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RE: Reducing barriers to business dynamism in Australia

About us

Governance Institute of Australia is the only fully independent professional association dedicated to the advancement of governance and risk practice in Australia. Our internationally recognised qualifications equip a diverse professional network of business leaders to make good decisions for the benefit of Australia's economy and society.

With a history dating over 100 years, Governance Institute is Australia's leading and trusted voice of governance. Our fully accredited education and training is tailored to the meet the needs of governance professionals across public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations.

Governance Institute is committed to independent, evidence-based advocacy that is focused on strengthening the governance capability of Australian organisations. We believe that good governance is the foundation of organisational resilience, productivity, and public trust.

Executive summary

Regulations play an important role in protecting businesses and consumers across society. However, over-regulation and regulatory complexity can inhibit economic dynamism and resilience. Business dynamism is being constrained less by the actual existence of regulation, and more by how the regulatory system operates in practice. Regulatory frameworks are fragmented, overlapping and inconsistent creating an environment of unnecessary complexity and cost. The cumulative impact of successive reforms is placing increasing strain on governance professionals, boardrooms, profitability and ultimately all Australians that rely on the private sector for employment opportunities, goods and services.

A recent report by the Australian Institute of Company Directors (AICD) found that the cost of compliance to Australian businesses is nearing $160 billion, around 5.8% of GDP, up from 4.2% a decade ago.[1] Inconsistent and overly draconian liability and enforcement signals are

[1] https://www.aicd.com.au/content/dam/aicd/pdf/news-media/research/2025/economic-cost-of-regulatory-complexity-report.pdf

contributing to risk aversion at board level detracting from time spent on strategy, entrepreneurship and organisational performance.[2]

At a time of unprecedented change driven by digital and data transformation and global market uncertainty, regulatory complexity may reduce organisational agility, discourage innovation and divert economic capacity away from productive activity. Regulatory reform efforts must take a coherent system-wide approach to enhance regulatory and legislative design processes, enhance the quality of implementation, and improve current regulatory review processes that largely remain ad-hoc and driven by sector specific interests.

The regulatory system requires closer scrutiny in practice

Fragmented, costly and complex regulatory frameworks translate into higher business costs and productivity losses resulting in diminished living standards and suboptimal economic growth. In a comprehensive inquiry undertaken by the Australian Law Reform Commission on corporations and financial services legislation, the *Corporations Act 2001* (Cth) was described as 'obscure and convoluted, shrouded in obfuscation and likened to a maze'.[3] The *Corporations Act 2001* is the main law governing companies in Australia, setting out how they are formed, operated and regulated. 'For businesses, complexity makes it harder to operate and innovate, as they more frequently require legal advice and adopt compliance processes that are made more costly by unnecessary legislative complexity'.[4]

For consumers and investors, complexity makes it harder to identify and enforce the protections and rights afforded by the legislation making it more costly for consumers to understand and enforce their rights, as they extend more time and resources to navigate their legal entitlements or pay for legal advice'.[5] 'Legislation that is harder to understand and comply with is also less likely to be effective and achieve the desired policy outcomes, costing the community and society at large'.[6] Ultimately complexity results in broader economic costs with fewer businesses innovating, entering the private sector and growing their enterprise. This reduces the range of goods and services and financial products available to consumers and investors.

Recommendation 1: Coordinate a comprehensive review of the *Corporations Act 2001 (Cth)* to determine whether it is meeting its intended purpose, particularly in serving the needs of the large number of small and medium sized enterprises that make up the majority of Australia's private sector.

Corporate law design framework

Governance Institute has led a coalition of distinguished scholars, industry bodies and professional associations, through the Corporate Law Reform Alliance (CLRA). The aim of the CLRA is to raise awareness of the concerns associated with corporate law design, including the ad-hoc way in which new regulations are being implemented and the inconsistent regulatory design impacting the coherence and clarity of Australia's corporations law framework. Concerns with the corporations' law framework is not isolated to the business community. Consumer

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[2] https://www.aicd.com.au/regulatory-compliance.html
[3] https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-Summary-Report-141.pdf
[4] https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-Summary-Report-141.pdf
[5] https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-Summary-Report-141.pdf
[6] https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-Summary-Report-141.pdf

groups and the judiciary have expressed equal frustration with the inconsistencies associated with Australia corporate law framework.[7]

Corporate entities operate within a regulatory environment characterised by multiple regulators with overlapping mandates, inconsistent definitions and requirements across different regimes, duplicative reporting and compliance obligations. These factors create compliance friction costs that inhibit responsiveness and flexibility driving a culture of increased reliance on external advice, slower and more conservative decision-making and difficulty forming a clear view of obligations in corporate boardrooms.

