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Productivity Commission

Via 5pillars@pc.gov.au

Dear Sir/Madam,

Productivity Commission inquiry on the five pillars of productivity – Interim Reports

Thank you for the opportunity to provide a submission in response to the Productivity Commission (**Commission**) Interim Reports 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.

The AICD strongly supports the focus of the Government on Australia's long standing productivity challenges. We consider the Commission's inquiry process is a foundational step in charting a path to genuine reform. Through the right mix of practical and ambitious reforms there is an opportunity to deliver meaningful productivity gains over the long term to drive real economic growth and improved living standards for all Australians.

Since our submission to the Commission's initial consultation we have provided a separate submission to the Treasurer's Economic Reform Roundtable process. The AICD is also member of a group of 30 membership bodies (chaired by the Business Council of Australia) who have come together to offer policy recommendations to the Roundtable process in areas of mutual interest.

To inform our policy positions to the Economic Reform Roundtable and this round of consultation by the Commission we have held three roundtables with senior chairs and directors across a broad range of sectors. We have also consulted widely with our membership and have engaged with subject matter experts relevant to each of the pillars.

1. Executive Summary

The AICD commends the Commission for its extensive analysis in the Interim Reports. As detailed in the accompanying submissions on each of the pillars, we are broadly supportive of many of the Commission's draft recommendations. In response to the draft recommendations and information requests we have sought to provide specific examples of targeted reforms that we consider have the potential to make a meaningful contribution to boosting productivity.

Enclosed at **Attachments A – E** are our detailed responses to each of the five pillars.

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

Pillar One: Creating a dynamic and resilient economy

- The AICD welcomes the Commission's compelling findings on the impact of over-regulation on Australia's productivity growth, and strongly concurs with the case presented for a regulatory reset. The Commission's findings align with consistent feedback we receive from the director community that regulatory requirements affect risk appetite, limit productive investment and hinder boards' abilities to focus on strategy and growth.
- We support draft recommendations 2.1 to 2.3 as important components of a holistic regulatory reset which recognise the necessity of tackling the 'stock' of complex and duplicative regulatory requirements already in existence, as well as the 'flow' of future regulation.
- In particular, we strongly support the Commission's call for a whole-of-government commitment to regulatory reform including quantitative targets and concrete reductions in regulatory burden (draft recommendation 2.1), and enhancement of regulatory practice to deliver growth, competition and innovation, including through ministerial statements of expectations (draft recommendation 2.3). A 25% reduction by 2030 should be the target.
- In relation to draft recommendation 2.2, we support the focus on stronger oversight and assessment of regulation, and encourage the Commission to go further in recommending a mandated accountability cycle, including standard consultation periods and mandatory post-implementation reviews of new regulation (which assess compliance costs). We also call for the appointment of a Minister for Better Regulation with cross-departmental responsibility in order to promote clear focus and accountability at the Cabinet level for the regulatory re-set.
- In its final report, we urge the Commission to address in greater detail the specific areas of law that need priority attention (such as the simplification of the *Corporations Act 2001* (Cth) and the other areas we have outlined in Attachment A) and recommend concrete actions to support reform (such as the establishment of an independent, expert body to support government policy-making or a new independent commission of experts who could be charged with simplifying and modernising key business laws over a certain time horizon, with necessary resources provided). We also strongly support a measured increase in large proprietary company reporting thresholds, a potential change that has recently been raised by the Australian Securities and Investments Commission (**ASIC**).
- We are pleased to provide the Commission with updated advice from law firm Allens on the director liability framework in Australia as a contribution to the evidence base of the need for reform (accessible here). The Allens advice confirms that Australian directors operate in a uniquely high-risk environment compared with peers in the UK, US, Canda, New Zealand and Hong Kong. This needs to change if we are to re-orientate boards to focus on growth and productivity, not just compliance with layers of regulation.

Pillar Two: Building a skilled and adaptable workforce

- We support draft recommendations 3.1 – 3.4 as representing a pathway to genuine reform of occupational entry regulations (**OERs**) across states and territories, including removing OERs with low or limited benefit.
- We support National Competition Policy (**NCP**) and the National Productivity Fund as the appropriate vehicles to incentivise genuine OER reform by states and territories on agreed timeframes. We recommend the Commission in its final recommendation provide an estimate of NCP funding that should be directed to OER reform.

- We recommend the Commission in its final report address how recognition of overseas obtained skills and qualifications can be streamlined in Australia across a diverse range of occupations, not solely construction skills. Migrants are a critical component of the overall labour and skills mix in Australia and at times of skills shortages are a key avenue of labour for Australia's growth and productivity.

Pillar Three: Harnessing data and digital technology

- We support draft recommendations 1.1 and 1.2 as appropriate approaches to help ensure Australia's regulatory response to AI mitigates risks, supports innovation and provides regulatory certainty.
- In respect of recommendation 1.3, we agree that the Government should only apply the proposed 'mandatory guardrails for high-risk AI' for harms that cannot be mitigated by existing regulatory frameworks and where new technology-neutral regulation is not possible.
- We do not support draft recommendation 3.1 for either of the alternative compliance pathway options outlined in the Interim Report. We are concerned that both options may exacerbate the existing complexity for entities. We have proposed an alternative to these options that centres on the 'fair and reasonable' test that has been proposed under the Privacy Act Review. We consider that the proposed test can be reworked in a manner that promotes beneficial privacy outcomes while also reducing the density and complexity of the APPs.
- We strongly support draft recommendation 3.2 that the Government not introduce a right of erasure in the Privacy Act. We recommend that the Commission in its final report should conclude that the broader suite of Privacy Act Review proposals be paused given uncertainty on the costs to productivity from implementation and the potential for limited privacy benefits. It would be more productive to prioritise clarification and simplification of existing data retention laws, rather than add complexity to an already full suite of obligations and overlapping regulation.
- We support in principle draft recommendation 4.1 to make digital financial reporting mandatory. We strongly recommend the draft recommendation be subject to a rigorous Treasury consultation that provides a strong cost-benefit analysis, draws on international best practice and outlines a fit-for-purpose regime with a phased in transition to reduce the reporting burden on preparers.

Pillar Four: Delivering quality care more efficiently

- We strongly support draft recommendation 1.1 that the Australian Government should pursue greater alignment in quality and safety regulation of the care economy to improve efficiency and outcomes for care users.

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

- We support the Commission's emphasis on the need for consistent national incentives and policy clarity across jurisdictions to reduce emissions at least cost. AICD's position is that clear national policy settings are needed to guide emissions reduction across the economy. Policy certainty and coherence are critical to long-term investment in clean energy infrastructure and innovation. To this end, we support draft recommendation 1.1, which calls for governments to prioritise the introduction of enduring, broad-based market settings in the electricity sector beyond 2030.
- In relation to draft recommendation 1.2, we support broader coverage of the Safeguard Mechanism scheme but caution that proportionality and regulatory efficiency is key - implementation must be thoughtfully managed. The scheduled 2026 – 27 review of the Safeguard Mechanism will provide an appropriate opportunity for consideration of the facility threshold.
- We strongly endorse the Commission's comments on the need for reform of environment laws and establishment of clear, enforceable National Environmental Standards, and align with the

Commission's view that a more streamlined and efficient approvals process for infrastructure projects will support the energy transition. To this end, we support draft recommendations 2.1 and 2.3.

- We support in principle the Commission's draft recommendations 3.1 and 3.2 targeted at addressing barriers to private investment in adaptation, but caution that any new information systems must align with the broader work underway between government and industry to address insurance affordability and access.

2. Next Steps

We hope our submission will be of assistance. We are happy to provide additional comments and supporting evidence as the Commission's work progresses.

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: Pillar One: Creating a dynamic and resilient economy

1. Corporate tax reform to spur business investment

This submission responds to **draft recommendation 1.3**.

Draft recommendation 1.3: Introduce a net cashflow tax of 5%

Consistent with our submission to the Treasurer's Economic Reform Roundtable, the AICD is a strong supporter of broad, coordinated reform of Australia's taxation system as critical to improving fiscal sustainability, economic efficiency and addressing concerns about intergenerational equity. We also recognise that Australia's corporate taxation settings are a significant factor in businesses undertaking productivity enhancing investments.

This position aligns with consistent feedback we receive from the director community, which highlights the need for stable policy settings that encourages long-term decision-making and efficient allocation of capital.

The AICD is a signatory to the Alliance of Industry Associations statement that responded to the cashflow draft recommendation. We share the concerns of the other industry bodies that draft recommendation 1.3 will add complexity to Australia's current corporate taxation settings and may ultimately curtail investment by Australia's largest companies, which have historically been drivers of Australia's productivity gains.

2. Regulating to promote business dynamism

This submission responds to **draft recommendations 2.1, 2.2 and 2.3** and **information requests 2.1 to 2.5.**

To support growth and productivity, the AICD has consistently called for a better regulatory regime to be a priority. Based on extensive engagement with directors across sectors, we know that regulatory requirements are a significant factor affecting risk appetite, limiting productive investment and hindering boards' abilities to focus on strategy and growth.

