Principal authors:

Yi Ming Hu, Economist
Julie Toth, Chief Economist
THE AUSTRALIAN INDUSTRY GROUP

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Australian Industry Group

National CEO Survey

Burden of Government Regulation
Key messages

Burden of Government regulation

Australian businesses face regulatory burdens that are far too high. They are growing and, because our regulatory burdens are heavier than in other countries, they place us at a competitive disadvantage.

Ai Group’s research and consultations with Australian business indicate that the burden of government regulation has been rising for some time. It has become an increasingly prominent issue over the past two to three years, including in our own surveys and reports and in the annual World Economic Forum reports on global competitiveness, for which Ai Group is the official Australian research partner organisation.

Australian governments at all levels – federal, state and local – impose regulations on business activities and processes. The Productivity Commission recently estimated that there are about 130 national government regulatory agencies in Australia, with another 350 operating in state and territory jurisdictions and a further 560 within local councils.

Individually, government regulations can have a myriad of worthwhile objectives, such as the promotion of environmental, safety and health benefits. The business community supports and actively promotes many of these objectives. However, the aggregated burden for the businesses and other organisations that are subject to all of this regulation is significant - and is significantly higher than it needs to be.

We asked CEOs participating in our annual survey of business prospects this year about the level of burden they face across a range of key regulatory areas and agencies. The levels of estimated burden due to government regulation this year are far higher than we have seen in our comparable surveys in previous years. The results point to a clear need to lift efforts to reduce the regulatory burden for Australian businesses. This is particularly the case in the areas of industrial relations and occupational health and safety. Over 83% of CEOs surveyed said their businesses face a medium to high level of regulatory burden in these areas in 2014. Regulatory burdens associated with taxation are also ranked as medium to high by large proportions of businesses: 68% rank the compliance costs associated with state-based taxes and charges such as payroll tax as imposing a medium to high regulatory burden and 64% say they face a medium to high regulatory burden in relation to national taxes, including company tax and the GST. In the environment, waste and energy area, almost half (48%) of CEOs say these areas of regulation place a medium to high cost burden on their business.

The high and rising regulatory burden faced by Australian businesses requires a policy response from all levels of government that is immediate, effective and ambitious. The Federal Government’s commitment to reduce red tape and to repeal burdensome and unnecessary legislation – with a stated target of removing $1 billion worth of regulatory burden on business - is an important step in the right direction. So too are initiatives underway in the states such as the Victorian Government’s initiative in establishing a ‘red tape’ commissioner to help identify and take action on the priority areas for reform in that state. The Council of Australian Governments (COAG) is giving higher priority to reducing regulatory burdens. This Report is aimed at informing these initiatives and at underlining the importance of lightening the load on Australian businesses, so as to improve our global cost competitiveness and boost future innovation and productivity.

Innes Willox
Chief Executive
Australian Industry Group
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National CEO survey of regulatory burden 2014: key findings

In our annual CEO Survey of Business Prospects this year, we asked Australia’s CEOs’ about the expected regulatory burden or cost imposed by various regulatory areas or agencies in 2014. The results provide a timely update on the regulatory burden faced by Australian business since we published our last major study on this topic, CEO Survey of Business Regulation (Sept 2011).

This year’s survey indicates that Australian CEOs generally expect various government regulations to place a medium to high cost on their businesses in 2014 (Chart 1). In particular:

- The areas of industrial relations, employment, workcover and OH&S are expected to place the largest burden on businesses in 2014, with 83% of CEOs stating the associated regulatory cost burden in these areas is medium or high.
- Compliance with payroll and other state taxes (68%), as well as national company taxes and GST compliance (64%), is also assessed as placing a medium or high cost on business in 2014.
- Regulations on environment, waste and energy place a medium to high burden on almost half (48%) of businesses.
- Around one-third of respondents experience a medium to high burden from complying with laws on infrastructure, planning and natural resources (36%), transport, product and food safety (34%), as well as competition and fair trading (33%).
- Furthermore, ‘government regulatory burden’ was one of the top three growth impediments expected in 2014 for 11% of businesses, while another 11% nominated ‘flexibility of industrial relations’ as a key growth inhibitor for this year.

Chart 1: Expected degree of regulatory burden in 2014

Source: Ai Group, 2014.

Across the major industry sectors in 2014:

- Manufacturing businesses say they face a medium to high degree of regulatory burden from industrial relations and OH&S (85%), payroll and other state taxes (70%), national company taxes and GST (67%) and environment and energy (55%) related regulations in 2014.
- Among services businesses, industrial relations and OH&S (80%), payroll and state taxes (65%) and national company taxes and GST (58%) are the most likely areas to impose a medium to high burden.

1 For further details about the 2014 CEO Survey and its participants, see the Appendix to this Report.
• Construction sector CEOs say they experience a medium to high regulatory burden as a result of industrial relations and OH&S (95%), payroll and other state taxes (79%), as well as national company taxes & GST (74%).

• The top three areas of regulatory burden for mining services businesses in 2014 include industrial relations and OH&S (69%), payroll and state taxes (62%) and national taxes (62%).

When examined by company size, industrial relations and OH&S is nominated as the single largest area of regulatory burden by both large (100 employees or more) and small and medium-sized businesses (less than 100 employees). More small and medium-sized businesses (SMEs) report a medium to high burden from payroll and other state taxes, and national taxes and GST, than large businesses. The burden of regulation is especially great for SMEs with limited resources, as noted by the Productivity Commission’s report on *Regulator Engagement with Small Business* (2013) and in Ai Group’s submission to that report. On the other hand, compliance with safety standards, infrastructure and planning laws and competition and fair trading laws are reported to be a bigger burden for large businesses than for small businesses.

Across the mainland states, businesses in Queensland are the most likely to report a medium to high regulatory burden due to industrial relations and OH&S (96%) in 2014. Industrial relations and OH&S, payroll and state taxes, and national taxes and GST are placing the largest degree of regulatory burden on businesses across all states.

Comparison with similar data from Ai Group’s CEO surveys conducted between 2010 and 2013 indicate that businesses’ assessment of their regulatory burden has worsened over time, with more businesses nominating ‘government regulation’ as a significant impediment to growth in 2014, than in the past (Chart 2).

2014 also saw a strong rise in businesses nominating ‘industrial relations flexibilities’ as a major impediment to growth in our CEO Survey.

**Chart 2: The rising regulatory burden**

![Chart 2: The rising regulatory burden](image)

Data from the Fair Work Commission and Fair Work Australia also suggest an increasing regulatory burden on businesses in recent years in the industrial relations arena. This is evident for example, in rising numbers of applications for union entry to worksites and for unfair dismissal claims. Regardless of their outcomes, such applications can impose large regulatory and legal costs on the businesses that are subject to them. The burden of industrial relations regulation is felt especially keenly by smaller businesses and those who lack the legal expertise to represent themselves.

The regulatory burdens faced by Australian businesses are high relative to those faced in other countries and this relative position has worsened in recent years and has been a major factor in the deterioration of our overall competitiveness ranking (Table 1).
Table 1: Australian rankings in key WEF Global Competitiveness Indicators

<table>
<thead>
<tr>
<th>Year</th>
<th>Overall competitiveness ranking</th>
<th>Burden of Government regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>19</td>
<td>68</td>
</tr>
<tr>
<td>2008-09</td>
<td>18</td>
<td>66</td>
</tr>
<tr>
<td>2009-10</td>
<td>15</td>
<td>85</td>
</tr>
<tr>
<td>2010-11</td>
<td>16</td>
<td>60</td>
</tr>
<tr>
<td>2011-12</td>
<td>20</td>
<td>75</td>
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<tr>
<td>2012-13</td>
<td>20</td>
<td>96</td>
</tr>
<tr>
<td>2013-14</td>
<td>21</td>
<td>128</td>
</tr>
</tbody>
</table>

Source: WEF Global Competitiveness Reports and database.

This deterioration makes it more difficult for Australian businesses to compete globally, but it also adds to our growing international reputation as a high cost country in which to do business and detracts from Australia’s attractiveness as a destination for business investment and collaboration.

Policy Priorities

On the basis of our latest CEO survey and of other, ongoing consultation processes with business, Ai Group has identified the following as the leading priorities for policy action to reduce regulatory costs:

- **Labour-related areas of regulation** require urgent and detailed attention from all levels of Government because they are consistently nominated as placing the largest cost burden on business. These include industrial relations regulations as well as OH&S and related laws. Reducing duplication and improving harmonisation in OH&S laws has been demanded by Australian business for many years, and it is still outstanding. Industrial relations regulation will be the subject of a forthcoming Productivity Commission inquiry. Reducing regulatory burdens should be a leading priority for this inquiry.

- **National and state tax compliance** is also a big burden for many businesses. This is a separate issue to the level of taxation that is imposed. Business costs could be reduced by addressing onerous and repetitive reporting requirements, online access, and national inconsistencies across jurisdictions. Reducing the costs of compliance and the distortions to business decisions must be a major focus of the Government’s foreshadowed taxation review.

- The ‘green tape’ that regulates the environment, waste and energy are a bugbear for around half of all businesses. As with taxation compliance, onerous reporting requirements and regulatory inconsistencies across jurisdictions are frequently cited, but ‘green tape’ is often also characterised by lack of clarity, repetition, duplication and lack of consistency in regulatory requirements across agencies. A major clean-up is required.

- More **specific regulations** for areas such as infrastructure, planning, natural resources, transport, product safety, food safety, competition and fair trading all impose regulatory costs on some businesses. All of these areas of regulation are ripe for finding productivity and efficiency improvements that will bring cost savings to business as well as potential savings to Government. Online applications, automated reporting and data sharing among regulatory agencies for example, should all be explored further.

