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Productivity Commission

Via 5pillars@pc.gov.au

Dear Sir/Madam,

Productivity Commission inquiry on the five pillars of productivity – priority reform areas

Thank you for the opportunity to provide a submission in response to the Productivity Commission (**Commission**) consultation on the five pillars of productivity and accompanying priority reform areas.

The Australian Institute of Company Directors (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 53,000 includes directors and governance leaders of not-for-profits (**NFPs**), large and small businesses and the public sector.

Australia has been facing a long-term productivity challenge for at least two decades that has been curtailing economic growth and weakening living standards. Addressing this challenge will be key to Australia remaining globally competitive and building prosperity for all Australians. The AICD commends the Government for providing the Commission with broad terms of reference to identify priority reforms that could drive measurable improvements in productivity growth in five key areas. While there is not a single simple remedy to address our declining productivity performance, our strong view, as outlined in this submission, is that targeted and measured long term reforms have the opportunity to drive genuine improvements in productivity.

Enclosed at **Attachment A** are our responses to several of the key questions under each of the five pillars. We have not sought to respond to each question but rather focus on those of greatest relevance to Australian directors and where the AICD has knowledge of the particular policy area. Our responses have been informed by engagement with directors and other stakeholders.

1. Executive Summary

The AICD receives consistent feedback from members that Australia has become an increasingly difficult place to do business, including making capital investments and driving innovation. A central concern among directors is the cumulative weight of federal, state and local regulation is crowding out the capacity of organisations, and their boards, to focus on strategy, growth and long-term value creation.[1] While the cost of regulation is often difficult to quantify, it imposes real and compounding burdens on organisations – costs that are ultimately passed onto Australians in the form of higher prices, lower quality goods or services or reduced productivity in service delivery.

With key trading partners including the UK, EU and US taking ambitious action to right-size regulation and promote growth, Australia risks being left behind without concerted focus. The Organisation for Economic Co-operation and Development's (**OECD**) recent Product Market Regulation economy-wide indicator shows that Australia is below the OECD average when it comes to alignment of our regulatory framework

[1] APRA (March 2025). Governance Review Discussion Paper. Page 25. Available here.

with international best practice and notes the administrative burden on businesses could be streamlined and reduced.

Our responses to several key questions under each of the pillars focus on this issue of better regulation. In a number of critical areas, we believe there is a need to rebalance regulatory settings through measured adjustments to existing and proposed regulations. This rebalancing does not mean reducing key regulatory controls or weakening individual protections. Rather, it involves adopting a more proportionate, risk-based approach that ensures regulation supports, rather than stifles business, investment and innovation.

A well-balanced regulatory system is critical to an efficient economy, creating appropriate guardrails within which to do business.

In this context, the AICD welcomes the Commission's recognition of the importance both of cost-benefit analysis in introducing new regulation and of the need to consider the cumulative burden of the stock of regulation. Likewise, the AICD strongly supports the proposition that governments should be proactive in repealing or amending regulations where benefits fail to exceed costs. As an example, Allens, as a component of the Data Governance Foundations for Boards publication, has estimated there are over 800 federal and state laws imposing recordkeeping, retention, or destruction requirements.

AICD members also consistently identify policy uncertainty as a key barrier to growth and strategic planning, particularly in the context of Australia's net zero transformation. Policy certainty is a critical enabler of both productivity and Australia's transition to a net zero economy and overdue action to improve federal environmental laws. Clear, stable, and consistent policy settings give businesses and investors the confidence to make long-term decisions, allocate capital effectively, and invest in innovation and low-emissions technologies.

Our key points under each of the pillars are as follows:

Pillar One: Creating a dynamic and resilient economy

- The AICD advocates for balanced, fit-for-purpose and modern regulation that strengthens national governance and promotes economic growth. We recommend the Commission consider how best to streamline administrative processes and reduce unnecessary compliance burdens to significantly enhance business dynamism and resilience.
- We recommend the Commission consider how a growth-focused regulation agenda can level the playing field between large and small businesses by simplifying reporting thresholds and tailoring compliance obligations to business size and risk profile, thereby supporting competition, innovation, and broader economic participation.
- Easing the regulatory burden via a whole-of-economy approach will help ensure Australia's international competitiveness and support its productivity. We recommend specific measures to achieve this, including: 1) expanding the regulatory initiatives grid economy-wide; 2) mandating post-implementation reviews for new legislation; 3) revitalising the Regulation Impact Statement process; and 4) refreshing Statements of Expectations for regulators to appropriately prioritise productivity and economic growth in carrying out their duties.
- We encourage the Commission to look to the United Kingdom government's commitment to a new strategy to ensure regulators and regulation support economic growth.

Pillar Two: Building a skilled and adaptable workforce

- We recommend the Commission prioritise action to address workforce and skills shortages by supporting a more dynamic, responsive jobs market and enabling a national approach to occupational licensing.
- Reforms should focus on aligning education and training with emerging skill needs, reducing unnecessary entry barriers, and promoting labour mobility across sectors and jurisdictions.

Pillar Three: Harnessing data and digital technology

- We recommend the Commission consider whether the implementation of the outstanding *Privacy Act 1988* (**Privacy Act**) Review recommendations should be paused to allow for a more rigorous review of the costs and benefits of the recommendations in totality. We also stress that the existing maze of Commonwealth and State data retention obligations should be addressed prior to further privacy reforms. The priority should be harmonising and clarifying existing laws rather than layering new obligations on the current complex and ambiguous framework.
- We support the Commission assessing an outcomes approach to privacy and data regulatory requirements in Australia and consider this offers an opportunity for alignment with AI regulatory settings.
- We urge the Government to prioritise immediate steps for de-identification of director personal information on the ASIC companies register, recognising the significant privacy and security risks.
- We recommend the Government act with urgency in delivering its National AI Capability Plan, and in issuing clear guidance on how existing regulation applies to AI. We also encourage the timely establishment of an AI Safety Institute to support secure, responsible AI use and enhance public trust in AI technologies.
- The AICD recommends Treasury conduct a public consultation that also draws insights from the international experience of implementing a fit-for-purpose digital financial reporting regime that benefits preparers and users.

Pillar Four: Delivering quality care more efficiently

- The AICD recommends the Government starts to implement the proposals from the 10-year roadmap Not-for-profit Sector Blueprint delivered in November 2024.
- As outlined in Pillar One, the AICD recommends expanding the regulatory initiatives grid economy-wide, which includes the care economy as critical subset of this reform.
- We encourage a holistic review of how regulation currently operates in the care sector and its impact on the availability of high quality, accessible services.

Pillar Five: Investing in cheaper, cleaner energy and the net zero transformation

- AICD members consistently identify policy uncertainty as a key barrier to business growth and strategic planning, particularly in the context of Australia's net zero transformation. We recommend that the Commission encourage the Government to prioritise national policy certainty to improve the cost-effectiveness and alignment of emissions reduction policies across the economy.
- We recommend the Commission support reforms to the *Environment Protection and Biodiversity Conversation Act 1999* (**EPBC Act**) that streamline approval processes while strengthening environmental protections, to unlock productivity benefits – particularly for clean energy infrastructure and housing.

2. Next Steps

We hope our submission will be of assistance. We look forward to providing additional comments and supporting evidence as the Commission's work progresses and the interim report is published.

If you would like to discuss any aspects of our submission further, please contact Christian Gergis, Head of Policy (cgergis@aicd.com.au) or Christie Rourke, Climate Governance Initiative Australia Lead and Senior Policy Advisor (crourke@aicd.com.au).

Yours sincerely,

Louise Petschler GAICD

GM, Education and Policy Leadership

Attachment A: Responses to key questions

1. Pillar One: Creating adynamic and resilient economy

Section 3. Reduce the impact of regulation on business dynamism

The AICD advocates for balanced, fit-for-purpose and modern regulation that strengthens national governance and promotes economic growth. When designed well and maintained, regulation not only provides business certainty, enhances competition and delivers on important societal objectives, but it can serve as a 'gatekeeper of the market',[2] determining which innovations and their economic benefits reach Australians.

