



CRC for Construction Innovation (2006) *Performance Benchmarking of Australian Business Regulation : Submission to the Productivity Commission.* □ □

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30 October 2006

Regulation Benchmarking Study
Productivity Commission
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Melbourne VIC 8003

regulationbenchmarking@pc.gov.au

Dear Sir / Madam

Thank you for the opportunity to provide a submission on the Performance Benchmarking of Australian Business Regulation.

The CRC for Construction Innovation (hereafter called *Construction Innovation*) is a national research, development and implementation centre focused on the needs of the property, design, construction and facility management sectors. *Construction Innovation* was established in 2001, and is developing key technologies, tools and management systems to improve the effectiveness of the construction industry. Further information about *Construction Innovation* and the *Construction Industry Business Environment* (CIBE) project which undertook this research can be found in Attachment A.

The focus of our submission is on the types of costs exacted on construction projects, firms and industry by the current regulatory environment. Direct costs, indirect costs and adaptation costs are discussed.

We argue that typical approaches to estimating regulatory costs, such as regulatory impact analysis, may underestimate the cumulative effect of multiple spheres of government regulation on construction projects, firms and industry. Many construction projects and firms in Australia operate across jurisdictional boundaries, and these firms experience additional costs adjusting to the requirements of multiple jurisdictions.

I trust that the attached summary of the research proves useful to your current inquiry. Consequently, it is hoped that the Productivity Commission will be able to identify the most appropriate tools for estimating costs associated with the regulatory environment of the construction industry in Australia.

Yours sincerely

Dr Keith Hampson
Chief Executive Officer

Submission to the Productivity Commission

**PERFORMANCE BENCHMARKING OF AUSTRALIAN
BUSINESS REGULATION**

Monday, 30 October 2006

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1. INTRODUCTION

The need to “reduce red tape” and regulatory inconsistencies is a desirable outcome (OECD 1997) for developed countries. The costs normally associated with regulatory regimes are compliance costs and direct charges. Geiger and Hoffman (1998) have noted that the extent of regulation in an industry tends to be negatively associated with firm performance. Typically, approaches to estimation of the cost of regulations examine **direct costs**, such as fees and charges, together with **indirect costs**, such as compliance costs.

However, in a fragmented system, such as Australia, costs can also be incurred due to procedural delays, either by government, or by industry having to adapt documentation for different spheres of government; lack of predictable outcomes, with variations occurring between spheres of government and sometimes within the same government agency; and lost business opportunities, with delays and red tape preventing realisation of business opportunities (OECD 1997). In this submission these costs are termed **adaptation costs**.

The adaptation costs of complying with variations in regulations between the states has been estimated by the Building Product Innovation Council (2003) as being up to \$600 million per annum for building product manufacturers alone. Productivity gains from increased harmonisation of the regulatory system have been estimated in the hundreds of millions of dollars (ABCB 2003). This argument is supported by international research which found that increasing the harmonisation of legislation in a federal system of government reduces what we have termed adaptation costs (OECD 2001). Research reports into the construction industry in Australia have likewise argued that improved consistency in the regulatory environment could lead to improvements in innovation (PriceWaterhouseCoopers 2002), and that research into this area should be given high priority (Hampson & Brandon 2004). The opinion of industry in Australia has consistently held that the current regulatory environment inhibits innovation (Manley 2004).

As a first step in advancing improvements to the current situation, a summary of the current costs experienced by industry needs to be articulated. This executive summary seeks to outline these costs in the hope that the Productivity Commission would be able to identify the best tools to quantify the actual costs to industry.

