THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:JBsh090925

9 September 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [redacted]

Dear Dr Popple,

PRODUCTIVITY COMMISSION INQUIRY: CREATING A MORE DYNAMIC AND RESILIENT ECONOMY

The Law Society appreciates the opportunity to contribute to the Law Council's submission to the Productivity Commission (**PC**) in response to its Interim Report, *Creating a more dynamic and resilient economy* (**CDRE**)

General

We note the CDRE contains six draft recommendations, organised under two broad areas of proposed reform:

- Draft recommendations 1.1 to 1.3 - *Corporate tax reform to spur business investment*; and
- Draft recommendations 2.1 to 2.3 – *Regulating to promote business dynamism*.

Our submission focuses on draft recommendations 2.1 to 2.3.

Regulation to promote business dynamism

The Law Society has long called for reform at all levels of government to ensure that the regulatory burden on business is necessary and proportionate to the harms sought to be addressed. The disproportionate impact of excessive and duplicative regulation on small business, in particular, is well documented and a major source of concern for our members and other stakeholders.[1]

We welcome initiatives to minimise unnecessary regulation that hinders businesses from flourishing, and endorse the guiding principles underpinning CDRE draft recommendations 2.1 to 2.3, namely, that the Australian Government should ensure clarity, rigour and accountability in developing regulation. Specifically, the PC considers that reforms targeting actors within the regulatory policy sphere are required. Sensible tools and procedures for good regulation design and managing the stock and flow of regulation, such as impact analysis and sunsetting, are said to be consistently undermined by a risk averse political culture.[2]

[1] See pre-interim report submissions to PC Pillar 1 from the NSW Small Business Commission, online, https://engage.pc.gov.au/document/410; the Australian Small Business and Family Enterprise Ombudsman, online, https://engage.pc.gov.au/document/732; and the Council of Small Business Organisations Australia, online, https://engage.pc.gov.au/document/594.
[2] See Interim Report, 30-33.

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CONSTITUENT BODY

While we do not disagree with the objective of encouraging an ethos of stewardship among regulators and policymakers towards supporting business growth, we differ in view, in some respects, on the means to achieve this end (see 2.2 and 2.3 below). We also suggest that strategies to improve policymaking culture would have greater impact if accompanied by government commitment to invest in regulatory technology that will assist in modernising the compliance framework and managing the inherent complexity of regulation, due to our multijurisdictional legal system (see 2.2 below).

2.1 Set a clear agenda for regulatory reform

The Law Society generally supports the draft recommendation that the Government adopts a statement on regulation that includes a commitment to reform, is anchored to principles of good regulation, and outlines how success will be measured. We consider the PC's proposal for quantitative targets to be a reasonable way to objectively track progress of the proposed reform agenda. We also note the PC's continued engagement with stakeholders in designing and setting the metrics to assess the quality of regulation and track the regulatory burden. In our view, broad-based consultation is essential in advancing objectives for better regulatory practices. Meaningful engagement will ensure alignment with best practice legislative development[3] and the avoidance of unintended, harmful, or high-risk consequences that may flow from reducing the stock of regulation.

Regulation is made in the public interest to protect consumers, businesses and communities. For example, the Law Society notes a recent Australian Security and Investment Commission (**ASIC**) report suggests small business restructurings are keeping struggling companies afloat, illustrating the positive benefits of assisting small business with bespoke or tailored regulation and initiatives.[4] In our view, any metrics developed to measure success in reducing regulatory burden should be balanced with careful evaluation of the estimated costs. That assessment should also recognise it is not just the volume of regulation and multiplicity of regulators that can hinder business activity and drive up costs, it is also the uncertainty surrounding the interpretation and applicability of a hierarchy of rules across jurisdictions that can deter business ventures.

The Law Society suggests that a statement committing to reform would benefit from an acknowledgment that best drafting legislative practice must also be observed when developing and amending regulatory regimes. We note the Law Council's sustained advocacy for improvement to lawmaking processes to avoid undesirable outcomes and uncertainty for individuals and businesses.[5] Good regulation starts with clear laws that foster certainty and confidence. The Law Society supports calls to simplify the regulatory framework. We agree with Joe Longo, ASIC Chair that,

> The more complex the regulation, the harder it is to understand and comply with it. And the harder it is to enforce.

[3] Law Council of Australia, *Best Practice Legislative Development Checklist*, online, https://lawcouncil.au/publicassets/54c598e1-9263-f011-94b6-005056be13b5/2025.
[4] ASIC, "ASIC report suggests small business restructurings are keeping struggling companies afloat", Media Release dated 27 June 2025, online, https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/
[5] LCA, n3.