We welcome the Commission's focus on institutional arrangements for making new regulation, as well as harmonising and reducing the burden of existing regulation. Too often agency approaches to policy-making processes and substantive law reform differ widely across portfolios, undermining implementation and driving up compliance costs.

We set out our responses to the specific questions in this section below.

4. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

Regulations that streamline administrative processes and reduce unnecessary compliance burdens can significantly enhance business dynamism and resilience. For example, the digitisation of regulatory processes during the pandemic – many of which have now been made permanent – have had a demonstrable positive impact. Similarly, reforms to continuous disclosure laws, introduced during the pandemic and made permanent in 2021, have also provided greater certainty for companies to make disclosures to the market without fear of speculative class actions.

Another example is the introduction of the insolvency safe harbour in 2017, which has supported business resilience by enabling companies to pursue restructuring strategies that preserve jobs and deliver better outcomes – where previously, liquidation or voluntary administration may have been the only option. Further details about these reforms and how they have enhanced business dynamism and resilience are set out below.

COVID-19 reforms

During the COVID-19 pandemic, many jurisdictions implemented temporary reforms to modernise regulatory requirements and facilitate business continuity. These included:

- Digitised filing requirements that replaced paper-based submissions with online lodgements, reducing delays and administrative effort.
- Acceptance of electronic signatures for official documents, contracts, and corporate filings, which improved efficiency and enabled business to continue operating remotely.
- Virtual meeting arrangements, such as allowing companies to hold AGMs and board meetings online, increasing flexibility and reducing cost.

These reforms not only supported businesses through a period of acute disruption but have since proven valuable in promoting more agile and responsive operations. Making many of these changes permanent

[2] Evans, J. (20 January 2021), "A brave new world: Agile regulation to unleash innovation", UK Civil Service Blog, Available here.

has enhanced operational resilience, particularly for smaller businesses with limited administrative capacity.

Continuous disclosure reforms

During the pandemic the AICD welcomed changes to continuous disclosure laws that introduced a fault element – requiring proof of knowledge, recklessness, or negligence – for civil liability in cases of non-disclosure.[3] These temporary reforms, now made permanent, aligned Australia's regime more closely with international comparators[4] and has brought better balance to disclosure laws, which involve complex, time-sensitive judgment calls.

The reforms have not hindered Australian Securities and Investments Commission's (**ASIC**) enforcement capabilities and contributed to the stabilisation of the previously under-stress directors and officers (**D&O**) insurance pool, with evidence of decreased premiums and re-entry of global insurers to the Australian market increasing competition.[5]

Since the 2021 reforms, the AICD is of the view that the disclosure landscape has evolved. There is increasing market demand for complex, often forward-looking disclosures, particularly from investors and regulators. Emerging areas such as climate reporting and cyber risk are presenting new challenges for boards, with heightened liability risks due to uncertainty, data limitations, and evolving regulatory expectations.

Insolvency safe harbour

One clear example of regulation that has enhanced business dynamism and resilience is Australia's insolvency safe harbour provisions under the *Corporations Act 2001* (**Corporations Act**).[6]

Introduced in 2017, the safe harbour provides directors with protection from personal liability for insolvent trading if they are pursuing a course of action that is reasonably likely to lead to a better outcome for the company than immediate administration or liquidation. This reform has been critical in encouraging more proactive and pragmatic restructuring efforts, allowing viable businesses to recover rather than default under the pressure of rigid insolvency rules.

By giving directors greater flexibility to respond to financial distress without the immediate threat of personal liability, the safe harbour promotes a culture of early engagement with financial challenges, reducing the stigma and cost traditionally associated with insolvency processes to the benefit of continuing business operations and employment.

A 2021-2022 independent review of the safe harbour provisions that was built into the legislation[7] provided valuable insights into its impact on business resilience and restructuring practices. The review found that the safe harbour provisions have been instrumental in allowing viable companies to restructure outside formal insolvency processes, preserving jobs and enterprise value.

The review found the utility of the safe harbour for directors of SMEs and smaller entities to be less evident and recommended measures to improve its accessibility. However, we understand that the Small

[3] Section 674A of the *Corporations Act 2001 (Cth)* was introduced by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* (Cth), which commenced on 14 August 2021. The amendment requires proof of knowledge, recklessness, or negligence to establish civil liability for breaches of continuous disclosure obligations.
[4] Herbert Smith Freehills (November 2023). Comparative analysis of international corporate disclosure and liability regimes. Available here.
[5] AICD (December 2023). Submission to Treasury on Continuous disclosure review. Available here.
[6] *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017.* Available here.
[7] Section 588HA of the *Corporations Act 2001* (Cth) required an independent review to examine and report on the operation of the permanent safe harbour for directors from liability for insolvent trading. Available here.

Business Restructuring regime (**SBR regime**), introduced in 2021, is increasingly being utilised by small business directors and their advisors to flexibly restructure businesses that are still viable but facing immediate financial challenges.[8]

We consider the safe harbour and the SBR regime strong examples of regulatory reform that balance accountability with a more modern, adaptive approach to business risk - contributing meaningfully to the resilience of the Australian economy.

The AICD is of the view that legislated review processes like this are important to ensure regulation is working as intended and remain fit for purpose. We set out further detail on how these review processes can be used to support better regulation in our response to question six below.

5. How has the regulatory burden on businesses and directors changed over time? If possible, please refer to specific examples of compliance cost and effort, and the share of senior management or board time dedicated to regulatory compliance.

The impact of mounting regulation on businesses and their directors

Australian companies are operating in an increasingly complex and burdensome regulatory environment. Although we accept that the regulatory environment will involve a degree of complexity with the advent of new technologies and emerging risk areas, much more can be done to simplify and harmonise legislation and ensure it is appropriately calibrated to achieve its objectives without unnecessary costs.

Well-designed, proportionate regulation is critical to protect consumers, safeguard against adverse outcomes and enable market participants to fairly compete. Imbalanced or poorly designed regulation, on the other hand, can stifle productivity, competition and economic growth, including by limiting the capacity of boards to focus on innovation and strategy.

The AICD's biannual survey of the director community – the Director Sentiment Index consistently finds regulatory requirements and excessive red tape as a top economic challenge cited by directors. In 2025,[9] we heard:

- 59 per cent of directors say compliance and regulation is the main factor affecting their board's risk appetite;
- more than two-thirds of directors expect regulatory compliance requirements to increase within their business over the next 12 months; and
- 70 per cent of directors said they believe a major business deregulation agenda would have a positive impact on Australia's productivity and economic growth.

Additionally, the AICD receives regular feedback from senior directors, especially of listed companies, that the weight of regulation and compliance at a Commonwealth and State level has reached a tipping point where it is impeding investment and a focus on innovation. This, according to our member engagement, is also contributing to a decline in the number of well-qualified directors seeking roles on listed company boards, effectively leading to 'talent leakage' from the public markets that are such significant contributors to our national prosperity and Australians' wealth creation.

The OECD's recent Product Market Regulation (**PMR**) indicators, which assess the alignment of a country's regulatory framework with internationally accepted best practices, has also found Australian regulation is in need of improvement. The PMR overall economy-wide indicator shows that **Australia is**

[8] AICD (March 2025). Insolvency trends, updated ASIC guidance and the Small Business Restructuring Regime: What Directors Need to Know. Available here.
[9] AICD (April 2025). Director Sentiment Index Survey 1st Half 2025. Available here.

below the OECD average and notes the administrative burden on businesses could be streamlined and reduced.[10] At a time when Australia is competing with other global markets for fast growth firms with new innovations, a lack of alignment with international best regulatory practice is a real competitive and economic disadvantage.