Across all regulatory areas, addressing the behaviours or ‘spirit’ in which regulations are implemented has considerable potential as a means of reducing the burden, particularly for small business. The importance of professional, constructive and consistent regulator behaviour has been highlighted repeatedly in Ai Group consultations with business and was noted by the Productivity Commission in relation to small business engagement with regulators in 2013. Such behaviour could be improved by a regulatory ‘code of practice’ or ‘best practice’ guidelines for regulatory staff. Principles of best practice in regulation are already well documented (for example, by the Australian Government’s Office of Best Practice Regulation) and include characteristics such as clarity, responsibility, accountability, transparency, efficiency and proportionality.

These qualities can equally be applied to the process of reducing the regulatory burden, which needs to occur in an open and accountable manner that includes clear lines of responsibility and measurable goals.

Further discussion of the policy implications of our 2014 Survey, and of the other research presented in this Report, is included under ‘Implications for Regulatory Reform’ below.
National CEO survey of regulatory burden 2014: regulatory burden by industry, business size and state

Industry

Manufacturing

In Ai Group’s CEO survey for 2014, 8.5% of manufacturers nominated ‘government regulatory burden’ as one of their top three ‘growth inhibitors’ for 2014 (Chart 3). This is almost unchanged from the previous year’s result when 8.7% of manufacturing respondents cited this as a main growth impediment for 2013. It is clear that manufacturers continue to view the regulatory burden as placing undue pressures on their growth.

10% of manufacturing CEOs also nominated ‘flexibility of industrial relations’ as a growth impediment in 2014, compared to only 4% cited this factor as a potential barrier for 2013. This finding possibly reflects the challenging conditions currently faced by the domestic manufacturing industry as they try to seek all possible avenues to streamline their operations, improve their flexibility and reduce their costs. Such concerns were highlighted recently in the domestic automotive manufacturing industry, with Toyota for example, being unable to commence negotiations to vary its enterprise bargaining agreement, due to a Federal Court decision limiting its ability to re-open negotiations.

Referring growing concerns over the flexibility of industrial relations hindering business growth, it is somewhat unsurprising that over 85% of manufacturers ranked the area of “industrial relations, employment, workcover, OH&S” as most likely to impose a medium or high cost on their business in 2014, with 43% of manufacturing CEOs expecting the associated costs to be high (Chart 4). Payroll and other state taxes, and national company taxes and GST were also expected to place medium to high costs on 70% and 67% of manufacturers respectively. In particular, 42% of manufacturing businesses think payroll and other state taxes would impose a high burden on their businesses in 2014.

Regulations around environment, energy and waste were a medium to high cost for over half (55%) of manufacturers in 2014. On the other hand, manufacturing CEOs were relatively less affected by regulations surrounding infrastructure and planning (44% said it imposed a medium to high cost), product and food safety (36%) and competition and fair trading (34%), although all of these areas of regulation still scored reasonably highly in terms of imposing a medium or high cost on business.

Chart 3: Manufacturing inhibitors to growth*

![Manufacturing inhibitors to growth chart](chart)

* Percentage of businesses who nominated regulatory burden as one of their top 3 growth impediments.

Chart 4: Expected degree of regulatory burden in 2014, manufacturing

![Expected degree of regulatory burden chart](chart)
Services

Around 16% of services CEOs cited ‘government regulatory burden’ as one of their top 3 potential growth impediment in 2014, an increase from the 13.7% who nominated this factor in the previous year (Chart 5). Meanwhile, a higher proportion of services businesses (11.4%) nominated ‘flexibility of industrial relations’ as one of their key concerns for growth in 2014. This compared to 2013, where only 7.2% of services CEOs were worried that the flexibility of industrial relations would be an impediment to their growth.

In 2014, 80% of services businesses said that regulations around ‘industrial relations, employment, workcover, OH&S’ would impose a medium or high burden on their business, with 33% expecting the related costs to be high (Chart 6). Furthermore, almost two-thirds of services CEOs think payroll and other state taxes will place a medium or high cost on their operations in 2014. In particular, 39% of services businesses expect the costs associated with complying with this area of regulations to be high. This possibly reflects the fact that the services industry is labour intensive in general and payroll tax is directly applied according to the size of the total employee payrolls.

Just over two-fifths (42%) of services CEOs expect regulations surrounding environment, energy and waste to impose a medium or high cost burden on their operations in 2014. Fewer services business anticipate a medium to high regulatory burden from competition and fair trading laws (36%), transport, product and food safety (35%) and infrastructure and planning (28%).

Construction

Similar to the services sector, this year’s CEO survey showed that an increasing percentage of construction CEOs have become more concerned that ‘government regulatory burden’ and the ‘flexibility of industrial relations’ will impede growth in 2014 (Chart 7). Both factors were nominated by 9.8% of construction businesses as one of their top 3 growth inhibitor for the year, compared to a slightly lower percentage (9.1% for each factor) of construction CEOs citing regulatory burden and industrial relations as their key growth concerns for 2013.

Considering all the labour-related challenges that construction businesses are facing at present, it is perhaps unsurprising that almost all construction CEOs (95%) in this year’s CEO survey said that regulations surrounding industrial relations, employment, workcover and OH&S impose a medium or high cost burden on their business in 2014 (Chart 8). Over half of construction businesses anticipate the associated costs with this area of regulations to be high.

Governments at the federal and state levels have taken steps towards harmonising various occupational health and safety legislations (as noted above), but Victoria and Western Australia are yet to sign up to the uniform laws. This adds complexity for construction businesses, especially when they operate across jurisdictions or move work locations for new projects.
Nearly four in five (79%) of construction CEOs said payroll and other state taxes are a medium to high regulatory burden on their business in 2014, with 42% expecting the related burden to be high. Similar to the services industry, the labour-intensive nature of the construction sector is typically accompanied by a higher regulatory burden in complying with relevant payroll tax legislation.

In addition, almost three quarters (74%) of construction businesses think national company taxes and GST are placing a medium or high cost on their operations. Relatively speaking, compliance with the relevant environment (45%), infrastructure and planning (45%), transport, product and food safety (33%) and competition and fair trading (30%) laws appear to be less of a burden for construction industry CEOs in 2014, although all of these areas of regulation still scored reasonably highly in terms of imposing a medium or high cost on many construction businesses.

Chart 7: Construction inhibitors to growth*

Chart 8: Expected degree of regulatory burden in 2014, construction

Mining services

The majority of the CEOs of mining services companies said they face only a light regulatory burden. In stark contrast to the other industries included in this year’s CEO survey, only 2.7% of mining services businesses nominated ‘regulatory burden’ as one of their top 3 growth inhibitors for 2014 (Chart 9). This was down sharply from 2013 however, when 19.6% were concerned about this factor as an inhibitor of their growth. This possibly reflects the fact that these businesses are highly exposed to mining sector investment which is waning, and so market factors are now taking more of their attention than are regulatory factors as a possible inhibitor of growth. As the outlook for mining investment in Australia has weakened over the past year due to lower commodity prices and a shrinking (albeit still large) pipeline of outstanding work, regulatory burden would likely have become less of a concern for mining services CEOs.

On the other hand, concerns about ‘flexibility of industrial relations’ surged among mining services businesses in the year’s survey, with 13.5% of CEOs considering this as a key impediment to growth for 2014, up from 2.2% in 2013. This may reflect their need to focus on new markets, on flexibility and on operational costs in order to maintain profitability, as new orders from the miners dry up. Industrial relations is clearly perceived as one of the potential inhibitors in achieving these goals.

Like the other major industries included in the annual CEO survey, industrial relations and OH&S are imposing medium or high regulatory costs on a high proportion of businesses in 2014, among mining services CEOs (69%) (Chart 10). Taxes at both the federal and state levels are also nominated as key factors adding a medium to high cost burden on mining services business in 2014.

Over 15% of CEOs in this sector also said regulations surrounding environment, energy and waste are imposing a high cost on their business in 2014, likely reflecting the nature of operations in the mining industry in general. On the other hand, fewer mining services CEOs than in other industries expected infrastructure and planning (23%), transport and product safety (15%) and competition and fair trading (8%) to impose a medium to high cost burden on their business in 2104.
Business size

For businesses that employ 100 staff or more (i.e. large businesses), the area of industrial relations, employment, workcover and OH&S are imposing the biggest burden on their operations in 2014. Almost 87% of the CEOs of these large businesses anticipate this factor to impose a medium to high cost on their business in 2014 with 43% expecting such costs to be high (Chart 11). This result may be expected considering that larger businesses are more likely to have additional regulatory compliance and costs due to the larger size of their workforce. On the other hand, over 80% of businesses with fewer than 100 employees (SMEs) also said that industrial relations and OH&S are placing a medium to high cost on their business in 2014, with 37% anticipating the associated costs to be high (Chart 12).

The regulatory burden associated with payroll and other state taxes is also weighing heavily on SMEs in 2014, with 72% stating it imposes and medium to high cost burden and over 40% estimating the costs to be high. The relatively smaller size and resources of SMEs means the process of complying with regulation and legislation may be stretching their capacity, to a greater degree than for large businesses. Just over 60% of large businesses said regulation of payroll and other state taxes is placing a medium to high cost on their business in 2014.

Almost two-thirds of SMEs (64%) in this year’s CEO survey indicated that the regulatory burden of complying with national company taxes and GST impose a medium to high cost on their business, compared to just under half (48%) of large businesses. As with payroll and state-based taxes, SMEs have much less capacity and resources to deal with the compliance requirements of the federal tax regime, including for example, monthly or quarterly lodgement of their Business Activity Statements (BAS).

Both large businesses (47%) and SMEs (48%) expect regulations around environment, energy and waste to place a medium to high cost on their operations. This similarity in burden may reflect the universality of these regulations, which tend to apply to all businesses regardless of their size.

Large businesses tend to be more concerned than small businesses about regulatory burden in the areas of various safety standards (44% with a medium to high burden), infrastructure and planning (44%) and competition and fair trading (40%). This is possibly because large businesses, due to the size of their operations, are more likely to be subject to scrutiny and/or reporting requirements under the relevant regulations and therefore to incur higher costs.
The Productivity Commission examined the issue of regulatory effects on SMEs in its 2013 report on *Regulator Engagement with Small Business*. The Commission found that the nature of SMEs and their particular challenges may sometimes justify preferential treatment from regulators, when compared to larger businesses.

