

## GOVERNMENT RESPONSE

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

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

- primary sector (completed);
- manufacturing sector and distributive trades (completed);
- social and economic infrastructure services (completed);
- business and consumer services (2010); and
- economy-wide generic regulation and regulation not addressed earlier in the cycle (2011).

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

The PC released its report on the *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* (the Report) on 15 September 2009.

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

The Report presents 42 PC recommendations, covering issues including energy, construction, transport, information media and telecommunications, health care and social assistance, education, aged care and child care.

The Government is supportive of a majority of the PC responses; the Government accepts or accepts in principle 26, notes 12 and has not accepted 4 responses.

The proposed Government Response indicates that considerable action has already taken place: 3 responses have been completed or are substantially completed, 22 have reforms or reviews underway and 8 are subject to future action.

The Commonwealth Government's formal response to the Report is set out below.

# Aged care

## PC Recommendation 2.1

To enable the Australian Government to reduce the burden associated with regulation and price controls, and to improve the quality and diversity of aged care services, it should explore options:

- for relaxing supply constraints in the provision of aged care services
- for allowing consumers' needs and preferences to be better understood and addressed
- for providing better information to older people and their families so they can make more meaningful comparisons in choosing an aged care service.

### Government Response: Accepted in principle

On 13 August 2009, the Prime Minister announced that the Government would shortly provide a reference to the PC to hold a public inquiry into aged care in Australia to examine the needs of aged persons for the next 20 years, as well as to look at appropriate standards and funding arrangements to secure the best outcomes from aged care services. The inquiry will enable the PC to consider the underlying objectives of this recommendation in more detail, and provide specific recommendations of how to implement them.

The Government has also commenced wide-ranging community consultations on the recommendations of the National Health and Hospitals Reform Commission (the NHHR Commission), which are relevant to this recommendation. The NHHR Commission's recommendations seek to: ensure greater choice and responsiveness for consumers; obtain the most effective use of public monies while protecting those older people who are most in need; and create an environment that fosters a robust and sustainable aged care sector.

In particular, the NHHR Commission recommended, inter alia, that:

“Rec 42. Government subsidies for aged care should be more directly linked to people rather than places. As a better reflection of population need, we recommend changing the limit on provision of aged care subsidies from places per 1000 people aged 70 or over to care recipients per 1000 people aged 85 or over.

“Rec 44. Requirement for aged care providers to make standardised information on service quality and quality of life publicly available on [ww.agedcareaustralia.gov.au](http://www.agedcareaustralia.gov.au) to enable older people and their families to compare aged care providers.

“Rec 45. Consolidating aged care under the Commonwealth by making aged care under the Home and Community Care program a direct Commonwealth program.

“Rec 47. More flexible range of care subsidies for people receiving community care packages, determined in a way that is compatible with care subsidies for residential care.

“Rec 49. People supported to receive care in the community should be given the option to determine how the resources allocated for their care and support are used.

“Rec 50. Once assessments, care subsidies and user payments are aligned across community care and residential care, older people should be given greater scope to choose for themselves between using their care subsidy for community or for residential care.”

Notwithstanding these reviews, the Government has already taken steps to increase the amount of information available to aged care consumers on quality of service provision. From 1 July 2009, the Government commenced the publication of non-compliance information on individual residential aged care services which are funded by the Government. This information is available through the Aged Care Australia website located at [www.agedcareaustralia.gov.au](http://www.agedcareaustralia.gov.au).

## **PC Recommendation 2.2 and 2.3**

The Australian Government should explore options for removing the regulatory restriction on bonds as a source of funding.

Contingent upon the freeing up of supply constraints in the provision of aged care services outlined above in Recommendation 2.1, the Australian Government should abolish the 'extra service' residential care category. In the interim, where there appears to be unmet demand for such 'extra service' places in a particular region, the Department should consider freeing up the regional cap and adopting a lighter-handed monitoring approach, only intervening where extra service provision is resulting in an unreasonable reduction of access for supported, concessional or assisted care recipients.

### **Government Response (2.2 and 2.3): Noted**

On 13 August 2009, the Prime Minister announced that the Government would shortly provide a reference to the PC to hold a public inquiry into aged care in Australia to examine the needs of aged persons for the next 20 years, as well as to look at appropriate standards and funding arrangements to secure the best outcomes from aged care services. The inquiry will enable the PC to consider the underlying objectives of this recommendation in more detail, and provide specific recommendations of how to implement them.

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The NHHR Commission recommended, inter alia, that:

“Rec 43. Consideration be given to permitting accommodation bonds to be an option for payment for accommodation for people entering high care, provided that removing regulated limits on the number of places has resulted in sufficient increased competition in supply and price.

“Rec 48. People who can contribute to the costs of their own care should contribute for care in the community as they would for residential care (not including accommodation costs).

“Rec 50. Once assessments, care subsidies and user payments are aligned across community care and residential care, older people should be given greater scope to choose for themselves between using their care subsidy for community or for residential care.”

## **PC Recommendation 2.4**

The Department of Health and Ageing should conduct a publicly available evaluation of the current safeguards that protect elderly people receiving care, including the police check requirements, to explore whether the benefits of the existing safety framework could be achieved in a less costly manner.

### **Government Response: Accepted**

The Government has initiated a number of reviews that will canvas initiatives aimed at protecting the health, safety and well-being of the frail and elderly people receiving care. These include the review of the accreditation process and the review of the Complaints Investigation Scheme.

The requirement for police checks in aged care was introduced in 2007 and strengthened in January 2009 and is, therefore, a relatively new measure. DoHA will continue ongoing work to look at opportunities to harmonise police check processes. This includes learning from recent developments through the Council of Australian Governments' (COAG) Exchange of Criminal History Information about People Working with Children Project, being progressed under the National Framework for Protecting Australia's Children 2009-2020.

## **PC Recommendation 2.5**

The Australian Government should amend the missing resident reporting requirements in the Accountability Principles 1998. It should allow a longer time period for providers to report missing residents to the Department. It should also adopt a more risk managed or tiered approach, by allowing different reporting time periods based on a provider's record on missing residents. This recommendation would not impact on the reporting of missing residents to police services by providers.