Examples of Australia's growing regulatory burden

A salient example of the extent of this regulatory burden is the number of board level requirements imposed by the Australian Prudential Regulation Authority (**APRA**) on regulated banks, insurers and superannuation trustees. APRA has estimated there are over 150 board level requirements in the prudential framework.[11] Directors have shared with us that the overall regulatory burden on financial institutions, including the board, is significant and is ultimately felt by consumers through higher priced, and less dynamic, products and services.

The AICD is currently updating research originally commissioned by the AICD and completed by Allens in 2020, which concluded that Australia's director liability environment was "uniquely burdensome" compared with peer jurisdictions, including Canada, Hong Kong, the United Kingdom, New Zealand and the United States.[12] Since 2020, additional director liability provisions (including sign-off requirements) have been introduced, including in:

- APRA's CPS 220 Risk Management;
- APRA's CPS 230 Operational Risk Management;
- the *Security of Critical Infrastructure Act 2018* (Cth);
- the *Modern Slavery Act 2018* (Cth); and
- the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* (Cth), which established Australia's mandatory climate reporting regime.

We will share this updated research with the Commission once available.

Further, in the last several years alone, the AICD and its members have observed the following developments which are also contributing to the issue of regulatory accumulation:

- the interaction between Australia's stringent continuous disclosure laws and its facilitative class action environment;
- the introduction of mandatory climate reporting for the largest emitters and corporations from 1 January this year;
- the increasing convergence of cybersecurity, privacy and AI regulatory initiatives, such as the 2023-2030 Cyber Strategy, the Government's response to the Privacy Act Review and proposed mandatory guardrails for AI;
- a new legislative Financial Accountability Regime with stronger governance and accountability obligations for entities in the banking, insurance and superannuation industries and their directors and senior executives;

[10] OECD (2024). Product Market Regulation (PMR) indicators: How does Australia compare? pp.1-2. Available here. Note: This uses the OECD PMR database for 2023/2024 and 2018/2019.
[11] APRA (March 2025). Governance Review Discussion Paper. Available here.
[12] AICD (February 2020). Australia's unique and uniquely burdensome director liability environment. Available here.

- passage of significant reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, with new services and entities coming under Australian Transaction Reports and Analysis Centre (**AUSTRAC**) regulation from 2026; and
- the passage of 32 bills in Federal Parliament on the final sitting day of 2024 alone, many of which contain new or changed corporate obligations (including merger reforms, anti-money laundering reforms mentioned above and tranche 1 Privacy Act reforms).

The AICD supports the policy objectives behind many of these reforms individually. Looked at holistically however, some lack harmonisation, pose a high degree of uncertainty, or impose significant compliance burdens relative to their policy benefits.

Measures to improve law-making processes and ease the regulatory burden

The AICD welcomes the Commission's focus on both improving the institutional processes for introducing new legislation as well as examining how existing regulation could be improved or removed.

It is imperative that all parts of government work to achieve these twin aims. Specifically, the AICD strongly advocates for the measures below to reduce unnecessary regulatory accumulation and ensure regulation is proportionate, while also safeguarding against harms:

- to better understand the impacts and costs of regulation, **the Regulation Impact Statement process should be revitalised** to include a more robust cost/benefit analysis, a clearer lens on productivity impacts, and greater private sector input;
- to improve the sequencing and coordination of regulation, **the Regulatory Initiatives Grid should be expanded economy-wide** and a stocktake of implementation and consultation timeframes should be undertaken;
- to improve the quality of laws passed, **standard minimum stakeholder consultation periods across all Commonwealth policy initiatives** should be set.
- to prevent further regulatory accumulation and overlap, where new compliance requirements are imposed, **a mandatory holistic examination of existing laws should be undertaken to ensure reforms are operating as intended including that the expected cost-benefit outcomes have been achieved**;
- to reduce the administrative costs of regulation, Australia should follow the UK's lead in **adopting a whole-of-government commitment to a more growth-focused and proportionate regulatory system** and establish a baseline for, and reduce by 25%, the administrative costs of regulation on businesses; and
- to re-orient regulation and regulators to become more innovation focused and less risk averse, the Government should issue **refreshed Statements for Expectations for regulators** which explicitly outline the Government's expectations that regulators will appropriately prioritise productivity and economic growth when undertaking their duties.

4. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience?

We consider regulation requires ongoing maintenance to help Australia meets its economic, competition and productivity objectives. However, the lack of regulatory upkeep in Australia has meant many of our regulations are becoming outdated and are failing to capitalise on technological innovations. This, alongside the growing volume of poorly targeted regulation, constrains business dynamism.

Regulatory complexity and outdated frameworks can also entrench advantages for incumbents, which are better resourced to navigate compliance burdens, while creating significant barriers for new entrants and smaller firms. This dynamic risks undermining competition and limiting the entry of innovative businesses that are essential for driving productivity and economic renewal. As noted by Dr Martyn Taylor and Andrew Pattinson, '[b]etter targeted regulatory interventions have less risk of creating adverse spillover effects that will cascade through the economy'.[13]

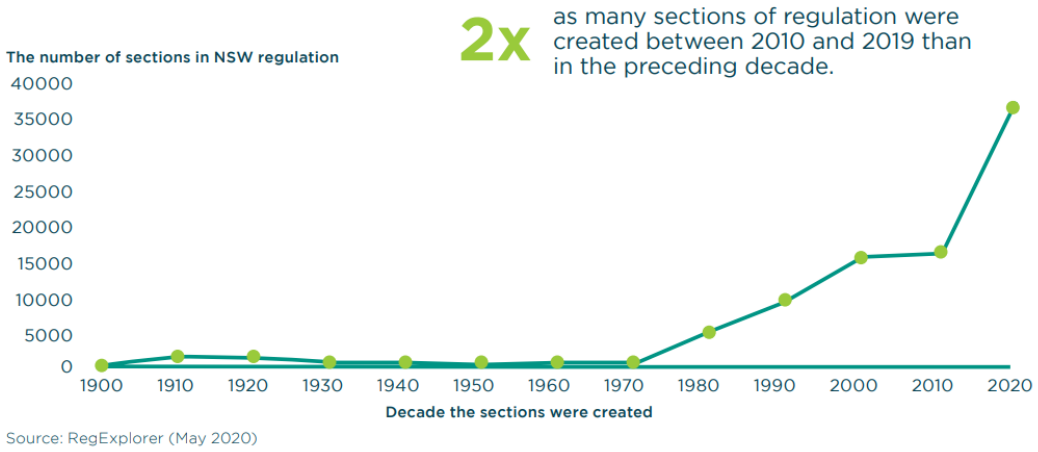
A more deliberate, growth-focused regulation agenda should consider how to level the playing field between large and small businesses by modernising regulatory settings and lifting unnecessary burdens. In this context, reforms such as simplifying reporting thresholds (discussed below) and tailoring compliance obligations to business size and risk profile can support greater dynamism and more inclusive economic participation.

Ageing and outdated regulation

While we provide specific examples of unnecessarily complex and imbalanced legislation below and in question 5 above, these are symptoms of a broader issue: Australia has an ageing statute book and many regulations are not updated to keep pace with emerging issues nor reviewed to ensure their benefits continue to outweigh their costs.

As the NSW Productivity and Equality Commission has recently noted, in NSW alone, the average piece of legislation has not been changed in over 20 years and '[g]enerally, regulation is enacted and then the reason it exists is not examined further, despite statutory requirements to remake or repeal regulations on a regular basis.'[14] With the use of AI and other tools, NSW Treasury also found that between 2010-19, two times as many sections of regulation were created than in the preceding decade.[15]

We strongly encourage the Commission to conduct a similar exercise at the Commonwealth level.



Source: NSW Treasury (July 2020). Regulating for NSW's Future. Page 3.

We anticipate this regulatory stagnation will only become more pronounced as the pace of technological change continues to accelerate, leaving some ageing regulations unfit for the digital present.