The Commission included in its report the results of a Council of Small Businesses of Australia (COSBOA) survey of 87 SMEs, which showed that 82% of the respondents felt that SMEs face disproportionately high compliance costs, while 44% indicated that they do not have the skills or capacity to understand their compliance obligations (Chart 13). These results agree with the findings in Ai Group’s surveys that suggest that some regulatory arrangements (e.g. payroll tax, GST as noted above) are more likely to place a medium to high cost burden on SMEs than on larger businesses. In addition, the Commission noted that “Australian studies have found that small businesses [alone] spend, on average, up to five hours per week on compliance with government regulatory requirements and deal with an average of six regulators per year”.

**Chart 13: Small businesses supporting different treatment, percentage by reason**

Source: Productivity Commission, COSBOA.
Selected states

New South Wales

- In this year’s CEO survey, we found businesses based in New South Wales (NSW) are most concerned with regulatory burden surrounding industrial relations and OH&S, with 82% expecting it to impose a medium to high cost on their business (Chart 14).

- Payroll and other state taxes are estimated to impose a medium to high cost on over 70% of NSW businesses, followed by national company taxes and GST (61%) and regulations on environment, energy and waste (53%).

- In comparison, businesses in NSW tend to be relatively less worried about excessive regulation burden in the areas of competition and fair trading (38% citing it as a medium to high cost), infrastructure and planning (33%), and various safety standards (32%).

Victoria

- Similar to the results in NSW, almost 80% of Victorian businesses estimate a medium to high cost burden from complying with relevant industrial relations and OH&S laws in 2014 (Chart 15).

- More Victorian businesses estimate that national company taxes and GST (63%) impose a medium to high cost burden on their business than payroll and other state taxes (60%). Around 30% said the regulatory costs associated with payroll and state taxes are high.

- Victorian CEOs tend to be less concerned about regulatory burden arising from complying with laws on environment and energy (42% citing it as a medium to high cost), infrastructure and planning (34%), safety standards (33%) and competition (31%).
South Australia

- CEOs in South Australia are mostly concerned (92%) about the medium to high regulatory burden from industrial relations and OH&S in 2014, with two-thirds expecting the related costs to be high in 2014 (Chart 16).

- Payroll and state taxes (82%), as well as national company taxes and GST (73%) are also expected by South Australian businesses to place a medium to high burden on their operations in 2014. 64% of South Australian CEOs estimate that their compliance costs for payroll and state taxes are high.

- The regulatory burden from other federal or state legislations, such as environment and energy (45% citing it as a medium to high cost), infrastructure and planning (36%), safety standards (27%) and laws governing competition and fair trading (18%) appear to be of relatively less concern for South Australian businesses.

Queensland

- Businesses in Queensland have the highest degree of reported regulatory burden from industrial relations and OH&S among all states, with 96% of the CEOs estimating that these areas impose a medium to high cost on their business in 2014 (Chart 17). 46% of Queensland CEOs estimate the burden from this area of regulation to be high in 2014.

- Payroll and other state taxes were also highlighted by 87% of Queensland businesses as a major cost concern for 2014. In particular, 57% of CEOs in Queensland estimate the relevant costs of compliance to be high in 2014. Two-thirds estimate medium to high costs in complying with national company taxes and GST legislation.

- Regulations around environment, energy and waste are expected to affect over half (52% citing it as a medium to high cost) of businesses in Queensland. Relatively fewer Queensland CEOs face costs due to safety standards (45% citing it as a medium to high cost), infrastructure and planning (43%) and competition and fair trading (36%).
Western Australia

- Industrial relations and OH&S are estimated to place a medium to high cost burden on 82% of businesses in Western Australia (Chart 18). 45% of Western Australian CEOs estimate these related costs to be high in 2014.

- Almost half (45%) of CEOs in Western Australia also estimate the cost of compliance with payroll and other state taxes to be high over the coming year. Nearly three-quarters (73%) expect this area of regulations to affect their businesses with medium to high costs. National company taxes and GST were also nominated by 64% of Western Australian businesses as a medium to high cost item for 2014.

- Laws surrounding environment, energy and waste are expected to affect 64% of businesses in the state, while 55% cited infrastructure and planning as a medium to high regulatory burden.

- Western Australian businesses are less concerned about costs arising from complying with competition and fair trading (27% citing it as a medium to high cost) laws and safety standards (27%).

![Chart 18: Expected degree of regulatory burden in 2014, Western Australia](image)
Ai Group surveys of regulatory burden: has the regulatory burden on business changed over time?

The results on regulatory burden from Ai Group’s CEO Survey 2014 are consistent with our survey of businesses’ policy priorities conducted in July 2013, ahead of the Federal election. The 2013 survey showed the top three business policy priorities for the Australian Government included:

- Industrial relations reform to boost productivity (particularly for manufacturers);
- Reducing red tape and regulatory duplication (especially for small businesses); and
- Reducing company tax rates and implementing tax reform.

Ai Group has conducted its annual National CEO Survey of Business Prospects on a consistent basis over several years. Comparison of these survey results over the most recent four years shows that business concern about both ‘government regulatory burden’ and ‘flexibility of industrial relations’ has grown, in terms of the proportion of CEOs nominating them as one of the top potential growth inhibitors for business over each coming year (Chart 19).

**Chart 19: Business inhibitors to growth**

In 2014, around 11% of CEOs surveyed cited ‘government regulatory burden’ as one of their top three impediments to growth. This is up from 10% of CEOs in 2013, 8% in 2012 and 9% in 2011. In 2014, ‘government regulatory burden’ was of greatest concern to CEOs of services businesses (cited by 16% of them as a top three growth impediment), compared to 10% of CEOs of construction businesses and 8% of CEOs of manufacturers.

In 2014, 11% of CEOs said that ‘flexibility of industrial relations’ would affect their growth over the coming year. This represents a significant rise in concern about industrial relations flexibilities from the preceding three years. From 2011 to 2013, only 5% or less of CEOs had expected ‘flexibility of industrial relations’ to be a key growth impediment.

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Across the major industry groups included in these annual surveys, CEOs of mining services (14%) and services companies (11%) are the most concerned about industrial relations flexibilities as an inhibitor to growth in 2014. 10% of CEOs in manufacturing and construction businesses also said that ‘flexibility of industrial relations’ would impede their growth in 2014.

Comparison between Ai Group’s CEO survey results for 2014 and our detailed study of regulatory burden in 2011 shows a significant rise in CEOs perceptions of regulatory burden, across almost all of the areas of regulation investigated (Chart 20). The two most notable areas of increase in CEO perceptions of regulatory burden over this period were ‘industrial relations and OH&S’ and ‘payroll tax and other state taxes’.

**Chart 20: Degree of regulatory burden, 2014 and 2011***

In 2011, almost two-thirds (63%) of CEOs said their business a faced medium or high amount of regulatory burden when dealing with industrial relations, workcover and OH&S regulations, but this had risen to 83% of CEOs expecting medium or high regulatory costs in 2014 (Chart 20).

Similarly, in 2014, a significantly higher percentage (68%) of CEOs expect payroll and other state taxes to impose medium or high costs on their business, compared to only 40% reporting a medium or high burden in 2011. Almost the same proportion of CEOs (64%) said national company taxes and GST place a medium or high burden on their business in 2014 as in 2011.

An increasing proportion of CEOs also reported a medium or high regulatory burden in 2014 from the following areas when compared to 2011:

- Almost half (48%) reported a high or medium costs on their business from complying with environment, energy and waste regulations in 2014, compared to one third in 2011.
- Just over 36% of CEOs said the regulatory burden relating to infrastructure, planning and natural resources is medium or high, compared to almost a quarter (24%) in 2011.
- One third of CEOs said compliance with safety standards, as well as competition and fair trading laws, will place a medium or high regulatory burden on their business in 2014. In 2011, only 18% of businesses said this area is a medium or high burden and only 15% said that safety standards were a medium to high burden.

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Time spent on business regulation

While results vary across states and over time, estimates from various surveys generally indicate that Australian businesses are spending a considerable amount of time complying with government regulatory requirements (Table 2). Survey results from both the Ai Group and Australian Chamber of Commerce & Industry (ACCI) in recent years show that more than 40% of businesses spent between one and five hours each week on compliance activities in 2011 and 2012. In addition, a substantial percentage of businesses spent more than 6 hours each week on business regulations in 2011 and 2012.

In NSW, almost half (47%) of businesses spent 1-5 hours on regulatory compliance each week in 2012, compared to 42% in 2011. The percentage of businesses that spent more than 10 hours on compliance activities varied from 17.5% 2012 to 21.1% in 2011. A worrying 8.2% of businesses in NSW spent more than 20 hours a week on regulatory compliance in 2012.

A similar trend can also be observed in Queensland, although between 12% and 20% of Queensland businesses are spending more than 20 hours per week on regulatory compliance. Survey results in Victoria (2012) and Tasmania (2013) generally mirrored the patterns observed nationally and in other states, although a higher proportion of businesses in both of these states claim to spend less than one hour per week on compliance activity. Both states still had a sizeable proportion of businesses that spent more than 10 hours on regulatory compliance activities each week at the time of the respective survey.