### **Government Response: Not accepted**

The Accountability Principles 1998 do not require approved providers to notify DoHA every time a resident goes missing from a facility. Approved providers are only required to advise DoHA when they have reported a resident missing to the police. The benchmark for reporting is therefore set at a high point, based on a risk management approach to such incidents.

It is essential that DoHA is made aware of such incidents quickly because of the risks to residents. It also enables DoHA to offer support to the family of the missing resident and to ensure that the facility concerned has the appropriate systems in place. The provision of support for families and assessment of the facilities systems needs to occur quickly, regardless of a facility's previous record on missing residents. DoHA will, however, assess scope to streamline its administrative arrangements for the reporting of missing residents as a part of the ongoing process improvement program.

## **PC Recommendation 2.6**

The Australian Government should review the Aged Care Standards and Accreditation Agency visits program to residential aged care facilities including the associated visit performance targets. The review should consider whether the visits program would benefit from a risk management approach designed with a greater focus on under-performing homes, that could achieve the same objectives (of ensuring compliance with accreditation standards) with less visits imposed on residential aged care providers overall.

### **Government Response: Accepted**

The residential aged care accreditation process is being reviewed by DoHA. This review is being informed by a public consultation process, which has garnered views from industry and consumer groups as well as professional bodies. The outcomes of this review will inform options for improving the accreditation process into the future.

Further consultations with key stakeholders through the Ageing Consultative Committee will occur through to June 2010.

## **PC Recommendation 2.7**

The Accommodation Bond Guarantee Scheme ensures the refund of accommodation bonds to aged care residents in the event that a provider becomes insolvent. Given this government guarantee to residents, the Australian Government should amend the prudential standards to remove the requirement on aged care providers to disclose to care recipients or prospective care recipients:

- a statement about whether the provider complied with the prudential standards in the financial year
- an audit opinion on whether the provider has complied with the prudential standards in the relevant financial year
- the most recent statement of the aged care service's audited accounts.

### **Government Response: Not accepted**

The Government considers that the information provided to residents by their approved provider about the approved provider's compliance with the prudential requirements ensures that residents and prospective residents have access to information about the financial status of the approved provider and their performance in meeting their prudential obligations.

The Accommodation Bond Guarantee Scheme (Guarantee Scheme) is intended as a safety net and does not replace the need for approved providers to manage residents' accommodation bonds in a responsible manner, or for residents to have information enabling them to make informed decisions. In this respect, the requirement for disclosure to prospective residents and existing care recipients works to reduce the moral hazard created by the Guarantee Scheme by assisting people to make informed decisions about the security of their bonds.

As the average size of new accommodation bonds in 2007-08 was \$188,798, the disclosure requirements are considered reasonable.

DoHA is proposing to conduct an evaluation of the operation of the Disclosure Standard and will consider whether the Standard could be modified to more effectively inform consumers after the evaluation has concluded.

The Government notes that during consultation on the recommendations in the PC's draft report, some approved provider representatives indicated that they did not believe that disclosing information to residents who had paid accommodation bonds was unreasonable given the amount of funds involved. Moreover, consumer representatives also support the provision of information to residents who have paid accommodation bonds.

## **PC Recommendation 2.8**

The Australian Government should amend the Residential Care Subsidy Principles 1997 to remove requirements on aged care providers to lodge separate written notices with the Secretary of the Department of Health and Ageing demonstrating compliance with Conditional Adjustment Payment reporting.

### **Government Response: Accepted**

Compliance with the financial reporting and participation in periodic workforce survey requirements for the Conditional Adjustment Payment (CAP) will be verified through other reporting mechanisms. Alternate means of verifying compliance with the CAP requirement to provide training opportunities to staff will be examined.

This will require amendment to the Residential Care Subsidy Principles 1997, and work to introduce these amendments will commence immediately. DoHA will undertake a process to inform approved providers, peak bodies and other aged care stakeholders of proposed changes to CAP reporting requirements. These changes will be implemented before the next CAP Annual Notice reporting deadline of 31 October 2010.

## **PC Recommendation 2.9**

The Department of Health and Ageing should review the efficacy of audited general purpose financial reports and consider whether other reporting mechanisms would deliver better outcomes for providers both in terms of comparative financial performance and compliance cost.

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

DoHA continually reviews the full range of financial reporting by approved providers to determine if there is scope for streamlining requirements. The appropriateness of the requirement to provide audited General Purpose Financial Reports was considered in the Review of the Conditional Adjustment Payment in the 2009-10 Budget.

The Government considers that General Purpose Financial Reports are the most appropriate statements for aged care providers to prepare, because, as the Australian Accounting Standards Board (AASB) has stated: 'general purpose financial reporting focuses on providing information to meet the common information needs of users who are unable to command the preparation of reports tailored to their particular information needs. These users must rely on the information communicated to them by the reporting entity' (AASB, Statement of Accounting Concepts 2, paragraph 7).

## **PC Recommendation 2.10**

The Department of Health and Ageing and the Aged Care Standards and Accreditation Agency must clarify their respective roles to the industry regarding the monitoring of provider compliance with the accreditation standards. To achieve this, an effective communication strategy should be implemented in conjunction with the immediate release of the protocol between the two organisations (which explains the actions each organisation takes when non-compliance is identified or suspected). Legislative amendments should also be considered, if required.

### **Government Response: Accepted**

The Government agrees that there may be confusion amongst the aged care industry and consumers about the roles of DoHA and the Aged Care Standards and Accreditation Agency Ltd in monitoring an approved provider's compliance with its responsibilities under the *Aged Care Act 1997*, including in respect of the accreditation standards and complaints investigation.

Reviews of the aged care accreditation process and of the Complaints Investigation Scheme are currently underway and this issue will be considered in the context of implementing outcomes from those reviews, both of which were informed by public consultation processes.

Further consultation with aged care stakeholders will occur through the Ageing Consultative Committee.

## **PC Recommendation 2.11**

The Department of Health and Ageing, in consultation with relevant state and territory government departments, should use current reviews of the accreditation process and standards to identify and remove, as far as possible, onerous duplicate and inconsistent regulations.

### **Government Response: Accepted**

The Government agrees that there may be confusion amongst aged care providers regarding the interface between the aged care Accreditation Standards and state and/or local government regulatory requirements. This issue will be considered in the context of the reviews of the residential aged care accreditation process and Accreditation Standards, which are currently being conducted by DoHA.