[13] Dr M Taylor and A Pattinson (2022) Regulating Business Ecosystems: Is this a new paradigm for competition law? Presentation to the Competition Law Conference. Page 8. Available here.
[14] NSW Productivity and Equality Commission (May 2025). Smarter regulations through experiments: How NSW should road test regulations. Page 8. Available here.
[15] NSW Treasury (July 2020). Regulating for NSW's Future. Page 3. Available here. Note: NSW Treasury also highlighted that "37% of all sections in NSW regulation contain prescriptive language such as "must", "shall", "cannot" and "ought".

In its recent *Regulatory Policy Outlook 2025*, the OECD has recommended that Australia consider 'overseeing more general reviews of regulations, such as those conducted under automatic review clauses and sunsetting provisions as part of ensuring continual regulatory improvement'.[16] The Outlook also indicates Australia is lacking when it comes to addressing 'innovation-related challenges when reviewing rules'.[17]

The AICD supports the OECD's recommendation and encourages the Government to adopt mandatory post-implementation reviews for new legislation (taking account of evolving innovations) and appropriate monitoring of implementation costs. This will help ensure legislation remains adaptive, fit-to-tackle emerging issues and its benefits outweigh the costs. It will also serve as an appropriate complement to the Commission's examination of the Policy Impact Analysis process.

In addition, high-quality policy outcomes depend on reform processes that are properly resourced, well-prioritised and underpinned by robust consultation. Too often, major regulatory reforms are developed under compressed timeframes, with limited engagement and insufficient analysis. Regulators must also be equipped with the right capabilities and resources to support implementation and ongoing monitoring of legislative reforms.

Corporate reporting thresholds

Clear examples of this regulatory stagnation are Commonwealth corporate reporting thresholds that are often not revisited or indexed after commencement. This has led to scope creep, increasing the number of organisations over time that are captured under different regulatory reporting or notification regimes. This can result in organisations whose size and resourcing make them inappropriately subject to the regimes, even though this was not intended when first introduced.

It is our view that corporate reporting thresholds should be lifted and include mandatory indexation or periodic review to keep pace with the economy. Specifically, the definition of 'large company' for the purposes of financial (and now sustainability) reporting to ASIC has not changed since 2019 despite heightened inflation – it currently sits at $50m consolidated revenue. This threshold should be increased to reduce the reporting burden on smaller companies that lack the resources to meet the reporting requirements.

The AICD is also proposing to undertake economic research to better understand the productivity impacts of specific regulatory settings on Australian businesses. The research would focus on quantifying the costs of selected existing requirements, such as Commonwealth corporate reporting requirements and seek to measure the potential gains from targeted reforms to the same. It would also examine how the broader regulatory burden on Australian businesses has changed over time. This will help guide a data-driven assessment of whether corporate reporting thresholds should be adjusted.

As part of this research, the AICD plans to assess the impact of excluding Group 3 entities from mandatory climate reporting requirements. Given the relatively low thresholds ($50 million revenue, $25 million in assets, or 100 employees), many medium-sized organisations are captured.

We have consistently argued that the cost-benefit analysis for including Group 3 entities within the mandatory reporting regime does not stack up, and that the regime should be targeted at those entities that will have the largest impact upon the nations' emissions profile.

[16] OECD (April 2025). Regulatory Policy Outlook 2025. Page 154. Available here.
[17] OECD (April 2025). Regulatory Policy Outlook 2025. 'Australia: regulating for' graph. Page 155. Available here.

The Corporations Act

The Australian Law Reform Commission's (**ALRC**) Final Report, *Confronting Complexity: Reforming Corporations and Financial Services Legislation* (**ALRC Final Report**), has found that for businesses, the high degree of legislative complexity in Australia, including within the *Corporations Act*, makes it 'harder to operate and innovate' and that reducing this complexity could achieve 'economic efficiencies and enhanced productivity' at a time when slow productivity growth is impacting living standards.[18] The ALRC also highlighted that a large number of detailed, sometimes overlapping, offence and penalty provisions does not lead to better compliance or more effective enforcement. Reducing the multiplicity of offence and penalty provisions would minimise users' uncertainty and decrease compliance costs.

The AICD strongly supports the ALRC Final Report recommendations and urges the Government to prioritise their implementation. Timely action on the ALRC's recommendations would help ensure this important body of work informs meaningful regulatory reform and delivers its intended economic benefits.

We are of the view that a substantive review of the *Corporations Act 2001* should also be undertaken to reduce complexity and compliance costs for industry, including simplifying offence and penalty provisions in line with the ALRC's recommendation. This substantive review would complement the ALRC's narrower technical review of corporations and financial services regulation.

7. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

The AICD has observed several examples, both domestic and international, that illustrate effective regulatory approaches to reducing business burden:

- Internationally, as noted above, the UK Government is taking a coordinated, whole-of-economy approach to regulatory reform. It has committed to reducing the administrative cost of regulation to business by 25 per cent by the end of the current parliamentary term. This goal is being pursued through a suite of measures, including public pledges from a wide range of UK regulators to simplify, streamline and modernise their regulatory processes. This represents a strong example of cohesive cross-regulatory alignment and accountability aimed at supporting economic growth while maintaining effective oversight.
- The UK moves are part of a broader international trend including the EU and US looking to reduce regulatory impost to drive innovation and economic growth. The European Commission has adopted a clear target to simplify EU rules by achieving at least 25% reduction in administrative burdens, and at least 35% for small and medium enterprises (**SMEs**).[19] This includes focusing the sustainability reporting obligations on the largest companies which are more likely to have the biggest impacts on people and the environment. In the US, the Trump Administration has imposed regulatory discipline for federal agencies to offset the cost of new regulations by repealing existing regulation (e.g. 10 for 1).[20]
- The NSW Productivity and Equality Commission has undertaken valuable work in promoting regulatory experimentation. Notably, it has measured economic benefits arising from relaxed

[18] Australian Law Reform Commission (January 2024) Complexity: Reforming Corporations and Financial Services Legislation (ALRC Report 141). Pages 48-49. Available here.
[19] European Commission (February 2025). Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief. Available here.
[20] White House (January 2025). Unleashing Prosperity Through Deregulation. Presidential Action. Sec. 3.+ Regulatory Cap for Fiscal Year 2025. Available here.

regulatory requirements introduced in NSW during the COVID-19 period.[21] This work has helped demonstrate the potential of targeted regulatory flexibility and adaptive policy settings to support business activity without compromising essential safeguards.

These examples highlight the importance of a system-wide response to regulatory burden. In Australia, as noted above, establishing a national baseline for the administrative costs of regulation on business would be a powerful first step. This would provide a clear benchmark against which progress can be assessed and support more data-informed regulatory reform efforts across sectors.

It is critical that Australia moves in alignment with key trading partners to remain internationally competitive.

2. Pillar Two: Building a skilled and adaptable workforce

Section 3. Support the workforce through a flexible post-secondary education and training sector

The AICD agrees that the success of our economy depends on our ability to use and develop new technology and ideas, perform skilled work, manage productive teams and deliver high-quality services efficiently.

Australia's education system needs to keep us at the forefront of the global market for skills and knowledge and create the foundation for lifelong learning.

According to the AICD's Director Sentiment Index, near-term concerns around labour and skills shortages peaked in the aftermath of the pandemic at very high levels with 93 per cent of directors surveyed identifying a skills shortage in the Australian workforce, and 74 per cent reporting that their organisations had been affected by labour market issues.[22] Since then, the numbers have fallen back somewhat, partly due to the elevation of new concerns to the top of respondents' worry lists (such as global trade policy uncertainty) and partly due to changes in underlying conditions. [23] Even so, our survey results continue to tell us that: labour shortages remain a top economic challenge for businesses; they still keep some directors 'awake at night'; and directors continue to view a general lack of workforce skills as a top issue that government should address.