Recommendation 2: Adopt a coherent, system-wide reform agenda for regulatory governance incorporating regulatory and legislative design processes, implementation quality standards to ensure regulations and legislative instruments are meeting their intended purposes.

Recommendation 3: Reform the way in which corporations' laws and frameworks are designed to limit further complexity and improve the way in which civil society, consumers, regulators, the judiciary and business community engage with the *Corporations Act 2001*.

Regulatory creep and post regulatory implementation reviews

Australian organisations are currently managing simultaneous reform agendas including privacy and data reforms, cyber security obligations, climate-related disclosures, financial and corporate governance updates. Whilst each reform is justified individually, in aggregate they stretch governance and compliance capacity, increase implementation risk and crowd out time spent on strategy and innovation. The implication of regulatory creep is that these isolated reviews on discreet regulatory matters do not adequately account for the aggregate regulatory load placed on organisations. A study by the AICD has found that the number of federal regulations has doubled since the year 2000 and the number of pages of federal regulation have tripled over the same period, resulting in a near three-fold increase in legal service bills to reach over $16 billion annually.[8] The Study found that businesses are diverting resources towards compliance in response to the ever expanding regulatory burden, with compliance having a demonstrable impact on business investment.[9] To deal with the flow of new regulations, it is necessary to introduce pre and post implementation reviews when new regulations are considered. Regulations that exceed the amount of intervention necessary should be identified and eliminated.

Recommendation 4: Initiate a process to review whether existing regulations are fit-for-purpose and drive their intended policy outcomes through a continuous cycle of post-implementation reviews to address regulatory creep.

Corporate Law Reform Advisory Boday

According to the ALRC, the report on Confronting Complexity: Reforming Corporations and Financial Services Legislation Report, is yet to receive an official government response following its publication in January 2024. The Report highlights that there are over 1,200 distinct notional

[7] https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-141.pdf
[8] https://www.aicd.com.au/content/dam/aicd/pdf/news-media/research/2025/economic-cost-of-regulatory-complexity-report.pdf
[9] https://www.aicd.com.au/content/dam/aicd/pdf/news-media/research/2025/economic-cost-of-regulatory-complexity-report.pdf

amendments in force which impact over 600 provisions of the Corporations Act and Corporations Regulations.[10] 'Critically the analysis observes that whilst the extensive of these amendments are "unknowable" on the face of the legislation, users must be aware of relevant notional amendments in order to understand the true effect of the law'.[11]

The task of corporate law reform is difficult, costly and complex requiring a dedicated independent corporate law reform body with the skills and expertise to make recommendations to the government for implementation. Comprehensive corporate law reform is required to kickstart the productivity reform process.

Recommendation 5: Reinstate a dedicated Corporate Law Reform Body, modelled on the Corporations and Markets Advisory Committee (CAMAC), with the skills and expertise to support government with long-term, evidence-based reform proposals.

Duplication in reporting and disclosure

Governance Institute members report multiple regulators requesting similar disclosures with corporate entities increasingly reporting the same or similar information to ASIC, ASX, ATO, APRA and the ACCC. These reporting requirements include areas such as climate risk, governance matters, privacy and cyber security, with organisations providing overlapping information to different regulators using slightly different definitions, formats and reporting periods creating significant compliance costs and increasing the risk of inconsistencies. Service NSW adopts 'design thinking' to make regulatory processes easier, treating businesses and citizens as customers rather than as regulated entities with adoption of a 'the tell us once' regulatory design approach. The passage of the Regulatory Reform Omnibus Bill 2025 (Cth) at the end of 2025 is a useful first step in cutting red tape and reducing regulatory friction and duplication whilst adopting the 'tell us once approach' across government services. The Commonwealth should continue to adopt and invest in regulatory infrastructure that reduces the wasteful administrative and regulatory burden on Australia's business community.

Many large corporate groups also face duplication because while parent entities lodge consolidated reports, subsidiaries may remain subject to separate reporting obligations and foreign-owned Australian subsidiaries may be required to prepare Australian-specific disclosures despite equivalent reporting already being undertaken by the parent company overseas. The lack of recognition of equivalent international reporting obligations can require duplicative financial reporting across a corporate group, particularly in relation to climate-related financial disclosures and sustainability reporting of local subsidiaries owned by foreign parent companies.[12] ASIC regulatory guidance, notes that Australian subsidiaries of the foreign parent that are reporting entities must still prepare an individual sustainability report under s292A.[13]

Recommendation 6: Adopt a tell-us-once approach where reporting entities information can be cross-populated to update all Commonwealth reporting agencies.

