensland companies seeking to compete in other states, benefits would arise for Queensland.
However, in some cases, harmonisation can result in the imposition of additional regulation in markets that are working well.

There are a number of circumstances in which harmonisation may not produce net benefits. First, best practice may not be the same in all states. Local conditions will affect not only how, but whether regulation should be imposed. Second, the compromises needed to reach agreement on harmonisation may lead to adoption of less than best practice regulations. Third, changing regulatory schemes may impose adjustment costs. In some cases, the cost of change may exceed marginal benefits from harmonisation. Finally, differences in approach among states can provide valuable information about the benefits and costs of alternative approaches to regulation. Premature harmonisation may prevent useful experiments. In addition, even if harmonisation may have a national benefit, depending on the circumstances in Queensland, there may not be a benefit to Queensland.

There is an optimal amount of harmonisation that should occur. Harmonisation should only be agreed to where there is a net benefit to Queensland.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

This question must be assessed on a case-by-case basis. There are a number of pieces of existing or proposed harmonisation schemes affecting a wide variety of businesses. Case-by-case assessment is necessary to determine which schemes should be abandoned in favour of a Queensland specific approach (which could have lower or more effective regulatory requirements).

(b) Does the regulation have significant ‘reach’?

Given the broad reach of harmonisation, there is undoubtedly potential for broad impact.

(c) Are there potential net benefits from reform significant?

This must be assessed on a case-by-case basis.

(d) Is the need for reform well understood?

This must be assessed on a case-by-case basis.

**Housing Restrictions**

A number of regulations intended to promote environmental goals have been placed on new house construction. These include a compulsory six star energy rating for new houses, a ban on electric hot water systems and requirements on water sources (primarily satisfied by installing rainwater tanks).

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

These regulations are of questionable benefit. The cost of rainwater tanks is substantial with little offsetting benefits. Homeowners can make their own informed choices about the environmental features of a new home. The carbon tax and rising energy costs will help ensure that appropriate choices will be made for energy.

(b) Does the regulation have significant ‘reach’?
The regulation impacts all new construction throughout Queensland.

(c) Are the potential net benefits from reform significant?

These regulations increase the cost of housing for Queenslanders by amounts that may be small in percentage terms but are large in the actual dollar impact.

(d) Is the need for reform well understood?

The building industry supports elimination of the regulations. Homeowners would generally prefer choice over government imposed decisions.

**Land Sales and Property Development Restrictions**

The Queensland Government regulates property development through a variety of legislation including the *Sustainable Planning Act 2009* and the *Coastal Protection and Management Act 1995*. Development approvals can provide significant consumer protection benefits and protect the community from inappropriate development. However, the submissions and consultation have identified this area as imposing significant red tape burdens.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

Given the consumer protection aspect of this regulation, it is likely needed in some form. However, in some areas, the regulation may unnecessarily and arbitrarily interfere with matters that can be addressed by the contracting parties. The administrative requirements could also be unduly onerous. Delay costs could be significant. Another potential problem with this regulation is that it may be used by existing businesses as a way to delay or prevent new competitive entry.

(b) Does the regulation have significant ‘reach’?

New developments are affected state-wide.

(c) Are the potential net benefits from reform significant?

Reduced risk to new development is likely to have a significant impact. The Property Council pointed out in its submission that the Queensland Coastal Plan ‘has caused development in Queensland’s coastal regions to grind to a halt’.

(d) Is the need for reform well understood?

The development industry supports reform.

**Mining Development Restrictions**

The *Mineral Resources Act 1989* (Qld) and other legislation regulate minerals exploration, extraction and processing.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

The minerals industry considers that mining and environmental approvals are complex, inconsistent and poorly administered. Approval delays and obligations have grown substantially in recent years.
(b) Does the regulation have significant ‘reach’?

The legislation has significant reach as a result of the interaction between the economic performance of the mining sector and the performance of the state economy.

(c) Are the potential net benefits from reform significant?

CIE estimates that the net present value of gains to Queensland would be approximately $2 billion or $125 million per year.

(d) Is the need for reform well understood?

The Government has committed to reforms in this area.

**OH&S and Workers Compensation**


(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

Businesses frequently complain about the burden these regulations place on their operations. Queensland is the only state that both allows full access to common law remedies for covered workers and retains a monopoly over insurance and claims. The OH&S legislation and Workers Compensation legislation are not linked.

(b) Does the regulation have significant ‘reach’?

Almost all workers and businesses in Queensland are covered by these schemes.

(c) Are the potential net benefits from reform significant?

Reforms have the potential to allow for significant economy wide productivity increases.

(d) Is the need for reform well understood?

Industry groups have noted problems with current regulation. There are likely to be some groups that do not agree with industry.

There is currently a Parliamentary review underway for Workers Compensation legislation.

**The Queensland Gas Scheme**

The Queensland Gas Scheme requires electricity retailers to source 15% of the energy they use from gas fired generation. The intent of the regulation is to boost the Queensland gas industry and reduce greenhouse gas emissions.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

The regulation appears both redundant and of questionable benefit. There is no apparent market failure that requires the government to boost the gas industry and there is no shortage of natural gas in Queensland. To the extent the purpose of the
regulation is to reduce carbon emissions, it is now redundant due to imposition of the carbon tax.

(b) Does the regulation have significant ‘reach’?

The Queensland gas scheme impacts electricity prices for all businesses and households in Queensland.

(c) Are the potential net benefits from reform significant?

The Authority has previously estimated the costs of the gas scheme (QCA 2011, p. 24). Using the Authority’s estimates, CIE noted that the total cost of the gas scheme was almost $50 million for 2012-2013. There are also administrative costs to the government and the industry. There are few benefits to the scheme for Queensland given the carbon tax has now been implemented.

(d) Is the need for reform well understood?

The Queensland Government previously stated an intention to move away from the scheme after the introduction of the carbon tax.

Tourism Restrictions

A variety of legislation affects the use of national parks and marine areas and may prevent or restrict commercial or individual tourism activities.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

There is clearly a role for government in preventing over-exploitation of natural resources, including national parks and marine areas. However, excessive regulation may prevent development of tourist businesses that can be a source of employment growth and generate significant income for Queensland. A balance must be struck between protecting environmental assets and legitimate use that can provide benefits to both businesses and the broader community. There is a view that the red tape generated by this legislation is a significant barrier to all development, including environmentally friendly activities or activities where benefits may exceed reasonable estimates of cost.

(b) Does the regulation have significant ‘reach’?

The tourism industry is an important component of the Queensland economy. The regulations impact millions of in-state and out of state tourist visits.

(c) Are the potential net benefits from reform significant?

Red tape that raises the cost of developing new tourist businesses, or prevents a business from investing altogether, can adversely affect economic development and growth in Queensland.

(d) Is the need for reform well understood?

The Department of Tourism, Major Events, Small Business and the Commonwealth Games and the tourism industry support reform.
Trading Hours Restrictions

The Restricted (Allowable Hours) Act 1990 restricts allowable trade hours.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

To the extent that the purpose of the restrictions is to protect workers, the rules are questionable because workers are protected by workplace relations laws, minimum wage and penalty rates governed by Commonwealth legislation.

An unstated objective of the Act may be to assist small business by restricting larger businesses operating times. If this is in fact an objective, this restriction on competition should be made explicit and the benefits assessed against the costs.

(b) Does the regulation have significant ‘reach’?

The Act has significant reach across the retail industry and the community.

(c) Are the potential net benefits from reform significant?

The potential benefits of the reform include an increase in retail productivity, more shopping convenience for the broader community and lower prices.

(d) Is the need for reform well understood?

Reforms have been undertaken and accepted in most other states. However, small shopkeepers oppose reforms because they consider they will lose business to larger retail outlets.

Vegetation Management

Vegetation management was discussed in the Issues Paper as a case study for examining different measures of the burden of regulation. Vegetation management regulation restricts landholder ability to remove unwanted vegetation in order to achieve a variety of environmental outcomes.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

The Productivity Commission (2004) concluded that obligations placed on landholders by the various State and Territory regulatory regimes often seem unnecessarily complex and onerous and that benefits have often not been well supported. It is not clear that reforms undertaken after this Report have removed all excessive regulation. Several submissions nominated vegetation management reform as the highest priority.

(b) Does the regulation have significant ‘reach’?

The regulations potentially affect more than 90 percent of the Queensland’s land area and have a major impact on the agricultural sector. The property sector and the mining sector are also affected.

(c) Are the potential net benefits from reform significant?
Well established estimates are not available at this stage for Queensland. The CIE report considered that the net benefits from reform are potentially large but more likely to be moderate. However, preliminary information from the case study (Synergies 2012) is consistent with the net benefits from reform being potentially large.

(d) Is the need for reform well understood?

The agricultural and land development sectors bear the immediate costs of vegetation management regulation and support reform. An inquiry is needed to establish whether environmental benefits can be preserved with reforms that reduce red tape.

**Water Efficiency Management Plans**

The *Water Supply (Safety and Reliability) Act 2008* requires development and approval for strategic asset management plans, leakage management plans, drinking water quality management plans, and customer service standards. Additional plans are called for under the *Local Government Act 2009*.

(a) Is the regulation clearly unnecessarily burdensome, complex, redundant or of questionable benefit?

Some of the plans are considered to be of questionable benefit, and may not be acted or relied upon by the regulator. There is also the possibility of redundancy of the required plans with other regulations. For example, water efficiency management plans may be redundant when considered alongside permanent water restrictions, water efficiency labelling standards and water prices.

(b) Does the regulation have significant ‘reach’?

The various requirements for plans apply mostly to water service providers. Non-residential business customers that use more than 10 megalitres a year are required to produce a Water Efficiency Management Plan.

(c) Are the potential net benefits from reform significant?

The net benefits have not been estimated but the regulation does not seem to be necessary.

(d) Is the need for reform well understood?

The industry would support streamlining of requirements.

### 5.3 Medium Term Priorities

In addition to the fast track reform candidates identified in the previous section, eight candidates that meet at least some of the prioritisation criteria were identified and suggested for medium term reform.

**Dam safety guidelines**

Dam safety of referable dams is regulated under the *Water Supply (Safety and Reliability) Act 2008*. The Department of Environment and Resource Management issued Guidelines on acceptable flood capacity for dams under this legislation. The degree of risk aversion implied by the standards may not be justified by a reasonable cost benefit analysis. Higher than necessary standards impose substantial costs on dam provisioning and upgrading.
cost associated with the required standards has been identified as a major concern by users of irrigated water.

**Government procurement regulations**

The *Queensland Industry Participation Policy Act 2011* places numerous constraints on who may provide services to government departments and imposes significant red tape on both vendors and departments. Reducing the burden of this regulation has the potential to reduce the costs of providing government services and increasing opportunities for small business.

**Health sector legislation**

Health care is a large and growing segment of the Queensland economy. Reduction in red tape costs of hospitals and health care providers is likely to produce significant productivity dividends.

