QUEENSLAND COMPETITION AUTHORITY

Office of Best Practice Regulation

Final Report

Measuring and Reducing the Burden of Regulation

February 2013

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GLOSSARY

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

OVERVIEW

The Authority has been directed to report to Government on a framework for reducing the burden of regulation, including:

(a) measurement of the regulatory burden, with appropriate regulatory burden benchmarks for Queensland Government departments;

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

(c) identifying priority areas for targeted review.

Measuring Regulatory Burdens and Setting Reduction Targets

The Government has established a target of a 20% reduction in the burden of regulation in Queensland over six years. The Final Report recommends the following approach to measurement of burden and burden reduction:

(a) use of a British Columbia style of counting obligations as the primary measure of the burden of regulation and for setting departmental targets to contribute to a net reduction of 20% across all Queensland regulation within a six-year period;

(b) measurement of the reduction in regulatory burden on a net basis which takes account of expiring and new regulation;

(c) a baseline measure using a modified British Columbia approach to be established as of 23 March 2012;

(d) OBPR to recommend reduction targets for individual portfolios, with the final target for each Department to be decided by Cabinet;

(e) a dollar estimate of the burden of regulation and a page count of legislation to be supplementary measures for monitoring progress in reducing the burden of regulation; and

(f) sunset clauses enforced for all regulations, with a RIS prepared where required by the RIS guidelines for continuing the regulation.

Review of the Existing Stock of Queensland Legislation

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

Candidates for Priority Reform

Candidates for immediate and medium term reform and proposed responsibility have been identified as set out below.

Fast track areas for immediate review		
What	***Who***	***Duration (months)***
Aquaculture restrictions[a]	OBPR	9
Harmonisation legislation that increases costs in Queensland	OBPR	9
Housing restrictions	OBPR	12
Land sales and property development (including coastal development) regulations that impose a significant red tape burden or restrict competition	Assistant Minister for Planning Reform	TBD
Mining development requirements that raise costs and delay investment	Department of Natural Resources and Mines	12
Occupational Health and Safety legislation and Workers Compensation legislation that impose red tape, increase the cost of business and restrict competition	OBPR, with Attorney-General due to legal onus problem.	15
Queensland Gas Scheme requirement to generate 15% of electricity from gas	OBPR	6
Tourism restrictions related to National Parks, Wild Rivers and similar	Department of Tourism, Major Events, Small Business and the Commonwealth Games	9
Trading hours restrictions	Department of Justice and Attorney-General	6
Vegetation management regulation that increases costs and prevents efficient use of property	OBPR	15

[a] *In this Final Report Aquaculture replaces Water Efficiency Management plans, which were removed as a result of the Government's decision to dissolve the Queensland Water Commission and end general water usage restrictions in South East Queensland.*

Medium Term Reform Candidate
Dam Safety standards with costs exceeding benefits
Government procurement regulations that raise cost and restrict competition
Health care legislation that raises costs or restricts competition
Local government regulation and business activities that increase burdens or restrict competition
Pharmacy ownership legislation and regulation that restricts competition
Taxi licensing and regulation that restricts competition
Water sensitive urban design requirements that delay and raise the cost of development
Water use and trading restrictions that raise costs and restrict competition

The Government is considering these priorities and will determine responsibilities and timetables for review.

Whole-of-Government Regulatory Management System

The Authority proposes a whole-of-government regulatory management system designed to reduce the burden of regulation on a comprehensive and sustained basis. A regulatory management system comprises the institutional roles, management processes, accountability mechanisms and evaluation tools that determine how and when regulations are made, administered and reviewed. The regulatory management system must be designed to ensure effective regulatory policy development, prioritisation, coordination, communication, implementation and monitoring.

The Government supports the concept of a whole-of-government regulatory management system and has advised that the Treasurer and Minister for Trade and the Assistant Minister for Regulatory Reform will be responsible for overall regulatory reform, and individual Ministers for regulatory reform in their portfolios, as provided for in administrative orders and Ministerial Charter letters. The Government has also advised that the Queensland Treasury and Trade Department will establish and maintain the regulatory management system.

TIMING, PROCESS AND CONTACTS

Key Dates

Receipt of terms of reference:	3 July 2012
Release of Issues Paper:	3 August 2012
Due date for submissions:	31 August 2012
Consultation with interested stakeholders:	August – November 2012
Interim Report for Government:	31 October 2012
Response by Government to the Interim Report:	19 February 2013
Final Report for Government:	(revised date) 28 February 2013

Process

The OBPR undertook an open consultation process following the publication of the Issues Paper and the Interim Report. The Authority released an Interim Report on 31 October 2012 that reflected the results of the consultation. This Final Report addresses both the Government's response to the Interim Report and reflects the results of further research and consultation. The Government will consider the recommendations in the Final Report and implement those it supports in the timeframes it considers appropriate.

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EXECUTIVE SUMMARY

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

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

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

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

This Final Report provides the Authority's recommendations for consideration by Government.

Consultation and Government Response

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

An Interim Report was provided to Government on 31 October 2012. The Government provided its response to the Interim Report on 19 February 2013, which is attached as **Appendix B**. This Final Report addresses the Government's response to the Interim Report and incorporates the results of further research and consultation. The Government will consider the recommendations in the Final Report and implement those it supports in the timeframes it considers appropriate.

Measurement

The Authority considered the following methodologies for measuring regulatory burden:

(a) number of pages of legislation and associated regulations;

(b) number of requirements as represented by words such as "must" and "shall" (the British Columbia approach), and

(c) the dollar cost of reporting, compliance, delay and the costs to business and consumers of missed opportunities due to restrictions on behaviour (with different options for including all or some of these components). Dollar cost measures could be developed for particular regulatory schemes or in the aggregate for the economy as a whole.

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

The number of pages of legislation is at best an imperfect proxy for regulatory burden. The Authority considers that the British Columbia approach of counting requirements contained in laws and rules to gauge the burden of regulation is a better proxy. The Authority recommends use of the British Columbia approach (modified to include both requirements and prohibitions) as the primary measure

of progress towards the Government's 20% regulation net reduction target. Page counts of legislation and high-level dollar cost estimates of the regulatory burden will also be provided as supplementary tools to measure the progress towards burden reduction.

Any new, remade or sunsetting regulation will be subject to the Regulatory Impact Statement (RIS) process, which will identify the costs and benefits of regulation using both quantitative and qualitative analysis. Regulation will only be introduced or retained where there is demonstrable net public benefit from the regulation.

Net versus Gross Burden Measurements

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

After the 20% target is reached, the Government will determine whether to set a new reduction target or continue the net burden approach.

Process for Setting Regulatory Burden Benchmarks for Departments

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

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

(b) Departments will review the OBPR restrictions count and suggest possible adjustments to burden reduction targets based on unique circumstances. Once the base-line is established, OBPR will recommend a reduction target for each agency. This is likely to be 20%, but may be adjusted if potential difficulties with an individual agency meeting the 20% target or scope for a higher target are identified. Final decisions regarding agency targets will be made by Cabinet. However, the overall 20% net reduction in regulatory requirements across government will remain.

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

(d) The annual progress reports will review the Departmental targets based on experience and circumstances. If there is a need to adjust the targets, OBPR will recommend the change to Government.

Prioritisation

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

Public Stocktake and Regulatory Reform Priorities

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

Table ES.1 shows 10 suggested fast track reforms (in alphabetical order), proposes which body would take the lead and suggests the period of time required for investigation and reporting. Some of these reform candidates have been targeted in other Government reform initiatives (see **Appendix C**). However, the Authority was tasked by the Direction Notice to recommend priority areas for targeted regulatory review irrespective of other Government initiatives underway.

Table ES.1: Fast Track Reform Priorities

What	***Who***	***Duration (months)***
Aquaculture restrictions	OBPR	9
Harmonisation legislation that increases costs in Queensland	OBPR	9
Housing restrictions	OBPR	12
Land sales and property development (including coastal development) regulations that impose a significant red tape burden or restrict competition	Assistant Minister for Planning Reform	TBD
Mining development requirements that raise costs and delay investment	Department of Natural Resources and Mines	12
Occupational Health and Safety legislation and Workers Compensation legislation that impose red tape, increase the cost of business and restrict competition	OBPR, with Attorney-General due to legal onus problem.	15
Queensland Gas Scheme requirement to generate 15% of electricity from gas	OBPR	6
Tourism restrictions related to National Parks, Wild Rivers and similar	Department of Tourism, Major Events, Small Business and the Commonwealth Games	9
Trading hours restrictions	Justice and Attorney-General	6
Vegetation management regulation that increases costs and prevents efficient use of property	OBPR	15

The Interim Report identified Water Efficiency Management Plan requirements on large water users as a fast track reform priority. These requirements were removed as a result of the Government's decision to dissolve the Queensland Water Commission and end general water use restrictions in South East Queensland.

The Authority also identified the eight potential medium term reform priorities shown in Table ES.2 (in alphabetical order).

Table ES.2: Medium Term Priorities

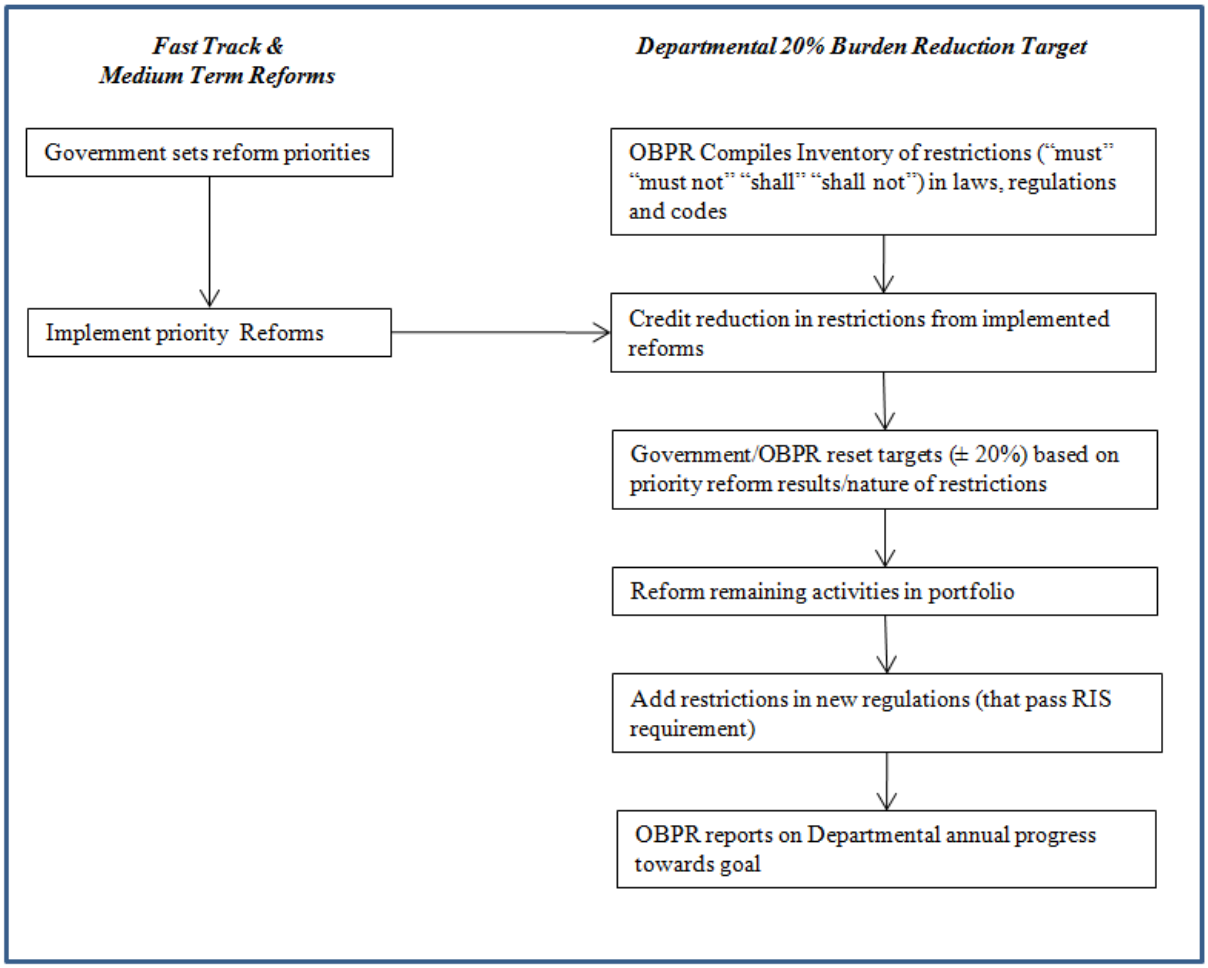
Reform Candidate
Dam Safety standards with costs exceeding benefits
Government procurement regulations that raise cost and restrict competition
Health care legislation that raises costs or restricts competition
Local government regulation and business activities that increase burdens or restrict competition
Pharmacy ownership legislation and regulation that restricts competition
Taxi licensing and regulation that restricts competition
Water sensitive urban design requirements that delay and raise the cost of development
Water use and trading restrictions that raise costs and restrict competition

The Government is considering these priorities along with ongoing departmental and Parliamentary Committee reviews and will amend the list as necessary, allocate responsibilities for reform and set indicative timetables for reform.

Developing and Implementing Reform Priorities

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

Box ES.1: Regulatory Reform Process



Long Term Reform – Whole-of-Government Regulatory Management System

The Authority recommends adoption of a whole-of-government structure for regulatory review and assessment. The objective is to ensure that minimisation of regulatory burdens becomes a central focus and enduring feature of government policy-making. There are several key components of an effective regulatory management system.

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

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

(a) measurable targets for departments;

(b) transparency in reporting on regulatory assessments and in progress on meeting targets; and

(c) changing the onus of proof to require proponents of regulations to show that there is a clear net benefit from their adoption.

The Government can make progress in meeting the targets part of the key performance indicators of departmental Directors-General.

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

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

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

(c) increased transparency;

(d) early engagement with policy and rule makers, and

(e) capacity building for departmental staff.

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

List of All Recommendations

The Authority's recommendations for implementing a regulatory reform plan are set out below and repeated at the end of each Chapter.

Measurement of Burden and Burden Reduction Targets (Chapter 3)

3.1 Measurement of burden and burden reduction

- **A regulatory burden base-line should be established using the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation) as the primary measure. The base-line will measure the regulatory burden as at 23 March 2012.**
- **The modified British Columbia approach should be the primary measure for monitoring progress in reducing the regulatory burden.**
- **Progress in regulatory burden reduction should be measured on a net basis, which takes account of expiring and new regulation.**
- **A dollar estimate of the burden of regulation and a page count of regulations should be supplementary measures for monitoring progress in reducing the regulatory burden.**
- **The modified New South Wales approach should be used to measure regulatory burdens for purposes of evaluating new regulatory proposals or legislation subject to sunset.**

3.2 Departmental Targets

- **OBPR will propose reduction targets for individual portfolios based on a 20% benchmark, with specific portfolio targets to be adjusted for distorting factors, the nature of regulation and the scope for reform. However, an overall target of a 20% net reduction in regulatory requirements will apply across Government as a whole over six years.**
- **The reduction target for each portfolio should be agreed to by Cabinet and included in the key performance indicators of Directors-General. Ministers who consider that their proposed target is onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% target.**
- **The setting of targets for other senior Departmental staff will remain at the discretion of each Director-General.**
- **When agencies and portfolios are re-organised, the regulatory base-line and regulatory burden reduction target for each portfolio should reflect that re-organisation.**
- **OBPR should present an annual report to Government on progress towards the regulatory burden reduction target. The inaugural annual report will be due to Government by October 2013 and cover the period to 30 June 2013.**
- **As part of its annual report to Government, OBPR should present any necessary recommendations for a re-balancing of the regulatory burden reduction target.**
- **Once a reduced (by 20% net) regulatory burden level is achieved, the Government should review its approach to ongoing regulatory reform and establish appropriate regulatory reform targets.**

3.3 New Regulatory Proposals and Sunset Reviews

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

Prioritising the Reform of Regulations (Chapter 4)

4.1 Criteria for Prioritising the Reform of Regulations

- **The Authority should use four criteria to assess reform priorities:**
  - **(a) Regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit.**
  - **(b) Regulation where there is significant 'reach' in terms of interaction between business and the community and government agencies.**
  - **(c) Regulation where there are potentially large net benefits from reform including direct reductions in red tape but also wider benefits for business, government and the community.**
  - **(d) Regulation where the need for reform is well understood and changes are likely to receive community acceptance if they are made aware of the net benefits from reform.**
- **In addition, the following criteria should be considered when excluding regulation from reform:**
  - **(a) Regulation that has been recently enacted or is yet to be effectively implemented or is planned, unless there is clear evidence of substantial burdens on business or the community.**
  - **(b) Regulation that has social or public good objectives where it is difficult to establish the need for change, unless there is clear evidence of substantial burdens on business or the community.**
- **Regulation that has significant environmental, ecological and cultural focus should not be excluded from review.**
- **Departments should use the above criteria to help establish their reform priorities in meeting their regulatory reduction targets.**

Identifying Priority Areas for Targeted Regulatory Reform (Chapter 5)

5.1 Fast Track Reform Candidates

- **The Government should determine fast track candidates, responsibilities for reforms and a time frame for reform. Ten possible candidates have been identified. The Government is considering reform priorities.**
- **The OBPR or a similar independent, well resourced entity should play an oversight role in the design and implementation of reforms. The Government has confirmed that it will determine the review arrangements on a case-by-case basis and that reviews of priority reform areas will be overseen by and independent and impartial body.**

5.2 Medium Term Reform Candidates

- **The medium term regulatory reform candidates and any other reform candidates nominated by Government should be submitted to responsible policy departments or regulatory agencies for their views and suggestions. This process is under way.**
- **The Government has confirmed it will consult with OBPR and determine the review arrangements for each reform candidate on a case-by-case basis.**
- **In line with the co-ordinating role proposed for the Treasury in relation to regulatory matters, OBPR should consult with Treasury in respect of specific responsibilities in relation to medium term priorities.**

5.3 Additional Candidates

- **Government has confirmed that it will consider the scope of OBPR's involvement in reviewing other regulatory reform proposals, including those developed by Parliamentary Committees and departments, on a case-by-case basis.**

5.4 Stocktake

- **The Authority recommends that instead of devoting resources to a formal stocktake, the Government move forward with specific reforms.**
- **Existing legislation with regulatory requirements should be made subject to sunset reviews that place the onus of proof for maintaining the regulation on the proponent.**
- **A phased program for implementation of sunset requirements should be developed by OBPR.**

5.5 Review of Primary Legislation

- **Future legislation that introduces a regulatory requirement should include a provision specifying a date for future review.**

Whole-of-Government Regulatory Management System (Chapter 6)

6.1 Overall Regulatory Objective

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

6.2 Whole-of-Government Regulatory Management System

- **A whole-of-government regulatory management system should be put in place. The recommended implementation of a regulatory management system is presented as Appendix F.**
- **Queensland Treasury and Trade will establish and maintain the regulatory management system.**

6.3 Coverage

- **Both State government and local government regulation, including codes and guidelines should be subject to regulatory review and reform.**
- **Further investigation is required to determine the nature and extent of reform that should apply to local government.**
- **The Government will consult with local government in late 2013 on a regulatory reform program for local governments.**

6.4 Minister for Regulatory Reform

- **The Treasurer and Minister for Trade, in association with an Assistant Minister, is responsible for regulatory reform. The role of the Treasurer and Minister for Trade should include: ensuring clarity of roles and tasks; ensuring capability to reduce and improve regulation; confirming priorities; overseeing regulatory activity; identifying scope for improvements; and promoting the importance of improving regulation. This is consistent with current arrangements.**

6.5 Individual Ministers

- **Each Minister should be responsible for regulatory reform in their departmental portfolio, subject to the Government's agreed priorities and principles for regulatory review and reform. This is consistent with current arrangements.**

6.6 Departmental Responsibility

- **The Government, through the Treasurer and the Assistant Minister for Regulatory Reform should consult with the OBPR about the scope for reform, review responsibilities and time frames for reform priorities on a case-by-case basis.**
- **The Government should consider OBPR's recommended reduction targets for each Department and announce finalised targets at an appropriate time.**
- **Queensland Treasury and Trade should provide a policy advisory and whole-of-government coordinating role in relation to regulatory matters. This function already exists.**
- **Departments should prepare a Regulatory Reform Statement to report progress against regulatory restriction targets and to inform the coordination of regulatory reforms.**
- **Departments should nominate one or more Regulatory Reform Champions for each Department to coordinate the Department's compliance with the RIS system and to track progress against regulatory restrictions targets.**

6.7 Local Government Responsibility

- **In line with the increased responsibility being given to local government, local governments should be required to reduce the burdens of regulation (including codes and guidelines) for which they have responsibility.**
- **Further investigation is needed to establish a manageable process and timetable for review. The Government proposes to consult with local government in late 2013 on a regulatory reform program for local governments, including regulation impact analysis and reporting arrangements, once the framework for regulatory reduction has been established at the State level.**
- **The scope and extent of local government requirements should reflect the resources of individual Councils and the extent of their individual regulatory reform tasks.**

6.8 Office of Best Practice Regulation

- **The OBPR should have an overall advisory and monitoring role in relation to reducing the burden of the existing stock of regulation and new regulation. Specific OBPR functions would include the following:**
  - **(a) Advising on priorities and proposals for reforming the existing stock of regulation in consultation with government departments and Ministers;**
  - **(b) Undertaking targeted reviews and reforms as directed by Ministers;**
  - **(c) Oversight or assessment of major regulatory reform initiatives as directed by Government;**
  - **(d) Annual reporting to government on whole-of-government progress in reducing the regulatory burden and future plans – this will include commentary on the performance of agencies in reducing the regulatory burden and their scope for further reform;**
  - **(e) Training public entities on how to evaluate regulation to reduce the regulatory burden and remove restrictions that impact adversely on economic activity, including application of RIS system requirements;**
  - **(f) Providing guidance to assist departments to prioritise which regulation to reform in achieving regulatory restrictions targets;**
  - **(g) Engaging early with departments to provide information and advice on preparation of RISs;**
  - **(h) Assessing the adequacy of RISs for new regulation and regulation with sunset and statutory review requirements;**
  - **(i) Annual Reporting on RISs; and**
  - **(j) Designing and implementing a permanent mechanism for firms and individuals to make a case for regulatory redesign and reduction. The mechanism would include arrangements for ongoing targeted consultation on priority review areas agreed with Government and a mailbox mechanism for submissions from the public on any regulatory matter at any time.**

6.9 Incentives for Reform

- **The onus of proof in justifying the continuation of regulation or new regulation should be on the entity proposing a new regulation or the retention of existing regulation.**
- **Appropriate targets should be set in net terms for Departments to reduce the burden of regulation.**
- **OBPR should report annually on Departments' progress against targets.**
- **All submissions, supporting analyses and reports on priorities for regulatory reform should be made publicly available at an appropriate time and adequate opportunity should be provided for effective consultation.**
- **All RISs for both consultation and decision purposes and the OBPR advice on those Statements should be made publicly available at an appropriate time.**
- **Regulatory Reform Statements prepared by Departments and OBPR's annual reports of report progress against regulatory restriction targets should be made publicly available at an appropriate time.**

1. INTRODUCTION AND BACKGROUND

The Queensland Competition Authority (the Authority) has been directed by the Treasurer and Minister for Trade and the Attorney-General and Minister for Justice (the Ministers) to investigate and report on a framework for measuring and reducing the burden of regulation. This Final Report has been prepared following the release of an Issues Paper, an Interim Report, and public consultation. The Government's response to the Interim Report is also addressed. The Authority's views are provided for consideration by Government.

1.1 Ministerial Direction Notice

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

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

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

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

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

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

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

The Direction requires the Authority to:

(a) consider both quantitative and qualitative measures of regulatory burden;

(b) consider other Australian and international approaches for measuring and reviewing regulatory burdens, and

(c) have regard to the costs of implementing possible frameworks for measuring regulatory burden, including costs associated with data collection and assessment.

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

Finally, the Direction emphasises that the Government has targeted a 20% reduction in red tape and regulation.

1.2 Context and Rationale for Reviewing Regulation

A thorough review of the stock of regulation and establishment of the Office of Best Practice Regulation (OBPR) within the Authority is the result of the wide-ranging and growing impact of regulation on individuals and business in Queensland.

Excessive or poorly designed regulation can impose costs on individuals, organisations and businesses and reduce their ability to adapt to change. Consequently, regulatory reform has the potential to generate large economic and social benefits.

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

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

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

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

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

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

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

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

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

Technological change is particularly important. Regulations that mandate particular technical solutions for compliance risk may prevent or delay lower cost solutions that may become available as technology changes. In some cases, technological advances may even eliminate the need to regulate.

