Australian Government

The Australian Government
Annual Deregulation Report
2014

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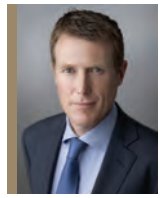
Foreword



Cutting red tape is at the heart of this Government's mission to build a strong and prosperous economy for a safe and secure Australia.

For too long, more regulation has been the default option for policy makers.

During the previous government, some 21,000 new regulations found their way into national life.

Poorly designed and inefficient regulation has been imposing unnecessary costs on us all.

This has damaged productivity, deterred investment and undermined jobs and growth.

This Government is cutting red tape and changing the way regulators act and behave.

During 2014, the Government took action to remove over 10,000 unnecessary and counter-productive regulations and redundant acts of parliament. In total, over 50,000 pages were taken from the law books and put in the history books.

As a result of our efforts:

- the Government has taken steps to remove around $2.3 billion in red tape, more than double the annual net $1 billion target we are committed to delivering;
- Deregulation Units have been established in every portfolio from existing resources to drive red tape reduction across the Commonwealth; and
- the Commonwealth is working with states and territories to reduce red tape across all levels of government.

This annual report details the progress we are making across government.

Our goal is to make life easier for Australians – and to make it easier for businesses to decide to invest and create more jobs.

Cutting red tape should mean less time in queues, less time filling out forms and less time searching for information.

This is just the start.

During 2015 and 2016, the Government will build on the strong results we have delivered to date.

The Hon Tony Abbott MP
Prime Minister of Australia

Christian Porter
Parliamentary Secretary to the Prime Minister

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CHAPTER 01
INTRODUCTION

Introduction

Regulation is a term generally used to describe the enforceable rules and administrative principles that all levels of government and organisations put in to place to shape behaviour and deliver desired policy outcomes. Regulations that are properly adapted to purpose and are not unnecessarily burdensome can protect the community and help support a safe, strong, productive and dynamic modern Australian economy. For example, through the *Competition and Consumer Act 2010*, regulations seek to ensure that markets function effectively and that consumers and businesses can deal with each other efficiently and fairly. Other regulations, such as those that govern the licensing and operations of commercial airlines and anti-terrorism legislation, help to protect public safety. Further, Commonwealth regulations ensure that Australia's unique environment and cultural heritage are appropriately protected.

Recognising the necessity of well-designed regulation, governments must always be aware that poorly designed and ineffective regulation and duplication of regulatory regimes can impose significant costs on businesses, community organisations, families and individuals. For instance, regulations can impede innovation and slow the adoption of new technology and new productive techniques. When new equipment or processes take extra time to gain regulatory approval in Australia compared with what is reasonably expected in other countries, these delays can be a significant constraint on Australian businesses.

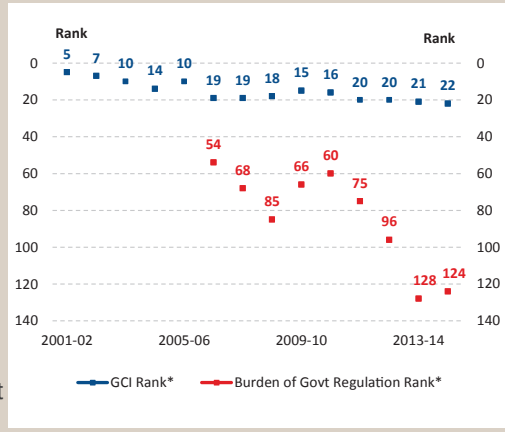
Red tape, including for example unjustified bans, permits and/or licensing restrictions can make it more difficult for Australian businesses to compete. In the case of licensing regulations for instance, the argument for an appropriate level of regulation is very often quite clear. While there is seldom debate that health professionals should be required to be suitably qualified to protect public health, in other instances there may be little or no demonstrated public benefit to licensing. Where unnecessary restrictions exist in licensing and other areas, competitive pressures in an industry can be reduced, in turn discouraging innovation and productivity. For businesses facing intensifying competition from overseas, such unnecessary restrictions can have a significant impact on their competitiveness (see Box 1).

These costs not only directly affect those that are forced to comply with red tape at first instance. Ultimately, unnecessary regulatory costs imposed by poor regulation can be transmitted downstream to other sectors of the economy in the form of higher prices and less choice for businesses and consumers.

Box 1: Perceptions of Australia's global competitiveness

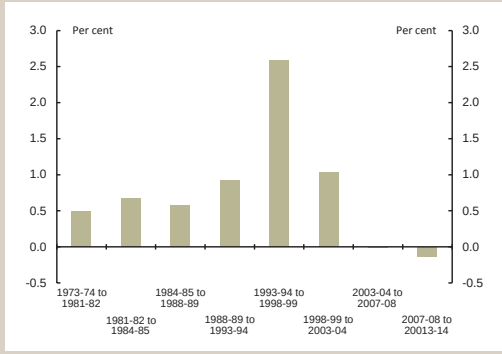
According to the World Economic Forum's (WEF) Global Competitiveness Index (GCI), Australia's competitiveness ranking has declined since the 2005-06 survey. The 2013-14 survey, taken before the Government came to office, ranked the Australian economy 21st out of a total of 148 economies. When questioned specifically about the 'burden of government regulation', the perceptions of those surveyed indicated that Australia may be well behind in terms of global best practice. In the 2013-14 survey, Australia's ranking had fallen to 128th out of 148 economies as a result of three years of significant decline in the perceptions of those surveyed.[1]

Figure 1: World Economic Forum's Global Competitiveness Index rankings – Australia[2]



Although it is difficult to directly measure the role of red tape on Australia's competitiveness, it is reasonable to assume that the amount of red tape in the overall economy is having real economic effects and has played some role in the decline in Australia's multi-factor productivity growth over the last decade.

Figure 2: Multifactor productivity growth cycles – annual average growth (Source: ABS Catalogue 5260.0)



[1] This ranking measure is obtained through a survey of businesses in each economy. The figures for each year are a weighted-average of respondents' views over the previous two survey years.

[2] Source: http://reports.weforum.org/global-competitiveness-report-2014-2015/

CHAPTER 02

REINVENTING THE APPROACH TO REGULATION

Reinventing the approach to regulation

For a long time there has been a concern within the Australian community that businesses, community organisations, families and individuals are being burdened with unnecessary regulation. Between 1990 and 2013, the Commonwealth Parliament created an average of 170 new acts each year. The proliferation of new laws has produced too high a compliance burden on the community. Although it is important to note that the Commonwealth Parliament is not the sole rule maker in Australia, clearly the Commonwealth has a major role to play in addressing community concerns and perceptions.

The need for cultural change

As part of a comprehensive response to tackling Australia's economic and fiscal challenges, the Coalition Government committed to a concise plan to reduce the regulatory burden and change the culture towards regulation in government and the community. This plan *to boost productivity and reduce regulation* aims to strike the best balance between necessary and appropriate regulation that supports markets, innovation and investment in the economy while also strengthening the efforts of the Government to remove costly red tape where it is unwarranted or unnecessary.[3]

The Government's plan entails a number of commitments to directly improve the development, administration and assessment of regulation and to establish processes to reduce the overall red tape burden. These include:

- relocating the Government's deregulation functions to the Department of the Prime Minister and Cabinet (PM&C) so that reducing red tape becomes a high policy priority;
- a clear measurable commitment to reduce the cost to businesses, community organisations, families and individuals of complying with Commonwealth regulations by new decisions totalling at least $1 billion annually;
- setting aside at least two full parliamentary days each year which are dedicated to repealing counterproductive, unnecessary or redundant legislation;
- undertaking a stocktake to assess the overall stock of Commonwealth regulations;
- establishing Ministerial Advisory Councils (MACs) for each portfolio Minister to consult on deregulation;
- providing incentives to motivate the Australian Public Service (APS) to cut red tape, such as linking remuneration of Senior Executive Service (SES) public servants to quantified and proven reductions in regulations;

[3] See The *Coalition's Plan to Boost Productivity and Reduce Regulation,* http://www.liberal.org.au/boosting-productivity-and-reducing-regulation

- improving Australian Government regulatory gate keeping requirements, including the introduction and compliance with a requirement that all submissions to Cabinet must be accompanied by a Regulation Impact Statement (RIS);
- establishing deregulation as a standing item on the Council of Australian Governments (COAG) agenda; and
- clarifying the Government's expectations for each regulator and establishing a Regulator Performance Framework to assess and audit the performance of individual regulators.

In addition to these overarching changes, the Government also made a number of specific, substantive commitments to reduce regulation in particular areas. These have included:

- abolishing the Carbon Tax to ease the administrative burden of taxation compliance for Australian business and households while continuing to reduce growth in emissions;
- repealing the Minerals Resource Rent Tax to remove the significant administrative and compliance burden on mining companies, including those not even liable for the tax;
- reducing the red tape burden on business by removing the requirement for employers to be the paymaster in the Paid Parental Leave Scheme and instead make payments through the Department of Human Services;
- reduce the compliance costs for small business financial advisers and consumers who access financial advice;
- streamlining grant application processes; and
- establishing a One-Stop Shop for environmental approvals.

Since coming to office, the Government has also committed to the general principle that Australia should adopt international standards and risk assessments to reduce the need for duplicative Australian approvals when products or services have already been approved by trusted overseas regulators. The changes, which were announced as part of the Government's Industry Innovation and Competitiveness Agenda in October 2014, are aimed at removing duplication and reducing delay for Australian businesses and consumers.