**Local government regulation and business activities**

Local governments administer state and commonwealth regulation and often impose regulatory requirements of their own. The submissions suggest that delays are caused by local government being under resourced to accomplish the tasks for which they are responsible. It was also suggested that local governments may add to the regulatory requirements of legislation they administer. There was also an issue raised in the submissions concerning local government compliance with the spirit of competitive neutrality requirements given enforcement loopholes in the *Local Government Act 2009*.

**Pharmacy ownership legislation and regulation**

The *Pharmacy Business Ownership Act 2001* largely restricts pharmacy ownership to pharmacists (or corporations owned by pharmacists and their families). These entry restrictions prevent the most efficient organisation of the industry and arguments in their favour are not persuasive. The Productivity Commission (1999a) has concluded that the restrictions are not needed to ensure that consumer interests are protected.

**Taxi licensing and regulation**

Queensland maintains restrictions on the number of taxis that may operate in a given area. High values of taxi licenses demonstrate that the supply of taxis is restricted relative to what would occur in a competitive market. This means consumers pay monopoly rents for taxi services and endure service delays. Both the Productivity Commission (1999b) and the National Competition Council (2000) have concluded that restrictions are unnecessary to protect consumer interests.

The regulation of taxis is in issue in all Australian jurisdictions. The Victorian Government is currently undertaking an inquiry of the taxi industry in Victoria. The Draft Report (Victorian Government Taxi Industry Inquiry 2012) confirmed a number of problems; including low customer satisfaction, poorly skilled drivers and lack of competition. License values were reported to be $478,000 in 2011 (p.62). The draft report proposes to increase the number of taxi licenses on the road over time, leading to an increase in service availability (p.24). The key issues in Queensland are likely to be similar to those arising in Victoria.

**Water sensitive urban design**

Water sensitive urban design was presented as a case study in the Issues paper. A number of pieces of legislation apply including the *Sustainable Planning Act 2009* and the
Environmental Protection Act 1994. The regulations are intended to promote important sustainability goals. The issue is whether alternative, less costly or intrusive forms of regulation can achieve valid goals (that provide consumer benefits) at lower costs. The submissions provided views on both sides of this issue. This issue is likely to be relevant when investigating the scope of property development restrictions.

Water use and trading restrictions

The trading and use of water is restricted in Queensland under various provisions of the Water Act 2000 and the Water Supply (Safety and Reliability) Act 2008. Submissions suggested that requirements under these regulations could be removed or reduced in relation to, for example, land and water management plans, metering upgrades and water licensing.

Other

Reform candidates identified by ongoing Departmental reviews or Parliamentary committees can be added to these lists. Appendix D presents reform candidates proposed in stakeholder submissions.

5.4 Further work on medium term priorities

Further work on medium term priorities will require a parallel process of defining and prioritising problems and potential solutions. There is also the issue of resources. Successful regulatory reform requires a significant concentration of effort and resources in order to ensure that reforms are durable and avoid major unintended consequences. In some cases, the medium term reforms will compete for the same administrative resources as existing high priority reforms. In other cases, medium term reform candidates require a closer definition of the problems to be solved, in order to ensure optimal use of resources.

In the current state of knowledge and resource constraints, the Authority envisages a process of consultation with Departments to move medium term priorities to the point where they can become current projects.

At the same time, the Authority maintains its emphasis on independent input and general stakeholder consultation as a means of identifying areas worthy of closer scrutiny. Apart from direct stakeholder input, the Authority intends also to follow up on reform opportunities identified by parliamentary Committees and other mechanisms used to focus on issues as they arise.

One medium term priority of particular interest is local government regulation. This is an area of significant complexity and broad reach, requiring comprehensive consultation and consideration of the widely varying size and resources of individual Councils as well as the relative sizes of their individual regulatory reform tasks. Nevertheless, the Authority notes that significant work has already been done to define a set of problems, with possible solutions. The Local Government Association of Queensland (LGAQ), for example, has lodged a submission that is clearly the product of significant deliberation on these matters. Contributions such as those of the LGAQ will assist greatly in moving forward with medium term priorities.

5.5 Discussion

The next steps are for the Government: to identify which of the potential reform areas it wants to move forward; confirm the responsibilities for designing and implementing reforms, and establish time lines for effective review.
Investigating and implementing the fast track reforms and other reform candidates nominated by the Government will, along with ongoing responsibilities for reviewing new regulation through the RIS process, effectively occupy the resources available to the departments and the OBPR for a considerable period.

In some cases, there may be issues with inconsistent or redundant regulation from different departments. For example, the Waste Recycling Industry Association of Queensland describes conflicts among eight pieces of legislation that affect its sector. In the case of broadly defined topics that may cut across several departments, it is suggested that the Government request individual departments to review regulatory requirements and forward findings and recommendations to the OBPR for further review.

The Government’s reform plan should recognize that OBPR or a similar independent, well resourced entity would play an oversight role in all reviews and prepare a public report for Government assessing the recommendations of the reviews. Assuming that this role is assigned to OBPR, it can then be tasked with developing a reform process that would involve the relevant departments and stakeholders.

The reviews would be conducted based on principles discussed in the Issues Paper and identified in Chapter 4 of this report. Reforms that are implemented as a result would likely make substantial contributions to the Government’s target of a 20% reduction in regulatory burdens.

In line with the co-ordinating role proposed for the Treasury Department in relation to regulatory matters (see Chapter 6), OBPR will consult with Treasury in respect of specific responsibilities in relation to medium term priorities.

**5.6 Review process**

OBPR’s review of priority areas for reform has produced a list with suggested priorities in widely varying areas of regulation, with different levels of complexity, and a range of costs and benefits from reform. This diversity suggests that different levels of scrutiny should be applied to each reform project, by a range of review bodies. In some cases, reviews are already under way.

Table 5.3 sets out OBPR’s suggestion for appropriate review bodies for the review priorities identified in Table 5.2. Table 5.2 also contains a suggested duration for each review, based on its complexity.

Table 5.3 sets out example time frames for a complex review (15 months) and a simple review (6 months). The simple review omits the iteration of a draft report with associated stakeholder input and further expert advice. Table 5.3 is indicative only, and each review will be tailored to specific circumstances. Reviews of 9 and 12 months will have differing degrees of similarity to 6 and 15 month reviews.
Table 5.2: Responsibility and Timing for Fast Track Reform Candidates

<table>
<thead>
<tr>
<th>What</th>
<th>Who</th>
<th>Duration (months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmonisation legislation that increases costs in Queensland (case-by-case assessment)</td>
<td>OBPR</td>
<td>9</td>
</tr>
<tr>
<td>Housing restrictions</td>
<td>OBPR</td>
<td>12</td>
</tr>
<tr>
<td>Land sales and property development (including coastal development) regulations that impose a significant red tape burden or restrict competition</td>
<td>Assistant Minister for Planning Reform</td>
<td>TBD</td>
</tr>
<tr>
<td>Mining development requirements that raise costs and delay investment</td>
<td>Department of Natural Resources and Mines</td>
<td>12</td>
</tr>
<tr>
<td>Occupational Health and Safety legislation and Workers Compensation legislation that impose red tape, increase the cost of business and restrict competition</td>
<td>OBPR, with Attorney General due to legal onus problem.</td>
<td>15</td>
</tr>
<tr>
<td>Queensland Gas Scheme requirement to generate 15% of electricity from gas</td>
<td>OBPR</td>
<td>6</td>
</tr>
<tr>
<td>Tourism restrictions related to National Parks, Wild Rivers and similar legislation</td>
<td>Dept of Tourism, Regional Development and Industry</td>
<td>9</td>
</tr>
<tr>
<td>Trading hours restrictions</td>
<td>Justice and Attorney-General</td>
<td>6</td>
</tr>
<tr>
<td>Vegetation management regulation that increases costs and prevents efficient use of property</td>
<td>OBPR</td>
<td>15</td>
</tr>
<tr>
<td>Water Efficiency Management Plan requirements on large water users that are burdensome or redundant</td>
<td>OBPR</td>
<td>6</td>
</tr>
</tbody>
</table>

Table 5.3: Examples of Timing for Complex and Simple Reviews of Fast Track Reform Candidates

<table>
<thead>
<tr>
<th>Step</th>
<th>Complex review (15 months)</th>
<th>Simple review (6 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government issues Terms of Reference</td>
<td>Start</td>
<td>Start</td>
</tr>
<tr>
<td>OBPR release issues paper</td>
<td>Week 13</td>
<td>Week 9</td>
</tr>
<tr>
<td>Close of stakeholder submissions</td>
<td>Week 26</td>
<td>Week 14</td>
</tr>
<tr>
<td>OBPR releases draft report</td>
<td>Week 47</td>
<td>---</td>
</tr>
<tr>
<td>Close of stakeholder comments on draft report</td>
<td>Week 53</td>
<td>---</td>
</tr>
<tr>
<td>OBPR releases final report</td>
<td>Week 66</td>
<td>Week 27</td>
</tr>
</tbody>
</table>

5.7 Further Stocktakes

The Issues paper recommended that a schedule for review and reform of all regulation that creates a regulatory burden should be developed by responsible departments in consultation with the OBPR and linked to the process for setting priorities. The Authority suggests that, given ongoing Departmental and Parliamentary Committee reviews as well as the high level review already conducted to identify the priority reform candidates (which considered input from stakeholders), resources are better spent in moving forward with the reform candidates that Government selects.
However, the Authority did receive submissions addressing the proposal in the Issues Paper for conducting a stocktake of regulation. These are summarised next.

5.8 Submissions

There was strong support in the submissions for progressive review of the existing regulation and public stocktakes, however submissions focussed on the standards that would be used for assessment.

Local Government Association of Queensland (LGAQ) endorsed periodic review (p.5):

LGAQ recommends a process of periodic stakeholder review with a well-defined method for the refinement and improvement of regulation, including the reduction of burden and unnecessary costs.

Master Builders noted (p.6):

Master Builders supports a progressive review of existing legislation. Red tape reduction targets are useful in the review process as they help set a tangible goal for the Government to aim for over the longer term.

Stanwell supported the principle of ongoing stocktakes with packaged sunset reviews (p.4):

Stanwell supports an ongoing review of both existing and new regulation, rather than large-scale regulatory reforms at various points in time. Stanwell recognises that the approach adopted to manage and review the stock of legislation provides a high return for the level of effort expended. The use of programmed reviews, including sunsetting provisions, provides an opportunity to streamline the level of regulation in Queensland.

Many stakeholders recommended that, as part of the review, the existing regulation be subject to the same RIS standards as the new regulation. Examples are provided below.

Master Builders (p.6):

Master Builders supports:

- Sunset provisions for regulation, requiring a regulation to be reviewed and remade after a certain period.

- Sunset reviews of regulation subject to the same RIS standards as the new regulation.

- That to the greatest extent possible (noting the constraints of ministerial responsibility) that review of the regulation should be undertaken by an independent entity to ensure an impartial and authoritative review, particularly for major reviews.