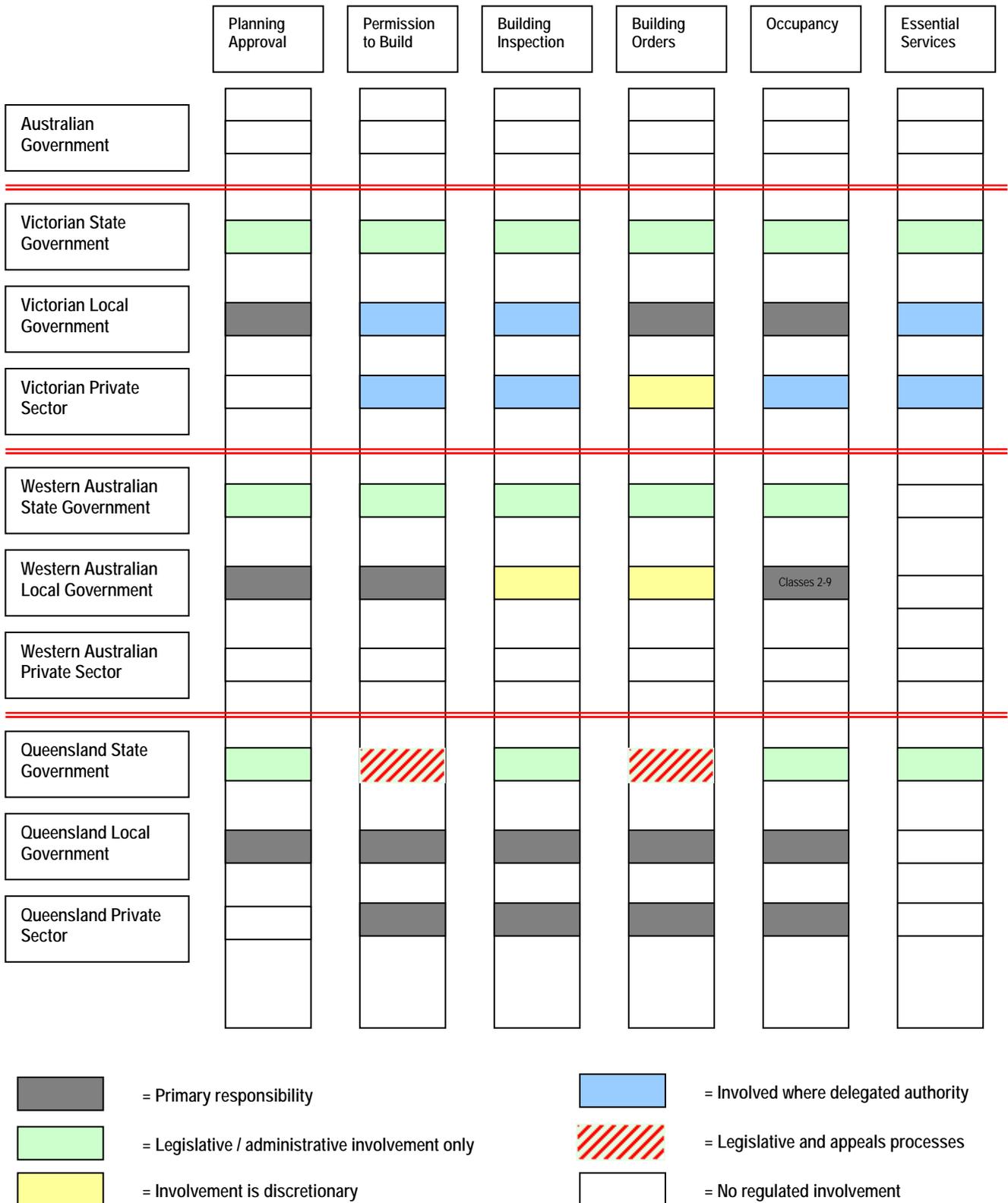
2. CURRENT STATE OF THE REGULATORY ENVIRONMENT

It is important to note at the outset that there have been previous attempts to develop a comprehensive outline of the regulations affecting the industry. These include those of Chun (2000), Collie Planning and Development (2002), and Productivity Commission (2004). Rather than initiating a separate investigation which would require the expenditure of considerable resources, this report draws upon previous work and attempts to synthesise and extend their discussion.