To monitor progress in meeting its red tape objectives, the Government pledged to detail its progress in an annual report on deregulation to the Parliament. This report provides an overview of the Government's progress against these commitments in 2014.[4]

[4] There were machinery-of-government changes on 18 December 2014. These changes in portfolio arrangements do not affect the overall figures reported for the Government in this Annual Report. Unless otherwise stated, the actions and associated regulatory savings/costs in this report are attributed to the portfolio that was responsible at the time the relevant decision was made. The titles of portfolios prior to the changes have been retained. The 2014 report covers the period from when the Government took office in September 2013 through to 31 December 2014.

CHAPTER 03

DEREGULATION SAVINGS AND COSTS

Deregulation savings and costs

At a glance

- In 2014, the Government introduced legislation to repeal over 10,000 legislative instruments and 1,800 Acts of Parliament.
- As a result of legislation introduced into the Parliament, as well as other decisions taken by the Government in 2014, it is estimated that, collectively, regulatory reforms could reduce the annual cost of complying with Commonwealth regulations by $2.3 billion per year.
- As at 31 December 2014:
  - of the decisions taken by the Government in 2014, approximately $1.5 billion in reforms had already been implemented; and
  - around $820 million worth of decisions taken in 2014 were still being progressed, including as a result of ongoing negotiations with state and territory governments (for example, One-Stop Shop reforms) and pending Parliamentary scrutiny of bills introduced in 2014.

Background

The core of the Government's red tape objective is to make decisions which, when implemented, will reduce the cost of complying with Commonwealth regulations. To help achieve this, the Government committed to stem the flow of new regulations and importantly to reduce the stock of regulations it administers. Each year the Government is committed to reducing the cost to businesses, community organisations, families and individuals of complying with Commonwealth regulations by $1 billion in net terms.

Since September 2013, ministers, departments and regulators have been actively pursuing reforms to reduce these costs. In proposing reforms, an estimate is made of the likely change in the cost of complying with Commonwealth regulations. In each instance, the department must measure both the reduction in compliance costs from removing red tape as well as any additional costs arising from introducing new regulations. These changes are estimated using the Regulatory Burden Measurement Framework (RBM) (see Box 2).

The section that follows provides an overview of the work undertaken by individual portfolios to deliver on this annual $1 billion target. The lag between a regulatory policy decision and the felt effect of reduced compliance costs depends on the specific instance of the regulation. As part of this discussion, Chapter 3 provides a reconciliation between savings from red tape reforms announced from September 2013 through to 31 December 2014, and where further progress would be required in 2015 to fully implement change.

The distinction recognises that the effect on the ground of red tape reforms can be felt some time after legislation is

introduced into the Parliament, or after a decision to reduce red tape is taken and/or announced. The lag between enacting a deregulatory policy decision and the felt effect of reduced compliance costs will depend on the specific initiative in question.

Detail on each of the larger red tape reforms announced in 2014 has previously been reported by the Government as part of its biannual Repeal Day process. To complement this whole-of-government annual report, each portfolio will separately present its own more detailed reconciliation of the individual measures contributing to the Government's target in their respective annual deregulation reports. These individual reports will be accessible through portfolio websites as well as through www.cuttingredtape.gov.au.

Box 2: Measuring the cost of complying with Commonwealth regulation

All portfolios are required to use the RBM to estimate the dollar impact of Government activities in the form of compliance costs on businesses, community organisations, families and individuals. The RBM aims to capture the cost of complying with Commonwealth regulations by analysing two broad categories of costs: these are the *administrative and substantive costs* of complying with Commonwealth regulations, and *delay costs*.

Administrative costs are those that are incurred primarily to demonstrate compliance with the regulation (for example, the costs of keeping and producing records, making applications, conducting tests). *Substantive costs* are those that are incurred in order to deliver the regulated outcomes being sought (for example, training employees, maintaining plant and equipment, and using professional services to meet regulatory requirements).

Delay costs capture the expenses and the loss of income that can be incurred as a result of time taken to complete an administrative action beyond what is usual and reasonably expected (for example, a decision taken outside a statutory timeframe by a regulator to assess and communicate a decision).

The RBM is a conservative measure of the cost of regulation which does not capture all costs. It excludes the cost to government of administering regulation, direct financial costs (including taxes and levies paid) as well as some of the wider, more difficult to measure considerations like wider opportunity costs including those that affect productivity. Importantly, through its use of the RBM, the Government measures both situations where costs are reduced, as well as situations where new regulation increases compliance costs.

The RBM framework follows the Victorian model, and is consistent with international best practice, as outlined by the Organisation for Economic Co-operation and Development (OECD). Further information, guidance notes and tools that portfolios use to apply the RBM Framework are available from the Office of Best Practice Regulation's website (https://www.dpmc.gov.au/office-best-practice-regulation).

Decisions taken in 2014

In the first year of the Government's red tape agenda, ending on 31 December 2014, Commonwealth portfolios reported over 600 decisions which, when fully implemented, will elicit net savings in compliance and delay costs of $2.3 billion. The net savings generated by decisions taken in 2014 exceed the Government's yearly target of a (net) $1 billion in savings and will be necessarily subject to ongoing long-term review as the implementation of all measures is tracked. It is notable that some of the decisions taken in 2014 were still being progressed and/or remained the subject of Parliamentary approval processes. Further information on these decisions is provided at the end of this section.

The total of $2.3 billion reflected gross red tape savings in excess of $2.6 billion spread across 505 deregulatory initiatives being reduced by a smaller number of new regulatory costs. Given that the Government's $1 billion target is a true net target which accounts for decisions affecting both reductions and additions in compliance costs, it is appropriate to note that these new measures are estimated to have added around $346.0 million in new compliance costs. As reported in Table 1, every Commonwealth portfolio made some contribution towards reducing red tape.

Table 1: Net red tape savings reported through to 31 December 2014 – by portfolio.
Note: Figures are rounded.

Portfolio	Net Savings ($ millions)	Number of Deregulatory Measures	Gross Savings ($ millions)	Number of Regulatory Measures	Gross Costs ($ millions)
Agriculture	24.5	37	25.0	9	0.5
Attorney-General's	-16.0	35	98.9	6	114.9
Communications	94.6	52	99.0	5	4.4
Defence (incl. Veterans' Affairs)	6.4	8	6.4	1	0.0
Education	40.8	39	44.7	5	4.0
Employment	151.1	10	151.5	1	0.3
Environment	546.4	13	572.4	24	26.0
Finance	72.3	2	72.3	0	0.0
Foreign Affairs and Trade	7.0	12	7.0	0	0.0
Health	152.2	34	152.8	5	0.6
Human Services	109.1	28	109.1	0	0.0
Immigration	83.1	26	83.8	5	0.7
Industry	205.7	50	218.3	11	12.6
Infrastructure	81.9	31	82.0	7	0.1
PM&C	8.5	3	9	1	0.5
Social Services	170.3	41	178.1	9	7.8
Treasury	570.7	84	744.2	19	173.5
Total	**2,308.6**	**505**	**2,654.6**	**108**	**346.0**

In 2014 there was a broad range of measures that contributed to the estimate of gross savings. In particular, significant progress was made to implement a number of Government election commitments, including efforts to reduce duplication in environmental assessments and approvals, as well as reforms to streamline grants application processes (see further below).

In addition to a number of larger measures, portfolios reported that over half of the decisions in 2014 reflected a range of small reforms. Individually, these smaller measures are designed to lower burden by less than $2 million per annum. Despite the small size of these measures individually, their cumulative effect has contributed to reducing the cost of regulation by over $140 million across the Commonwealth. Although each measure was modest in comparison to some of the savings arising from the Government's more substantive election commitments, these small reforms have been important in helping to clean up the regulatory stock and reduce the amount of nuisance regulation that concerns many businesses, community organisations, families and individuals (see Box 3).

Streamlining the film, publication and computer game classifications system

The Government is streamlining its classification processes, meaning faster and more cost-effective arrangements for content producers. These small changes will normally save producers of movies such as Kung Fu Panda from having to reapply for another ratings classification simply if they choose to produce a 3D version from existing 2D content.

Box 3: Cleaning up the statute book

The Government has committed to setting aside two parliamentary sitting days each year for the purpose of repealing counterproductive, unnecessary or redundant legislation.

Allowing spent and redundant acts to remain in force on the Commonwealth's statute book makes it harder for businesses, community organisations, families and individuals to find out about the regulations that matter to them. Instead of being able to quickly and easily find and access the regulations they need to comply with, they have to sift through outdated, unnecessary regulations to determine whether they still apply.

In 2014, the Government took a number of steps to clean up the Commonwealth's statute book by introducing the Autumn and Spring Omnibus Repeal Day Bills, the Amending Acts 1901 to 1969 Repeal Bill, the Amending Acts 1970 to 1979 Repeal Bill, and the Statute Law Revision Bills (No.1 and No.2).

Subject to approval by the Parliament, these bills, together with the bulk repeal of regulations by the Attorney-General, will repeal over 10,000 legislative instruments and 1,800 Acts of Parliament.

Deregulatory savings

A significant share of the gross savings that were reported in 2014 reflects decisions taken on a number of the Government's key election commitments. These included:

- Instituting a One-Stop Shop for environmental approvals. Once agreements are in place, separate Commonwealth assessments and approvals will no longer be required where accredited state and territory approval processes are in place. This will reduce delays and provide affected businesses with a speedier and more cost effective approval process, while maintaining high environmental standards.
- Repealing the carbon and mining taxes has removed a significant compliance burden and will result in lower administrative costs associated with monitoring and recording reporting obligations for approximately 75,000 businesses.
- Streamlining grants administration processes for the National Health and Medical Research Council to reduce information requirements and initiate early triage of grant applications unlikely to be successful. Decisions taken to extend some grants from three to five years will also allow for greater certainty for grant recipients.