The review of the accreditation process was informed by a public consultation process and further consultation with key stakeholders will occur through to June 2010, through the Ageing Consultative Committee.

## **PC Recommendation 2.12**

The Australian Government should abolish the annual fire safety declaration for those aged care homes that have met state, territory and local government fire safety standards.

### **Government Response: Accepted**

Ongoing monitoring of the safety and environment of a residential aged care facility, including the management of fire risks and compliance with fire safety requirements, occurs through the accreditation process and the requirement to meet the Accreditation Standards. Exceptions reporting will be introduced requiring approved providers that are assessed as not meeting the requirements of state and territory or local authority requirements to report to DoHA to allow for ongoing monitoring.

The necessary legislative amendments will be made so that exceptions reporting can commence in respect of compliance in the 2010 calendar year.

Consultation with aged care stakeholders and the necessary amendments to the Quality of Care Principles will occur during 2009-10.

## **PC Recommendation 2.13**

The Department of Health and Ageing should submit a Proposal for Change to the Australian Building Codes Board requesting the privacy and space requirements contained in the current building certification standards be incorporated into the Building Code of Australia. Newly constructed aged care facilities would then only be required to meet the requirements of the Building Code of Australia. Once all existing residential aged care facilities have met the current building certification standards those standards should be abolished.

### **Government Response: Accepted**

The Government will consult with the Australian Building Codes Board (ABCB) and aged care stakeholders to develop a proposal by 30 June 2010 to consolidate building requirements for the ABCB's consideration.

Input from aged care stakeholders will be incorporated into the development of the proposal, following which DoHA will enter into discussions with the ABCB on advancing the proposal, consulting with the Building Minister's Forum where necessary. It is noted that consideration will need to be given to how incorporation of the requirements into the Building Code of Australia may impact on eligibility for subsidy and charging accommodation bonds, application to existing building stock, ensuring consistency of application across Australia and other implementation risks.

Presently, building certification standards for Commonwealth funded services are higher than the requirements specified in the Building Code of Australia, including specifying standards on aspects of safety and amenity for residents that go beyond privacy and space, such as fire and safety, security, heating and cooling and the identification and rectification of hazards. Such standards are required to ensure that vulnerable frail aged care residents are provided with an appropriate environment.

## **PC Recommendation 2.14**

The Australian Government should allow residential aged care providers choice of accreditation agencies to introduce competition and to streamline processes for providers who are engaged in multiple aged care activities.

### **Government Response: Not accepted**

Accreditation is an important part of the aged care quality framework and all residential aged care homes must be accredited in order to receive Australian Government funding through residential care subsidies.

The Government supports the continuation of a single accreditation provider on the basis that the residential aged care sector is small (approximately 2,800 services) and a single accreditation provider is better placed to ensure consistency of assessment of aged care homes against the Accreditation Standards, which is important given the links between accreditation, quality of care and funding.

## **PC Recommendation 2.15**

The Commonwealth, state and territory governments should resolve any outstanding issues with the proposed community standards and reporting processes and implement the National Quality Reporting Framework as soon as possible, consistent with the methodology and principles supporting Standard Business Reporting.

### **Government Response: Accepted**

The Government is actively working towards implementation of a National Quality Reporting process. Commonwealth and state and territory governments have been collaborating on and developing draft Common Standards, which will simplify reporting for the diverse range of community programs, service types and settings.

A pilot of the draft Common Standards and associated reporting processes to test their useability and suitability with service providers and quality assessors was completed in September 2009. The final report is being considered and it is anticipated that the Common Standards and reporting processes will be progressively implemented in 2010 subject to approval of final Common Standards and implementation planning by governments.

DoHA is working to standardise and simplify financial reporting requirements for community care providers and is making progress on a project that would allow for electronic data collection using a standard framework. As a first step, providers funded under the National Respite for Carers Program will trial a revised Financial Accountability Report form from January 2010. Providers will be able to submit their reports via email on a pre-populated form. This is an improvement on the previous practice of mailing a blank form to providers for completion. These improvements will reduce the administrative burden for service providers.

The outcomes of the trial will inform any wider rollout to other community care programs.

The suitability of an internet based system for providers to meet their reporting obligations is also being examined. This project is in the early scoping stages. This is broadly in line with the objectives of Standard Business Reporting (SBR). This project will involve a trial of whether the requirement for audited financial information can be reduced using a risk management approach.

Scope to expand the reports which are included in the SBR initiative can be considered when SBR is fully operational in July 2010. The SBR project aims to cut the red tape confronting business when reporting to government through better, more streamlined computer reporting systems. Once SBR has been tested, opportunities for expanding its application will be considered, subject to a compelling business case.

## **Child care**

### **PC Recommendation 3.1**

The Australian Government should amend the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 so that it is clear that a service can have its Child Care Benefit approval removed if it is not accredited by the National Childcare Accreditation Council.

### **Government Response: Accepted**

The Australian Government supports this recommendation and will address it through legislation which clarifies the possible consequences of failing to become accredited, including the option of civil penalties and the potential removal of Child Care Benefit approval. However, there does need to be a discretionary aspect (or professional judgement) to ensure that a balance is struck between ensuring that families have access to services and at the same time assuring safety and quality.

This legislation will be introduced as part of the legislative changes that will bring into effect the COAG decision on 7 December 2009 to introduce a new National Quality Framework, which is a genuinely integrated national system that includes a new National Quality Standard, a quality rating system, enhanced regulatory arrangements, a new national body and an Early Years Learning Framework.

It is anticipated that amendments to the family assistance law to enable the recommendation to be implemented would be sought during 2010.

### **PC Recommendation 3.2**

The Department of Education, Employment and Workplace Relations should improve both the quality of child care service information provided to parents, and the way it is delivered by:

- making it mandatory for the National Childcare Accreditation Council to publish on its website information on child care services' accreditation status (and the reasons for any 'not accredited' decision) and the Quality Profile Certificate (or quality rating) of specific child care services
- publishing on its website information on those child care services that are non-compliant with Child Care Quality Assurance, including the reasons for their non-compliance, and the consequences/outcomes that have resulted from their non-compliance
- providing direct links to this information on the [mychild.gov.au](http://mychild.gov.au) website.

