



## **GOVERNMENT RESPONSE**

### **Executive Summary: Australian Government Response to the Productivity Commission Annual Review of Regulatory Burdens on Business: Business and Consumer Services**

Since 2007 the Productivity Commission (PC) has been undertaking a series of annual reviews of the burdens on business from the stock of Australian Government (the 'Government') regulation in the following areas:

- primary sector;
- manufacturing sector and distributive trades;
- social and economic infrastructure services; and
- business and consumer services.

The reviews are designed to ensure that all Government regulations are efficient and effective, by recommending reforms which could offer net benefits to business and the community, without compromising underlying policy goals.

The PC released its report on the *Annual Review of Regulatory Burdens on Business: Business and Consumer Services* (the Report) on 12 October 2010.

In undertaking its review, the PC sought submissions from, and consulted with a wide range of stakeholders, including individual companies and business groups in the sector, regulators and policy departments.

The Report presents 18 recommendations, covering issues including government consultation, superannuation, rationalisation of legacy financial products, monetary thresholds applying to overseas investment in Australia and national registration of architects.

The Government's formal response to the Report is set out below. The Government accepts or accepts in principle ten and notes eight recommendations.

## **PC recommendation 2.1**

The Australian Government should improve the transparency and accountability of its consultation processes by:

- incorporating a ‘consultation’ Regulation Impact Statement in the regulation making process (in a similar manner to the COAG requirements) for use in public consultation
- requiring the Office of Best Practice Regulation to extend its monitoring and reporting to the quality of consultation, by explicitly reporting on compliance by departments and agencies with the best practice consultation principles
- using confidential consultation processes only in limited circumstances where transparency would clearly compromise the public interest.

### **Government Response: Accepted in principle**

The Government’s strengthened best practice regulation requirements took effect on 1 July 2010.

The Government’s best practice regulation requirements are continually reviewed for their effectiveness. As part of this on-going process, the Government will examine the performance of existing consultation requirements and consider the introduction of a ‘consultation’ Regulation Impact Statement (RIS).

As part of the strengthened best practice regulation requirements, the Office of Best Practice Regulation (OBPR) requires a RIS to demonstrate adequate consultation to be considered compliant. In addition, the 2010-11 Best Practice Regulation Report will report on whether consultation plans were published as part of annual regulatory plans.

The OBPR only assesses the use of confidential consultation processes in limited circumstances.

## PC recommendation 2.2

The Australian Government should amend the Superannuation Industry (Supervision) Regulations 1994 to permit non-lapsing binding death nominations.
--

### **Government Response: Noted**

Binding death nominations ensure a trustee of a superannuation fund must pay benefits to the nominated beneficiary. Currently, the requirement is to renew binding death benefits nominations every three years. This reduces administrative costs for superannuation funds because costs involved in the exercise of discretion are removed.

The goal of further reducing administrative costs by making binding death nominations non-lapsing, must be balanced with the risk that individuals will fail to update their nomination if their circumstances change. This could result in ‘wrong’ payments being made. The appropriate balance can be struck by requiring that binding death nominations be updated at regular intervals.

The Super System Review, chaired by Jeremy Cooper, approached the issue of binding death nomination from the perspective that more should be done to prevent the possibility of ‘wrong’ payment. Recommendation 5.14 of the Super System Review states that ‘[t]he SIS Act should be amended so that binding death nominations would be invalidated when certain ‘life events’ occur...’. Subject to recommendation 5.14 being implemented, the panel made the further recommendation 5.15 that ‘binding death nominations only have to be reconfirmed every five years’.

The Report states that it would be sufficient if individuals are advised of their existing nomination each time they receive their annual statement. Given that engagement with the superannuation system is low, especially amongst young people whose circumstances are more likely to frequently change, advising members of their existing nomination in their annual statement would not be sufficient to prevent ‘wrong’ payments.

The Government’s response to the Super System Review recommendations is to ‘support in principle’ and to ‘consult relevant stakeholders’ on issues relating to binding death nominations. Consideration of any reform in this area is best undertaken through this process.

### **PC recommendation 2.3**

The Australian Taxation Office and the Department of Immigration and Citizenship should examine options that give departing temporary residents the ability to submit their applications for Australian superannuation payments before the time of their departure, rather than after they have left Australia.

#### **Government Response: Accepted**

Through the Departing Australia Superannuation Payment (DASP) scheme, a temporary resident who is planning to depart Australia may apply online for a refund of superannuation payments prior to their departure using the Australian Taxation Office's (ATO's) free online DASP application system. When the temporary resident has left Australia and their visa has expired they may submit their application for assessment. Once the ATO receives a completed application, payments must be made within 28 days.