Table 2: Estimates of business time spent on business regulation*

<table>
<thead>
<tr>
<th>Hours spent on compliance (per week)</th>
<th>National 2012 (ACCI)</th>
<th>National 2011 (Ai Group)</th>
<th>New South Wales 2012 (NSW Bus.)</th>
<th>New South Wales 2011 (NSW Bus.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 hour</td>
<td>16.1%</td>
<td>0.3%</td>
<td>18.9%</td>
<td>18.2%</td>
</tr>
<tr>
<td>1-5 hours</td>
<td>44.0%</td>
<td>43.4%</td>
<td>46.9%</td>
<td>41.8%</td>
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<tr>
<td>6-10 hours</td>
<td>16.1%</td>
<td>48.2%</td>
<td>13.7%</td>
<td>18.2%</td>
</tr>
<tr>
<td>11-20 hours</td>
<td>9.9%</td>
<td>2.3%</td>
<td>9.3%</td>
<td>8.4%</td>
</tr>
<tr>
<td>More than 20 hours</td>
<td>11.7%</td>
<td>2.6%</td>
<td>8.2%</td>
<td>12.7%</td>
</tr>
<tr>
<td>Non (outsourced)</td>
<td>2.1%</td>
<td>3.2%</td>
<td>2.9%</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours spent on compliance (per week)</th>
<th>Queensland 2013 (CCIQ)</th>
<th>Queensland 2012 (CCIQ)</th>
<th>Victoria 2012 (VECCI)</th>
<th>Tasmania 2013 (Stenning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 hour</td>
<td>19.6%</td>
<td>13.5%</td>
<td>20.7%</td>
<td>38.9%</td>
</tr>
<tr>
<td>1-5 hours</td>
<td>39.0%</td>
<td>27.5%</td>
<td>47.4%</td>
<td>31.9%</td>
</tr>
<tr>
<td>6-10 hours</td>
<td>16.9%</td>
<td>24.8%</td>
<td>16.5%</td>
<td>10.8%</td>
</tr>
<tr>
<td>11-20 hours</td>
<td>9.4%</td>
<td>12.5%</td>
<td>7.8%</td>
<td>6.6%</td>
</tr>
<tr>
<td>More than 20 hours</td>
<td>12.0%</td>
<td>19.8%</td>
<td>7.5%</td>
<td>8.1%</td>
</tr>
<tr>
<td>Non (outsourced)</td>
<td>3.1%</td>
<td>2.0%</td>
<td>n/a</td>
<td>3.6%</td>
</tr>
</tbody>
</table>

* The 2011 national data is sourced from Australian Industry Group’s 2011 National CEO Survey: Business Regulation, the 2012 national data come from ACCI’s 2012 red tape survey. The Tasmanian survey asked businesses their annual hours spent on regulatory activities and the data were then converted to weekly estimates using 50 weeks per year.

Regulatory burden on business: context and detailed examples

In consultations with government agencies regarding regulatory burden, Ai Group is often asked to provide detailed examples of regulations, legislation and reporting requirements that are particularly burdensome. The examples provided in this section are drawn from - and reflect - the recent experiences of a range of Ai Group member businesses with regard to significant areas of federal and state government regulation.

Industrial relations and OH&S

While responses vary somewhat across states and industries, Australia’s CEOs generally assessed the areas of industrial relations, employment, workcover and OH&S as imposing the most burden on their business in 2014, with a total of 83% of CEOs reporting that the regulatory burden these areas place on their business is medium (44%) or high (39%). The relevant legislation and regulations in this space include the Fair Work Act 2009, Small Business Fair Dismissal Code, various industry-based modern awards and the Work Health and Safety Act 2011 (with separate state based legislations for Victoria and Western Australia).

With regard to workplace relations, some of the key concerns in this area of regulation appear to have intensified in 2014, particularly following amendments to the Fair Work Act 2009 in 2012 that introduced another 50 pages of new legislation. In particular, businesses noted a significant increase in the regulatory burden from complying with:

- union right of entry to workplaces;
- employees’ claims of unfair dismissal;
- restrictions on flexible work arrangements;
- inconsistent regulation of employee compensation such as long service leave; and
- various OH&S regulations across states and territories.

Union right of entry applications

One of the more common areas of business concern with IR regulations is union entry into the workplace. Based on quarterly reports published by the Fair Work Commission (FWC, formerly Fair Work Australia), there was an average almost 400 entry permits for union officials issued in each quarter up to September 2013. The data also indicate that an increasing number of entry permits have been applied and issued since the commencement of the Fair Work Act 2009 section 512. In 2010, there were close to 300 entry permits issued on average per quarter under section 512, but this number increased to 333 in 2011 and further escalated to around 420 entry permits issued per quarter in 2012 (Chart 21).

The permit is designed to help assist compliance with the applicable laws and regulations, but it also creates additional administrative burdens for businesses, in terms of time lost in dealing with the permit application. This burden tends to be felt particularly keenly when a business feels there is little or no grounds for an on-site union investigation or when they are too small to be able to respond on their own.
Unfair dismissal applications

Unfair dismissal claims are also perceived to be placing a growing regulatory burden on business. Quarterly data from the Fair Work Commission show there has been a steady increase in applications to the Commission to hear unfair dismissal disputes, from around 430 in the September quarter in 2010 to over 690 for the quarter ending September 2013. The number of applications to the Fair Work Commission to grant a remedy (e.g. compensation or reinstatement) under section 394 of Fair Work Act 2009 has also increased by around 30% over the three years to September 2013, from just over 3,100 per quarter in 2010 to over 4,000 in September quarter last year (Chart 22).

Chart 22: Number of unfair dismissal relation applications, quarterly

Source: Fair Work Commission
The procedures for businesses who must reply to an unfair dismissal application are lengthy and onerous. Once the employee’s unfair dismissal application has been lodged, the employer receives written notification of the application, information about the process the Commission will follow and an employer response form to complete. The Fair Work Commission will also send both the employee and the employer a written notice with the date and time for their conciliation hearing. Many businesses also bear the additional cost of legal representation in these hearings, as they do not have the expertise to represent themselves. Over 80% of these cases are settled without a decision being made by the Fair Work Commission (e.g. through conciliation). Nonetheless, all businesses must go through the time consuming and costly process of filling in all the information and reproducing all the evidence for the Fair Work Commission.

Among the cases that are settled by an agreement between the parties, the majority are settled for very small sums of money. Data from the Fair Work Commission show that between 1 July 2012 and 31 January 2013, of the settlement agreements that involve monetary compensation, 51% were for less than $4,000 and 80% were below $8,000 (Table 3). Furthermore, the data show that 76% of the matters that proceeded to determination were dismissed by the Fair Work Commission because the applications were improper (i.e. want of jurisdiction) or because the dismissal was found to be fair. While acknowledging the importance of protecting employees’ rights, the small amount of compensation that is eventually agreed in these cases suggests there needs to be a more efficient and less costly method of dealing with such matters.

### Table 3: Unfair dismissal conciliation outcomes involving monetary compensation, 1 July 2012 to 31 January 2013

<table>
<thead>
<tr>
<th>Monetary amount</th>
<th>No.</th>
<th>Percentage</th>
<th>Cumulative percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0–$999</td>
<td>310</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>$1,000–$1,999</td>
<td>617</td>
<td>17</td>
<td>25</td>
</tr>
<tr>
<td>$2,000–$3,999</td>
<td>940</td>
<td>26</td>
<td>51</td>
</tr>
<tr>
<td>$4,000–$5,999</td>
<td>662</td>
<td>18</td>
<td>69</td>
</tr>
<tr>
<td>$6,000–$7,999</td>
<td>404</td>
<td>11</td>
<td>80</td>
</tr>
<tr>
<td>$8,000–$9,999</td>
<td>237</td>
<td>6</td>
<td>86</td>
</tr>
<tr>
<td>$10,000–$14,999</td>
<td>283</td>
<td>8</td>
<td>94</td>
</tr>
<tr>
<td>$15,000–$19,999</td>
<td>97</td>
<td>3</td>
<td>97</td>
</tr>
<tr>
<td>$20,000–$29,999</td>
<td>91</td>
<td>2</td>
<td>99</td>
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<tr>
<td>$30,000–$39,999</td>
<td>21</td>
<td>1</td>
<td>100</td>
</tr>
<tr>
<td>$40,000–maximum amount</td>
<td>12</td>
<td>0</td>
<td>100</td>
</tr>
<tr>
<td>&gt;maximum amount</td>
<td>7</td>
<td>0</td>
<td>100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,681</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Fair Work Commission.

**Restrictions on flexible work arrangements in Modern Awards**

A number of modern awards provide blanket restrictions on the types of employees that an employer can engage. For example, several awards do not recognise part-time or casual work at all and require employers to only offer full-time employment. This regulatory restriction limits employers’ ability to engage employees who may have family responsibilities or require flexible working hours. It also restricts how a business can use labour hire services to manage peaks and troughs in demand. In addition, there are still many awards that do not permit an employer and employee to agree on non-monetary arrangements for working additional hours, such as time off in lieu of an overtime penalty.

While awards were largely simplified as part of the Award Modernisation process in 2008-2009, the reality is that many awards still contain restrictions on how employers are to employ and remunerate employees that are not in line with modern employment practices. These issues need to be addressed in the Fair Work Commission.
Commission’s current four-yearly review of modern awards and in the forthcoming review of Australian industrial relations, to be undertaken by the Productivity Commission.

Inefficient and unclear regulations on Long Service Leave

The current state of long service leave laws creates significant confusion and potential costs for businesses. Although some employers are subject to federal long service leave schemes contained in old awards or enterprise agreements, most businesses are subject to different state-based legislative schemes. Rules covering the scale of long service leave entitlement and how the benefits accrue differ from state to state.

Businesses that operate in more than one state or nationally need to navigate, understand and apply multiple pieces of legislations that provide different entitlements to employees who are based in different states and territories, even if they are doing the same work and/or have the same length of service. This creates significant compliance costs for businesses who must then administer different compensation arrangements for employees across jurisdictions. Specifically, for employees travelling or relocating around Australia and overseas, there is confusion and widespread uncertainty over whether long service leave is payable and if so, under which regimes.

Occupational health and safety (OH&S)

Ai Group research indicates that by far the biggest concern with regard to regulatory burdens on business is the compliance costs associated with various OH&S rules across all industry sectors. While most businesses agree with the principles of the OH&S laws, the amount of paperwork involved is often reported to be an excessive regulatory burden. Applying ‘risk assessment’ principles is also a major area of concern with OH&S regulations, as ongoing communication involving a large number of employees tends to consume significant amounts of non-productive time with little practical value, especially when proper safety processes and checks are already in place.