The lack of harmonisation between regulation at different levels of government or between states or localities may also contribute to regulatory burdens. Duplicative or inconsistent regulation obviously needs to be addressed. There may also be lack of harmonisation among regulations administered by different departments within the State. For example, environmental regulation may require a regulated firm to take actions that are inconsistent with transport regulation. Subjecting businesses to the resulting risk and uncertainty comes with a cost.

Harmonisation of regulation across jurisdictions should not be an overarching objective. In some cases, harmonisation may increase the regulatory burden for certain jurisdictions and stakeholders without producing a net benefit. Harmonisation should be pursued only where there is a net benefit to Queensland. A separate consultant's report prepared for this investigation provides an assessment of national harmonisation (Ergas 2012).

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

1.3 Growth of Regulation

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

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

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

Table 1.1: Number of regulatory pages across jurisdictions

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

Source: Productivity Commission (2008, p. 32)

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

By any measure, the burden of regulation in Queensland is likely to be large. Savings to government from removing unnecessary regulation can be used to reduce debt, lower taxes or fund other more effective programs to benefit the community. Reducing regulatory

burdens on business will likely lead to higher investment, with resulting employment and productivity benefits. Business savings may also be reflected in lower costs for consumers as the benefits of cost reductions are passed through in the form of lower prices.

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

1.4 Prior Reviews

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

1.4.1 New South Wales

The New South Wales Government's current red tape reduction policy includes the following elements (New South Wales Government 2012a):

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

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

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

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

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

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

(a) streamlined trade tests for trainee electricians;

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

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

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

1.4.2 Victoria

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

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

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

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

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

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

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

(a) reforms to food regulation;

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

(c) simplified procedures for legal practitioners.

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

(a) environment protection and climate change;

(b) planning and land use regulation;

(c) vocational education and training regulation;

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

(e) liquor licensing regulation.

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

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

1.4.3 National Competition Policy

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

A nation-wide agreement to review all legislation that restricts competition every 10 years was first signed in 1995. The program of initial reviews spanned several years and was completed in 2005. The agreement was re-ratified by all Australian governments in 2007. The Productivity Commission estimated that the NCP infrastructure reforms alone were associated 'with price reductions and productivity gains amounting to around 2.5% of GDP' (PC 2008, p. 3).

Although new legislation that restricts competition is reviewed as part of the Regulatory Impact Statement (RIS) process, it is understood that there have been no major reviews of existing legislation that restricts competition in Queensland since 2005. It is understood that this is also typically the case in the rest of Australia.

1.5 Government-Wide Efforts to Reduce Regulatory Burden

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

(a) assessing the adequacy of proposed regulation using the RIS System (*Queensland Competition Authority Act 1997* (QCA Act) s.10(lb) and 3 July 2012 Ministers' Direction Notice),

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

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

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

(a) oversight;

(b) red tape reduction policies and mechanisms;

(c) cross-jurisdictional reform programs; and

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

1.6 Regulatory Alternatives

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

1.6.1 Costs Exceed Benefits

The easiest cases involve regulations that serve no useful purpose because they are obsolete, redundant, or were imposed inappropriately in the first place. These regulations provide no benefits and only impose costs. These regulations can be removed and the costs of enforcing and complying with them eliminated.

Another case is where the regulation may provide benefits but the costs exceed the benefits. If there are no alternatives to the existing approach to regulation, then the regulation does not pass a public interest case and should be removed.

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

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

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

1.6.2 Effective Alternatives to Regulation

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

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

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

1.6.3 Alternative Forms of Regulation

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

Performance based regulation has been suggested as an alternative to detailed occupational health and safety regulations. For example, firms could be allowed to devise their own training and safety measures to prevent accidents. Stricter rules or fines would be triggered if performance fails to improve. However, it may be necessary to change the legal liability rules to enable the introduction of performance based regulation for occupational health and safety regulation.

Some stakeholder submissions noted that an advantage of rules based regulation is that businesses can be assured that they are in compliance as long as the rules are followed (even if the public policy objective is not met). An alternative is to allow firms to opt in to a performance based scheme. If the potential compliance cost savings are large, the firm will be willing to take the compliance risk (assuming penalties are set appropriately).

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

2. ISSUES, CONSULTATION AND GOVERNMENT RESPONSE

Consistent with the Ministerial Direction, the Authority released an Issues Paper, undertook an extensive open consultation process with interested parties and provided an Interim Report to Government. The Government has provided a response to the recommendations in the Interim Report (Appendix B).

2.1 Issues Paper

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

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

(a) the context and rationale for reviewing regulation;

(b) the nature and extent of the regulatory burden;

(c) approaches to identifying and measuring regulatory burden;

(d) approaches for conducting reviews of the existing stock of legislation;

(e) methods for identifying and prioritising areas for regulatory review;

(f) essential components of a regulatory management system for reducing and improving regulation, and

(g) examples of measuring the regulatory burden for two significant regulatory regimes (native vegetation regulation and water sensitive urban design).

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

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

2.2 Submissions and Consultation

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

Questions for comment were included at the end of each chapter of the Issues Paper. Stakeholders were encouraged to address these questions and provide any other input. Written submissions were received from 34 stakeholders including large and small

businesses, individuals, peak bodies, government departments, local governments and the Local Government Association. **Appendix D** provides a list of the stakeholders that provided written submissions. Copies of the public submissions are available on the Authority's website at http://www.qca.org.au/OBPR/rbr/.

OBPR staff met with a number of individuals and groups to discuss the Issues Paper. Organisations representing the four pillars in the Government's economic policy were contacted along with the Environmental Defender's Office and other interested parties.

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

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

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

2.3 Interim Report

The Authority's 31 October 2012 Interim Report addressed all aspects of the terms of reference and took account of concerns and suggestions raised by stakeholders in submissions and meetings. Following the release of the Interim Report, the OBPR met with the Local Government Association of Queensland, the Queensland Resources Council and UnitingCare Queensland and other non-government organisations involved in health and community care to discuss their views on the Interim Report.

Most of the material presented in the Interim Report has been retained for this Final Report with amendments made where relevant to incorporate recent developments, further suggestions from stakeholders, and the response by Government.

2.4 The Government's Response to the Interim Report

On 19 February 2013, the Government provided the Authority with a response to the recommendations in the Interim report (see **Appendix B**). The Government supports most of the Authority's recommendations in whole or in part. Specific areas where the Government suggested modifications or extensions to the Authority's recommendations are discussed below. Additional discussion of the Government response to the recommendations in the Interim Report is provided in relevant chapters in the rest of this report.

2.4.1 Measurement of Burden and Burden Reduction

The Government endorsed the use of the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation). OBPR was asked to develop guidelines for assessing the regulatory burden using this method. The Guidelines should:

(a) identify the scope of regulatory instruments to be included in the assessment of regulatory burden (particularly for quasi-regulation);

(b) identify the types of obligations/burdens to be included in the assessment; and

(c) seek to prevent "double counting" of regulation wherever possible.

OBPR has developed a methodology for counting restrictions that reflects the Government's request and has commenced a project to establish a baseline count for each Act, regulation and quasi-regulation by Agency and for whole-of-government.

The Interim Report suggested primary reliance on the restrictions count for measuring the regulatory burden and assessing progress. The Government considers that a basket of measures should be used to provide information on the regulatory burden and recommends that a page count and estimates of dollar cost burden should be used in addition to the restrictions count.

OBPR will report legislative page counts in future reports. The Government recognises the difficulty with establishing a dollar cost base-line for the regulatory burden and encourages consideration of existing benchmark estimates. The Authority's recommended approach to establishing a dollar cost benchmark for the burden of regulation is discussed in section 3.13 and **Appendix E**.

Consistent with the Government's response, the OBPR will make recommendations for burden reductions for each portfolio. The OBPR recommendations will not require Ministerial sign-off. However, final decisions regarding agency targets will be made by Cabinet.

The Interim Report recommended application of a zero net increase in the regulatory burden after achieving the 20% net reduction from baseline regulation. The Government did not support this recommendation, noting that it will review the approach to future regulatory burden reduction once the 20% target is reached.

2.4.2 Criteria for Prioritising Regulatory Reform

The Government supported the Authority's recommendations.

2.4.3 Fast Track and Medium Term Reform Candidates

The Government is considering the reform candidates proposed in the Interim Report and will make decisions regarding the role of OBPR with respect to the scope, conduct and assessment of reviews. The Government recognises the importance of naming an independent and impartial body to conduct or oversee reviews.

2.4.4 Overall Regulatory Objective

The Government supported the Authority's recommendations that the overall regulatory objective should be to achieve a net public benefit defined to take account of economic, environmental and social variables.

2.4.5 Whole-of-Government Regulatory Management System

The Government supports the development of the whole-of-government regulatory management system and notes that

> *. . . it has already implemented a number of key features in this regard, including the appointment of an Assistant Minister to the Treasurer and Minister for Trade, with specific portfolio responsibility for regulatory reform.*

The Government will consider the role of OBPR with regard to major regulatory reviews on a case-by-case basis. With regard to reducing the burden of local government regulation, the Government proposes to consult with local government on the scope for reform.

The Authority's recommendation to investigate use of technology to share information between government agencies and provide better information to business and consumers (an electronic one-stop shop) was not supported because Government has an independent inquiry into achieving this goal and wishes to avoid duplication of effort.

The Government supports the Authority's view that submissions, supporting analyses and reports on RISs and priorities for regulatory reform should be made publicly available at an appropriate time. However, the Government response notes that there are cases where public release of information may not be appropriate or should be delayed. The Government will make these determinations on a case-by-case basis.

The Government supports the Authority's recommendation for a permanent mechanism for individuals and businesses to make a case for review and reform of regulations that create a significant regulatory burden. The Government has indicated that the mechanism would include arrangements for ongoing targeted consultation on priority review areas agreed with Government and a mailbox mechanism for submissions from the public on any regulatory matter at any time.

3. MEASUREMENT OF BURDENS AND BENCHMARKING

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

3.1 Approaches to Measurement

The Ministerial Direction categorised regulatory costs as follows:

(a) administrative and compliance costs;

(b) delay costs to business, and

(c) other costs that affect the community as a whole.

The Issues Paper and the Interim Report reviewed a range of regulatory burden measurement tools. The following alternatives for measuring these costs and the associated burden of regulation were identified:

(a) number of pages of legislation and associated regulations;

(b) number of requirements as represented by words such as "must" and "shall" (the British Columbia approach), and

(c) the dollar cost of reporting, compliance, delay and the costs to business and consumers of missed opportunities due to restrictions on behaviour (with different options for including all or some of these components).

The first two approaches (page and requirements count) are proxy measures while the third seeks to arrive at an actual dollar cost estimate. Generally speaking, proxy measures are most useful when actual cost measures are disproportionately costly to obtain.

Burden measurement can be undertaken in two separate contexts. First, regulatory burdens must be assessed for evaluation of new regulatory proposals and sunset reviews of existing ones. Second, a method for measuring the aggregate regulatory burden must be developed in order to implement a reform agenda designed to reduce the overall burden of regulation by 20% in net terms.

3.2 Proxy Measures

The proxy measures (page count and number of requirements) are easily understood and applied to any suggested change in regulation. However, the page count methodology has severe limitations. Page count is influenced by irrelevant (non-regulatory) factors such as format and layout, and a simple page count gives no indication of the nature of the regulation.

The number of requirements in legislation, regulations, and codes and practices is a more effectively focussed proxy measure. British Columbia has reduced regulatory burdens and focused awareness of the burden of regulation on policymakers by identifying requirements and establishing reduction targets. Nevertheless, this approach must be applied with awareness of its limitations. The major (and obvious) limitation is that a trivial requirement imposing a minimal cost on a small group is counted with the same weight as an onerous requirement imposing a major cost on a large number of people. For that reason, this

measure should not be used by itself when comparing the burdens of different regulatory options.

The British Columbia approach does not count an absolute prohibition as a restriction. The Authority considers this anomalous, since an absolute prohibition is usually a greater barrier to economic welfare and development than a qualified restriction. However, this shortcoming is easily remedied.

Page and requirements counts do not provide a measure of the net economic effect of regulation in dollar terms. However, these proxy measures may be useful in providing a broad indication of the aggregate regulatory burden and can be developed in a reasonable time frame. They are also a low cost way to track progress in burden reduction over time.

3.3 Value Measures

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

(a) full balancing of costs and benefits;

(b) quantitative comparison of burdens under different regulatory options, using indicators such as sector profits or general economic activity, for example Gross State Product (GSP); and

(c) recognition of the loss arising from economic activity that would otherwise take place, for example sales and purchases that do not take place because of restricted trading hours or reduced competition.

The disadvantages of dollar value measures include:

(a) the large effort and uncertainty involved in estimating the dollar impact of regulatory measures, particularly where impacts (both costs and benefits) can ripple through many parts of the economy, and interact with other changes taking place;

(b) large scope for disagreement on the impacts of regulation, particularly where different stakeholder groups have opposing interests; and

(c) disagreement about precisely which costs should be included in value measures.

There is some disagreement on the components that should be included in value measures. The Queensland Treasury Regulatory Assessment Statement Guidelines V2.1 (undated) provide broad and flexible guidance on this issue. This flexibility has advantages. However, greater precision and rigour are necessary to ensure that burdens are adequately identified and removed if not justified by the benefits.

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

3.4 Evaluating New Regulatory Proposals and Sunset Reviews

The Interim Report suggested that the New South Wales approach, with minor modification, is generally suitable for the purposes of assessing the costs of individual regulatory proposals for purposes of an initial RIS or sunset review. The New South Wales approach categorises regulatory costs as follows:

(a) administrative costs;

(b) substantive compliance costs;

(c) fees and charges; and

(d) delay costs.

The New South Wales approach omits the cost of opportunities that are not realised because of regulation. A simple example concerns shop trading hours. If shop trading hours are severely restricted, there is a loss to both sellers and buyers due to transactions that do not take place. The restrictions prevent these transactions. Another example is the loss in productivity resulting from regulation that restricts completion – for example by increasing entry barriers. Therefore, the Authority considers that this omission fails to capture an important aspect of regulatory burden.

Other jurisdictions may exclude these costs because their estimation requires more assumptions and analysis than for other components of dollar cost estimates. This can be particularly problematic when attempting to measure aggregate burdens of regulation. When individual regulatory proposals are being evaluated the cost of missed opportunities can be better refined, and will be subject to closer scrutiny. The Authority therefore considers that including the cost of missed opportunities will improve the New South Wales method.

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

As discussed in the Issues Paper, accounting tools can be used to estimate the administrative and compliance burdens included in the New South Wales Approach. A compliance cost calculator approach that is widely used internationally is the 'Standard Cost Model' (SCM) first developed by the Netherlands Government to estimate the administrative burdens of regulatory requirements (SCM Network 2005). The SCM or variations on it is used in several countries, including Australia.

The Office of Best Practice Regulation in the Commonwealth Department of Finance and Regulation has developed a 'business cost calculator' (BCC) based on SCM principles that is designed to estimate the business compliance cost of regulatory options (Australian Government Department of Finance and Regulation 2012). Queensland Treasury has developed a Compliance Cost Calculator based on the BCC.

3.5 Measuring the Aggregate Regulatory Burden

As was the case with measuring individual regulations, proxy measures and quantitative methods may be used to measure the aggregate regulatory burden. The Interim Report recommended the use of the modified British Columbia proxy approach (modified to count prohibitions and restrictions) rather than page counts or a dollar cost approach as the primary means of identifying the aggregate burden of regulation and measuring reductions over time.

3.5.1 Case Studies

The Authority used two case studies to evaluate the British Columbia requirements approach and dollar value approaches to estimating the burden of regulation in Queensland:

(a) Native Vegetation Regulation; and

(b) Water Sensitive Urban Design (WSUD).

The findings are provided in separate reports available from the Authority's website (Synergies 2013, 2012 and Mainstream 2012). A summary of findings is as follows:

(a) The British Columbia approach to measurement is relatively easy to apply. However, some level of judgement is required in counting restrictions.

(b) The British Columbia approach does not address fundamental issues of net benefit and regulatory efficiency, so it must be applied with awareness of its limitations.

(c) It is possible to modify the British Columbia approach to provide more information. For example, restrictions could be classified according to the perceived economic burden or some approximate measure of severity. However, such adjustments require the application of considerable judgement and additional resources. Given the scale of the task such modifications are not considered to be justified.

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

3.6 Implementation of the Restrictions Counting Approach

Achieving the objective of a 20% net reduction in regulation over a six-year period requires an allocation of responsibility across portfolios in order to provide individual Ministers and Directors-General with specific targets. The Issues Paper noted the importance of targets for creating incentives in reducing regulation.

The Interim Report noted that options for allocating the regulatory burden target include:

(a) a straight 20% net reduction target for each portfolio;

(b) a reduction target tailored to take account of factors such as the type of legislation administered in the portfolio; or

(c) a reduction target tailored to take account of priority areas for regulatory burden reduction.

Setting targets is an important element of accountability. An equally important element is reporting. The Government response to the Interim Report proposed a division of responsibility between OBPR and the Government for specifying targets for each portfolio. This is discussed in section 3.10.

3.6.1 Net versus Gross Measures of Burden Change

The Issues Paper and Interim Report discussed the relative merits of net and gross aggregate regulatory burden reduction measures. The gross burden approach measures progress in reforming regulation by counting the absolute number (or value) of burden reductions. The net measure offsets burden reductions by the impact of new regulations.

Despite the theoretical advantage of a net measure, most jurisdictions use a gross measure. The gross measure may avoid potential barriers to regulatory innovation, which could be an outcome of requiring a cut in existing regulation in order to implement new regulation.

A related topic is how to constrain growth in regulation after a burden reduction target has been met. A gross measurement approach requires a separate restriction to control additional regulation. Net measurement automatically takes account of both existing and new regulation.

3.7 Submissions

The submissions generally supported quantitative assessment where possible. However, the Environmental Defenders Office noted the uncertainties associated with placing a dollar value on the costs and benefits of regulation.

The modified British Columbia approach was strongly preferred over page counts as a proxy measurement method. For example, CCIQ endorsed the British Columbia approach even though it has used the page count method in the past to emphasise the extent and growth of regulation in Queensland. Master Builders Queensland and Queensland Farmers Association also support the modified British Columbia approach over page counts.

The Property Council of Australia, Queensland Division supported the use of cost models, focus groups and surveys to provide qualitative and quantitative measures of regulatory burden in other countries and in Australia.

Taste South Burnett noted that in some cases it may be the manner in which a regulation is enforced rather than the regulation itself that generates a burden. The Queensland Consumers Association suggested that a balanced assessment of existing and proposed regulation should pay particular attention to measuring and assessing impacts of regulation and regulatory reforms on consumers.

All of the submissions on the Issues Paper are available on the Authority's website. The Interim Report provides a more detailed summary of the submissions that addressed measurement issues.

3.8 Government Response to the Interim Report

The Government supports assessment of new regulatory proposals and sunset reviews in accordance with the RIS Guidelines, including a dollar value assessment where required under the Guidelines and estimates of opportunity costs where they can be quantified. However, the Government requested further advice about the management of sunset reviews and the nature of assessments that should be undertaken. This is discussed in Chapter 6.

In relation to measurement of the regulatory burden, the Government:

(a) supported use of the British Columbia approach for counting obligations. The Government requested the preparation of counting guidelines and a count of obligations by regulation, agency and whole-of-government;

(b) noted that in addition to a modified British Columbia requirements count approach for measuring the burden of regulation, OBPR should also include a page count and a dollar cost estimate; and

(c) supported measurement of the burden of regulation on a net basis which takes account of new regulations in contributing to the reduction target of 20% over six years.

In relation to setting Departmental Targets for reducing the burden of regulation, the Government:

(a) supported most of the recommendations in the Interim report regarding setting departmental targets, with some suggested minor amendments;

(b) requested that the regulatory burden baselines be established for each agency (after consultation with each agency and after adjusting for the nature of regulation and the scope to modify it) and proposed to Government by 30 April 2013;

(c) noted that the recommended targets would then be considered by Cabinet for final approval and targets included in Directors-General contracts; and

(d) specified that the inaugural annual OBPR report on progress towards the regulatory reduction target should be completed by October 2013, reporting on progress to 30 June 2013.

The Government does not support the specification of a zero net increase target for the measure of the regulatory burden after the 20% net reduction target is achieved. The Government will review its approach to regulatory reform once the target is achieved and notes that the improved RIS system will constrain the introduction of new regulatory burdens.

3.9 Discussion

3.9.1 Cost Measures for Evaluating New or Sunset Regulation

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

The Authority considers that the most appropriate method of assessing the net benefit of regulatory proposals is the New South Wales approach, modified to exclude fees paid to government where they are a transfer and include the cost of missed opportunities. The Government request to consider whether the Compliance Cost Calculator or other accounting models adequately measure relevant costs will be reviewed by the OBPR in the course of evaluating RISs.

3.9.2 Combination of Value and Proxy Measures for Assessing and Reducing the Overall Burden

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

(a) A baseline measure of regulatory burden should be established as the primary measure of the regulatory burden, using the British Columbia approach. This exploits the advantages of the British Columbia approach being relatively easy to apply, on a comprehensive basis and easy to understand.

(b) The primary progress measures of burden reduction should also utilise the modified British Columbia approach. Once again, this requires minimal resources. It also ensures that the burden reduction measurement is consistent with the baseline measurement.

(c) Although the page count measure has significant limitations as a measure of regulatory burden, it is a low cost measure. In line with the Government's response to the Interim Report, the Authority proposes to retain it as a supplementary measure.

(d) In recognition of the Government's response to the Interim Report, the burden of regulation in dollar terms should also be estimated as a supplementary baseline at the aggregate level for the Queensland economy by applying benchmark estimates for other jurisdictions. Progress in reducing the regulatory burden in dollar terms can then be assessed against this dollar value baseline measure. See section 3.13 below.

3.10 Accountability for Burden Reduction Targets

The overall regulatory burden reduction target must be allocated to individual portfolios. The allocation can be achieved in a number of ways. The simplest method of allocation is to specify a 20% net reduction for each Ministerial portfolio.

Another approach is to take into account the different profile of each portfolio, with some having an inherently greater or lesser regulatory burden. This was previously done under the Smart Regulation Reform Agenda of the previous government. Under that program, agencies were categorised as having a low, medium or high regulatory burden. Based on its category, each agency was assigned a burden reduction target of $5 million, $10 million or $20 million.

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

In the current situation, the Authority is recommending that the primary burden reduction target be based on a count of obligations (regulatory restrictions). Measures of the dollar burden of regulation and the page count of regulations would be supplemental measures. As noted a dollar estimate of the regulatory burden would be formulated at an aggregate economy-wide level for Queensland regulation and progress towards reducing that dollar burden would be separately accounted for as reforms were undertaken.

A base-line estimate of regulatory restrictions would be established for each department or agency as of the day before the election (23 March 2012). However, a number of factors are likely to require a move away from a uniform 20% target for each department:

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

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

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

(d) Some departments may have a large stock of redundant legislation and regulations, never utilised in practice. In this case, removing anachronistic requirements could satisfy the target of a 20% reduction without actually materially reducing the

day-to-day regulatory burden faced by Queenslanders. For these portfolios, ideally the target reduction should be more than 20%.

In the Interim Report, the Authority recommended an initial 20% net reduction target, as a starting point, for each portfolio. This is considered to be reasonable for most Departments, given that target is to be implemented over six years and British Columbia achieved over a 40% reduction in regulatory restrictions in less than 12 years. However, recognising the uncertainties outlined above and the Government's response to the Interim Report, the Authority will make use of the criteria set out in section 6.1 to assess the nature of legislation that each Department is responsible for and the scope to reduce restrictions. It will then propose targets for each Department, consult with them about the targets and make recommendations to Government. However, there would still be an overall 20% net reduction target for all regulation across Government.

The Government has requested a deadline of 30 April 2013 for the recommendations for Departmental targets for reducing the burden of regulation. The Authority has advised the Government of the risk that a complete robust count of restrictions, effective consultation and establishment of individual Departmental targets cannot be completed in this time frame.

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

(a) OBPR will engage consultants to undertake a count of regulatory obligations. The count will include Acts, regulations, codes of practice and any other instrument imposing an obligation. The count will also have a broad categorisation of obligations, so that it is clear which obligations are archaic, exempt from review, or in some other relevant category. This will allow the possible inaccuracies identified above to be addressed. An independent count is necessary to avoid a potential conflict of interest that might arise if agencies are responsible for establishing their own base-line count. The count will establish the baseline as at 23 March 2012. The count will be quality controlled with the aim of a maximum 1% error rate for each portfolio.

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

(c) Once the base-line is established, OBPR will recommend a reduction target for each agency. This is likely to be 20% for most Departments, but adjusted as explained above to recognise the nature of regulation and the scope for reform. The presumption will be for a relatively even distribution of burden reduction, as a starting point, since a reduction in one area will require a more onerous target in another area and there is a six year time frame for the targets.

