SUBMISSION TO GOVERNMENT

CUTTING RED TAPE

SERVICES
[APPENDIX C]

{MAY 2014}

EXECUTIVE SUMMARY

The following issues have been identified as representing opportunity for the Government to address and ensure that cost savings are maximised and inefficiencies are reduced.

Item	Issue	Cost Impact	Urgency	Page No.
1.	**Prostheses regulation – health insurance** Amend processes for approval and benefit setting	High	Short Term	2
2.	**Inconsistent State and Territory based gambling regulations** Adopt Productivity Commission recommendations for national regulatory approach	Medium	Medium Term	4
3.	**Environmental Compliance Reporting** Implement a national data base and reporting process	Medium	Short Term	5
4.	**Residential Aged Care** Current 'one-size-fits all approach to quality compliance is inappropriate	Medium	Short Term	7
5.	**FBT Legislation** Basis of approach is complex and administratively inefficient	High	Medium Term	8
6.	**Use of tax file numbers by share registries** Remove legislative impediments to use of tax file numbers by share registries.	Medium	Short Term	9

Implementation of the G100's recommendations is estimated to result in cost savings of around $45m over the time periods suggested.

1. PROSTHESES REGULATION - HEALTH INSURANCE

Issue

Prostheses benefits paid by the Australian private health insurance industry are rapidly escalating with approximately $1.5 billion in benefits paid in 2012. Prostheses benefits now represent approximately 14% of total benefits paid meaning that swelling prostheses benefits will only further increase pressure on private health insurance premiums.

Legislated benefits payable for prostheses in Australia are up to five times higher than the prices paid for the same items in comparable economies such as the United States and the United Kingdom. Lower costs will allow more Australians to improve their quality of life with new prostheses. Reducing prostheses outlays would also make private health insurance more affordable and attractive for non-insured Australians, through reduced pressure on premium prices, easing the burden on the public hospital system.

The current system of prostheses regulation and benefit setting has taken shape over the past decades. The health insurance industry believes it is time the system evolves in a considered manner to ensure that patient safety and sustainability are its cornerstones. Through this prostheses benefit reform process, the Australian Government would save $2.6 billion between 2014 and 2020. These savings would be in addition to the considerable savings by health insurers.

Background

Under the Private Health Insurance Act 2007, health insurers are required to pay a set benefit for any prostheses on the Prostheses List which is provided as part of an episode of hospital treatment (or hospital substitute treatment) where a Medicare benefit is payable. The Prostheses List only includes surgically implanted prostheses and there are more than 9,000 products on the list.

The Ministerially appointed committee, the Prostheses List Advisory Committee (PLAC), makes recommendations to the Minister for Health on the prostheses that should be listed and the benefits insurers are required to pay for them. There is no statutory definition of 'prosthesis' with the PLAC instead individually applying the criteria for listing to assess each product separately. The List is updated every six months and published each February and August.

On 18 December 2008, the previous government announced a review of health technology assessment ('HTA') in Australia. Following the HTA review, a new benefit setting process was introduced from mid-2010. This involved the establishment of a single benefit for groups of products with similar clinical effectiveness. It was claimed that this would improve transparency and ensure that the same price is paid for prostheses that deliver similar health outcomes.

As a result of these changes, the current prostheses benefit setting process does not take place in a competitive marketplace. In particular:

- benefit setting is not subject to normal marketplace tensions, including cost effectiveness;
- there is no mechanism for benefits to be adjusted either up or down;
- existing prostheses sponsors and suppliers have an unfair advantage over new entrants; and
- group pricing is not achieving its original objective.

Proposed Solution

The G100 believes that the current process for prostheses approval and benefit setting should be streamlined according to the following principles to:

- safeguard patient safety;
- improve transparency;
- achieve appropriate competitive pricing;
- ensure appropriate representation; and
- encourage product innovation.

In particular it is suggested that the following should occur in relation to the benefit setting process:

1. Adopt a clear definition of prostheses to ensure that all items on the Prostheses List conform to the same definition. In particular, the definition should reflect that agreed by key stakeholders in 2003 but not adopted by the government at the time. Making this change will remove the possibility that double payments are made by insurers for items that are funded through other mechanisms in hospital contracts and deliver greater transparency for all List users.