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[10] https://www.dlapiper.com/en/insights/publications/2024/02/confronting-complexity-alrc-releases-the-final-report-in-its-inquiry-into-corporations

[11] https://www.dlapiper.com/en/insights/publications/2024/02/confronting-complexity-alrc-releases-the-final-report-in-its-inquiry-into-corporations

[12] https://www.bdo.com.au/en-au/insights/esg-sustainability/foreign-parent-s-consolidated-sustainability-report-doesn-t-exempt-australian-entities-from-sustaina

[13] https://download.asic.gov.au/media/j4rhwyiz/rg280-published-31-march-2025.pdf

Recommendation 7: Allow foreign owned parent companies of locally operated subsidiaries a pathway to voluntarily lodge sustainability reports, on their behalf, where equivalent reporting has taken place.

Recommendation 8: Consider the merits of simplifying reporting requirements for wholly owned subsidiaries and corporate groups.

Driving innovation and a framework for inclusive technology adoption

The uneven adoption of technology is creating a growing divide between "frontier" firms with large capital expenditure and high returns on investment in new technologies and "laggard" firms that are increasingly falling behind.[14] The rapid development of new technologies, particularly AI, has emerged as a once in a generation opportunity to drive a productivity up-tick across organisations of all sizes, in all industries. As well as driving the creation of innovative new businesses AI can be leveraged to solve complex challenges. Broad-scale uptake of AI technologies is not about replacing existing jobs. Instead, it is about transforming jobs and ways of working.[15]

Governance Institute Studies have shown that the uptake of AI technologies reflects a patchwork of adoption and success.[16] Organisations are finding it difficult to measure a return on investment in AI technologies, and recent experimentation with AI technologies have led to investments stalling or failing to progress past the initial pilot stage.[17] Multiple factors are driving this trend including regulatory uncertainty, difficulty accessing suitable labour and gaps in essential technology governance education and training, particularly across senior leaders and the director community. Organisations require greater confidence in their ability to adopt and deploy new technologies, particularly where productivity benefits are likely to be significant across the economy.

Australia ranks highly for AI readiness however in contrast with international peers, Australian businesses have been slow to adopt AI technologies in the workplace.[18] A recent Study by the RBA about how technology investments have been affecting the way businesses run has found that enterprise-wide AI transformation was the exception rather than the norm.[19] A lack of broad scale experimentation and usage of AI systems will place Australian businesses behind as other advanced economies move ahead.

The AI revolution will transform the way consumers, businesses and governments engage, transact, and do business with each other. However, there is a growing trust deficit and there are emerging ethical concerns in the community about how successfully AI is being deployed across organisations. It is crucial that Australia keeps pace with global innovations that act to successfully transform labour markets.

[14] https://www.oecd.org/content/dam/oecd/en/about/programmes/global-forum-on productivity/events/london-2025/GFP@10-highlights.pdf
[15] https://www.rmit.edu.au/online/blog/2025/you-wont-lose-your-job-to-ai
[16] https://www.governanceinstitute.com.au/thought-leadership/2025-ai-deployment-and-governance survey-report/
[17] https://www.governanceinstitute.com.au/thought-leadership/2025-ai-deployment-and-governance survey-report/
[18] https://theconversation.com/australian-businesses-have-actually-been-slow-to-adopt-ai-survey-finds-269812
[19] https://theconversation.com/australian-businesses-have-actually-been-slow-to-adopt-ai-survey finds-269812

If smaller sized businesses are to adopt AI, they cannot expect the same level of governance assurances as large corporations because the technology becomes too difficult, risky or expensive to incorporate commercially. AI products should be designed and developed with Australian technical and regulatory standards in mind. Government can assist with the adoption of laws that regulate the inherent design features of AI products and services offered in Australia that are developed in jurisdictions elsewhere.

Recommendation 9: New AI technologies should be certified as compliant-by-design to minimise harms to Australian deployers and consumers.

Recommendation 10: Design an AI Voluntary Reporting Register to support transparency and community trust in the use and deployment of AI tools and technologies in workplaces, to demonstrate effective human-centred and ethical deployment practices.

Recommendation 11: Establish a Framework of Inclusive Technology Adoption (FITA), prioritising the needs of digitally nascent firms, smaller-sized entities, charities and not-for profits.

If you have any questions, please contact me or Daniel Popovski, Senior Policy and Advocacy Advisor Daniel.popovski@governanceinstitute.com.au

Yours faithfully,

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