We welcome the Commission's findings in relation to the increase in Australia's regulatory burden and the consequent drag on growth, productivity and business dynamism.

Legal analysis: Australian directors face unique risks compared with overseas peers

As a contribution to the evidence-base for the need for reform and for consideration by the Commission in the development of its final report, we have commissioned law firm Allens to update advice on the director liability framework in Australia (available here). Originally commissioned by the AICD in 2019 and now updated for 2025 (covering emerging governance areas such as cyber security, financial accountability, and mandatory climate reporting), **the advice confirms that Australian directors face more legal risks and heavier penalties compared to international peers, and that Australia continues to regulate through the imposition of director liability provisions, layered on top of existing directors' duties**.

This uniquely high-risk environment (when compared with the UK, US, Canada, New Zealand and Hong Kong) needs to change if we are to reorientate boards to focus on growth and productivity, not just compliance with layers of regulation. We encourage the Commission to also consider regulatory reform through this lens, noting the importance of the role of the board in steering their organisation and setting strategic directions.

The AICD will also be undertaking economic research to understand the productivity impacts of specific regulatory settings on Australian businesses. The research will 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. It would also examine how the broader regulatory burden on Australian businesses has changed over time.

We will provide this research to the Commission in advance of its publication.

Draft recommendation 2.1: Set a clear agenda for regulatory reform

We **strongly support** draft recommendation 2.1 regarding the adoption of a whole-of-government statement that sets quantitative targets and concrete reductions in regulatory burden.

We agree that a clear and actionable reform agenda is needed (and indeed overdue) and that transformative cultural change will be required to achieve it.

An ambitious whole-of-government statement committing to a targeted and proportionate regulatory system is an important first step, and consistent with Government's acknowledgement of the issue through the Treasurer's Economic Reform Roundtable process. We strongly support the inclusion of quantitative targets and concrete reductions in regulatory burden. In our view, this is critical to anchor ambition, drive reform, and measure progress.

The AICD has called for the Government to commit to undertake and publish an economy-wide regulatory stocktake to establish the baseline cost of red tape to business, and commit to a 25 per cent reduction in regulatory costs by 2030 (noting similar steps taken in other jurisdictions, including the UK and EU).

We also agree that the statement should contain the other elements that the Commission has outlined (page 35), including a clear expression of the principles of good regulation and a schedule, reissued regularly, committing the Government to regulatory reforms.

We **recommend** that, in its final report, the Commission consider in greater detail the specific areas of law that need priority attention, including simplification of the *Corporations Act 2001* (Cth) (the **Corporations Act**) (see response to Information requests below).

We understand that this may be the intention, noting that the Commission has indicated that, in its final report, it intends to propose several high priority regulatory reviews that could be commissioned immediately and undertaken by the Commission (page 39). In some cases, previous reviews have highlighted reforms areas (including, for the example, the review of the Australian Law Reform Commission (**ALRC**) into corporations and financial services legislation, with a number of recommendations set out in its final report *Confronting Complexity: Reforming Corporations and Financial Services Legislation* (**ALRC Report**)).

To support review outcomes translating to policy reform, we **strongly recommend** the establishment of an independent, expert body to support government policy-making, such as the former Corporations and Markets Advisory Committee (**CAMAC**), or a new independent commission of experts who could be charged with simplifying and modernising key financial, markets and corporations laws over a certain time horizon.

Draft recommendation 2.2: Bolster high-level scrutiny of regulations

We **support** the focus on scrutiny, review and evaluation in draft recommendation 2.2, and encourage the Commission to go further in highlighting the need for a mandated and robust accountability cycle for the regulatory process.

We acknowledge the Commission's view that transformative cultural change amongst both policymakers and regulators is key, recognising that the tools and procedures for stock and flow management are already incorporated in relevant frameworks, but often not followed in practice.

We consider the following features particularly important:

- standard minimum stakeholder consultation periods across all Commonwealth policy initiatives to ensure that rushed legislation does not create unnecessary compliance costs or unintended consequences;
- Regulatory Impact Statements that incorporate productivity and growth impact; and
- mandatory post implementation reviews of new regulation including appropriate monitoring of implementation costs.

A re-set of the regulatory process is critical to avoid compounding the issues the Commission has identified. We suggest that implementation of the key tools and procedures needed to regulate well should be a subject of a formal recommendation (at a minimum, clearly expressed as one of the matters to be addressed in the whole-of-government statement).

The AICD also calls for the appointment of a Minister for Better Regulation with cross-departmental responsibility as an important step in promoting clear focus and accountability at the Cabinet level for the regulatory re-set.

Draft recommendation 2.3: Enhance regulatory practice to deliver growth, competition and innovation

We **strongly support** draft recommendation 2.3 regarding the enhancement of regulatory practice to deliver growth, competition and innovation, including through ministerial statements of expectations that outline how much risk is tolerated in pursuit of business dynamism and via central agencies giving public servants more guidance and capability building resources.

To drive the reform required and support the necessary cultural shift, there needs to be strong alignment between policymakers and regulators. Statements of Expectation support clear communication from government to regulators on the government's expectations, and the outcomes for which regulators will be held accountable. The AICD reiterates its call for refreshed Statements of Expectation for regulators to elevate innovation, growth and productivity.

We also support the Commission's recommendation that the government give public servants more guidance and support to become regulatory stewards and hold them to account via key performance indicators and assessing the costs their activities impose on businesses.

Information request 2.1

We agree with the Commission that there needs to be a focus on paring back inappropriate regulations that already exist (i.e. 'the stock'), as well as improving processes to ensure a better approach to regulation going forward (i.e. 'the flow').

We note the Business Council of Australia (**BCA**) *Better Regulation* report and the finding that Australia has a more than $110 billion red-tape burden, which is holding back investment and major projects critical to Australia's economic success.[1]

The AICD urges a focus on the following priority areas:

- **Simplify the Corporations Act**
    - Addressing the complexity in the Corporations Act is essential. We have consistently supported the recommendations made by the ALRC in relation to reform of corporations and financial services legislation, and called for complexity in the Corporations Act to be reduced and the offence and penalty provisions streamlined. We acknowledge that comprehensive reform is no small task – but urge the Commission to recognise the necessity of tackling the challenge, given

[1] Business Council of Australia, *Better Regulation Report*, August 2025. Available here.

the fundamental role of our corporations laws in enabling business to operate efficiently within a clear and coherent legal framework.

- It is well-accepted by the legal community that, in particular, the complexity and fragmentation of Chapter 7 of the Corporations Act needs to be addressed, including by removing duplication and redundancy, fixing complex use of definitions (sometimes across legislation, or modified by separate ASIC instruments) and improving structural clarity to make easier for users to locate and interpret the law (see further below in relation to the design and distribution regime). These issues were highlighted by the ALRC Report.
- As one example of overly prescriptive and rigid regulation, we are aware of concerns in relation to consolidated reporting, with Australian entities needing to comply with a complicated, technical and burdensome process under Part 2M.6 of the Corporations Act and ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 to effect and administer a Deed of Cross Guarantee in order to obtain relief for certain wholly owned subsidiaries from preparing and lodging separate financial reports. This is not only a significant compliance cost in and of itself, the potential consequences of technical non-compliance with any aspect of the process could be significant (including the company needing to lodge historical audited accounts at substantial cost).
- To drive progress, we suggest that policy reform could be supported by a CAMAC-style law reform advisory body, or a new independent expert commission charged with simplifying and modernising key business laws over an appropriate time horizon.

- **Reduce reporting burden**
  - Any effort to reduce the regulatory burden on business must include a comprehensive review of corporate reporting frameworks. As outlined in our initial submission to the Commission, the AICD has a strong view that reporting thresholds should be subject to mandatory periodic indexation (e.g. inflation or GDP growth) and periodic review, to avoid scope creep.
  - We note the comment in its letter to the Treasurer and Minister for Finance dated 12 August 2025 that ASIC would support consideration of the Corporations Act Chapter 2M thresholds for when a company is defined as a large proprietary company (noting that falling within this definition triggers the need to lodge audited financial reports with ASIC and these entities will also be required to lodge a statutory climate report under the recently legislated reporting regime). ASIC estimates that 1,535 companies would no longer need to report if the thresholds were adjusted to $100m revenue and $50m assets (from $50m revenue and $25m assets).
  - We would support such a lift in thresholds and also recommend:
    - aligning key aspects of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* with the Corporations Act to streamline regulatory requirements and reduce duplication; and
    - limiting the scope of mandatory climate reporting to groups 1 and 2 only, with NFPs explicitly excluded given the significant compliance costs involved.
- **Ease the regulatory burden for the financial services sector**
  - In financial services it must be recognised that, particularly for APRA regulated entities, the regulatory burden is particularly large. Legislation is passed by the Parliament, regulations set by the relevant minister and then prudential standards (which operate as delegated legislation) issued by APRA in addition to broader financial services regulations (e.g. Australian Financial Services Licence and anti-money laundering obligations). APRA has noted that the average board of a regulated entity has 150 board level obligations imposed in the prudential framework alone. APRA has also recognised the overlap between its fit and proper prudential requirements and the legislated Financial Accountability Regime (**FAR**) regime.[2] A holistic review of these

[2] APRA Chair, Letter to Treasurer and Minister for Finance on reform opportunities, 31 July 2025. Available here.

various board level obligations (not just those imposed by primary legislation or APRA) should be undertaken as a priority.