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

(e) The setting of targets for other senior Departmental staff will remain at the discretion of each Director-General.

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

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

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

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

Table 3.1: Timeline for Reduction Targets

Milestone	***Target date***
OBPR commences baseline count as at 23 March 2012	15 Feb 2013
OBPR completes preliminary baseline estimate	8 Apr 2013
OBPR recommends reduction for each portfolio, subject to discussion between departments and the Government	30 Apr 2013
Government includes final reduction targets in 2013-2014 State Budget	4 June 2013
Agencies report to OBPR on reductions in burden up to 30 June 2013	20 Aug 2013
OBPR reports on reduction progress to the Government, and notes any suggested adjustment in targets	30 Sep 2013

3.11 Net versus Gross Measures of Burden Change

In the Interim Report, the Authority expressed a preference for a net measure of burden reduction. Experience shows that there is a strong regulatory impulse in most jurisdictions to find a way around any test with an element of subjectivity, such as net benefit for new regulation. The Authority considers that a strong and unambiguous rule along the lines of British Columbia's "zero net increase" can prevent the unnecessary growth of regulation. The relative accuracy of an obligations count (as opposed to a dollar value estimate) makes such an approach easy to understand and enforce within a British Columbia style of burden measurement.

Net measurement has been a feature of the British Columbia system. British Columbia initially set a net reduction target and a "zero net increase" policy after the target is met. The Authority understands that the approach has had a positive impact, and that the British Columbia regulatory culture has changed so that officials now automatically search for offsetting reductions when proposing new regulation.

As noted above, the Government will review its approach to regulatory reform once the target is achieved recognising that the improved RIS system should constrain the introduction of new regulatory burdens.

One point to note is that British Columbia's requirement for a zero net increase is applied to each portfolio – it is not possible to offset increases and decreases across portfolios. The Authority recommends that Queensland should allow trade across portfolios, so that the 20% net reduction in regulatory restrictions occurs on a government-wide basis and not necessarily for each Department. This would increase the Government's freedom of action. This recommendation has been supported by Government.

3.12 Cost Models

As discussed above, a number of jurisdictions, including Queensland, have created on-line cost models for estimation of regulatory burden. The models can be useful for a preliminary assessment of a proposal, but their scope is too limited for a full assessment. Regulation and regulation reform produce complex impacts and uncertainties, as noted in the section above on Value Measures.

This complexity cannot generally be captured in a pre-existing computerised calculation. Cost models also have the weakness of not being able to provide a proper assessment of the benefits of any specific regulatory reform. As a result, they do not provide a broad net benefit calculation. OBPR will review the role of cost models in RIS evaluations.

3.13 Quantifying the Aggregate Burden

The Government's response to the Interim Report noted that the restrictions count using the British Columbia approach should be supplemented with a dollar cost estimate of burden. In the Issues Paper, the Authority provided a conservative estimate of the 'red tape' (administrative) burden of state regulation in Queensland of approximately $2.5 billion or 1% of GSP. This figure was based on benchmark measures of the regulatory burden for state regulation in New South Wales and Victoria. The measure is conservative in that it only covers the burden on business and government of complying with and administering regulatory restrictions. It does not cover the economic cost of restricting economic activity from what it would be in the absence of the regulatory restriction.

Appendix E provides a survey and analysis of Australian and international efforts to quantify the regulatory burden. Estimates of administrative burdens on businesses in Australia and other OECD countries surveyed ranged between 1% to 3% of GDP. However, the total regulatory burden includes additional direct and indirect costs, which can be substantial. Moreover, some estimates, particularly those associated with countries in Europe, were made after regulatory reforms had been undertaken. Finally, as noted in section 1.3, there is also a perception that businesses in Queensland have been subject to more regulation and a higher rate of growth in regulation than other Australian jurisdictions.

Therefore, it is reasonable to conclude that an estimate of the regulatory burden from Queensland regulation of around 1% of GSP is appropriate. Including the cost of Commonwealth regulation would increase the estimated burden in Queensland to greater than 2%. Developing a more precise estimate would be a difficult, expensive and time consuming exercise.

The Authority suggests that in order to conservatively inform the Government of the possible dollar impact of reductions in regulatory burden as reforms progress, the percentage reduction in restrictions be applied to the base dollar cost estimate to provide a proxy for the dollar impacts.

3.14 Recommendations

3.1 Measurement of burden and burden reduction

- **A regulatory burden base-line should be established using the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation) as the primary measure. The base-line will measure the regulatory burden as at 23 March 2012.**
- **The modified British Columbia approach should be the primary measure for monitoring progress in reducing the regulatory burden.**
- **Progress in regulatory burden reduction should be measured on a net basis, which takes account of expiring and new regulation.**
- **A dollar estimate of the burden of regulation and a page count of regulations should be supplementary measures for monitoring progress in reducing the regulatory burden.**
- **The modified New South Wales approach should be used to measure regulatory burdens for purposes of evaluating new regulatory proposals or legislation subject to sunset.**

3.2 Departmental Targets

- **OBPR will propose reduction targets for individual portfolios based on a 20% benchmark, with specific portfolio targets to be adjusted for distorting factors, the nature of regulation and the scope for reform. However, an overall target of a 20% net reduction in regulatory requirements will apply across Government as a whole over six years.**
- **The reduction target for each portfolio should be agreed to by Cabinet and included in the key performance indicators of Directors-General. Ministers who consider that their proposed target is onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% target.**
- **The setting of targets for other senior Departmental staff will remain at the discretion of each Director-General.**
- **When agencies and portfolios are re-organised, the regulatory base-line and regulatory burden reduction target for each portfolio should reflect that re-organisation.**
- **OBPR should present an annual report to Government on progress towards the regulatory burden reduction target. The inaugural annual report will be due to Government by October 2013 and cover the period to 30 June 2013.**
- **As part of its annual report to Government, OBPR should present any necessary recommendations for a re-balancing of the regulatory burden reduction target.**
- **Once a reduced (by 20% net) regulatory burden level is achieved, the Government should review its approach to ongoing regulatory reform and establish appropriate regulatory reform targets.**

3.3 New Regulatory Proposals and Sunset Reviews

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

4. PRIORITISING THE REFORM OF REGULATION

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

4.1 Classification of Legislation and Regulations

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

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

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

The broad classification categories are:

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

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

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

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

(e) **Health, safety, transport and consumer standards regulation**. Health, safety, transport and consumer standards regulation is extensive in the Queensland and

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

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

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

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

(i) **Administration of Government and Parliament and taxation**. This category covers a wide range of functions concerning the operation of government and the Parliament. Unless there are collateral impacts on business, legislation in this category was considered less likely to impose a compliance burden for business. However, there can be exceptions, for example red tape associated with taxation compliance.

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

4.2 Criteria for Prioritisation of Regulatory Reviews

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

Useful criteria for filtering proposals for regulatory reform have been developed by:

(a) the Regulation Task Force (see Australian Government, 2006) for the most recent economy-wide regulatory stocktake for the Commonwealth Government;

(b) the Independent Pricing and Regulatory Tribunal (2006) in its study of regulatory burdens in New South Wales, and

(c) VCEC (2011b) in its recent inquiry into Victoria's regulatory framework.

Based on these studies and other research, the Issues Paper suggested that high priority be assigned to reforming regulatory schemes that meet the following four general criteria:

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

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

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

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

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

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

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

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

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

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

(b) regulation that has social or public good objectives where it is difficult to establish the need for change should generally not be considered unless there is clear evidence of substantial burdens on business or the community.

Information relevant to these general criteria can be obtained from previous reviews and studies of reforms, in-depth case studies of current circumstances, principles-based analysis, simple quantitative estimates, detailed specific reviews, and consultation processes and

surveys. As discussed below, the consultation process for this report has been an important means of identifying the priorities for reform in Queensland.

4.3 Submissions and Consultation

Master Builders and the Queensland Resources Council endorsed the prioritisation criteria. Queensland Resources Council also suggested calculating the relative contribution to the economy of the sector being regulated to identify priority areas for immediate regulatory reform.

CCIQ raised concerns that the process of prioritisation of individual regulation may not consider the overall (cumulative) impact of regulation on businesses and may limit the opportunities for regulatory reform.

Taste South Burnett suggested that regulation that has significant environmental, ecological and cultural benefit should be excluded from review, or a protection provided to ensure that standards for review would prevent serious environmental or sustainability costs for short term economic gain.

In a meeting with the Authority convened by UnitingCare Queensland, a range of large non-government organisations indicated concern that the community services sector did not feature as a priority in the regulatory reform process. These organisations indicated a willingness to work with the State Government on proposals such as streamlining funding legislation, quality systems, adoption of single licensing requirements and centralised account management practices.

All of the submissions on the Issues Paper are available on the Authority's website. The Interim Report provides a more detailed summary of the submissions that addressed prioritisation.

4.4 Government Response to the Interim Report

The criteria for prioritising reforms set out in the Interim Report were supported by the Government. In particular, the Government supports the Authority's recommendation that regulation that has significant environmental, ecological and cultural focus should not be excluded from review.

4.5 Discussion

There was considerable support from stakeholders for the prioritisation criteria discussed in the Issues Paper. All of the submissions on the Issues Paper are available on the Authority's website. The Interim Report provides a more detailed summary of the submissions that addressed prioritisation.

A prominent concern in the submissions and at stakeholder meetings is that identifying priorities from among the total stock of regulation may result in inadequate attention to areas not identified for priority reform. The Authority agrees that the cumulative effect and range of impact of regulation is significant.

The Authority considers that comprehensive regulatory reform requires attention to both the broad reach and economic impact of major regulatory programs and the cumulative impact of scores of individual regulatory requirements. However, the process for reform must begin with identifying and reforming individual regulations.

In addition, the Authority is recommending that a permanent mechanism be established for making a case for regulatory reform. This will enable identification of reform candidates not

identified by the process applied in the Interim Report. The permanent mechanism for making a case for regulatory reform is discussed in Chapter 6.

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

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

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

While it is accepted that environmental impacts may in some cases be difficult to quantify, this should not be an excuse for ignoring the question of whether the benefits from regulation exceed the costs. Rigorous cost benefit analysis should be applied to any new regulation. Existing regulation that cannot be demonstrated by its proponents to provide a net overall public or community benefit should be revised or removed.

The Authority agrees that environmental protections should not be eliminated for short term economic gain. A comprehensive assessment of costs and benefits of regulation must consider long term impacts to the environment.

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

4.6 Recommendations

4.1 Criteria for Prioritising the Reform of Regulations

- **The Authority should use four criteria to assess reform priorities:**
  - **(a) regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit;**
  - **(b) regulation where there is significant 'reach' in terms of interaction between business and the community and government agencies;**
  - **(c) regulation where there are potentially large net benefits from reform including direct reductions in red tape but also wider benefits for business, government and the community; and**
  - **(d) regulation where the need for reform is well understood and changes are likely to receive community acceptance if they are made aware of the net benefits from reform.**
- **In addition, the following criteria should be considered when excluding regulation from reform:**
  - **(a) regulation that has been recently enacted or is yet to be effectively implemented or is planned, unless there is clear evidence of substantial burdens on business or the community; and**
  - **(b) regulation that has social or public good objectives where it is difficult to establish the need for change, unless there is clear evidence of substantial burdens on business or the community.**
- **Regulation that has significant environmental, ecological and cultural focus should not be excluded from review.**
- **Departments should use the above criteria to help establish their reform priorities in meeting their regulatory reduction targets.**

5. IDENTIFYING PRIORITY AREAS FOR TARGETED REGULATORY REFORM

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

5.1 Review Process

There are various approaches to reviewing the stock of regulation. The proposed inventory of the number regulatory restrictions discussed in Chapter 4 is a form of regulatory stocktake and helpful in establishing a broad benchmark of the burden of regulation and useful for setting easily understood targets for reform. It is proposed as the primary measure to track progress in reducing the regulatory burden. Upon completion of the stocktake, it is proposed that the OBPR will, in consultation with Departments, recommend individual targets for the elimination of restrictions in order to meet the Government's overall 20% regulatory reduction target.

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

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

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

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

The following criteria were used to exclude legislation for review:

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

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

(c) regulation that has recently been enacted or recently reformed.

It was considered that legislation in these categories was unlikely to satisfy all of the prioritisation criteria.

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

While the assessment was conducted at a high level, the intent and scope of each piece of legislation can usually be discerned from a review of part 1 or part 2 of the relevant Act. Documentation provided by Queensland Treasury and Trade on the status of National Competition Policy reviews was also helpful in providing information to establish priorities

Each piece of legislation was scored by assigning a one or a zero for each of the four prioritisation criteria depending on whether it was considered the criterion was met.

Information obtained from submissions and consultations was also used to establish priorities. For example, a variety of restrictions on housing construction were identified as potential candidates for fast track reform during the course of consultation and these were added to the fast track priority list. The Authority also reviewed reform initiatives undertaken by the VCEC and the Independent Pricing and Regulatory Tribunal for suggestions for priority reform areas (see section 1.4). The harmonisation issue discussed above was considered a priority item given that it affects a number of sectors.

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

A report by the Queensland Agriculture, Resources and Environment Parliamentary Committee (2012) identified that there was a concern that Queensland's regulatory framework was restricting the development of the aquaculture industry in Queensland. The CIE (2013) was tasked with preparing a report on regulatory restrictions and the potential of the aquaculture industry in Queensland which was used in developing a revised list of reform priorities for this Final Report.

5.2 Priority Reform Candidates

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

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

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

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

Additional reform candidates identified by the ongoing departmental reviews and Parliamentary Committees and Inquiries can be added to the list of suggested reform candidates. In addition, when a permanent formal mechanism for firms and individuals to seek a reduction in specific regulatory burdens (discussed in Chapter 6) is adopted, individuals and businesses can propose areas for reform that have not been identified to date.

The review of legislation did not encompass local regulation. However, review of local regulation is identified as a medium term priority.

The Government has announced a number of initiatives that were identified as Fast Track or Medium Term Reform candidates in the Interim Report. In particular, Water Efficiency Management plans were designated as a fast track priority in the Issues Paper. However, these requirements were removed as a result of the Government's decision to dissolve the Queensland Water Commission and end general water use restrictions in South East Queensland. As a result the list of reform candidates provided in the Interim Report has been adjusted to reflect these initiatives and a review of restrictions affecting aquaculture has been added to the list of Fast Track Reform candidates. Government initiatives are summarised in **Appendix B**.

5.2.1 Fast Track Reform Candidates

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

The basis for including each of the 10 candidates is described below. As noted above the CIE (2012, 2013) also provided information on many of the reform priorities.

Table 5.1: Fast Track Reform Candidates and Criteria for Prioritisation

Regulation	*Unnecessarily burdensome, complex, redundant or questionable benefit*	*Reach*	*Potential for large net benefits from reform*	*Need for reform well understood*
Aquaculture restrictions[a]	Unnecessarily burdensome	Moderate	Moderate	Yes. Part of Government's target of doubling food production.
Harmonisation	Questionable benefit	High	Moderate	Yes (Industry and government)
Housing Restrictions	Questionable benefit	Moderate	Moderate — $23-$86 million/year	Yes
Land Sales and Property Development Restrictions	Unnecessarily burdensome	High	High	Yes, priority for review
Mining Development Restrictions	Unnecessarily burdensome	Moderate	High — ~$125 million/year	Yes
OH&S and Workers Compensation	Overly complex (in part)	High	High	Yes
Queensland Gas Scheme	Possibly redundant	High	Small to Moderate — $12-$53 million/year	Yes
Tourism Restrictions	Overly complex (in part)	Moderate	Small	Yes, in part
Trading Hours Restrictions	Redundant	High	High — ~$200 million/year	Yes
Vegetation Management	Redundant	High	Moderate/high	Yes

[a] *In this Final Report Aquaculture replaces Water Efficiency Management plans, which were removed as a result of the Government's decision to dissolve the Queensland Water Commission and end general water usage restrictions in Southeast Queensland*

Source: CIE and Authority

Aquaculture

The Agriculture, Resources and Environment Committee (AREC) of the Queensland Parliament recommended in November 2012 "that the Government review the regulations governing Queensland's aquaculture industry and explore the use of a single, dedicated piece of legislation, as used in South Australia".

The Authority has undertaken a brief review of aquaculture in Queensland, and engaged CIE to estimate the potential economic benefits of better regulation. In its report, CIE notes that the potential of aquaculture is limited by non-regulatory factors, but nevertheless considers that better regulation could allow the industry to approach the 14% annual growth rate of Tasmanian aquaculture, which would equate to 270% growth over 10 years.

Informal discussion with Queensland stakeholders has highlighted a number of problems with current regulation, best exemplified by the Guthalungra project, near Bowen. This project, which would increase Queensland prawn production by 50%, has been seeking regulatory approval for 13 years. In that time, the proponents have dealt with numerous Queensland and Commonwealth departments. Furthermore, in the last 10 years no new aquaculture operation has been approved anywhere in Queensland. Nevertheless, production from existing operations has grown at an annual rate of around 4% over that period, suggesting that there is significant demand for expansion.

Informal discussions with South Australian stakeholders, including the Department of Primary Industries and Resources SA (PIRSA), have highlighted some key features of South Australian regulation. These include:

(a) Aquaculture zones. These are zones where the Government undertakes extensive research and testing to define environmental and other considerations that need to be considered in any aquaculture operation. Applicants in these zones face a simplified process with minimal delays, since the operational parameters have already been established.

(b) Governance by key organisations such as the Aquaculture Advisory Committee and the Aquaculture Tenure Allocation Board.

(c) A public register allowing the registration of a mortgage on an aquaculture lease or licence. This provides to the mortgagee a level of security comparable to that of land titles, and facilitates commercial financing.

The South Australian regulatory system is of particular interest because it was first introduced in 2001, and was fine-tuned with amendments in 2010. Adoption of a similar framework would allow Queensland to benefit from the practical experience of South Australian regulators and aquaculture operators.

A summary assessment based on the four prioritisation criteria is as follows.

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

Regulation of aquaculture is considered burdensome and complex, involving multiple agencies across all levels of government.

(b) Does the regulation have significant "reach"?

Restrictions on aquaculture affect every coastal region of Queensland. Although the Queensland aquaculture industry is small relative to other industries, its potential reach is considerable.

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

CIE suggested that the aquaculture industry has a significant growth potential and an industry expansion would lead to economic growth in significant parts of Queensland along the coastline. The economic benefit is estimated at $170 million in present value terms over 10 years.

(d) Is the need for reform well understood?

The Queensland Government's target is to double food production by 2040. Aquaculture is likely to be a key part of this target. Land-based aquaculture generally

produces greater output per area than agriculture or grazing. However, the potential for reform is complicated by the need to coordinate policies with the Commonwealth Government.

Overall, then, the Authority considers that aquaculture regulation is a very good candidate for priority reforms, with South Australian regulation as a good model to consider.

Harmonisation

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

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

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

This question must be assessed on a case-by-case basis. There are a number of pieces of existing or proposed harmonisation schemes affecting a wide variety of businesses. Case-by-case assessment is necessary to determine which schemes should be abandoned in favour of a Queensland specific approach (which could have lower or more effective regulatory requirements). The current harmonisation process appears not to use case-by-case assessment, but to adopt harmonisation as a default position.

(b) Does the regulation have significant 'reach'?

Harmonisation has had an impact on many sectors, including key areas such as energy regulation. The harmonisation program foresees further changes in numerous sectors of the economy.

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

The sheer reach of harmonisation means that net benefits from reform should be large.

(d) Is the need for reform well understood?

Informal discussions with other jurisdiction suggest that they also have reservations about the harmonisation process. The Victorian Government has signalled its reservations in its December 2012 economic statement, stating that "unless a common sense, best practice model is adopted for national reforms, Victoria will consider

alternative ways to achieve best practice outcomes." (Victorian Government 2012b, page 56).

The OBPR commissioned Professor Henry Ergas of Deloitte Access Economics to write a report on an assessment of national harmonisation and its impacts in Queensland. The report is available at http://www.qca.org.au/files/OBPR-DEL-ErgasReport-C&B-RegHarmon-1212.pdf.

Housing Restrictions

A number of regulations intended to promote environmental goals have been placed on new house construction. These include a compulsory six-star energy rating for new houses, a ban on electric hot water systems and requirements on water sources (primarily satisfied by installing rainwater tanks[2]).

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

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

(b) Does the regulation have significant 'reach'?

The regulation impacts all new construction throughout Queensland.

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

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

(d) Is the need for reform well understood?

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

Land Sales and Property Development Restrictions

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

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

Given the consumer protection aspect of this regulation, it is likely needed in some form. However, in some areas, the regulation may unnecessarily and arbitrarily interfere with matters that can be addressed by the contracting parties. The administrative requirements could also be unduly onerous. Delay costs could be

[2] The requirement to install water tanks in new buildings was repealed as of 1 February 2013. Local governments now have to demonstrate a net public benefit from the installation of water tanks in their jurisdictions to enable a mandatory regulatory requirement.

significant. Another potential problem with this regulation is that it may be used by existing businesses as a way to delay or prevent new competitive entry.

(b) Does the regulation have significant 'reach'?

New developments are affected state-wide.

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

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

(d) Is the need for reform well understood?

The development industry supports reform.

Mining Development Restrictions

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

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

The minerals industry considers that mining and environmental approvals are complex, inconsistent and poorly administered. Approval delays and obligations have grown substantially in recent years.

(b) Does the regulation have significant 'reach'?

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

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

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

(d) Is the need for reform well understood?

The Government has committed to reforms in this area.

OH&S and Workers Compensation

The *Queensland Work Health and Safety Act 2011* and the *Workers' Compensation and Rehabilitation Act 2003* together address health, safety and workers compensation issues.

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

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

(b) Does the regulation have significant 'reach'?

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

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

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

(d) Is the need for reform well understood?

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

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

The Queensland Gas Scheme

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

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

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

(b) Does the regulation have significant 'reach'?

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

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

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

(d) Is the need for reform well understood?

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

Tourism Restrictions

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

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

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

(b) Does the regulation have significant 'reach'?

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

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

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

(d) Is the need for reform well understood?

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

Trading Hours Restrictions

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

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

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

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

(b) Does the regulation have significant 'reach'?

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

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

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

(d) Is the need for reform well understood?

Reforms have been undertaken and accepted in most other states. The main resistance to reform has been from small business and unions. However, in January 2013 the United Retail Federation which represents small business reversed its opposition to trading hours restrictions.

Vegetation Management

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

The current vegetation management system places the onus of proof on landholders to prove that they can clear specific areas. This has been a problem because most classification has been undertaken on the basis of aerial photography without "ground truthing", simply because Queensland covers such a large area. In some cases, this has led to the temporary loss of productive land, as farmers are not able to clear regrowth while they work to correct classification errors.

AgForce has provided a supplementary submission to the Authority, setting out how vegetation management regulation has limited the clearing of remnant vegetation. This is an issue particularly in North Queensland, which has significant potential for growth in food production.

Due to the loss of actual and potential productive land, vegetation management restrictions work counter to the Government's goal of doubling food production by 2040.

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

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

(b) Does the regulation have significant 'reach'?

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

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

Well-established estimates are not available at this stage for Queensland. The CIE (2012) report considered that the net benefits from reform are potentially large but more likely to be moderate.

(d) Is the need for reform well understood?

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

5.2.2 Medium Term Priorities

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

Dam safety guidelines

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

Government procurement regulations

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

Health sector legislation

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

Local government regulation and business activities

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

Pharmacy ownership legislation and regulation

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

Taxi licensing and regulation

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

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

Water sensitive urban design

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

Water use and trading restrictions

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

Other

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

5.3 Further work on medium term priorities

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

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

5.4 Review process

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

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

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

Table 5.2: Proposed Responsibility and Timing for Fast Track Reform Candidates

What	*Who*	*Duration (months)*
Aquaculture restrictions	OBPR	9
Harmonisation legislation that increases costs in Queensland	OBPR	9
Housing restrictions	OBPR	12
Land sales and property development (including coastal development) regulations that impose a significant red tape burden or restrict competition	Assistant Minister for Planning Reform	TBD
Mining development requirements that raise costs and delay investment	Department of Natural Resources and Mines	12
Occupational Health and Safety legislation and Workers Compensation legislation that impose red tape, increase the cost of business and restrict competition	OBPR, with Attorney General due to legal onus problem.	15
Queensland Gas Scheme requirement to generate 15% of electricity from gas	OBPR	6
Tourism restrictions related to National Parks, Wild Rivers and similar legislation	Department of Tourism, Major Events, Small Business and the Commonwealth Games	9
Trading hours restrictions	Justice and Attorney-General	6
Vegetation management regulation that increases costs and prevents efficient use of property	OBPR	15

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

Step	*Complex review (15 months)*	*Simple review (6 months)*
Government issues Terms of Reference	Start	Start
OBPR releases issues paper	Week 13	Week 9
Close of stakeholder submissions	Week 26	Week 14
OBPR releases draft report	Week 47	---
Close of stakeholder comments on draft report	Week 53	---
OBPR releases final report	Week 66	Week 27

5.5 Further Stocktakes

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

5.6 Submissions

There was strong support in the submissions for progressive review of the existing regulation and public stocktakes. Submissions focussed on the standards that would be used for assessment. Many stakeholders recommended that, as part of the review, the existing regulation should be subjected to the same RIS standards as the new regulation. There was also general support for an independent entity to undertake the reviews of existing regulation.