Lack of harmonisation

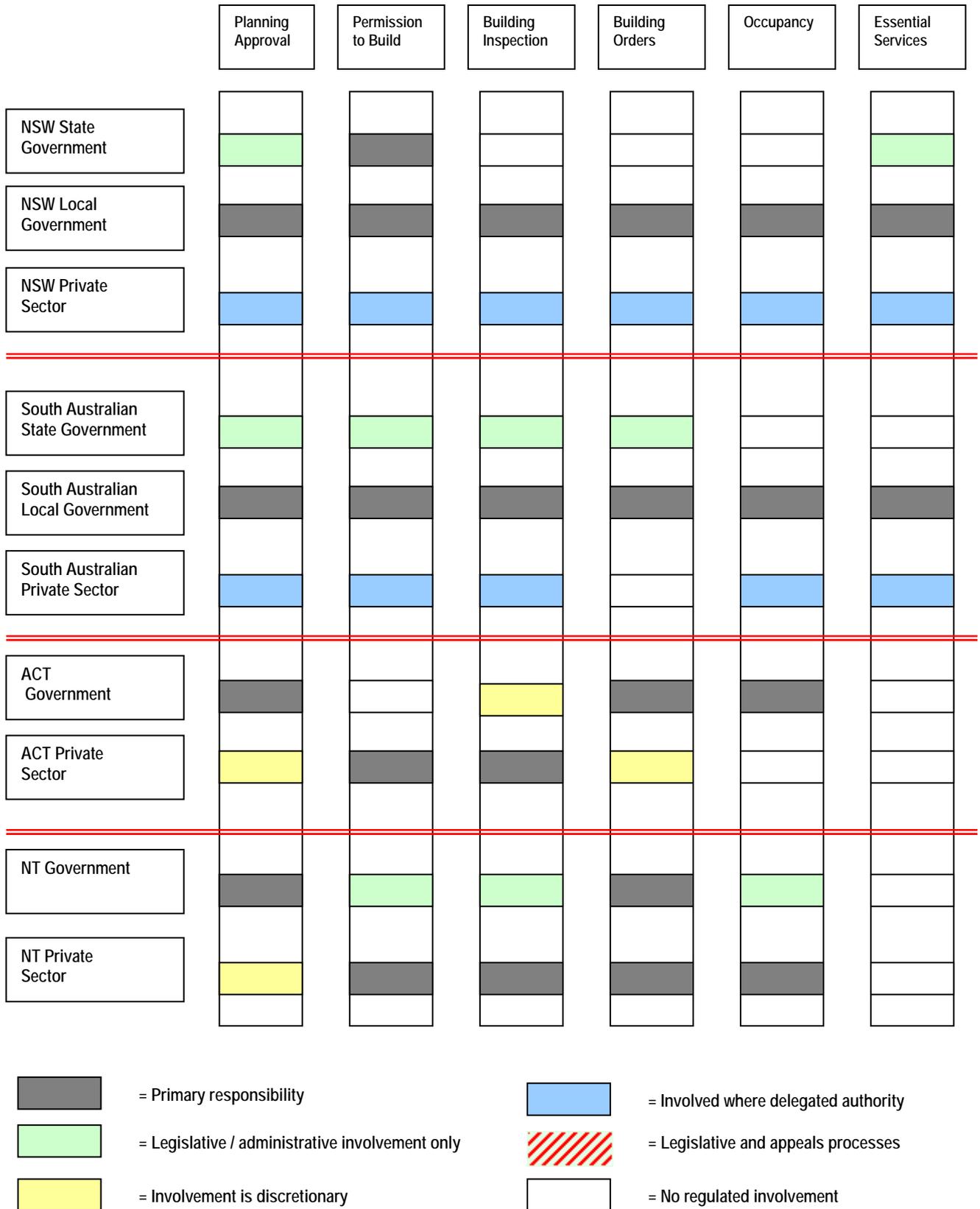
A central thesis of this research project is that there are costs associated with the lack of harmonisation between states. It is evident from viewing Figure 1 and Figure 2 (on the following pages) that little harmonisation occurs between the states on construction, with the notable exception of the Building Code of Australia. Apart from this example, there is a high level of variance between the states and territories of Australia, with each jurisdiction developing distinct approaches from each other, for a variety of reasons.

Figure 1a - Regulations affecting construction projects¹



¹ The main areas of regulation described in these figures follow those set out by the Productivity Commission and Department of Industry, for the sake of consistency. Building orders refers to those orders which follow inspection of a building, normally requiring correction of a fault. Occupancy refers to the permission given to occupy a building.

Figure 2 - Regulations affecting construction projects



For construction firms the specific content of regulations across industries is important. What we have attempted to demonstrate above, is that there is considerable difference between jurisdictions. The likely costs of these are discussed below.

3. COSTS OF THE REGULATORY ENVIRONMENT

An observation was articulated by an industry partner in the early stages of the CIBE project: “The construction industry in Australia is one of the most regulated industries in Australia” (Interview data). Costs associated with government regulations include **direct costs**, normally in the form of taxes, insurances, duties and fees (OECD 1997). However, there can also be an array of **indirect costs**, which are primarily the costs associated with complying with regulations (OECD 1997). In federal systems of government there are also what we have termed **adaptation costs** which occur when firms attempt to work across jurisdictions. Adaptation costs include construction firms having to continually adapt documentation to cope with the vagaries of various spheres of government; a reduction in the predictability of outcomes due to the lack of standard approaches and processes; and lost business opportunities, with delays and red tape preventing realisation of business opportunities (OECD 1997).

In order to demonstrate the regulatory costs across construction projects and firms, the set of codes set out in Figure 3 will be used:

Figure 3 - Legend for Regulatory Costs

Code	Description
Direct \$\$	Direct Costs (Taxes, Fees, Duties)
Indirect \$\$	Indirect Costs (Compliance, Procedural)
Adaptation \$\$	Adaptation Costs (delays, lost opportunities and lack of consistency) as a consequence of working between various jurisdictions)

Regulatory costs incurred by construction projects

Most costs associated with construction projects occur at a local government level. State governments provide a layer of compliance costs with integrated planning acts and similar instruments. There are fees and compliance costs associated with most aspects of the building process, and this is exacerbated when firms work across jurisdictions. Compliance costs can also occur when working across local government boundaries as well. A summary of regulatory costs incurred by construction projects is in Figure 4.