- Placing the onus of proof for the continuation of the regulation on the entity responsible for it and to remove the regulation unless that entity can establish that it is in the public interest to retain it.

The Queensland Consumers Association (p.1):

...the Association supports greater use of tools such as Regulatory Impact Assessments/Statements to examine the merits of existing and proposed regulations.

CCIQ (p23):

CCIQ believes the same rigour needs to be applied to sunset reviews and post-implementation reviews as is applied to proposed new or amended regulation.

Property Council of Australia (p.3):
Adopting RIS requirements for regulation subject to review will increase transparency and consistency, while allowing for public consultation.

Stanwell (p.4):

Stanwell agrees that the Regulatory Impact Statement (RIS) requirements for expiring regulation should be the same as for new regulation, and that post implementation reviews of new regulations should be sufficiently robust to enable an appropriate interrogation of the impact of the regulation in practice.

There was also general support for an independent entity to undertake the reviews of existing regulation.

5.9 Discussion

A number of submissions emphasised that one-time reviews are not sufficient. Preventing excess regulation should be a continuous or periodic process. The Authority considers that the inventory of regulatory restrictions described in Chapter 3 together with imposition of a permanent 20% reduction in regulatory requirements will partially satisfy this objective.

Imposition of sunset requirements with an improved RIS process, as suggested by some stakeholders and as recommended in the Issues Paper would also contribute towards achieving the objective of minimising regulatory burden in the stock of legislation.

In addition, the onus of proof requirement on proponents of regulation was generally supported. The recommended permanent formal mechanism for firms and individuals to seek a reduction in specific regulatory burdens (discussed in Chapter 6) will also help to address concerns raised in the submissions about one-off reviews.

5.10 Recommendations

5.1 Fast Track Reform Candidates

- The Government should determine fast track candidates, responsibilities for reforms and a time frame for reform. Ten possible candidates have been identified.
- The OBPR or a similar independent, well resourced entity should play an oversight role in the design and implementation of reforms.
5.2 Medium Term Reform Candidates

- The medium term regulatory reform candidates and any other reform candidates nominated by Government should be submitted to responsible policy departments or regulatory agencies for their views and suggestions.

- Departmental responses should be reviewed by the OBPR, re-considered where relevant and a final recommendation made to Government by the OBPR on the scope for reform, priority and sequencing, responsibilities and resource requirements.

- The responsible policy department would then develop a plan for regulatory reform priorities and submit the plan to the OBPR for final review. The plan should recognize that OBPR or a similar independent, well resourced entity would play an oversight role for all reviews and make a public report to Government assessing the recommendations of the review.

- In line with the co-ordinating role proposed for the Treasury in relation to regulatory matters, OBPR should consult with Treasury in respect of specific responsibilities in relation to medium term priorities.

5.3 Additional Candidates

- OBPR should be advised of any departmental regulatory reform proposals not included in the stocktake described above.

- OBPR should review all Parliamentary Committee and departmental regulatory reform proposals and evaluations that have been developed independently of the OBPR stocktake.

5.4 Stocktake

- The Authority recommends that instead of devoting resources to a formal stocktake, the Government move forward with specific reforms.

- Existing legislation with regulatory requirements should be made subject to sunset reviews that place the onus of proof for maintaining the regulation on the proponent.
6. **WHOLE OF GOVERNMENT REGULATORY MANAGEMENT SYSTEM**

The Authority proposes a whole of government regulatory management system designed to reduce the burden of regulation on a comprehensive and sustained basis.

6.1 **Objectives, Incentives and Management**

A regulatory management system comprises the institutional arrangements, management processes, accountability mechanisms and evaluation tools that determine how and when regulations are made, administered and reviewed. The regulatory management system has to be designed to ensure effective prioritisation, coordination, communication, implementation and monitoring. But before developing the details of an appropriate regulatory management system, it is critical to first establish the relevant policy and regulatory objectives. It is also critical to recognise that there is likely to be an issue with the existing culture in government in relation to the role of regulation.

The economic principles that form the basis for public policy formulation recognise the ‘public interest’ as the most appropriate overarching objective for government. The recognition of public interest means that financial considerations do not necessarily outweigh environmental considerations and that the converse also applies. The public interest should be broadly defined to include economic, social and environmental objectives. It is the overall public benefit that counts for testing whether a regulation or other government intervention is justified.

A fundamental issue to be addressed is a culture within government that for many stakeholders encourages regulation as a solution to many issues. It is imperative that the regulatory management system contain features to help ensure that policy and rule makers and those responsible for designing and administering regulation have appropriate incentives to ensure that regulation is in the public interest. As suggested, recognising the public interest objective is important in itself for ensuring the regulatory management system contains appropriate incentives and is effective.

There are various activities under way that will reduce and improve regulation in Queensland (see section 1.5.). However, given the scale of the regulatory burden and the limited resources available to undertake reform, there is a need to develop and implement a coordinated and comprehensive system to ensure the best outcomes from the reform effort.

The OECD (2010, 2012b), Productivity Commission (2011), Regulation Taskforce (Australian Government, 2006) and Victorian Competition and Efficiency Commission (VCEC 2011a) have made a number of recommendations in relation to regulatory management systems. The following observations relate to key findings of these reviews, particularly that of the VCEC.

**Clarity of Objectives, Roles and Accountability for Performance**

Clarity of objectives is a critical starting point. Determination of the overall regulatory policy objective is a matter for Government. Ideally, the Government needs to set a clear overall regulatory policy objective and a clear purpose for an appropriate, supporting regulatory management system. This is important for motivating support, guiding priorities and effort, and providing a unifying framework for regulatory reform. It is also important to distinguish between means and objectives in defining regulatory policy.

The VCEC (2011a, p. 192) recommended that the Government should publish a *Regulatory Policy Statement* to clarify the objectives it wishes to pursue and the principles that should
guide actions to achieve those objectives. The VCEC suggested that the concept of ‘net community benefit’ was a good starting point for specifying an overall objective.

The VCEC also highlighted that it was important to have clear objectives at the level of individual regulations and for those responsible for administration and implementation of regulation. It suggested that it would also be useful to have a Statement of Expectations for each regulatory agency from the responsible Minister. The Victorian Government is implementing this approach.

In order to remove confusion and duplication and help ensure accountability, there is also a need for clear specification of the roles and responsibilities of all those who are involved in the regulatory management system.

The VCEC (2011a) recommended that a ‘Minister for Regulatory Reform’ be given responsibility for the regulatory management system on behalf of the Cabinet. The role of the Minister for Regulatory Reform could encompass: ensuring role and task clarity; ensuring capability to reduce and improve regulation; identifying priorities; overseeing regulatory activity; identifying scope for improvements; and promoting the importance of improving regulation and better policies to achieve it.

OECD (2012, p. 7) has made a similar recommendation:

> The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such Minister could include:

- Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
- Reporting on the performance of the regulatory management system against the intended outcomes;
- Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

Given his direct responsibility for the Office of Best Practice Regulation, the Treasurer and Minister for Trade (in association with the Assistant Minister for Finance, Administration and Regulatory Reform) is the Minister responsible for regulatory reform in Queensland.

Once objectives and roles are made clear, it becomes easier to establish accountability for performance. This will require an effective incentive system.

**Incentives**

Progress in reducing the regulatory burden requires incentives designed to discourage unjustified growth of regulation and to facilitate reform of existing regulation where appropriate. This aspect is considered to be the most important feature of the proposed whole of government regulatory management system.

Prior reviews across Australia in recent years have identified a significant agenda for reducing the regulatory burden. There has clearly been a lack of appropriate incentives for ensuring the effective assessment of regulatory proposals. Regulation should be proposed and designed only if it is in the public interest as a whole (the community’s interest broadly defined to reflect all aspects of the quality of life).
A key concern is ensuring that arrangements are put in place to encourage effective review and reform of existing regulation and to be more disciplined in assessing the need for additional regulation.

The main features of a regulatory management system that can affect incentives are:

(a) clarity of objectives, roles and accountability for performance, including performance targets;

(b) independent and authoritative review of policy and regulatory proposals and performance;

(c) transparency of the policy and regulatory assessment process; and

(d) onus of proof to demonstrate there is a public benefit from the specific government intervention.

Examples of clarity of objectives, roles and accountability include: an overarching Regulatory Policy Statement; a publicly available Statement of Expectations from the responsible Minister for each entity responsible for regulation; and performance contracts with regulatory targets for chief executives of government departments.

Experience has shown that it is critically important to set some overall binding quantitative targets for individual agencies in order to ensure agencies have incentives to undertake meaningful reform efforts. This is particularly important where efforts to reduce the regulatory burden have been neglected or achieved limited success and even if the targets are only an approximate indicator of the regulatory burden. However, experience has also shown that it is important to involve Departments in the specification of appropriate targets for reform efforts.

Financial rewards and penalties can also motivate incentives for reform as demonstrated in the case of National Competition Policy legislative reviews from 1995 to 2005. However, fiscal circumstances may effectively rule out the use of financial incentives for regulatory reform.

The requirement for independent and authoritative review of policy and regulatory proposals is necessary to ensure discipline and rigour in the assessment process.

Transparency is a fundamental means to providing effective incentives for better policy and regulatory outcomes. A good example of best practice transparency is a commitment to public availability of all RISs and assessments of RISs. Exposing departmental decisions to public review will help to ensure high quality analysis that will lead to decisions that reflect government policy to reduce regulatory burdens.

A requirement that a proponent of regulation must prove that the regulation is in the public interest is also critical in affecting incentives and changing the culture of policy development and rule making in government.

**Capability**

An effective regulatory management system requires adequate staff resources with appropriate policy analysis skills. There is clearly a need for those who are involved in advising on regulatory options to have a good understanding of non-regulatory approaches for achieving policy objectives and the ability to undertake suitable cost benefit analysis. OBPR anticipates providing a training function to help make this happen.
For training to be most effective, those receiving it need to have appropriate incentives to use the material that is provided. This observation reinforces the need to ensure other aspects of the regulatory system are working well.

**Consultation**

Consultation with those affected by regulations as well as effective communication within government is important for identifying and explaining the need for reforms. An effective consultation processes is needed both for assessing the existing stock of regulation on an ongoing basis as well as for evaluating new regulation.

**Organisational Issues**

Most government agencies have a role to play in reducing the burden of regulation. This includes eliminating unnecessary regulations and designing the least cost way to implement regulation that is needed to meet policy objectives. As the OECD notes, ‘ensuring the quality of the regulatory structure is a dynamic and permanent role of governments and Parliaments’ (OECD 2012b, p. 22).

Given the scale of the issue, a whole-of-government focus on improving regulatory and policy outcomes is required. This means that a regulatory management system needs to be developed and implemented from a whole-of-government perspective.

The VCEC and other institutions with experience in regulatory management systems recommend formalising the accountability of a regulatory management system and defining specific roles. This approach assumes an entity with an oversight and coordinating function.