Directors also continue to report negative impacts on their own organisation from labour market issues in general. Directors consistently highlight that skills shortages are particularly acute in areas such as technology (which is hindering the adoption of emerging technologies like artificial intelligence and cybersecurity), healthcare, construction and trades, and sustainability and green skills (critical for Australia's transition to a net zero economy).

The AICD is of the view that structural issues, such as workforce shortages, are among the key factors keeping the Director Sentiment Index in negative territory, despite some positive economic indicators. It also underscores the importance of addressing these challenges to improve overall economic confidence and productivity.

The AICD encourages the Government to take steps to ensure the jobs market is dynamic and able to respond quickly as demand for skills change, allowing business to innovate and respond to opportunities. We also support reforms to occupational entry requirements to help ensure regulations are proportionate to risk, while enabling a more mobile and responsive workforce to meet industry demand.

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[21] NSW Productivity and Equality Commission (May 2025). Smarter regulations through experiments: How NSW should road test regulations. Available here.
[22] AICD (April 2023). Director Sentiment Index Survey – 1st Half 2023. Available here.
[23] AICD (April 2025). Director Sentiment Index Survey – 1st Half 2025. Available here.

Steps should be taken to create a system where professional or trade licenses are recognised across all states and territories under a national occupational licensing scheme. The recently announced Productivity Commission inquiry into national occupational licensing is a welcome step, and we encourage continued focus on this reform as a key productivity driver.

3. Pillar 3: Harnessing data and digital technology

The AICD strongly supports the Commission's focus on how more efficient and effective regulatory settings may enhance Australian organisations' use of data and digital technology to drive productivity gains and innovation. At the same time, our view is that a more targeted and consistent regulatory regime can also benefit individuals through a clearer regulatory framework that is easier for organisation to comply with and individuals to access.

Our recent publication for directors, *Data Governance Foundations for Boards*, produced with Allens and Melbourne Business School, recognises that key organisational data is increasingly the fundamental asset that all organisations hold. The publication strongly encourages boards to support investments in the systems, processes and people to harness this strategic asset. It also recognises that a board should have effective oversight of data risk controls and compliance obligations, including an understanding of the complexity of current regulatory requirements.

Section 2. Support safe data access and handling through an outcomes-based approach to privacy

The AICD's response to this section is limited to questions seven and eight. Our responses are informed by extensive consultation we have previously undertaken on Privacy Act reforms and separately the development of better practice governance guidance for directors on data governance.

7. How is the Privacy Act operating to balance consumer privacy considerations while supporting the benefits associated with data sharing? Is the balance right?

We accept the findings and recommendations of the Australian Competition and Consumer Commission (**ACCC**) in the Digital Platforms Inquiry that the Privacy Act is broadly not suitable for how individuals increasingly engage in a digital world, including with digital platforms. However, as detailed in response to Question 8 we are concerned that the implementation of the outstanding Privacy Act Review recommendations will only serve to increase the cost and complexity of complying with the Privacy Act, especially for SMEs.

While we are broadly supportive of principles-based framework to legislation we recognise that the Australian Privacy Principles (**APPs**) are overly complex and challenging to interpret and comply with. The 13 APPs often overlap and interact in complex ways, making it difficult to understand which specific requirements apply in particular situations. Organisations must navigate multiple principles simultaneously, each with their own specific requirements and exceptions. Supporting Office of the Australian Information Commissioner (**OAIC**) guidance has left considerable interpretation gaps or has contributed to the uncertainty on how to meet the APPs in practice.

This complexity is demonstrated by examination of the privacy notices provided to individuals that are required under APP 5. Privacy notices are long, complex and overly legalistic and key information is often contained in other documents, such as the organisation's privacy policy. This results in a situation that is impenetrable for most individuals to navigate and produces a passive form of individual consent to the collection and use of personal information. This situation is also not desirable for organisations which expend significant resources on Privacy Act compliance and updating privacy notices that do not benefit individuals.

Overlapping and inconsistent data requirements

We urge the Commission to not consider data solely within the prism of the Privacy Act. Data that organisations utilise to make business decisions and to improve operations is drawn from a range of sources that is not solely personal information. However, the maze of data obligations and regulatory requirements that sit across the economy are a handbrake to more dynamic utilisation of data and create specific risks.

We have received feedback from both AICD members and industry experts on the current challenges with interpreting, navigating and complying with Commonwealth, state and industry specific data retention laws. Members have shared with us instances of an entity having to grapple with inconsistent data retention obligations and requiring costly legal advice on how to navigate the conflicting requirements. Allens, as a component of the *Data Governance Foundations for Boards* publication, **estimated there are over 800 federal and state laws** imposing recordkeeping, retention, or destruction requirements.[24]

Director personal information

An example of incongruous and inconsistent regulatory settings on data and privacy is the ASIC's companies register where personal information of the approximately 2.4 million directors is available. Allowing public access to director personal information on the companies register exposes Australian directors and officers to potential privacy, cyber, identity-theft and personal safety risks. We are not aware of any other profession in Australia where personal information such as a residential address or date of birth is made publicly available. We also note that this is at odds with the Government's policy direction to strengthen consumer rights under the Privacy Act Review.

The AICD's view is that this data and privacy regulatory complexity across the economy not only imposes compliance costs but is a key contributing factor to entities holding personal information for longer than is necessary, which in turn increases the extent of data loss and potential damage from a significant cyber incident or data breach.

We **recommend** that harmonising and consolidating data regulatory and retention requirements is a necessary precondition to any reform of Privacy Act, including an outcomes-based model as contemplated by the Commission. Instead of rushing to implement the remaining Privacy Act recommendations, and layer new obligations, the Government should be focusing on fixing existing data retention laws.

Automated decision making

In November 2024 the Government passed legislation to introduce new requirements in the Privacy Act around the disclosure of the use of automated decision making (**ADM**). This change was the implementation of a proposal from the Privacy Act Review carried out by the Attorney-General's Department.

Our strong view is that this new requirement is a regressive new compliance obligation that will exacerbate the existing complexity with privacy policies and notices and not result in meaningful transparency benefits for individuals. Our understanding of the law is that in addition to artificial intelligence systems it will require disclosure of the use of common business software tools, such as Microsoft Excel, when utilised in decision making. It is not apparent the market failure or consumer harm that exists with capturing such a broad spectrum of existing business tools. Further, this reform was legislated despite the potential for conflict and overlap with the proposed AI mandatory guardrails.

[24] AICD, Melbourne Business School, Allens (May 2025), *Data Governance Foundations for Boards: Key principles for director oversight and value creation*. Appendix A: Regulatory requirements – Privacy and Data Handling. Available here.

This requirement will not only be burdensome to implement for entities but will create another barrier to businesses harnessing new technology and data solutions.

We highlight this ADM change as an example of uncoordinated, piecemeal and poorly thought-out changes to the Privacy Act that will not meaningfully improve individual rights and will only add the complexity and cost of complying with the Privacy Act.

Statutory tort

In the same November 2024 package, the Government also legislated a statutory tort privacy for the first time in Australia. The introduction of a statutory tort in Australia has long been advocated for, including by the ACCC and the ALRC. While we retain some concerns about how the statutory tort will be utilised in-practice we are in-principle supportive of this reform, recognising that such a right exists in many comparable countries.

We note that a statutory tort could be a fundamental element of a 'outcomes' orientation to privacy and data legislation in Australia. In particular, it captures a broader range of privacy invasions than is currently envisaged by the Privacy Act, for example an individual invading another individual's privacy. Further, it provides agency to individuals to pursue privacy claims outside of OAIC action.

However, as detailed under Question 8, we would be concerned if the statutory tort was just one of multiple layered redress options, such as the proposed direct right of action (see below).

8. Are there any changes you would like to see to privacy legislation in Australia?

We are supportive of the Commission's focus on an 'outcomes' orientation to data and privacy requirements in Australia and whether this would be more appropriate for data collection and use in a digital world than the current restrictive settings of the Privacy Act. As outlined below we hold significant concerns with the Government's commitment to implementing almost all of the Privacy Act Review recommendations and consider this inquiry an opportune time to pause and reassess this policy direction.