- We **recommend** a comprehensive and independent review of the Design and Distribution Obligations (**DDO**) framework that was introduced in 2021 under Part 7.8A of the Corporations Act. This framework has not been subject to a post-implementation review to date despite the significant costs associated with implementation and ongoing compliance and the broader policy objective to improve consumer outcomes.
- We have received consistent feedback from directors that meeting the DDO requirements imposes high compliance costs on financial services firms and there is genuine uncertainty that it has produced meaningful consumer benefits. Directors have noted that there is overlap with existing obligations in respect of product disclosure and responsible lending. For instance, it is not apparent that providing a customer with a target market definition, in addition to a product disclosure statement, has improved customer decision-making or the quality of financial services products offered to customer cohorts. We are also aware of practical interpretation challenges (with issuers of mass-market financial products finding it challenging to identify target markets narrowly enough to define appropriate distribution conditions).
- We also **recommend** a comprehensive review of the reporting and notification obligations faced by financial entities. Directors have raised concerns with the duplicative nature of reporting to both APRA and ASIC with key financial and non-financial information reported multiple times via APRA Connect and separately on ASIC returns. While the regulators have made some limited progress in some areas, for example reporting FAR information via APRA Connect, our view that there is more to do under the broader principle of 'tell us once' articulated by the Treasurer.[3]
- Entities in the financial services sector and their boards have faced a significant increase in the overall weight of regulation in recent years. In addition to the FAR, prominent examples include CPS 230 Operational Risk Management, the Consumer Data Right, mandatory climate reporting, design and distribution obligations, the scams prevention framework and critical infrastructure amendments.
- We welcome ASIC's acknowledgement in its recently released *REP 813 Regulatory simplification* that simplifying financial services laws will help promote innovation, productivity gains and increased competition.
- As a general comment, we consider it particularly important to avoid duplication across regulatory standards and legislative requirements in the financial services sector, recognising that the twin peaks model of regulation can contribute to the overall compliance burden and increase the risk of overlapping and conflicting requirements (with the Regulatory Initiatives Grid seeking to enhance transparency in a complex regulatory environment).

- **Review director liability provisions**
  - The AICD is strongly of the view that new director liability provisions should be avoided unless they are clearly justified. Existing statutory directors' duties (e.g. sections 180 and 181 of the Corporations Act) provide a clear avenue for personal liability and should be sufficient.
  - As noted above, the AICD has commissioned Allens to update its 2019 advice on the director liability environment in Australia. The original research compared how directors are held legally responsible in Australia and five other comparable jurisdictions - Canada, Hong Kong, New Zealand, the UK, and the US – across key areas including corporations, competition, tax, environmental, and workplace laws. The updated 2025 advice (available here) now also covers contemporary governance areas including cyber security, financial accountability, and mandatory climate reporting.

[3] Treasurer, Press conference: Economic Reform Roundtable, tax, productivity, road user charge, 21 August 2025. Available here.

- Key findings include that:
  - compared to international peers, Australian directors face more legal risks and heavier penalties;
  - Australia continues to regulate through the imposition of director liability provisions, on top of existing directors' duties, with new director liability provisions having come in across various areas of law since 2019;
  - Australian directors now face reporting and attestation requirements in areas like sustainability reporting, modern slavery and security of critical infrastructure. The AICD's concern is that this pushes boards into the traditional domain of management and encourages a disproportionate compliance focus; and
  - directors face criminal liability more readily and harsher penalties, despite national principles recommending such liability be reserved for exceptional cases.
- This provides additional context for the consistent feedback we receive from members that director liability laws contribute to a risk averse corporate culture holding back Australia's productivity.

- **Streamline planning processes for clean energy, infrastructure and housing priorities**
  - Members have raised strong concerns in relation to the current operation of the Environment Protection and *Biodiversity Conservation Act 1999* (**EPBC Act**), noting that Commonwealth approval conditions often duplicate or overlap with state or territory requirements. This contributes to time delays and adds cost without delivering better environmental outcomes.
  - Given the potential for significant productivity improvements, we welcome the indication from the Treasurer that EPBC Act reform and the implementation of the recommendations of the Independent Review of the EPBC Act in 2020, led by Professor Graeme Samuel AC, will be prioritised.
  - A more efficient and streamlined process that maintains strong environmental safeguards is critical. Further comments are included in Attachment E, in relation to the Commission's Pillar 5 interim report.
- **Harmonise data retention, privacy and cyber requirements**
  - The AICD calls for whole-of-government coordination, under the direction of Prime Minister & Cabinet department, to improve cohesion of digital policy.
  - There is a clear imperative to clarify and simplify the current complex, fragmented and uncoordinated (and not always consistent) layers of data retention, privacy and cyber requirements. This will help support reforms in adjacent areas, such as catalysing R&D investment and the development of a cohesive regulatory framework that supports AI use and development. Further comments are included in Attachment C, in relation to the Commission's Pillar 3 interim report.
  - We recommend the Government harmonise existing cyber, critical asset and privacy incident reporting obligations. Currently organisations must report the same incident to multiple regulators via multiple different mechanisms. We have received feedback that organisations find the thicket of separate reporting obligations at a time of crisis to be overly complex, costly and diverts attention from responding to the incident. This problem was compounded last year with the introduction of the ransomware payment reporting requirement that was not harmonised with reporting under the *Security of Critical Infrastructure Act 2018*. To the greatest extent possible, an organisation should only have to report an incident to the Australian Government once.
  - We recommend that priority be given to clarifying and simplifying data retention laws rather than adding a new layer of obligations to an already complex set of requirements.

- **Align quality and safety regulation in the care economy**
    - For completeness, we reiterate the need for greater regulatory alignment across the care economy to improve efficiency and outcomes for care users. Further comments are included in Attachment D, in relation to the Commission's Pillar 4 interim report.

Information request

This section responds to information requests 2.2 – 2.5.

Information Request 2.2: Which quantitative economywide measures of the quality of regulation and the regulatory burden should the Australian Government track? How should it set targets for these?

As per above, the AICD advocates for the Government to commit to undertake and publish an economy-wide regulatory stocktake to establish the baseline cost of red tape to business, and commit to a 25 per cent reduction in regulatory costs by 2030.

We support the Commission's suggestion in its interim report that regulators and policymakers should develop their own comprehensive accounting of the total compliance burden of each regulatory system they manage, which can serve as a benchmark against which change is reported and used to identify problematic areas within each system for targeted review and reform (page 42). While the Commission has noted that this could be a longer-term step, prioritising this work could provide useful inputs into the establishment of the baseline cost of red tape to business and the 25% reduction target proposed above.

We note that the Commission has also suggested improvement in survey-based measures of compliance burden, such as our Director Sentiment Index (**DSI**), as another option to track the burden of regulation. The DSI represents the breadth of AICD member opinions on a range of issues covering the Australian and global economies, government policy and governance regulations. It has tracked business and economic attitudes for the past 14 years, indicating shifts in business sentiment, and delivering context-driven insights and trends. As outlined in our previous submission to the Commission, the DSI consistently finds regulatory requirements and excessive red tape as a top economic challenge cited by directors.

In our view, the DSI's consistent methodology and regular publication make it a valuable tool for tracking trends and measuring the confidence of leaders, including by identifying emerging trends and shifts in sentiment. We would be pleased to work with the government and regulators to track particular metrics.

Information Request 2.3: In which sectors or regulatory systems is immediate regulatory review most warranted, and why?

We would urge the prioritisation of the areas we have outlined above under information request 2.1, particularly in relation to corporations and financial services laws, as well as reform of the EPBC Act. In relation to the latter, slow assessment and approvals processes are a key challenge in delivering new buildings and infrastructure, as well as renewable energy projects.

We also note that the Commission has raised the problem of duplicative and inconsistent regulation in the care economy, and made recommendations in its interim report on Pillar 4. As discussed further in our submission on this pillar, we strongly agree that reform should be prioritised in the care sector, particularly noting the impact of over-regulation on availability and cost of services.

Further delay will only exacerbate the current issues. This is a valuable opportunity for the government to embrace the challenge of reform – recognising strong support across stakeholders expressed for better regulation in the context of the Economic Reform Roundtable process.

Information Request 2.4: How should regulators and policymakers balance risk with growth objectives? What guidance should governments give? What are the constraints which impede regulators and policymakers from better balancing risk and growth objectives? What guidance can governments give to help?