### **Government Response: Accepted**

On 7 December 2009 COAG endorsed a new National Quality Framework for early childhood education and care services, which includes a National Quality Standard and ratings system. The ratings system will provide information for parents on the quality of services, including making this information available on relevant websites. The information for parents will identify how services are performing across a number of quality areas relevant to the delivery of early childhood education and care and school age care services.

### **PC Recommendation 3.3**

The Department of Education, Employment and Workplace Relations should continue to improve the way child care services report anticipated vacancy information so that industry compliance costs are constrained and the information provided to parents is more useful.

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

The Government will implement this recommendation through continuing work to improve vacancy reporting in both the quality and level of information provided to parents. This will build on the recent introduction of a standard definition of a vacancy. Vacancy information for individual services updated on a weekly basis will be made available to parents and services on the mychild website ([www.mychild.gov.au](http://www.mychild.gov.au)) shortly. Scope for improving current reporting arrangements including automated reporting will be explored with the sector before the end of the year to reduce the administrative burden on child care service providers. This may include working with third party software providers to provide tailored information to services about how to most effectively use software applications to submit vacancy data.

### **PC Recommendation 3.4**

The Department of Education, Employment and Workplace Relations should remove the requirement on the National Childcare Accreditation Council to conduct 'unannounced' validation visits of child care services, but continue with (unannounced) spot checks.

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

NCAC announced on 21 October 2009 that it would implement this recommendation from 1 November 2009.

Previously, validation visits were unannounced. Services were only advised of a six-week timeframe in which the visit would occur but not the actual date(s) of the visit. Under the new proposal, the services will receive notification in writing of the date of the scheduled validation visit. Spot checks will continue to be unannounced. Child care services will receive advice concerning the date of their validation visit before the end of 2009.

### **PC Recommendation 3.5**

The National Childcare Accreditation Council should replace paper validation surveys given to parents with an alternative delivery mechanism, such as a telephone validation survey, so that child care services are no longer required to act as a survey dispensing/collection service.

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

NCAC announced on 21 October 2009 that it would implement this recommendation from 1 November 2009.

The previous requirement for parents to fill out paper validation surveys about their service was not considered to be useful for a range of reasons. Feedback from parents is an important feature of the new National Quality System and is actively being addressed in the new standards. Child care services were notified by NCAC during November 2009 that the completion of paper-based family surveys is no longer necessary. While a more in-depth telephone survey is being designed as a replacement, families using the NCAC website will be able to respond to some questions about the quality of care at their service.

### **PC Recommendation 3.6**

The Department of Education, Employment and Workplace Relations should complete the integration of the three existing Child Care Quality Assurance systems as soon as possible.

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

On 7 December 2009 COAG endorsed a new National Quality Framework for early childhood education and care services, which for the first time provides a single framework for quality early childhood education and care and school age care regardless of setting, and brings together current licensing and regulation systems managed by the state and territory governments with the quality assurance system currently managed by NCAC.

The National Quality Framework will initially apply to the three settings covered by the current Child Care Quality Assurance System – Long Day Care, Family Day Care and Outside School Hours Care – as well as Preschool. The framework includes a new National Quality Standard, a quality ratings system, a new national body and a unified national regulatory system.

### **PC Recommendation 3.7**

The National Childcare Accreditation Council and state/territory regulators should coordinate their visits to child care services as far as possible, to reduce the risk of compliance activity spiking within a specific timeframe during the year.

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

This recommendation will be addressed through the implementation of the National Quality Framework. Under the new framework, a jointly governed unified national system will replace current licensing and quality assurance processes and will mean that:

- individual services will need to deal with only one organisation for quality assessment;
- a single set of improved national quality standards will integrate education and care and promote good developmental outcomes; and
- a new ratings system will provide better information about service quality.

It is not intended to make significant structural changes to the regulatory processes before the COAG reforms are implemented on 1 January 2012. However, in the intervening period the Government will work to identify opportunities to coordinate service visits to avoid the risk of activity spiking at certain times.

# Information media and telecommunications

## PC Recommendation 4.1

The Australian Communications and Media Authority should be provided with a broader discretion, similar to that provided to the Commonwealth Ombudsman, to not investigate some code complaints.

### Government Response: Noted

The Government will give this recommendation further consideration, in light of the practical consequences for the Australian Communications and Media Authority (ACMA). In further considering this recommendation, the Government will need to strike a balance between the interests of complainants and the interests of the regulator and industry in minimising the regulatory burden.

ACMA currently has some flexibility in investigating code complaints and in dealing with breaches arising from code complaints.

The *Broadcasting Services Act 1992* (BSA) currently provides that ACMA need not investigate a complaint if it is satisfied that the complaint is frivolous, or vexatious, or was not made in good faith. In addition, ACMA only receives complaints under codes of practice if made in accordance with the relevant code of practice.

The co-regulatory framework set out in the BSA allows ACMA to use its discretion to form an opinion on the exercise of its power in relation to individual breaches.

Section 5 of the BSA confers on ACMA a range of functions and powers that are to be used in a manner that, in the opinion of ACMA, will:

- produce regulatory arrangements that are stable and predictable; and
- deal effectively with breaches of the legislation.

Section 5 of the BSA also provides that: “Where it is necessary for the ACMA to use [its] powers... the Parliament intends that the ACMA [should do so] in a manner that, in the opinion of the ACMA, is commensurate with the seriousness of the breach concerned”.

The Government notes that this requires ACMA to use its enforcement powers appropriately and to identify the most effective and proportionate way of dealing with breaches.

## **PC Recommendation 4.2**

The Australian Communications and Media Authority and the Department of Broadband, Communications and the Digital Economy should conduct a comprehensive joint review of all of the customer information requirements imposed on telecommunications businesses, and the processes used in developing new requirements. Specifically they should:

- review all of the current customer information requirements in consultation with industry and consumer organisations, with the aim of streamlining the requirements to remove duplication, reduce the burden on business, and improve the comprehensibility and clarity of information provided to customers, consistent with the principles set out in the Productivity Commission's Report on its Review of Australia's Consumer Policy Framework
- review the processes for developing new customer information requirements to ensure that such processes take account of the existing requirements and that the new requirements form part of a comprehensive and comprehensible package of customer information.