Figure 4 - Regulatory costs incurred by construction projects

Sphere of government	Planning Approval	Approval to Commence Building	Inspection of Buildings	Enforcement of Building Orders	Occupancy
Australian Government					
State Governments	Indirect \$\$				
Local Governments	Direct \$\$ Indirect \$\$ Adaptation \$\$				

Regulatory costs incurred by construction firms

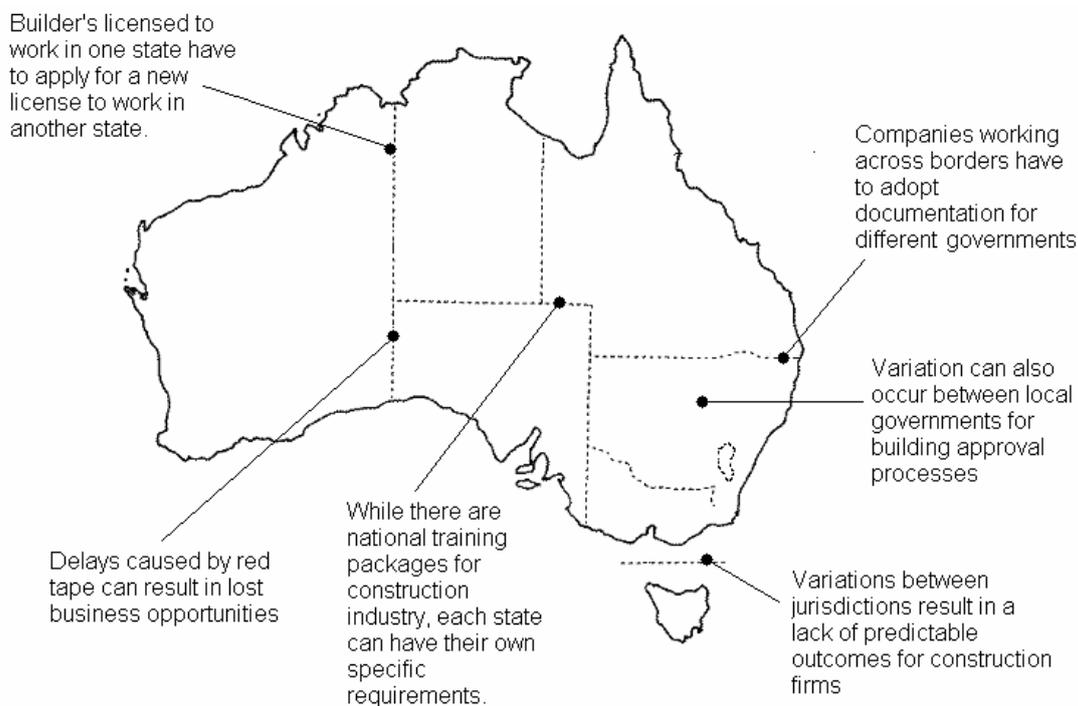
Costs are not only accrued at the project level, but are also experienced by construction firms. A summary of the costs incurred by construction firms is in Figure 5.

Figure 5 - Regulatory costs incurred by construction firms

Sphere of Government	Builder's / Certifiers Licensing	Insurance	OH&S	Taxation / Duties / Fees	Procurement	Dispute Resolution
Australian Government				Direct \$\$ Indirect \$\$	Indirect \$\$	
State Governments	Direct \$\$ Indirect \$\$ Adaptation \$\$	Direct \$\$ Indirect \$\$ Adaptation \$\$	Direct \$\$ Indirect \$\$ Adaptation \$\$	Direct \$\$ Adaptation \$\$	Indirect \$\$ Adaptation \$\$	Direct \$\$ Indirect \$\$ Adaptation \$\$
Local Governments		Direct \$\$ Indirect \$\$ Adaptation \$\$	Direct \$\$ Indirect \$\$ Adaptation \$\$	Direct \$\$ Adaptation \$\$	Indirect \$\$ Adaptation \$\$	Direct \$\$ Indirect \$\$ Adaptation \$\$

The following diagram (Figure 6) summarises the costs associated with a fragmented regulatory environment for construction firms in Australia. Please note that the costs are indicative of cross jurisdictional costs and are not associated with any one particular boundary.

Figure 6 – Summary of costs associated with cross jurisdictional activity in Australia



The set of figures in this submission indicate that there are costs associated with construction firms and projects exacted by multiple spheres of government at multiple phases of the construction project, and in multiple areas of the construction firm. The situation becomes more complex once an organisation works across jurisdictional boundaries. A summary of these findings is below (Figure 7).