In addition to progressing the Government's election commitments, a range of further significant red tape reforms have contributed to the Government's success in 2014.

The economic benefits of One-Stop Shops

The benefits to Australia from One-Stop Shop reforms go well beyond the estimated red tape savings for the affected businesses. The Minerals Council of Australia has estimated that the direct and indirect savings and the flow-on benefits for the Australian economy over time could be many tens of billions of dollars.[5]

Improving the business operating environment

A major focus of the Government's policy is to reduce the cost to business in complying with Commonwealth regulation.

- In February 2014, the Government announced the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as the sole designated assessor of offshore petroleum and greenhouse gas activities in Commonwealth waters. The amalgamation of responsibilities into a single regulator will reduce burden on industry through streamlining the approvals process for businesses with projects in Commonwealth waters.
- The Government has also taken important steps to reform grant and procurement administration. As part of a suite of changes, the Department of Finance introduced standard terms and conditions to the Commonwealth Contracting

[5] Source: http://www.minerals.org.au/news/one-stop_shop_agreements_significant_steps_forward_in_tasmania_and_victoria

Suite. The introduction of more user-friendly and intuitive online templates relieves businesses from having to access legal advice and incur other associated costs in order to provide services to the Commonwealth.

- As part of reforms announced by the Attorney-General, the Government moved to expand private sector access to the National Document Verification Service (DVS). Access to the DVS is benefiting businesses with identity checking obligations (including banks and telecommunications companies) by enabling them to verify the identity of their customers quickly and cost effectively by using government records.

Assisting small businesses

Small businesses remain an important driver of employment and economic growth in Australia's economy. However, because of their smaller size and limited resources, red tape can have a disproportionate impact on these businesses. Significant progress is being made to help free up the time spent by small businesses in meeting red tape requirements and to alleviate some of the barriers to growth prospects confronting the sector. Some of the key reforms include:

Changes to the entry thresholds for Pay-As-You-Go instalments

- An estimated 447,000 small businesses will benefit from administrative changes to entry thresholds for Pay-As-You-Go (PAYG) instalments. Of these, 45,000 small businesses that have no GST reporting requirements now will no longer have to lodge a Business Activity Statement (BAS) where to date, lodgements have been made only to report PAYG instalments. The remaining 402,000 small businesses with modest or negative incomes that are required to lodge a BAS, will no longer have to interact with the PAYG instalment system.

A National Construction Code available free online

- The Government, in conjunction with states and territories, has cut red tape for Australia's building industry by providing free online access to the National Construction Code (NCC), commencing with the NCC 2015 edition. By eliminating the NCC's purchase price (almost $400) the number of building and plumbing practitioners using the NCC is expected to rise, from 12,000 to around 200,000 across Australia. In addition, the NCC will transition from a one-year to a three-year amendment cycle, delivering greater certainty and stability, particularly for the many small businesses that form a vital part of the Australian building and construction industry.

Improving the way individuals interact with government

Part of the Government's reform of the measurement of the costs of red tape has seen for the first time the impact on individual Australians considered. Significant red tape reforms undertaken in 2014 will reduce the burden that the Commonwealth places on individuals seeking to access government services.

- As a result of changes implemented in the Treasury portfolio, around 1.4 million Australians will be able to have income and other data automatically pre-populated in their tax return by the Australian Taxation Office (ATO). These changes will reduce the amount of information users need to supply to the ATO, saving users significant time and money in complying with Commonwealth tax laws.
- A broad package of administrative decisions being implemented by the Department of Human Services (DHS) will also make it easier for Australians to access government services. A range of transactions such as claiming payments and reporting can now be undertaken online. For example, Centrelink claimants for certain payments will be able to check the status of their claims online, reducing the need for follow-up interventions by phone or in person at a Centrelink Service Centre.

Making it easier for students to update their study details

Maria is a full-time university student receiving Youth Allowance. She is one of 200,000 students who can now update more of her study details online, and make multiple updates in the same session. She can now remove a future course and add a new one, edit her student ID or advise study load percentages. Using the convenient online option means Maria doesn't need to call or travel to a service centre to update her study details.

Regulatory costs

As would be expected from any new government which is responding to a changing economic and security environment, over the course of 2014, the Government also took decisions to introduce a number of new, important regulations.

With regard to new regulatory measures, some points are immediately noticeable.

- First, there have been very significant improvements in measuring regulatory costs, as well as improvements in the processes which are designed to prevent unnecessary new regulation.
- Second, as part of the Government's efforts to cut red tape and mitigate 'regulatory creep', any new proposal that raises new regulatory burden must identify regulatory offsets (reductions in regulations within the same portfolio) at the

time a decision is taken by the Government.

- Third, the Government is fully committed to stringently adhering to the new rules designed to slow the growth of new regulation and avoid all unnecessary new regulation.

As an example of appropriate new regulation, the Attorney-General introduced changes that will strengthen the requirements on institutions, particularly banks and other financial institutions that are frequently required to identify and verify customer identity. These additional requirements, which will include ongoing training, as well as systems and process improvements (for example, improved monitoring and reporting) will help to strengthen Australia's anti money-laundering and counter-terrorism financing framework.

Another example was the decision to establish the *Student Start-up Loan* to replace the *Student Start-up Scholarship* (at the same rate of payment). In contrast to the previous Scholarship which was automatically paid to eligible students, the new Scholarship will require students to apply for the loan, thereby raising students' interaction with the government.

A number of other decisions were also taken to enable Australia to comply with international obligations.

As Chair of the Group of 20 (G20) economies, the Treasurer announced Australia's intention to introduce Common Reporting Standards for the automatic exchange of tax information between G20 economies from 2017.

The proposal will require banks and financial institutions to collect and report additional financial information on non-residents to the ATO in an effort to enhance transparency and deter tax evasion.

Furthermore, the Australian Prudential Regulation Authority (APRA) announced changes to implement new global prudential reforms. Although changes to regulations under Basel III aim to increase Australia's resilience to global financial market shocks, the new liquidity requirements will increase the compliance cost for Australian deposit-taking institutions.

Decisions taken in 2014 where implementation is ongoing

Throughout 2014 the Government took a wide range of decisions to cut red tape. In many cases (but not all), implementation of the Government's decisions is subject to Parliamentary approval. As noted in the introduction to this chapter, the necessary lag between when a decision is taken and implemented is only one factor that influences when the effect of reduced compliance cost is felt within the community.

In practice, changes to reduce the costs of complying with regulations may be proposed in bills introduced by ministers, or through changes to regulations tabled in the Parliament. It is necessarily the case that in changes of this type, both Houses of the Parliament have roles to play in scrutinising and passing such reforms. This process of parliamentary scrutiny and approval can also result

in changes to the Government's proposals. It can also result in time elapsing between when decisions by the Government are taken and initiated, and the point at which changes to rules and regulations formally take effect. The Commonwealth Parliament can in many instances determine the extent to which decisions taken by the Government to reduce compliance costs are implemented and when the results may be felt within the community. In some cases, legislation may also provide for a delay between laws passing the Parliament and implementation. This can be to give time to ensure that stakeholders are adequately informed of changes and that appropriate systems and information are in place so that the regulation can be implemented efficiently.

Box 4: Parliament's role in the reform process

Australia's Constitution gives the power to make laws on a broad range of areas to the Commonwealth Parliament. Because of these powers, the Parliament rather than executive government controls the pace that regulatory reforms that require legislation can proceed.

Through the Government's red tape initiative, ministers and regulators can make decisions designed to reduce the regulatory burden that is placed on businesses, community organisations, families and individuals in three major ways.

First, the Government can make decisions and introduce legislation into the Parliament to repeal, amend or replace existing laws with less onerous or prescriptive requirements. These proposals must be passed by both Houses of the Parliament and receive Royal Assent before new rules have legal effect.

Second, the Government can revoke or amend subordinate legislation or other instruments, to reduce the complexity of the implementation of the regulatory scheme. These changes are usually instruments that the Parliament has the power to disallow.

Third, the Government can change its administrative processes to reduce the costs that compliance with requirements imposes, for example simplifying forms or being more flexible in the application of compliance requirements or reporting obligations. Regulators often have powers delegated to them by government to allow them to change regulation. Maximising the benefits from improvements relating to how regulation is administered in this third category is one of the key aims of the Government's new Regulator Performance Framework (see Chapter 4).

Decisions taken up to 31 December 2014 will elicit $2.3 billion worth of cost savings and already around $1.5 billion (approximately two-thirds) of these decisions have been implemented. The balance, approximately $820 million of decisions that have been taken require further action in 2015 in order to be formally implemented. These decisions that were taken but are yet to be implemented include a number of measures that would reduce red tape, as well as some measures that would increase regulatory burden. The following provides a brief description of some of the key compliance savings and costs that at the end of 2014 were yet to be implemented. A fuller description of the Government's accounting of red tape savings is provided in Box 5.

Table 2: Key decisions taken that will reduce compliance costs but were yet to be implemented at 31 December 2014.
Note: Figures are rounded.