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

The Government supports this recommendation in principle but considers it would be premature for ACMA and the Department of Broadband, Communications and the Digital Economy (DBCDE) to conduct a comprehensive joint review of all customer information requirements imposed on telecommunications businesses until other relevant consumer law reform and processes have been completed. In June 2009, the Government introduced legislation which commenced the move to a national consumer law by establishing a single, national consumer law regime to be known as the Australian Consumer Law. This legislation is broadly consistent with the PC's recommendations in its Consumer Policy Framework Review. The next phase of this reform will involve the Government introducing in early 2010 further legislation covering the remainder of the Australian Consumer Law provisions, drawn from the existing consumer protection provisions of the *Trade Practices Act 1974*.

In the 2009-10 Budget, the Australian Government has also provided funding of \$2.0 million per annum to support the newly established Australian Communications Consumer Action Network (ACCAN). ACCAN will act as the new peak body to represent and advocate the interests of consumers. One of its likely immediate areas of interest will be to work closely with industry and government to improve the quality and availability of product and service information to consumers.

### **PC Recommendation 4.3**

The Australian Government should review the costs and benefits of identity checks for prepaid mobile phone services in consultation with law enforcement and security agencies. The review should have the objective of substantially revising the regime to better achieve its objectives while eliminating unnecessary costs to business.

### **Government Response: Accepted**

The Experts Group, a high level strategic policy group chaired by DBCDE and the Attorney-General's Department (AGD) considered this issue at its 16 June 2009 meeting and agreed terms of reference for a prepaid identity checking review working group led by DBCDE. The working group comprises representatives from AGD, the Australian Security and Intelligence Organisation, the Australian Federal Police, ACMA, Telstra, Optus, Vodafone Hutchison Australia, and the Australian Mobile Telecommunications Association. The working group will report to the Experts Group in March 2010.

### **PC Recommendation 4.4**

The anti-siphoning regime imposes regulatory burdens because of the protracted commercial negotiations required in respect of listed events. To address this issue the Australian Government should substantially reduce the anti-siphoning list.

### **Government Response: Noted**

The Government will consider the composition of the anti-siphoning list as part of the statutory review of the anti-siphoning scheme announced by the Minister for Broadband, Communications and the Digital Economy on 20 August 2009. The review will consider a range of matters, including the operation of the licence condition on subscription television operators restricting access to anti-siphoning listed events. Public submissions to this review closed on 16 October 2009 and the Government is now considering the matters raised in the submissions.

The outcomes of the review will inform the Government's policy decisions for the scheme leading up to digital television switchover and beyond.

## **PC Recommendation 4.5**

The policy objective of the local content rules for radio could be met through more flexible rules. The Australian Government should introduce amendments to make provision for regional broadcasters to meet their local content obligations over the course of a longer time period, rather than through rigid daily content obligations. For certain categories of licence, such as racing and remote area licences, consideration should be given to whether there is a need for local content requirements.

More flexible local content obligations should be accompanied by streamlined reporting requirements which target compliance activity on broadcasters who have been identified as having a high risk of non-compliance.

### **Government Response: Noted**

Following amendments to the BSA, from 1 January 2008 regional commercial radio broadcasting licensees have been required to broadcast specified levels of material of local significance (local content).

Broadcasters report annually to ACMA on their compliance with these obligations. ACMA is also required under the BSA to make available to the Minister for Broadband, Communications and the Digital Economy information about regional commercial radio broadcasters' compliance with these obligations. This information will be used to inform a statutory review of the operation of local content and presence requirements for regional commercial radio, which the BSA requires to be conducted by 4 April 2010. This review is expected to consider the matters raised in this recommendation.

The review will help inform the Government's future approach to the operation of the local content rules.

## **PC Recommendation 4.6**

The Australian Government should introduce amendments to abolish the trigger event provisions for radio broadcasters. Instead, local content provisions should be relied on to ensure broadcast of locally significant material.

### **Government Response: Noted**

A trigger event refers to a transfer of a regional commercial radio licence, or the change in controller or formation of a new registrable media group which includes a regional commercial radio broadcasting licence.

The trigger event provisions of the BSA provide that following a trigger event, affected licensees must meet minimum service standards for local news, local weather, local community service announcements, emergency warnings and, where applicable, designated local content programs.

Trigger event affected broadcasters report annually to ACMA on their compliance with these obligations. ACMA is required under the BSA to make available to the Minister for Broadband, Communications and the Digital Economy information about regional commercial radio broadcasters' compliance with these obligations. This information will be used to inform a statutory review of the operation of local content and presence requirements for regional commercial radio, which the BSA requires to be conducted by 4 April 2010.

The review will help inform the Government's future approach to the operation of the trigger event provisions. The review is expected to consider the matters raised in this recommendation.

## **PC Recommendation 4.7**

A greater risk management approach should be taken to the radio Disclosure Standard. The Australian Communications and Media Authority should revise the Disclosure Standard to make it less prescriptive.

### **Government Response: Noted**

The Disclosure Standard applies to all commercial radio broadcasting licensees who broadcast current affairs programs, and requires the disclosure of commercial agreements that have the potential to affect the content of current affairs programs.

The Government considers that it is important to encourage the fair and accurate coverage of matters of public interest. Listeners of commercial radio current affairs programs should be confident that the content they hear has not been influenced by commercial agreements or, where commercial arrangements exist, they should be informed about them.

ACMA already applies a risk management approach to the Disclosure Standard. The high level of program syndication, non-compliance with industry codes and the importance of current affairs programming were considerations in ACMA's decision to determine the industry standard, which applies only to licensees that broadcast current affairs programs. Further, the enforcement options available to ACMA in cases of a breach of a program standard are stronger than for a breach of a code.

In December 2008, ACMA announced its decision to undertake a comprehensive review of the three program standards that apply to commercial radio licensees to ensure they deliver appropriate community safeguards. The three standards are the Broadcasting Services (Commercial Radio Compliance Program) Standard 2000, Broadcasting Services (Commercial Radio Advertising) Standard 2000, and the Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000. ACMA intends to release an Issues Paper inviting submissions to the review early in 2010. An Options Paper is then expected to be released in the first half of 2010, inviting submissions on specific options that emerge from the consultation process. The review is expected to be completed in the second half of 2010 and is expected to consider the matters raised in this recommendation.