Figure 7 - Summary of Regulatory Costs incurred by the Construction Industry

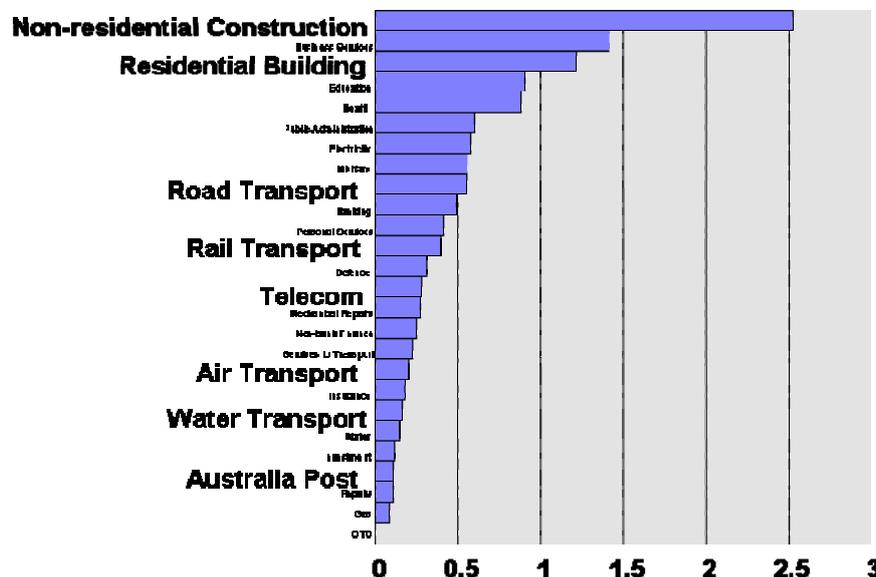
	Planning Phase	Construct Phase	Ownership Phase
Building Project Level	Payment of appropriate fees (local) and insurances (state) for building to commence. Adaptation costs when working across jurisdictional boundaries.	Possible contract specifications from government as client, and dispute resolutions. Socio-economic policy outcomes embedded in government building contracts (e.g. training, 'buy local'). Adaptation costs when working across jurisdictional boundaries.	Ongoing provisions and responsibilities of ownership have implications in the design phase, particularly OH&S - ensuring 'buildability' of buildings and the ongoing issues of OH&S in buildings; the environmental design issues surrounding buildings such as impact, water use, retrofitting, grey water and inclusion of sustainability in the Building Code.
Firm Level	Licensing of builders, accreditation of inspectors. Adaptation costs when working across jurisdictional boundaries.	Direct costs include payment of taxation at local, state and federal levels, as well as insurance. Indirect costs include compliance with state regulations (such as OH&S), company reporting, contractual obligations, and the Building Code. Adaptation costs when working across jurisdictional boundaries.	Implications of OH&S, building maintenance (in most states), GST on fittings and consumables, Commonwealth, state and local taxation regimes.

Qualified support for the concern expressed by industry that there is regulation for every area of the industry can be supported. Nothing in these tables should be taken to suggest however, that regulation is not needed or warranted. Additionally it is beyond the scope of this paper to attempt to quantify the exact costs to industry for all of these regulations.

Effect of reducing the regulatory burden on construction industry

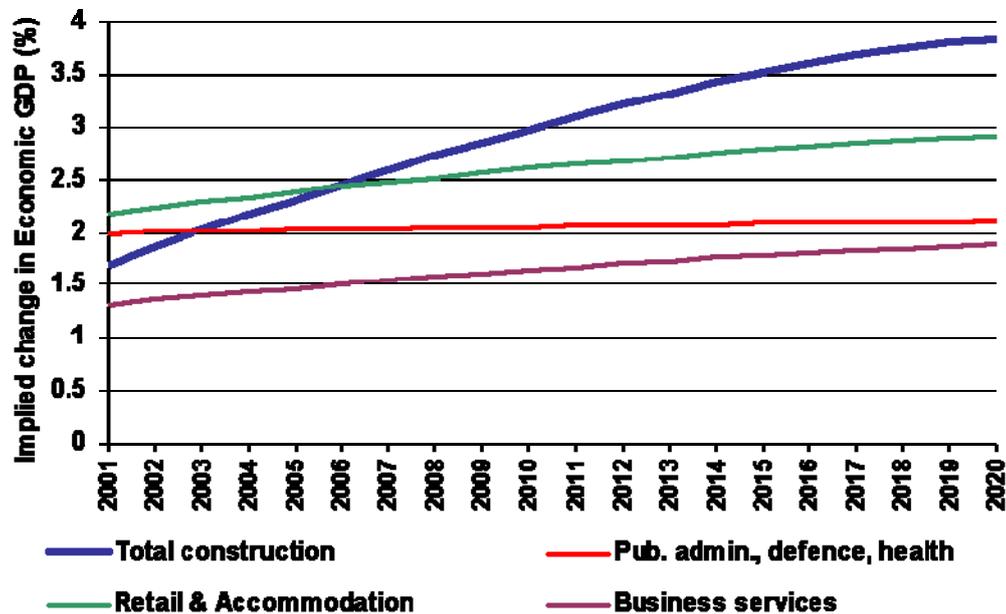
Stoeckel and Quirke (1992) have argued that if costs on industry could be reduced by 10%, this could have a strong positive effect on GDP. Significantly, they predict that a 10% reduction of costs to non-residential construction would have the biggest positive effect on GDP (Figure 8).