Fixing the 'flow' of new regulation (i.e. through better processes and a clear accountability cycle) will support a more proportionate risk-based system.

In addition, an expanded Regulatory Initiatives Grid would assist in co-ordinating and sequencing regulation, and strengthening regulator and government engagement with key sectors. We **recommend** that the Commission consider making a recommendation that the Regulatory Initiatives Grid be expanded in its final report, and that the government consult with stakeholders in the financial services sector on options to enhance its effectiveness.

Information Request 2.5: What levers does the government have, beyond statements of expectation and guidance from central agencies, to help promulgate and embed a culture of regulatory stewardship within the APS?

While statements of expectation are key levers, the AICD also emphasises the importance of:

- reviewing and strengthening existing frameworks for transparency and accountability including considering disclosures in regulator corporate plans and annual reports (with appropriate disclosures against, for example, compliance burden reduction targets);
- focusing parliamentary scrutiny on regulatory stewardship performance;
- taking a co-ordinated approach to regulation across government departments, and requiring regulators to do the same; and
- through the Australian Public Service Commission, embedding continuous improvement through consideration of, and, where appropriate, adoption of, best-practice regulatory stewardship approaches from key overseas jurisdictions, as well as learnings from the private sector in relation to cultural change.

In addition, in our view it would also be beneficial if:

- key government agencies with a substantive role in economic policy and regulation had a stronger presence in capital cities and major economic centres to support more direct engagement with the business community; and
- APS recruitment practices were diversified to further broaden experience, particularly private sector experience, at all levels of the public service. This would strengthen policy development and improve engagement with industry.

We note the Commission's proposed regulatory stewardship guide (figure 2.2 and appendix C.3), and support the formulation of clearer guidance to articulate responsibilities of regulatory stewards (including the focus on monitoring and outcomes-based reporting; targeted, evidence-based and outcomes-focused regulatory reform; and data and evidence to support decision-making).

Attachment B: Pillar 2 - Building a skilled and adaptable workforce

This submission responds to **draft recommendations 3.1, 3.2, 3.3, 3.4** and **information request 3.1 (8 – 10)**.

We have received consistent feedback from our members that Australia faces significant skills and human capital challenges that are a handbrake on business investment and productivity.

While our focus in this part of the submission is on the productivity benefits from reform of occupational entry regulations (**OER**) we note that how individuals enter, access or participate in the labour market cuts across a number of the Commission's draft recommendations. For instance, the productivity gains from a more flexible and dynamic approach to recognising vocational and tertiary education will be magnified if there are lower barriers to people moving between professions and occupations resulting from genuine OER reform.

Further, as noted below in response to the Commission's information request, directors consider that a comprehensive approach to OER reform should account for how Australia can more efficiently recognise internationally qualified workers who migrate to Australia.

Draft recommendation 3.1: Remove excessive occupational entry regulations that offer limited benefits

We **support** draft recommendation 3.1 that state and territory governments work to remove OERs that offer limited benefit. As highlighted in the Interim Report, there is strong evidence that excessive and inconsistent OERs are a handbrake on labour mobility, deprive businesses of critical workers, lower the productivity of impacted firms and contribute to overall skill shortages across the economy.

We are concerned by the observations in the Interim Report that the prevalence of OERs may be increasing and that licencing regimes are more stringent in Australia as compared to similar countries. For example, we note Engineers Australia's submission that individual engineers are required to obtain separate qualifications or pay multiple fees to work in each state and there are additional costs for engineering firms.[4]

We strongly support an evidence-based approach to removing OERs with limited benefits and low risk, starting with the occupations listed in the Interim Report. Our starting point is that for many occupations and professions, relying on general laws is a more efficient and effective regulatory approach than establishing discrete and complex licences that are challenging to monitor and enforce. Notably, workplace health and safety obligations have application to the conduct and actions of an individual undertaking their work duties.

We consider this work should be the starting point of a broader reform that seeks revitalisation of the automatic mutual recognition (**AMR**) scheme and separately national licensing across a broader range of high-risk occupations and professions. We note that national licencing reform has commenced with electrical trades and we support the Commission's interim recommendation 3 under its National Competition Policy report for an independent evaluation of the AMR.

As discussed further below we consider that a revitalised National Competition Policy is an appropriate vehicle to incentivise states and territories to address this issue and partly offset the foregone revenue from removing OERs.

Draft recommendation 3.2: Expand entry pathways and streamline qualification requirements for occupations

We **support** draft recommendation 3.2 that current qualification requirements be assessed and that alternative pathways to trade-based occupations be considered

We agree that there is a danger of credentialism creep associated with OERs and this dynamic is a key element as to why many OERs may not result in net benefit. We consider that a comprehensive and

[4] Engineers Australia, Submission - Building a skilled and adaptable workforce, June 2025.

rigorous approach to assessing qualification requirements should be a component of independent reviews of existing OERs (draft recommendation 3.3) and broader work to remove or reform existing low benefit OERs (draft recommendation 3.1).

Individual industry bodies will be better placed to comment on reform of specific qualification requirements, for example risk-based tiers for company auditors.

Skill shortages in construction trades have been a long-standing issue and have contributed to poor productivity in the construction industry and ultimately lower housing supply and increased costs.[5] We strongly support alternative pathways to assist in addressing this issue. The Commission presents a compelling case study in respect of the Victorian Building and Plumbing Commission model as the potential for alternatively pathways to drive meaningful changes in labour supply.

As discussed below in respect of the information request, our view is that reform of vocational pathways, for example, should be accompanied by a broader examination of how Australia recognises the skills, experience and occupational licences of prospective migrants.

Draft recommendation 3.3: Improve the regular reviews of occupational entry regulations

We **support** draft recommendation 3.3 for the states and territories to independently review OERs, including utilising sunset reviews on a scheduled basis.

As discussed in our initial submission response, we strongly support all governments undertaking more rigorous reviews of the efficacy of legislation. We highlighted that 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.[6] As outlined in more detail in our submission to Pillar One we strongly support an independent statutory commissioner to the Office of Impact Analysis.

The AICD has had longstanding concerns with the rigour of statutory and post-implementation reviews. We agree with the Commission's analysis that state based regulators may not be best placed to critically assess the reforms that the regulator itself oversees or has implemented. We also agree that these assessments too often lack high quality data and are based on anecdotal evidence.

In addition to greater rigour and independence in undertaking both regulation impact statements and post-implementation statutory reviews, we also strongly support sunset provisions for OER requirements. As the Commission convincingly demonstrates, many OERs appear to impose high costs with questionable benefits. Sunsetting provisions are a structural legislative feature that by design requires a genuine assessment of the efficacy of particular legislation and is ideally suited to reviewing OERs that may have low or negative net benefit.

Draft recommendation 3.4: Incentivise occupational entry regulation reform through National Competition Policy

We **support** draft recommendation 3.4 for the Australian Government to incentivise OER reform via the NCP. States and territories can face various disincentives and barriers to undertaking meaningful reform at their jurisdictional level, particularly where the benefits of such reform are felt at a national level. This is the case with reform of OERs.

CEDA recently estimated that state and territory regulators may receive $500 million annually from licensing fees.[7] This is a significant revenue stream that states would be reluctant to forego. States and territories may also have distinct policy motivations for imposing specific OERs that then represent a barrier to removing or harmonising the requirement, such as historical workplace incidents. Further, states have competing regulatory priorities that can result in significant delays or lags to implementing national

[5] Productivity Commission, *Housing construction productivity: Can we fix it?,* February 2025, Page 23.
[6] OECD (April 2025). Regulatory Policy Outlook 2025. Page 154. Available here.
[7] CEDA, *Towards a More Seamless Australian Economy*, August 2025.

agreed reforms. We have observed this tendency to significant delay with implementation of the National Fundraising Principles that has sought to harmonise state based fundraising laws.

The NCP has a demonstrated track record of incentivising states to undertake meaningful productivity reform. Given the barriers to OER reform, notably existing revenue from licence fees, our view is that the $900 million investment in the National Productivity Fund will have to be substantially increased. We **recommend** the Commission in its final recommendation provide an estimate of NCP funding that should be directed to OER reform.

Information request 3.1

This section responses to **questions 8 – 10** of information request 3.1.

The Australian Government has a critical role in supporting state and territory governments to undertake meaningful reform to drive skills-based productivity. We consider there are two primary mechanisms by which the Government can provide this support:

1. An expanded NCP productivity fund that incentivises states and territories undertake genuine OER reform. The expanded NCP should be designed in a manner that specifically offsets, in part, any foregone fee revenue from abolished or amended OERs. The NCP should specifically list the OERs for reform, establish a clear timeframe and tie payments to the achievement of outcomes. As recommended above, we consider the Commission in its final report should recommend a specific NCP design in respect of OERs and the corresponding size of the fund.
2. Skills and assistance to support identification and review of existing OERs (i.e. recommendations 3.1 – 3.3). As the Commission identifies the capacity and motivation of state regulators to undertake the necessary policy and cost/benefit analysis of OERs may be limited. The Australian Government supporting this critical work, potentially through the Office of Impact Analysis, can assist overcome this barrier. As the productivity benefits of OER reform will be felt across the national economy it is appropriate that this is a collaborative approach to reform across the different levels of government.