## **PC Recommendation 4.8**

The Department of Broadband, Communications and the Digital Economy and the Attorney-General's Department, in consultation with stakeholders, should seek agreement on whether requirements for captioning of broadcasts are most appropriately dealt with through broadcasting regulations or the Disability Discrimination Act. The legislation should then be amended accordingly so that broadcasters are only required to comply with a single set of regulations.

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

On 30 April 2008, a discussion paper was released as part of the Government's consideration of access to electronic media by people with a hearing or vision impairment. The discussion paper examined requirements for, and current levels of, captioning and audio description on television (free-to-air and subscription), films, DVDs and the internet. One of the matters canvassed was whether regulation of captioning requirements should be dealt with through the BSA or the *Disability Discrimination Act 1992* (DDA). Over 160 submissions were received in response to the discussion paper.

On 26 November 2009, the Media Access Review Discussion Report was released. The Discussion Report outlines possible approaches being considered by the Government to address the key issues raised in response to the discussion paper. One approach being considered is to prescribe the relevant parts of the BSA under the DDA to address concerns about regulatory certainty. Submissions and further views on the appropriateness and effectiveness of these possible approaches are invited in writing by 29 January 2010. The Government will consider the submissions received and finalise a report for tabling in Parliament in 2010.

## **PC Recommendation 4.9**

The Australian Government should introduce amendments to abolish the requirement for a minimum number of hours of high definition television to be broadcast by free-to-air television broadcasters. Whether abolished or not, the requirement on free-to-air television broadcasters to report on compliance with the high definition quota is redundant and should be removed.

### **Government Response: Noted**

The Government notes that the minimum hours quotas are scheduled to cease over the next few years as digital switchover occurs.

ACMA is responsible for monitoring broadcasters' compliance with annual high definition television (HDTV) quota requirements. ACMA has advised that, with the exception of one broadcaster in 2005, all affected broadcasters to date have met, and frequently exceeded, the HDTV quotas.

The quota for HDTV was instituted to provide assurance to consumers, manufacturers and local production companies that HDTV programming would be available until the switchover to digital television. This continues to be the case as some licence areas in Australia will not switchover to digital television until 2013. Reporting requirements allow the Government to be sure that these policy objectives are being met and to ensure compliance with requirements imposed by Parliament.

The high definition quota for commercial and national broadcasters is legislated to end at switchover in the relevant licence area. After switchover, broadcasters will be free to determine the number of standard definition and high definition channels they transmit with their allocated spectrum. The switchover process in Australia will commence in Mildura in 2010.

# Electricity, gas, water and waste services

## PC Recommendation 5.1

The Australian Energy Market Agreement should be amended to:

- provide a clear timetable for future reviews by the Australian Energy Market Commission (AEMC) of the effectiveness of competition in energy markets in those states and territories not yet reviewed by the AEMC
- clarify the process for follow up reviews of competition in those jurisdictions where an initial review by the AEMC has recommended the removal of price regulation, but that recommendation has not been accepted by the relevant jurisdiction
- require ongoing price monitoring by the Australian Energy Regulator, for a period of at least three years, where retail price regulation has been removed.

### **Government Response: Accepted**

A new timetable for the Australian Energy Market Commission (AEMC) reviews of the effectiveness of competition in jurisdictions that retain regulated retail prices was agreed to by the Ministerial Council on Energy (MCE) on 10 July 2009 ([www.mce.gov.au](http://www.mce.gov.au)). As the proposals relate to processes which are currently the responsibility of the MCE, this recommendation will be referred to the MCE for action.

## **PC Recommendation 5.2**

The Ministerial Council on Energy should commission ongoing work involving the states and the Australian Energy Market Commission to consider how the cost identification process used by existing regulators in each state will need to be modified to be responsive to changes in costs as a result of the Carbon Pollution Reduction Scheme.

### **Government Response: Accepted**

In December 2008 the MCE tasked the AEMC with reviewing the existing energy market frameworks in light of the challenges that will result from the introduction of climate change policies. In its first two interim reports, the AEMC identified that increased uncertainty and volatility of carbon inclusive wholesale energy costs may follow the commencement of the Carbon Pollution Reduction Scheme (CPRS). Further, the risks this could pose to the viability of retailers and to the development of competitive retail energy markets would be exacerbated if financial instruments to allow effective hedging of the costs were slow to emerge.

The AEMC recommended in its final report ([www.aemc.gov.au](http://www.aemc.gov.au)) to MCE on 8 October 2009 that those jurisdictions retaining retail price regulation introduce an adjustment mechanism in existing frameworks to review wholesale energy and carbon costs, if new information reveals differences between assumed and actual costs. To facilitate this adjustment, COAG recently agreed to an MCE proposal to amend the Australian Energy Market Agreement to specifically provide for the pass through of CPRS and Renewable Energy Target costs where prices are regulated. Additionally, the AEMC has also been working with jurisdictional regulators on mechanisms to action these changes. The MCE's 17 December 2009 policy response to the AEMC review noted the importance of this issue and agreed that was appropriate for the AEMC to continue working with jurisdictional regulators on mechanisms for introducing flexible arrangements around regulatory reviews to help manage this risk.

### PC Recommendation 5.3

All levels of government need to work cooperatively to reduce the burden associated with reporting obligations by:

- eliminating unnecessary requests for information, including where possible reducing the frequency of requests
- where appropriate, and agreed with business, sharing information between regulators
- standardising the language and forms used, and the type of data requested and wherever possible aligning reporting obligations with existing company data gathering and reporting
- facilitating on-line submission of information.

Reforms to reporting obligations impacting on energy, water and waste services should, as far as possible, be consistent with the systems being developed as part of Standard Business Reporting (SBR) so as to facilitate an extension of the SBR taxonomy and the use of SBR services for report creation and delivery in those sectors in the future.

### Government Response: Accepted

#### *Energy*

The MCE's initiatives of the *National Energy Customer Framework* and *Energy Technical and Safety Regulatory Harmonisation Enhancement Plan* are expected to minimise the burden on industry of providing information by promoting national consistency. Existing information provision requirements within energy legislation are being considered in the development of these initiatives with a view to streamlining the provision of information to energy market institutions.