All of the submissions on the Issues Paper are available on the Authority's website. The Interim Report provides a more detailed summary of the submissions that addressed the priority reforms.

5.7 Government Response

The Government supported the recommendations in the Interim Report to move forward with specific reforms instead of devoting resources to a formal stocktake of all legislation.

The Government is separately considering the priority reform candidates proposed in the Interim Report and will consult with OBPR about the scope for reform, review responsibilities and timeframes and determine review arrangements on a case-by-case basis.

The Government also confirmed that it will be essential that reviews of priority reform areas are conducted by OBPR or an independent and impartial body.

With regard to sunsetting provisions, the Government requested further advice from OBPR on: the resourcing effort required; options for phased implementation; and the type of sunset review that would be suitable to apply to primary legislation. This is discussed further in section 5.9.

5.8 Discussion

The next steps are for the Government to identify which of the potential reform areas it wants to move forward, confirm the responsibilities for designing and implementing reforms, and establish time lines for effective review.

Investigating and implementing the fast track reforms and other reform candidates nominated by the Government will, along with ongoing responsibilities for reviewing new regulation through the RIS process, effectively occupy the resources available to the departments and the OBPR for a considerable period.

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

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

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

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

5.9 Sunset Reviews

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

The Government intends to maintain sunsetting provisions relating to subordinate legislation. The Interim Report recommended that all existing legislation with regulatory requirements should be subject to sunset reviews that place the onus of proof for maintaining the regulation on the proponent.

The Government is concerned that 'the automatic sunsetting and review of all primary legislation would be resource intensive for both agencies and stakeholders and may contribute significantly to the parliamentary legislative workload' (**Appendix B**, p. 8).

The Government has requested advice from OBPR regarding: the resourcing implications of the sunset proposal for primary legislation and an approach that would enable review efforts to be focussed on areas likely to offer the greatest return. Specifically, the Government asked OBPR to consider:

(a) Resourcing efforts required

(b) Options for the phased implementation of sunset requirements on primary legislation; and

(c) The type of sunset review that would be suitable to apply to primary legislation"

The Government also seeks an approach that would focus review on areas likely to produce the greatest return.

A review provision already exists in some legislation while some Acts (or sections of Acts) include a specific expiry date. Table 5.4 lists 12 Acts that are either due to expire or may require review by 30 June 2014. Acts that were due to be reviewed within the previous 12 months have not been included.

Table 5.4: Review Dates for Primary Legislation to 30 June 2014

Act	*Department*	*Details*	*Review Date*
Queensland Civil and Administrative Tribunal Act 2009	Justice and Attorney-General	Review of Act	Review at 5 year intervals after First review. (Currently under review)
Retail Shop Leases Act 1994	Justice and Attorney-General	Review of Act	Currently under review
Public Safety Preservation Act 1986	Police and Community Safety	Review of Part 2A	Review by 1 Mar 2013
Child Protection (Offender Prohibition Order) Act 2008	Police and Community Safety	Review of Act	Review after 2 June 2013
Electricity Act 1994	Energy and Water Supply	Expiry of subsections 3 & 4 in Section 264	Expires 1 July 2013
Corrective Services Act 2006	Police and Community Safety	Review of Act	Review by 28 August 2013
Nature Conservation Act 1992	Environment and Heritage Protection	Expiry of Section 184A	Expires 23 Nov 2013
Transport Security (Counter-Terrorism) Act 2008	Transport and Main Roads	Review of Act	Review after 12 Dec 2013
Strategic Cropping Land Act 2011	Natural Resources and Mines	Review of Act	Review after 30 Jan 2014, but before 30 Jan 2016.
Liquor Act 1992	Justice and Attorney-General	Expiry of Division 6	Expires 29 June 2014
Queensland Reconstruction Authority Act 2011	State Development, Infrastructure and Planning	Expiry of Act	Expires 30 June 2014
Motor Accident Insurance Act 1994	Treasury and Trade	Review of Act	Ongoing when necessary

The limited number of Acts requiring review by June 2014 suggests that the resource implications of a review are manageable. The Authority recommends that Government review these scheduled Acts to ascertain whether the regulations they contain should be modified or removed using the prioritisation criteria recommended in section 4.2. The onus of proof for maintaining regulation should be on the proponent. A one-time effort may be

required to eliminate any backlog from prior years. Any restrictions eliminated as a result of a sunset review would be counted towards a department's 20% net reduction target.

It appears that a small proportion of Acts currently contain a review provision. OBPR recommends that all future legislation that imposes a regulatory requirement should include a section requiring review of the Act. These reviews would be staggered over future years based on when new legislation is introduced, thus reducing resourcing concerns.

OBPR notes that each Department will be reviewing the existing stock of legislation in order to remove restrictions identified by the restrictions count being undertaken by OBPR. It is suggested that those regulations that have the potential for the highest net gain from their removal should be identified.

OBPR recommends that all legislation should be subject to sunset provisions and that it should develop a phased program for implementation of sunset requirements.

5.10 Recommendations

5.1 Fast Track Reform Candidates

- **The Government should determine fast track candidates, responsibilities for reforms and a time frame for reform. Ten possible candidates have been identified. The Government is considering reform priorities.**
- **The OBPR or a similar independent, well resourced entity should play an oversight role in the design and implementation of reforms. The Government has confirmed that it will determine the review arrangements on a case-by-case basis and that reviews of priority reform areas will be overseen by and independent and impartial body.**

5.2 Medium Term Reform Candidates

- **The medium term regulatory reform candidates and any other reform candidates nominated by Government should be submitted to responsible policy departments or regulatory agencies for their views and suggestions. This process is under way.**
- **The Government has confirmed it will consult with OBPR and determine the review arrangements for each reform candidate on a case-by-case basis.**
- **In line with the co-ordinating role proposed for the Treasury in relation to regulatory matters, OBPR should consult with Treasury in respect of specific responsibilities in relation to medium term priorities.**

5.3 Additional Candidates

- **Government has confirmed that it will consider the scope of OBPR's involvement in reviewing other regulatory reform proposals including those developed by Parliamentary Committees and departments on a case-by-case basis.**

5.4 Stocktake

- **The Authority recommends that instead of devoting resources to a formal stocktake, the Government move forward with specific reforms.**
- **Existing legislation with regulatory requirements should be made subject to sunset reviews that place the onus of proof for maintaining the regulation on the proponent.**
- **A phased program for implementation of sunset requirements should be developed by OBPR.**

5.5 Review of Primary Legislation

- **Future legislation that introduces a regulatory requirement should include a provision specifying a date for future review.**

6. WHOLE-OF-GOVERNMENT REGULATORY MANAGEMENT SYSTEM

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

6.1 Introduction

A regulatory management system comprises the institutional roles, management processes, accountability mechanisms and evaluation tools that determine how and when regulations are made, administered and reviewed. The regulatory management system has to be designed to ensure effective regulatory policy development, prioritisation, coordination, communication, implementation and monitoring.

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

The OECD (2010a, 2012b), Productivity Commission (2011), Regulation Taskforce (Australian Government, 2006) and VCEC (2011b) have made a number of recommendations in relation to regulatory management systems. The material presented in this Chapter builds on key findings of these reviews, particularly that of the VCEC.

6.2 Objectives

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

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

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

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

A fundamental issue to be addressed is a culture within government that for many stakeholders encourages regulation as a solution to many issues. It is imperative that the regulatory management system contain features to help ensure that policy and rule makers and those responsible for designing and administering regulation have appropriate incentives

to ensure that regulation is in the public interest. This requires ensuring a whole-of-economy and whole-of-community perspective (i.e. a public interest objective) when designing and assessing regulatory policy options. Recognising the public interest objective is important in itself for ensuring the regulatory management system contains appropriate incentives and is effective. However, there are additional incentive mechanisms that should be part of an effective whole-of-government regulatory management system.

6.3 Clarity of Roles

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

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

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

> *The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such Minister could include:*
>
> - *Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;*
> - *Reporting on the performance of the regulatory management system against the intended outcomes;*
> - *Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.*

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

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

6.4 Incentives

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

Prior reviews across Australia in recent years have identified a significant agenda for reducing the regulatory burden. There has clearly been a lack of appropriate incentives for ensuring the effective assessment of regulatory proposals. Regulation should be proposed and designed only if it is in the public interest as a whole (the community's interest broadly defined to reflect all aspects of the quality of life).

A key concern is ensuring that arrangements are put in place to encourage effective review and reform of existing regulation and to be more disciplined in assessing the need for additional regulation.

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

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

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

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

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

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

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

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

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

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

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

6.5 Capability

An effective regulatory management system requires adequate staff resources with appropriate policy analysis skills. There is clearly a need for those who are involved in advising on regulatory options to have a good understanding of non-regulatory approaches for achieving policy objectives and the ability to undertake suitable cost benefit analysis. OBPR anticipates providing a training function to build relevant capability.

For training to be most effective, those receiving it need to have appropriate incentives to use the material that is provided. This observation reinforces the need to ensure other aspects of the regulatory system are working well.

6.6 Consultation

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

6.7 Organisational Issues

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

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

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

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

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

6.8 Management mechanisms and evaluation

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

Chapter 4 of this report discusses measurement issues and targets for reducing and reforming regulation.

Stock flow linkage rules are rules that constrain the total amount of regulation by linking new regulation to the existing stock. They include 'one-in one-out' rules and 'regulatory budgets' that limit the stock of legislation. The Productivity Commission (2011, p.xv) notes that, to provide effective discipline, the rules need to be obligatory but could have perverse effects (as they are not linked to an appropriate measure of net benefit).

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

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

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

6.9 Coverage

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

6.10 Reducing Duplication

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.12 New Regulation and the RIS System

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

Regulatory impact analysis (RIA) is widely used as a means to minimise the burden of new regulation through the systematic assessment of the options and associated impacts for addressing a policy issue. By applying an evidence-based approach to policy making, RIA

aims to ensure that the development of regulatory proposals is both effective and efficient and that decision makers and stakeholders are fully informed about proposals' impacts prior to a decision to regulate.

The RIS system – formerly the Regulatory Assessment Statement (RAS) system – is the Queensland Government's RIA process guiding the development and review of State regulation. A summary of the RIS system is provided in the companion report *Key Features of the Regulatory Impact Statement System* (QCA 2012c).

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

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

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

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

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

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

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

6.13 Submissions

Clarification of regulatory and policy objectives and roles and improved accountability were well supported by the submissions and consultation process (the Australian Institute of Company Directors, the CCIQ, the Australian Institute of Company Directors).

CCIQ noted that noted that this principle is already reflected through the Government's 20% red tape reduction target and Ministerial Charter Letters and this should be sufficient to drive and maintain clarity and make the objectives of the Government clear.

Several stakeholders recognised that the build up of regulation reflects cultural factors that promote a resort to regulation as the prime means of addressing a myriad of issues and risks for the community without a thorough understanding of the costs of regulation. For example, the Australian Institute of Company Directors noted that the incentive structure of politics has led to a culture of regulation.

There was broad support for more accountability by setting meaningful performance targets and ensuring processes and assessments of policy and regulatory options were transparent. The CCIQ emphasised the importance of progress reporting against the baseline and targets. The Australian Institute of Company Directors noted the importance of transparency.

Several submissions and meetings with individual stakeholders indicated strong support for sunset provisions and for the 'onus of proof' to be placed on a proponent of regulation to prove a regulation entailed a net benefit rather than on proving a regulation should be removed (CCIQ, Energy Retailers Association of Australia, Property Council of Australia, Queensland Resources Council, Stanwell, TRUenergy). The importance of transparency was emphasised in several submissions.

However, some submissions expressed concerns that the benefits of regulation would not be properly recognised. For example Queensland Consumers Association and the LGAQ were concerned that this approach could lead to insufficient attention to eh benefits of regulation.

There was general support for an independent, authoritative entity to ensure discipline and rigour in the assessment process for the stock of regulation and for new regulation (Master Builders, the Australian Institute of Company Directors, CCIQ). CCIQ, however, emphasised the need for government agencies to actively participate in the reviews and take ownership of the process.

There were mixed views about the priority for improving capability. The CCIQ noted that Departments should have sufficient skill and tools, but stressed the need for improvement in engagement strategies and development of a better understanding of how businesses operate. On the other hand, Agforce and the Queensland Resources Council were concerned about Departmental capabilities.

The LGAQ highlighted the limited capacity for local government to evaluate regulatory policies with a standard regulatory impact statement process.

Consultations with Government agencies confirmed that there is a need for building the capacity to prepare effective RISs.

Most stakeholders emphasised the need for improved consultation, including allowing adequate time and giving genuine consideration of stakeholder concerns (Australian Institute of Company Directors, the CCIQ, Master Builders, Waste, Recycling Industry Association Queensland). Master Builders expressed the opinion that government departments sometimes seemed to treat stakeholder consultation merely as a compliance exercise.

Several submissions supported the need for a whole-of-government approach to regulatory reform and management (Australian Institute of Company Directors, CCIQ, Master Builders),

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

CCIQ was concerned that development of a process and framework does not substitute for making actual reforms. Other key components of a whole-of-government approach that were highlighted included transparency and reporting arrangements.

Stakeholders recognised the need for development of mechanisms and tools for managing and evaluating regulation. Submissions expressed support for stock-flow linkage rules in managing regulation (Property Council of Australia, CCIQ).

There was general support from stakeholders for sun-setting provisions (Australian Institute of Company Directors, Master Builders, CCIQ). However, LGAQ and Taste South Burnett raised concerns about the administrative burdens and the effectiveness of applying sunsetting provisions to all regulation.

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

Several submissions raised concerns about the regulatory burden of local laws and their implementation. The Local Government Association questioned whether local laws were within the scope of the Ministerial Direction. At a separate meeting, following the release of the Interim Report, the Local Government Association expressed concerns to the Authority about the resources that would be required for Councils to undertake proposed reforms and meet reporting requirements recommended in the Interim Report.

There were mixed views about the extent to which duplication was a problem for business. The CCIQ did not consider that contacting various agencies was a major issue, provided complexity was reduced and better service provided. However, the Property Council noted the importance of reducing duplication for local government regulation. AgForce also noted several aspects of duplication in relation to the *Wild Rivers Act 2004.*

Redland City Council considered consolidation of State legislation impacting local government should be a priority.

The Queensland Resources Council highlighted that the main instances of duplication arose where the regulatory jurisdiction was not clear.

In a meeting with the Authority convened by UnitingCare Queensland, a range of large non-government organisations highlighted onerous reporting requirements, multiple service agreements and numerous points of contact with government departments as examples that increased the burden of regulation for the sector.

The consultation process confirmed interest in a permanent formal mechanism for stakeholders to present a case for reducing specific regulatory burdens (Master Builders, CCIQ, Taste South Burnett).

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

The Master Builders (p.3) noted that a more rigorous and consistent RIS process is needed to ensure that costs and benefits are assessed more accurately and realistically. While acknowledging the potential of the RIS system and 'onus of proof' requirement to reduce

regulatory burden, CCIQ had concerns about proposals avoiding the scrutiny of the RIS system.

There was support for an independent body to ensure rigour in the assessment process for new regulation. However, the LGAQ was not supportive of extending the RIS process to local laws.

The need for genuine and adequate consultation in the regulatory development process was supported by several submissions but there was a view that the RIS process was not achieving this goal. CCIQ also raised concerns about the RIS system's ability to control regulatory creep:

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

6.14 Government Response

6.14.1 Overall objective

The Government supports the recommendation in the Interim Report that the overall regulatory objective should be to achieve a net public benefit defined to take account of economic, environmental and social variables leading to sustained improvements in the overall welfare of the Queensland community. It confirmed that there should not be a presumption that any particular regulatory goal is absolute, as it is the overall public benefit that is important.

6.14.2 Whole-of-Government Regulatory Management System

The Government supports the concept of a whole-of-government regulatory management system.

The Government has advised that the Treasurer and Minister for Trade and the Assistant Minister for Regulatory Reform will be responsible for overall regulatory reform, and individual Ministers for regulatory reform in their portfolios, as provided for in administrative orders and Ministerial Charter letters. The Government has also advised that the Queensland Treasury and Trade Department will establish and maintain the regulatory management system.

6.14.3 Local Government Responsibility

The Government has advised that further investigation is required to determine the nature and extent of any regulatory reform program to apply to local government. It proposes to consult with local government on a regulatory reform program in late 2013 once the framework for regulatory reform has been implemented at the State level. This would include reporting arrangements.

6.14.4 Office of Best Practice Regulation

The Government supported most of the recommendations in the Interim Report in relation to OBPR responsibilities. It noted that annual reporting should: include commentary on the outlook for agencies with respect to regulatory matters; and provide an up-to-date assessment of the regulatory burden using a basket of measures (page count, regulatory restrictions count and dollar cost of the regulatory burden) and additional relevant information.

The Government has requested further advice from OBPR as to the extent of its proposed role in monitoring compliance with regulatory burden reduction targets and initiatives.

The Government supported the establishment of a permanent mechanism to enable business and individuals to raise regulatory issues but not in the form of an Ombudsman's role. The Government has suggested a mechanism with an ongoing process of targeted consultation in relation to priority areas for regulatory reform as the central feature. This would include publication of a forward schedule of proposed targeted consultation. The outcomes of the targeted consultation would inform the scope for formal reviews. There would also be a 'mail box' mechanism where businesses and individuals could make submissions or raise issues.

The Government did not support the OBPR investigating the opportunity for a 'one-stop shop' arrangement for making better use of technology to reduce the regulatory burden. It noted that this initiative was already part of a separate work program being led by Government.

6.14.5 Incentives for Reform

The Government supported the recommendations for placing the onus of proof in justifying regulation or new regulation on the entity proposing to regulate (or continue regulating).

Recommendations to make submissions, analyses, reports and RISs publically available were supported in part. The Government confirmed that it will continue to make decisions about "the timing of public release of submissions, supporting analyses and reports on priority reform areas and RIS documentation and OBPR advice on a "case-by-case basis."

6.15 Discussion

6.15.1 Reform Roles within Government

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

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

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

6.15.2 Commitment and Incentives

There is evidence that previous efforts to improve regulatory outcomes have failed to include some critical features needed to change the culture of embracing regulatory options irrespective of the net public benefit. In particular, there is a need to make sure that there is

continuing high level political commitment to regulatory reform and that policy advisers have appropriate incentives for reducing the burden of regulation.

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

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

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

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

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

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

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

6.15.3 Local Government

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

At this stage, full regulatory impact analysis, as envisaged for state government departments, will often not be justified. However, some level of consultation with an opportunity for interested parties to consider and comment on proposals is considered to be feasible and

appropriate for most local governments. Ideally, local governments should be required to report in their annual budgets on the progress of their programs for reducing the burden of regulation. The scope and extent of these requirements should reflect the resources of individual Councils and the extent of their regulatory reform tasks. As noted, a regulatory reform program of local governments, including reporting requirements, will be determined as part of the Government's consultation process with local governments in late 2013.

In the interim, the Government has noted that local government could opt in to annual reporting on their efforts to reduce regulatory burden (to both OBPR and as part of their own reporting processes).

6.15.4 New Regulation and the RIS System

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

There was a mix of views about departmental capability to design and implement regulation. In terms of design, capability is of little relevance if incentives do not promote good regulatory practice. Hence, it is considered to be critical to ensure the appropriate incentives are in place. Assuming that has been done, the OBPR will provide training and advice on how to improve policy assessment in Departments. As part of this effort, OBPR will engage early with departments to provide information and advice on the preparation of RISs.

A key problem with administrative capacity relates to the extent to which discretion exists in the development and application of codes and standards. Some discretion is needed for optimal results. Too much discretion can be clearly problematic. More careful vetting of regulations and discretionary power when the regulations are being developed will help. In addition, a permanent, formal mechanism for stakeholders to make a case to seek a reduction in the regulatory burden (see above) will provide a backstop.

6.15.5 Reform Tools and Mechanisms

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

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

There was not strong support for pursuing the concept of a 'one stop' shop within government to deal with regulatory requirements, provided regulation was streamlined and made clearer and the issue of discretion was better addressed. Ongoing efforts to make information regarding regulation more accessible, including through the better use of technology, should be encouraged. As indicated, the Government is already investigating opportunities for better information sharing and will continue to lead this work program, consulting with OBPR where appropriate.

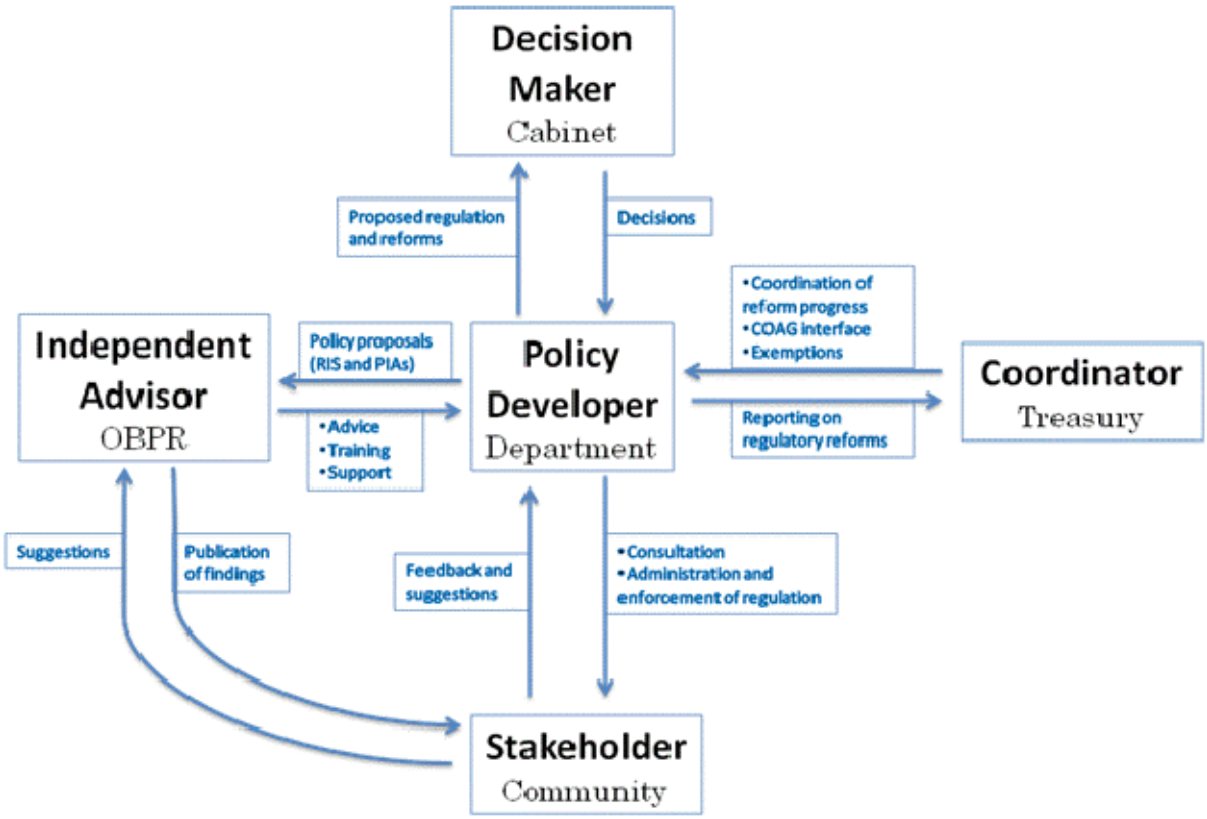
Finally, there was general support for a permanent formal mechanism for stakeholders to make a case for regulatory reform.

6.16 Proposed Whole-of-Government Regulatory Management System

This section provides an outline of the proposed whole-of-government regulatory management system. **Appendix F** describes the proposed system in more detail.

The Authority's proposed regulatory management system provides **clarity of objectives and roles**. The objective of the Regulatory Management System proposed for Queensland is regulation that is in the public interest. Figure 6.1 shows the proposed roles to be performed by government agencies and stakeholders, using a range of mechanisms.

Figure 6.1: Proposed Regulatory Management System



The Regulatory Management Systems holds Departments **accountable** for the burden of regulation by publishing justifications for new regulation under the RIS system and quantifying the regulatory burden imposed by each Department through a regulatory restrictions count.

To provide effective **incentives** to reduce the regulatory burden, the Authority proposes to:

(a) place the onus of proof on the proponent of new or retained regulation to ensure that only well-justified regulation is enacted or retained;

(b) require Departments to achieve a reduction in regulatory restrictions target of a net 20% across government in six years – the net target takes new regulation into account; and

(c) independently report each Departments' progress against the regulatory restrictions target and supplementary measures of page count and economic burden on an annual basis.