We **recommend** the Commission in its final report address how recognition of overseas obtained skills and qualifications can be streamlined in Australia across a diverse range of occupations, not solely construction skills. Migrants are a critical component of the overall labour and skills mix in Australia and, at times of skills shortages, can provide a key avenue of labour that benefits both the migrant and Australia.

Directors have provided feedback that more could be done to improve how Australia assesses and recognises the skills of migrants from countries with comparable qualification and training frameworks. We note the Commission's 2023 productivity review, which found the process to recognise the skills, experience and occupational licences of prospective migrants creates barriers for qualified workers to enter Australia, and often duplicates existing state based occupational license requirements.[8] While there has been some piecemeal reform since that review, including a new Skills Recognition Framework, we understand that there are still significant complexities and high costs that are a drain on employer productivity and also labour mobility.[9]

We **recommend** that the Commission consider this issue of overseas skills recognition within the broader analysis of OER reform.

[8] Productivity Commission, *5-year Productivity Inquiry: A more productive labour market*, February 2023.
[9] Activate Australia's Skills, *Skilled ready - A blueprint for activating Australia's overseas-trained workforce*, October 2024.

Attachment C: Pillar Three - Harnessing data and digital technology

This submission responds to **draft recommendations 1.1, 1.2, 1.3, 3.1, 3.2 and 4.1**.

Draft recommendation 1.1: Productivity growth from AI will be built on existing legal foundations. Gap analyses of current rules need to be expanded and completed

We **support** draft recommendation 1.1 that the Australian Government should continue, complete, publish and act on ongoing reviews into the potential gaps in the regulatory framework posed by AI. We agree that these reviews should consider: a) the uses of AI; b) the additional risk of harm posed by AI (compared to the status quo) in a particular use case; c) whether existing regulator frameworks address these risks potentially with improved guidance and enforcement; and d) if not, how to modify existing regulation to address these risks.

We urge this exercise to be undertaken as soon as possible. It is critical that any gaps or unmitigated risks posed by AI are identified and addressed as quickly as possible to protect consumers, build public trust in AI and provide regulatory certainty for those adopting and developing AI.

To achieve this, we encourage regulators, with their deep expertise of their own regulatory frameworks, to work collaboratively with experts to surface potential unmitigated risks posed by AI and emergent use cases. The Law Council of Australia has previously identified a potential legislative gap in relation to the use of AI to replicate personhood[10] while the Australian Human Rights Commission and the Human Technology Institute have identified particular risks relating to facial recognition technologies that may warrant closer examination vis-à-vis existing laws.[11]

This gap analysis should also not delay regulators issuing guidance where there is a known need for additional clarity. The AICD has previously called for clear guidance on how existing laws apply to AI[12] and the OAIC has helpfully provided guidance on developing and training generative AI models consistently with the law, as we well as complying with privacy obligations when using commercially available AI products.[13]

We anticipate that this gap analysis will need to be refreshed as AI technologies and use cases evolve. To facilitate this (and to support regulatory hygiene more broadly), the establishment of a national AI Safety Institute to which the Government previously committed[14] could serve an important role in transparently sharing findings relating to areas of emerging safety risk with regulators.

A comprehensive gap analysis of existing legislation will help ensure any risks are mitigated in a methodical and evidence-based way without exacerbating the known issues of regulatory complexity and duplication that the AICD's members have previously raised (and which Pillar 1 of the Commission's inquiries seeks to address). This, in turn, will give Australia the best chance of achieving the dual challenge that has confronted many policymakers globally when seeking to respond to risks posed by AI: safeguarding safety and human rights while supporting innovation and competitiveness.

Draft recommendation 1.2: AI-specific regulation should be a last resort

We **support** draft recommendation 1.2 that AI-specific regulation should only be used as a last resort where existing regulatory frameworks cannot be sufficiently adapted to handle the issue and

[10] Law Council of Australia (October 2024), Submission in response to the Proposals paper for introducing mandatory guardrails for AI in high-risk settings, page 21.
[11] See Australian Human Rights Commission (October 2024), Submission in response to the Proposals paper for introducing mandatory guardrails for AI in high-risk settings, available here, and Human Technology Institute (October 2024), Submission in response to the Proposals paper for introducing mandatory guardrails for AI in high-risk settings.
[12] AICD (October 2024), Submission in response to the Proposals paper for introducing mandatory guardrails for AI in high-risk settings. Available here.
[13] OAIC (October 2024), Guidance on privacy and developing and training generative AI models. Available here. OAIC (October 2024) Guidance on privacy and the use of commercially available AI products.
[14] The Government committed to the establishment of an AI safety institute as signatory to the Bletchley Declaration by Countries Attending the AI Safety Summit, 1–2 November 2023.

technology-neutral regulations are not feasible. As the AICD and other stakeholders have previously noted,[15] a range of existing technologically neutral laws are in place to provide oversight of AI and have the potential to be improved and adapted to address new AI harms and risks.

In the first instance, addressing any gaps in existing regulation through additional regulatory guidance, modified enforcement or amending existing laws in a technology-neutral way is likely to enable a more agile response to risk mitigation – which is critical to keeping pace with fast-moving technological developments in AI. As noted by the OECD, 'tech neutrality can make regulations more resilient to technological change and more adaptable to evolving regulatory environments'.[16]

We encourage the Commission to consider in its final recommendations any guidance that the Government may need to provide to regulators to ensure adaption of existing regulatory frameworks and/or regulatory guidance is as consistent as possible across sectors and aligned with the Commission's Pillar 1 recommendations. For example, the UK Government has set out five clear cross-sectoral principles for governing AI for regulators to apply to uses cases within their remit.[17]

In the AICD's response to the Government's *Proposal paper for introducing mandatory guardrails for AI in high-risk settings* (**Mandatory Guardrails Consultation Paper**), we did not support an AI-specific Act and that to the extent legislative gaps are identified, recommended adapting existing regulatory frameworks through framework or principles-based legislation could help ensure consistency across sectors.[18] We also consider this could potentially be achieved in a tech-neutral manner. This should help avoid potential detriments to competition and innovation observed in relation to the EU AI Act in the recent Draghi report, which highlights that the EU AI Act and General Data Protection Regulation (**GDPR**) create the 'risk of European companies being excluded from early AI innovations because of uncertainty of regulatory frameworks as well as higher burdens for EU researchers and innovators to develop homegrown AI'.[19]

The AICD therefore believes that any AI regulatory response should not only be proportionate, risk-based, outcomes-based and technology neutral (as the Commission proposes), but should also be pro-innovation. We **recommend** the Commission explicitly include pro-innovation objectives in its final recommendations to Government with respect to AI regulation.

Additional recommendations

While the ultimate form of any AI-related regulation is critical, the quality of policy decision-making and analysis upstream is equally important. To this end, we encourage the Commission to consider including the following additional recommendations in its final report to Government:

- *to facilitate more cohesive policymaking*, ensure AI regulatory reforms are coordinated with and take account of intersecting digital reforms in the areas of data, privacy and cybersecurity. We consider this would be best achieved through whole-of-government coordination on digital policy, under the direction of the Department of the Prime Minister & Cabinet. The AICD has previously raised concerns from the director community that intersecting reforms across these areas are not sufficiently coordinated and cohesive.[20]
- *to support safe AI innovation under appropriate regulatory supervision*, the Government should work with regulators to identify priority sectors in which pro-innovation initiatives like regulatory sandboxes could be deployed. This is similar to the approach being taken by the UK Government in response to

[15] See, e.g., AICD (July 2023), Submission in response to the Safe and Responsible AI Discussion Paper, page 2. Available here.
[16] OECD Regulatory Policy Outlook 2025, page 155. Available here.
[17] UK Government (August 2023), A pro-innovation approach to AI regulation. Available here.
[18] See, for example, AICD (October 2024), Submission in response to the Proposals paper for introducing mandatory guardrails for AI in high-risk settings. Available here.
[19] European Commission, 2024, 'The future of European competitiveness Part B: In-depth analysis and recommendations', page 79. Available here.
[20] Ibid. See also AICD (June 2025), submission to the Productivity Commission on the five pillars of productivity – priority reform areas. Available here.

the UK AI Opportunities Action Plan[21] and aligns with the recommendation for greater regulatory experimentation as part of the OECD Council Recommendation for Agile Regulatory Governance to Harness Innovation.[22] It also aligns with the Federal Treasurer's recent comments on the need to focus on AI 'capabilities and opportunities, not just guardrails'.[23]

- *to ensure regulation remains fit-for-purpose and keeps pace with technological developments*, there should be rapid and regular post-implementation reviews (**PIRs**) of relevant AI regulation, which consider innovation-related impacts in line with OECD best practice.[24] (See also the AICD's comments on PIRs as part of our submission to the Commission's Pillar 1 interim report).
- *to promote interoperability with global regulatory frameworks and international engagement*, Australia should engage with the OECD's BRIDGE ('Better Regulation in the Digital Age') initiative. This program supports governments and regulators in adapting their regulatory systems to technological innovations. The OECD is currently identifying best practices in regulatory approaches to AI as part of this work. [25]

Directors are responsible for the oversight of an organisation's strategy and risk management processes in line with their directors' duties**.** This includes both AI risks and opportunities. We believe the additional recommendations above will help ensure Australia's regulatory architecture supports both.