In June 2008, the MCE established an industry group to identify opportunities for greater harmonisation in energy supply industry regulation, compliance and training. The group provided its *Energy Technical and Safety Harmonisation Enhancement Plan* to the MCE in November 2009, which was accepted in principle by the MCE on 4 December 2009. This Plan recommended the development of an Intergovernmental Agreement to commit the state and territory governments to adopt a new 'safety case' standard for the electricity supply industry, mutual recognition by regulators of the standard and the establishment of an ongoing governance body to facilitate the sharing of information by regulators. The MCE considers these recommendations will assist in reducing the compliance costs and reporting for multi-jurisdictional network operators and ensuring the consistent interpretation of reporting requirements by regulators.

In implementing reporting processes, the Government notes that applying a standard model may not be consistent with all reporting requirements, such as for network business regulatory resets or for the calculation of industry-wide parameters for economic regulation. Those specific recommendations on economic regulation should

be appropriately referred to the Australian Energy Regulator. The Government also notes that industry has previously indicated concerns about the sharing of information between energy market institutions, particularly with respect to the broad information gathering powers of the new Australian Energy Market Operator. In response to those concerns, the MCE has agreed that these powers should not be widely utilised, nor should there be unnecessary sharing of the information gathered.

### *Water*

Under the *Water Act 2007* the Bureau of Meteorology (BoM) was tasked with collecting, holding, interpreting and disseminating Australia's water information, together with providing reports, forecasts and water accounts information.

BoM is working closely with water data owners to coordinate and implement the development of a national system for water information storage, analysis and reporting which requires a high level of collaboration between stakeholders. An external Steering Committee has been formed to oversee the development of the Australian Water Resources Information System (AWRIS). The first phase of AWRIS is focussed around a two-year, \$10 million project funded by the National Water Commission's Raising National Water Standards programme. This will deliver the first level of AWRIS capabilities as an operational system and is expected to be completed in early 2010.

In 2008, BoM began a five-year, \$80 million program to help water data collection agencies upgrade and expand their streamflow, groundwater monitoring and water storage measurement networks. Investment priorities in the Modernisation and Extension Funding program include improving data quality and currency, developing software to simplify data transmission to the BoM and filling critical gaps in monitoring networks.

### *Waste*

In relation to waste services, on 5 November 2009 the Government and states and territories agreed a National Waste Policy that sets a clear direction for producing less waste for disposal and managing waste as a resource. The National Waste Policy seeks to standardise waste classifications and establish a national waste data system that provides integrated national core data on waste and resource recovery.

Scope to expand the reports which are included in the SBR initiative can be considered when SBR is fully operational in July 2010. The SBR project aims to cut the red tape confronting business when reporting to government through better, more streamlined computer reporting systems. Once SBR has been tested, opportunities for expanding the application of SBR will be considered, subject to a compelling business case.

# Transport

## PC Recommendation 6.1

The Australian Government, through COAG, should expedite the development and implementation of the National System for the Prevention and Management of Marine Pest Incursions.

### Government Response: Accepted in principle

The Australian Government supports this recommendation, and will continue to develop and implement the National System for the Prevention and Management of Marine Pest Incursions (National System) in conjunction with the state and territory governments and other stakeholders.

The National System aims to prevent new introductions and translocations of marine pests, provide ongoing management and control for pest species already established, and build an emergency response capability to respond to new incursions.

To date, there has been significant investment by the Government in the development of detailed implementation arrangements for the National System to a point where individual jurisdictions can make choices about funding commitments to address regional marine pest risks. Through the National Introduced Marine Pests Coordination Group a number of the elements under the National System have transitioned from the development stage to the implementation stage, including National Control Plans and marine pest monitoring activities.

The National System is consistent with the recommendations of the Independent Review of Australia's Quarantine and Biosecurity Arrangements (Beale Review). The Government continues to make progress on reforms to strengthen Australia's biosecurity system as outlined in the preliminary response to the Beale Review released in December 2008. The Government has provided \$14.7 million for 2009-10 to progress foundation elements of the reforms, including new biosecurity legislation, information systems and risk-return capability.

The extension of Commonwealth responsibility to international and domestic ballast water regulation, as recommended by the Beale Review (recommendation four), is subject to further discussion with the state and territory governments in the context of negotiations on the National Agreement on Biosecurity.

## **PC Recommendation 6.2**

The *Aviation Transport Security Act 2004* should be amended to enable the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government, on the advice of the Office of Transport Security, to grant exemptions, variations and alternative procedures to the existing aviation security regulations that would meet the required regulatory outcome.

### **Government Response: Not accepted**

The Transport Security Program regime contained in the *Aviation Transport Security Act 2004* currently provides industry with the ability to formulate processes and procedures to meet regulatory requirements in a way that best suits their business.

The Government is committed to working with the aviation industry to remove unnecessary prescription from regulations and is also examining the possibilities for developing, in line with international best practice, appropriate quality assurance or security management systems. This may assist in reducing reliance on regulations in the future.

## **PC Recommendation 6.3**

The Aviation Security Advisory Forum should provide a greater focus on consultation with industry with regard to existing and proposed aviation security regulation.

### **Government Response: Accepted**

The Department of Infrastructure, Transport, Regional Development and Local Government is working with industry to develop an improved consultation process that will provide an opportunity for comments on regulatory changes to be made earlier and more often during their development.

This may include providing the opportunity to comment through the Department's website and developing a register of self-nominating interested parties to be notified by email that a proposal is on the web for comment. These changes will be implemented during the first half of 2010.

## **PC Recommendation 6.4**

The price notification arrangements applying to regional airlines using Sydney Airport should be subject to independent review on their expiry in 2010.

### **Government Response: Noted**

The Government released its National Aviation Policy White Paper on 16 December 2009 which, among other economic regulatory considerations, recognised the importance of preserving regional access to Sydney Airport.

Sydney Airport is a critical hub in the Australian regional aviation network. Nearly a million passengers flew into Sydney Airport on regional airlines in 2008. Many of these passengers would have been connecting to the broader domestic or international airline network or accessing the services that are only available in large cities like Sydney.

