

EXECUTIVE SUMMARY

OPEN LETTER TO THE NEXT GOVERNMENT: WHAT DIRECTORS ARE LOOKING FOR

The upcoming election is an important one for our nation. Regardless of which party forms the next government, it is an opportunity to rethink not only the way government approaches some key issues but how it conducts its relationship with business.

The Australian Institute of Company Directors – a non-partisan organisation representing a diverse membership of more than 26,600 – considers these issues to be of the highest importance.

They are also of vital concern to the 2.1 million Australians who are directors.

The Key Issues for Directors

Director Liability

Reform of corporate regulation, and especially laws which have a direct impact on directors and the way they operate, is a significant issue for the business community, for the economy and, ultimately, for Australian society as a whole.

The Australian Institute of Company Directors is particularly concerned with the number of laws that hold directors personally liable in one way or another.

These laws are stifling business, investment and job creation. They are anti-business. They are in urgent need of reform.

1. Reinvigorate the COAG reform process

Governments around Australia are now supposed to be undertaking legislative reviews to reform and harmonise laws on director liability after the States and Territories conduct audits of their legislation on the basis of agreed benchmarks. However, there appears to be little progress on this process, which has been given low priority by state governments

The next Federal Government, of whatever political colour, should redouble its efforts to ensure the states carry through with their reviews. In future, there should be renewed talks with the States to seek to apply more **rigorous and consistent benchmarks for reform** of director liability legislation, with real KPIs and consequences if they are not met.

2. Creating a ‘Safe Harbour’ for directors

The Australian Institute of Company Directors strongly believes there is a need for a **broad-based business judgement defence** or safe harbour for directors, consistent across Commonwealth, state and territory laws or, alternatively, an overriding Federal law.

3. Insolvency law reform

Current laws on insolvent trading make trading out of insolvency not only extremely risky but they prohibit it for the directors of a company in solvency stress. Each director faces being held personally liable for any further debts incurred, unless the company is placed into external administration.

The critical element to address our concerns regarding the current laws on insolvent trading is a broad **business judgment rule defence** to allow directors and companies a “fair go” to salvage companies for the benefit of all.

4. Occupational Health & Safety law reform

The Australian Institute of Company Directors welcomed last year’s agreement by the Workplace Relations Ministers’ Council, following on that of COAG, to harmonise state and territory legislation and to implement a uniform national approach to OH&S.

The next Federal Government should make it a high priority to ensure that the spirit of this vital reform is reflected in the legislation to be implemented at the State level.

Getting Regulation Right

We believe deregulation – stemming the growth in regulation and cutting back existing red tape - is a crucial part of the new government's economic task and a key element of the agenda for boosting national productivity.

1. Structural reform is needed

The processes that create new regulations must ensure they genuinely are needed and are as efficient as possible, that proper consultation takes place with business and that existing red tape is frequently reviewed, rigorously assessed and vigorously pruned back as necessary. We need better regulation, not more regulation.

The system of creating and removing regulation needs to be reformed, not just the regulations themselves.

At the federal level, there needs to be a **whole of Government approach**. There must be commitment by every minister and within every department to a better regulation and deregulation agenda. This must be properly resourced.

Targets need to be set, progress monitored and gains regularly quantified by a suitable independent body, preferably the Productivity Commission.

Reform must be national in focus. A **reinvigorated national reform plan** is needed, which includes improving the mechanisms used by the Commonwealth and the States to create new regulations and assess existing ones.

At Commonwealth and State levels, **basic principles** such as "one in, one out" should be the “default mode” for reform.

There must also be a **requirement to frequently review existing regulations**, to rigorously assess them against cost-benefit principles and to remove them where they are no longer justified.

There should be a firm **requirement to consult business** when formulating new regulation.

Governments should include **sunset clauses** and review provisions in legislation to provide a mechanism to ensure that new regulations are assessed after a period of time and removed if found to be ineffective or no longer required.

2. Good Regulation Principles

In 2006 the Government endorsed the six principles of good regulatory process set out in the Banks report:

- 1. A case for regulatory action must be established**
- 2. Regulatory proposals should not be put forward without an examination of the alternatives to regulation**
- 3. The likely cost to business of proposed regulation needs to be rigorously calculated**
- 4. Effective consultation with stakeholders should occur at all stages of considering and preparing regulatory proposals**
- 5. An adequate Regulatory Impact Statement must be prepared**
- 6. Post-implementation reviews must be conducted**

Directors and the business community endorse these principles.

Better consultation with business

When governments are considering new laws, there should be appropriate consultation with business *before* measures are announced as firm policy, to ensure that unintended consequences and practical problems can be identified and dealt with.

There should be a commitment by the incoming government to consult business when formulating new policy and legislation impacting on business in any way.

Improving Policymakers' Understanding of Business

Innovative ways of improving the understanding of business among policy makers and politicians are needed.

The next government should consider and institute **executive exchange and secondment programs** to allow government officials and ministerial advisers to work in the private sector, and to similarly allow private sector executives the opportunity to work in government.