In the Council of Australian Governments (COAG) Reform Council’s final report,\(^4\) the reform to create nationally uniform OH&S laws to reduce compliance costs for business and promote safer, healthier workplaces is far from complete. The Victorian Government has announced that it will not enact the proposed models laws, while Western Australia is still considering its position on the reforms. Furthermore, even among the other seven state and territory governments (particularly Queensland and ACT) that have adopted the national uniform model, four passed laws containing differences from the model laws that are not permitted by jurisdictional notes on the model bill. While COAG noted that such variations are unlikely to reduce the benefits of a national OHS regime, businesses still need to navigate, understand and comply with these different state-based OH&S laws, creating unnecessary regulatory burden and costs for those that operate in more than one state or that have employees travelling across state boundaries.

OH&S is a key area where large savings can be made on the business regulatory burden. The Productivity Commission estimated in 2012 that a harmonised OH&S regime would reduce compliance costs for businesses operating in more than one state by $480 million a year, despite an initial $850 million transition cost of implementing the laws and a potential $110 million a year burden of additional compliance costs for single-state businesses.

National and state taxation regulation

Payroll tax and other state-based taxes (state revenue offices) are estimated to impose a significant cost on a large proportion of Australian businesses. In Ai Group’s CEO Survey for 2014, over two-thirds (68%) of Australia’s CEOs estimated that this area of regulation places a medium or high burden on their business, including almost 40% of CEOs who say the costs are high. The relevant regulations related to this aspect include state-based payroll taxes, stamp duties, land taxes, gambling taxes and vehicle registration fees.

In addition, just under two-thirds of CEOs (64%) reported a medium or high burden on their business from complying with national company taxes, the Goods and Services Tax (GST) and other taxes administered by the Australian Taxation Office (ATO). This includes almost a quarter (23%) of Australia’s CEOs who report the cost of compliance for this area of regulations to be high. Relevant national taxes include company tax, GST, capital gains tax (CGT), Fringe Benefits Tax (FBT), as well as superannuation levies.

Some of the key concerns by businesses in this area of regulation relate to difficulties in complying with varying legislation and regulatory requirements across states and territories. As a result, businesses are spending too much time and effort in researching, understanding and complying with different sets of laws on the same topic across different jurisdictions.

Payroll tax

The regulatory burden in relation to tax is particularly evident with regard to state payroll tax, which varies in terms of thresholds and rates across states (Table 4). While all taxes impose a direct cost on businesses and individuals, the administrative burden to comply with state-based payroll tax legislation places additional compliance costs on businesses. Each state and territory in Australia has its own payroll tax threshold and tax rate, as well as its own revenue office, which creates an extra layer of administrative complexity on businesses that employ staff in more than one state (Table 4).

As an attempt to gain benefits from harmonising payroll tax arrangements between jurisdictions, six of the states and territories have passed harmonised payroll tax legislation since 2007, with the Queensland Government amending its current legislation by introducing aligned provisions in the key areas. Western Australia has enacted similar aligned provisions within their payroll tax legislation from 1 July 2012. In the Productivity Commission’s (PC) 2012 report, Impacts of COAG Reforms: Business Regulation and VET, it estimated that the harmonisation of legislative and administrative arrangements across states and territories with regard to payroll tax is likely to lower ongoing administrative costs to government by an estimated $5 million across the jurisdictions, and to accrue progressively over a period of four years.5

Despite the positive moves toward payroll tax harmonisation so far, the PC noted that there are further benefits to be gained from developing a single web portal for taxpayers to log on and register for payroll tax across different states and territories. It suggested that the Standard Business Reporting platform could be used as the single portal for businesses to meet their payroll tax obligations as jurisdictions continue to harmonise definitions and other legislation. As a result, businesses would only need to submit information once (instead of repeating it for each jurisdiction as it happens now) and the information could be distributed across the jurisdictions as appropriate. This would help achieve further administrative cost reduction for businesses through elimination of duplicated effort.

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5 Productivity Commission’s, Impacts of COAG Reforms: Business Regulation and VET, Volume 1 and 2, April 2012.
Table 4: Payroll tax thresholds and rates

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Threshold (p.a.)</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>$550,000</td>
<td>4.90%</td>
</tr>
<tr>
<td>South Australia</td>
<td>$600,000</td>
<td>4.95%</td>
</tr>
<tr>
<td>New South Wales</td>
<td>$750,000</td>
<td>5.45%</td>
</tr>
<tr>
<td>Western Australia</td>
<td>$750,000</td>
<td>5.50%</td>
</tr>
<tr>
<td>Queensland</td>
<td>$1,100,000</td>
<td>4.75%</td>
</tr>
<tr>
<td>Tasmania</td>
<td>$1,250,000</td>
<td>6.10%</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>$1,500,000</td>
<td>5.50%</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>$1,750,000</td>
<td>6.85%</td>
</tr>
</tbody>
</table>

Sources: Australian Revenue Offices for the States and Territories of Australia

Environment, energy and waste

The regulatory burden from complying with the various environment, energy and waste laws is estimated to be medium or high for almost half (48%) of businesses in 2014, with 18% assessing the degree of burden on their business to be high. Relevant legislation in this area includes the federal Environment Protection and Biodiversity Conservation Act 1999 (EPBC), the Greenhouse Energy Minimum Standards (GEMS) Act 2012, the Clean Energy Act 2011 (which the new Federal Government said it would repeal), plus various state-based environment and waste management laws, such as the Environment Protection Act 1970 in Victoria.

Some of the key concerns arising from this area of regulation stem from the additional costs businesses have to bear as a result of the new legislations that have been introduced over recent years, especially with regard to reporting and monitoring requirements under these various Acts and regulations. Reporting can become particularly onerous when it is unclear on how the laws are to be applied, potentially leading to a dramatic escalation of costs.

On top of this, various regulatory agencies and departments often release proposals about the same products or processes from different regulatory perspectives, and dealing with these overlapping processes can drain precious businesses resources which could be used for other more productive purposes.

Ambiguity and lack of coordination across regulatory agencies are frequent complaints in this area, and need to be addressed, as these two practical examples illustrate.

Example 1: Ambiguity under the Greenhouse Energy Minimum Standards (GEMS) Act 2012 and its regulatory cost implication

The Greenhouse Energy Minimum Standards (GEMS) Act 2012 has replaced seven separate state and territory energy efficiency regulations and came into effect on 1 October 2012. The GEMS Act is discretionary in determining what constitutes “product families” and the Australian GEMS Regulator has advised that the approach to each product can vary. However, industry sub-sectors may have to bear higher costs if the Regulator adopts a narrow definition of product families.

For example, a lighting industry business explained that it is looking at registering a new range of 54W long life, energy efficient T5 lamps in five different colours. It would have cost a total of $340 to register these five lamps with the now replaced Queensland regulators, including $170 registration fee for one particular colour and another registration fee of $170 for the other four colours which can be grouped together.

Following the introduction of the GEMS Act and under the Minimum Energy Performance Standards (MEPS) system, it will cost a total of $2,200 to register these same five lamps (at $440 each as they are expected to registered separately). This represents a cost increase of about five-and-half times. Such increase is especially damaging to the lighting industry given the low selling prices of its products and thin margins.

A motor supplier also noted that prior to the introduction of the GEMS Act, the cost to register motors and a family of motors was $306.72 per registration. Under the GEMS Act, their registration costs escalated to $670 per registration, an increase of 118%. Considering a possible total of 168 motor power/pole number variants in the combined tables A2 and A3 of AS1359.5:2004, 168 registrations would potentially cost up to $112,560.

The GEMS Act also requires the Australian GEMS Regulator to facilitate the addition of new models to an
already existing family registration, although little appears to have been achieved so far.

In addition, “product families” are not allowed to include multiple brands at the moment. In the case where a company is changing ownership and brand but the products will remain identical, new registrations will be required under the GEMS Act. This duplicates registration costs to the businesses, despite the products being identical and having been assessed previously.

**Example 2: Opportunity cost from uncoordinated regulatory approaches**

There are often multiple regulatory agencies or government departments making proposals about the same products from different regulatory perspectives. This can result in business resources being tied up with responding to all of the multiple regulatory consultation processes. The opportunity cost of diverting people and capital from innovative research and development into compliance activities on existing products is not currently factored into regulatory impact statement cost-benefit analysis.

As an example, the water heater industry is currently awaiting decisions and responding to consultations conducted by three separate federal government agencies, including:
- the Equipment Energy Efficiency Committee’s (E3) “E3 demand response”, “E3 heat pump water heaters minimum energy performance standards (MEPS)”, “E3 standby power MEPS” and “E3 electric storage water heaters MEPS”;
- “the solar water heating scheme review” undertaken by the Clean Energy Regulator and
- the Watermark scheme review conducted by the Australian Building Codes Board.

Furthermore, the industry has recently been advised to expect an E3 review of MEPS for solar water heaters.

Any potential changes from any one of these policy proposals will have a major impact on the industry. If not well coordinated, such attempt to undertake several changes at once would likely affect the water heater industry significantly by imposing unnecessary product tooling and planning costs.

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### Infrastructure, construction, planning and natural resources

Around 36% of CEOs say they experience a medium to high regulatory burden as a result of laws governing *infrastructure, construction, planning and natural resources*. Almost 13% estimate the related costs to be high in 2014 and 24% estimate a medium burden from compliance.

As part of the COAG national reform program, there is now a single national construction code covering both building and plumbing regulation in almost all jurisdictions. This has been estimated to save $1.05 billion to the national economy annually. The Western Australian State Government however, is still reviewing its plumbing laws and will consider applying the national plumbing requirements as part of this review. This creates an additional set of regulatory compliance costs for businesses that operate in Western Australian and other states.

Although the Commonwealth Government made regulations that allow the Australian Competition and Consumer Commission (ACCC) to approve competitive tender processes in some significant government owned monopoly infrastructure in June 2010, one of the key ongoing concerns in this area of legislations relates to arrangements around the actual tendering costs for major public projects, where businesses may incur extreme expense to win a project with potentially no return at all.