Given his role as the Minister responsible for regulatory reform, the Treasurer and Minister for Trade, supported by an Assistant Minister, should help ensure a whole-of-government perspective that includes good regulatory principles and practices. This should include overall responsibility for the regulatory management system including its performance. At the same time, responsibility for policy development and regulation at the portfolio level should (and it is understood will) remain with portfolio Ministers.

This approach goes well beyond the ‘gate-keeping’ type approaches that have been used to date and found to be unsuccessful in reducing the burden of regulation. Experience has shown that a commitment and capability with respect to reducing the burden of regulation at the policy development level and a concerted, whole-of-government effort supported by an appropriate whole-of-government regulatory management system are required. Training by itself is not likely to be sufficient without appropriate incentives that should derive from a well designed whole-of-government regulatory management system. It is critical that the key features discussed above in relation to incentives to improve regulatory outcomes and reduce the regulatory burden are prominent attributes of the regulatory system.

**Management mechanisms and evaluation**

A regulatory management system also includes mechanisms and tools to provide some discipline and rigour in managing and evaluating regulation. This includes measurement of the burden of regulation, targets for reducing and reforming regulation, stock-flow linkage rules, programmed reviews and leading practices in managing regulation.

Chapter 3 of this report discusses measurement issues and targets for reducing and reforming regulation.
Stock flow linkage rules are rules that constrain the total amount of regulation by linking new regulation to the existing stock. They include ‘one-in one-out’ rules and ‘regulatory budgets’ that limit the stock of legislation. The Productivity Commission (2011, xv) notes that, to provide effective discipline, the rules need to be obligatory but could have perverse effects (as they are not linked to an appropriate measure of net benefit).

Programmed reviews are designed to review specific regulations at a specified time or for a specified situation. Programmed review mechanisms include reviews linked to sunsetting provisions and post implementation reviews. These mechanisms are considered to have good potential for reducing the regulatory burden.

‘Sunsetting’ requires a regulation to be re-made after a certain period (typically 5 to 10 years). The Productivity Commission (2011, p. xix) notes that ‘for sunsetting to be effective, exemptions and deferrals need to be contained and any regulations being re-made need to be appropriately assessed first’. Sunsetting provisions or other forms of programmed reviews also offer the opportunity to undertake broad ranging reviews for related legislation. Timetables for sunsetting also need to be developed to smooth out the number of instruments due to sunset over time.

The concept of leading practices refers to management approaches and mechanisms that ensure best practice principles for good regulation are effectively implemented. This can include various requirements to ensure transparency, effective consultation and effective evaluation.

### Coverage

Another issue is the coverage of regulation. As explained in the Issues Paper, the term regulation refers to both legislation and subordinate legislation and the scope for government entities to set conditions or standards. In addition, both state and local government regulation would be subject to regulatory review and reform.

### Reducing Duplication

Stakeholders in many jurisdictions have commented on overlapping (and sometimes contradictory) regulatory requirements imposed by different agencies of the same government. Examples can include:

(a) A requirement to provide name, address, business registration and similar details to a number of agencies for day to day dealings and business permits.

(b) Different deadlines to lodge project details with different agencies. In some cases, the deadline for one agency can expire before the expiry of a mandatory period for stakeholder comment imposed by another agency.

(c) Lack of clarity on the order in which different permits need to be obtained before lodgement of the next step in an application process.

A common response to problems of overlap and duplication is to consider creation of a ‘one stop shop’\(^3\). The idea behind this is to consider regulation from the point of view of the customer, and to simplify the customer-centred process accordingly. A key benefit of eliminating duplication is that it eliminates burden without eliminating regulatory effect.

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\(^3\) For example, the Productivity Commission recommended creation of a one stop shop in its 2010 report entitled *Report on the Contribution of the Not for profit Sector*. 

An issue to also be considered is whether there can be better use of technology to share information between government agencies (an electronic one-stop shop).

The Authority understands that proposals for a Queensland Government one stop shop are being developed by the Department of Science, Information & Technology, Innovation and the Arts. This will be investigated to determine its status and how it might address the needs of business and individuals.

**A Permanent Formal Mechanism to Facilitate a Reduction in Specific Regulatory Burdens**

Another approach to consider is the establishment of a permanent mechanism that would allow firms, individuals, or representative bodies, to make a case for reducing specific regulatory burdens. For example, a particular organisation, company, industry group or community organisation might (at its expense) make a submission to the OBPR seeking regulatory redesign and reduction for the particular entity (and other similar entities). The submission might provide:

(a) an audit of the range of State regulations that apply to the entity;

(b) a list of the legislative and regulatory objectives that these regulations appear to be seeking to attain; and

(c) a submission explaining how the entity believes those regulatory objectives can be attained in a more effective and efficient way as they pertain to that particular entity (and by implication other similar entities) or why the regulatory objectives are misplaced or obsolete.

The OBPR would then consult with the regulatory agencies referred to in the submission (along with any other relevant agencies) to determine whether there is indeed regulatory overlap or inefficiencies, and whether there are better ways to attain the desired legislative and regulatory objectives as they apply to that entity.

OBPR would then report to the Government on recommendations for any regulatory redesign and relief it believes appropriate, which may lead to amendments of regulation as it pertains to that entity and other similar entities.

Even if any resulting tailor-made regulatory changes resulting from this process are not substantial, the process may lead to significant changes in the ways in which future laws and regulations are devised. Policy makers would no doubt be educated to take a more client-focused perspective as a result of the consultation process arising from a regulatory relief submission.

**New Regulation and the Regulatory Impact Statement System**

As new economic, social and environmental challenges emerge, governments will continue to introduce or amend regulations as one of the means by which to address such policy issues. However, the flow of new regulation should be subjected to a systematic and disciplined process that ensures new regulation is necessary, efficient and effective in achieving policy objectives without imposing unnecessary burdens on stakeholders (both external and internal to government).

Regulatory impact analysis (RIA) is widely used as a means to minimise the burden of new regulation through the systematic assessment of the options and associated impacts for addressing a policy issue. By applying an evidence-based approach to policy making, RIA
aims to ensure that the development of regulatory proposals is both effective and efficient and that decision makers and stakeholders are fully informed about proposals’ impacts prior to a decision to regulate.

The Regulatory Impact Statement (RIS) system – formerly the Regulatory Assessment Statement (RAS) system – is the Queensland Government’s RIA process guiding the development and review of State regulation. A summary of the RIS system is provided in the companion report Key Features of the Regulatory Impact Statement System.

Assessments by the Queensland Audit Office (2011) and the Productivity Commission (2012a) have concluded that the requirements of the RIS system in Queensland generally reflects a good-practice model of policy development and decision-making. However, the Productivity Commission (2012a) suggested that the design of the RIS system could be strengthened through the adoption of measures to improve transparency and accountability.

The Productivity Commission (2012a) (p.78) also noted that a gap between RIA principles and practices, and a lack of commitment by Ministers and agencies, was reducing the efficacy of existing RIA processes across Australian jurisdictions:

... the contribution of RIA to better regulatory outcomes has also been inhibited by poor implementation and enforcement of existing processes. The lack of effective integration of RIA into policy development processes suggest that there is a need for a stronger commitment by politicians (including heads of governments) to ensuring the gap between RIA principles/requirements and actual practice is narrowed.

The Productivity Commission (2012b) (p.27) emphasised the fundamental importance of fully embedding RIA into the policy development process for it to achieve its full potential:

Integrating RIA with the policy making process is essential if the scrutiny and analytical rigour it brings are to become a routine part of policy development. Since RIA provides an assessment of regulatory and non-regulatory alternatives, it is important to integrate it at an early stage of the process – ideally as soon as it is considered that regulatory may be necessary.

In addition to lack of political commitment, other barriers to the integration of RIA in policy development identified by the Productivity Commission (2012b) (pp.325-330) included a lack of skills in Departments to undertake RIA, a lack of data on which to base analyses, and the administrative burden of the RIA process.

As discussed in this Chapter, a whole-of-government regulatory management system that provides incentives (including independent review and transparency of regulatory proposals) to encourage more effective integration of the RIS system into departments’ policy development processes should increase the efficacy of the RIS system. Importantly, it should help to ensure that only regulation that is in the public interest is introduced. Training provided by the OBPR on the RIS process, cost-benefit analysis and alternatives to regulation, as well as early engagement with Departments when policies are being considered, should further support effective implementation by departments of the RIS system.

6.2 Submissions

Clarity of Objectives, Roles and Accountability for Performance

Clarification of regulatory and policy objectives and roles and improved accountability was well supported by the submissions and consultation process.

The Australian Institute of Company Directors in its July 2012 Working Paper – Business Deregulation a Call to Action (pp. 22-23) – noted that clear objectives and frameworks at the
political level were recommended as a key principle in the OECD’s 2005 report on Guiding Principles for Regulatory Quality and Performance.

The Chamber of Commerce and Industry Queensland noted that this principle was already recognised with existing Queensland Government approaches (p.29):

> A public commitment (election commitment) and broader Cabinet agreement on the 20 per cent red tape reduction target should provide the necessary clarity on the objectives for regulatory reform.

CCIQ notes that Ministers and CEOs also have clear expectations outlined in their Charter Letters and this should be sufficient to drive and maintain clarity and make the objectives of the Government clear.

The Australian Institute of Company Directors (p. 12) highlighted the need for clear processes and responsibility:

> To ensure the reforms are properly implemented, clear processes must be established to carry them forward. In particular, there should be:

- a forward agenda, identifying at the outset what actions are to be taken, both in relation to the specific reforms and further reviews;
- indicative timeframes for the various components of the forward agenda;
- processes in place to monitor and facilitate the progress of implementation of reforms across all levels of government; and
- clarity as to who is responsible for ensuring reforms are carried out in a logical order; assuring regulatory quality; and ensuring regulations remain appropriate in a changing, fast-paced environment.

**Incentives**

Several stakeholders recognised that the build up of regulation reflects cultural factors that promote a resort to regulation as the prime means of addressing a myriad of issues and risks for the community without a thorough understanding of the costs of regulation.

The Australian Institute of Company Directors (p. 13) noted how the incentive structure of politics has led to a culture of regulation:

> Part of the problem is that the urge to regulate is part of the incentive structure of modern politics, which is both risk averse and increasingly inclined to respond to media and public pressure to “do something” about perceived problems. Governments often respond with regulation which is impractical, unworkable and disproportionate to the ‘problem’ it is purported to solve.

The importance of cultural change was also highlighted (p. 32):

> Cultural change is imperative for any regulatory reform to succeed. According to the OECD Review, in order for substantive cultural change to take place a number of issues must be resolved including:

- how to ensure that regulatory policy considerations are genuinely and substantively taken into account at the outset of the policy development process; and
- how to ensure more effective and substantive engagement by Ministers in considering better regulation implications of policy proposals.