The Report proposes a two-step application process where DASP applications are submitted to superannuation funds prior to departure, with payment to follow once confirmation of departure has been received from the Department of Immigration and Citizenship (DIAC).

DIAC will continue to consult with the ATO on ways to streamline and simplify arrangements for departing temporary residents.

## PC recommendation 2.4

The Attorney-General's Department should explore options with stakeholders to standardise the instructions to superannuation trustees made on the dissolution of marriage.

### **Government Response: Accepted**

The Government, the superannuation industry and the legal profession recognise the potential benefits in standardising the language and format of property settlement orders and binding financial agreements under the *Family Law Act 1975* containing instructions to superannuation fund trustees to split superannuation on relationship breakdown.

A working group consisting of representatives from the Law Council of Australia's Family Law Section, the Financial Services Council, the Association of Superannuation Funds of Australia and the Attorney-General's Department has been established to:

- develop standard text for provisions in court orders and binding financial agreements splitting superannuation in family law property settlements; and
- examine options for the use of pro-forma orders and agreements.

## **PC recommendation 2.5**

The Australian Government should amend the *Corporations Act 2001* and associated regulations so that superannuation fund members must make a specific request to receive transaction confirmation letters.

### **Government Response: Noted**

The Report states that employer-sponsored superannuation funds are exempt from sending confirmation letters for regular superannuation guarantee or other regular employer contributions while public offer funds are not.

However this is not the case. The *Corporations Act 2001* does not require either employer-sponsored or public offer funds to send confirmation letters for regular transactions. Confirmation letters are only routinely sent to personal account members in public funds receiving non-regular transactions. These consumers may elect to receive this advice online.

There appears to be confusion regarding some aspects of the provisions in the *Corporations Act 2001* that could be clarified in consultation with industry and regulatory authorities. The Government will also explore ways of better communicating the requirements of the legislation to superannuation trustees.

## **PC recommendation 2.6**

The Treasury and state and territory revenue authorities should continue the process of streamlining administrative processes dealing with unclaimed monies.

### **Government Response: Accepted**

The *Superannuation Legislation Amendment Act 2010*, which received royal assent on 16 November 2010, contains measures which will improve the administration of superannuation unclaimed monies by facilitating the transfer by States and Territories of any unclaimed superannuation they hold to the Australian Taxation Office.

## **PC recommendation 2.7**

The Treasury should resolve any outstanding issues associated with legacy products and then implement the product rationalisation mechanism for managed investment schemes and life insurance policies as soon as possible.

### **Government Response: Noted**

The Government has undertaken extensive work on product rationalisation with the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). The proposed rationalisation mechanism spans both life insurance and management investments scheme products, which are inherently different in their legal structures and regulated by different agencies (APRA and ASIC). Introducing the reform package may involve significant changes to existing legal contracts, and to the rights of consumers under those contracts. This task is complex and needs to be done in a way which does not disadvantage consumers. While progress has been made in addressing issues raised by industry during what has been a lengthy consultation process, further consideration will be needed, taking into account all relevant factors, including the Government's broader budgetary processes, before deciding whether, when and in what form reform in this area will proceed.

## **PC recommendation 2.8**

An implementation timetable for the project to improve the effectiveness of mutual recognition of powers of attorney between jurisdictions should be made publicly available by the Standing Committee of Attorneys-General as soon as possible.

### **Government Response: Accepted in principle**

The Government accepts in principle the need for a national approach to the regulation of powers of attorney. The disparities that exist between jurisdictions affects all Australians and is therefore of concern to the Government. Regulation of powers of attorney is an issue for the States and Territories. Given this the Government is not in a position to commit to publishing an implementation timetable. The Attorney-General, the Hon Robert McClelland MP, through his membership on the Standing Council on Law and Justice (SCLJ) has encouraged States and Territories to adopt arrangements that would improve the recognition and enforcement of powers of attorney between jurisdictions and will continue to do so as appropriate.

### **PC recommendation 3.1**

The Australian Government should index monetary thresholds applying to all overseas investment in developed non-residential commercial real estate on the same basis as the thresholds applying to other types of overseas investment in Australian businesses.