Concern about direction of Privacy Act Review

The AICD has significant concerns with the volume, complexity and cost of the 106 recommendations from the Privacy Act Review that the Government has agreed, or agreed in-principle, to implement. Our strong view is that is has not been demonstrated that in totality these changes will result in sufficient benefits, either in consumer protection/rights or greater and more productive data use, that outweigh the significant costs.

While we recognise that the Privacy Act is increasingly not fit-for-purpose we consider that the direction of the Privacy Act Review recommendations is in totality misguided and risks only furthering the complexity of the Privacy Act and its restrictive settings. We understand that the Attorney-General's Department has undertaken a limited cost-benefit analysis on a number of key recommendations. However, this has not been published, and industry stakeholders who participated in the exercise have shared with us that it was rushed and featured limited analysis.

As noted above, the Government has already legislated a first tranche of the recommendations, including a statutory tort for privacy and ADM transparency requirements.

We **recommend** the Commission consider whether the implementation of the outstanding recommendations should be paused to allow for a more rigorous review of the costs and benefits of the recommendations in totality. Further, a pause would allow the Government to respond to the findings and recommendations of this inquiry.

We highlight two recommendations that the Government has agreed in-principle to implement that demonstrate the risks and costs from this policy direction that will layer more complexity into the Privacy Act, and increase costs for business.

Fair and reasonable test

The Government has agreed in-principle to a new 'fair and reasonable' threshold test for the collection, use and disclosure of personal information. On the surface this test could form a foundation of an outcomes-based privacy regulatory framework. Our concern lies with a new test that sits on top of the existing APPs, which already contain 'fairness' and 'reasonableness' as concepts in a number of the principles (e.g. APP 3). Further, it combines two distinct legal concepts or thresholds in 'fairness' and 'reasonableness' that is not replicated in comparable regulatory frameworks overseas (e.g. the EU General Data Protection Regulation) or in Australia (e.g. the Australian Consumer Law is limited to 'fairness'). Further, it is unclear how the proposed test will interact with other proposed reforms, including more stringent consent obligations, or mandatory data collection and retention obligations outside of the Privacy Act.

We consider this is an example of a proposal that in isolation has a sound policy rationale. However, in the context of the existing complexity of the Privacy Act we are not satisfied that layering an overarching test on top of existing obligations is a productive reform that will drive improvements in consumer outcomes and ultimately will add further compliance costs to entities.

Direct right of action

In addition to the legislated statutory tort for privacy the Government has agreed in-principle to legislate a separate direct right of action. Our strong view is that having multiple options for redress under the Privacy Act, in addition to OAIC enforcement actions, will ultimately have a chilling effect on how data is collected and used in Australia and impose significant costs on businesses.

Based on the detail in the Privacy Act Review Final Report the direct right of action would have a low threshold of a bare 'interference with privacy' and have a lower barrier for access as compared to a 'serious invasion' under the statutory tort.[25] As a consequence, there is a risk that an action will be pursued in court even where the OAIC has established that an entity has taken reasonable steps under APP 11 to protect personal information.

We are particularly concerned that a framework that allows a claimant to pursue the same claim via the statutory tort and the direct right of action will result in a proliferation of class actions in Australia. This may occur against companies that have been a victim of a significant and sophisticated cyber security attack and have had in place appropriate defences (i.e. have secured information consistent with APP 11). Were this to occur it would ultimately impose significant costs on businesses that would be passed onto consumers through higher prices or less innovative and data rich products and services.

While the direct right of action may appear to be a relatively small change in the context of the broader Privacy Act Review proposals, we consider it is symbolic of a policy process that is not appropriately considering the costs and unintended consequences of the proposals. Further, the proposals originate from the premise that the solution to identified privacy and data handling weaknesses is to add further regulation and compliance obligations onto an existing complex framework.

[25] Attorney-General's Department (February 2023). Privacy Act Review Report. Page 274. Available here.

Outcomes and risk-based approach

We strongly support the Commission assessing whether an outcomes orientation or focus to privacy and data regulatory settings in Australia may be productivity enhancing while also providing appropriate consumer safeguards and transparency.

Rather than prescriptively detailing exactly how organisations must collect, manage and protect personal information the framework could set clear outcomes to achieve - such as "prevent unauthorised access to personal information" or "allow individuals to maintain meaningful control over their information." Organisations would then have flexibility in how they meet these outcomes principles consistent with the nature of the organisation, the data it collects and the industries/sectors in which it operates.

We encourage the Commission to assess whether risk-based settings could be a feature of an outcomes framework. Risk-based seatings could place heightened obligations on particular categories of data (e.g. medical or biometric data) and particular uses of data (facial recognition technology). Organisations that have low risk data handling practices or rely on Government approved identification intermediaries/platforms, such as the Digital ID platform, would have less onerous obligations. In certain cases it may be appropriate for certain industries or sectors to have heightened obligations (e.g. where data is collected on children).

A focus on high-risk industries and/or data uses would be consistent with the Government's policy direction on AI, as discussed further below. As AI systems and tools become increasingly prevalent it is critical that the regulatory settings on AI and privacy/data are aligned or ideally harmonised. For instance, mandatory guardrails on the use high-risk AI could be a component of a broader outcomes focused privacy and data framework.

Section 4. Enhance reporting efficiency, transparency and accuracy through digital financial reporting

20. Why do you choose not to submit digital financial reports? What changes are needed for you to adopt digital financial reporting?

The AICD encourages the uptake of digital financial reporting as part of enhancing the consistency and efficiency of corporate reporting and moving closer into alignment with international jurisdictions. We note that numerous jurisdictions already mandate some forms of digital financial reporting including the US, EU, UK, Japan, South Korea, India and China.[26]

Whilst mandatory digital financial reporting has been recommended by multiple reviews,[27] we support further government work to address the barriers and incentivise companies to increase uptake on digital financial reporting. The Financial Reporting Council (**FRC**) notes technology issues and data accessibility as key challenges to wider adoption.[28]

Barriers to adoption in Australia also include:[29]

- Implementation costs;
- Technical challenges;

[26] Treasury (May 2024). Response to PwC – regulation of accounting, auditing and consulting firms in Australia. Consultation paper. Page 38. Available here.
[27] Parliamentary Joint Committee on Corporations and Financial Services (November 2024). Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry. Final Report. Available here.
[28] Financial Reporting Council (March 2025). Agenda – 113th FRC Meeting. Current challenges. Page 4. Available here.
[29] Australian Shareholders' Association (December 2023). Response to Questions on Notice – Ethics and Professional Accountability: Structural challenges in the audit, assurance and consultancy industry. Available here.

- Data security and privacy concerns; and
- Regulatory and standardisation issues.

From a productivity perspective, Deloitte Access Economics research shows "it takes several years for benefits to outweigh costs when businesses act alone, while the economy wide impact will be profound."[30] A new report from Chartered Accountants Australia and New Zealand (**CA ANZ**) *Digital Reporting Now: Empowering Companies, Investors, and the Economy* highlights that barriers to adoption by listed companies have decreased significantly over the past five years due to improvements in reporting technologies and overseas markets addressing teething issues.[31]

With regards to considerations for digital reporting for mandatory sustainability disclosures, we have previously noted that whilst digital reporting could allow preparers to "tag" certain topics as climate change to enhance comparability of reports, there will be a significant lag in uptake as preparers and users adjust to any technology.[32]

We **recommend** Treasury conduct a public consultation that also draws insights from the international experience of implementing a fit-for-purpose digital financial reporting regime that benefits preparers and users such as investors and regulators.[33] We note Treasury is also still yet to release its final report into the regulation of accounting, auditing and consulting firms in Australia, which included a question on the costs and benefits of digital financial reporting.[34]

Section 5. Enable AI's productivity potential

The AICD welcomes the Commission's focus on enhancing the productivity of AI technologies while safeguarding against adverse outcomes.