To enable Departments to meet these targets, the Authority proposes to enhance their **capability** to improve regulation. To this end the Authority will provide guidance regarding regulatory principles as well as training on the RIS system and cost benefit analysis.

The Authority's proposed Regulatory Management System includes a number of embedded mechanisms for **consultation**, such as Consultation RISs and the Register of Representative Bodies.

The proposed Regulatory Management System identifies many mechanisms that are already in place, or are described in more detail in the preceding chapters. However, there a number of mechanisms that do not currently exist, or are not a central part of the Authority's recommended approach to reducing the burden of regulation. These include:

(a) increased **accountability** through the completion of an annual Regulatory Reform Statement by each Department to report progress against regulatory restriction targets and to inform the coordination of regulatory reforms;

(b) greater **capability** through the identification of one or more Regulatory Reform Champions for each Department to coordinate the Department's compliance with the RIS system and to track progress against regulatory restrictions targets;

(c) greater **capability** through guidance published by OBPR to assist departments to prioritise which regulation to reform in achieving regulatory restrictions targets; and

(d) more **consultation** through a permanent red tape complaints forum to respond to general complaints about the burden of regulation and to undertake targeted consultation on priority areas for review.

Appendix F contains a detailed description of the Authority's proposed Regulatory Management System.

6.17 Recommendations

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

6.1 Overall Regulatory Objective

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

6.2 Whole-of-government Regulatory Management System

- **A whole-of-government regulatory management system should be put in place. The recommended implementation of a regulatory management system is presented as Appendix F.**
- **Queensland Treasury and Trade will establish and maintain the regulatory management system.**

6.3 Coverage

- **Both State government and local government regulation, including codes and guidelines should be subject to regulatory review and reform.**
- **Further investigation is required to determine the nature and extent of reform that should apply to local government.**
- **The Government will consult with local government in late 2013 on a regulatory reform program for local governments.**

6.4 Minister for Regulatory Reform

- **The Treasurer and Minister for Trade, in association with an Assistant Minister, is responsible for regulatory reform. The role of the Treasurer and Minister for Trade should include: ensuring clarity of roles and tasks; ensuring capability to reduce and improve regulation; confirming priorities; overseeing regulatory activity; identifying scope for improvements; and promoting the importance of improving regulation. This is consistent with current arrangements.**

6.5 Individual Ministers

- **Each Minister should be responsible for regulatory reform in their departmental portfolio, subject to the Government's agreed priorities and principles for regulatory review and reform. This is consistent with current arrangements.**

6.6 Departmental Responsibility

- **The Government, through the Treasurer and the Assistant Minister for Regulatory Reform should consult with the OBPR about the scope for reform, review responsibilities and time frames for reform priorities on a case-by-case basis.**
- **The Government should consider OBPR's recommended reduction targets for each Department and announce finalised targets at an appropriate time.**
- **Queensland Treasury and Trade should provide a policy advisory and whole-of-government coordinating role in relation to regulatory matters. This function already exists.**
- **Departments should prepare a Regulatory Reform Statement to report progress against regulatory restriction targets and to inform the coordination of regulatory reforms.**
- **Departments should nominate one or more Regulatory Reform Champions for each Department to coordinate the Department's compliance with the RIS system and to track progress against regulatory restrictions targets.**

6.7 Local Government Responsibility

- **In line with the increased responsibility being given to local government, local governments should be required to reduce the burdens of regulation (including codes and guidelines) for which they have responsibility.**
- **Further investigation is needed to establish a manageable process and timetable for review. The Government proposes to consult with local government in late 2013 on a regulatory reform program for local governments, including regulation impact analysis and reporting arrangements, once the framework for regulatory reduction has been established at the State level.**
- **The scope and extent of local government requirements should reflect the resources of individual Councils and the extent of their individual regulatory reform tasks.**

6.8 Office of Best Practice Regulation

- **The OBPR should have an overall advisory and monitoring role in relation to reducing the burden of the existing stock of regulation and new regulation. Specific OBPR functions would include the following:**
  - **(a) Advising on priorities and proposals for reforming the existing stock of regulation in consultation with government departments and Ministers;**
  - **(b) Undertaking targeted reviews and reforms as directed by Ministers;**
  - **(c) Oversight or assessment of major regulatory reform initiatives as directed by Government;**
  - **(d) Annual reporting to government on whole-of-government progress in reducing the regulatory burden and future plans – this will include commentary on the performance of agencies in reducing the regulatory burden and their scope for further reform;**
  - **(e) Training public entities on how to evaluate regulation to reduce the regulatory burden and remove restrictions that impact adversely on economic activity, including application of RIS system requirements;**
  - **(f) Providing guidance to assist departments to prioritise which regulation to reform in achieving regulatory restrictions targets**
  - **(g) Engaging early with departments to provide information and advice on preparation of RISs;**
  - **(h) Assessing the adequacy of RISs for new regulation and regulation with sunset and statutory review requirements;**
  - **(i) Annual Reporting on RISs; and**
  - **(j) Designing and implementing a permanent mechanism for firms and individuals to make a case for regulatory redesign and reduction. The mechanism would include arrangements for ongoing targeted consultation on priority review areas agreed with Government and a mailbox mechanism for submissions from the public on any regulatory matter at any time.**

6.9 Incentives for Reform

- **The onus of proof in justifying the continuation of regulation or new regulation should be on the entity proposing a new regulation or the retention of existing regulation.**
- **Appropriate targets should be set in net terms for Departments to reduce the burden of regulation.**
- **OBPR should report annually on Departments' progress against targets.**
- **All submissions, supporting analyses and reports on priorities for regulatory reform should be made publicly available at an appropriate time and adequate opportunity should be provided for effective consultation.**
- **All RISs for both consultation and decision purposes and the OBPR advice on those Statements should be made publicly available at an appropriate time.**
- **Regulatory Reform Statements prepared by Departments and OBPR's annual reports of report progress against regulatory restriction targets should be made publicly available at an appropriate time.**

APPENDIX A: MINISTERS' DIRECTION NOTICE

QUEENSLAND COMPETITION AUTHORITY ACT 1997
Section 10(e)

MINISTERS' DIRECTION NOTICE

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

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

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

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

Matters to be considered

In undertaking this investigation, the Authority is to:

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

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

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

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

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

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

d) Have regard to the costs of implementing possible frameworks for measuring regulatory burden, including costs associated with data collection and assessment.

The proposed framework should include a requirement that the Authority publish an annual report on departmental performance against regulatory burden benchmarks, taking into account the Government's target of a 20 per cent reduction in red tape and regulation.

Consultation

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

Reporting

The Authority must provide:

1. an Interim Report by 1 November 2012 regarding a proposed framework for measuring regulatory burden and identifying initial priority areas for targeted regulatory review; and
2. a Final Report by 31 January 2013.

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

[redacted]

[redacted]

TIM NICHOLLS
Treasurer and Minister for Trade

JARROD BLEIJIE
Attorney-General and Minister for Justice

APPENDIX B: GOVERNMENT RESPONSE TO THE INTERIM REPORT

QLD COMPETITION AUTHORITY

20 FEB 2013

DATE RECEIVED

Hon Tim Nicholls MP
Member for Clayfield
Treasurer and Minister for Trade

TRY-02994

19 FEB 2013

Dr Malcolm Roberts
Chairperson
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Dr Roberts Malcolm,

Thank you for the Office of Best Practice Regulation's (OBPR's) Interim Report on Measuring and Reducing the Burden of Regulation. The Interim Report is a significant body of work and an important part of the Queensland Government's plan to cut red tape and regulation by 20 per cent by 2018.

The Government has considered the OBPR's recommendations and is pleased to provide the attached response to the Interim Report.

I look forward to receiving the OBPR's Final Report by 28 February 2013.

Should officers from the Queensland Competition Authority require further information, I encourage them to contact Ms Katrina Martin, Director, Regulatory Reform Branch, Queensland Treasury and Trade on (07) 3035 1830 or email katrina.martin@treasury.qld.gov.au.

Yours sincerely

[redacted]

Tim Nicholls
Treasurer and Minister for Trade

[redacted]

Deb Frecklington
Assistant Minister for Finance, Administration and Regulatory Reform

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QUEENSLAND GOVERNMENT RESPONSE TO THE OBPR INTERIM REPORT ON A FRAMEWORK FOR REDUCING THE BURDEN OF REGULATION

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
3.1 Measurement of Burden and Burden Reduction		
3.1.1	*A regulatory burden base-line should be established using the British Columbia approach of counting obligations (modified to count an absolute prohibition as an obligation). The base-line will measure the regulatory burden as at 23 March 2012.*	**Support in part** The Government notes that the OBPR's Interim Report has considered several methods to effectively measure the regulatory baseline and discussed the inherent advantages and disadvantages of each. These measures include page count, modified British Columbia approach and dollar cost. The Government considers that no single measure provides a comprehensive assessment of the regulatory base-line on its own, and as such, the OBPR should use a basket of the measures to provide Government with the best information on the regulatory burden. The basket of measures should include page count, modified British Columbia approach and dollar cost. The Government acknowledges that the base-line for the dollar cost method may be difficult to establish, however, the Government would encourage the OBPR to consider the benchmark estimates developed by others, such as the Productivity Commission to estimate the baseline in a cost effective way. The base-line measurement as at 23 March 2012 is appropriate. The Government supports the OBPR undertaking an independent assessment of the regulatory burden (in consultation with agencies) for approval by Directors-General. This will ensure a consistent approach for measuring the base-line across Government. The Government supports the OBPR commencing the baseline assessment immediately so that Directors-General can consider and agree the final baseline count prior to the OBPR recommending agency-specific reduction targets to Government (see 3.2.1). The Government requests that the OBPR develop guidelines for assessing the regulatory burden. The guidelines should: a) identify the scope of regulatory instruments to be included in the assessment of regulatory burden (particularly for quasi-regulation);

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		b) identify the types of obligations/burdens to be included in the assessment; and c) seek to prevent "double counting" of regulation wherever possible. The initial assessment should establish a baseline count for: a) each regulation (i.e. Act, regulation, quasi-regulation which is in scope); b) each agency; and c) for whole of government.
3.1.2	*Progress in regulatory burden reduction should be measured using the same (modified British Columbia) approach used in establishing the regulatory burden.*	**Support in part** The OBPR should measure the progress in reducing the regulatory burden using the basket of measures outlined by the Government in section 3.1.1.
3.1.3	*Progress in regulatory burden reduction should be measured on a net basis.*	**Support** The Queensland Government understands that business has been unduly impacted by burdensome regulation. To provide business with much needed relief the regulatory reduction burden will be measured on a net basis.
3.2 Departmental Targets		
3.2.1	*OBPR will propose reduction targets for individual portfolios based on a 20% benchmark, with specific portfolio targets to be adjusted for any unique distorting factors, but with the overall target maintained at an overall 20% reduction in regulatory requirements across government over six years.*	**Support** The 20% overall reduction is consistent with the Government's election commitment. The Government recognises the importance of assigning responsibility to agencies for addressing the regulatory burden imposed by regulations they administer. The Government requests that the OBPR consider each agency's legislative responsibilities when recommending reduction targets for each portfolio, including: a) the nature of legislation involved – e.g. social, environmental or business-related; and b) an agency's ability to influence the regulatory framework they administer - e.g. nationally and internationally determined laws, guidelines and standards. The Government requests that, following the establishment of regulatory burden baselines, the OBPR present recommended reduction targets for each agency to Government by 30 April 2013.

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
3.2.2	*The reduction target for each portfolio should then be signed off by the responsible Minister and approved by Cabinet and included in the key performance indicators of Directors-General. Ministers who consider that their proposed target is too onerous can suggest to Cabinet an alternative area of reduction so that the Government can achieve its overall 20% target.*	**Support in part** It is expected that, based on its consideration of appropriate targets and consultation with agencies, the OBPR will make recommendations to Government, with final decisions regarding specific agency targets to be made by Cabinet. It is not intended that these will require Ministerial sign-off prior to Cabinet consideration. The inclusion of regulatory burden benchmarks in Directors'-General contracts is consistent with the Government's election commitment.
3.2.3	*Progress towards achieving targets should become part of the key performance indicators of senior departmental and agency staff.*	The inclusion of regulatory burden benchmarks in Directors'-General contracts is consistent with the Government's election commitment. Any extension of this approach to other senior departmental and agency staff will remain at the discretion of each Director-General.
3.2.4	*When agencies and portfolios are re-organised, the regulatory base-line and regulatory burden reduction target for each portfolio should reflect that reorganisation.*	**Support** Machinery of Government changes can present significant challenges in terms of resetting regulatory base-lines and reduction targets. Establishment of a base-line regulatory burden measurement for each regulation (i.e. each Act, regulation, and quasi-regulation in scope) would assist in measuring the reduction over time. In the event of machinery-of-Government changes, it would be expected that the OBPR would reflect the impacts of these changes, in terms of any revised agency targets, as part of its annual reporting to Government. Importantly, machinery of Government changes should not impact the whole of government baseline and measurement of regulatory reductions against the Government's overall 20 per cent reduction target.
3.2.5	*OBPR should present an annual report to Government on progress towards the regulatory burden reduction target.*	**Support** OBPR annual reporting of departmental performance against regulatory burden benchmarks is consistent with the Government's election commitment. The Government supports the delivery of an inaugural report by October 2013, reporting on progress for the

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		period to 30 June 2013. Refer to section 3.1.2 for further information regarding the OBPR's annual reporting of agencies' progress towards the regulatory burden reduction target.
3.2.6	*As part of its annual report to Government, OBPR should present any necessary recommendations for a re-balancing of the regulatory burden reduction target.*	**Support** This approach would provide flexibility and ensure agency targets remain appropriate.
3.2.7	*Once a reduced (by 20%) regulatory burden level is achieved, there should be requirement for a zero net increase in this burden across government, with an increase in one portfolio balanced with a decrease in another portfolio if approved by Cabinet.*	**Not support** The Government will review its approach to ongoing regulatory reform and red tape reduction once the 20 per cent target is reached. This review would consider whether a zero-net increase target is appropriate (noting that the improved RIS System will also seek to constrain the introduction of new regulatory burdens over time) or whether another reduction target is appropriate.
3.3 New Regulatory Proposals and Sunset Reviews		
3.3.1	*New regulatory proposals and sunset reviews should be subject to a dollar value assessment showing a positive net benefit.*	**Support in principle** The assessment of new regulatory proposals and sunset reviews of subordinate legislation should be conducted in accordance with the RIS Guidelines. This should include a dollar value assessment of impacts where required under the RIS Guidelines. The RIS Guidelines currently require demonstration of a net benefit to the community, including a dollar value assessment where possible. The implementation of this recommendation will need to take account of data and research limitations both in government and stakeholder organisations. As noted in section 5.4.2 the Government is seeking further OBPR advice about the automatic sunsetting of primary legislation, including the type of reviews that may be appropriate in this regard.
3.3.2	*The method of measurement for individual proposals should be the NSW method of measurement, modified to include the value of missed opportunities.*	**Support** The approach adopted in New South Wales in relation to the dollar value assessment of regulatory proposals considers administrative costs, substantive compliance costs, fees and charges and delay costs. It would be expected that these types of costs would be considered in undertaking assessment of regulatory proposals under the RIS Guidelines, which specify that all impacts of a

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		regulatory proposal should be identified and assessed, including economic, competition, social, environmental and compliance cost impacts. However, the OBPR should consider whether existing accounting models (e.g. Business Cost Calculator) used by agencies to assess regulatory proposals adequately account for these costs. Opportunity costs for new regulatory proposals and sunset reviews should be included in the RIS assessment if they can be quantified. If these opportunity costs cannot be quantified then they should be acknowledged in the RIS.
4.1 Criteria for Prioritising the Reform of Regulations		
4.1.1	*The Authority should use four criteria to assess reform priorities:* *a) Regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit.* *b) Regulation where there is significant 'reach' in terms of interaction between business and the community and government agencies.* *c) Regulation where there are potentially large net benefits from reform including direct reductions in red tape but also wider benefits for business, government and the community.* *d) Regulation where the need for reform is well understood and changes are likely to receive community acceptance if they are made aware of the net benefits from reform.*	**Support**
4.1.2	*Regulation that has significant environmental, ecological and cultural focus should not be excluded from review.*	**Support**
5.1 Fast Track Reform Candidates		
5.1.1	*The Government should determine fast track candidates, responsibilities for reforms and a time frame for reform. Ten possible candidates have been identified.*	**Support** The Government is giving separate consideration to the proposed candidates and will assign responsibilities and timeframes for reviews accordingly.
5.1.2	*The OBPR or a similar independent, well-resourced entity should play an oversight*	Regulatory reviews involve: a) establishing the scope of the review (i.e.

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
	role in the design and implementation of reforms.	developing terms of reference, assigning responsibilities and timeframes for review); b) conducting the review; and c) assessing review recommendations. The Government will consider the role of the OBPR in relation to each of these processes on a case-by-case basis. Although the Government will determine the review arrangements for each reform candidate on a case by case basis, it will be essential that reviews of priority reform areas are conducted/overseen by an independent and impartial body (e.g. OBPR or a Steering Committee). Consideration of the appropriate governance arrangements for reviews of potential reform areas, including oversight of design and implementation, will be considered by the Government on a case by case basis.
5.2 Medium Term Reform Candidates		
5.2.1	*The medium term regulatory reform candidates and any other reform candidates nominated by Government should be submitted to responsible policy departments or regulatory agencies for their views and suggestions.*	The Government is currently considering the nominated medium term regulatory reform candidates, including seeking the views and suggestions of responsible departments.
5.2.2	*Departmental responses should be reviewed by the OBPR, re-considered where relevant and a final recommendation made to Government by the OBPR on the scope for reform, priority and sequencing, responsibilities and resource requirements.*	Government will consult with the OBPR about the scope for reform, review responsibilities and timeframes for each identified reform candidate. Although the Government will determine the review arrangements for each reform candidate on a case by case basis, it will be essential that reviews of priority reform areas are conducted/overseen by an independent and impartial body (e.g. OBPR or a Steering Committee).
5.2.3	*The responsible policy department would then develop a plan for regulatory reform priorities and submit the plan to the OBPR for final review. The plan should recognize that OBPR or a similar independent, well-resourced entity would play an oversight role for all reviews and make a public report to Government assessing the recommendations of the review.*	
5.2.4	*In line with the co-ordinating role proposed for the Treasury in relation to regulatory matters, OBPR should consult with Treasury in respect of specific responsibilities in relation to medium term priorities.*	**Support**

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
5.3 Additional Candidates		
5.3.1	*OBPR should be advised of any departmental regulatory reform proposals not included in the stocktake described above.*	It is intended that all regulatory proposals will soon be required to be submitted to the OBPR for a decision about whether a RIS is required. This process will provide an appropriate mechanism for advising the OBPR of departments' regulatory reform proposals. This could be supplemented by departments providing information to the OBPR on reform proposals as part of the OBPR's annual reporting on progress in reducing the regulatory burden.
5.3.2	*OBPR should review all Parliamentary Committee and departmental regulatory reform proposals and evaluations that have been developed independently of the OBPR stocktake.*	**Support in principle** Government will consider the merits and scope of the OBPR's involvement in reviewing regulatory reform proposals developed by Parliamentary Committees and departments on a case-by-case basis. The OBPR's role in the various stages of the regulatory review process is discussed in more detail in relation to recommendations 5.1.2 and 5.2.2. It is intended that all regulatory proposals will soon be required to be submitted to the OBPR for a decision about whether a RIS is required. This process will provide an appropriate mechanism for advising the OBPR of departments' regulatory reform proposals.
5.4 Stocktake		
5.4.1	*The Authority recommends that instead of devoting resources to a formal stocktake, the Government move forward with specific reforms.*	**Support** This targeted approach would provide for Government to focus reform efforts on areas of greatest importance to achieve the most efficient and effective outcomes.
5.4.2	*Existing legislation with regulatory requirements should be made subject to sunset reviews that place the onus of proof for maintaining the regulation on the proponent.*	**Support in part** The Government intends maintaining the sunsetting provisions relating to subordinate legislation as prescribed in the *Statutory Instruments Act 1992*, which provide for the automatic expiry of subordinate regulation after 10 years (unless it is repealed or expires sooner, or is granted an exemption from automatic expiry). This is consistent with the arrangements of other Australian jurisdictions and recognises that subordinate legislation is not subject to the same level of parliamentary scrutiny as primary legislation (as it is made under delegation by a third party).

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		However, the automatic sunsetting and review of all primary legislation would be resource intensive for both agencies and stakeholders and may contribute significantly to the parliamentary legislative workload. The Government therefore seeks further advice from the OBPR regarding the resourcing implications of this proposal and an approach which would enable review efforts to be focussed on areas likely to offer the greatest return. In this regard, the OBPR should consider: a) resourcing effort required; b) options for the phased implementation of sunset requirements on primary legislation; and c) the type of sunset review that would be suitable to apply to primary legislation.
6.1 Overall Regulatory Objective		
6.1.1	*The overall regulatory objective should be to achieve a net public benefit defined to take account of economic, environmental and social variables, leading to sustained improvements in the overall welfare of the Queensland community. There should not be a presumption that any particular regulatory goal is absolute, it is the overall public benefit that is important.*	**Support**
6.2 Whole of Government Regulatory Management System		
6.2.1	*A whole of government regulatory management system should be put in place. The key components are set out in other recommendations in this Report.*	**Support** The Government supports the development of a whole of government Regulatory Management System (RMS) and has already implemented a number of key features in this regard, including the appointment of an Assistant Minister to the Treasurer and Minister for Trade, with a specific portfolio responsibility for regulatory reform. A whole of government RMS will promote a culture aimed at reducing the regulatory burden of regulation and help embed regulatory best practice across government. The Government's position on the key components of the RMS recommended by the OBPR is detailed elsewhere in the Government's response to the Interim Report. Queensland Treasury and Trade will establish and maintain the RMS.

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
6.3 Coverage		
6.3.1	*Both state government and local government regulation, including codes and guidelines should be subject to regulatory review and reform.*	**Support** The Government agrees that local government should adopt best practice regulatory principles and undertake regulatory reform. However, further investigation is required to determine the nature and extent of any regulatory reform program to apply to local government. Consideration of this issue must have regard to the resourcing requirements and other impacts on local governments and be developed in consultation with local governments. Please refer to section 6.7 for further information regarding the Government's position on the application of regulatory reform arrangements to local governments.
6.3.2	*Further investigation is required to determine the nature and extent of reform that should apply to local government.*	
6.4 Minister for Regulatory Reform		
6.4.1	*The Treasurer and Minister for Trade, in association with an Assistant Minister, is responsible for regulatory reform. The role of the Treasurer and Minister for Trade should include: ensuring clarity of roles and tasks; ensuring capability to reduce and improve regulation; confirming priorities; overseeing regulatory activity; identifying scope for improvements; and promoting the importance of improving regulation.*	**Support** The current administrative orders and the Ministerial Charter letters clearly identify the Treasurer and Minister for Trade and the Assistant Minister as having portfolio responsibility for regulatory reform.
6.5 Individual Ministers		
6.5.1	*Each Minister should be responsible for regulatory reform in their departmental portfolio, subject to the Government's agreed priorities and principles for regulatory review and reform.*	**Support** The Ministerial Charter letters clearly articulate that each Minister is responsible for regulatory reform in their portfolio and are expected to contribute to the Government's target to reduce regulation by 20%.
6.6 Departmental Responsibility		
6.6.1	*The OBPR should work with each Department in establishing the details for implementation of reform priorities.*	The Government, through the Treasurer and Assistant Minister for Regulatory Reform, will consult with the OBPR about the scope for reform, review responsibilities and timeframes for reform priorities on a case by case basis.