2. Increase transparency of the incentives provided to health professionals by prostheses manufacturers and suppliers. This process could mirror the new transparency arrangements for pharmaceutical companies as mandated by the ACCC.

3. Prostheses benefits should be set using a transparent and competitive process which is regularly reviewed. This could include options such as benchmarking Australian prostheses benefits against comparable economies, a return to market-driven negotiation of benefits between providers and payers, competitive tenders, internal price benchmarking etc.

4. Indexation should not be used to adjust prostheses benefits. This will ensure that benefits are set appropriately as indexation does not reflect the actual cost of producing the prostheses (particularly over time).

5. Introduce a co-ordinated process for hybrid and co-dependent technologies. Such an approach would reduce timeframes and administrative hurdles to assessing these technologies ensuring that they are able to be brought to market in Australia more quickly than is currently the case.

In addition, improved regulation of quality and performance of prostheses, including restricting the range of prostheses (as is the case Sweden) to encourage the use of well-tested and cost-effective devices with proven effective clinical outcomes, would also deliver further savings with fewer corrective procedures to remove and replace failed prostheses. These have not been included in this submission but we would be happy to provide further details if required.

Cost Impact	High Cost	Urgency	Short Term

2. INCONSISTENT STATE AND TERRITORY BASED GAMBLING REGULATIONS

Issue

Gambling in Australia is regulated by state and territory governments with an overlay of some federal regulation (primarily online gambling[1] and gaming machine gambling[2]). Each state and territory adopts different requirements and regulatory approaches, which attracts a significant compliance burden for companies operating in the national gambling market.

While it is appreciated that governments need to maintain a balance between the harm that may be caused by gambling, and the economic and recreational benefits that lawful gambling delivers, achieving this balance can occur without a multitude patchwork of regulation and requirements. The red tape inherent in this approach significantly inhibits the productivity of gambling industry participants and detracts from the innovative focus required to allow these participants to effectively compete against each other and offshore operators.

Background

Regulation and controls around gambling in Australia began developing prior to the formation of the Federation and were largely based on state government political and economic imperatives. Despite the advent of new technologies, highly transient populations and national and global markets that increasingly render state and territory borders irrelevant, the regulation of gambling has not shifted far from its origins.

The Productivity Commission's 1999 *Inquiry into Gambling* found that the fragmented and inconsistent nature of gambling regulations in Australia created unnecessary complexity and inefficiencies. Further, the High Court in *Betfair Pty Limited v State of Western Australia* (2008) 234 CLR 418 recognised that there is a movement toward a 'new economy' brought about by internet commerce and a move away from 'a time of physically distinct communities located within colonial borders and separated by the tyranny of distance'.

Emmett J in the *State of Victoria v Sportsbet Pty Ltd* [2012] FCAFC 143 appropriately sums up the issue:

> *It is a blight on our nationhood and a travesty of sensible administration and good government that there are eight different regulatory regimes concerning lawful gambling in Australia, with an overlay of federal intervention, both actual and threatened.*

Proposed Solution

The Productivity Commission's 2010 *Inquiry into Gambling* found there would be benefits from a single national regulatory approach, or a formally coordinated approach across jurisdictions. This position is supported and could be achieved by:

- instituting a national regulatory framework backed up by Commonwealth constitutional powers. This may include use of the corporations, trade and commerce, banking, taxation, telecommunications and currency powers, territories power as well as possible use of the 'referral' power;

[1] *Interactive Gambling Act 2001* (Cth)

[2] *National Gambling Reform Act 2012* (Cth) (until repealed)

- encouraging state and territory governments to work towards nationally consistent laws by negotiating 'facilitation' payments or reward incentives like that adopted for the Seamless National Economy reforms;

- incentivising state and territory governments to adopt mutual recognition of licensing, approvals and compliance activities from other Australian jurisdictions within their legislative frameworks. This solution is likely to be the most difficult to achieve as attempts to achieve this to date through the Ministerial Council on Gambling have not been successful due to differing political drivers in each state and territory.

By embarking on this reform, a significant contribution could be made to the Government's target of cutting red tape by at least $1 billion per year, as set out in *The Coalition's Policy to Boost Productivity and Reduce Regulation*.

It is estimated that gambling industry participants operating in all Australian jurisdictions are subject to over 100 specific pieces of legislation and statutory instruments. Accordingly, it is understandable that gambling industry participants have dedicated resources and teams focused on deciphering the patchwork of regulatory requirements for each jurisdiction.