We hear from the director community that directors are increasingly seeking to use AI technologies in their roles and the AICD is separately undertaking work to understand the full spectrum of AI use in Australian boardrooms.

The AICD recognises the need to support directors in implementing effective, safe and responsible AI governance. Our program includes a Director's Guide to AI Governance resource suite, AI Governance for Directors Webinar Series, articles (including highlighting the Voluntary AI Safety Standard to directors), and an AI Fluency for Directors Sprint short course.

The AICD's response to this section is limited to question 24. Our response is primarily based on previous member consultation in response to the Government's proposal paper for mandatory guardrails for high-risk AI and the Senate Select Committee's Inquiry into the opportunities and impacts for Australia arising out of the uptake of AI technologies.

We look forward to engaging further with the Commission on AI-related issues as its consultation progresses.

[30] Deloitte Access Economics (July 2023). Embracing the power of digital corporate reporting. Available here. Note: Deloitte's modelling finds that by 2030, the economy would be approximately $7.7 billion larger per year if all large businesses adopted digital financial reporting.
[31] Chartered Accountants Australia and New Zealand (June 2025). Digital Reporting Now: Empowering Companies, Investors, and the Economy. Available here.
[32] AICD (February 2023). Submission on Treasury's Mandatory Climate reporting consultation. Question 6. Page 9. Available here.
[33] CPA Australia (2022). Digital Corporate Reporting: Global experiences from the G20 and implications for policy formulation. 2022. Available here. CA ANZ (March 2023). Can digital reporting tame the corporate reporting beast? Available here.
[34] Treasury (May 2024). Response to PwC – regulation of accounting, auditing and consulting firms in Australia. Consultation paper. Page 38. Question 15. Available here.

24. What challenges do you face in accessing or using AI? How can these challenges be overcome?

Lack of clear guidance on the application of existing laws to AI

A central challenge cited by directors and other stakeholders is the lack of clear guidance on how existing laws and regulations apply to the development and use of AI in Australia. This is long overdue despite repeated calls from stakeholders for the Government to issue such guidance.

AI development and use is already regulated, to some extent, by existing legislation relating to privacy, cybersecurity, consumer protection, anti-discrimination, duty of care, and work health and safety obligations. Directors' duties to act with due care and diligence and in the 'best interests' of the company also extend to the organisation's use of AI.

Despite this, as the AICD has previously noted, research shows that the application of existing laws to AI is not well understood.[35] To address this, the AICD **recommends** the release of clear, plain English guidance on how existing laws apply to AI development and use. We also welcome the Inquiry's focus on monitoring and reviewing whether existing regulations remain fit-for-purpose in respect of AI technology.

This will help ensure that diligent directors and employees have the information needed to guide them in developing and using AI in a compliant way. It will also help ensure any legislation to enact mandatory guardrails for AI in high-risk settings, as contemplated by the Department of Industry, Science and Resources' 2024 consultation,[36] will appropriately address gaps in existing law, rather than risk regulatory duplication or overlap.

Regulatory uncertainty and the urgent need for a national AI strategy

Another potential barrier to wider use and adoption of AI in Australia is a lack of regulatory certainty and cohesive national plan for AI. As noted above, the Government has proposed legislating mandatory guardrails for high-risk AI; however, draft legislation has not yet been released nor gaps in existing regulation identified.[37] It is critical that any such legislation (to the extent required to address regulatory gaps) is coordinated and aligned with adjacent privacy, data and cybersecurity reforms, takes account of international regulatory settings and facilitates global interoperability. As Productivity Commissioner Stephen King has rightly noted, if Australia 'adopts idiosyncratic AI-specific rules, then developers may simply bypass our market and go elsewhere'.[38]

The Government has indicated it expects to deliver a long overdue National AI Capability Plan at the end of 2025, which would aim to grow AI investment, strengthen AI capabilities, boost AI skills and secure economic resilience.[39] Key to the viability of this plan will be establishing mechanisms to enable agile policy responses to the rapid technological developments in AI. Given Australia has significantly lagged behind other jurisdictions in the development of its national AI plan (the UK Government, for example, released its National AI Strategy in 2021),[40] the importance of keeping in step with fast emerging AI opportunities and threats cannot be overstated.

Without progress on these issues at velocity, we risk AI technology significantly outpacing Australia's policy and strategic response, limiting our ability to capitalise on its potential economic and productivity benefits.

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[35] See Human Technology Institute (2023), The State of AI Governance in Australia at page 33 (PDF page 35). See also AICD submission to the Senate Select Committee's Inquiry into the opportunities and impacts for Australia arising out of the uptake of AI technologies (May 2024). Available here.
[36] Department of Industry, Science and Resources (September 2024). Introducing mandatory guardrails for AI in high-risk settings: proposals paper. Available here.
[37] As at 3 June 2025.
[38] Productivity Commission (February 2024). Stephen King 'The right approach to AI regulation'. Speech. Available here.
[39] Department of Industry, Science and Resources (December 2024). Developing a National AI Capability Plan. Available here.
[40] Her Majesty's Government, National AI Strategy, presented to UK Parliament September 2021. Available here.

Other measures to support strong AI governance and safety

The AICD recognises that sound AI governance and safety cannot be achieve through regulation alone. For this reason, we encourage the Government to implement important complementary measures, including establishing an AI Safety Institute, as the Government committed to do under the 2023 Bletchley[41] and 2024 Seoul[42] declarations. The Institute would serve as an independent technical body focused on advancing AI safety and security for the public interest and collaborate with international AI safety institutes from other signatory countries. This could help build public trust in AI technology and spur further responsible adoption of AI.

We also support recent calls by stakeholders such as the Business Council of Australia for increased funding for the National AI Centre (**NAIC**) to deliver technical assistance and expert consultancy through accessible regional hubs to small and medium businesses.[43] This would build on the existing work of the NAIC in educating businesses on adopting AI, and help to overcome some of the practical challenges these businesses may experience, such as employee training and system readiness.

4. Pillar Four: Delivering quality care more efficiently

Section 2. Reform of quality and safety regulation to support a more cohesive care economy

5. To what extent do differences in quality and safety regulation make it costly or complex to provide or access care services? What are the reasons for your answer?

The AICD observes the following findings from the NDIS Commission's July 2023 Regulatory Burden Consultation Insights Report, which highlights the complexity of various requirements across sectors and jurisdictions:[44]

- Impact of duplicate reporting obligations from State and Territories, and the regulatory requirements associated with work, health and safety.
- Complexity of meeting NDIS and child safe standards, particularly when supporting children and young people also accessing supports funded through States and Territories.
- Challenges with the audit process and inconsistent practice with auditors regarding the interpretation of practice standards.
- Risks identified with Worker Screening were raised with regards to delays, lack of clarity on how to manage compliance when workers move interstate, inconsistent timeframes for approvals and costs for multiple probity checks.

While supporting the underlying intent to improve care governance, feedback from members who have served on the governing bodies of disability service providers have reflected concern with the increasing regulatory and reporting burden, without demonstration of the value added to quality and safe service provision. Similar concerns are shared by members involved in the governance of aged care providers regarding the cumulative impact of the legislative reforms arising out of the Aged Care Royal Commission, which included a new duty applying to providers linked to the standard of care provided to older Australians.[45]

[41] The Bletchley Declaration by Countries Attending the AI Safety Summit, 1–2 November 2023. Available here.
[42] Department of Industry, Science and Resources (May 2024). The Seoul Declaration by countries attending the AI Seoul Summit, 21-22 May 2024. Available here.
[43] Business Council of Australia (June 2025). Accelerating Australia's AI Agenda. Available here.
[44] NDIS Commission (July 2023). Regulatory burden insights report. Available here.
[45] AICD (December 2024). Generational aged care reforms. Available here.