Sydney is the only Australian airport with legislated caps on the allowable number of hourly runway movements and a demand management scheme to allocate the limited number of runway slots. Without government action, commercial pressures would tend to favour the use of large capacity jet aircraft which service domestic trunk routes and international services at the expense of services operated with smaller regional aircraft.

The Government recognises Sydney Airport's role as an essential transport hub for regional New South Wales and will ensure access and reasonable pricing for regional airlines by a suite of measures including the extension of the current price notification arrangements until 2013.

The Productivity Commission is to undertake a full review of Australia's airport economic regulatory regime in 2012 which will include all arrangements at airports including special arrangements for regional airlines at Sydney Airport.

# Education and training

## PC Recommendation 7.1

The Department of Education, Employment and Workplace Relations, in consultation with state and territory authorities, should ensure that reforms to streamline reporting obligations in the education sector, including for schools and in response to recommendations from the Bradley Report, are undertaken consistent with the methodology and principles of the Standard Business Reporting initiative. Electronic reporting and secure on-line sign-on to the agencies involved should be introduced.

### Government Response: Accepted

Financial reporting by schools to the Department of Education, Employment and Workplace Relations (DEEWR) is undertaken on-line with secure sign-on. This includes the provision of financial accountability certificates, the annual Financial Questionnaire for non-government schools and the annual census of non-government schools.

This recommendation is being considered in consultation with the states and territories as part of broader discussions concerning the establishment of a new national quality regulator for higher education, the Tertiary Education Quality and Standards Agency (TEQSA). TEQSA is likely to use financial data to assess financial viability, and DEEWR will work with TEQSA to ensure business reporting requirements are consistent with best practice approaches, especially in relation to harmonising business information requirements.

The Government will also consider scope to streamline reporting obligations with the states and territories in implementing a new national Vocational Education and Training data strategy in 2012.

## Medical services

### PC Recommendation 8.1

The Australian Government should implement the remaining recommendations from the Productivity Commission's 2003 Review of General Practice Administrative and Compliance Costs and the recommendations from the Regulation Taskforce's 2006 review relating to general practice which include:

- introducing a single provider number for each general practitioner
- removing the Pharmaceutical Benefits Scheme authority approval requirement or allowing GPs to re-use an authority number for a repeat prescription where a patient's condition is unlikely to change
- rationalising the incentive programs for GPs.

### Government Response: Noted

Any changes to the Medicare provider number system would be complex, as the provider number is central to Medicare's operation.

The implementation of a National Registration and Accreditation Scheme for health professions from 1 July 2010 will provide unique health professional identifiers for each health professional registered for the purposes of e-health. This provides an opportunity to consider whether this number can also be used within the Medicare systems. However, there are complex privacy and systems issues which need further consideration.

The Commonwealth National Registration and Accreditation (Consequential Amendments) Bill is also likely to contain a number of legislative changes which will simplify the process for recognising general practitioners for Medicare purposes. These changes are currently being discussed with Medicare Australia.

The Australian National Audit Office is currently undertaking an audit of the Practice Incentives Program (PIP). The audit is examining both DoHA's administration of the PIP (including assessing DoHA's planning, program development and monitoring practices) and Medicare Australia's role in delivering the PIP. The audit will be delivered in two reports: Part A will examine DoHA's role and the relationship between DoHA and Medicare Australia, and Part B will focus on Medicare Australia's role. The audit reports are expected to be tabled in the Autumn 2010 Parliamentary Sitings.

As part of the 2009-10 Budget, the Australian Government announced a range of administrative changes to the PIP to reduce red tape for the almost 5,000 practices currently participating in the program. These changes include:

- moving to retrospective PIP payments to reduce red tape, from August 2010;

- introducing an annual process to update PIP practice records to help practices ensure the accuracy of their payments, from May 2010;
- ceasing the current 3 and 6 month recalculation of PIP quarterly payments to simplify administrative processes, from May 2010; and
- introducing an online administration system for the PIP, from October 2010.

In May 2003, the Australian Government established the Red Tape Taskforce (the Taskforce), in response to the PC's report on *General Practice Administrative and Compliance Costs*. In July 2004, the PIP and Enhanced Primary Care Review was established to address the Taskforce's recommendations. A number of changes to the PIP were implemented between 2004 and 2006 to reduce red tape for practices, including:

- simplifying the administrative arrangements for the PIP Quality Prescribing Incentive;
- clarifying requirements for PIP Service Incentive Payments;
- streamlining administrative arrangements for the PIP;
- improving the PIP After Hours Incentive to assist smaller practices to access incentives for after hours cover; and
- updating the requirements of the PIP Information Management / Information Technology Incentive.

# Improving regulatory impact analysis

## PC Recommendation 9.1 and 9.2

The Australian Government should improve the transparency and accountability of its best practice regulation assessment processes by:

- developing a central register of regulatory impact analysis. The register would include:
  - Regulation Impact Statements (and the Office of Best Practice Regulation's adequacy assessments) at the time government decisions are made public, and
  - post-implementation reviews (and the Office of Best Practice Regulation's adequacy assessments) at the time these reviews are made public
- subject to review of the new Small Business Advisory Committee's effectiveness, considering the extension of this model beyond small business to include other businesses within a broader Business Advisory Committee
- improving the existing annual regulatory plan process, by making it mandatory for departments and agencies to update their plans as preliminary assessments are completed
- incorporating a 'consultation' Regulation Impact Statement in the regulation making process (in a similar manner to the COAG requirements) for use in public consultations where possible, or as part of confidential consultation with the Small Business Advisory Committee (or Business Advisory Committee should the concept be broadened beyond the small business sector).

The Australian Government should commission an independent public review of the current best practice regulation requirements no later than five years after the requirements came into effect (that is, 20 November 2011).

### **Government Response (9.1 and 9.2): Noted**

The Government is committed to the best practice regulation process. While it looks for ways to improve the quality of analysis, it is also mindful of the costs it imposes on itself and does not seek to over-regulate regulatory analysis.

The Organisation for Economic Co-operation and Development (OECD) is currently undertaking a Regulatory Review of Australia to assess our regulatory management arrangements against the OECD's best practice regulation principles.

The Government will respond to these recommendations following the release of the OECD's report (expected for early 2010).