Cost Impact	**Medium**	**Urgency**	**Medium Term**

3 DUPLICATION OF DATA REQUIRED FOR ENVIRONMENTAL COMPLIANCE REPORTING

Issue

Environmental compliance reporting under the *Environmental Protection Acts* in Australia is an administrative and financial burden to companies given the inherent duplication of data provided to regulators across multiple reporting forums.

It is recognised that regulators (being local, state and federal government agencies) are required to monitor and ensure that companies comply with the *Environmental Protection Acts*. However, onus should be placed on these agencies to consolidate all reports/forms and forums of data submitted by companies, therefore reducing duplication.

Background

Environmental compliance in Australia is state and territory based. Each jurisdiction has different reporting requirements across a number of forums.

In any given year, the regulators require companies to submit a number of data inputs/reports/forms to demonstrate compliance with the *Environmental Protection Acts*. Some of the data inputs/reports/forms required are in relation to the areas of:

- EPA License Annual Returns;

- Environmental Management Systems (proactive certification);

- Compliance reporting (auditing, procedural and environmental management plans); and

- Compliance sampling and testing regimes.

Two further federal schemes relating to environmental compliance also specify different reporting requirements:

- National Pollutant Inventory ('NPI') Measures; and
- National Greenhouse and Energy Reporting ('NGER').

The following table provides examples of instances where the data required by Regulators, and resources allocated by companies are duplicated across different reporting forums:

Items of Duplication	EPA License Annual Returns	National Pollutant Inventory Measure	NGER	Environmental Management systems	Compliance reporting	Compliance sampling and testing
Emissions from Facility Data	X	X	X	X	X	X
Energy Usage Data			X	X	X	X
Use of Consultants and Internal Specialists	X	X	X	X	X	X
Similar data required in different document formats	X	X	X		X	X
Administrative support requirements	X	X	X	X	X	X
Industry Forums & Conference Costs		X	X	X	X	

From the table above, it is recognised that EPA site license requirements differ from NPI measures and the NGER scheme, however, a number of similar data inputs are still provided and submitted to different departments within State and Federal Governments, highlighting the need for a single data collection point.

The need for a single data collection point is further substantiated by differences in the compliance level required by State regulators. For example, in NSW the EPA requires emission and sampling data to be made readily available on company websites for public access. This data, updated on a monthly basis, is also provided to the NSW EPA and other Government departments. Compiling the data required is a substantial cost for companies, requiring environmental specialists and personnel to handle the administrative process to ensure the data is presented in a logical format for uploading, and that the data has been prepared and reviewed for website compatibility. In other States, EPA licensed facilities also have License variations, Notices and Current License data available online for the public to access at their discretion.

In the Federal NPI scheme, the objectives of the measures are to collect a broad base of information on emissions of substances, and disseminate the information collected to all sectors of the community in a useful, accessible and understandable form. However, although NPI data is submitted by companies annually, the publication of data is currently experiencing a 2 year lag.

The above examples demonstrate that the environmental performance of a facility, for the most part, is accessible to the general public, and repercussions from companies not meeting Annual Return or License criteria are well publicised by fines and prosecutions.

Proposed Solutions

The regulators would benefit from the consolidation of data inputs by producing a single national portal/database that has the ability to collate data obtained from companies. All stakeholders should have access to the portal/database to obtain the relevant data required to perform their assessments. This can be achieved by:

- ensuring all data submitted in reports/forms are for the same reporting period so that companies can collate the data at a single point in time;
- conducting an assessment of current categories of data to identify those that could be collected under one regime to satisfy multiple purposes and use the outcome of such an assessment to overhaul the number of reporting mechanisms.

Cost Impact	**Medium**	**Urgency**	**Short Term**

4. RESIDENTIAL AGED CARE

Issue

There is a 'one size fits all' approach to quality compliance at a Federal level, which Residential Aged Care providers believe leads to increased cost and inefficiency both for the government and providers.

In addition there are a number of scenarios in which regulations 'double-up' between the national requirements and the requirements of States and Territories. This results in providers being subject to a number of seemingly similar checks and processes from a range of parties.

While regulation is necessary given that some of society's most vulnerable people are under the care of aged care providers, Residential Aged Care providers are concerned that some aspects of the current regulations provide no tangible benefit to residents.