Finally, we emphasise that regulation alone is not sufficient to maximise AI benefits while minimising harms. Regulation must be accompanied by actions aimed at uplifting AI capability and governance skills (an area of focus for the AICD with respect to directors and boards) and other practical tools to encourage safe innovation. While we understand that draft recommendations relating to AI beyond AI regulation are outside the scope of the Commission's interim report, we would encourage the Commission to consider the intersection of AI with other pillars of the inquiry (particularly Pillar 2) ahead of its final report. Ensuring the workforce has the right training and skills to adopt AI is essential to equitably harnessing its productivity benefits.

Draft recommendation 1.3: Pause steps to implement mandatory guardrails for high-risk AI

We **agree** that the Australian Government should only apply the proposed 'mandatory guardrails for high-risk AI' in circumstances where harms cannot be mitigated by existing regulatory frameworks and where new technology-neutral regulation is not possible.

We encourage the Government to consider how framework legislation of the kind identified in the Mandatory Guardrails Consultation Paper could be used to address any identified gaps in existing legislation in a tech-neutral manner. We also agree with the Commission that any steps to implement mandatory guardrails should therefore occur only after regulatory gap analyses have been completed.

To the extent high risk areas have already been identified (including via previous consultation on the Mandatory Guardrails Consultation Paper) and can be addressed via non-statutory means, this should occur urgently and in parallel with economy-wide gap analyses.

Draft recommendation 3.1 and information request 3.1: An alternative compliance pathway for privacy

We applaud the Commission attempting to tackle the complexity of the Privacy Act and seeking an innovative solution through an alternative compliance pathway. However, we do have concerns, based on the outline in the Interim Report, that both options for an alternative compliance pathway may exacerbate the existing complexity for currently complying entities. Below we have proposed an

[21] UK Government (January 2025), *AI Opportunities Action Plan: Government response*, Recommendation 27. Available here.
[22] OECD Council, Recommendation for Agile Regulatory Governance to Harness Innovation, adopted on 6/10/21. Available here.
[23] As reported by the *Australian Financial Review*, 'Chalmers pushes back on union demands to regulate AI at work', 14 June 2025. Available here.
[24] OECD Regulatory Policy Outlook 2025, page 155. Available here.
[25] See OECD, *Better Regulation in the Digital Age (BRIDGE)*. Available here.

alternative to these options that centres on the 'fair and reasonable' test that has been proposed under the Privacy Act Review.

Option 1: Defence

Based on feedback from privacy experts, our view is that an entity currently complying with the Australian Privacy Principles (**APPs**) is unlikely to take comfort, or utilise, a 'best interest's defence of the nature outlined in the Interim Report.

Due to the current drafting of the APPs and accompanying guidance from the OAIC it is difficult to envisage how an entity will be able to demonstrate that it has met an individual's best interests without also meeting the APPs. For instance, it is hard to see how an entity that does not obtain consent or disclose how it is utilising the information it has collected is meeting that individual's best interests.

Further, APP 11 is a key regulatory obligation in Australia relevant to data protection and cyber security. We do not consider it is an optimal policy outcome for an entity to not comply with APP 11, for example, by not taking all reasonable steps to protect personal information, and then rely on a broad defence that such weaknesses in data protection or cyber security were somehow in the individual's best interests.

A defence of this nature would also create additional challenges and complexity for the OAIC in monitoring compliance with, and investigating breaches of, the Privacy Act, including the subjective task of determining what are the best interests of an individual or group of individuals.

Lastly, we note that currently complying entities have embedded extensive systems, processes and resources to meet the APPs and follow the accompanying guidance from the OAIC, including obtaining consent and publishing privacy notices. Feedback from privacy experts indicates that these entities would be highly unlikely to cease these internal compliance functions and instead start to rely on a defence.

We recognise that a defence may have initial appeal to smaller organisations, including entities that have recently crossed over the small business exemption threshold, as mechanism to comply with the Privacy Act but not meet each APP in detail and the requisite resourcing this often brings. As outlined below, we consider that a reframed test may be a more effective mechanism to addressing compliance complexity for small and growing organisations.

Option 2: Safe harbour

We do not support the safe harbour option.

In our experience a safe harbour is most effectively constructed when it details a set of specific steps an organisation, or individual can take, to have protection from a specific form of liability. This is the case with the Insolvency Safe Harbour in the Corporations Act which provides a safe harbour to directors from personal liability associated with insolvent trading on the condition that certain specific conditions and actions are met (e.g. superannuation liabilities have been met).[26]

The challenge with a safe harbour in the context of the APPs is that the drafting of the APPs, while dense and complex, is principles-based. For example, APP 11 requires an entity to take 'reasonable steps to protect the information from misuse, interference and loss', however it does not specify what those 'reasonable steps' should entail other than 'technical and organisational measures'. In effect it would be very challenging for an entity to have confidence, or be able to demonstrate, that it is within the safe harbour in this case as what is 'reasonable steps' is open to interpretation and is subjective. Again, this is not the case with the Insolvency Safe Harbour where the criteria is relatively confined and there is now a track record of directors and advisers having confidence on accessing the safe harbour.[27]

[26] Further information on the Insolvency Safe Harbour is available in ASIC Regulatory Guide 217: Duty to prevent insolvent trading: Guide for directors, available here.
[27] Treasury, *Review of the insolvent trading safe harbour - Final report*, March 2022.

We also consider that a safe harbour of this nature would be complex for the OAIC to regulate and enforce.

While we have concerns with the current complexity and shortcomings of the Privacy Act and the APPs, we are not satisfied that either Option 1 or Option 2 are a workable solution to these issues.

Best interest threshold

We do not consider that a best interest threshold is the appropriate construction of a defence.

The concept of a best interest test can work in markets, such as financial services, where a complex product or service is offered to a wide range of customers that often face an information asymmetry. While the collection and management of personal information can have these elements (e.g. dense privacy notices) it more closely resembles a two-sided market where an individual will provide personal information, and often payment, in return for a broad range of services or benefits.

Best interest denotes that the customer/individual is the primary interest in the exchange when in privacy the interests are balanced between the individual and entity. For example, the entity collects and utilises customer information that is of benefit to its business (e.g. marketing, budgeting, risk activities) in a manner that is broader than the narrow provision of products and services to that particular customer(s). We would be concerned that a defence/safe harbour based on best interests may result in a more restrictive and costly privacy environment than is currently the cases.

While we have concerns with the current complexity and shortcomings of the APPs, we are not satisfied that either Option 1 or Option 2 are a workable solution to these issues.

Alternative: Reframed 'fair and reasonable' test

As the Commission is aware, the Privacy Act Review has proposed the introduction of a 'fair and reasonable' test, which would complement the existing APPs (Proposals 12.1 – 12.3). The Government has agreed in-principle to this proposal.[28]

A fair and reasonable test will require an entity to consider the fairness and reasonableness of the collection from the perspective of the individual (i.e. an outcome orientation), accounting for a range of factors (Proposal 12.2). The AICD's concern with this proposal has been that it is currently duplicative of existing obligations within the APPs and will ultimately burden entities with a new obligation with limited benefit to individuals. For example:

- APP 3, 'an organisation may only solicit and collect personal information that is **reasonably** necessary for one or more of its functions or activities';
- APP 3, 'an APP entity must collect personal information 'only by lawful and **fair** means';
- APP 6, 'the individual would **reasonably** expect the secondary use or disclosure, and that is related to the primary purpose of collection'; and
- APP 7, 'the individual would **reasonably** expect their personal information to be used for the purpose of direct marketing';

We consider there is an opportunity to reframe this test in a manner that both promotes broader individual outcomes and also rationalises the existing APPs, and the level of detail in these APPs, in order to reduce the compliance burden and complexity of the overall privacy framework.

An overarching test accompanied by more targeted and curtailed APPs will be of particular benefit to smaller organisations with no or limited compliance functions and resourcing challenges to interpret and comply with the Privacy Act. Further, an overarching test accompanied by consolidated APPs may be more fit-for-purpose to account for future technological and data developments, including in AI.

[28] Government response to Privacy Act Review Report, September 2023.

We **recommend** the Commission assess whether the proposed test can be reworked in a manner that promotes beneficial privacy outcomes while also reducing the density and complexity of the APPs.