The AICD has recently released a guide to assist directors to meet new governance obligations in the aged care sector, Governing for quality aged care – A director's guide.[46] Our annual Not-for-Profit Governance and Performance Study also highlights the prevalence of 'care committees' across sub-sectors such as health and residential aged care and social services.[47]

It must be remembered that large parts of the care sector are run by NFP providers who rely extensively on volunteers to provide their services, and where often board directors are unpaid. We note NFP director remuneration is more common in larger and more resourced organisations.

7. To what extent should quality and safety regulations be more aligned across the different care service sectors and jurisdictions? What are the reasons for your answer?

The NFP sector is a major provider of essential services and captures organisations in the care economy such as health, aged care, disability, and early childhood education and care. The charity sector is a major employer with smaller charities more reliant on volunteers to operate.[48] The Commission has also noted that "the historical experience in Australia and elsewhere is that many care services have been provided by volunteers or unpaid carers."[49] Given the prevalence of volunteers in the provision of care, both formal and informal, quality and safety regulation should be evaluated on its impact on organisations, especially those with volunteers who help to deliver services.

The AICD **recommends** the Government starts to implement the proposals from the 10-year roadmap Not-for-profit Sector Blueprint[50] (the **Blueprint**), delivered in November 2024. The first initiative of the Blueprint recommended prioritising and advocating for cross-jurisdictional harmonisation of standards and regulations that affect the NFP sector, such as streamlining volunteer accreditation and working with children checks to improve oversight and reduce barriers to entry. The Blueprint also noted responsibilities of NFP board directors are "changing or are being increasingly enforced as part of reforms in particular sub-sectors and service providers."[51]

While directors in the sector agree that they must act with a high degree of commitment and diligence, increasing liability risks are beginning to deter well-qualified individuals from serving on boards, particularly where those roles are often unremunerated.

As recommended in Pillar One, the AICD **recommends** expanding the regulatory initiatives grid economy-wide, which includes the care economy as critical subset of this reform.

We also encourage a holistic review of how regulation currently operates in the care sector and its impact on the availability of high quality, accessible services, noting demand will only increase with an ageing population.

Pillar Five: Investing in cheaper, cleaner energy and the net zero transformation

Section 2: Reduce the cost of meeting carbon targets

The AICD, as host of the Climate Governance Initiative Australia, encourages non-executive directors to advocate for strategies aligned with scientific recommendations to achieve net-zero carbon emissions by 2050 or earlier, consistent with limiting global warming to 1.5°C above pre-industrial levels. Additionally, the AICD joined other business, investor, and conservation groups in supporting the passage of the

[46] AICD (March 2025). Governing for quality aged care – A director's guide – Version 2. Available here.
[47] AICD (March 2025). Not-for-Profit Governance & Performance Study 2024-25. Page 23. Available here.
[48] Australian Charities and Not-for-profits Commission (June 2025). Australian Charities Report – 11th Edition. Page 7. Available here.
[49] Productivity Commission (July 2024). Future foundations for giving. Final Report. Available here.
[50] Department of Social Services (November 2024). Not-for-profit Sector Development Blueprint. Available here.
[51] Ibid. Page 50.

Climate Change Bill 2022, which legislates a 2030 emissions reduction target and sets the framework for achieving net zero by 2050.

1. What could be done to improve the cost-effectiveness and alignment of policies to reduce emissions across the industrial, electricity and transport sectors?

The AICD welcomes the Commission's focus on improving the cost-effectiveness and alignment of policy settings to reduce emissions across key sectors. Directors consistently highlight that greater national policy certainty is critical to enhancing the effectiveness of emissions reduction efforts across the Australian economy.

The AICD's 2024 Climate Governance Study found that the most commonly cited barrier to effective climate governance among directors (42 per cent) was the absence of clear and settled climate change policy at the national level.[52] This is consistent with findings from our 2021 study. The AICD's Director Sentiment Index released in April 2025 identified energy policy as the third most important issue influencing directors' voting intentions in the Federal election, with 26 per cent of directors nominating it as a top priority for Federal Government to address over the next three years.[53]

In the absence of appropriate and consistent policy settings, directors face greater difficulty making long-term investment decisions. Policy uncertainty also heightens risk for investors, who may redirect capital to more stable jurisdictions. Clear, stable, and aligned policies are essential to enable long-term business investment in climate initiatives - an important prerequisite for meeting Australia's national emissions reduction targets.

The AICD acknowledges the Australian Government efforts to enhance policy certainty through the development of a 2035 emissions reduction target (due this year) and the finalisation of the Climate Change Authority's *Sector Pathways Review*. Confirming long-term targets and sectoral pathways (which should be underpinned by insights relevant to business), will help provide clear signals to investors, business and industries, which will facilitate informed decision-making and investment in low-emissions technology.

Sustained policy certainty is essential for accelerating the deployment of clean technologies, fostering innovation and achieving Australia's climate goals in a cost-effective manner. The AICD **recommends** that the Commission encourage the Government to prioritise the clear national policy settings to guide emissions reduction policies across the economy.

We would encourage the government to periodically review the safeguard mechanism to ensure its efficacy and that it is sufficiently driving down emissions in line with national targets.

Section 3. Speed up approvals for new energy infrastructure

6. Should clean energy projects be treated differently to other projects for the purpose of environmental and other approvals? If so, how?

The AICD supports reforms to the *Environment Protection and Biodiversity Conversation Act 1999* (**EPBC Act**) that enhance environmental protections while streamlining approval processes. Well-designed reforms have the potential to deliver significant productivity benefits, particularly by facilitating timely investment in clean energy infrastructure and to support the broader net zero transition. We encourage the Commission to **recommend** that the Government prioritise EPBC Act reform, including the establishment of National Environmental Standards as a priority.

[52] AICD (2024). Climate Governance Study 2024. Available here.
[53] AICD (April 2025). Director Sentiment Index Survey – 1st Half 2025. Available here.

As outlined in the Independent Review of the EPBC Act in 2020, led by Professor Graeme Samuel AC (the **Samuel Review**), Australia's environmental regime is not currently achieving its intended outcomes for the environment, for the private sector, or for the community.[54] The review concluded that the EPBC Act is outdated, inefficient, and ineffective at protecting biodiversity.

In the absence of clear and enforceable National Environmental Standards, approval processes remain fragmented and inconsistent across jurisdictions. The AICD has received anecdotal feedback from directors that prolonged approval timelines (often exceeding two to three years) are a significant barrier to investment in infrastructure and clean energy projects. We understand investors view regulatory uncertainty and delay as key barriers to capital allocation in Australia, further impacting productivity.

Reforms should also include clear guidelines and procedural fairness, including in the issuance of Environment Protections Orders (**EPOs**), to reduce the risk of unnecessary delays and costs for businesses.

Importantly, efforts to streamline approvals must be balanced with robust environmental safeguards to ensure efficiency does not come at the long-term expense of nature. Ahead of the Global Nature Positive Summit last October, the AICD along with ten signatories across Australian business, finance, investor and civil society groups came together to drive focus on the importance of nature protection and restoration.[55] The Joint Statement highlighted that nature and biodiversity loss can pose systemic, strategic, operational and reputational risks for business and investments - from supply chain disruptions, through to community backlash and impacts on the financial bottom line.

The AICD will shortly commence a survey of directors on their board's approach to nature, in partnership with the University of Sydney Business School. The survey, which will be supplemented by qualitative feedback, includes a focus on challenges arising from policy uncertainty in environmental approvals. Results will be shared once available and may offer further insight into the business impacts of current regulatory settings.

[54] Department of Climate Change, Energy, the Environment and Water (January 2021). Professor Graeme Samuel AC "Independent Review of the EPBC Act – Final Report". Available here.
[55] AICD (October 2024). Nature Key To Our Shared Prosperity. Joint Statement. Available here.