Specific policy interventions such as incentives, training and sharing of best practice can help. However, ensuring Ministers and their departments are clearly accountable for the quality of regulation in their portfolio is more likely to influence culture and regulatory behaviour more generally. It is not sustainable for the Commonwealth to continue to provide ongoing financial incentives to motivate reform.
There was broad support for more accountability by setting meaningful performance targets and ensuring processes and assessments of policy and regulatory options were transparent.

The Chamber of Commerce and Industry Queensland (p. 30) noted:

One of the most important aspects of a best practice regulatory reform framework is regular public progress reporting against the baseline and targets.

The Australian Institute of Company Directors (p. 8) noted:

It is also imperative that the entire process is transparent and that governments and regulators are held accountable for implementing reforms.

Several submissions and meetings with individual stakeholders indicated strong support for the ‘onus of proof’ to be placed on a proponent of regulation to prove a regulation entailed a net benefit rather than on proving a regulation should be removed. However, some submissions noted some information and administrative concerns with the concept.

The Chamber of Commerce and Industry Queensland (p. 27) indicated there was evidence that the principle could lead to a reduction in red tape:

CCIQ agrees that greater accountability needs to rest with the regulators to argue their case for regulation and to demonstrate that no other form of action, statutory or quasi-regulatory instrument can deliver the same outcome and address the issue. Evidence from other jurisdictions demonstrates that this approach can lead to more efficient regulation and a net reduction in red tape.

Energy Retailers Association of Australia (p. 2) supported the principle but noted a concern about the administrative burden if applied to all regulation:

The ERAA supports the principle of switching the onus of proof from those seeking to remove regulation, to those who are advocating for its retention. The ERAA believes this is a sound approach that will achieve the goal of reducing existing regulation. This approach would be especially beneficial when considering the case for electricity price deregulation. However, requiring all regulation in Queensland to be justified (or deemed to be not necessary) could result in a significant administrative burden.

The Property Council of Australia (p.3) noted:

Sunset provisions and the onus of proof provide incentive for government departments to assess, review and strengthen regulation on a regular basis.

Queensland Resources Council (p.3) endorsed the concept:

QRC supports the onus of proof being on those advocating regulation (issue 1.5).

Stanwell (p. 5) supported the principle provided there was transparency in the decision making process:

Stanwell also supports placing the onus of proof in justifying the continuation of regulation on the entity proposing a new regulation or retaining existing regulation. Given the volume of regulation currently in place in Queensland, such an approach has the potential to effectively reduce the regulatory burden, provided there is transparency in the decision making process.

TRUenergy (p. 2) supported the principle provided complete information was available:

TRUenergy is supportive of the approach whereby the proponent of new regulation is responsible for proving the net public benefit however is concerned that this party may not be in possession of complete information with regard to the associated costs. Where regulation is created as a result of a policy decision, consultation should be undertaken to ensure that the initiative is feasible before there is a public commitment to the policy.
However, some submissions expressed concerns that the benefits of regulation would not be properly recognised. For example:

Queensland Consumers Association (p. 1):

The terms “regulatory burden” and “the burden of regulation” are widely used in the literature on regulation and are included in the Minister’s Direction Notice. This is unfortunate because it can result in a regulatory approach to the achievement of public policy objectives being considered very negatively, whereas in practice it can be, and is, the optimal approach for consumers and business. Also, it can result in an excessive emphasis on the costs of regulation rather than on benefits.

Local Government Association of Queensland (p.3):

All regulation raises costs for businesses and consumers. However, regulation is introduced for reasons including market failure, public interest, safety and welfare. Accordingly, any process seeking to reduce regulation needs to follow a set of principles and a clearly defined process that includes a risk-assessment element.

There was however general support for an independent, authoritative entity to ensure discipline and rigour in the assessment process for the stock of regulation and for new regulation.

For example, Master Builders noted (p.6):

That to the greatest extent possible (noting the constraints of ministerial responsibility) that review of the regulation should be undertaken by an independent entity to ensure an impartial and authoritative review, particularly for major reviews.

The Australian Institute of Company Directors (p.58) noted:

In order to be successful, it is essential that:

• those heading the review are at arm’s length from the relevant policy area and regulator, with no conflicting interests.

• the reviews are led and overseen by an independent chair, and an advisory panel which includes business representatives.

CCIQ, however, emphasised the need for Government agencies to actively participate in the reviews and take ownership of the process. CCIQ stated (p.25):

CCIQ believe that an important element of the “cultural change” process will be for agencies to take ownership of the regulatory reform process. Agencies therefore can and should be expected to review their own regulation and identify/develop reform priorities.

Agencies should be accountable and be incentivised by other aspects in the framework including the target for red tape reduction, ministerial onus of proof, and Cabinet and public reporting of reform progress. Additional mechanisms to maintain the impartiality and effectiveness of agencies reviews of regulation will be improved consultation protocols and regulatory impact assessment processes.

What should however be independently assessed is regular progress reports or stocktake reports against the baseline and target.

Other aspects which should also be kept independent (and delegated significant authority) include the decision making regarding exemptions and quality of RIS/RAS and advice regarding the cost-benefit analysis.
Capability

There were mixed views about the priority for improving capability.

The Chamber of Commerce and Industry Queensland noted that, in relation to regulatory reform (p. 30):

*CCIQ believes that policy and regulatory officers should already be equipped with sufficient skill and tools to meet regulatory reform and efficiency objectives.*

*However CCIQ believes that the OBPR could support agencies by providing information about alternative instruments to regulation and examples of best practice outcomes to support the policy development process.*

*CCIQ also firmly believes that regulatory agencies need to improve their engagement strategies with industry and community stakeholders and develop a better understanding of how businesses operate and how industry responds to regulatory and compliance requirements.*

However, AgForce expressed strong concerns about administrative capability (pp. 7-8):

*Administration of the VMA and its codes and decisions are made by staff who do not have the appropriate skills or lack on-ground understanding of the region- this leads to inconsistency of advice as well as an unwillingness to offer, negotiate or consider alternative solutions to performance requirements.*

The Queensland Resources Council was also concerned with the administration of regulations (p. 4):

*However, an issue that QRC did want to emphasise with OBPR is the key importance of adequate skilled personnel to administer regulations effectively. The issue of skilled and experience administrators was clearly called out in work conducted in 2006 by specialist consulting firm, URS.*

The Local Government Association of Queensland highlighted the limited capacity for local government to evaluate regulatory policies with a standard regulatory impact statement process (p. 2):

*A requirement for a RIS process for local laws would create an unreasonable impost on local government and councils do not have the resources that would be required to undertake the significantly increased task.*

Consultations with government agencies confirmed that there is a need for building the capacity to prepare effective Regulatory Impact Statements.

Consultation

Most stakeholders emphasised the need for improved consultation, including allowing adequate time and giving genuine consideration of stakeholder concerns.

The Australian Institute of Company Directors in its July 2012 Working Paper – Business Deregulation a Call to Action (pp. 45-46) noted (in relation to consultation across Australia):

*There has been a consistent lack of proper consultation by governments with business at each of the following stages of the regulatory making process:*

- Initial proposal for new regulation
- Consideration of the likely impact of the proposed regulation
- Drafting of the proposed regulation
• Review of regulation

The Chamber of Commerce and Industry Queensland (p. 30) also emphasised the need for consultation to occur at appropriate stages of the regulatory development process and for the consultation to be genuine:

*The most important element of consultation is to ensure it is conducted at the most appropriate stage in the policy/regulatory development cycle and that any engagement or invitation for feedback on proposals represents genuine consultation and is used to genuinely influence an outcome and the decision making process.*

And at p. 31:

*CCIQ also firmly believes that regulatory agencies need to improve their engagement strategies with industry and community stakeholders and develop a better understanding of how businesses operate and how industry responds to regulatory and compliance requirements.*

Master Builders (p. 2) noted:

*The inadequate consultation process – tight timeframes make it almost impossible for the business community to provide meaningful input. It also appears that some government departments are treating consultation as a ‘tick the box’ process with the regulatory outcomes already determined prior to the consultation process.*

**Organisational Issues**

Several submissions supported the need for a whole of government approach to regulatory reform and management. Examples are provided below.

Australian Institute of Company Directors, from the paper “Business Deregulation: A Call to Action” (p. 9):

*There needs to be a coherent, whole-of-government approach to these reforms to create a regulatory environment favourable to the creation and growth of business, productivity and competition. It is not sufficient to simply appoint a minister responsible for deregulation or regulatory reform; there must be a commitment by every minister and every government department to a better regulation and deregulation agenda.*

Chamber of Commerce and Industry (p.11);

*CCIQ are generally supportive of the proposed whole of Government management system and believe it is important to the process of driving cultural change across Government.*

Master Builders (p. 2):

*The lack of a government-wide approach to regulation – every department appears to act in isolation without any consideration for the cumulative impact of the government-wide regulatory burden. This is a particularly important issue in relation to the cost of regulation where departments argue that the cost impact is relatively minor without giving due consideration to the cumulative cost impacts of government regulation. All these ‘little’ costs add up and can ultimately be a determining factor in business viability.*

Further consultation with individual stakeholders generally confirmed the importance of ensuring a coordinated and comprehensive regulatory management system, provided that real progress was made in reforms rather than the creation of a system with no meaningful effect.

For example, the Chamber of Commerce and Industry noted (p. 28):

*CCIQ would also seek assurances that the process of developing and agreeing on the “process and framework” for regulatory reform does not receive undue attention and remove focus of*
resources and efforts away from the task at hand to actually deliver regulatory reform and cost savings to business, Government and the community.

The Australian Institute of Company Directors, from the paper “Business Deregulation: A Call to Action” noted (p. 6):

*Our research exposed a consistent pattern of:*

- government appointing an independent taskforce or body to research and report on a particular area of regulatory reform;
- the taskforce or body then producing a lengthy and comprehensive research report to government recommending various areas for reform;
- government producing a detailed response to the research report accepting and rejecting each of the recommendations; and
- then little or no transparency, monitoring or follow-up as to the progress of implementation of the reforms, and no accountability by government for failing to do so.

And recommended the following approach to ensure effective implementation (p. 7):

*To ensure the reforms are properly implemented, clear processes must be established to carry them forward. In particular, there should be:*

- a forward agenda, identifying at the outset what actions are to be taken, both in relation to the specific reforms and further reviews;
- indicative timeframes for the various components of the forward agenda;
- processes in place to monitor and facilitate the progress of implementation of reforms across all levels of government; and
- clarity as to who is responsible for ensuring reforms are carried out in a logical order; assuring regulatory quality; and ensuring regulations remain appropriate in a changing, fast-paced environment.

Other key components of a whole of government approach that were highlighted included: transparency and reporting arrangements.

**Management mechanisms and evaluation**

Stakeholders recognised the need for development of mechanisms and tools for managing and evaluating regulation.