Portfolio	Net savings Decisions Taken ($ millions)	Implemented ($ millions)	Yet to be Implemented ($ millions)
Agriculture	24.5	9.2	15.4
Attorney-General's	-16.0	35.1	-51.1
Communications	94.6	86.6	8.0
Defence (incl. Veterans' Affairs)	6.4	6.4	0.0
Education	40.8	29.3	11.5
Employment	151.1	47.5	103.6
Environment	546.4	139.6	406.9
Finance	72.3	72.3	0.0
Foreign Affairs and Trade	7.0	0.7	6.3
Health	152.2	111.1	41.0
Human Services	109.1	109.1	0.0
Immigration	83.1	53.3	29.9
Industry	205.7	182.1	23.6
Infrastructure	81.9	81.9	0.0
PM&C	8.5	8.5	0.0
Social Services	170.3	123.8	46.5
Treasury	570.7	388.2	182.6
Total	**2,308.6**	**1,484.4**	**824.2**

Key decisions taken that will reduce compliance costs but at the end of 2014 were yet to be implemented

By way of example of the sometimes complicated implementation process, throughout 2014, excellent progress was made to implement a One-Stop Shop for environmental assessments and approvals. As at 31 December 2014 assessment bilateral agreements had been signed with all states and territories. In addition, draft approval bilateral agreements with six jurisdictions (New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory) had been released for public comment.

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 which was introduced on 22 October 2014, remained before the Senate at the end of 2014. As part of proposed changes, the bill will enable telephone numbers to remain on the Do Not Call register indefinitely. Once the Bill passes the Parliament and receives Royal Assent, 10 million consumers will benefit as they will no longer need to re-register their phone numbers (currently they are required to re-register every eight years).

Furthermore, a number of measures in the Employment portfolio remained before the Senate at the end of 2014, including the Fair Work Amendment Bill 2014 and the Safety, Rehabilitation and the Compensation Legislation Amendment Bill 2014.

Key decisions that will raise compliance costs but at the end of 2014 were yet to be formally implemented

On 30 October 2014, the Attorney-General introduced the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. As part of the proposed changes, telecommunications service providers will be required to retain for two years telecommunications data (not content). At the end of 2014, the bill's passage in the Parliament remained subject to consideration by the Joint Party Intelligence and Security Committee following a referral on 30 October 2014.

Further details on the status of each decision taken but yet to be implemented at the end of 2014 is provided in the individual portfolio annual red tape reports.

Box 5: Accounting for red tape savings

The degree to which red tape reform is felt within the community and how rapidly and for how long the economic effects and compliance savings are felt will depend on a number of circumstances.

For the majority of decisions that have been taken and implemented, benefits begin to flow for stakeholders in the year of implementation. Moreover, most of these measures will have an ongoing effect on regulated entities and individuals well beyond 2014. For example, efforts by the ATO that will allow myTax users to prepopulate online forms using existing government data will benefit users immediately and those same improvements will benefit users again next year, and the year after in perpetuity. In short, many of the reforms the Government is implementing will have recurrent benefits for the community. In some cases (such as once-off exemptions), implemented measures will only have a time-limited impact on the community or a selection of businesses. In such cases, the felt effect of these measures will be more limited in contrast to the continuing felt impact of many ongoing reforms.

As part of its annual red tape commitment, the Government has decided it will only claim new, additional savings against its annual deregulation target in the year when decisions are taken. In essence, although in most cases Australians will benefit year on year from the reforms implemented in 2014, only new decisions taken from 1 January 2015 will contribute to the 2015 target.

For decisions that were taken in 2014, and therefore counted, but were not implemented by the end of 2014, the reduction in compliance costs will not be felt until after 2014. In some cases, the timing for when the reduction in burden will be felt in the community is conditional on Parliamentary approval. In some other cases, portfolios are working with stakeholders on details, such as the final reform timetable.

The Government will fully report for each calendar year all decisions taken in the calendar year and it will not count the recurring compliance costs savings of these decisions towards the next yearly target of $1 billion. This is a transparent framework that recognises that decisions taken can be sufficient to signal change to the community which can, in turn, influence the behaviour of regulated entities (the felt effect) even before requirements take legal effect.

As part of its stringent red tape agenda, the Government is closely monitoring the progress of decisions taken in 2014 and will amend the final estimate of net savings as necessary in a fully transparent manner each year in this report to the Parliament.

CHAPTER 04

TAKING STOCK OF COMMONWEALTH REGULATIONS

Taking stock of Commonwealth regulations

At a glance

- The annual cost to business and individuals of complying with Commonwealth regulations is estimated by Commonwealth portfolios to be around $65 billion per annum.
- This arises through approximately 85,000 regulations that portfolios estimate they administer.
- More than 70,000 of these regulations arise from powers delegated by the Parliament to agencies and regulators to achieve outcomes (for example quasi-regulations).
- Two regulators alone - the ATO and the Australian Securities and Investments Commission (ASIC) – are responsible for more than half of all of the Commonwealth's quasi-regulations.
- The ATO is the largest Commonwealth regulator. The ATO estimates that the annual burden it imposes costs entities and individuals $40 billion per annum.

Background

In September 2013, the Government instructed PM&C to design and coordinate a stocktake of all legislation administered by each Commonwealth portfolio.[6]

With a view to developing a consistent whole-of-government approach, the Government established Deregulation Units in each of the Commonwealth portfolios. A key role of the Units in 2014 was to assist in the development of the methodology for the stocktake process that they then implemented.

Consultations between PM&C and the portfolio Deregulation Units continued throughout 2014. This approach was instrumental in achieving something which, remarkably, has not before been known with any degree of accuracy, namely the existing stock of Commonwealth regulations.

A coordinated yet flexible approach

A development of a coordinated, yet flexible approach has been an essential element in assisting portfolios to implement key aspects of the Government's broader red tape reduction programme. A degree of flexibility was also necessary to enable portfolios to complete the stocktake process. It allowed portfolios to best respond to the diverse regulations and frameworks administered within their portfolios providing a fair and accurate assessment of the stock of regulation, whilst retaining appropriate consistency with a general whole-of-government approach.

The outline that follows provides an overview of the two-stage process that was undertaken throughout 2014. The outline begins with a discussion of the work by portfolios to count the number of regulations (Stage One)

[6] See The Coalition's *Plan to Boost Productivity and Reduce Regulation*, July 2013, page 15.

and concludes with the presentation of the estimated cost of Commonwealth regulations as estimated by portfolios (Stage Two).[7]

Additional detail on portfolio-specific results in this regulatory stocktake process is presented in the respective portfolio Annual Deregulation Reports. These individual reports will be accessible through portfolio websites as well as through www.cuttingredtape.gov.au.

Stage One: Counting and assessing regulation

Counting the number of Commonwealth regulations

As the first step in quantifying the cost to businesses, community organisations, families and individuals of complying with Commonwealth regulations, each portfolio was required to identify and count ***any regulation*** – legislative or administrative – that imposed a compliance burden on non-government entities and individuals.

Portfolio responsibility for particular Acts and regulations was determined by the Administrative Arrangements Order (AAO) of 3 October 2013.[8]

Significant work and consultation was needed across portfolios. This is because, amongst other considerations, to implement Acts and regulations, there exists a range of circumstances where agencies administer regulatory activities on behalf of other agencies which have legislative and policy responsibilities under the AAO. This is particularly relevant in the case of the DHS which administers regulatory activities (for example, through Medicare and Centrelink payments and services) on behalf of a range of agencies including the Departments of Social Services, Health and Employment. In these instances, significant collaboration was required between relevant departments to count (and later cost) Commonwealth regulations. In the case of DHS, its count and cost of regulation includes the activities it administers on behalf of other agencies.

Consistent with the Government's approach to measuring regulatory burden, each portfolio's assessment was limited to the rules and regulations that impose compliance costs on non-government entities, families and individuals.[9]

[7] The stocktake represents an assessment by portfolios of the count and type of regulations that they impose, as well as an estimate of the cost to businesses, community organisations and individuals to comply with those requirements. A high regulatory count or a large cost associated with complying with regulations is not necessarily a reliable indicator of ineffective red tape and duplication. The reasons are discussed further in the following sections.

[8] Refer to *Amendments to the Administrative Arrangements Order – 3 October 2013*.
Source: https://www.dpmc.gov.au/parliamentary/

[9] The Government's commitment to reduce red tape represents a commitment to reduce the compliance burden imposed on businesses, community organisations, families and individuals. While all portfolios have a commitment to remove 'internal (government-to-government) red tape' through the Government's Smaller Government commitment, the annual $1 billion red tape objective recognises only regulations and changes in the regulatory burden that are external to government (that is, non-government entities and individuals).

Box 6: What is a regulation?

The *Australian Government Guide to Regulation* defines a regulation as 'any rule endorsed by government where there is an expectation of compliance'.[10]

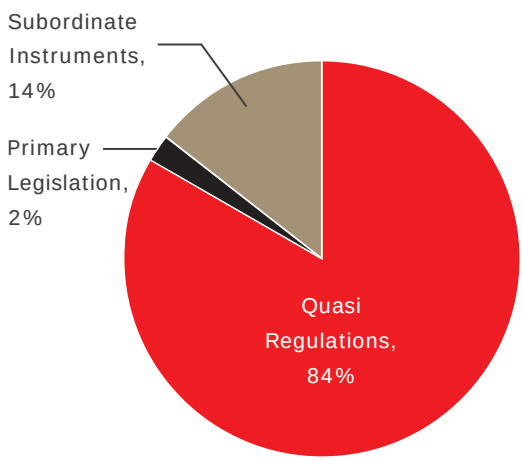
This broad definition reflects the fact that, in practice, regulations can arise in many forms. 'Black letter laws' such as primary legislation and subordinate instruments are an obvious and visible form of regulation. However regulation also captures the wider range of rules or quasi-regulations. These quasi-regulations are the rules developed by administrative agencies or bodies that help to achieve the overarching principles set out in primary acts and regulations. These can include (but are not limited to) international treaties, codes of practice, guidance, industry-government agreements and accreditation schemes. By delegating some of its regulatory powers to administrative agencies, regulators and bodies, the Government can also influence or compel behaviour through rules and regulations more effectively than can be achieved through primary legislation.