Draft recommendation 3.2: Do not implement a right to erasure

We **strongly support** the draft recommendation that the Government does not introduce a right of erasure in the Privacy Act. We **recommend** that the Commission in its final report should conclude that the broader suite of Privacy Act Review proposals be paused given the uncertainty on the costs to productivity of implementation and the potential for limited privacy benefits.

The Commission's analysis that a right of erasure will be very costly and complex for entities to implement is consistent with feedback we have received from privacy experts, directors and entities. Given how personal information can be utilised, repackaged, archived and backed-up in a digital business environment it may not be technically practical for an entity to be able to guarantee that all information has been 'erased'. There is also a tension with the existing complexity of federal and state data retention obligations and whether an entity would be able to process an 'erasure' request and remain in compliance with these retention obligations.

As noted in the Interim Report, entities already have an obligation to dispose or de-identify personal information that is no longer required under APP 11. In the context of these existing requirements, we are not satisfied that a right of erasure will result in material privacy benefits to individuals in the aggregate that will outweigh the significant compliance costs.

The Commission highlights research on the implementation of the GDPR to express broader 'caution' with implementation of the Privacy Act Review proposals. Of particular concern given Australia's productivity challenges are indications that the GDPR has curtailed innovation in the European Union.

Taken together, the Privacy Act Review proposals will substantially move Australia to GDPR-like settings. With this significant shift comes the real risk that Australian entities will also experience a large increase in compliance costs, curtailed data led innovation and limited privacy benefit to individuals. As highlighted by the Commission there are genuine questions about the rigour of the cost/benefit analysis that has been undertaken on the proposals.

<u>High-cost privacy reforms</u>

In particular, we highlight the following proposals that the Government has agreed, or agreed in-principle, to implement that will likely have substantial complexity and costs associated with them:

- The removal of the small business exemption with the full suite of Privacy Act obligations to be imposed on smaller organisations without any proportionality;
- The introduction of a direct right of action that can be initiated by a claimant without having reached a serious harm threshold and/or for there to be significant fault on the part of an entity;
- Requirements to appoint a senior employee with responsibility for privacy and separately undertake privacy impact assessments applying to all entities regardless of size or data complexity; and
- Greater restrictions and prohibitions on targeted advertising in a manner that will be very technically challenging to implement.

We also have broader policy concerns that the direction of the Privacy Act reforms, to a more compliance and prescription heavy framework, has an inherent tension with the Commission's identification of the potential productivity gains from the deployment of AI and the need for a flexible, lighter-touch approach to regulating AI and its data inputs.

Given the Commission's concerns with the potential costs of the outstanding Privacy Act reforms and questions on the quality of the underlying analysis of these reforms, we **recommend** that the Commission in its final report should conclude that further changes to the Privacy Act are paused until a comprehensive and independent impact analysis can be conducted.

Draft recommendation 4.1 and information request 4.1: Make digital financial reporting the default

We **support in principle** draft recommendation 4.1 to make digital financial reporting mandatory for disclosing entities. We strongly recommend the draft recommendation be subject to a rigorous Treasury consultation that provides a strong cost-benefit analysis, draws on international best practice and outlines a fit-for-purpose regime with a phased in transition to reduce the reporting burden on preparers.

Who should be required to submit digital financial reports? Should implementation be phased?

The AICD considers that the initial tranche of reporter should be listed entities, subject to setting appropriate reporting thresholds, conducting a regulatory impact assessment, and mapping out a reasonable implementation period. Any future expansion of the regime should also be subject to a rigorous regulatory impact assessment. With the recent implementation of mandatory climate reporting, listed entities are already dealing with a nascent reporting regime, where the regulator is expecting 'high quality, consistent and comparable' climate and sustainability reporting.[29] It is critical to allow sufficient time for major reform to be bedded down before rolling out another mandatory reporting regime.

Are there other reports that should be submitted digitally?

Members have suggested that mandatory climate reports could eventually be submitted digitally, following a strong cost-benefit analysis and regulatory impact assessment. It is also essential that public sector IT infrastructure across the Commonwealth is effectively set up to receive digital financial reports before expanding to other reports.

What can be done to enable high-quality reporting and the production of high-quality data? For example, is the digital reporting taxonomy adequate?

We have heard that the digital reporting taxonomy under the International Financial Reporting Standards, additional tags for Australian-specific reporting requirements, and strong assurance and oversight will support high-quality reporting.[30]

Should report preparers be required to prepare their digital financial reports in XBRL format, iXBRL format, either format or a different format?

Report preparers should prepare their digital financial reports in the most advanced format, reflecting the need to ensure the regime is fit-for-purpose and is aligned with international best practice. We note that iXBRL is used around the world including in the US, UK, EU and Japan for company reports.[31] We note financial reports in iXBRL provide tagged data for analysis (including AI) and can also be viewed in a human-readable form using web browsers.

How should digital financial reports be submitted? How should they be made available to the public?

Digital financial reports should be lodged and freely accessed through an online portal, whether through ASIC or ASX. A rigorous Treasury inquiry would be able to further test the feasibility of both options, learn from international experiences, and consider other government work underway with online registers. It is essential that the critical market infrastructure underpinning the online portal is fit-for-purpose, noting recent challenges.[32] ASIC notes that since 2018 a small number of Australian companies listed in the US have prepared digital financial reports for lodgement in the US but have not lodged these with ASIC. [33]

[29] AICD (August 2025). 10 takeaways from Climate Governance Forum 2025. Available here.
[30] CA ANZ (August 2025). Joint roundtable on the future of digital reporting. Insights paper. Page 6. Available here.
[31] XBRL International (September 2025). What is iXBRL? Note: In the US, all companies must file iXBRL to the SEC. In the UK, over two million companies file iXBRL each year to HMRC, the UK tax authority, and to Companies House, the business registrar. In Japan, over 9000 listed companies and investment funds use iXBRL to submit financial statements to the Japan Financial Services Agency (JFSA). ESMA, the European Securities and Markets Authority obliges public companies that report in IFRS (the vast majority of EU financial statements) to use Inline XBRL. Available here.
[32] ASIC (June 2025). ASIC launches Inquiry into ASX. Available here.
[33] ASIC (June 2025). Submission to Productivity Commission. Pillar 3.

What should be done to ease the reporting burden for preparers?

As noted earlier, setting appropriate reporting thresholds, conducting regulatory impact assessments, and mapping out reasonable implementation periods are measures to reduce the reporting burden for preparers. More broadly, we strongly recommend government agencies review where reports and information requests can be done under the principle of 'report once, use often'. We note the recent post-Economic Reform Roundtable remarks from the Treasurer highlighting that the Finance Minister will introduce a regulatory reform bill to progress the 'tell us once' principle for reporters.[34]

Additionally, see our earlier overarching responses to draft recommendations in Pillar 2.

[34] Treasurer (21 August 2025). Press conference, Canberra. Available here.

Attachment D: Pillar Four - Delivering quality care more efficiently

This submission responds to **draft recommendation 1.1**.

We have received feedback from our members that the perspectives of the care economy have been marginalised in the current debate on productivity with the sector largely framed as an economic impost on the federal budget, with less attention placed on the value of care, including unpaid care and the role of volunteers. There have been wide-ranging regulatory reforms over recent years, further challenging the ability to provide affordable care and maintain a sustainable operating model.

A recent AICD member roundtable on the care economy highlighted the challenges of defining and measuring productivity in the care economy, including the shift from *outputs* to *outcomes* and from *quantity* to *quality*.

We also heard that significant structural challenges with workforce shortages and rising costs are barriers to delivering quality care more efficiently. This includes the risks from recruiting and retaining a care workforce that is increasingly reliant on workers on visas to plug persistent shortages.

This also compounds the ability for providers to invest upfront in technological improvements that may improve productivity, especially smaller providers and those involved in service delivery in regional, rural and remote areas.

Whilst greater adoption of technology in Australia represents an opportunity to drive gains in productivity in the care economy, especially health care (i.e. telehealth, rostering, scheduling, AI scribes, and robots), there is concern these gains may be feasible only for better resourced organisations. Knowledge sharing to diffuse better practices and processes across the care economy in a cost-effective way are key challenges to work through. We note collaborations such as the Care Economy Cooperative Research Centre (CRC), a $129 million, 10-year partnership of 60 organisations across Australia is well placed to support the sector on care technology, data solutions and workforce innovation.[35]

Whilst we primarily have focussed on improving regulatory alignment across the care economy, we agree that the recommendations to embed collaborative commissioning and establish a National Prevention Investment Framework are worth exploring further to reduce fragmentation and improve care outcomes, including access to more culturally appropriate care for Aboriginal and Torres Strait Islander people.