> It's a burden borne by everyone – legislators, policymakers, businesses big and small, regulators, consumers and investors. It's played out across the economy in lost time and productivity.[6]

We note that the Government is yet to respond to the Australian Law Reform Commission (**ALRC**) Final Report, *Confronting Complexity: Reforming Corporations and Financial Services Legislation (Report 141, 2023)*[7] tabled in Parliament on 18 January 2024. The ALRC made 58 recommendations to simplify the law with a view to reducing costs for service providers and consumers, improving productivity, and providing clarity around compliance requirements and enforcement.[8]

2.2 Bolster high-level scrutiny of regulations

The Law Society endorses strengthening scrutiny, evaluation and review of new regulation proposals to ensure promotion of business dynamism. We are concerned, however, that the recommendation to appoint an independent statutory commissioner to oversee the operations of the Australian Government Office of Impact Analysis may, if that proposal amounts to the creation of a new agency, introduce further delay in regulatory development and decision making. We suggest that an oversight role may be more efficiently implemented by incorporating the function under the existing PC framework. Arguably, the PC is empowered under section 17, *Productivity Commission Act 1998* (Cth) to provide advice to the Minister on legislative and regulatory impact assessments, or that function could be expressly prescribed. In our view, the PC is well placed to consider the impact of a regulatory proposal on productivity performance of business and the economy. Additionally, the PC has statutory independence with the potential to lift the profile and standards of impact analysis.

We also call for Government investment in accelerated research and development of regulatory technology. We acknowledge efforts made to reduce process duplication through strategies such as "tell us once" services[9], progress is slow. Our members have consistently reported over a number of years that Australian Government digital systems are cumbersome and unreliable for business users[10]. In our view, the PC should further examine innovative initiatives to improve the regulatory framework such as Rules as Code (**RaC**).

RaC projects, which convert legal text into computer code, have been in experimental phases for a number of years in Australia and have included exploration of digital experience and mapping tools to remove regulatory barriers.[11] We note that this technology has the potential to augment scrutiny of regulation by identifying intersection of laws and facilitating harmonisation. On 1 July 2025, the United Kingdom launched the

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[6] Joe Longo, "The times they are a-changin'– but directors' duties aren't**"**, Keynote Speech, Australian Institute of Company Directors, Australian Governance Summit, 12 March 2025, online, https://www.asic.gov.au/about-asic/news-centre/speeches/the-times-they-are-a-changin-but-directors-duties-aren-t/.
[7] See online, https://www.alrc.gov.au/wp-content/uploads/2024/01/ALRC-FSL-Final-Report-141.pdf.
[8] Ibid.
[9] See online, https://www.dataanddigital.gov.au/strategy/missions/simple-and-seamless-services.
[10] For example, our members have reported ongoing system issues with the online processes for foreign investors to obtain a Director's ID – see online, https://www.abrs.gov.au/director-identification-number/apply-director-identification-number; and with access to the Foreign Investment Portal – see online, https://www.ato.gov.au/online-services/foreign-investors/online-services-for-foreign-investors.
[11] For example, see the applications listed in Australian Government, Productivity Commission, *Regulatory Technology: Information Paper* October 2020, online, https://www.pc.gov.au/research/completed/regulatory-technology/regulatory-technology.pdf, 13.

Regulatory Innovation Office (**RIO**). The RIO promotes RaC as a key tool to improve regulatory processes and assists businesses to,

> face the challenge of understanding the labyrinth of regulations in their sector. This can be especially tough for smaller companies, who often don't have teams of compliance experts, and will help them scale faster – supporting the SMEs that are the backbone of the UK economy….[The RIO] will support the development of new smarter tools to make navigating the system faster, clearer and more accessible. This will include evaluating a unified digital library providing a 'one stop' access to digital policy and regulations for innovators, helping to free up businesses to focus on growth and innovation.[12]

The Law Society encourages the PC to consider further examination of regulatory technology as part of its CDRE inquiry work.

2.3 Enhance regulatory practice to deliver growth, competition and innovation

The Law Society supports the general proposition that regulatory practice will be enhanced by fostering a culture of stewardship. We also note that 2024 reforms to the *Public Service Act 1999* (Cth) formally enshrined stewardship as a core Australian Public Service (**APS**) value.[13] However, we query the utility of the PC's proposal to extend the current APS obligations by specifically address "regulatory stewardship".

The Government has already developed guidance on regulator performance and reporting which applies to both independent standalone regulators and those located within policy departments.[14] We agree with the PC's proposal that this resource could be strengthened by highlighting the concept of regulatory stewardship and augmented by providing practical training on implementation.[15] We would not support, however, the introduction of a new obligation on public servants that requires them, as regulatory stewards to "prioritise economic growth". In our view, this may heighten the potential for public servants to be exposed to conflict of duties issues that potentially undermines confidence in government institutions.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sonja Hewison, Policy Lawyer, at (02) 9926 0219 or sonja.hewison@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

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[12] Gov.UK, "Regulatory Innovation Office to help streamline regulation, helping UK's world-leading fintech sector", press Release dated 1 July 2025, online, https://www.gov.uk/government/news/regulatory-innovation-office-to-help-streamline-regulation-helping-uks-world-leading-fintech-sector.
[13] *Public Service Amendment Act 2024*, Schedule 1, Item 2.
[14] Australian Government, Department of Finance, *Regulator Performance (RMG 128)*, online, https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128.
15 Interim Report, 44.