The interim Stage One results

The count of regulations (as assessed by individual portfolios) suggested that as at 3 October 2013, the Commonwealth Government's total regulatory footprint was made up of approximately 1,800 pieces of primary legislation, 12,200 subordinate instruments and over 71,000 pieces of quasi-regulation (see Figure 3 and Table 3).

The estimates in Table 3 exclude a large number of government-to-government regulations which reflect the requirements Commonwealth agencies impose on other Commonwealth agencies or other levels of government in Australia. Some deregulatory initiatives have resulted in significant reductions in government-to-government costs but these do not presently count towards meeting the $1 billion cost saving target.

Figure 1: Composition of Regulation



[10] *The Australian Government Guide to Regulation*, Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2014, page 3.

In particular, despite having primary responsibility for a large number of Acts and legislative instruments, Finance has assessed that a significant number of these regulatory requirements are imposed on other government agencies rather than imposing compliance costs on businesses or the wider community.[11]

An avenue to possible future improvement of the present system is to devise a fair and accurate methodology to measure the costs of regulation in a consistent way that captures the savings effected by reducing government-to-government compliance costs.

Table 3: Approximate count by portfolio of Commonwealth regulations as at 3 October 2013.

Portfolio	Primary Legislation	Subordinate Instruments	Quasi Regulations	Total
Agriculture	79	244	347	**670**
Attorney-General's	124	279	135	**538**
Communications	40	591	46	**677**
Defence (incl. Veterans' Affairs)	58	170	363	**591**
Education	14	3	201	**218**
Employment	24	47	460	**531**
Environment	60	141	114	**315**
Finance	6	5	3	**14**
Foreign Affairs and Trade	20	57	53	**130**
Health	57	172	2,517	**2,746**
Human Services	3	7	2,050	**2,060**
Immigration	23	7,086	1,321	**8,430**
Industry	79	156	104	**339**
Infrastructure	89	987	15,614	**16,690**
PM&C	51	-	121	**172**
Social Services	57	411	242	**710**
Treasury	1,015	1,847	48,026	**50,888**
Total	**1,799**	**12,203**	**71,717**	**85,719**

Note: Portfolio titles are those that existed prior to the machinery-of-government changes in December 2014. The estimates reported regarding the count of regulations include only those regulations that imposed compliance costs on non-government entities and non-government individuals.

[11] As a result of these types of exclusions, the number of Acts that portfolios assess as imposing costs on businesses, community organisations, families and individuals will be different to the number of Acts identified through other sources.

The results reported by portfolios revealed a large range in the number and type of regulations administered by portfolios. Moreover, the stocktake of regulation highlights how responsibility for the regulations that the Commonwealth imposes is skewed to a relatively small number of portfolios and their regulators. For example, the Treasury, Infrastructure, Immigration, Health, and Human Services portfolios are collectively responsible for approximately 95 per cent of the total number of regulations that are imposed on businesses, community organisations, families and individuals.

Across the Commonwealth, the largest share of legislation is administered by agencies within the Treasury portfolio. The large count of quasi-regulations reported by Treasury reflects the responsibilities of two of its key agencies – namely the ATO and its administration of Australia's taxation and superannuation systems, and ASIC and its role as Australia's corporate, markets and financial services regulator. This is not surprising given the compulsory nature of taxation and its effect in the everyday lives of individuals and businesses, and the central role financial and market regulation plays in all economies. Together, the ATO and ASIC accounted for over 95 per cent of the quasi-regulations administered in the Treasury portfolio.

Implementing Tax Regulation

The largest area of regulation in the Treasury Portfolio is administered by the ATO. Treasury estimates that more than 24,000 pieces of quasi-regulations are needed to implement all tax legislation.

Some regulators have flexibility to change or make regulation, either through delegation or interpretation of the regulations they administer (that is, quasi-regulation). For example, the ATO has the power to make formal interpretations of regulations through public rulings, while ASIC has some delegated regulation-making powers. This gives the regulators some flexibility to make changes more quickly than would be the case if regulatory change needed to occur through legislation or through a disallowable regulation that was required to be put before the Parliament.

These types of delegated responsibilities also explain the large number of quasi-regulations in other portfolios, such as the Infrastructure portfolio. For example, regulators within the Infrastructure portfolio work to foster an efficient, sustainable, competitive, safe and secure transport system comprising rail, road, aviation and maritime transport. The breadth of the areas regulated by the portfolio and the significant proportion of its business that relates to safety and security necessitates a significant number of quasi-regulations across the portfolio.

Assessing the broad cost categories of the Commonwealth's compliance burden

The extensive count undertaken by each portfolio during Stage One provided a useful platform to begin the process of *quantifying* the burden imposed by each regulation.

The large number and variety of regulations administered by portfolios meant that costing the total regulatory stock in detail using a single process and methodology was not feasible for all portfolios. The solution required an interim step to be undertaken prior to commencing Stage Two.

Box 7: Stratified sampling

Stratified sampling involves a distinct population (in this case, the broad category of regulations in the Administrative Arrangements Order) being segmented into smaller homogeneous groups, and these smaller groups being sampled to make judgements about the broader group of regulations.

The approach can be used when the population under consideration varies significantly, but elements within the population (in this case, individual regulations or frameworks) can be grouped into relatively smaller, but similar, subgroups.

Users can form judgements about the population mean and variation based on the mean and variation calculated from samples taken from each of the subgroups, weighted by the size of these subgroups.

Under the right circumstances, stratified sampling can lead to better estimates of population than may be achieved from sampling from the overall population. (See http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Stratified_sampling.html).

This step required portfolios to catalogue their stock of regulations into smaller subgroups that imposed broadly similar requirements (and hence, regulatory burden) on regulated entities and individuals.

As discussed in Box 7, developing an approach that might assist portfolios to group regulations was useful for those portfolios that did not cost their entire regulatory stock.

To ensure consistency, Deregulation Units and policy officers familiar with the regulations administered within the portfolio were encouraged to assess each framework/regulation in the context of six broad criteria:

- the type of requirements the regulation imposes;
- the complexity of the regulation;
- the reach of the regulation;
- the frequency of interactions with the regulation;
- the currency of review; and
- the scope for reform.

Box 8 provides some context for each of the six initial criteria.

Box 8: Developing criteria to group regulations

The type of requirements the regulation imposes

Regulations that impose similar requirements could be grouped within a portfolio. For example, similarities in the qualifications required to undertake an activity such as the appointment of an independent auditor could be used to distinguish between regulations and define groups imposing similar compliance requirements.

The complexity of the regulation

Complex regulations or those that contain a larger number of sections that have been added over time might require a greater amount of time and resources compared with newer or more straightforward regulations. Similarly, more prescriptive regulations could be aligned with other rules-based regulations (in terms of the cost of complying with regulations) despite regulations having very different end objectives/users.

The reach of the regulation

Similarities in the way in which different regulations affect the community could offer another way of grouping regulations. For example, the burden placed on small businesses is different to the burden imposed on larger businesses, and the burden of complying with regulations for low-income individuals might be treated differently to that imposed on high-income groups.

The frequency of interactions with the regulation

The frequency with which affected groups are required to interact with regulation could be used to group regulations. For example, the compliance burden for regulated entities that are required to prepare monthly compliance reports might be grouped differently to those that require annual reports.

The currency of review

The time since legislation and regulations were last reviewed could assist portfolios to determine the effectiveness and the compliance burden of regulations. Regulations that have been more recently reviewed could be more effective, efficient or fit for purpose compared with older regulations, especially those that had been the subject of amendment.

The scope for reform

Finally, portfolios could consider the 'scope for reform' as a means of identifying and grouping regulations. For instance, if there is widespread agreement for reform in an industry then there could be more scope for reform, particularly if regulations were originally developed with no or minimal consultation with the affected industry. These were regulations that could result in more burdensome regulation compared to those rules that were developed in step with the affected stakeholders.

Stage Two: Quantifying the Commonwealth's compliance burden

As already noted, the scale of the *number* of regulations administered by most portfolios meant that an estimate of the cost of complying with each regulation was not feasible or cost effective for all portfolios. Therefore the design of alternative approaches to costing regulatory stocks was a pivotal part of the second stage of the stocktake process. As already outlined, sampling techniques offered portfolios an opportunity to estimate regulatory burden without the need to estimate the compliance cost of each individual element of the portfolio's regulatory stock.

Portfolios that chose not to cost their entire regulatory stock were encouraged to implement random sampling. Again, recognising the obstacles to implementing a one-size-fits-all approach, portfolios were given the final responsibility for implementing appropriate portfolio-specific strategies. This included an assessment by each portfolio of an appropriate sampling strategy, as well as the most appropriate sample size to make judgements about their compliance burden.[12]

Deregulation Units were also encouraged to test the results of their audits with their MACs or other stakeholder groups where appropriate. This step provided portfolios with an additional mechanism to test the veracity of their estimates with regulated entities.