Figure 8 – Effect on GDP of reducing costs by 10% (Stoeckel & Quirke 1992)



This finding was reinforced by macroeconomic modelling conducted on behalf of *Construction Innovation* by ACIL Tasman (2005), who found that improvement of productivity in the construction industry will have significant improvement in GDP over time (Figure 9).

Figure 9 – Growth (GDP) Impacts of One-off, Sustained 10% Productivity Gain, by Sector



Thus this research provides qualified support for the contention of industry that the construction industry is faced with a strong regulatory framework which operates at a project and organisational levels. Regulatory regimes are enacted by multiple spheres of government. A reduction in the regulatory burden on the construction industry has been shown to result in strong positive impact upon GDP.

4. RATIONALES FOR REGULATORY COSTS

There are reasonable explanations as why this situation exists. Construction industry is one in which each sphere of government in Australia has a stake, both in terms of regulatory responsibility and income. Government also plays a key role in providing infrastructure for society – public works for the public good.

Taxation Income (direct costs)

The Commonwealth gains income from the construction sector through company taxes, income taxes, and the GST. State governments gain income from construction and property through property taxes, stamp duties and the like. In fact, 41.3% of the income received directly by states, not through grants from the Commonwealth, was derived through property tax in 2003-2004 (Australian Bureau of Statistics 2005). Local government derives income from construction and property through application fees, development fees, and rates. While ever a jurisdiction derives significant income from an industry, relinquishing authority would appear unlikely². All spheres of government derive income from the construction sector.

² As an interesting note, some states are phasing out certain stamp duties, in return for increased Commonwealth grants derived from the GST. While this has resulted in decreased revenue raising costs for the states, and increased income, increased dependency on the Commonwealth is a possible consequence which some states may resist (Hamill 2005).

Regulatory responsibility (indirect costs)

In the Australian Constitution, infrastructure, public works and main roads are the responsibility of the states. Historically local government has provided service provision in the area of building inspections, town planning, and local roads. The Commonwealth has increasingly become involved in construction, primarily through tied grants. Indeed part of the increasing role of the Commonwealth government is in the provision of funding to the states of major grants for infrastructure – to which the Commonwealth can attach conditions (Fenna 2004). Thus all three spheres of government enact regulatory regimes which affect the construction industry.

Nothing here should be taken to suggest that regulation is unwarranted, however. Much of the regulatory burden ensures that the rights of consumers, clients, employees and the public are protected, and the responsibilities of construction firms are clearly spelt out. However, a focus on consumer protection may not always result in the best outcome for industrial productivity. Ways need to be found to ensure that the rights and safety of clients, consumers, employees and the public are protected, and yet industrial productivity is not unduly hindered. Reducing inconsistencies in regulation regimes between jurisdictions appears to be a salient way of reducing costs, while ensuring appropriate levels of consumer protection are in place.

Current approaches to regulatory impact analysis (adaptation costs)

Part of the reason for the current fragmented regulatory system may relate to the current approach to regulatory impact analysis. All jurisdictions in Australia are required to undertake a Regulatory Impact Assessment (RIA) (Council of Australian Governments [COAG] 2004) when considering changes to the regulations. A RIA is meant to take into consideration the costs, benefits, and risks associated with proposed changes to legislation (COAG 2004). The impact of a given policy option can be undertaken in economic terms through cost-benefit analysis, cost-effective analysis or opportunity cost analysis, analysis can also include assessments of the social and environment impact of policies. Typically, the policy will often be reviewed in terms of National Competition Policy, competitive neutrality, regulatory impact, reduced outlays, and competitive service delivery (Bridgman and Davis 2004).

A deficiency with the current approach to regulatory impact analysis, however, is that proposed legislation tends to be considered in isolation from other legislation. While the impact of a specific piece of legislation is considered in its own right, the cumulative affect of regulations tends not to be considered. The danger of undertaking RIA process on an isolated piece of legislation is that the impact of a single piece of legislation is never felt by industry in isolation, but each piece has a **cumulative** effect upon industry. Additionally, RIA processes tend to be conducted by a single government department and a single sphere of government, not taking into account the regulations of other spheres of government.

Over time the cumulative effect of legislation can become quite profound and periodic reviews of the entire legislative framework, such those undertaken by the Productivity Commission, are required in order to highlight the amount of legislation and the likely effect that this will have upon industry.

5. WAYS OF MEASURING REGULATORY COSTS

There are a number of other approaches to estimating costs of a particular regulation. A difficulty experienced by this project has been to find the best way of estimating the cost of regulations to a specific industry. One economist has suggested that estimating regulatory costs on an industry would be a 'heroic' undertaking. However number of extant approaches can be found below:

AusIndustry (2005) Regulation Reduction Incentive Fund Costing Tool

This CD Based tool is designed to generate cost estimates for businesses in complying with government regulations. While designed for small businesses and councils, the tool can be applied across industry and government. The tool requires a large amount of data entry in order to be effective, and is often reliant on secondary data.