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
6.6.2	*Where appropriate, departments should be assigned a regulatory reduction target, developed in consultation with the Office of Best Practice Regulation and approved by Government.*	**Support** The Government will consider the OBPR's recommended reduction targets for each agency, and intends announcing finalised targets as part of the 2013-14 State Budget.
6.6.3	*The target should be part of the departmental chief executive's performance indicators.*	**Support** The inclusion of regulatory burden benchmarks in Directors'-General contracts is consistent with the Government's election commitment.
6.6.4	*The Treasury Department should provide a policy advisory and whole of government coordinating role in relation to regulatory matters.*	**Support** Queensland Treasury and Trade (Treasury) currently provides a policy advisory and whole of government coordinating role in relation to regulatory matters. The Regulatory Reform Branch is responsible for: • co-ordination of regulatory policy and reform and facilitation of regulatory policy development by agencies; • co-ordinating the monitoring and reporting on specific red tape reduction initiatives identified by agencies in the interim period until the Framework being investigated by the OBPR is fully developed and implemented; • establishing and co-ordinating the Government's regulatory reform framework and monitoring and reporting processes across Government, as required to complement and inform the OBPR's reporting role; • administering the RIS System and RIS Guidelines; • representing Queensland on national working groups with agendas relating to regulatory reform; • co-ordinating and advising Queensland Government agencies on policy development and implementation of national regulatory reforms; • co-ordinating reporting on Queensland's involvement and progress in COAG and inter-jurisdictional deregulation and regulatory reform initiatives; and • oversight of the implementation of specific whole of government reform initiatives. In oversighting the Government's red tape reduction agenda, Regulatory Reform Branch works closely with other relevant areas of Treasury and the Department of Premier and Cabinet in relation to specific aspects of red

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		tape reporting, monitoring and policy development. This includes reporting and monitoring arrangements in relation to each of the specific red tape reduction initiatives.
6.7 Local Government Responsibility		
6.7.1	*In line with the increased responsibility being given to local government, local governments should be required to reduce the burdens of regulation (including codes and guidelines) for which they have responsibility.*	**Support in principle** The Government will work collaboratively with local governments to reduce the regulatory burden. Local governments are expected to minimise the burden of regulation for which they are responsible. However, any consideration of a formal process for achieving this (i.e. a regulatory reform program) must be developed in consultation with local government and have regard to resourcing requirements and other impacts. In this regard, the Government proposes consulting with local government in late 2013 on the scope for reform (i.e. a regulatory reform program for local governments) once the Framework for regulatory reduction has been implemented at the State level.
6.7.2	*Further investigation is needed to establish a manageable process and timetable for review. This issue has been identified as a medium term priority.*	
6.7.3	*At this stage, full regulation impact analysis for new regulation will typically not be justified but some level of consultation with an opportunity for interested parties to consider and comment on proposals is considered to be feasible and appropriate for most local governments.*	**Support** It is noted that individual local governments may have established mechanisms for developing and reviewing local laws and regulations, and that the *Local Government Act 2009* imposes certain requirements on local governments in this regard, including in relation to public consultation. Further investigation is required to determine whether there is scope to improve the existing local government regulatory development processes. This matter will be considered as part of the Government's proposed consultation with local government in late 2013.
6.7.4	*Each local government should be required to report annually to OBPR and in its annual budget on the progress of its program for reducing the burden of regulation. The OBPR reports would be submitted to Ministers and made publicly available.*	**Support in principle** This matter will be considered as part of the Government's proposed consultation with local government in late 2013. In the interim, local governments will be encouraged to voluntarily opt-in to annual reporting on their efforts to reduce regulatory burdens (both to the OBPR and as part of their own annual reporting processes).

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
6.7.5	*The scope and extent of local government requirements should reflect the resources of individual Councils and the extent of their individual regulatory reform tasks.*	**Support**
6.8 Office of Best Practice Regulation		
6.8.1	*The OBPR should have an overall advisory and monitoring role in relation to reducing the burden of the existing stock of regulation and new regulation. Specific OBPR functions would include the following:* *a) Advising on priorities and proposals for reforming the existing stock of regulation in consultation with government departments and Ministers;* *b) Undertaking targeted reviews and reforms as directed by Ministers;* *c) Monitoring compliance with regulatory burden reduction targets and initiatives;* *d) Oversight or assessment of all major regulatory reform initiatives;* *e) Annual reporting to Government on whole of government progress in reducing the regulatory burden and future plans;* *f) Training public entities on how to evaluate regulation to reduce the regulatory burden and remove restrictions that impact adversely on economic activity, including application of RIS system requirements;* *g) Engaging early with departments to provide information and advice on preparation of RISs;* *h) Assessing the adequacy of RISs for new regulation and regulation with sunset and statutory review requirements;* *i) Annual Reporting on RISs;* *j) Investigating better use of technology to share information between government agencies and provide better information to business and consumers (an electronic one-stop shop);* *k) Designing and implementing a permanent mechanism for firms and individuals to make a case for regulatory redesign and reduction.*	(a) The Government is currently considering the 10 priority reform areas identified by the OBPR and the eight medium term reform priorities. The Government will consult with the OBPR about the scope for reform, review responsibilities and timeframes for these reform candidates. **(b) Support** (c) Government requests further advice from the OBPR as to the extent of this proposed role. (d) The Government, through the Treasurer and Assistant Minister for Regulatory Reform, will consult with the OBPR about the scope for reform, review responsibilities and timeframes for priority reform candidates. The Government will consider the role of the OBPR in relation to major regulatory reviews on a case by case basis. **(e) Support** OBPR annual reporting of departmental performance against regulatory burden benchmarks is consistent with the Government's election commitment. It would also be expected that the OBPR's annual reporting to Government will: • include commentary on the outlook for agencies, including any potential or recommended revisions to specific agency reduction targets; and • provide an up to date assessment of the regulatory burden using the basket of measures and providing additional information about the benefits of reforms (see section 3.1.2). **(f) Support** **(g) Support**

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		(h) Support
		(i) Support
		(j) Not support As the OBPR notes, Government is already investigating opportunities for better information sharing and the concept of a "one-stop shop". This is an extensive work program and involves complex and technical matter. To avoid duplication of effort and resources, the Government will continue to lead this work program, including investigating better use of technology to share information, but will consult with the OBPR where appropriate.
		(k) Support The establishment of a permanent mechanism to enable business and individuals to raise regulatory issues has the potential to identify new reform opportunities which may deliver significant and tangible benefits for stakeholders. The Government considers there may be merit in establishing a mechanism with the following key features to be considered: • on an ongoing basis, the OBPR to facilitate targeted consultation with stakeholders in relation to potential priority areas for review identified and agreed by Government. This consultation would be undertaken by inviting comments from individuals and businesses (within a three to four month consultation window) about rules and regulations that affect them in regard to this area of regulation; • the outcomes of the targeted consultation would inform the scope of any formal reviews to be undertaken (either by agencies or the OBPR) and the development of reform proposals to address issues raised; • the OBPR to publish a forward schedule of its proposed targeted consultation to be undertaken over the following 12 month period (with up to 3 or 4 priority areas to be targeted over any 12 month period); • in addition, the OBPR to establish a "mail box" mechanism where businesses and individual can make submissions or raise issues in relation to any regulatory matter at any time; and

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#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		• issues raised through the mail box, and other potential priority areas identified by agencies, would inform the OBPR's identification of further areas to be considered for targeted consultation. The establishment of a permanent mechanism of this nature should not be an avenue for parties to seek remedy for regulatory decisions and it is not intended that the OBPR would assume an ombudsman role.
6.9 Incentives for Reform		
6.9.1	*The onus of proof in justifying the continuation of regulation or new regulation should be on the entity proposing a new regulation or the retention of existing regulation.*	**Support** However, as noted in section 5.4.2, the Government seeks further OBPR advice about the automatic sunsetting of primary legislation.
6.9.2	*Appropriate targets should be set in net terms for Departments to reduce the burden of regulation.*	**Support** See section 3.1.3
6.9.3	*All submissions, supporting analyses and reports on priorities for regulatory reform should be made publicly available at an appropriate time and adequate opportunity should be provided for effective consultation.*	**Support in part** The Queensland Government supports open and transparent consultation and agrees that all submissions, supporting analyses and reports on priorities for regulatory reform should be made publicly available at an appropriate time and adequate opportunity should be provided for effective consultation. In recognition that the public release of some information may not always be appropriate (for example, where advance notification of a proposal may offer an unfair commercial advantage or provide for regulatory gaming), the Government will continue to make decisions about the appropriate timing of public release of submissions, supporting analyses and reports on priority reform areas on a case by case basis.
6.9.4	*All Regulatory Impact Statements for both consultation and decision purposes and the Office of Best Practice Regulation advice on those Statements should be made publicly available.*	**Support in part** The Queensland Government supports open and transparent consultation and agrees that all RIS and associated OBPR advice should be made publicly available. However, as provided for in the RIS Guidelines, Government approval is required to publicly release RISs

#	OBPR RECOMMENDATION	QLD GOVERNMENT RESPONSE
		and the OBPR's advice on RISs. This recognises that the appropriate timing of the public release of RIS documents needs to be considered (for example, where advance notification of a proposal may offer an unfair commercial advantage or provide for regulatory gaming).

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APPENDIX C: GOVERNMENT-WIDE EFFORTS TO REDUCE REGULATORY BURDEN

Oversight

The Government has made substantial progress towards regulatory reform across a number of areas. The following information related to completed reforms or reforms underway is based on information supplied by the Department of Treasury and Trade. A number of the reforms relate to the priority reform recommendations made by the Authority in the Interim Report and repeated in Chapter 5. There are additional reforms under consideration that have not yet been made public.

Ministerial Responsibilities

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

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

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

Parliamentary Portfolio Committees

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

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

Specific Red Tape Reduction Policies and Mechanisms

RIS System

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

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

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

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

Six Month Action Plan

The Government released their initial Six Month Action Plan in July 2012. Included within the plan were 15 commitments to reduce specific areas of red tape within six months. The Government's Final Report on that Plan is available at:

http://www.thepremier.qld.gov.au/plans-and-progress/progress/6-months-report-july-dec-12.aspx

A second Six Month Action Plan was published in January 2013, and includes 29 red tape reduction commitments. The plan is available at:

www.thepremier.qld.gov.au/plans-and-progress/plans/6-months-jan-jun-13.

90 Day Red Tape Reduction Initiative

In May 2012, the Premier wrote to all Ministers requiring them to identify sources of red tape (including regulations, rules, procedures and forms) which could be repealed within 90 days. In response, agencies identified 148 specific red tape reduction initiatives, of which 99 have been implemented with the majority of the remainder on track to be delivered by early 2013.

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

3 for 1 Regulatory Offset Requirement

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

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

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

(b) the burden reduction must be equal to or greater than the burden to be imposed.

Cross-Jurisdictional Reform Activities

Harmonisation

Overarching Queensland Government principles have been established in relation to assessing Queensland's participation in inter-governmental agreements. The principles specify that participation in intergovernmental activities must result in a net benefit to Queensland that aligns to the Queensland Government's policy priorities and agenda. See:

http://www.premiers.qld.gov.au/publications/categories/guides/assets/principles-for-intergovernmental- activities.pdf.

COAG Seamless National Economy Reforms

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

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

Detailed information regarding the full suite of SNE reforms is available at:

http://www.coag.gov.au/a_seamless_national_economy

COAG Regulation and Competition Reform Agenda

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

(a) addressing duplicative and/or cumbersome environmental regulation;

(b) streamlining approval processes for major projects;

(c) rationalising carbon reduction and energy efficiency schemes;

(d) delivering energy market reforms to reduce costs;

(e) improved assessment processes for low risk/low impact developments; and

(f) best practice approaches to regulation.

COAG has established a new inter-jurisdictional Business Advisory Forum Taskforce (BAF) to progress the above reforms.

At its December 2012 meeting, COAG and the BAF signed the National Compact on Regulatory and Competition Reform. The Compact and details of the specific reform priorities are available at:

http://www.dpmc.gov.au/publications/baf/index.cfm

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

Sector-specific reforms, reviews and inquiries

Dam Safety Upgrade Guidelines

The dam safety framework was partially examined by the Flood Commission of Inquiry, and legislative provisions increasing dam safety have recently been enacted.

Government Procurement Regulations

The Department of Housing and Public Works is leading a review of State Procurement Policy.

Greentape Reduction

The Government's Greentape Reduction initiatives amended the *Environmental Protection Act 1994*, the *Sustainable Planning Act 2009* and other relevant Acts with a view to integrating, coordinating and streamlining regulatory requirements in addition to implementing risk based assessment principles in assessment processes for Environmentally Relevant Activities.

The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* reached assent on 14 August 2012.

Health Sector Legislation

The Department of Health is conducting a review of the Health (Drugs and Poisons) Regulation, which is the sole remaining topic of the *Health Act 1937*. The project is a review of the licensing, approval and authorities schemes and will result in a more streamlined and efficient scheme for regulating medicines, drugs, and poisons.

Reforms detailed in the Government's Six Month Action Plan (Jan – June 2013) include: Introduction of legislation in response to the recommendations of the Chesterman Inquiry to better respond and assess allegations of medical malpractice.

Housing Restrictions

A number of changes have been made, or are under consideration, to legislation and regulation affecting the housing industry:

(a) Amendments to the Six Star Standard provide flexibility in reaching the six-star rating. Additional flexibility is also included for sub floor insulation in subtropical and tropical climate zones to better reflect Queensland conditions.

(b) Removal of restrictions on rain water tanks and hot water systems were announced 14 December 2012. Legislative amendments took effect on 1 February 2013.

(c) Withdrawal from the COAG commitments to increase energy efficiency standards for multi-unit residential buildings from five star to six star announced on 6 October 2012.

(d) Amendments to the Queensland Development Code to remove the requirements to upgrade toilets, shower roses and tapware at the time of other renovations (i.e. when a building and plumbing approval is required) as the plumbing work required was made notifiable work.

(e) Swimming pool safety: A single pool safety standard replaced the previous 11 standards that applied depending on where and when the pool was constructed.

(f) Changes to the swimming pool safety laws to remove the need for a building approval for building works to certain pool fences

(g) Introduction of the notifiable work scheme from 1 November 2012 that removed the need for unnecessary plumbing approvals for a range of plumbing matters, resulting approved efficiencies for customers and building owners

(h) Removal of the Sustainability Declaration, which reduced the red tape associated with selling property in Queensland, took effect on 27 June 2012. Also the Government withdrew from the COAG commitment for a mandatory disclosure scheme for residential buildings.

(i) Agreed new State policy on bushfire standards that provides a clear delineation between building and planning requirements in bushfire prone areas and simplifies the approval process for new homes, saving homeowners time and money.

(j) Building over Infrastructure: Building Codes Queensland has reviewed the requirements for building to provide for a consistent and cost-effective way of building over or near service providers' infrastructure services - e.g. sewer, storm water and water main pipes and is progressing options for change and to provide an appeal mechanism to the Building and Development Committees.

(k) On 30 November 2012, the Transport, Housing and Local Government Parliamentary Committee released its findings and recommendations in regard to the inquiry into the operation and performance of the Queensland Building Services Authority. On 24 January 2013, the Minister for Housing and Public Works appointed a panel of experts to fully assess the recommendations. A preliminary response to the Committee's findings is expected to be tabled in Parliament by the end of February with a final report due by mid-year.

Land Sales and Property Development (Including Coastal Development)

(a) Significant reviews of key legislation, including the Sustainable Planning Act and Integrated Development Assessment System were undertaken in 2012.

(b) The *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012* commenced on 22 November 2012. Key features include:

(i) the establishment of a single state assessment and referral agency to commence early-2013;

(ii) giving the Planning and Environment Court general discretion to award costs;

(iii) improved efficiency of the Planning and Environment Court by enabling the Alternate Dispute Resolution registrar to hear and determine minor disputes;

(iv) removal of the structure and master planning provisions;

(v) removal of regulatory 'red tape' for development applications involving state resources (through changes to resource entitlements); and

(vi) greater flexibility for local government to accept development applications with appropriate supporting information so that the assessment process can commence in a more timely way.

(c) The Economic Development Act commenced on 1 February 2013. Key features include:

(i) replacing the Minister for Industrial Development Queensland (MIDQ) and the Urban Land Development Authority (ULDA) with the Minister Economic Development Queensland (MEDQ), a corporation sole, operating through a single commercialised business unit within the Department of State Development; and

(ii) amending the *State Development and Public Works Organisation Act 1971* to clarify and improve the powers of the Coordinator-General to fast-track projects, better reflect Government policies and priorities, streamline assessment and prevent proponents from misusing the intent of the Coordinator-General's statutory powers to promote their individual projects;

(d) A Single State Planning Policy is being developed. Consultation commenced 29 October 2012.

See: http://www.dsdip.qld.gov.au/statewide-planning/state-planning-policies.html

(e) The Draft Coastal Protection State Planning Regulatory Provision was announced and published in October 2012.

See: http://www.dsdip.qld.gov.au/resources/laws/state-planning-regulatory-provision/draft-coastal-protection-sprp.pdf

Liquor and Gaming Laws

The Government has appointed an expert panel to review the state's liquor and gaming laws to reduce red tape. The Government released a discussion paper on 15 February 2013 proposing a range of reforms aimed at reducing the regulatory burden on the industry while maintaining a high level of accountability.

The discussion paper is available at:

http://www.olgr.qld.gov.au/aboutUs/ourLawsAndPolicies/discussion-paper-red-tape-reduction.shtml

Local Government Regulation and Business Activities

As part of the Local Government and Other legislation Amendment Bill 2012, enacted on 22 November 2012, a range of amendments to the *Local Government Act 2009* and the *City of Brisbane Act 2010* commenced in November and December 2012 following an extensive review of the legislation in consultation with key stakeholders. These amendments achieved significant red-tape reductions and will provide Queensland local governments with more autonomy and authority in their local government area and greater capacity to make decisions in the public interest.

Complementary changes to the local government regulations were also made, in order to ease the burden on local government and assist in generating further red-tape reductions. Six pieces of subordinate legislation were reduced to two: the new *Local Government Regulation 2012* and the new *City of Brisbane Regulation 2012*, which commenced on 14 December 2012. Key features of the new legislation included simplifying the local law making process.

Occupational Health and Safety and Workers Compensation

(a) National model Work Health and Safety Act and Regulations are being implemented in Queensland – DJAG is currently reviewing potential impacts on Queensland business (particularly small business).

(b) Queensland Parliament's Finance and Administration Committee is currently reviewing Workers' Compensation Scheme – due to report 23 May 2013.

Pharmacy ownership Legislation and Regulation

The Department of Health is conducting a review of the Health (Drugs and Poisons) Regulation, which is the sole remaining topic of the *Health Act 1937*. The project is a review of the licensing, approval and authorities schemes and will result in a more streamlined and efficient scheme for regulating medicines, drugs, and poisons.

Property Agents and Motor Dealers Act 2000 (PAMDA)

The Government has released draft legislation to split the PAMDA legislation into occupation-specific acts, reduce regulatory burden for businesses licensed under PAMDA and to consolidate license categories.

Property Sales

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

Tourism sector reforms (Including reforms related to national parks, Wild Rivers and similar)

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

(a) reducing permits requirements for accessing national parks;

(b) reducing and fast tracking approval processes;

(c) review legislation associated with liquor licensing, gaming, trading hours, noise restrictions and state imposed event costs; and

(d) review of land use, planning, tenure and approval processes for land use adjacent to ecotourism operations.

The *Nature Conservation and Other legislation Amendment Bill 2012*, to improve access for ecotourism in national parks, was introduced into parliament on 13 November 2012. Final regulatory amendments, delivering 50% permit class reductions, was considered by Governor in Council on 13 December 2012. A range of reforms are being implemented, including:

(a) tourism in protected areas (TIPA) review by DNPRSR – simplifying operator permit/agreement processes;

(b) reduction in number of permits required by eco-tourism operators;

(c) Stage 1 reforms to the Nature Conservation Act to attract private investment; and

(d) enhance security of tenure with lease terms of up to 30 years to be made available, with options to renew for a further 30 years subject to meeting strict performance criteria.

Water Efficiency Management Plans

Bulk water entity merger legislation, passed by Parliament on 29 November 2012 removed requirement for Water Efficiency Management Plans in South East Queensland.

Water sensitive urban design requirements

Relevant matters, related to State Planning Policy 4/10 Healthy Waters, are expected to be fully addressed through the Government's consideration and development of a single State Planning Policy.

Parliamentary Inquiries

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

(a) *Inquiry into Queensland Agriculture and Resource Industries* – Report to Parliament presented on 30 November 2012.

(b) *Operation of Queensland Workers' Compensation Scheme* - report to Parliament due 23 May 2013.

(c) *Review of the Retirement Villages Act 1999* - report to Parliament presented on 30 November 2012.

(d) *Inquiry into the Operation and Performance of the Queensland Building Services Authority* - report to Parliament presented 30 November 2012.

(e) *Inquiry into the Motorcycle Licensing Process in Queensland* - report to Parliament presented in October 2012.

Queensland Competition Authority reviews

The Treasurer and Minister for Trade and Attorney-General and Minister for Justice are empowered under legislation to instruct the Authority (incorporating the OBPR) to review, investigate and report on regulation and policies that impose regulatory burdens on business, government and the community. This Final Report concludes the investigation of a framework for reducing the burden of regulation in Queensland.

Other Completed Reviews:

(a) Investigating and reporting on requirements for water tanks and other water saving devices that apply to houses and new commercial and industrial buildings;

(b) Review of National Rail Safety Regulation and Investigation Reform; and

(c) Review of National Reform on Commercial Vessel Safety.

APPENDIX D: PUBLIC SUBMISSIONS

Submissions are available on the Authority's public website at http://www.qca.org.au/OBPR/rbr/.

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

APPENDIX E: AGGREGATE MEASURES OF REGULATORY BURDEN

This appendix provides an overview of empirical estimates of economic costs associated with regulatory burden in Australia and overseas.

Background

Economic costs of regulation can be separated into two kinds: direct and indirect. Direct costs are costs incurred by parties in administering or complying with a regulation. In measures of the regulatory burden, these direct costs largely relate to the value of time spent in compliance and administration. Indirect costs in effect reflect the value of activity that is precluded by the regulatory restrictions. For example, the number of procedures required by regulation to start up a business may constitute a substantial barrier to entry. This in turn may reduce competition and economic activity in the sector compared to the absence of the regulation. The net value of that lost activity is an economic cost.

The SCM methodology commonly used to estimate compliance burdens focuses only on the "administrative burdens" caused by regulation. Administrative burdens are defined as costs incurred by a firm in complying with information obligations required by a government regulation (SCMN 2005). Many studies in Europe used this approach to estimate the administrative burdens on private businesses driven by the EU and central (federal) government regulation.

The Australian Commonwealth Government encourages the use of the BCC in measuring the compliance costs on business. The BCC adopts a "broader" definition of regulatory burden cost relative to the SCM by taking account of costs beyond those purely related to information obligations. As an illustration, the cost of training and notifying staff regarding a new legislation would be recorded in the BCC but not the SCM accounting. However, similar to the SCM, the BCC does not assess the indirect effects of regulation.

Surveys of firms or individuals subject to regulation have also been used to estimate overall compliance costs.

International Estimates

The Netherlands and Denmark Governments made an explicit commitment to a 25% reduction in administrative burden in the 2000s (OECD 2010b, 2010c).

For the Netherlands, approximately half of the burden could be attributed to EU regulations, while the remainder originated from national legislation. Based on use of the SCM, the burden estimate for 2002 was estimated at €16.4 billion (3.6% of GDP) (SCMN 2005). As of 1 March 2007, the aggregate administrative burden on businesses in the Netherlands was estimated to be €9.3 billion, which constituted 1.7% of the Netherlands GDP (SCMN n.d.). These estimates suggest a substantial fall in the Netherlands' administrative burdens, both in absolute and percentage terms.

Using the SCM, the administrative burden in Denmark was estimated to be €3.6 billion (1.9% of GDP) in 2008, a considerable decline from €4.2 billion (2.3% of GDP) in 2001 (OECD 2010c).

While both countries adopted the SCM approach, the Netherlands estimates included administrative burden incurred by publicly owned companies (national companies) as well as private businesses, while the results for Denmark only captured administrative burdens on the latter (SCMN 2005).

In 2005, the 'Administrative Burden Reduction Program' was launched in the UK with a primary aim of reducing regulatory compliance costs. Central government departments agreed to reduce administrative burdens on businesses by 25% of by 2010 (UK BIS 2010). An SCM exercise carried out for benchmarking purposes found that the administrative burdens on private businesses and

voluntary organisations amounted to £13.1 billion. This estimate did not include compliance costs for the financial sector or the tax administrative burdens on businesses. Two additional SCM studies were conducted and revealed a £6 billion burden, in which £5.1 billion arose from the UK tax system (Real Assurance Risk Management 2006a, 2006b, KPMG 2006). The aggregate UK administrative burden was approximately £20 billion in 2005 (1.6% of GDP) (OECD 2010d).

The French Government is also committed to reducing administrative burdens. Using a modified SCM methodology, it was estimated that the total annual administrative cost for businesses was approximately €60 billion in 2006-2008 (3.1% of the 2007 GDP) (OECD 2010f)[4]. According to Riedal (2009), the SCM approach applied in France incorporates the information costs to the private sector as well as central government departments. The latter was not covered in the SCM estimates presented previously. The estimate also took account of costs arising from administrative delays i.e. the financial costs and income loss due to the time waiting for a mandatory decision by the government before undertaking their intended operation. This would partly explain why France had a higher administrative burden estimate relative to other EU countries.

The Belgian Federal Government has used a bi-annual survey by the Federal Planning Bureau to estimate the administrative burden on businesses since 2000. The survey results show that regulatory burden costs as a percentage of GDP fell from 3.5% in 2000 to 1.7% in 2010 (OECD 2010e). The survey covers three main regulatory areas: environmental, employment and tax legislation (Janssen et al. 2004). According to Janssen et al. (2004), the survey involves businesses identifying expenses related to regulation, providing monetary estimates of administrative burdens and also their views of business legislation.