This is a particular concern for an area such as aged care where any unnecessary regulatory burdens take staff away from their important role of providing high quality care to residents.

Background

Following the introduction of the Living Longer, Living Better packages of reforms, on 1 January the Australian Aged Care Quality Agency replaced the existing Aged Care Standards and Accreditation Agency Limited. Under the Aged Care Act 1997, the Australian Aged Care Quality Agency monitors compliance of residential aged care facilities, covering providers' responsibilities in matters such as accreditation and quality management. While the move to one body through the Living Longer, Living Better reforms at a Federal level is welcomed, providers are concerned that there does not appear to have been any changes made to the existing 'one size fits all' compliance approach.

In addition, despite the move to a streamlined approach at a Federal level, providers remain concerned about the overlap between State and Federal obligations. Further, the Department of Social Services is responsible for the Aged Care Complaints Scheme; however, there are also State and Territory agencies that potentially have overlapping jurisdiction for aged care complaints. For example, the Health Care Complaints Commission in NSW, the Health Services Commissioner in Victoria and the Health Quality and Complaints Commission in Queensland are all responsible for managing complaints relating to providers of health services, and which could overlap with the national Aged Care Complaints Scheme.

Proposed Solution

- While welcoming the recent streamlining of approach at a Federal level, providers believe that accreditations and inspections need to move from a 'one size fits all' (e.g. each facility gets an unannounced inspection every year regardless of the quality of their organisation and their past record) to a best practice/certification process (wherein 'quality-assured' providers do not need to be checked as regularly). This approach would focus efforts (and funds) on the homes that are most likely to benefit from the process, while resulting in significant cost savings for government and providers.

- Residential Aged Care providers believe that a review of the interaction between and the roles of the various State agencies and the Department of Social Services in relation to aged care is needed. This would be undertaken with a view to potentially being able to consolidate/streamline some of the approaches to deliver a more holistic approach to regulation of aged care across State jurisdictions.

Cost Impact	**Medium**	**Urgency**	**Short Term**

5. FBT LEGISLATION

Issue

The Fringe Benefits Tax was first introduced in 1986 and is levied on non-cash benefits that an employer provides in respect of employment. At a principle level, the legislation is designed to ensure that neither employers nor employees are advantaged unfairly through the provision of non-cash benefits as opposed to cash benefits. The onus for both calculation and payment of the tax resides with the employer rather than the employee.

Since 1986 there has been a raft of legislation and case law to the extent that FBT now forms one of the most complex tax categories and is one that is hugely onerous for employers.

Background

In recent years successive Federal governments have focussed on amendments to the FBT legislation that primarily seeks to tighten definitions or remove areas of perceived abuse for specific benefit types.

Despite this, FBT remains a hugely complex area that requires high levels of tax specialisation in order to fully comply. The sheer range of potential benefits that exist where data needs to be first collected and then analysed is extraordinary.

The increasing complexity and onerous collection requirements has led to a situation where there is a very poor cost to benefit ratio in terms of the effort required for employers to submit the FBT return (cost) versus the actual tax collected (benefit to Federal Government). In the vast majority of cases this is likely to be a significantly worse cost/benefit ratio for the Australian economy when compared with the other major tax categories (GST, Income tax etc.).

One of the drivers for the poor cost/benefit ratio is the amount of effort to collect and analyse volumes of data for the significant majority of 'lower paid' employees who typically receive very few benefits. In these cases, despite lengthy data collection procedures, the end result may well be nil or marginal tax paid as the employees will be under or close to the exemption for minor and infrequent benefit thresholds (currently $300). Changing the threshold may have some impact on the workload, however it is not absolute as employers will still ultimately collect and analyse data for all its employees regardless of the tax paid.

While Federal Governments have attempted to make FBT fairer at the detailed benefit level, it appears that the larger question as to whether there is a fundamentally simpler way of collection and/or whether upholding the principles of FBT is actually worth the pain is not raised.

Proposed Solution

Within most western economies a tax mechanism is in place to ensure that most non-cash benefits are taxed at least to some degree. However, in many countries the onus exists on the employee to declare the benefits rather than the employer. This model has the significant advantage of completely removing the burden on Australian industry while still ensuring non-cash benefits are appropriately taxed. If this change was implemented, to ensure that individual employees are not 'dis-advantaged, consideration could be given to a re-alignment between personal and company tax rates.