#### **Government Response: Accepted**

The Government accepts the PC's recommendation. In general, proposed foreign acquisitions of developed commercial real estate are treated in the same way as proposed foreign acquisitions of Australian businesses. They are only subject to Foreign Investment Review Board (FIRB) notification when the value of the real estate exceeds a monetary threshold. However, while the thresholds for business acquisitions are now indexed annually to ensure that they keep pace with inflation, the threshold for developed commercial real estate (\$50 million) is not indexed.

The Government will amend the *Foreign Acquisitions and Takeovers Regulations 1989* so that the notification threshold for developed commercial real estate is indexed each year using the same formula that applies to the notification thresholds for business acquisitions. This will ensure that the indexation treatment for the notification threshold is consistent with other thresholds.

### **PC recommendation 3.2**

The Australian Government should remove the monetary threshold applying to proposed overseas investment in heritage listed non-residential commercial real estate. Such real estate should be subject to the same threshold at which Foreign Investment Review Board assessment is required for proposed investment in developed non-residential commercial real estate not subject to heritage listing.

#### **Government Response: Noted**

Developed commercial real estate that is heritage listed is subject to a lower Foreign Investment Review Board (FIRB) notification threshold of \$5 million. For a property to be listed, the *Foreign Acquisitions and Takeovers Regulations 1989* provide that the property must be entered on the Register of the National Estate.

The Government notes the recommendation, but as FIRB normally receives fewer than five proposals each year involving heritage-listed properties, it considers that the regulatory burden of having a separate threshold for heritage-listed properties is negligible.

Nevertheless, the Government will continue to monitor the application of the threshold to ensure it does not impose an unnecessary burden on foreign investors.

### **PC recommendation 3.3**

The Australian Government should amend the *Trade Practices Act 1974* to have restaurant and café menu surcharges for specific days placed outside the scope of the component pricing provisions of that legislation.

#### **Government Response: Accepted**

The Government recognises that amendment of the component pricing provisions of the Australian Consumer Law (ACL) as they apply to restaurant and café menu surcharges would reduce the regulatory burden for small businesses in the tourism and hospitality sector.

Therefore, the Government will seek to amend section 48 of the ACL, which replaced section 53C of the *Trade Practices Act 1974* on 1 January 2011, to address the regulatory burden imposed by this provision.

The ACL is supported by the Intergovernmental Agreement for the Australian Consumer Law (IGA). The IGA states that before the Commonwealth can amend the ACL, State and Territory Governments must be consulted and the amendment must be supported by the Commonwealth and at least four other jurisdictions (including at least three States).

The Commonwealth will seek agreement from the States and Territories to amend section 48 of the ACL, pursuant to requirements under the IGA.

### **PC recommendation 3.4**

The Council of Australian Governments should develop and implement mutual recognition arrangements in respect of Responsible Service of Alcohol training as soon as possible.

#### **Government Response: Accepted in principle**

The Government supports the mutual recognition of Responsible Service of Alcohol training and recognises the importance of cross-border mobility of skilled workers to address labour market constraints. The Minister for Tourism, the Hon Martin Ferguson AM MP, is the Chair of the Tourism Ministers' Council which is currently progressing this issue. State and Territory tourism ministers have written to responsible ministers within their jurisdictions to seek universal acceptance of Responsible Service of Alcohol certification around Australia and work on implementing this proposal is continuing.

### PC recommendation 3.5

The Department of Environment, Water, Heritage and the Arts should revise the *Environment Protection and Biodiversity Conservation Act 1999* and its relevant regulations and memoranda to ensure that reference to the commercial use of imported specimens is consistent and clearly defined.

#### **Government Response: Accepted in principle**

The EPBC Act is the Australian Government's central piece of environmental legislation. The government amended the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) Regulations in May 2010 to remove an inconsistency in references to 'primarily for commercial purposes'. The EPBC Act and its regulations are now consistent regarding the commercial use of imported specimens.

The *Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* was published on 21 December 2009 and is available at: [www.environment.gov.au/epbc/review/publications/index.html](http://www.environment.gov.au/epbc/review/publications/index.html).

On 24 August 2011, Minister Burke released details of a package of reforms to Australia's national environment law. Details of the reform package can be found at: <http://www.environment.gov.au/epbc/reform/>.

The Government will consult further with stakeholders to develop administrative procedures and legislative amendments to progressively shift the focus of international wildlife trade provisions from the individual permitting system to assessing and accrediting management arrangements for companies and/or industry sectors while complying with Australia's international obligations including the requirements under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Government will also consolidate the different categories of sources of wildlife and wildlife products that can be approved for international trade, subject to meeting international obligations. The Government is also committed to providing improved guidance to help stakeholders understand the legislation. This will include guidance on the distinction between commercial and non-commercial uses and will assist in building stakeholder understanding of the commercial use provisions.