The final results

The results estimated by individual portfolios suggest that, collectively, the annual cost of complying with Commonwealth rules and regulations was around $65 billion as at 3 October 2013 (or approximately 4.2 per cent of Gross Domestic Product).

[12] Portfolios were responsible for balancing rigour (likely to be affected by selecting too small a sample) with the resourcing implications of costing many frameworks. Frameworks that were identified as imposing 'nil cost" (no regulatory burden) in Stage One were not considered to be part of the portfolios samples in Stage Two. Nil cost frameworks only affected the total count of regulations reported in Stage One.

Table 4: Cost of complying with Commonwealth regulations – as at October 2013.
Note: Figures are rounded.

Portfolio	Stock of Regulation ($ million)	Per cent of Total
Agriculture	628.1	1.0%
Attorney-General's	249.0	0.4%
Communications	1,346.4	2.0%
Defence (incl. Veterans' Affairs)	385.5	0.6%
Education	1,828.7	2.8%
Employment	2,626.7	4.0%
Environment	711.4	1.1%
Finance	587.7	1.0%
Foreign Affairs and Trade	351.9	0.5%
Health	383.2	0.6%
Human Services	3,747.6	5.7%
Immigration	1,556.6	2.4%
Industry	2,145.0	3.3%
Infrastructure	972.7	1.5%
PM&C	62.3	0.1%
Social Services	783.8	1.2%
Treasury	47,000.0	71.9%
Total	**65,366.6**	

As noted, there exists a range of circumstances where agencies administer regulatory activities on behalf of other agencies which have legislative and policy responsibilities under the AAO. For example, in the case of Human Services, its count and cost of regulation includes the activities it administers on behalf of other agencies.

In line with the central role of tax administration in the economy, and the size of the population affected by tax regulations, the Treasury portfolio imposes the largest regulatory burden across all Commonwealth portfolios. In particular, more than 50,000 regulations are estimated to impose over 70 per cent of the cost of complying with Commonwealth regulations. The cost to businesses and individuals to comply with tax regulations alone is estimated to be around $40 billion per annum.

How do these figures compare?

The estimates from the stocktake process are broadly comparable with estimates reported elsewhere. Notably, in its December 2011 research report *Identifying and Evaluating Regulation Reforms*, the Productivity Commission (PC) cited a number of studies that had estimated similar (proportional) compliance costs in the Australian economy.

- Based on a 2001 OECD survey, the PC estimated the compliance costs of regulations at around $35 billion in 2005-06, or "as high as 4 per cent of gross domestic product".[13]

- A 2011 Australian Industry Group (AIG) survey of Chief Executive Officers estimated that, on average, the costs of meeting regulation was almost 4 per cent of their total annual expenditure.[14]

More recently, in a survey of 137 Australian businesses, Deloitte Access Economics estimated the total cost to individuals, businesses and the public sector of complying with public sector regulations at 4.4 per cent of national income. Upon assessing its survey estimate and the earlier estimates reported by the PC, Deloitte concluded that the cost of complying with public sector regulation was likely to be 4.2 per cent of national income or around $67 billion per year.[15]

Conclusions

This is one of the few times that any jurisdiction in the world has undertaken this thoroughgoing 'bottom up' approach to determining the total regulatory burden imposed on the economy by its own government. It provides the most accurate possible estimate of regulatory burden that has ever been available in Australia.

The stocktake is a point in time estimate by Commonwealth portfolios of the likely cost incurred by businesses, community organisations, families and individuals in complying with Commonwealth regulations. It is reasonable to expect that the estimate of the cost of complying with the stock of regulation will evolve over time. For example, as the number of new businesses rises or falls, and Australia's population increases, the size of the regulated sector will change. In addition, changes in the RBM methodology such as the way in which the Government values leisure time, or the treatment of government-to-government regulation, could also change the measured cost of complying with Commonwealth regulations.

Importantly, the stocktake is an indicative barometer of the size of the Commonwealth's regulatory burden. The stocktake measure includes the cost incurred by businesses, community organisations, families and individuals to comply with the essential rules and regulations that every society needs to operate effectively. However, as well as appropriate and necessary regulation, inside the total figure are costs of complying with unnecessary red tape. It is the Government's urgent task to identify the unnecessary regulations and remove them and to make sure that necessary regulation is administered in the least burdensome manner.

The estimates from the stocktake – both of the number of frameworks and the total cost of regulations – do not, in themselves, provide an accurate indication of where 'excessive' red tape exists. This

[13] Productivity Commission (2006) Potential Benefits of the National Reform Agenda – Report to the Council of Australian Governments, Productivity Commission Research Paper
[14] Identifying and Evaluating Regulation Reforms, Productivity Commission, Productivity Commission Research Report
[15] *Get out of your own way – Unleashing productivity.* Building the Lucky Country Series #4, Deloitte, 2014, page 39.

is because an important safeguard imposed on a large population can often result in a large compliance cost to the economy. In contrast, a small ineffective regulation that duplicates reporting requirements on a narrow group of regulated entities or individuals, though highly ineffective, might be administratively smaller in dollar terms.

The Government's estimate of Commonwealth regulation also excludes the regulations that all other levels of government, private businesses and organisations impose, some of which are often mistaken as Commonwealth regulations.

Notwithstanding these important qualifications, the inherent value of the Government's stocktake of regulation lies not only in having for the first time an estimate of total regulatory burden, but also in the *process* portfolios have undertaken to identify and measure these costs. This has been an extensive and difficult, but long overdue, exercise. For the first time, ministers, portfolio secretaries, regulators and policy officers have a detailed map of where and how much burden they impose. No government has previously attempted to count the total number of regulations in the Commonwealth, with the explicit goal of understanding the cost it imposes on the businesses, community organisations, families and individuals that have to comply with these regulations.

This map can be used to identify future reform priorities. By working closely with those affected by regulations, the Government is well positioned to add to the red tape commitments it began in 2014. Sustained progress towards removing duplication and ineffective red tape will assist policy makers to strike a more appropriate balance between the risks which the Commonwealth regulates to avoid and encouraging the entrepreneurial spirit that remains key to Australia's productivity potential.

CHAPTER 05

POLICIES SUPPORTING DEREGULATION

Policies supporting deregulation

Throughout 2014, ministers and their portfolios took significant steps to embed and improve regulatory reform in the APS. This means making sure that regulation is developed and implemented efficiently and effectively and not automatically used as the first policy response but rather as the measure of last resort for any individual policy problem.

Making expectations clear

In March 2014 the Government published the *Australian Government Guide to Regulation* – which prescribes 10 principles for policy makers to follow in the policy making process. Collectively, these principles drive home the Government's requirement that cutting existing red tape and limiting the flow of new regulation is of the highest priority. The Guide makes it clear that regulation is to no longer be the default option in government policy-making.

Establishing new structures

The Government has established the Office of Deregulation within PM&C to create a dedicated body at the centre of government to support the Government's deregulation agenda, including:

- developing technical guidelines with portfolios, such as on measuring regulatory burden; conducting four community of practice events (two for regulators and two for Deregulation Unit staff) where experiences and lessons are shared; coordinating work to publish newsletters, repeal day overviews, annual reports and guidance notes to portfolios (see Appendix A);
- fortnightly meetings with heads of Deregulation Units to manage the collective delivery of deregulation milestones; and
- development of the www.cuttingredtape.gov.au website.

Improving regulatory skills

A better understanding of regulatory issues and the Government's red tape reduction requirements is being effected across departments through capacity-building forums such as the regulators' community of practice, as well as ad-hoc forums formed to work through specific deregulation challenges and process improvements.

The Office of Best Practice Regulation (OBPR) provides training to policy makers on the RIS process. The OBPR's training takes several forms: general and comprehensive seminars for officers in agencies; group training focused on specific agencies; and one-on-one advice during the development of regulatory proposals such as the preparation of a RIS or the quantification of regulatory costs.

In 2014, the Australian Public Service Commission (APSC) began developing a learning programme to support red tape reduction. The APSC's longer term *Leadership and Core Skills Strategy* includes further work on core and management-level regulatory skills.

Deregulation Units

The Government has required all portfolios to establish a Deregulation Unit to drive the reduction of red tape.

The 18 portfolio Deregulation Units played a key role in implementing the deregulation agenda and delivering the red tape savings announced by the Government to date. In addition to being responsible for overseeing red tape reduction activity within their portfolios, they contribute to future reform by working across their departments, agencies and regulators to identify where unnecessary or inefficient red tape can be removed. Throughout 2014, Deregulation Units were critical to developing and coordinating their portfolios' contributions to the Government's repeal days.

Deregulation Units are also responsible for working in departments to improve RIS compliance, by working with the OBPR and taking steps to improve regulatory literacy within their portfolios. They play an important role in driving cultural change at departmental level and make a valuable contribution to the collective body of knowledge on regulatory best practice.

Many have taken innovative approaches to raising the profile of the Government's deregulation policies, including through regular internal forums, educational activities, developing internal guidelines and cross-department networking.

- Deregulation Units are playing a lead role to break down existing departmental silos by working with each other to pursue potential cross-portfolio reforms. This is particularly important where red tape reduction involves changing both the relevant policy framework and how services are delivered. For example, on 28 February 2014, the Ministers for the Environment and Industry announced that NOPSEMA would be the sole, designated assessor for environmental approvals within its jurisdiction. This is being implemented through an approval made under the *Environment Protection and Biodiversity Conservation Act 1999*.
- The One-Stop Shop approvals process will remove unnecessary duplication between two sets of laws administered across different portfolios, removing costly layers of red tape for businesses trying to develop offshore projects.