Several submissions expressed support for stock-flow linkage rules in managing regulation. For example, the Property Council of Australia noted (p.3):

*Sunset provisions and the onus of proof provide incentive for government departments to assess, review and strengthen regulation on a regular basis. These must be supported by stock-flow linkages to ensure no net increase to the existing stock of regulation.*

The Chamber of Commerce and Industry Queensland noted (p.22):

*In most jurisdictions where such policies including a „zero net growth“ or „one-in-on-out“ policies have been put in place they have proven effective at least in the initial phases of reform. Indeed as cultural change occurs the need for such blunt instruments would also diminish.*

There was general support from stakeholders for sunsetting provisions. Examples are provided below.
Australian Institute of Company Directors, from the paper “Business Deregulation: A Call to Action” (p.10):

Mechanisms such as sunset clauses or periodic reviews need to be built in to legislation to ensure that regulations remain relevant and effective over time.

Master Builders (p.6):

Master Builders supports:

- Sunset provisions for regulation, requiring a regulation to be reviewed and remade after a certain period.
- Sunset reviews of regulation are subject to the same RIS standards as the new regulation.

Chamber of Commerce and Industry Queensland (p.22):

CCIQ support the use of sunset provisions as a tool for reducing existing stock and controlling the flow of new regulation. Sunset provisions, provided adequate and independent oversight and authority of the administrators of the policy have proven effective in reducing the burden of regulation and ensuring only the most necessary regulations continue to exist.

However, LGAQ (p.4) and Taste South Burnett (p.2) raised concerns about the administrative burdens and the effectiveness of applying sunsetting provisions to all regulation.

**Coverage**

The consultation process confirmed the importance of ensuring that all regulation, including codes and guidelines, is included in the regulatory management system.

The Local Government Association questioned whether local laws were within the scope of the Ministerial Direction (p.2):

LGAQ seeks clarification on whether or not local laws are considered to be within the scope of the Ministerial Direction to the OBPR on this matter. Clarification is also requested on whether or not the issues paper is suggesting that local laws be subject to a RIS process.

This is particularly relevant given current action by the Department of Local Government to streamline the Local Government Act 2009 and related regulations.

Several submissions raised concerns about the regulatory burden of local laws and their implementation.

The Property Council of Australia noted the importance of incentives for local government (p.3):

Incentives must be provided for local government to review and streamline their stock, leading to a reduction in duplication, costs and time delays.

This may be in the form of reporting requirements, reduction targets and/or public consultation.

**Reducing Duplication**

There were mixed views about the extent to which duplication was a problem for business.

The Chamber of Commerce and Industry Queensland did not consider that contacting various agencies was a major issue, provided complexity was reduced and better service provided (p. 31):
CCIQ does not believe that businesses essentially have an issue with contacting various agencies, provided the quality of information and level of service offered meets their needs. Additionally, business contact with regulatory agencies would be reduced if the complexity of compliance and the quality of the initial information was improved. Accordingly CCIQ would prefer to see investment in service delivery within agencies rather than time and resources invested in creating new “portals” or service delivery arms of Government.

However, the Property Council noted the importance of reducing duplication for local government regulation (p3).

Incentives must be provided for local government to review and streamline their stock, leading to a reduction in duplication, costs, and time delays.

AgForce also noted several aspects of duplication in relation to the Wild Rivers Act 2004 (p15):

Since its introduction in 2005 AgForce has opposed the Act on a number of grounds, not the least of which is the question surrounding the need for further regulation when legislation already exists that can provide the same environmental outcomes.

Redland City Council considered consolidation of State legislation impacting local government should be a priority (p. 2):

Council recommends a consolidation of State legislation impacting local government in areas including delegations, authorisations, administrative processes, powers and enforcement tools etc. Different pieces of legislation include different processes and heads of power for establishing delegations and authorisations and this leads to unnecessarily time consuming processes and compliance activities by local government.

The Queensland Resources Council highlighted that the main instances of duplication arose where the regulatory jurisdiction was not clear (p. 3):

QRC sees the main instances of duplication where the regulatory jurisdiction is unclear. For example, Queensland operates a portable long service leave scheme for building and construction workers. The loose wording of the Queensland legislation means that construction is defined to encompass many aspects of resource projects. The levies collected on these 'construction' activities directly duplicate the levies collected under Commonwealth legislation for portable long service leave for the coal industry (issue 1.4).

A Permanent Formal Mechanism to Facilitate a Reduction in Specific Regulatory Burdens

The consultation process confirmed interest in a permanent formal mechanism for stakeholders to present a case for reducing specific regulatory burdens. Examples are provided below.

Master Builders (p.7):

Master Builders also considers that there is merit in establishing a formal permanent mechanism for individuals and firms affected by regulation to make the case for the redesign or regulation. We note however that it will be important to manage expectations about that mechanism and its likely outcomes.

The Chamber of Commerce and Industry Queensland (p. 32):

CCIQ is supportive of a permanent process for stakeholders and industry associations to lodge issues, complaints and suggestions for regulatory reform.
Taste South Burnett (p. 2):

A centralised "one stop shop" approach could possibly be beneficial, as would a single department/contact point where individuals and industry can challenge existing regulation or bring forward suggestions/improvements to regulation and/or service delivery. This would be consistent with the "whole of government" approach and would reduce the confusion and duplication with a number of separate departments being responsible for similar or overlapping regulations.

**New Regulation and the Regulatory Impact Statement System**

As highlighted above, several submissions noted that a cultural change by government was required to address the reflex to regulate when a policy issue arises. There was also support for the ‘onus of proof’ being placed on the proponent of new regulation to show that proposed regulation would result in a net public benefit. The RIS system provides a means by which regulation can be demonstrated to satisfy this principle. However, some submissions expressed concerns with the rigour, consistency and objectivity of the RIS system in practice.

The Master Builders (p.3) noted that:

...one of the most effective ways to reduce the regulatory burden is to ensure that only regulation that is justified is allowed to become law. In our view, this requires a more rigorous and consistent Regulatory Impact Statement (RIS) process to make sure that the costs and benefits are assessed more accurately and realistically. Sometimes it appears as though the discount rates, asset lives and other parameters have been set to achieve the regulator’s preferred outcome resulting in overstated benefits and unstated costs.

While acknowledging the potential of the RIS system and ‘onus of proof’ requirement to reduce regulatory burden, the Chamber of Commerce and Industry Queensland had concerns about proposals avoiding the scrutiny of the RIS system (p. 12):

CCIQ agrees that RIS and reverse onus of proof are effective mechanisms to address existing stock, however has concerns over the mechanisms which allow Ministers and agencies to argue for the exemption of their regulatory proposals.

As mentioned in section 1.2, there was support for an independent body to ensure rigour in the assessment process for new regulation. However, the Local Government Association of Queensland (p.2) was not supportive of extending the RIS process to local laws (see section 1.2.3).

The need for genuine and adequate consultation in the regulatory development process was supported by several submissions but there was a view that the RIS process was not achieving this goal.

The Master Builders (p. 3) expressed the opinion that government departments sometimes seemed to treat stakeholder consultation merely as a compliance exercise:

The current RIS process also needs to be tightened so that stakeholder consultation is more meaningful and effective. It appears these days that some government departments treat stakeholder consultation as a 'tick the box' process whereby you go through the motions of consultation so that you can say that you have done it rather that to identify and address legitimate stakeholder concerns. This view is supported by the fact that consultation times have frequently been shortened to such an extent that it is now almost impossible for the business community to provide meaningful input.

Concerns were also raised by the Chamber of Commerce and Industry Queensland (p.9) about the RIS system’s ability to control regulatory creep:
An improved RIS process is an imperfect tool to control the flow of new and amended regulation as in many cases when viewed in isolation regulatory proposals will pass the public benefit and cost-benefit analysis tests.

An issue identified from consultation with government agencies was the need to engage early in the policy development process to ensure that agencies are better equipped to prepare adequate RISs.

6.3 Discussion

Reform Roles within Government

There was general recognition in submissions for better structure, clarity and discipline in specifying objectives and roles and in developing appropriate accountability arrangements. The Government has a number of initiatives in place to address these needs and some submissions noted the progress that had already been made, for example, Ministerial Charter letters and performance requirements for Chief Executive Officers of Government Departments and the role of the Treasurer and Assistant Minister in relation to regulatory reform. The Queensland Treasury is also now coordinating and reporting on the regulatory initiatives from a whole of government perspective.

There was generally strong support for an independent, authoritative entity to ensure discipline and rigour in the assessment process for the stock of regulation and for new regulation.

However, a key concern of many submissions was to ensure that real progress is made with reforms rather than merely building a management structure. This is an important point and reflects the experience in many jurisdictions and in the past in Queensland in establishing systems, processes and targets that seem to have little impact on improving regulatory outcomes and reducing the overall regulatory burden.

Commitment and Incentives

There is evidence that previous efforts to improve regulatory outcomes have failed to include some critical features needed to change the culture of embracing regulatory options irrespective of the net public benefit. In particular, there is a need to make sure that there is continuing high level political commitment to regulatory reform and that policy advisers have appropriate incentives for reducing the burden of regulation.

High level political commitment is essential for changing the culture. This has been highlighted by the Productivity Commission in its recent report on Benchmarking Regulatory Impact Analysis (2012a, p. 9):

Commitment to RIA processes by agencies developing regulation is most evident where there is strong ministerial commitment. Ministers bypassing the RIA process sends a signal to agencies that RIA processes are not valued. Under such circumstances, senior managers in agencies are unlikely to invest adequately in RIA capacity building — this includes the development of key skills (at an appropriately senior level) for examination of regulatory proposals and the establishment of ongoing processes to collect information for use in cost benefit analysis. It is not surprising therefore, that lack of data and in-house skills were identified as key barriers to using the RIA process to better inform policy development.

The Queensland Government has indicated its strong commitment to regulatory reform but there is a need to put in place a number of mechanisms and best practices to ensure sustained commitment across government to regulatory reform objectives and processes. In particular, commitments to: measurable targets for departments, transparency in reporting on regulatory assessments and in progress on meeting target; and changing the onus of...
proof to show that there is a clear net benefit from regulatory options, are considered critical.

A good example of a best practice transparency principle is the recent recommendation of the Productivity Commission (2012a, p16)

Leading practice would suggest that all RIS documents (consultation and final), for both primary and non-primary legislation, should be published.

As noted above, allowing public review of a RIS will help to ensure high quality analysis. This in turn will help to ensure the realisation of government policy to reduce regulatory burdens.

Some submissions were concerned with ensuring that the benefits of regulation are properly recognised. The onus of proof requirement does make it more difficult for a proponent of regulation to make a case for regulation. The recommended process will support continued regulation, provided the benefits can be reasonably demonstrated to be in the public interest (for example, through the RIS process). The onus of proof principle is required to provide critical discipline to facilitate a change in culture that has proven to be costly from a public interest perspective.

Local Government

Another issue of concern was whether local government should be included in the process and, if so, how to take account of the range of capacity of the many local governments in Queensland. Local government regulation is part of the terms of reference for this review and many stakeholders and other reviews have confirmed that local government regulation can be a significant burden on economic activity and development. Local government regulation needs to be included in the reform process. However, further investigation will be needed to develop specific effective recommendations, including the extent and form of review required for local regulations.