According to the Canadian Federation of Independent Business (CFIB) (2013), the estimated total cost of regulation for Canadian businesses was CAD $30.9 billion (1.7% of GDP). This estimate was based on a survey of around 8000 small-medium business owners in 2012 and the survey results were extrapolated to estimate the regulatory burden for all private firms. The definition of the cost of regulation used by the CFIB covers a broader range of compliance costs relative to those considered in the basic SCM approach. Specifically, CFIB includes the administrative burdens, the cost of administrative delay (similar to the French approach), as well as professional fees and purchase of equipment incurred by businesses in ensuring regulatory compliance. In addition, the CFIB study took account of the cost of regulation driven by regulation from all levels of government, i.e. federal, state and local.

Applying the same methodology, the CFIB conducted a survey in the US and found that the cost of regulation in the US was $198 billion (1.3% of GDP) (CFIB 2013)[5]. This survey of 1500 US small-medium businesses was commissioned by the CFIB with the intention of deriving a US estimate for comparison purposes. It should also be noted that the CFIB surveys did not involve publicly listed companies, which are subject to more government legislation. Hence, the CFIB estimates were considered conservative.

[4] This assumes that the French GDP in 2007 was €1895 billion.
[5] This assumes that the US GDP in 2012 was $US 15 trillion.

Table E.1: Regulatory Burden Cost Estimates (International)

Country and Source	*Reference Year*	*% of GDP*
Netherlands (SCMN n.d.)	2007	1.7
Denmark (OECD 2010c)	2008	1.9
United Kingdom (OECD 2010d)	2005	1.6
France (OECD 2010f)	2006-2008	3.1
Belgium (OECD 2010e)	2010	1.7
Canada (CFIB 2013)	2012	1.7
United States (CFIB 2013)	2012	1.3

Australian Estimates

Lattimore et al. (1998) estimated that the total regulatory paperwork burden on Australian businesses, excluding non-profit organisations, was approximately $10.8 billion in 1994-95 (2.3% of GDP). This estimate took account of those compliance burdens associated with federal as well as state level taxes and regulation. It was largely based on a study by Evans et al. (1997), which indicated that the aggregate federal tax compliance burden was close to $9 billion. According to the Productivity Commission (2006), the costs of managers and staff time, costs of external advisers and incidental costs such as specific travel, stationery, postage and computer use were also included in this measure.

A study by the OECD (2001) estimated that the total administrative compliance cost for Australian small-medium enterprises (SMEs) in 1998 to be around 2.9% of GDP. It was suggested that Australian SMEs spent $8.5 billion on external "regulatory-oriented services" such as hiring lawyers and accountants to assist with regulatory compliance. This is a survey-based study, focussing on the burden arising from taxation, employment and environmental regulations from all levels of government[6]. Questions that were asked included hours spent complying with regulations, the cost of obtaining external assistance, costs induced by information obligations and etc. Survey results were then extrapolated to obtain estimates of total compliance burden for SMEs in each country surveyed (PC 2006)[7].

Table E.2: Regulatory Burden Cost Estimates (Australia)

Study	*Reference Year*	*% of GDP*
Lattimore et al. (1998)	1994-1995	2.3
OECD (2001) for SMEs	1998	2.9

Attempts have been made to estimate the regulatory burden in Australia at the state level. The Victorian Department of Treasury and Finance (DTF 2007) estimated their state's total administrative burden in 2006 to be $2.33 billion (1% of GSP) (including both Commonwealth and state regulation). This DTF estimate was based on the SCM estimate for UK in 2005, which suggested that

[6] The farming and mining sectors were not included in the study.
[7] For purposes of measuring regulatory burdens in Queensland, tax compliance costs will mainly relate to compliance with Commonwealth legislation.

administrative burdens were 1.6% of the UK GDP. Note that the UK estimate of 1.6% included the costs of providing information to the authority as well as third parties. Since the DTF did not consider third party information obligations as a burden, they arrived at their estimate of 1% after excluding such obligations from the UK estimate.

PricewaterhouseCoopers (PwC 2007) was commissioned by the Victorian Government to study the appropriateness of benchmarking Australian and Victorian administrative burdens with the UK estimate. Using a mapping approach, PwC suggested that 44% of the administrative burdens were directly driven by the state regulation. This effectively implies that administrative burdens induced by Victorian Government regulation were $1.03 billion (0.44% of GSP) in 2006.

PwC did not conclude that Australia and the UK might share a similar total administrative burden expressed as a percentage of GDP. Hence, it is unclear whether the 1% estimate used by the DTF in 2006 accurately reflected the true regulatory environment in Victoria and Australia. The DTF has since replaced the Victorian SCM methodology with the Regulatory Change Measurement tool (RCM) in measuring reductions in regulatory burdens. The RCM methodology incorporates the administrative costs, substantive compliance costs as well as delay costs (DTF 2010).

More recently, the regulatory burdens associated with state regulation were estimated to be approximately $3.7 billion (0.91% of GSP) and $2.8 billion (0.96% of GSP) in New South Wales and Victoria respectively (New South Wales Government 2012a, Victorian Government 2012a). While derivations of these estimates are not publicly available, it is assumed that the burdens in this specific context include a broader range of regulatory compliance costs relative to administrative burdens in the SCM approach. This would explain the substantial difference in estimates (0.44% in 2006 vs. 0.96% in 2012) for Victoria. Based on these estimates the Authority suggested in the Issues Paper that the total burden of state regulation in Queensland is approximately 1% of GSP or $2.5 billion (QCA 2012d, p. 30). See Table E.3.

Table E.3: Regulatory Burden Cost Estimates (Australian state level)

	NSW	***Victoria***	***Queensland***
1. Per cent reduction (%)	20[a]	25[b]	20[c]
2. Reduction in dollars ($ million)	750[d]	715[e]	*500*
3. Total burden ($ million)	*3,750*	*2,860*	*2,511*
4. Gross State Product ($ million)	410,774[f]	298,123[f]	251,144[f]
5. Burden as % of GSP	*0.91*	*0.96*	*1.00*

a NSW Government (2012a)
b Victorian Government (2012a)
c Queensland Government (2012)
d NSW Government (2012a)
e Victorian Government (2012a)
f Australian Bureau of Statistics (2012), GSP for FY 2010

Summary and Conclusion

In the Issues Paper, the Authority suggested that the total burden of state regulation in Queensland is approximately $2.5 billion or 1% of GSP. This figure was arrived at by extrapolating recent measures of total regulatory burden for New South Wales and Victoria.

Estimates of administrative burdens on businesses in Australia and other OECD countries surveyed here range between 1% to 3% of GDP. These estimates are not always strictly comparable with the lower part of the range relating largely to certain administrative costs and the upper estimates including various other compliance costs. In addition the upper part of the range often covers national as well as state and local regulation. However, all estimates presented above do not include indirect costs from restricting economic activity, which can be substantial. Moreover, some estimates, particularly those associated with countries in Europe, were made after regulatory reforms had been undertaken. Finally, as noted in section 1.3, there is also a perception that businesses in Queensland have been subject to more regulation and a higher rate of growth in regulation than other Australian jurisdictions.

Therefore, it is reasonable to conclude that a conservative estimate of the regulatory burden from Queensland regulation of around 1% of GSP is appropriate. Including the cost of Commonwealth regulation would increase the estimated burden in Queensland to greater than 2%.

These estimates relate to direct costs only and not the value of lost opportunities arising from restrictions.

APPENDIX F: WHOLE-OF-GOVERNMENT REGULATORY MANAGEMENT SYSTEM

Introduction

A regulatory management system comprises the institutional roles, management processes, and accountability and evaluation mechanisms relating to regulation. It encompasses the management arrangements of both new regulation and existing regulation.

The Authority's *Issues Paper - Measuring and Reducing the Burden of Regulation and Interim Report - Measuring and Reducing the Burden of Regulation* proposed the implementation of a whole-of-government regulatory management system. The Authority's reports describe in detail the characteristics and principles of such a system. A whole-of-government regulatory management system should:

(a) provide clarity of **objectives** and **roles**;

(b) provide effective **incentives** to reduce the regulatory burden;

(c) contain sufficient **capability** to improve regulation;

(d) use **consultation** as an integral part of the regulatory process; and

(e) have a wide **coverage** of regulation, subordinate regulation and codes.

This paper builds on the recommendations in the Interim Report. It proposes a possible implementation of a regulatory management system in Queensland. In doing so, the paper describes a body of existing roles and mechanisms within the broader context of a regulatory management system. Some new roles and mechanisms are also proposed.

Objective

The overall regulatory objective should be to achieve a net public benefit defined to take account of economic, environmental and social variables, leading to sustained improvements in the overall welfare of the Queensland community. There should not be a presumption that any particular regulatory goal is absolute, it is the overall public benefit that is important. The recognition of public interest means that, for example, financial considerations do not necessarily outweigh environmental considerations and that the converse also applies.

It is the overall public benefit that counts for testing whether a regulation or other government intervention is justified[8].

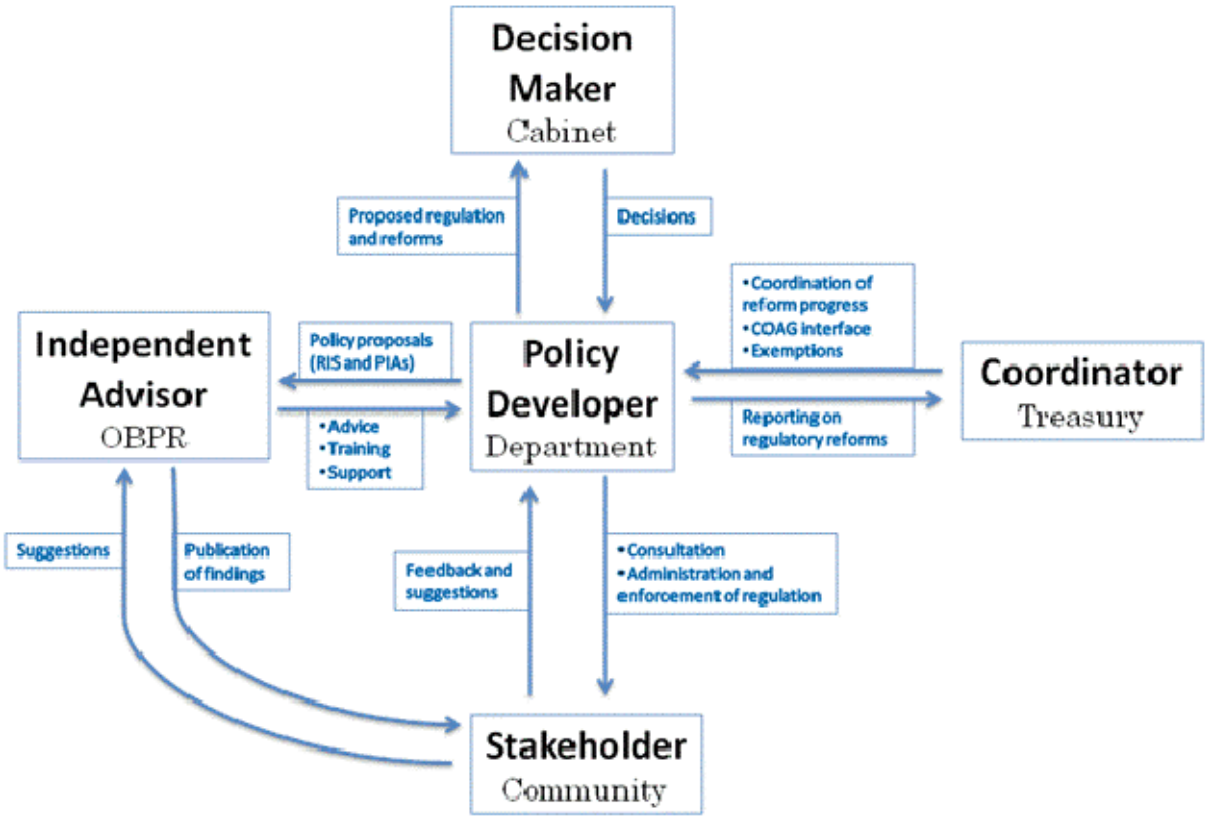
A whole-of-government regulatory management system is a collection of roles and mechanisms that facilitate the public benefit objective.

Roles

The Authority's recommended specification of roles is shown in Figure F.1.

[8] The objective of 'public interest' aligns broadly with that proposed by VCEC ('net benefit', 2011) and COAG ('improving the wellbeing of all Australians', 2013).

Figure F.1: Regulatory Roles



Treasurer

Given his direct responsibility for the OBPR, the Treasurer (in association with the Assistant Minister for Finance, Administration and Regulatory Reform) is the Minister responsible for regulatory reform in Queensland.

The Authority proposes that the Treasurer, as assisted by the Treasury and Trade Department, is responsible for:

(a) the high-level regulatory policy framework;

(b) granting exemptions from the RIS System;

(c) coordination of regulatory reviews; and

(d) setting reform priorities and targets at a whole-of-government level, subject to Cabinet approval.

This is consistent with current arrangements.

Regulatory Policy Framework

The Treasurer is responsible for setting the policies that guide the development of regulation. This role includes: the maintenance of policy tools such the RIS Guidelines, the specification of policies and processes regarding exemptions from the RIS System and policies regarding sunsetting reviews. This role concerns the development of policy ***about*** regulation, as distinct from the development of regulation itself.

The Authority recommends that this role includes periodic reviews of policy documents such as the RIS Guidelines. However, the Authority needs to have the opportunity to advise on amendments to the RIS Guidelines to ensure they are effective as possible.

Exemptions

As described in the RIS Guidelines[9], the Treasurer has the discretion to exempt regulatory proposals with significant impacts from the RIS system. When granted an exemption, the regulation is subject to a Post Implementation Review which commences two years after enactment (see below). The Authority considers that this role is currently well developed in the Treasury and Trade Department and believes that exemptions should continue to be granted only in exceptional circumstances.

Coordination of Regulatory Reviews

The Authority considers that the development and review of regulation in a particular policy area may have implications for other policy areas. A possible example is the development of a requirement for businesses to provide information to one government department that is already being provided to another department under separate legislation. The purpose of a coordination role is therefore to ensure that regulatory development is in the public interest at a Queensland-wide level, rather than being considered in isolation from the surrounding regulatory environment.

The Authority therefore considers that there is a need for a coordination role of regulatory changes. To inform this role, the Authority recommends the use of a Regulatory Reform Statement (see below). The coordination role ensures that Departments are reforming regulation in a cohesive manner. Legislation that is cross-referencing, mutually dependent, or simply addressing similar issues should be considered jointly when reforming regulation. The coordination role is required to prevent inconsistency or unintended consequences of regulatory reform.

The Authority considers that the coordination role should be performed by the Treasurer through the Treasury and Trade Department. The Authority understands that responding to the COAG reform priorities requires regulatory coordination with other Ministers and Departments, a task that is already being performed by the Treasury and Trade Department.

Reform Priorities

The Authority's Interim Report recommends some immediate and medium term priority areas for regulatory reform. This high level, government-wide prioritisation is intended to complement a prioritisation process to be undertaken by each Department to meet its target for reducing the burden of regulation (see below). The Authority considers that the Treasurer is ideally placed to respond to the Authority's priority recommendations and set the priorities for regulatory reform from a whole-of-government level.

Ministers

Ministers and their Departments are primarily responsible for the design and implementation of regulation that relates to their portfolio responsibilities. Departments are the lead agency in regulatory development, regulatory administration and regulatory review, and play a critical role in ensuring the design and implementation of effective regulation. However, they have portfolio objectives which do not always correspond with a whole-of-government perspective or objective. This is why there is a need for a coordinating Department and a Minister with overall responsibility for regulatory matters.

[9] See http://www.qca.org.au/files/OBPR-Guidelines-RIS-0712.pdf

Regulatory Development

Departments are responsible for the development of regulation. The Authority considers that effective regulation is developed in response to an identified problem, and it is Ministers and their Departments that are best placed to identify problems which may require regulatory intervention in consultation with stakeholders.

Furthermore, Departments, with their specialised expertise, are best placed to develop options for addressing problems. If regulation is the preferred option, Departments are expected to have the expertise to demonstrate that the costs of regulation, when considered broadly, are outweighed by the benefits.

Departments are also primarily responsible for implementation of regulation, including the drafting of legislation.

Regulatory Reform

Departments are ultimately responsible for regulatory reform. OBPR will recommend regulatory restrictions targets for each Department to achieve the Government's goal of a net 20% reduction in the burden of regulation. Furthermore, OBPR can provide advice regarding prioritisation and reforms, and the Treasury and Trade Department can assist in the coordination of regulatory reform. However, ultimately it is Departments that are responsible for policy development and the proposed changes to legislation necessary to reduce the regulatory burden. Each Department will be responsible for meeting its regulatory restrictions target.

Regulatory Administration

Departments and their various agencies are also primarily responsible for the administration and enforcement of existing regulation. This essential role provides Departments with information and access to stakeholders that can be used to inform regulatory proposals.

OBPR

OBPR will perform an independent advisory role. This includes quality assurance and advice on regulatory proposals issued by the Departments. OBPR is required to assess the adequacy of all RISs to ensure they are consistent with Queensland Treasury's RIS Guidelines. OBPR will also assist with identifying targets and priorities for regulatory reform where required by Ministerial Direction or requested by Departments. The work undertaken by OBPR will be undertaken recognising its independent capacity and will be published on its website where appropriate.

Mechanisms

A summary of the Authority's recommended mechanisms, including targets and reports targets, in relation to each entity's role is show in Table F.1.

Table F.1: Regulatory Mechanisms

Objective	*Mechanisms to achieve the Objective*	
	New and Sunsetting Regulation	***Existing Regulation***
Accountability	The RIS System	Regulatory restrictions count
	Publication of OBPR advice regarding appropriateness of RIS	Publication of Departmental responsibility for legislation
		Reporting to Treasury and OBPR on reform progress
Incentives	Onus of Proof	***20%*** Red tape reduction targets
	Red tape ***Net*** reduction targets	Annual reporting of progress against targets
Capability	Regulatory Principles	OBPR identified priorities
	OBPR training	OBPR guidance to assist departments to prioritise reforms
	RIS Guidelines	Treasury coordination of regulatory reform
	Regulatory Reform Champions	
Consultation	Consultation RIS	OBPR's Interim Report on reducing the burden of regulation
	Register of Representative Bodies	Permanent red tape complaints forum
	Existing Departmental interactions with stakeholders	Existing Departmental interactions with stakeholders

The majority of the mechanisms listed in Table F.1 are already being employed by the relevant entities, or have been described in some detail in the Authority's Interim Report. The following sections describe how the mechanisms combine to meet the objectives of a Regulatory Management System.

Accountability

The regulatory reform process depends on Departments and Directors-General being accountable for the task of reducing the burden of regulation. Departments should have clarity in relation to which regulation they manage, the regulatory burden of each piece of regulation and the process required to reduce or reform existing regulation and introduce new regulation.

Regulatory Burden Base-Line

It is necessary to have a credible starting point for a regulatory reduction programme. To achieve this, a baseline count of restrictions will be completed for the regulation maintained by each Department. This count will measure, for each piece of regulation, the number of restrictions that it imposed on business, community and government as at 23 March 2012[10].

[10] The eve of the 2012 Queensland State election.

Separate guidelines have been developed that explain how to count regulatory restrictions. The initial count will be undertaken by consultants under the supervision of OBPR.

This will allow the baseline to be impartial and consistently measured across Departments. To ensure accountability, Directors-General would then be required to confirm the accuracy of the restrictions count for each piece of regulation under their jurisdiction.

The restrictions count will be complemented by a count of the pages of regulation and an estimate of the overall economic cost of regulation in Queensland. In combination, these estimates provide a suite of measures of the burden of regulation on Queensland. The Authority recommends that the regulatory restrictions count is the primary measure, to be used in setting targets for reducing the burden of regulation (see below).

The RIS System[11]

The RIS System holds agencies accountable for ensuring that new regulation, or regulation subject to amendment, is in the public interest. The Authority does not propose major changes to the RIS System but would like the opportunity to make suggested amendments to the RIS Guidelines.

The RIS system has been developed by Treasury to meet the Queensland Government's policy objectives to improve regulation. The key objectives of the RIS system are to:

(a) improve the quality and standard of regulatory proposals provided to Cabinet and decision-makers, and those developing, assessing and maintaining regulation in accordance with regulatory best practice principles;

(b) ensure there is thorough assessment of need for regulation; and

(c) where regulation is proven necessary, ensure it is designed to minimise compliance and administrative costs for business, community and government, and maximise the benefits to the Queensland economy.

The key steps in the RIS System include:

(a) **Determining that regulation is necessary** - It is important to establish that a problem requiring the introduction of regulation exists. Evidence of the source, nature and scale of the problem, and its impacts, need to be clearly articulated. If regulation remains a potential option to address the problem then application of the RIS system is triggered.

(b) **Preparing a Regulatory Principles Checklist** - The Regulatory Principles Checklist (RPC) is designed to aid agencies in assessing the need for regulation and, where there is a need, to show that the regulatory best practice principles have been considered in the development of the proposal. The RPC is progressively completed as a regulatory proposal is developed under the RIS system. All sections of the RPC must be completed and explanations provided for areas of non-compliance. For regulation excluded from the RIS system, only the case for action and the exclusion sections of the RPC need to be completed.

(c) **Determining whether the regulation is excluded from the RIS system** - While the RIS system has been designed to apply to all regulation, there are circumstances where applying the RIS system to certain regulatory proposals would produce a negligible outcome. Accordingly, provisions exist to exempt certain regulatory proposals from the RIS system. Where an agency has identified that a regulation aligns with an excluded category, it must submit a RPC, with the justification for the exclusion to OBPR to assess whether the regulation falls within the excluded category.

[11] The RIS System is described in detail at: http://www.qca.org.au/OBPR/ris/

(d) **Preliminary Impact Assessment** – A Preliminary Impact Assessment (PIA) is completed for all regulatory proposals, except those excluded from the RIS system A PIA requires a brief assessment of the potential economic (including competition), social, environmental and compliance cost impacts of the proposal on business, community and government. Only if the assessment of the impacts is considered to be significant will the agency be required to prepare a Consultation RIS.

(e) **Seeking a Treasurer's exemption from preparing a RIS** - The Treasurer has the discretion to exempt a regulatory proposal, based on urgency or fairness considerations. All proposals that receive the Treasurer's exemption are subject to a Post-Implementation Review (see below). An application must be made in writing to the Treasurer by the relevant Minister stating the reason and argument for seeking an exemption together with a completed PIA and RPC. Treasury has advised that each application will be assessed on its merits.

(f) **Consultation RIS** – Where the regulatory proposal has been assessed as having a significant impact under the PIA and is not otherwise excluded from the RIS system, the agency must prepare a Consultation RIS for the regulatory proposal. The preparation of a Consultation RIS requires a series of actions by the agency, the OBPR and the relevant Decision-maker that follow the policy development process prescribed in the RIS Guidelines and where required, the Cabinet Handbook. Agencies are required to submit their RIS to OBPR to assess its adequacy with the requirements of the RIS Guidelines. OBPR will publish the Consultation RIS and the Letter of Adequacy once the Consultation RIS has received Cabinet approval to go out to consultation.

(g) **Decision RIS** – Once the agency has conducted public consultation on the Consultation RIS, it must consider the content of all submissions received during that consultation process. The responses must be summarised in an addendum to the Consultation RIS as a key part of the transition towards a Decision RIS document. The agency is also required to articulate whether it has decided to change anything raised in during consultation. OBPR will assess the Decision RIS and provide a Letter of Adequacy reflecting the degree to which it meets the requirements of the RIS Guidelines. OBPR will publish the Decision RIS and its Letter of Adequacy, once Cabinet approval has been provided.

Publication of RIS documents

The Authority considers that the publication of the Consultation and Final RIS documents is essential for providing incentives for Departments to be effectively accountable for the quality of their regulatory proposals. It will also help to ensure that stakeholders have an opportunity to provide input into the process.

The Authority recommends that all RIS documents are published on the OBPR website, in addition to the Departmental website. This will help ensure transparency and effective accountability for regulatory proposals.

Publication of OBPR Assessments

The Authority recommends that its assessments of all RIS documents also be published. The publication of OBPR's assessments provides a powerful accountability mechanism, providing public knowledge regarding whether Departments are sufficiently justifying regulatory proposals.

The comments of the Authority on the final draft of the RIS, whether positive or negative, should also be included in any submission to Cabinet.

Sunset Reviews

A sunset review will take place at the end of the statutory limitation on each piece of legislation. Sunsetting regulation will be subject to the RIS System. This will follow a process similar to that for introducing new legislation, with the base case used for impact analysis being the case of legislation being allowed to expire.