To support transparency Deregulation Unit heads are listed on www.cuttingredtape.gov.au.

Ministerial Advisory Councils

MACs along with a range of other consultative arrangements provide each Cabinet minister with an external source of advice on opportunities to reduce red tape. These forums provide a deregulation-focused consultation mechanism for ministers. Memberships

of MACs comprise business, not-for-profit and other industry and community stakeholders.

By the end of 2014, more than 40 MACs were established across the Government. All portfolios except the Finance portfolio have advised the Prime Minister on their deregulation consultation arrangements (See Appendix B).

Performance and remuneration

The Government is ensuring that the appropriate incentives to pursue red tape reforms exist for the APS. While SES performance agreements and remuneration are agreed at the agency level, agreements for SES officers now include a criterion relevant to advancing the deregulation agenda and quantified reductions in regulatory burden.

Standard template performance agreements for departmental secretaries have been updated to reflect the Government's deregulation policy agenda. Performance is being taken into account in secretaries' annual performance reviews.

Council of Australian Governments

COAG has agreed that reducing red tape is an ongoing priority. Work is underway in jurisdictions to improve regulation and remove unnecessary red tape.

In 2014, each jurisdiction selected specific small business and manufacturing sectors to target in their work to reduce regulation. While the specific reforms in each jurisdiction vary, the reforms focus on five main themes.

1. Digital reforms – moving from paper-based to online and electronic forms to reduce administrative burden and improve processing times.
2. Single service models – establishing single entry and contact points for licensing and regulatory enquiries.
3. Mutual recognition and streamlining regulatory requirements – reviewing regulatory requirements to remove duplication and developing processes to allow for mutual recognition across governments.
4. Reduce processing times – administrative reforms to improve application processing times.
5. Streamlining planning approvals – state and territory reviews of their planning systems to improve consistency and approval processing times.

Universities will also benefit from a reduction in reporting burden as all jurisdictions have agreed to consult the cross jurisdictional Higher Education Data Committee before requesting data which is often already available. Universities will only need to provide higher education institutional data to government once. The Commonwealth continues to work with states and territories to develop a higher education DataMart, which will provide a single point of access to various higher education data collections to further

reduce the need for separate data requests directly to universities.

The work undertaken in 2014 will provide a foundation for ongoing progress in 2015. COAG will continue its work to reduce regulation for the early childhood education and childcare sector and small business. Improving regulator performance and looking at consolidating regulatory bodies so that business and the community interact with as few regulatory bodies as is necessary will continue to be a priority. COAG will also explore adopting, as a general principle, trusted international standards or risk assessment processes for systems, services and products, unless it can be demonstrated that there is a good reason not to, and will consider reforms to improve the chemicals regulatory framework.

Improving regulator performance

Letters of Expectation

Ministers (or departmental executives acting on their behalf) issued statements to approximately 150 Commonwealth bodies with regulatory functions, setting out expectations for their performance. The letters addressed six areas: the broad deregulation policy framework; provision of strategic direction; regulator independence; best practice regulation; risk-based approaches to regulation; and advice that further information will be provided to regulators once the whole-of-government framework for regulator performance had been finalised.

Ministers tailored these statements to the size, remit and function of the regulatory body. In some portfolios with internal regulators, the commitment was met through agreements between the Minister and the Secretary.

The majority of statements were finalised and sent by the end of March 2014. At the end of 2014, two portfolios (the Treasury and PM&C) were yet to finalise letters to one regulator each. The Treasury was awaiting the commencement of the new Statistician at the Australian Bureau of Statistics, and in the PM&C portfolio, correspondence to the Indigenous Land Corporation was awaiting finalisation of the Government's response to a review of the Indigenous Land Corporation.

Regulator Performance Framework

From 1 July 2015 Commonwealth regulators that administer, monitor or enforce regulation will be required to implement the Regulator Performance Framework. The Framework is an important element of the Government's commitment to reduce red tape.

The Framework was developed following extensive consultation with a range of stakeholders. It consists of six outcomes-based key performance indicators covering reducing regulatory burden, communications, risk-based and proportionate approaches, efficient and coordinated monitoring, transparency, and continuous improvement. It is available at http://www.cuttingredtape.gov.au/regulator-performance-framework.

The Framework requires regulators to look at how they operate and

the imposition they create when administering regulation. This will help to improve the way regulators operate and encourage appropriate risk-based regulatory approaches.

Regulators will self-assess annually and external reviews of performance will be required from time to time. Requirements to publish a report on the outcomes of each annual self-assessment and any external reviews of regulator performance against the Framework will increase accountability and transparency for regulators. These reports will identify the extent to which the regulator is achieving the performance indicators in the Framework and highlight areas for improvement. The aim is to assist regulators to meet community expectations, and help build stakeholder and public confidence. The 2015-16 financial year is the first assessment period.

The cuttingredtape.gov.au website

The www.cuttingredtape.gov.au website was launched on 17 March 2014. The website is a shop front for the deregulation agenda, and allows public comments or submissions on red tape issues. It houses materials relating to the Government's deregulation agenda, including the *Australian Government Guide to Regulation, the Regulator Performance Framework*, and information on Parliamentary Repeal Days.

The range and extent of comments and submissions lodged on the website varies considerably. The website has been used by some groups for coordinated input on a specific issue, for example changes to firearms regulation or the utility of the Aviation Security Identification Card. Another category of comments and submissions relates to issues that have concerned the individual without actionable issues being identified which reduce regulatory costs.

As at 31 December 2014, there had been 55,651 visits to the website by 36,307 unique visitors, who averaged 2.85 page views per visit. Approximately 150 submissions were made and over 1500 substantive comments have been left. All comments and submissions have been considered and where substantive issues were raised, the matter was referred to the relevant policy department for information and where appropriate, for consideration.

International standards and risk assesments

On 14 October 2014, the Government announced as part of the Industry Innovation and Competitiveness Agenda, that it will examine opportunities for greater acceptance of international standards and risk assessments. This issue has arisen because businesses often have to undertake a regulatory approvals process to use or sell products in Australia that duplicates a process that has already occurred in other developed countries. This adds to costs and provides little or no additional protection.

The Government announced that it will adopt a new principle that if a system, service or product has been approved

under a trusted international standard or risk assessment, then our regulators should not impose any additional requirements for approval in Australia, unless it can be demonstrated that there is a good reason to do so.

To ensure a thorough review of all regulations, ministers and secretaries are writing to regulators in their portfolios and are working with stakeholder groups to develop criteria for assessing opportunities for the acceptance or adoption of trusted standards and assessments. The Government will report on progress in 2015.

CHAPTER 06

REGULATORY IMPACT ANALYSIS

Regulatory Impact Analysis

At a glance

- The Government's Regulatory Impact Analysis framework has been enhanced.
- RISs are now required for all Cabinet submissions.
- There were 58 Australian Government RISs completed from September 2013 through to December 2014.
- There was 100 per cent compliance by portfolios with the Government's Regulatory Impact Analysis requirements.

> *"Good public policy — policy that achieves desirable ends in cost-effective ways — demands good policy making processes. By providing a better evidentiary basis for regulatory decision making, including through the testing of alternative approaches and consulting with those affected, regulatory impact analysis seeks to deliver regulations (or other policy solutions) that provide the greatest benefits to the community. The value of regulatory impact analysis processes is accepted by all Australian governments. However, the extent to which these processes have been implemented and embraced has been variable."*[16]

Background

Regulatory Impact Analysis is an approach that many governments have adopted to assess the potential impacts of new policy proposals (as well as existing regulations) on the economy. By providing an evidence base for regulatory decision making and effective consultation, this process seeks to deliver regulation where it provides greatest benefits to the community, and to reduce opportunities to introduce it where it would not.[17]

A Regulatory Impact Analysis framework has existed in some form in Australia since 1985. The OBPR administers the Australian Government's and COAG's regulatory impact analysis requirements. Integral to the Regulatory Impact Analysis framework are RISs. A RIS is a key document that analyses the impact of regulatory options, which could meet the Government's policy objectives, for decision makers, including outlining the views of key stakeholders.

[16] Productivity Commission (2012) *Regulatory Impact Analysis: Benchmarking*, Productivity Commission Research Report, November 2012, available at http://www.pc.gov.au/inquiries/completed/regulatory-impact-analysis-benchmarking/report/ria-benchmarking.pdf

[17] Source: http://www.dpmc.gov.au/office-best-practice-regulation/about

The following discussion briefly details some of the recent improvements that have been implemented by the Government over 2013 and 2014, in addition to a brief description of overall Commonwealth compliance with the RIS requirements in 2014. A detailed description of the evolution of the Australian Government's RIS process is also available in the *Best Practice Regulation Report, 2013-14.*[18]

Recent improvements in the RIS process

The RIS system has undergone a number of changes over recent years.

Prior to the current system, there was a series of changes to the RIS process in July 2013. The catalyst for these changes was the *Independent Review of the Australian Government's Regulatory Impact Analysis Process* conducted by David Borthwick AO PSM and Robert Milliner.[19] Following a period of high levels of non-compliance with the RIS process and frequent Prime Ministerial exemptions, the Borthwick and Milliner Review made a number of recommendations for improvement.

One of the main improvements was the introduction of a two-stage RIS process to address a key frustration that business and community organisations had with inadequate consultation processes under the June 2010 RIS system. This two-stage process consisted of an options-stage and a details-stage RIS. The options-stage RIS formed the basis for consultation and considered the problem, objective and a range of options. The details-stage RIS combined the three elements of the options-stage RIS with the impact analysis of options, consultation, conclusion/recommendations, and implementation/review.