Members have also raised the inefficiencies in the way governments fund services, especially applicants navigating across multiple agencies to seek funding to deliver essential services and the increased certainty that comes from longer-term agreements. We strongly recommend that the government progress reforms from the NFP Sector Blueprint, released last November. This includes the application of appropriate indexation, and minimum term contract and renewal periods in all areas of service provision (Initiative 4b) and establishing co-governance and shared decision-making protocols of the Blueprint with First Nations NFPs and communities (Initiative 8a). [36]

Finally, we echo the following reflections from the Business Council of Australia's Health and Care Blueprint:

> "*Rigid policy based on inputs, such as care minutes can stifle innovation and hinders the development of alternative models of care. A shift to robust quality and outcomes-based funding and regulation is needed across the health and care system*."[37]

[35] University of Sydney (April 2025). Care economy boost with new Cooperative Research Centre. Available here. Note: La Trobe University highlighted that the Care Economy CRC will "support the growth of small and medium enterprises in the care sector, boosting their growth and contributing to the overall prosperity of care providers and outcomes for people in care."
[36] Department of Social Services (November 2024). Initiative 4b (Page 33); Initiative 8a (Page 46). Available here.
[37] Business Council of Australia (September 2025). Health and Care Blueprint. Qualtity versus quantity payments. Page 72. Available here.

Draft recommendation 1.1: The Australian Government should pursue greater alignment in quality and safety regulation of the care economy to improve efficiency and outcomes for care users

We **strongly support** draft recommendation 1.1 that the Australian Government should pursue greater alignment in quality and safety regulation of the care economy to improve efficiency and outcomes for care users.

In a recent AICD member roundtable on the care economy, representing providers across health, aged care, disability, and veterans care, there was support for the recommendations on greater regulatory alignment, with strongest support for the short-term action of a national worker screening clearance process.

Members expressed support for longer-term reforms in having a single set of practice and quality standards and single system for provider audits, reflecting the experience of dealing with duplicative standards and multiple regulators. Providers frequently operate across sectors such as aged care and disability and cite the overlapping nature of the aged care quality standards and NDIS practice standards. Restrictive practices were identified as one area where better regulatory alignment would also assist care workers who work across aged care and disability sectors.

Further, members highlighted the impact of being subject to multiple audits by regulators and the negative impact on staff capacity and resourcing. We welcome the regulatory reform work of the Aged Care Quality and Safety Commission to reduce unnecessary compliance burdens, streamline regulatory processes through a revised audit framework and implement cross-government initiatives (i.e. Care Economy Regulatory Alignment project, offering longer registration periods, and improving coordination with other regulators).[38] We also strongly support the work underway on a national approach on Working with Children Checks by Attorneys-Generals by end of 2025.[39]

[38] Department of Finance (4 July 2025). Regulatory reform to reduce red tape and ease burden on businesses. Letter from Aged Care Quality and Safety Commission. Available here.
[39] Attorney-General (15 August 2025). Delivering urgent reform of Working with Children Checks. Available here.

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

This submission responds to **draft recommendations 1.1, 1.2, 2.1, 2.3, 3.1 and 3.2**. We have not responded to the **information requests.**

Draft recommendation 1.1: Reducing emissions in the electricity sector after 2030

The AICD **supports** draft recommendation 1.1, which calls for governments to prioritise the introduction of enduring, broad-based market settings in the electricity sector beyond 2030. We agree that these settings should be nationally consistent and embed investment incentives to ensure reliability and system security are maintained. We also support the recommendation to phase out jurisdiction- and technology-specific incentives over time, in favour of a more streamlined and efficient national framework.

This recommendation aligns with the AICD's previous submission to the Commission, which emphasised the importance of clear, stable, and nationally coordinated policy settings to guide emissions reduction efforts across the economy. Policy certainty and coherence are essential enablers of long-term investment in clean energy infrastructure and innovation.

Draft recommendation 1.2: The Safeguard Mechanism should cover more industrial facilities and carbon leakage provisions should be improved

The AICD considers that the Safeguard Mechanism is a critical component of Australia's climate policy architecture and supports the intent to drive emissions reductions at Australia's largest industrial facilities. Our members have raised concerns that the current facility threshold of 100,000 tonnes CO_2-e per annum may be too high, potentially excluding significant emitters from the scheme's coverage. For that reason, we **support** lowering the threshold in line with national targets.

AICD agrees with the recommendation that the scheduled 2026–27 review of the Safeguard Mechanism should determine the appropriate facility threshold. We support a broadening of the scheme's coverage wherever feasible, and recommend that the review specifically assess:

- Whether a lower threshold would introduce inefficiencies, such as uneven coverage across sectors;
- The appropriateness of phasing-in the inclusion of new facilities to manage compliance and transition risks;
- The potential benefits of aligning with state-level thresholds, such as the 25,000 tonnes CO_2-e per year proposed by the NSW Environment Protection Authority.

Implementation will need to be carefully managed and monitored to ensure it is operating as intended.

Draft recommendation 2.1: Reform national environment laws

As set out in our earlier submission to the Commission, the AICD **supports** draft recommendation 2.1, which calls for reform of national environmental laws to expedite approvals for clean energy projects while strengthening environmental protections. We agree that reforms should introduce clear and enforceable national environmental standards, facilitate regional planning (particularly within renewable energy zones) and establish stricter statutory deadlines for assessing projects in designated 'go zones'.

Our members consistently identify approvals processes as a key challenge for project delivery. In our submission to the Economic Reform Roundtable, we highlighted that Australia is increasingly seen as a difficult place to do business, with regulatory complexity and delays acting as barriers to investment and innovation. Directors have expressed concern that the cumulative weight of federal, state and local regulation is limiting boards' ability to focus on strategy, growth and long-term value creation. Streamlining environmental approvals is essential to unlocking private sector investment and accelerating the transition to net zero.

We also support measures to improve transparency and efficiency, including the provision of accessible, high-quality environmental data and past assessment decisions, and clearer expectations for engagement with local communities and Aboriginal and Torres Strait Islander peoples.

This recommendation reinforces key points raised in our earlier submission to the Commission, particularly the need to implement the findings of the Samuel Review. We continue to advocate for a comprehensive overhaul of the Environment Protection and Biodiversity Conservation Act 1999 (**EPBC Act**), with reforms that balance regulatory efficiency with strong, long-term environmental safeguards. Establishing robust national standards will be critical to providing certainty for project proponents and ensuring that environmental outcomes are not compromised in the pursuit of faster approvals.

Draft recommendation 2.3: Establish a Coordinator-General for priority projects

The AICD **supports** draft recommendation 2.3 in relation to the establishment of a Coordinator-General (**CG**) to oversee and facilitate priority clean energy and infrastructure projects. This recommendation reflects feedback from our members, who identify complex and fragmented approvals processes as a major barrier to timely project delivery and investment certainty.

Our members have emphasised the need for a centralised, empowered role within government to act as a single point of contact for project proponents – someone who can navigate regulatory systems, advocate for investment, and ensure accountability across agencies. The CG model has proven effective in practice, albeit in a different context. We understand the introduction of a CG to the Tasmanian Government's Economic Development Board significantly accelerated investment that had previously been stalled. The CG served as a trusted ally for business - embedded within government but advocating for proponents and guiding them through regulatory processes. This approach materially improved investment outcomes and built confidence in the system.

AICD supports the replication of this model at the national level, particularly for priority projects aligned with Australia's net zero transition. The CG should be empowered to coordinate across jurisdictions, streamline approvals, and ensure timely resolution of regulatory bottlenecks. Importantly, this role must be underpinned by clear governance, transparency, and accountability to maintain public trust and ensure alignment with environmental and community expectations.

Draft recommendation 3.1: Set up a climate risk information database covering all climate hazards

The AICD acknowledges the importance of improving access to climate risk information and supports efforts to enhance transparency and resilience in the built environment. We have consistently emphasised the interlinkages between climate and nature and that these should not be addressed in isolation. We recognise that climate and ecosystem risks are intertwined but distinct; understanding and managing these dimensions together can significantly bolster resilience, as evidenced by challenges such as coastal mangrove loss or declining soil health affecting communities and agricultural productivity.

While AICD does not hold technical expertise in the development of climate risk databases, we have engaged with the Insurance Council of Australia (**ICA**) to understand the general insurance industry's perspective on this issue, and understand that at present, risk information is fragmented and inconsistent across jurisdictions. Along with the ICA, we support a central, publicly accessible database covering all major climate risks.

However, members have also raised concerns that increased visibility of climate risk may exacerbate the issue of non-insurability in high-risk areas. This underscores the importance of aligning any new information systems with the broader work underway between government and industry to address insurance affordability and access.

More broadly, while the principle of increased information transparency is sound, our members caution that Australia has a history of underutilising available data – particularly in areas such as financial services

disclosures. To be effective, climate risk information must be integrated into decision-making frameworks and supported by clear guidance for users, including homeowners, developers, and local governments.

Draft recommendation 3.2: Develop a nationally consistent climate resilience rating system for housing

The AICD **supports** draft recommendation 3,2, noting that it would provide households, builders, insurers, and policymakers with property-level resilience information and identify cost-effective upgrades.

A well-designed rating system has the potential to provide households, builders, insurers, and policymakers with clear, trusted, and location-specific information on the resilience of individual properties, and to identify practical, cost-effective upgrades that would reduce risk from climate hazards.