Dunn's (1981) Public Policy Analysis

This book undertakes cost estimations from a planning perspective, akin to regulatory impact analysis prior to the introduction of a new regulation. The book reviews a number of approaches to estimating costs, including comparing the likely costs of different policy options.

Pandley and Scott (2002) "Red Tape: A Review and Assessment of Concepts and Measures" Journal of Public Administration and Theory 12:4, pp. 553 – 580. This paper reviews a number of approaches for estimating costs associated with regulations (mainly economic and statistical approaches).

OECD (2004) The Standard Cost Model

The OECD has released a standard cost model which they define as a framework for defining and quantifying administrative burdens for businesses. The model outlines data collection processes as well as ways of estimating costs from these interviews.

Dutch Administrative Burdens Model (2005)

The Dutch government has developed a range of tools and publications for assessing the cost of "red tape" for business. This seems to follow much of the methodology of the Standard Cost Model (above).

SCM Network (2004) International Standard Cost Model Manual is a further development of the Standard Cost Model.

6. CONCLUSION

Finding 1 – There are costs levied upon the industry by government at all levels and all stages of the building process, and these by multiple spheres of government. These are direct costs (taxes and charges) and indirect costs (administrative burden and substantive costs).

Finding 2 – There is a lack of consistency between the states in their regulation of the property, design, construction and facility management sectors. Different processes may well be embedded in legislative or pragmatic reasons. However firms working across jurisdictions experience what we have termed adaptation costs, which involve delays, lost opportunities and lack of predictability of outcomes from working across jurisdictions.

Finding 3 – Reducing the regulatory burden on the property, design, construction and facility management sectors is predicted to result in a significant improvement to Australia's GDP. Reduction in inconsistencies between jurisdictions seems to proffer a salient way forward – enabling regulatory burden (adaptation costs) on industry to be reduced, while ensuring consumer stakeholders' protection.

Finding 4 – While regulatory impact analysis has become a standard process throughout most jurisdictions, this process does not go far enough in estimating the costs of regulation upon industry. While this process typically includes consultation with industry, current processes focus on the impact of a single piece of legislation upon industry. What current processes do not acknowledge adequately is the cumulative affect regulations have upon industry, together with impact of multiple spheres of government upon industry.

Finding 5 – The ways of measuring costs are difficult to assess and there appears to be little consensus on the best way of measuring and quantifying these costs. It is hoped that the Productivity Commission is able to provide a way forward on this issue.

7. ATTACHMENT A

CRC for Construction Innovation

The CRC for Construction Innovation (hereafter called *Construction Innovation*) is a national research, development and implementation centre focused on the needs of the property, design, construction and facility management sectors. *Construction Innovation* was established in 2001, and is developing key technologies, tools and management systems to improve the effectiveness of the construction industry.

Current partners of *Construction Innovation* include:

Industry	University	Government
ARUP	CSIRO	Australian Building Codes Board
Bovis Lend Lease	Curtin University	Brisbane City Council
Brookwater	Queensland University of Technology	Building Commission (Victoria)
DEM	RMIT University	Building Services Authority (QLD)
John Holland Group	University of Newcastle	Queensland Department of Main Roads
Rider Hunt	University of Sydney	Queensland Department of Public Works
Woods Bagot		Queensland Department of State Development, Trade and Innovation
		Western Australian Department of Housing and Works

Construction Innovation maintains a number of national and international collaborations to further the research objectives of the organisation, these include:

- Australian Construction Industry Forum (ACIF)
- Australian Sustainable Built Environment Council (ASBEC)
- Australian Property and Construction Council (APCC)
- International Construction Research Alliance (ICALL) – with membership including:
 - ~ Centre for Integrated Facility Engineering (CIFE), Stanford University, USA
 - ~ Centre Scientifique et Technique du Bâtiment (CSTB), France
 - ~ Faculty of Construction and Land Use, The Hong Kong Polytechnic University
 - ~ Research Institute for the Built and Human Environment, The University of Salford, UK
 - ~ VTT Technical Research Centre, Finland
- International Council for Research and Innovation in Building and Construction (CIB)

One of the objectives of *Construction Innovation* was to have a positive influence on public policy. In order to advance this objective, the Construction Industry Business Environment project was funded.