These are obviously complex areas that go to the heart of the tax system and it is therefore recommended that federal government explore overseas taxation models to determine what may be a suitable and more efficient option for adoption within Australia.

Cost Impact	**High**	**Urgency**	**Medium Term**

6. WIDER USE OF TAX FILE NUMBERS BY SHARE REGISTRIES

Issue

Legislative impediments to the use of tax file numbers ('TFNs') by share registries should be removed to help reunite shareholders with their lost holdings.

Background

The Super Stream reforms have promoted the use of TFNs to locate and consolidate multiple superannuation accounts. Allowing the use of TFNs as a primary locator of member accounts is considered to be a key measure by which superannuation funds can achieve processing efficiencies and cost savings for their members.

Share registries could achieve similar types of benefits for issuer clients and their shareholders if they were able to use TFNs in order to help reunite shareholders with their lost holdings. However, legislative mechanisms that limit the permitted uses of TFNs have prevented share registries from utilising them as a primary identifier for this purpose. Instead, registries need to rely on a combination of other pieces of information to locate lost holdings for issuers and their members, including name, address, and security registration numbers ('SRNs'), which are used to identify holdings on issuer sponsored registers.

Historically, SRNs have not been particularly useful as primary identifiers for lost holdings, because in most cases where shares have been lost, so too have the associated SRNs. Unlike TFNs, SRNs are more likely to be lost, forgotten or overlooked because they are used almost exclusively by share registries – whereas TFNs are used by individuals for broader purposes, and may be collected by a range of government and private organisations to help administer the taxation system.

We believe reuniting shareholders with their lost holdings and other unclaimed payments (like dividends) can be significantly improved by giving investors the option to use TFNs to search the relevant registries. This is because share registries maintain, on their systems, a considerable number of TFNs that were originally quoted to them by investors who wished to avoid the deduction of resident withholding tax from unfranked dividends. Share registries (as agents for their issuer clients) should therefore be permitted to use the TFNs that they maintain to match TFNs provided by individuals who are searching for their lost holdings.

Proposed Solution

The use of TFNs in this manner could be authorised under Corporations legislation so that they can be used to reunite investors with lost shareholdings (in much the same way that it is authorised for superannuation funds under superannuation law).

Share registries could then facilitate the operation of an internet search facility with the functionality to enable shareholders to securely submit their TFNs. Provision of TFNs would be entirely optional for shareholders, though it would increase the chances of identifying their lost shares and other unclaimed payments and distributions.

Registries would need to ensure that no individuals would have access to or be able to view TFNs at any stage. Registries would also need to apply encryption techniques as appropriate to ensure the security of TFNs.

Note, even if a TFN match was to occur, the individual would still need to supply other identifiers to satisfy the registry's security validation procedures before receiving any information about the holding in question.

The potential cost savings are difficult to quantify. In general terms, the benefits of TFNs being used for this purpose are that:

- companies will not incur the ongoing expense of maintaining records of lost shareholders on their registers;

- small investors can more efficiently and effectively trace tens of millions of dollars in unclaimed dividends and hundreds of millions of dollars in lost shares. A large source of these lost or unclaimed shares and payments can be traced back to shares issued in the demutualisation of Australian companies since the mid-1980s; and

- lost shares and dividends, once found, can be realised by investors and reinvested back into financial markets and the Australian economy more broadly.

Cost Impact	Medium	Urgency	Short Term

7. MANDATORY DATA BREACH NOTIFICATION BILL

We are aware that there is another potential regulatory burden in relation to the Mandatory Data Breach Notification Bill being reintroduced into the Federal Parliament by the Opposition.

If passed, the Bill will amend the *Privacy Act 1988* (Cth) and impose a mandatory data breach obligation on organisations to notify affected individuals and the Privacy Commissioner where serious data breaches occur. We consider this reporting obligation to be an example of regulatory overload and we expect it will create onerous monitoring and compliance burdens for businesses across Australia. Accordingly, we do not support the proposed legislation. We contend that the existing voluntary reporting regime is sufficient, particularly given the more exacting compliance regime and harsher penalties that organisations face as a result of the recent privacy law amendments.

Cost Impact	Medium to High	Urgency	Immediate

As this regulation has not yet been introduced we have not included it in our Executive Summary. We are also aware that the Government has previously expressed reservations on this issue.