At this stage, full regulatory impact analysis, as envisaged for State government departments, will often not be justified. However, some level of consultation with an opportunity for interested parties to consider and comment on proposals is considered to be feasible and appropriate for most local governments. Local governments should also be required to report annually to OBPR and in their annual budgets on the progress of their programs for reducing the burden of regulation. The scope and extent of these requirements should reflect the resources of individual Councils and the extent of their regulatory reform tasks.

New Regulation and the Regulatory Impact Statement System

Concerns about inadequate consultation and proposals avoiding effective review can be addressed by more rigour and discipline in the application of the RIS system to new, amending and remade regulation. Independent, authoritative assessment by the OBPR, the onus of proof principle (to demonstrate a net public benefit) and increased transparency are critical for an effective RIS system.

There was a mix of views about departmental capability to design and implement regulation. In terms of design, capability is of little relevance if incentives do not promote good regulatory practice. Hence, it is considered to be critical to ensure the appropriate incentives are in place. Assuming that has been done, the OBPR will provide training and advice on how to improve policy assessment in Departments. As part of this effort, OBPR will engage early with departments to provide information and advice on preparation of RISs.
A key problem with administrative capacity relates to the extent to which discretion exists in the development and application of codes and standards. Some discretion is needed for optimal results. Too much discretion can be clearly problematic. More careful vetting of regulations and discretionary power when the regulations are being developed will help. In addition, a permanent, formal mechanism for stakeholders to make a case to seek a reduction in the regulatory burden (see section 6.1) will provide a backstop.

Reform Tools and Mechanisms

A stock-flow linkage rule, defined in terms of one-in, one out, is equivalent to setting a no net increase target. An overall target of a 20% net reduction in regulatory restrictions is being proposed. Therefore there is no need to set a stock-flow linkage rule.

Sunset provisions are considered to be relevant in providing discipline to review the stock of regulation at appropriate intervals. Sunset review enables a comprehensive analysis of an entire regulatory framework and contributes to an overall net reduction target.

There was not strong support for pursuing the concept of a ‘one stop’ shop within government to deal with regulatory requirements, provided regulation was streamlined and made clearer and the issue of discretion was better addressed. It is proposed to investigate the concept but not as a priority. Ongoing efforts to make information regarding regulation more accessible should be encouraged.

In contrast, there was more support for a permanent formal mechanism for stakeholders to make a case for regulatory reform.

6.4 Recommendations

The following recommendations (some of which have already been implemented) are considered to be important for providing effective leadership, changing the culture and ensuring sustained commitment to regulatory reform.

6.1 Overall Regulatory Objective

- The overall regulatory objective should be to achieve a net public benefit defined to take account of economic, environmental and social variables, leading to sustained improvements in the overall welfare of the Queensland community. There should not be a presumption that any particular regulatory goal is absolute, it is the overall public benefit that is important.

6.2 Whole of Government Regulatory Management System

- A whole of government regulatory management system should be put in place. The key components are set out in other recommendations in this Report.

6.3 Coverage

- Both state government and local government regulation, including codes and guidelines should be subject to regulatory review and reform.
- Further investigation is required to determine the nature and extent of reform that should apply to local government.
6.4 Minister for Regulatory Reform
- The Treasurer and Minister for Trade, in association with an Assistant Minister, is responsible for regulatory reform. The role of the Treasurer and Minister for Trade should include: ensuring clarity of roles and tasks; ensuring capability to reduce and improve regulation; confirming priorities; overseeing regulatory activity; identifying scope for improvements; and promoting the importance of improving regulation.

6.5 Individual Ministers
- Each Minister should be responsible for regulatory reform in their departmental portfolio, subject to the Government’s agreed priorities and principles for regulatory review and reform.

6.6 Departmental Responsibility
- The OBPR should work with each Department in establishing the details for implementation of reform priorities.
- Where appropriate, departments should be assigned a regulatory reduction target, developed in consultation with the Office of Best Practice Regulation and approved by Government.
- The target should be part of the departmental chief executive’s performance indicators.
- The Treasury Department should provide a policy advisory and whole of government coordinating role in relation to regulatory matters.

6.7 Local Government Responsibility
- In line with the increased responsibility being given to local government, local governments should be required to reduce the burdens of regulation (including codes and guidelines) for which they have responsibility.
- Further investigation is needed to establish a manageable process and timetable for review. This issue has been identified as a medium term priority.
- At this stage, full regulation impact analysis for new regulation will typically not be justified but some level of consultation with an opportunity for interested parties to consider and comment on proposals is considered to be feasible and appropriate for most local governments.
- Each local government should be required to report annually to OBPR and in its annual budget on the progress of its program for reducing the burden of regulation. The OBPR reports would be submitted to Ministers and made publicly available.
- The scope and extent of local government requirements should reflect the resources of individual Councils and the extent of their individual regulatory reform tasks.
6.8 Office of Best Practice Regulation

- The OBPR should have an overall advisory and monitoring role in relation to reducing the burden of the existing stock of regulation and new regulation. Specific OBPR functions would include the following:
  
  (a) Advising on priorities and proposals for reforming the existing stock of regulation in consultation with government departments and Ministers;
  
  (b) Undertaking targeted reviews and reforms as directed by Ministers;
  
  (c) Monitoring compliance with regulatory burden reduction targets and initiatives;
  
  (d) Oversight or assessment of all major regulatory reform initiatives;
  
  (e) Annual reporting to Government on whole of government progress in reducing the regulatory burden and future plans;
  
  (f) Training public entities on how to evaluate regulation to reduce the regulatory burden and remove restrictions that impact adversely on economic activity, including application of RIS system requirements;
  
  (g) Engaging early with departments to provide information and advice on preparation of RISs;
  
  (h) Assessing the adequacy of RISs for new regulation and regulation with sunset and statutory review requirements;
  
  (i) Annual Reporting on RISs;
  
  (j) Investigating better use of technology to share information between government agencies and provide better information to business and consumers (an electronic one-stop shop);
  
  (k) Designing and implementing a permanent mechanism for firms and individuals to make a case for regulatory redesign and reduction.

6.9 Incentives for Reform

- The onus of proof in justifying the continuation of regulation or new regulation should be on the entity proposing a new regulation or the retention of existing regulation.

- Appropriate targets should be set in net terms for Departments to reduce the burden of regulation.

- All submissions, supporting analyses and reports on priorities for regulatory reform should be made publicly available at an appropriate time and adequate opportunity should be provided for effective consultation.

- All Regulatory Impact Statements for both consultation and decision purposes and the Office of Best Practice Regulation advice on those Statements should be made publicly available.
APPENDIX A: MINISTER’S DIRECTION NOTICE

QUEENSLAND COMPETITION AUTHORITY ACT 1997
Section 10(e)

MINISTERS’ DIRECTION NOTICE

In our capacity as responsible Ministers, pursuant to sections 10(e) of the Queensland Competition Authority Act 1997, we hereby direct the Queensland Competition Authority (the Authority) to investigate and report on a framework for reducing the burden of regulation, including:

a) a proposed framework for measuring the regulatory burden of legislation, including appropriate regulatory burden benchmarks against which Queensland Government departments may be assessed by the Authority on an annual basis;

b) a proposed process for reviewing the existing stock of Queensland legislation; and

c) priority areas for targeted regulatory review having regard to the regulatory burden imposed by legislation.

Matters to be considered

In undertaking this investigation, the Authority is to:

a) Develop methodology for measuring the regulatory burden of legislation, including appropriate regulatory burden benchmarks against which departments may be assessed by the Authority on an annual basis.

   In developing methodology, the Authority is to consider both quantitative and qualitative measures of regulatory burden.

   For the purpose of this review, regulatory burden includes administrative and compliance costs, delay costs to business and other costs that affect the community as a whole.

b) Develop a process for reviewing the existing stock of Queensland legislation.

   For the purpose of this review, legislation includes Acts and regulations.

c) Consider other Australian and international approaches for measuring and reviewing regulatory burdens, reviewing legislation and identifying priority review areas. In particular, the Authority should review, and report on, the approach taken by the Victorian Competition and Efficiency Commission for measuring regulatory burden.

d) Have regard to the costs of implementing possible frameworks for measuring regulatory burden, including costs associated with data collection and assessment.
The proposed framework should include a requirement that the Authority publish an annual report on departmental performance against regulatory burden benchmarks, taking into account the Government’s target of a 20 per cent reduction in red tape and regulation.

Consultation

The Authority must undertake open consultation processes with all relevant parties and consider any submissions received within the reporting timeframes. Relevant parties include business, the community and relevant government departments and regulatory agencies.

Reporting

The Authority must provide:

1. an Interim Report by 1 November 2012 regarding a proposed framework for measuring regulatory burden and identifying initial priority areas for targeted regulatory review; and


The Authority should publish issues papers, reports and submissions on its website as it considers appropriate.

TIM NICHOLLS
Treasurer and Minister for Trade

JARROD BLEIJIE
Attorney-General and Minister for Justice
APPENDIX B: GOVERNMENT-WIDE EFFORTS TO REDUCE REGULATORY BURDEN

Oversight

Ministerial Responsibilities
Under current administrative arrangements, the Treasurer and Minister for Trade, with the support of the Assistant Minister for Finance, Administration and Regulatory Reform have overall portfolio responsibility for regulatory reform and red tape reduction across Government.

The Treasurer and Minister for Trade has responsibility for approving and issuing the Regulatory Impact Statement (RIS) System Guidelines that apply to the development of new regulation.

The Treasurer and Minister for Trade and the Attorney-General and Minister for Justice are empowered under the Queensland Competition Authority Act 1997 to direct the Authority (incorporating the Office of Best Practice Regulation) to undertake specific functions and investigations.

Parliamentary Portfolio Committees
Recent reforms to Queensland's Parliamentary Committee structures have put in place seven committees dedicated to oversight of designated departmental portfolio areas. Each committee has a responsibility to examine and scrutinise the actions, legislative changes and budgets of the departments that fall within their assigned portfolio areas.

If a committee identifies significant issues with a legislative proposal, including unnecessary regulatory burdens, they are able to make recommendations to parliament as to whether a bill should be passed or amended. Portfolio committees may hold hearings and seek public and expert submissions to support their reviews of legislation.

Specific Red Tape Reduction Policies and Mechanisms

Regulatory Impact Statement (RIS) System
The Regulatory Impact Statement (RIS) system is the Queensland Government's regulatory development and review process and is based on COAG's endorsed regulatory best practice principles. The system applies to all Queensland Government departments, agencies and statutory bodies.

Under the system, a RIS is required to be prepared for any regulatory proposal that is likely to have a 'significant' impact on business, government or the community.

The Queensland Competition Authority provides both an advisory role in assisting agencies with development of RISs as well as performing the overall formal assessment of RIS adequacy.