In addition, accountability for the quality of the RIS and the process of developing these key documents shifted from the OBPR to departments and agencies. Secretaries or deputy secretaries are now required to certify that the RIS requirements have been met. Furthermore, RISs assessed as non-compliant by the OBPR are no longer prevented from consideration by the decision-maker. However, public accountability is achieved with the OBPR publishing its assessment of the RIS, including where relevant, why it is assessed as non-compliant. Previously, the OBPR played a gatekeeper role in which proposals were prevented from consideration by the decision maker until the OBPR had assessed the RIS as compliant. Many agencies were concerned with the OBPR's ability to hold up policy processes until an adequate RIS was produced, for what they viewed as important and often pressing policy issues.

To address the large rise in Prime Ministerial exemptions, specific criteria were introduced for when an exemption could be sought. The criterion applied in the granting of an exemption is then published following an announcement of a proposal.

[18] http://www.dpmc.gov.au/sites/default/files/publications/0010_Best_Practice_Regulation_Report_%202013-14.pdf
[19] Borthwick, D & Milliner R, 2012, *Independent Review of the Australian Government's Regulatory Impact Analysis Process*.

The Government came to office in September 2013 with the stated objective of more rigorous assessment of regulatory impacts. The Government's objective is made clear in the *Australian Government Guide to Regulation* – policy makers are not to turn to regulation as the default response to a policy problem; the impacts of the regulatory proposals are to be considered early in the process; and any resulting changes in regulatory burden are to be identified, reported and offset where there is a net increase in burden.

Further changes have been made to the RIS system. First, the regulatory impacts on individuals were explicitly brought into the scope of the RIS requirements. Second, RISs were required for all Cabinet Submissions. Third, quantification of regulatory costs to businesses, community organisations and individuals associated with an increase or decrease in regulation was required.

The recent evolution of the RIS process is outlined in Table 5 below.

Table 5: Main attributes of the RIS arrangements which applied in 2013 and 2014

RIS process	Main attributes
June 2010	• Single stage RIS • OBPR gatekeeper – non-compliant RISs prevented from proceeding to the decision maker
July 2013	• Two-stage RIS process (Options stage and Details stage) • Non-compliant RISs can proceed to decision maker after being assessed by OBPR • Independent reviews can be used in lieu of a RIS • Prime Minister's exemptions only available for defined criteria
September 2013 Interim arrangements	• RIS is required for every Cabinet Submission • Regulatory costs must be quantified for all regulatory proposals and offsetting regulatory costs must be identified • Individuals brought into the scope of the RIS requirements
March 2014	• Evolving RIS which can be submitted to the OBPR for formal assessment at two points in the RISs development – an early and final assessment • Option with the highest net benefit should be recommended • Post-implementation review required for proposals which have a substantial and widespread impact on the economy

The development of a RIS evolves with the key decision making points in the policy's development. The OBPR provides an early assessment and a final assessment. The early assessment can be undertaken once the four RIS questions have been answered, regulatory costs have been quantified and consultation has been planned.[20] Following consultation, the RIS is further developed so that all RIS questions are answered and regulatory costs are quantified. A final assessment by the OBPR must be undertaken prior to a final decision on the matter.

The OBPR assesses best practice with the Government's RIS system with reference to the ten principles for Australian Government policy makers and the seven RIS questions. The OBPR encourages agencies to produce the best RIS possible by providing advice on what it considers to be the appropriate form of the RIS and consultation method for particular proposals and when to have the RISs assessed. However, it is the agency which has ultimate responsibility for the decisions they make on the type of RIS and consultation method, and when to have the RIS assessed. The OBPR can still find agencies non-compliant with the RIS requirements if departures from best practice are serious enough. To minimise the risks of this occurring, the OBPR assists agencies in preparing RISs through ongoing training and guidance; monitoring and reporting on the Australian Government's Regulatory Impact Analysis requirements; and administering the COAG guidelines for regulation-making by national bodies.

For each portfolio, Deregulation Units are the first point of contact for all regulatory related proposals, and have also played a significant role in highlighting the importance of the RIS process and in driving cultural change in their portfolios.

2014 compliance

Between September 2013 and 31 December 2014, there were 58 finalised and published Australian Government RISs, all of which were compliant. There was one Prime Minister's exemption for the Qantas Sale Amendment Bill 2014. While full compliance was achieved, there are still challenges to embedding cultural change in departments and agencies, as evidenced by the 11 RISs which did not meet best practice in 2014. There was a total of 13 COAG decision RISs in 2014, all of which were compliant with the COAG RIS system.

[20] For more information on the seven RIS questions, refer to the *Australian Government Guide to Regulation:* http://www.cuttingredtape.gov.au/sites/default/files/documents/australian_government_guide_regulation.pdf

Table 6: Published Australian Government compliant RISs at the decision-making stage by portfolio

Portfolio	Number
Agriculture	5
Attorney-General's	5
Communications	3
Defence (incl. Veterans' Affairs)	1
Education	1
Employment	5
Environment	2
Finance	0
Foreign Affairs and Trade	3
Health	4
Human Services	0
Immigration	1
Industry	6
Infrastructure	2
PM&C	0
Social Services	3
Treasury	17
Total	**58**

Table 7: COAG compliant RISs at the decision-making stage by COAG body

Portfolio	Number
Australian Building Codes Board	2
Food Standards Australia New Zealand	2
Industry and Skills Council	1
Agriculture Ministers' Forum	1
Standing Council on Energy and Resources	1
Standing Council on Federal Financial Relations	4
Standing Council on Transport and Infrastructure	1
(Former) Standing Council on Environment and Water	1
Total	**13**

The Australian Government RIS compliance numbers exclude Short Form RISs as they are not published under the Government's RIS system, as well as non-Cabinet regulatory decisions which are considered to be minor or machinery in nature.

Minor changes are those that do not substantially change the existing regulatory arrangements for businesses, individuals and community organisations. Machinery changes are consequential changes required as a result of a substantive regulatory decision, and there is often limited discretion available to the decision maker.

The majority of the 600 repeal day measures are administrative in nature for which regulatory costings were required, but are not in scope of the RIS requirements. There was also a number of the measures which were either minor or machinery in nature and did not require a RIS – either as determined by the OBPR via a preliminary assessment, or as certified by the agency's secretary/ deputy secretary – or were subject to a Short Form RIS.

Appendices

Appendix A

List of Department of the Prime Minister and Cabinet Guidance Notes to Portfolios[21]

Name of Guidance Note	Date Issued
Establishment of Ministerial Advisory Councils or equivalent consultation mechanisms	December 2013
Establishment of portfolio Deregulation Units	December 2013
Ministerial letters of expectation to regulators	February 2014
Regulation audit – stocktake, self assessment and costing (stage one audit)	February 2014
Guidelines on the definition of a regulator	April 2014
Regulation audit – stage two	June 2014
Regulation audit – cross portfolio regulation	July 2014
Regulatory impacts from non compliance and administration of courts and tribunals	September 2014
International standards and risk assessments	December 2014

[21] Guidance notes are available at www.cuttingredtape.gov.au

Appendix B

Summary of Ministerial Advisory Council arrangements

Arrangement	Existing or New Body
Agriculture	
Agricultural Industry Advisory Council	Existing
Attorney-General's	
Screen Australia Board	Existing
Bankruptcy Reform Consultative Forum	Existing
Australia Council Board	Existing
Family Law Council	Existing
Industry Consultation on National Security	New
Communications	
Ministerial Advisory Council on Communications	New
Defence & Veterans' Affairs	
Defence Portfolio Ministerial Advisory Council on Deregulation	New
Education	
Deregulation Ministerial Advisory Council	New
Employment	
National Workplace Relations Consultative Council	Existing
Environment	
Indigenous Advisory Committee	Existing
Water Act Review Expert Panel	New
Australian Heritage Council	Existing
Threatened Species Scientific Committee	Existing
Finance	
Advice on MAC arrangements outstanding	
Foreign Affairs and Trade	
Trade and Investment Policy Advisory Council	New
Health & Sport	
Health MAC	New
Australian Sports Commission Board	Existing
Human Services	
Child Support National Stakeholder Engagement Group	Existing
National Welfare Rights Network	Existing
National Multicultural Advisory Group	Existing
Older Australians Working Group	Existing
Stakeholder Consultative Group	Existing

Arrangement	Existing or New Body
Immigration & Border Protection	
Independent panel conducting a review of integrity in the subclass 457 programme[22]	Existing
Customs and Border Protection National Consultative Committee	Existing
Industry	
Growth Centre Advisory Committee (GCAC) and other bodies[23]	Existing
Infrastructure	
Accessible Public Transport National Advisory Committee	Existing
Aviation Security Advisory Forum	Existing
Regional Industry Consultative Meeting	Existing
Maritime Industry Consultative Meeting	Existing
Oil and Gas Security Forum	Existing
The National Road Safety Forum	Existing
Aviation Industry Consultative Council	Existing
Peak bodies	Existing
Prime Minister and Cabinet	
Indigenous Advisory Council	New
Social Services	
Community-Business Partnership	New
Aged Care Sector Committee	New
Treasury	
Board of Taxation	Existing
Financial Sector Advisory Council	Existing
Financial Reporting Council	Existing
Small Business MAC	New

[22] Dissolved at the end of 2014 following the end of its limited term.
[23] The MAC role of the GCAC is being finalised in early 2015.