Post-Implementation Reviews

Under the RIS system, the Treasurer may exempt a regulatory proposal with significant impacts from the requirement for a RIS in situations where:

(a) an immediate regulatory response is required; and/or

(b) notice of the proposal may render the rule ineffective or unfairly advantage or disadvantage any person likely to be affected by the regulation.

Regulation that is provided an exemption by the Treasurer will be subject to a Post-Implementation Review. This review is required to begin two years after the implementation of the regulation. The purpose of the Post-Implementation Review is to evaluate the effectiveness and efficiency of the regulation in addressing the policy objective for which it was introduced. Post-Implementation Reviews will follow the RIS System, with the base case used for impact analysis being no regulation, rather than the continuation of existing regulation.

Publication of Departmental Responsibility for Legislation

An important part of regulatory accountability is clarity regarding which Minister and Department are responsible for which regulation. This clarity is provided by the Administrative Arrangements Order[12] which allocates all primary legislation to Departments. Information regarding the allocation of subordinate legislation to primary legislation is available from the Office of the Queensland Parliamentary Counsel[13].

Regulatory Reform Statement

Accountability will be promoted by means of an overall Regulatory Reform Statement, to be prepared by each Department annually. The Regulatory Reform Statement is not meant to be a detailed plan that requires a significant additional resource effort on the part of Departments. It is meant to achieve two objectives:

(a) inform OBPR annual reporting of Departments' progress against regulatory restrictions targets over the previous 12 months; and

(b) inform the Treasury and Trade Department's coordination of regulatory reforms over the coming 12 months.

The Regulatory Reform Statement will contain:

(a) a ledger of regulatory reforms achieved over the preceding 12 months, listed by regulatory instrument, section, and the corresponding reduction or increase in regulatory restrictions and net dollar cost reduction in the regulatory burden where this can be reasonably estimated;

(b) a timetable of internal reviews of regulation over the coming three years;

[12] See: http://www.qld.gov.au/about/how-government-works/structure-changes/
[13] See: http://www.legislation.qld.gov.au/OQPChome.htm

(c) an intended program of cabinet decisions regarding regulatory reform, including details of the legislation or regulatory instruments in question, over the coming 12 months; and

(d) a list of stakeholder organisations that the department has committed to consult with over the coming 12 months.

The Regulatory Reform Statement should be sent to the OBPR and the Treasury and Trade Department and published on the OBPR website. The Authority recommends that Regulatory Reform Statements are also provided to Cabinet for consideration. It is intended that the Regulatory Reform Statement complements the existing cabinet submission process.

Incentives

A fundamental issue to be addressed is a culture within government that, for many stakeholders, encourages regulation as the default solution to policy problems. It is imperative that the regulatory management system contain features to help ensure that policy and rule makers and those responsible for designing and administering regulation have appropriate incentives to ensure that regulation is in the public interest.

Onus of proof

The Authority proposes to change the onus of proof to require proponents of regulations to show that there is a clear net benefit from their adoption. At each stage of the process for either amending or introducing legislation, the proponent or sponsoring Department must be able to demonstrate that regulation is preferable to the non-regulated case in terms of the public interest. Importantly, this recommendation reduces the incentive to maintain the regulatory status quo.

The onus of proof should explicitly rest with the party proposing:

(a) new regulation;

(b) the continuation of existing regulation; or

(c) the extension of existing regulation.

Restrictions Target

As noted in the Interim Report, a 20% reduction in regulatory restrictions over six years is recommended on a government-wide basis. This measurable target will be the primary means of ensuring that the Departments have incentive to undertake regulatory simplification.

Once OBPR has determined the regulatory restrictions count for each Department, OBPR will propose reduction targets for each Department. The individual targets may vary across Departments reflecting the nature of regulation they are responsible for and the scope they have to reduce regulatory restrictions. However, there will still be a whole-of-government target of a net reduction of 20% in regulatory restrictions over six years from 23 March 2012. OBPR's recommended targets by Departments will be considered by Cabinet.

It is important to recognise that the 20% target is a ***net*** target. Any new regulation or regulatory restrictions will therefore require an offsetting reduction in existing regulations. As discussed in the Interim Report, this one-in, one-out style of rule is considered necessary to ensure an effective reduction in the burden of regulation. After six years the targets would be revisited to determine whether further reductions would be beneficial.

Annual Performance Reporting

As recommended in the Interim Report, OBPR will publish annually the status of Departments' progress against their regulatory restrictions target. The Authority expects that this will increase incentives to reduce burdensome regulation.

Capability

A regulatory management system requires sufficient resources to enable detailed consideration of policy alternatives.

Staff

Staff levels

The Authority considers that the allocation of sufficient staff resources to effective regulation is a matter for government. To this end, the Authority has not formed a view on what the required level of staff dedicated to effective regulation is, either within departments or across government. However, the Authority considers that insufficient staffing will likely result in sub-optimal regulatory outcomes.

Regulatory Reform Champions

The Authority recommends that each Department nominate one or more Regulatory Reform Champions. This would be a senior officer tasked with:

(a) coordinating the RIS System from the Department's point of view; and

(b) monitoring and reporting progress against the Departments' regulatory restrictions targets.

The Authority has not conducted an analysis of the resourcing requirements of a Regulatory Reform Champion in each Department. However, the Authority believes that there are many Departments where one or more officers are already performing this role, and the designation of a Regulatory Reform Champion would be merely formalising an existing working relationship. Regulatory Reform Champions were also in place for some time in the previous regulatory management system. Further, the Authority considers that the amount of effort required of a Regulatory Reform Champion will vary depending on the complexity of regulation managed by each Department. In some instances, a Regulatory Reform Champion could only require a minimal additional commitment that could be accommodated by existing staff resources.

RIS System

The Regulatory Reform Champion will ensure that quality assurance occurs in the RIS System at an early stage, so that significant re-design is not required at an advanced stage of the assessment process. Further, this position should be charged with the storage of previously completed RIS work, so that it can be revisited later if the legislation is amended.

It is intended that the Regulatory Reform Champion is the conduit for RIS material between the Department and outside entities such as OBPR. This role may not have explicit responsibility for drafting RIS material, but should have responsibility for confirming that a RIS is in a satisfactory state prior to it being sent to stakeholders.

While the identification of a Regulatory Reform Champion will facilitate interactions with outside stakeholders, it is primary an internally focussed position. The Regulatory Reform Champion would be on-hand to assist Department policy staff in the basic requirements of the RIS System and to solicit the assistance of OBPR where appropriate.

Regulatory Restrictions Targets

The Regulatory Reform Champion would also be responsible for monitoring and reporting on the Department's progress against restrictions targets. The Authority expects that this will involve:

(a) maintaining the Department's ledger of regulatory restrictions, initially provided by OBPR. The ledger will describe the number of regulatory restrictions by each section of each regulatory instrument. The ledger should be updated with any change to regulation which impacts on the number of regulatory restrictions; and

(b) providing an annual Regulatory Reform Statement to OBPR and the Treasury and Trade Department (see above).

Skills

Regulatory Principles

During development of regulation, policy staff should be cognisant of not just the policy problem in question, but of the overall principles that guide effective regulation. To this end, the Authority recommends use of the Productivity Commission's (2011) three broad goals against which regulation should be assessed:

(a) **Effective** regulation achieves the objective of the regulation.

(b) **Efficient** regulation does not impose any unnecessary distortions or burdens on the economy in achieving its objective. In other words, given a policy objective, the regulation is achieved at the least cost to society.

(c) **Appropriate** regulation addresses a real economic, environmental or social concern and actually delivers a net benefit to the community. A regulation may be effective and efficient but may not have an appropriate objective.

These simple regulatory principles, if adopted, would contribute to achieving the overall objective of regulation, which is the promotion of the public interest.

RIS Training

An effective regulatory management system requires policy staff with appropriate policy analysis skills. There is clearly a need for those who are involved in advising on regulatory options to have a good understanding of non-regulatory approaches for achieving policy objectives and the ability to undertake suitable cost benefit analysis. To achieve this, OBPR proposes to provide a permanent training program open to all policy officers in Government departments.

The Authority's proposed training focuses on several key areas of the RIS System. The training will acquaint policy officers with the stages of the RIS System and what satisfactory progress entails at each stage.

The Authority's proposed training will ensure policy officers are familiar with resources that explain the key features of the RIS System[14] and the RIS Guidelines[15].

[14] See: http://www.qca.org.au/files/OBPR-QCA-Report-Key%20FeaturesOfTheRISSystem-1012.pdf
[15] See: http://www.qca.org.au/files/OBPR-Guidelines-RIS-0712.pdf

Cost Benefit Analysis Training

The training will also involve an overview of how to perform cost benefit analysis on policy alternatives, so that the RIS documents transparently address the issue of economic efficiency and public benefit.

The cost benefit analysis training will cover the rationale for performing cost benefit analysis and the principal components of the analysis framework. It will teach policy officers how to identify impacts of a given policy on affected stakeholders and the state economy as a whole. In addition, training will emphasise the existence of other non-regulatory options. It will emphasise that the RIS system should only be triggered when it appears that regulation is the best option.

Guide to Identifying Regulatory Reform Priorities

While the Authority's Interim Report identified some regulatory reform priorities from a state-wide perspective, Departments will need to undertake a prioritisation process to decide which regulation should be reviewed in the process of meeting their 20% reduction targets.

The Authority recommends that Departments prioritise regulatory reforms in a similar manner to that undertaken in the Authority's Interim Report. That is, Departments should consider regulation by its category and apply a set of criteria to assess whether reform is likely to be of net benefit to the Queensland economy and community as a whole. Departments should prioritise those regulations that will provide the greatest net benefit, rather than those with the most restrictions.

Prioritisation by Category

As discussed in Chapter 4 in detail, OBPR has categorised all primary and subordinate legislation into the following broad classification categories (QCA 2012b)[16]:

(a) Economic regulation of infrastructure businesses or monopoly activity;

(b) Professional and business licensing regulation;

(c) Environmental, natural resource use and building regulation;

(d) Workplace and labour regulation;

(e) Health, safety, transport and consumer standards regulation;

(f) Regulation affecting the start up or efficient operation of a business or market;

(g) Justice and policing regulation;

(h) Social regulation; and

(i) Administration of government and parliament and taxation.

If possible, Departments should focus on legislation within criteria (a) to (f) in the first instance. The Authority considers that these categories of legislation are likely to have substantial impacts on the Queensland economy and are most readily subject to an assessment of their public benefit.

The Authority notes that some Departments, by nature of their legislative responsibilities, will primarily be responsible for legislation that falls under the categories (g) to (i). The Authority will

[16] A complete list of legislation by category can be found at: http://www.qca.org.au/files/OBPR-QCA-Report-QLDLegislationPageCountandClass-1112.pdf

take this into account when recommending regulatory restrictions targets (see above), but considers that Departments can still perform prioritisation by criteria.

Prioritisation by Criteria

The following questions may assist the Departments in applying the prioritisation criteria:

Criterion 1: Regulation that is clearly unnecessarily burdensome, complex, redundant or of questionable benefit.

(a) Can existing regulation be reduced by consolidation, simplification or streamlining?

Reductions in administrative burden can be made by consolidation of existing regulation. Improving the transparency, consistency, comprehensibility and accessibility of regulations, to improve processes and forms, and remove duplication (both within and across agencies) should result in reductions in regulatory burden. This is a process currently being investigated by the Department of Natural Resources and Mines who have published a "red-tape reduction toolkit" to assist their officers.

(b) Would the original problem that the regulation was meant to address still be a problem now in the absence of regulation?

If the answer is yes, then Departments should evaluate if there are alternatives to prescriptive regulation which can achieve the same results. These can include:

1. Self-assessable developments (not needing a permit or approval, but still adhering to relevant regulation);

2. Co-regulation (developed with industry, enforced by government);

3. Non-mandatory codes of practice (usually enforced by industry); and

4. Community Education and Awareness campaigns.

Criterion 2: Regulation where there is significant 'reach' in terms of interaction between business and the community and government agencies

(a) Does existing regulation impact on a significant number of businesses or a large portion of the community?

(b) Does existing regulation have a significant geographic reach?

Criterion 3: Regulation where there are potentially large net benefits from reform (including direct reduction in red tape and wider benefits for the community)

(a) Are there likely to be large net economic benefits from reform and can an indicative estimate be prepared?

(b) Would removal of regulatory restrictions allow greater employment, innovation, competition or productivity in affected industries?

(c) Are there large community or social benefits from reform and can they be broadly quantified?

The net economic benefit of reform is a vital criterion when prioritising reforms. While precise quantification of the net economic benefit of reform of each regulation will not be possible when prioritising reforms, Departments should prioritise regulation which restricts:

1. employment (such as professional accreditation requirements);
2. innovation (such as product specification requirements);
3. competition (such as business licensing requirements); or
4. productivity (such as onerous reporting requirements).

The objective of some regulation is to deliver social or community benefits which cannot be satisfactorily considered from an economic perspective. Regulation in categories (g) to (i) above is most likely to meet this description. In such instances, Departments should consider the potential benefits of reform from a social perspective. Departments should prioritise regulation that:

1. involves more than the minimum required intervention and administration to address the social objective;
2. intervenes in a manner disproportionate to the social objective to be addressed;
3. is inflexible in addressing a diverse social objective; or
4. is not transparent or consistent in addressing the social objective.

Regulation that has social objectives where it is difficult to establish the need for change should generally not be considered for prioritisation unless there is clear evidence of substantial burdens on business or the community.

Criterion 4: Regulation where the need is well understood and changes are likely to receive community acceptance

(a) Have stakeholders, industry or community raised concerns with the regulation?

Consultation with stakeholders will help identify regulation that meets criterion 4.

Criterion 5: Regulation that is outdated

(a) Was the regulation enacted more than 15 years ago?

(b) When was the regulation last reviewed?

(c) Has technology or industry structure changed?

(d) Have social or cultural values changed since regulation was designed?

Common causes of the obsolescence of regulation are technological developments or changes in industry or market structure. Older regulation, regulation that has not been recently reviewed, or regulation addressing industries or social objectives that are rapidly changing should be prioritised by Departments.

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

Data

In any regulatory process, it is assumed that Departments have access to data concerning their policy area, as without any data Departments would not be able to satisfactorily identify a policy problem and

how to best resolve it. For example, a regulation regarding public safety should be supported by data held by Departments regarding avoidable accidents or injuries. Data showing declining numbers of an endangered species could trigger a regulatory proposal regarding habitat protection, and so on.

It should be noted that the data which led to the original policy problem being identified should be included in a RIS or PIA. To successfully complete a RIS, Departments will need to apply their data to inform a cost-benefit analysis. To do so, Departments can also draw on the following data sources:

(a) Data regarding the Queensland economy may be necessary for cost-benefit analysis. This can generally be sourced from the Government Statistician[17], within the Treasury and Trade Department.

(b) OBPR can also assist in providing data, such as the appropriate discount rate, inflation rates and the time horizon to consider in cost-benefit analysis.

OBPR's role includes the provision of advice regarding data to Departments but not the collection of data that is specific to the issue under consideration. While the Authority considers that Departments should have the expertise required to identify data directly concerning the policy area in question, OBPR encourages Departments to consult with OBPR early regarding any data issues that fall outside their area of expertise.

Consultation

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

The Authority's proposed Regulatory Management System includes a number of embedded mechanisms for consultation.

Red Tape Complaints Forum

The Authority proposes a new mechanism for enabling consultation on reducing the burden of regulation: a permanent submissions address, incorporated in the OBPR, which would receive public submissions regarding suggested regulatory reforms.

Objective

The Authority's intention is to give the public a forum to raise issues of regulation, that are particularly troubling or burdensome, with an independent authority. The targeted audience would be the wider Queensland community, particularly those who are not readily represented by an industry association or peak body, or do not wish to raise complaints about regulation with the particular regulator in question.

The forum would not be an avenue for parties to seek OBPR's intervention in regulatory decisions or to seek OBPR to perform an ombudsman role.

Operation of the Forum

The Red Tape Complaints forum would include a website, email address and telephone number placed on the Authority's website. The Authority would receive all complaints of substance, and actively request suggestions for how regulation could be improved. In each instance of a complaint, the Authority would seek permission to publish the complaint on its website, and invite other community members to add to the original complainant's suggestions.

[17] See http://www.oesr.qld.gov.au/index.php

The Authority expects that Departments and Regulators have existing complaints and consultation processes and are frequently engaging with relevant stakeholders. The Authority does not propose to subsume these processes. It is considered that an independent organisation that receives proposals for regulatory reform relating to issues across the whole-of-government is complementary to the existing complaints and consultation processes. In particular, this would provide a suitable forum for:

(a) the public to make complaints without necessarily knowing which agency was responsible for the regulation in question;

(b) complaints about duplication of regulation, such as when a business or individual is required to provide the same information to two or more separate government agencies; and

(c) complaints about the cumulative burden of regulation, where a business or individual does not feel as though any individual form of regulation is particularly problematic, but that combined regulatory burden is excessive.

The Red Tape Complaints forum would not investigate proposals for regulation, but only for its removal. This one-sided approach is considered appropriate in the context of the Government's stated goal to reduce the burden of regulation. Proposals for regulation would be forwarded to the agency in question.

Responding to Complaints

Once the Authority had received a critical mass of complaints on a particular topic, the Authority would launch an investigation into the issue, in consultation with the relevant agency, and provide a recommendation to the Treasurer and Assistant Minister regarding whether regulatory reform is likely to be of benefit to the community. It is recommended that the Authority has the discretion to determine when the number and nature of complaints warranted detailed investigation and review.

Where the regulatory reform is likely to be significantly complex, or community stakeholders present conflicting views regarding the need for reform, the Authority recommends that the area of complaints be considered by OBPR for Targeted Consultation (see below).

Targeted Consultation

In addition to a permanent forum for complaints regarding red tape, OBPR recommends that the Forum be used to conduct targeted consultation with stakeholders in relation to priority areas for review. Relative to general complaints, it is recommended that the targeted consultation process is a more in-depth review of proposed reforms that are either complex or contentious.

Targeted consultation would proceed as follows:

(a) OBPR would publish a forward schedule of four priority areas identified for targeted consultation over the coming 12 month period;

(b) OBPR would invite comments on a priority area from individuals and businesses within a three month consultation window;

(c) OBPR would liaise with the responsible Department regarding the regulation in question; and

(d) on the basis of stakeholder comments and advice from the Department, OBPR would publish a reform proposal to be considered by Cabinet.

The Authority considers that a successful example of community consultation in such a forum is provided by the Red Tape Challenge website in the United Kingdom that has attracted over 29,000 comments since being launched in April 2011[18].

Public Awareness of the Forum

For the Red Tape Complaints forum to function, it requires a public profile. To achieve this it is intended to undertake information distribution with departments, industry associations, peak bodies and Members of Parliament to educate them of the forum. It is intended that complaints received by Members of Parliament, industry associations and peak bodies could be referred to the Red Tape Complaints forum if considered appropriate. The Authority recommends that a modest advertising campaign be undertaken across Queensland, ideally in conjunction with Ministerial Media Statements announcing the forum.

The Authority considers that the Red Tape Complaints Forum should also be referenced on the Government's Complaints Portal[19].

Access to Stakeholders

In general, Departments must have an understanding of who the key stakeholders are with regards to any proposed change in regulation. The Authority considers that the first step of any regulatory process (problem identification) cannot be satisfactorily achieved without some level of consultation with stakeholders who are directly affected. It is important that these stakeholders be consulted, but Departmental efforts to consult in the community must also consider other members of the community aside from those likely to be directly affected.

To this end, Departmental officers may make use of the OBPR's Register of Representative Bodies[20], which contains a list of stakeholder organisations and peak bodies. The Register may be used to identify groups within the community that may have an interest in proposed regulatory change but otherwise would not likely provide input into the RIS System.

Consultation RIS

The Authority recommends continuation of the requirement for agencies that are proposing regulation to consult with the public. As outlined in the RIS Guidelines, for all significant regulation, agencies are required to produce a RIS that documents the costs and benefits of the proposed regulation. The Authority considers this is an important mechanism to ensure consultation, and applies to:

(a) new regulation;

(b) amendments to existing regulation;

(c) sunsetting regulation; and

(d) exempt regulation (during a Post-Implementation Review).

Agencies' existing consultation and complaints processes

The Authority expects that Departments and Regulators have existing complaints and consultation processes and are frequently engaging with relevant stakeholders. This is likely to include detailed discussion with industry groups about how regulation is being implemented. As noted above, the

[18] See http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/
[19] See http://www.complaints.qld.gov.au/
[20] See http://www.treasury.qld.gov.au/office/knowledge/docs/register-representative-groups/

Authority does not propose to subsume these processes with the Red Tape Complaints forum, and considers that Departments and Regulators play a vital role in consultation.

Members of Parliament interaction with the community

As Parliamentary representatives, the Authority expects that Members of Parliament will have a number of interactions with their constituents regarding matter of regulatory burden. Members of Parliament may choose to refer constituents to the Authority's Red Tape Complaints forum in addition to undertaking their existing policy processes regarding community engagement

Coverage

Another issue is the coverage of regulation. As explained in the Issues Paper, the term "regulation" refers to both legislation and subordinate legislation and the scope for government entities to set conditions, standards or codes. To manage the regulatory burden across government as a whole, a whole-of-government regulatory management system must have as broad an application as possible.

OBPR's regulatory restrictions count, that sets the baseline from which Departments are to achieve their 20% reduction targets, is as broad as practicable. However, the Authority acknowledges that some forms of regulation or quasi-regulation will not be measured. This includes:

(a) federal Government and other jurisdictions' regulation, except to the extent it is mirrored by Queensland legislation;

(b) local government legislation, subordinate legislation, by-laws and codes; and

(c) voluntary industry codes of best practice, certifications or rating systems.

Federal Government and Other Jurisdictions' Regulation

The Authority has no jurisdiction over federal government legislation or legislation existing in other states and territories. These regulations are outside the scope of the regulatory management system. Any enquiries fielded by OBPR regarding federal regulation will be forwarded to the Commonwealth OBPR or relevant Department.

However, the Authority notes that a number of federally-led regulatory reform initiatives have resulted in standardised or model legislation that have been adopted in each State and Territory. The requirements of legislation from other jurisdictions that has effect in Queensland due to the enactment of Queensland legislation that refers to it will be included in the Authority's restrictions count.

Local Government

With regards to local government legislation, the Authority notes that it was included as a medium term priority for review in the Interim Review and can be a significant burden on economic activity and development. The Authority notes that the Government has proposed to consult with local government in late 2013 on a regulatory reform program.

As part of Government's consultation, the Authority recommends that the OBPR prepare a separate paper, in conjunction with the Department of Local Government, regarding local government red tape reduction. The Authority recommends that this paper address:

(a) methods for measuring the burden of local government regulation;

(b) targets for reducing the burden of local government regulation;

(c) identifying priorities and common sources of burdensome regulation in policy areas under local government jurisdiction;

(d) whether there is scope to improve the existing local government regulatory development processes;

(e) considering the need for and form of reporting by local governments regarding the regulatory burden; and

(f) recommending the appropriate level of justification that should be prepared by local governments when proposing regulation, such as whether a complete RIS and cost-benefit analysis be prepared, or a less onerous level of justification.

Voluntary Industry Codes

The Authority recommends that industry codes of practice are not subject to review by OBPR, and are not included as part of the government's regulatory management system. Although industry codes may represent some form of quasi-regulation, the Authority considers that voluntary codes[21] are unlikely to represent a large burden of regulation. Industry participants who adhere to such codes could choose to opt out if the costs of meeting the code's requirements outweigh the benefits.

Conclusion

To achieve regulation that is in the public interest, the Regulatory Management System proposed for Queensland incorporates various roles performed by government agencies and stakeholders, using a range of mechanisms and documents.

The majority of the roles and mechanisms proposed by the Regulatory Management System are already functioning and have been described here to highlight their importance to the broader System. Furthermore, a number of the recommendations of the OBPR's Interim Report (such as a regulatory restrictions count) serve a purpose in a whole-of-government Regulatory Management System.

However, the Authority has identified a number of features of a Regulatory Management System that do not currently exist, or were not a central part of the Authority's recommended approach to reducing the burden of regulation, as described in the Interim Report. These include:

(a) a formal regulatory coordination role for the Treasury and Trade Department, informed by the preparation of a Regulatory Reform Statement by each Department;

(b) the identification of one or more Regulatory Reform Champions for each Department;

(c) OBPR guidance to assist departments to prioritise reforms; and

(d) a permanent red tape complaints forum.

[21] The Authority notes that some industry-developed voluntary codes are later required by governments in legislation. For example, the mandatory Water Efficiency Labelling Scheme for appliances was adapted by the Commonwealth Government from previously voluntary industry-led ratings. Such requirements, where enforced by Queensland regulation, will be captured in the Authority's requirements count.

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