Consistent with best practice regulation principles, the final RIS and the Authority's advice will be posted on the Authority's website as soon as practicable, in accordance with the RIS Guidelines, after a final assessment has been made.

Six Month Action Plan
The Government released their Six Month Action Plan in July 2012. Included within the plan are 15 commitments to reduce specific areas of red tape within six months.

90 Day Red Tape Reduction Initiative
In May 2012, the Premier wrote to all Ministers requiring them to identify sources of red tape (including regulations, rules, procedures and forms) which could be repealed within 90 days. In response, agencies identified 134 specific red tape reduction initiatives.

The Regulatory Reform Branch within Treasury has been given responsibility for monitoring and reporting on the implementation of the initiatives in the 90 Day Red Tape Reduction Initiative.

3 for 1 Regulatory Offset Requirement
As of 4th May 2012, Ministers bringing forward any Cabinet submissions that impose a new regulatory requirement or procedure on small businesses are required to identify up to three options for reducing regulatory burden.

This reduced burden can take the form of repeals to any regulations, rules, forms or procedures provided that Treasury agrees that the following requirements have been satisfied:

(a) the burden reduction must apply to the same or similar stakeholders and sectors that are being affected by proposed regulation; and

(b) the burden reduction must be equal to or greater than the burden to be imposed.
Cross-Jurisdictional Reform Activities

**Council of Australian Governments (COAG) Seamless National Economy Reforms.**

In 2008, COAG agreed to implement a suite of national regulation and competition reforms under the National Partnership Agreement to Deliver a Seamless National Economy (SNE). The agreement comprised 27 deregulation priorities, 8 competition reforms and general reform of regulatory development and review processes.

Queensland Treasury's Regulatory Reform Branch co-ordinates the Queensland Government's participation in the COAG SNE reform agenda via the Business Regulation and Competition Working Group.


**Council of Australian Governments Future Regulation and Competition Reform Agenda**

In April 2012, COAG agreed to progress six priority areas of business reforms to lower costs, improve competition and increase productivity:

(a) addressing duplicative and/or cumbersome environmental regulation
(b) streamlining approval processes for major projects
(c) rationalising carbon reduction and energy efficiency schemes
(d) delivering energy market reforms to reduce costs
(e) improved assessment processes for low risk/low impact developments
(f) best practice approaches to regulation

COAG has established a new inter-jurisdictional taskforce to progress the above reforms. The taskforce has also been instructed to examine and report on regulatory burdens experienced by small to medium enterprises and identify specific measures to remove reporting overlaps.

Queensland representatives from both Treasury and Department of Premier and Cabinet are participants in the Taskforce.

**Sector-specific reforms, reviews and inquiries**

**Greentape Reduction**

The Government's Greentape Reduction initiatives seek to amend the Environmental Protection Act 1994 with a view to integrating, coordinating and streamlining regulatory requirements in addition to implementing risk based assessment principles in assessment processes for Environmentally Relevant Activities (ERAs).

**Tourism sector reforms**

Following the 2012 DestinationQ tourism forum, the Government committed to a 12 month action plan. The plan includes a number of red tape reduction commitments including:

(a) Reducing permits requirements for accessing national parks
(b) Reducing and fast tracking approval processes
(c) Review legislation associated with liquor licensing, gaming, trading hours, noise restrictions and state imposed event costs
(d) Review of land use, planning, tenure and approval processes for land use adjacent to ecotourism operations

**Amendments to the Building Act 1975**

In June 2012, the Government removed all requirements to complete and make available a Sustainability Declaration when selling a residential property. The *Property and Motor Dealers Act 2000* was also amended to remove related Sustainability Declaration requirements.

**Parliamentary Inquiries**

A number of current inquiries with red tape implications have been referred to portfolio committees by the Legislative Assembly including:

(a) Inquiry into Queensland Agriculture and Resource Industries - report to Parliament due 30 November 2012.
(b) Operation of Queensland Workers’ Compensation Scheme - report to Parliament due 28 February 2013
(c) Review of the Retirement Villages Act 1999 - report to Parliament due 30 November 2012
(d) Inquiry into the Operation and Performance of the Queensland Building Services Authority - report to Parliament due
Queensland Competition Authority reviews

The Treasurer and Minister for Trade and Attorney-General and Minister for Justice are empowered under legislation to instruct the Queensland Competition Authority (incorporating the Office of Best Practice Regulation) to review, investigate and report on regulation and policies that impose regulatory burdens on business, government and the community.

Reviews currently in progress include:

(a) Investigating and reporting on a framework for reducing the burden of regulation in Queensland.
(b) Investigating and reporting on requirements for water tanks and other water saving devices that apply to houses and new commercial and industrial buildings
(c) Review of National Rail Safety Regulation and Investigation Reform
(d) Review of National Reform on Commercial Vessel Safety.
APPENDIX C: PUBLIC SUBMISSIONS


Acting Director-General for Department of Local Government
AgForce Queensland
AGL
Amy-Rose West
Assistant Minister for Finance, Administration and Regulatory Reform
Australian Institute of Company Directors
Bligh Tanner Consulting Engineers
Board of Professional Engineers of Queensland
Chamber of Commerce and Industry Queensland
David Collen
Department of Agriculture, Fisheries and Forestry
Department of Tourism, Major Events, Small Business and the Commonwealth Games
Energy Retailers Association of Australia
Healthy Waterways
Local Government Association of Queensland
Master Builders
Office of the Information Commissioner Queensland
Property Council of Australia
Queensland Consumers Association
Queensland Council of Social Services
Queensland Farmers Federation
Queensland Resources Council
Redland City Council
Richard Koerner
Shopping Centre Council of Australia
Stanwell Corporation Limited
Stormwater 360
Taste South Burnett
Tru Energy
UnitingCare Queensland, Centacare Brisbane, The Benevolent Society and Mercy Community Service
Waste, Recycling Industry Association of Queensland
APPENDIX D: PRIORITY REFORMS PROPOSED IN THE SUBMISSIONS

Submissions Raising Specific Red Tape Reduction Proposals

Shopping Centre Council of Australia
Deregulation of trading hours, specifically amendment of Trading (Allowable Hours) Act 1990 and Trading Hours - Non-Exempt Shops Trading By Retail -State Order

Richard Koerner; Amy-Rose West
Investigation of pricing practices of Maroochy Water Services

Waste, Recycling Industry Association Queensland
Conflicts between Commonwealth and Queensland regulations; inorganic waste red tape; unintended consequences for scrap metal recyclers; Local Government competitive neutrality enforcement issues

- Environment Protection Act and subordinate legislation
- Waste Reduction and Recycling Act and subordinate legislation
- Local Government Act and sub-ordinate legislation
- Second Hand Dealers and Pawnbrokers Act and sub-ordinate legislation
- Sustainable Planning Act and sub-ordinate legislation
- Transport Operations (Road Use Management) Act and sub-ordinate legislation
- Queensland Competition Authority Act
- Work Health and Safety Act and sub ordinate legislation.

David Collen
Removal of registration requirements for professional engineers, specifically amendment of Professional Engineers Act 2002 and Regulation

Redland City Council
Regulation impacting on local council operations, including:

- Consolidation of State legislation impacting Local Government
- Increased flexibility with regards to procurement
- Removal of unnecessary licensing requirements
- Reduced level of prescription for Annual Reports

Local Government Association of Queensland
Specific changes to simplify local government operations recommended for:

- Local Government Acts and Regulations
- Local Laws, Public Health, Food, Animal Management Regulation
- Water Supply, Plumping and Drainage
- Sustainable Planning Acts
- Environmental Protection, Nature Conservation, Fisheries, Waster Reduction and Recycling, Petroleum and Gas Act
- Land Act, Vegetation Management Act
- Road and traffic regulation

Queensland Resources Council
Overlaps between state and Commonwealth regulatory processes, particularly under Environmental Protection and Biodiversity conservation Act; review of transitional environmental programs for inundated resource operations

Chamber of Commerce and Industry Queensland
Identifies business red tape "hot spots" under:

- Industrial relations (Fair Work Act)
Appendix D: Priority Reforms Proposed in the Submissions

- Workplace health and safety
- Food regulation and food standards
- Taxation
- Workers compensation
- Superannuation
- Property Agents Act
- Transport licences
- Retail shop leases legislation
- Fire Safety
- Asbestos management
- VET systems
- Liquid trade waste regulation
- Small grants and government procurement

**AgForce Queensland**
Specific red tape impediments under:
- Vegetation management regulation
- Labour laws
- Wild rivers
- Transport regulation

**Master Builders**
Endorse key initiatives identified in the Queensland Government’s Six Month Action Plan

**Bligh Tanner Consulting Engineers**
Suggestions for improving water sensitive urban design regulation (WSUD), specifically referencing:
- Sustainable Planning Act 2009
- The Water Act 2000
- Water Supply (Safety and Reliability) Act 2008
- Environmental Protection Act 1994 and Regulations
- Public Health Act 2005 and Regulations
- Food Act 1981
- Plumbing and Drainage Act 2002
- Standard Plumbing and Drainage Regulation 2003
- South-East Queensland Water (Distribution and Retail Restructuring) Act 2009
- Water Fluoridation Act 2008
- Federal Environment Protection and
- Biodiversity Conservation Act 1999
- Australian Consumer Law

**Healthy waterways; Stormwater 360**
Maintaining the current water sensitive urban design regulation in Queensland

**Tru Energy**
Implementation of the National Energy Consumer Framework

**AGL**
Deregulation of retail electricity prices
Energy Retailers Association of Australia; Stanwell Corporation Ltd.
Development of uniform national regulation for electricity

UnitingCare Queensland, Centacare Brisbane, The Benevolent Society and Mercy Community Services; Queensland Council of Social Services
Review of regulation of the non-for-profit sector

Department of Tourism, Major Events, Small Businesses and the Commonwealth Games
Regulations negatively affecting Tourism industry, specifically in:
- Wine Industry Act 1994
- Trading (Allowable Hours) Act 1990
- Liquor Act 1992
- Travel Agents Act 1988
- Tourism Services Act 2003
- Nature Conservation Act 1992
- Building Act 1975
- Body Corporate and Community Management Act 1997
- Property Agents and Motor Dealers Act 2000
- Corporations Act 2001
- Marine Industry Regulation
- Land Act 1994
- Brisbane Forest Park Act 1977
- Forestry Act 1959

Queensland Consumers Association
Consideration of the impacts of regulation on consumers

Property Council of Australia
- Queensland Coastal Plan
- Vegetation Management Act
- Retail Shop leases Act
- Property Agents and Motor Dealers Act
- Body Corporate and Community Management Act

The Board of Professional Engineers of Queensland
Opposes submission of David Collen (above) and prefers national model based on Queensland Act

Queensland Farmers’ Federation
- Vegetation Management
- Water Reforms
- Regulation of farming practices in coastal regions
- Workplace health and safety requirements
- Transport regulations
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