In the recently Draft Report of the Productivity Commission’s inquiry into the costs of completing major public infrastructure projects, Ai Group provided a submission that highlighted the need for continuing investment in Australia’s physical capital, and the importance of completing these projects with maximum productivity and at minimum cost. To this end, Ai Group recommended to the Productivity Commission that:

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• the Productivity Commission should examine Australia’s system of industrial relations and recommend changes that eliminate unacceptable industrial practices and overcome the unnecessary costs placed on projects. In particular, Ai Group questions the appropriateness of the outdated practice of pattern bargaining still taking place in the construction industry;
• key measures recommended by the Cole Royal Commission be reintroduced given the demonstrated effectiveness of these reforms to ensure projects are delivered on time and without unnecessary cost;
• all levels of government recommit to a timely harmonisation of licensing along the lines already agreed by COAG, in order to address the arcane system of state-based licensing of trades which does not meet the needs of today’s workforce or construction companies;
• project selection should be based on thorough cost benefit analysis. Bodies like Infrastructure Australia have made significant progress towards ensuring this occurs, but further progress needs to be made on project selection especially by state governments, so as to address the major hurdle of financing these large and vital projects. Ai Group supports measures to facilitate a greater role by the private sector in financing public infrastructure, as well as sensible strategies by government to use their balance sheets to fund investment in a fiscally responsible way;
• governments across the country should change their tendering requirements to be more in line with private sector commercial projects, so as to could also achieve better value for money for tax payers and reduce unnecessary costs borne by construction companies; and
• the Productivity Commission should examine and address the distortionary effects of government policy on the country’s energy markets.

In its Draft Report for this Inquiry, the Productivity Commission found that the industrial relations environment in the construction industry is adding to costs, and that IR reform would reduce significant cost pressures. It found that these costs are preventing infrastructure from being delivered. The Commission recommended:

• increased penalties for unlawful industrial relations conduct in the construction industry. Higher penalties are provided for in the Building and Construction Industry (Improving Productivity) Bill 2013. The re-establishment of the Australian Building and Construction Commissioner (ABCC) will investigate and prosecute those who break the law. The Bill needs to be passed by Parliament without delay.
• the nation-wide adoption of a building code or guidelines modelled on the Victorian Government’s construction industry industrial relations (IR) guidelines. Unions routinely use the commercial risk faced by contractors as a lever to secure industrial concessions. An appropriate building code would break this cycle because contractors and unions would understand that code-compliance is essential to work on Government projects;
• future infrastructure projects are first subject to rigorous cost benefit analysis to ensure they are taken in the public interest and deliver vital infrastructure in value for money for taxpayers; and
• outdated and onerous requirements imposed by governments on tenderers are unnecessarily adding to project costs. Adopting the PC’s recommendations to improve tendering process and better define government projects before tendering would help alleviate unnecessary design costs on unsuccessful tenderers that currently add to the cost of all projects across the country.

Ai Group notes that some of these problems with the regulatory costs of major construction projects have a long history. In 1990 for example, a forerunner to Ai Group, the Metal Trades Industry Association made a submission on this issue to the (then) Industry Commission Inquiry into Construction Costs of Major Projects. Unfortunately, little progress has been made addressing these concerns on how the public sector tenders for major infrastructure projects and whether the public sector adopt less costly approaches taken by organisers of large private sector projects.

The 1990 submission noted the public sector contracts were often awarded on a least cost basis and without regard to ensuring the winning firm had necessary expertise to deliver, meaning that value for outcome was not achieved and/or that other companies could often be contracted to assist the winning company to deliver the project. Governments need to better define the project concept work before putting projects out to tender by engaging and paying a company to perform the design work, rather than requiring tenderers to perform it. This would ensure only those companies that could meet the projects requirements would tender. It is also recommended to partially reimburse external bid costs to encourage contestability and help provide a better overall value for money outcome for taxpayers. While contestability is an important means of ensuring competitively prices bids, mandating a fixed minimum number of tenders is not the optimal way to achieve this. The usual method in the private sector is to invite selective tendering for projects, and this could be adopted in the public sector to ensure better outcomes for all.
Today, construction companies still face far greater costs when they tender for government projects relative to the private sector projects but without better outcomes for either side. The public sector often requires tendering companies to provide more detail and discovery work than necessary, and certainly compared to private sector projects which are better defined. In today’s terms, the cost of tendering for major projects can cost in the tens of millions which can amount to a total bill in the hundreds of millions over a year for those large companies tendering for several projects across the country. The requirement by often imposed by government that three companies tender for each project invariably means that two tenderers bear significant expense without a return.

### Safety and transport regulations

One-third of businesses in this year’s CEO survey said that road safety, transport regulation, product safety and food safety is imposing a medium to high cost on their business in 2014. One of the major concerns in this area of regulations relates to the regulatory burden arising from transport regulation and road charges. In its latest reform progress report, the COAG Reform Council noted that heavy vehicle charging is currently done through a fixed annual registration charge and fuel-based charges, which means that some heavy vehicle users are relatively overcharged for their road use compared to others. Furthermore, current road pricing is not directly linked to the costs of providing and maintaining roads and the effect of road usage on those costs.

The Road Reform agenda aims to review road pricing options to improve efficiency, productivity, safety and sustainability in freight infrastructure. However, the COAG Reform Council found that the reform to reach a new heavy vehicle charging regime is well off track from its original timeline of implementation by December 2014. COAG agreed to a more ambitious reform in response to the Road Reform Plan Feasibility Study in an attempt to improve the reforms, but a new timeline has not been agreed by governments. The extent of this latest delay to road pricing reform is unclear.

In manufacturing, a significant challenge arises from product standards and safety regulations that are not adequately tested or enforced – particularly in relation to imported products. This puts conforming businesses at a cost disadvantage, as they must comply with regulations (including costly product testing) and compete with other businesses (often based abroad) who do not incur such regulatory costs and whose products may not always conform to the relevant Australian or international standards. Ai Group research into the incidence of non-conforming product in key building materials in 2013 found that such “non-conforming product” suppliers avoid the regulatory costs of product testing. In some cases they are using manufacturing processes and/or inputs that do not conform to Australian or international standards.

A related problem for Australian manufacturers is the duplication of product testing, registration or reporting by various regulatory agencies. This adds yet another layer of cost disadvantage to local manufacturers versus their international competitors who are not subject to these regulatory requirements.

These regulatory issues are illustrated in the examples below.

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**Example 1: Duplication of product testing, registration and reporting**

There are cases where product testing, registration or reporting for Australian-made products are duplicated by different agencies. For example, the current requirement for some electrical appliances (e.g. washing machines and dishwashers) requires separate certification and registration by:

- state-based electrical safety regulators (Queensland and Tasmania commenced the new national electrical equipment safety system (EESS) in 2013) and
- the Greenhouse Energy Minimum Standards (GEMS) regulator, which checks their energy efficiency rating, and
- the Water Efficiency and Labelling Standards Scheme (WELS), which checks their water efficiency, and

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• the Australian Communications and Media Authority (ACMA), which maintains separate Electromagnetic Compliance (EMC) information.

**Example 2: Costs to maintain conformance in structural steel fabrication**

One small Australian structural steel fabricator with 17 employees spends the following on quality assurance and maintaining conformance with Australian standards:

- between 7.6% to 11% additional project costs due to the required additional labour for a conforming process (work preparation, practices, supervision) and non-destructive testing; plus
- an average of $19 000 per annum for the business over the last 5 years for worker qualifications and procedure development;

When these costs are not borne by competitors, the conforming business is placed at a competitive disadvantage.

**Example 3: Regulator delays in national transport regulation**

Established under the Heavy Vehicle Regulatory Reform, the National Heavy Vehicle Regulator (NHVR) is Australia’s first national independent Regulator for all vehicles over 4.5 tonnes gross vehicle mass. From 10 February 2014, the NHVR started administering one set of laws for heavy vehicles under the Heavy Vehicle National Law (HVNL) in Queensland, New South Wales, Victoria, Tasmania and South Australia. The new national law will commence in ACT and Northern Territory at a later date but Western Australia will not commence the HVNL despite having completed a cost-benefit analysis. This represents a major step towards simplifying the regulatory burden on industry by achieving a greater degree of national consistency but it is still not truly national.

The NHVR has struggled to issue road access permits to trucking operators in a timely way since it commenced full operation. Of the 2,050 permit applications submitted to the NHVR in the period leading up to Tuesday 18 February 2014, the NHVR only managed to issue 258 permits.

Trucking operators moving over size and over mass loads, like large pieces of mining equipment, have been particularly affected. In the mining sector, some of the world’s largest manufacturers of mining equipment are facing contract penalties because they have not been able to get their specialised equipment to mine sites in time.

In response, the Queensland, Victorian and New South Wales state governments have temporarily taken back responsibility for issuing some permits and sent additional staff to the NHVR national office in Brisbane to provide additional support.

**Example 4: Inconsistent regulatory advice on a faulty electrical cable**

In August 2013, *Infinity* electrical cables were tested at the independent National Association of Testing Authorities (NATA) and found to be non-conforming with the electrical safety standard for those products (AS/NZS 5000.1:2005). This particular brand of cables was found to have high conductor resistance and “testing of the cables has shown that deterioration of the insulation over time can cause wires to become exposed and potentially result in an electrical shock or fire”. This finding was highlighted to electrical safety regulators with non-conforming NATA test reports.

Subsequently, Product Safety Recalls Australia issued a warning regarding *Infinity* cables product. After this warning notice was issued, *Infinity* cables was placed into liquidation and one state-based electrical regulator issued a mandatory recall notice advising consumers to check with their electrician to determine whether *Infinity* cables were used in re-wiring work done in the past 12 months.