### **PC recommendation 3.6**

The monthly earnings threshold of the superannuation guarantee should be increased through an appropriate process and subject to periodic review established by the Treasury.

#### **Government Response: Noted**

The appropriateness of the current \$450 per month threshold was considered by the Australia Future Tax System (AFTS) review. The AFTS Panel's strategic report released in May 2008 noted that some submissions argued for the opposite of the PC's recommendation 3.6 (that is, for the monthly earnings threshold to be abolished, not increased). The AFTS Panel's May 2008 report concluded that the current \$450 per month threshold provides an appropriate means of balancing the compliance costs to employers and the benefits for employees.

#### **PC recommendation 4.1**

The Australian Government should work with state and territory governments to implement a national register for architects.

#### **Government Response: Accepted in principle**

Consideration will be given to this recommendation in the context of developing options for a second stage national regulatory reform agenda requested by the Council of Australian Governments (COAG) on 13 February 2011, subject to advice from the National Occupational Licensing Authority as to whether to include architects and other building professionals within the scope of national licensing reform for the building sector.

## PC recommendation 4.2

The Australian Government should amend the *Migration Act 1958* to exempt lawyers holding a current legal practising certificate from the requirement to register as a migration agent in order to provide 'immigration assistance' under section 276. An independent review of the performance of these immigration lawyers and the legal professional complaints handling and disciplinary procedures, with respect to their activities, should be conducted three years after an exemption becomes effective.

### **Government Response: Noted**

The Government recognises the importance of maintaining the protection of a particularly vulnerable client group and remains concerned that there has not been a consistent approach by the legal profession within Australia to the provision of immigration assistance. The Law Council of Australia (LCA) has previously advised that in New South Wales immigration assistance is not considered to be legal work subject to New South Wales legal services regulators. The LCA has also previously advised that professional indemnity insurers may not cover migration agent work undertaken by barristers. While other jurisdictions have not adopted this position, the LCA has advised that it is open for them to do so.

COAG has agreed in principle to settle reforms to legal profession regulation and has asked Attorneys-General to finalise the details of a reform package. Once this has been implemented, the Government will consider whether this recommendation can be adopted, giving regard to the national structure of the legal profession and whether the Government's specific client protection objectives are adequately dealt with.

### PC recommendation 4.3

A taskforce should be established to identify personal and corporate insolvency provisions and processes that could be aligned. The case for making one regulator responsible for both areas of insolvency law should also be examined.

#### **Government Response: Noted**

The recommendation mirrors recommendations 1 and 2 of the Senate Economics Committee Inquiry into Liquidators and Administrators. The Government tabled its interim response to these recommendations on 2 June 2011.

The Government agrees that there should be greater consistency between the personal and corporate insolvency systems. Significant work is already being progressed by relevant government agencies to identify areas for greater harmonisation, and therefore the Government believes that establishing a taskforce is unnecessary and may duplicate work already being undertaken.

The Government will facilitate the closer alignment of the personal and corporate insolvency laws through its options paper, *A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia*, which was released on 2 June 2011. This paper canvasses options for the registration, regulation and remuneration of participants in the corporate and personal insolvency industries.

The Government is not proposing to establish a new single regulator of personal and corporate insolvency regimes. There would be major upfront costs of merging the regulators, which may not necessarily be offset by long-term savings. The extent to which simply unifying the regulators would result in an improved regulatory environment is not clear. Separate policy considerations apply to many aspects of personal and corporate insolvencies and there is not currently sufficient evidence that a one-size-fits-all approach for all issues would necessarily optimise outcomes for stakeholders.

The removal of the responsibility for regulation of corporate insolvency from the corporate regulator would result in corporate insolvency losing its important connection with other parts of ASIC, for example in relation to major corporate administrations, regulation of insolvent trading and of director and corporate misconduct that may have occurred in the lead up to, or during, an insolvency event.

#### **PC recommendation 4.4**

COAG's Business Regulation and Competition Working Group should, in consultation with relevant Ministerial Councils, oversee the development of a Uniform Real Property Act. The provisions of the Act, once agreed, should then be adopted in all Australian jurisdictions, with any variations to be kept to a minimum and subject to a public interest test.

#### **Government Response: Noted**

The Attorney-General will seek the views of Ministers on the Standing Council on Law and Justice (SCLJ) in 2011 on whether SCLJ should pursue property law reform as part of its micro-economic reform agenda.