

SUBMISSION FROM THE DEPARTMENT OF FINANCE AND DEREGULATION
TO THE INQUIRY INTO THE REGULATORY POWERS (STANDARD
PROVISIONS) BILL 2012

I welcome the introduction of the Regulatory Powers (Standard Provisions) Bill 2012. This Bill establishes a framework of regulatory powers that, once activated, could provide Commonwealth agencies and regulators with a standard suite of regulatory compliance and enforcement tools. Over time, this Bill will allow for standard monitoring and enforcement powers to be made available to all Commonwealth regulators when undertaking regulatory and enforcement activities. This staged approach, and the ability for existing powers to remain, provides flexibility for regulators, while providing consistency across regulations in relation to enforcement activities.

Providing laws and enforcement powers that can be applied consistently across the Commonwealth will provide clarity for businesses and the broader community on the enforcement of regulations. The availability of appropriate enforcement tools, such as infringement notice schemes and enforceable undertaking schemes will, over time, provide regulators with a range of options to encourage compliance with the law.

Both within Australia and internationally, there is an interest in better understanding the way in which the behaviour of regulators can impact on and impose regulatory burdens and unnecessary costs on businesses. The Productivity Commission in its December 2011 research report *Identifying and Evaluation Regulation Reforms* recommended that the Government commission a study into regulator practices to enhance the administration and enforcement of regulation. In addition, the Council of Australian Governments (COAG) has agreed that it will consider measures by all jurisdictions to improve regulatory performance as part of its response to the Business Advisory Forum. This extends to adopting a risk-based approach to regulatory design, implementation, enforcement and review. This Bill will assist with the provision of a range of consistent regulatory powers that will enable Commonwealth agencies to adopt such an approach.

The invitation to make a submission asked that this submission encompass the views of agencies within my portfolio: the Albury Wodonga Corporation, the Australian Electoral Commission (AEC), Australian Reward Investment Alliance (now CSC) and Comsuper. Of these agencies, only the AEC has regulatory functions akin to those in the Bill.

The AEC has advised that it is strongly supportive of the measures contained in the Bill which allow for a hierarchical response to breaches, including: infringement notices; enforceable undertakings; and injunctions. The AEC notes that these are all measures that have been included in various AEC submissions to the Joint Select Committee on Electoral Matters (JSCEM). The JSCEM Report entitled *Review of the AEC analysis of the FWA Report on the HSU* contains the following recommendation:

Recommendation 10

The committee recommends that the Australian Government clarify, and where needed strengthen, the coercive powers of the [AEC] to determine the extent of an individual or organisation's disclosure obligations and to investigate whether reporting obligations under Part XX of the *Commonwealth Electoral Act 1918* have been met. (paragraph 3.225)

The AEC notes that the Bill itself does not change the investigation and enforcement provisions in other Commonwealth Acts and that the provisions can only be triggered by an amendment contained in another Act or regulations which makes reference to the Bill.

In relation to the AEC's administration of Part XX of the *Commonwealth Electoral Act 1918*, the AEC would seek to have similar powers provided so that alternative investigation and enforcement powers are available in addition to the current criminal penalty regime. This would place the AEC in a similar position to that of the electoral management bodies in both Canada and the United Kingdom and is an essential part of reforming campaign funding and disclosure laws in Australia.

Department of Finance and Deregulation
6 November 2012