However, other state-based electrical safety regulators have issued various warnings, safety alerts and prohibition notices on this matter. For example, one noted “Remove the product from sale, including display for sale. Cease use of this cable immediately and return to the point of sale for refund under Australian

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8 Product Safety Recalls Australia, NSW: Mandatory recall: Infinity brand electrical cable, August 2013.
“Consumer Law. It is an offence to supply any cable subject to the prohibition order.” This notice does not advise consumers to remove already installed cables despite Product Safety Recalls Australia warning that “the risk is expected to increase over time”. Another regulator advised electricians that they “should” remove already installed cable, although this warning was not a mandatory requirement. Another state regulator issued a warning and “stop sale” notice but only to electrical contractors asking for “unused cable to be returned to the place of purchase” and “none of the cabling should be used by electrical contractors in doing electrical installation work”.

Industry commentators believe Infinity cables, if left installed, could lead to major long term safety risks with increased risks of fire and electric shock to employees and the public.

This situation meant that consumers and electrical contractors across different states were given different advice on how to deal with the same potential safety hazard. Coordinated regulatory approaches are clearly needed across state-based regulators, in order to provide consistent safety messages and warnings.

Competition and fair trading

One third of CEOs said they expect a medium to high burden from dealing with competition and fair trading laws in 2014, regulated by agencies such as ACCC and ASIC. Over 13% of businesses expected the compliance costs for these areas of regulation to be high in 2014.

Some of the main concerns in this aspect of regulatory burden stem from unreasonable expectations (from the perspective of business) by departments and regulators on how quickly a particular law or regulation can be effectively implemented, taking into account practical business operations and cost effects.

Moreover, inconsistent regulatory approaches by different levels of departments and authorities are also believed to affect similar businesses unevenly despite dealing with the same problem.

These regulatory issues are illustrated in the example below.

Example 1: Impractical timeframe for implementation

From 1 January 2012, Regulation 90 under the Australian Consumer Law (ACL) requires all suppliers, importers and manufacturers of products who offer ‘manufacturer’s warranties’ or ‘warranties against defects’ to provide full details about terms such as what the consumer must do to claim under the warranty, who bears the costs of claiming under the warranty and the benefits given by the warranty. This means that all suppliers, importers and manufacturers are required to amend their existing warranties against defects and are also required to amend existing packaging or request changes to warranty cards included with imported products.

Many manufacturers and retailers have struggled to achieve compliance with this requirement within the 12 month notice period they were given, from 1 January 2011.

As a result, the Australian Competition and Consumer Commission (ACCC) decided that until September 2012, businesses might not be fined for stocks manufactured and packaged prior to 1 November 2011 if there were serious practical difficulties in updating warranty documents and the supplier has taken all reasonable steps to otherwise convey the mandatory text and information required by the ACL to consumers. Nevertheless, many businesses noted that such a short time frame in which to comply with Regulation 90 was impractical, as durable products can be sometimes found in the supply chain, in warehouses or even on retailers’ shelves, four to five years after being manufactured.
Impact of regulatory burden on Australia’s global competitiveness

The World Economic Forum’s (WEF) Global Competitiveness Report is published annually and provides a range of comparable measures with which to assess each country’s competitiveness in the global arena. Australia’s total global competitiveness index has been broadly stable since 2008-09, but many other countries have improved on various measures of their competitiveness at the same time. This has resulted in Australia’s overall global ranking declining from a peak of 15th in 2009-10 to 21st in 2013-14.

Delving into the detail of the WEF’s many individual indicators that relate to the regulatory environment, the WEF indexes indicate that Australia has deteriorated sharply in recent years in its global rankings (Chart 23).

Chart 23: Global Competitiveness Index, Australia, selected measures

On the “burden of government regulation” index ranking, Australia has slipped from 60th place in 2010-11 to 128th in 2013-14 (Table 5). The ‘best practice’ countries on this measure are consistently the successful developed economies such as Singapore, Hong Kong and Finland. Unfortunately, developing economies such as Rwanda and Zambia can also score well on this measure, possibly due to their very minimal business regulation framework in many relevant areas. Nevertheless, this index ranking indicates that it has become relatively more burdensome for businesses to comply with governmental administrative requirements in Australia than in other developed countries. This finding is in accordance with our national CEO surveys over the past four years which show that ‘government regulatory burden’ has been nominated as a key growth impediment by an increasing proportion of Australian businesses over this period (see above).

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9 The Australian Industry Group is the Australian partner association that contributes to the Australian component to this unique annual research project.
10 For further details, see Australian Industry Group. WEF Global Competitiveness Survey: Australia’s global competitiveness ranking slips further in 2013-14, September 2013.
In the WEF rankings, Australia’s competitiveness on labour market efficiency has also deteriorated significantly on various measures since 2008-09. In particular, Australia’s ‘flexibility of wage determination’ has worsened from 75th place in 2008-09 to only 135th in 2013-14. Some of the best practice countries on ‘flexibility of wage determination’ are again to be observed among our Asian peers including Hong Kong and Singapore, as well as advance economies such as the UK. Furthermore, Australia has also become relatively worse on other aspects of labour market efficiency over recent years, including ‘pay and productivity’, ‘co-operation in labour-employer relations’ and ‘hiring and firing practices’ (Chart 23). Although this decline in Australia labour market efficiency ranking has been gradual, it has clearly contributed to Australian businesses worsening cost base and their deepening difficulties in competing globally.

Table 5: **Australian rankings in key WEF Global Competitiveness Indicators**

<table>
<thead>
<tr>
<th>Year</th>
<th>Overall competitiveness ranking</th>
<th>Flexibility of wages</th>
<th>Burden of Government regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>19</td>
<td>87</td>
<td>68</td>
</tr>
<tr>
<td>2008-09</td>
<td>18</td>
<td>90</td>
<td>66</td>
</tr>
<tr>
<td>2009-10</td>
<td>15</td>
<td>75</td>
<td>85</td>
</tr>
<tr>
<td>2010-11</td>
<td>16</td>
<td>110</td>
<td>60</td>
</tr>
<tr>
<td>2011-12</td>
<td>20</td>
<td>116</td>
<td>75</td>
</tr>
<tr>
<td>2012-13</td>
<td>20</td>
<td>123</td>
<td>96</td>
</tr>
<tr>
<td><strong>2013-14</strong></td>
<td><strong>21</strong></td>
<td><strong>135</strong></td>
<td><strong>128</strong></td>
</tr>
</tbody>
</table>

Source: WEF Global Competitiveness Reports and database.
Implications for regulatory reform

Ai Group’s latest research findings on the burden on business arising from Government regulation show that the need for regulatory reform is becoming increasingly urgent. These findings help to shed light on the business community’s current concern about government regulation, but they also provide useful indicators of how the burden these regulations are placing on business can best be reduced.

Ai Group’s findings point to an urgent need to renew efforts to reduce the regulatory burden for Australian businesses, particularly in the areas of industrial relations and OH&S. In these and other regulatory areas, all levels of government need to eliminate and/or harmonise duplicated or inconsistent laws and regulations implemented by different national regulators, state and territory governments and local councils in the same activity or geographic area. Many of the examples of regulatory duplication highlighted in Ai Group’s 2011 CEO Survey are yet to be resolved or still require further attention. In 2011, these examples of duplication included:

- ATO / state revenue office / workcover;
- Between the ATO and private sector banks and insurance providers, who often want the same information in different formats;
- Tax, child support and superannuation requirements, could all be better connected;
- Local and State Government water and waste authorities;
- Overlapping environmental laws/licenses between local, state and federal governments;
- Overlapping transport laws/licenses between local, state and federal governments;
- Water Efficiency and Labelling Standards Scheme (WELS) and Watermark;
- Regulatory overlaps and duplications between ASIC and ACCC; and
- Mandatory reporting for compliance purposes to more than one authority and in more than one format.

All levels of government need to address unclear or poorly drafted legislation and regulations that are unnecessarily ambiguous or open to interpretation. Regulatory ambiguity is time consuming and adds costs to businesses.

All levels of government must take a co-ordinated approach across different governments, departments and regulators when seeking to introduce new regulations and in undertaking reviews. The need for stronger coordination was highlighted by the COAG Reform Council and the Productivity Commissions in their reports.

The high priority given to deregulation at the COAG meeting in December 2013 is a welcome start with governments agreeing to work in their own jurisdictions to improve regulation and remove unnecessary red tape; to work bilaterally to implement ‘one-stop-shops’ for environmental approvals in each state and to concentrate initially on reducing red tape affecting manufacturing, higher education, early childhood and small business. COAG also agreed to consider workplace health and safety at its first meeting in 2014. The effectiveness of these initiatives will be significantly enhanced if there are clear measures of progress and unambiguous responsibilities for achieving results.

Detailed policy responses to the problem of regulatory burden should include the changes that would have the greatest impact on reducing their regulatory compliance burden. Ai Group’s CEO Survey of Business Regulation in 2011 suggests that business would like to see: the establishment of reliable electronic and web-based reporting (proposed by 25.4% of businesses); reducing the frequency of reporting requirements to a minimum (19.8%); and a single location or website for all related regulatory information and announcements (12.7%). Avoiding duplication and overlap between regulators was also seen by businesses to be an important issue (Table 6).
Table 6: Measures to reduce the burden of regulatory compliance

<table>
<thead>
<tr>
<th>Percentage of CEOs who recommended the following measures:</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of reliable electronic and web-based reporting</td>
<td>25.4</td>
</tr>
<tr>
<td>Reduce the frequency of reporting requirements to a minimum</td>
<td>19.8</td>
</tr>
<tr>
<td>Single location or website for all regulatory information and announcements</td>
<td>12.7</td>
</tr>
<tr>
<td>One agency which collects all the required information</td>
<td>11.9</td>
</tr>
<tr>
<td>Reducing the duplication of regulation across local government boundaries and state borders</td>
<td>10.3</td>
</tr>
<tr>
<td>Better communication and consultation with businesses when developing new regulations</td>
<td>10.3</td>
</tr>
<tr>
<td>Agencies sharing information and ensuring there are no duplicate information requirements</td>
<td>4.7</td>
</tr>
<tr>
<td>Implement pre-populated forms and reports</td>
<td>3.2</td>
</tr>
<tr>
<td>Scheduled release of new and amended regulation</td>
<td>1.6</td>
</tr>
</tbody>
</table>