Construction Industry Business Environment [CIBE] purpose

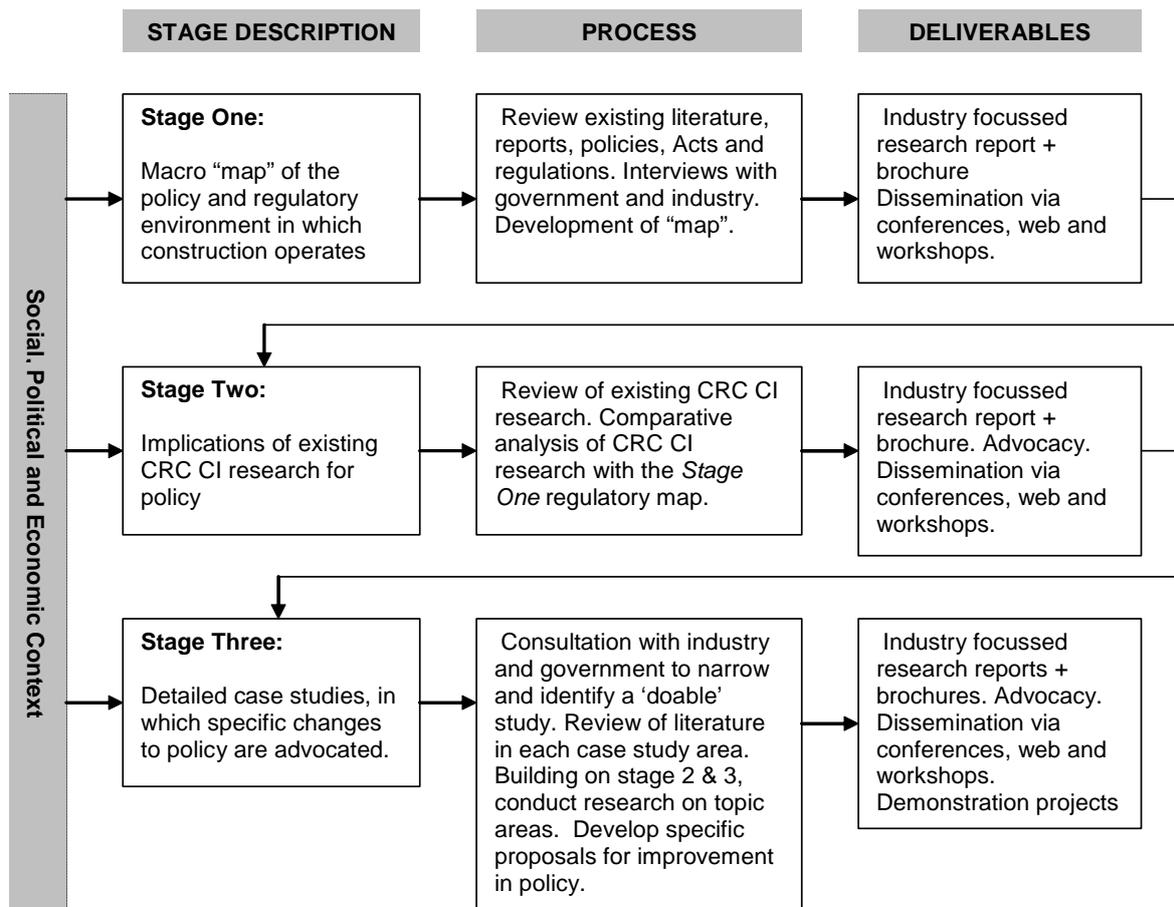
Stage 1 of the CIBE Project completed a brief review of the *context* (social, political, and economic) of the construction industry, examined the similarities and differences of *content* between the various policies and regulations at national and state levels, and advanced a *rationale* for the current regulatory framework. **Stage 2** involved a detailed analysis of the policy implications of completed and current CRC CI research projects, and how application of this research could result in efficiencies and improved productivity for government and industry. **Stage 3** will analyse specific policy areas in which a coordinated approach across all levels of government would benefit the construction industry. Case study areas were identified in consultation with CRC Construction Innovation partner organisations. It is expected that these studies will recommend specific changes in order to improve the current regulatory and policy environment.

The initial areas identified for **case studies** include:

- 1) Training and capability for the construction industry;
- 2) Occupational Health and Safety;
- 3) eBusiness (and related ICT implications for construction and property businesses);
- 4) Procurement (including supply chain, risk mitigation, tendering, and contractual arrangements);
- 5) Environmental sustainability
- 6) Builders licensing.

It is anticipated that these case studies will be completed by the end of June, 2007. A flow chart of the project is below (Figure 10).

Figure 10 – Process for CIBE Project



As noted above, the limited coordination of construction policies, legislation and regulations between the various spheres of government in Australia is argued by industry to be costly and to impede innovation, which in turn has a negative impact on productivity. Improving regulatory harmonisation should therefore reduce costs for industry, and result in improved productivity. Apart from research that reports industry being disgruntled with the amount of regulation currently imposed, there has not been an attempt to identify and map the current regulatory environment affecting the industry, together with the likely costs associated with this environment.

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