With regard to small businesses that often feel the burden of regulation most keenly, Ai Group notes the importance of ensuring that all regulators engage in ‘best practice’ regulatory behaviour and engagement, in accordance with established public policy guidelines. Some examples of ‘best practice’ regulatory behaviour that all regulators could productively adopt in their engagements with small (and large) businesses include:

- The principles of best practice regulation must be adhered to in all dealings with business including: transparency; accountability; proportionateness; consistency; and careful targeting.
- All regulations should be simply written in plain English, so they are easily understood, implemented and enforced.
- No inspection should take place without a reason.
- Businesses should only have to supply information that is necessary and that is unavailable through other sources (e.g. through other government agencies).
- Claims of reduction in regulatory burden should be externally validated by a process that includes industry-based feedback and assessment.
- Regulators should share a common objective of allowing and encouraging economic progress and should carry out their protective role within that context.
- Businesses should feel encouraged to invite a regulator into their premises. Regulators should include this in their key Performance Indicators (KPI’s) and measure it through regular stakeholder surveys.
- Regulators should always explain why they are there and what they are looking for.
- Regulators should have a consistent narrative that explains their objective, including the compliance behaviour they are looking for, and shows the role of every interaction (visit, notice, prosecution) in the context of the overall task of influencing business behaviour.
- Interactions with business should not be personalised or adversarial.
- If an inspection is undertaken following a third party complaint (by an employee, union or member of the public, etc.), the regulator should not prejudge the situation and act as if the alleged breach has occurred, or the facts alleged are true, until they are shown to be true.
- Inspectors should act respectfully towards SMEs and seek to understand the limitations of a small management team. Conversely, regulators should not assume that small businesses are too unstructured or unsophisticated to understand compliance duties, or assume they will not have systems in place to meet them, until proven otherwise.
• Businesses should not be made to feel that they will be disadvantaged if they take responsibility for adverse incidents and seek ways to immediately learn from them and avoid them in the future. Taking responsibility should not be equated with accepting blame.

• Inspectors should not be afraid to admit they don’t have particular technical expertise, and should call for assistance, rather than bluff their way through.

• Inspectors should actively acknowledge positive efforts, improvements or voluntary over-compliance by duty holders.

• Inspectors should acknowledge, respect and try to be consistent with rulings, notices or observations made to that business by other inspectors from the same regulator by another regulator dealing with the same issue (e.g. a similar regulator in another state). Inconsistency undermines authority.

• Internal review processes or appeal mechanisms should be openly and transparently communicated, as part of a strategy to make enforcement appear as objective as possible. Inspectors should actively encourage businesses to use appeal or review mechanisms if the business does not understand or agree with the regulatory action taken or the reasons given for it. Inspectors should feel confident to say: “If you disagree with what I have done, I encourage you to take it up with…”

In its 2013 report, Regulator Engagement with Small Business, the Productivity Commission found that many regulators do not have robust frameworks to ensure high level ideas are consistently carried out in practice. It recommended that:

• Regulators tailor their reporting requirements around data that are already collected by businesses;

• Make greater use of industry associations to disseminate information;

• Ensure regulatory information can be readily found on websites; and

• Enable timely access to regulatory staff.

To reduce the regulator burden imposed on businesses, the Productivity Commission recommended that governments:

• Adopt a risk-based approach where less frequent inspections or reporting requirements are required for lower risk businesses. This will help to lower compliance costs, especially for small businesses;

• Ensure regulatory frameworks do not inhibit adoption of leading practices;

• Provide regulators, given their limited resources, with explicit guidance on regulatory priorities to help prevent some risks become unaddressed or pushing the costs of mitigation onto businesses (including small businesses);

• Ensure low cost mediation services for disputes and make wider use of formal cooperation between regulators to facilitate joint compliance checks and information sharing; and

• Ensure ongoing monitoring of the regulatory performance and costs imposed on business.
Progress on regulatory reforms under the COAG Reform Council

The Council of Australian Governments (COAG) Reform Council delivered its final report in 2013 on the progress to date by all governments to implement competition and regulatory reforms, as agreed in the National Partnership Agreement in 2009. The Reform Council reported that 31 of the 45 reforms it monitors have been completed or are on track to be completed. However, it highlighted several key unfinished areas in the agreement, most notably with regard to energy, transport and infrastructure reforms. The Council also noted that reforms that attract reward payments under this agreement made greater progress than those that did not attract reward payments (Chart 24). This demonstrates that financial incentives for governments can play a role in implementing national reform programs.

Despite the positive progress on the reform agenda over the past five years, the Council Review found that achieving the milestones under the agreement would not necessarily result in more consistent and better designed regulation. The Review also noted that:

“To much bureaucracy and red tape has grown up around COAG. … COAG agreed that its Council system should be streamlined and refocussed on COAG’s priorities over the next 12–18 months. The current 22 COAG Councils will be replaced with the following eight:

• Federal Financial Relations;
• Disability Reform;
• Transport and Infrastructure;
• Energy;
• Industry and skills;
• Law, Crime and Community Safety;
• Education; and
• Health.

Given the importance of Indigenous affairs and deregulation they will be included in the terms of reference of each Council, and considered directly by COAG as standing items. " (www.coag.gov.au).

In a separate review of COAG’s progress on its ‘National Partnership’ reforms, a recent Productivity Commission report did not identify any resulting substantial improvements in Australia’s regulation making and review procedures.11 Although the Commission found that Australian governments’ principles for regulation-making and review processes are sound and compare favourably internationally, there is a clear gap between agreed principles and practices. In particular, the Commission noted a lack of practical progress because:

• proposals with significant impacts are frequently exempted from regulatory impact analysis,
• the public consultation process is often mechanical, and
• there is poor public transparency in most decision making processes.

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The Commission’s finding is also reflected in the Australian Office of Best Practice Regulation’s *Best Practice Regulation Report 2012-13*. While 64 of the 66 Regulatory Impact Statements (RISs) it examined were assessed as adequate, a higher number (8) of ‘exceptional circumstances’ were granted by the former Prime Minister in 2012-13 compared to 2011-12 (5) where a RIS was not prepared. Some of the announced exemptions in 2012-13 were related to various aspects of the *Fair Work Act 2009*, which presumably would have an effect on the industrial relations dynamics for domestic businesses.

In the absence of an adequate RIS or an exemption from the Prime Minister, a post-implementation review (PIR) is required to commence within one to two years of the implementation date. In these cases, businesses still have to bear all the burden and costs of complying with such regulations without full knowledge of the impact on their business or on industry or the economy in general. It is clear in this report that despite declining slightly in 2012-13, the number of regulations that require an RIS prior to the decision-making stage has remained high over recent years (see Table 7).

<table>
<thead>
<tr>
<th>Table 7: Australian Government Regulatory Impact Statement (RIS) compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stage</strong></td>
</tr>
<tr>
<td>Decision-making stage</td>
</tr>
<tr>
<td>Transparency stage</td>
</tr>
<tr>
<td>Exceptional circumstances</td>
</tr>
</tbody>
</table>

*The number of RISs required at the transparency stage can be lower than at the decision-making stage because some regulations are subject to multiple decision-making processes. For example, RISs are required for treaties at two separate decision-making stages.*

Source: Australian Government Office of Best Practice Regulation
Appendix: National CEO survey participants, 2014

In order to identify the prospects for businesses in 2014, the Australian Industry Group undertook a comprehensive survey of Australian business CEOs in October and November 2013. Responses were received from the CEOs of 241 businesses across Australia. Together, these businesses employed around 39,400 people (184 people each on average) and had a collective annual turnover of $15 billion in 2013.

All Australian States (except for Tasmania) and major non-farm private-sector industries were represented in this year’s CEO survey (see tables below). The manufacturing sector contributed the highest proportion of respondents (46%). Manufacturing’s share of this sample is far higher than its share of national production (around 7%). Victoria was somewhat over-represented in the sample, relative to other states. The data in this report have been presented in their original form and are not adjusted or weighted to match the current industry representation in the broader economy (e.g. as indicated in the ABS national accounts or labour force data). The higher proportion of manufacturers and Victorian businesses in the sample therefore means that the general findings reflect the higher number of responses from these types of businesses. The analysis of the results for each of the four broad industry groups and for each state, however, is not affected by this over-sampling in manufacturing.

<table>
<thead>
<tr>
<th>State</th>
<th>National CEO Survey 2014</th>
<th>ABS data (2012-13)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of respondents</td>
<td>% of respondents</td>
</tr>
<tr>
<td>NSW</td>
<td>73</td>
<td>30.3</td>
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<tr>
<td>Vic</td>
<td>106</td>
<td>44.0</td>
</tr>
<tr>
<td>Qld</td>
<td>31</td>
<td>12.9</td>
</tr>
<tr>
<td>WA</td>
<td>12</td>
<td>5.0</td>
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<td>SA</td>
<td>18</td>
<td>7.5</td>
</tr>
<tr>
<td>ACT</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tas</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>NT</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>241</td>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Industry</th>
<th>National CEO Survey 2014</th>
<th>ABS data (2012-13)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of respondents</td>
<td>% of respondents</td>
</tr>
<tr>
<td>Mining and mining services</td>
<td>14</td>
<td>5.8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>112</td>
<td>46.5</td>
</tr>
<tr>
<td>Construction</td>
<td>25</td>
<td>10.4</td>
</tr>
<tr>
<td>Services *</td>
<td>90</td>
<td>37.3</td>
</tr>
<tr>
<td>Total</td>
<td>241</td>
<td>100</td>
</tr>
</tbody>
</table>

* the services sectors represented in this sample include: utilities (electricity, gas and water); IT, communications and media services; transport, post and storage services; wholesale trade; retail trade; finance and insurance; real estate and property services; professional services; administrative services; health and welfare services; education; hospitality (food and accommodation services); arts and recreation services; and personal and other services. Excludes public administration and safety (about 5.2% of output).
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