A PLAN FOR DEREGULATION

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Prepared by
GOVERNMENT AFFAIRS & PUBLIC POLICY

nab

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Executive Summary

"We will cut red tape – there will be a bonfire of the regulations."
The Hon. Tony Abbott MP, 26 March 2013

National Australia Bank (NAB) welcomes the opportunity to contribute to the Federal Government's deregulation initiative.

NAB is a financial services organisation employing over 42,000 people and operating more than 1800 stores and business banking centres globally. Our major financial services franchises are in Australia with international businesses in New Zealand (NZ), Asia, the United Kingdom (UK) and the United States (US).

NAB plays an important role in the national economy, particularly through lending to individuals and businesses as they seek to create jobs and generate wealth. Millions of Australians benefit from NAB's profits through the receipt of dividends as shareholders, or through their superannuation fund. In the 2013 financial year, NAB paid out more than $4 billion in dividends, representing payments to over 500,000 retail shareholders and approximately 12 million Australians whose superannuation funds hold NAB stock.

NAB's response to the Government's deregulation initiative is guided by two principles: improving the customer experience and enhancing shareholder wealth. Further, in compiling this document NAB has had regard for the five principles of deregulation (listed below) outlined by Parliamentary Secretary, the Hon Josh Frydenberg MP in his speech to *The Sydney Institute* on 28 October 2013:

1. Reduce the volume of regulation
2. Eliminate extensive duplication and regulatory overlap
3. Improve the quality of consultation
4. Ensure rigorous and mandatory post implementation reviews
5. Ensure regulators are transparent, accountable and efficient

In particular, NAB has identified areas where the cost and compliance requirements of specific existing regulations outweigh their benefits to the industry or consumers and where there is regulatory duplication or overlap. NAB is mindful of our external commitments to customers and community partners and has not sought to move against regulation to the detriment of the customer experience; rather NAB contends that smarter, better targeted regulation can act in service to customers.

In addition to providing information responding to the Government's five principles, NAB has detailed additional information in the following three areas:

- Inhibitors to the emerging digital economy
- Lack of clarity in existing regulation
- Lack of national consistency – items for consideration by COAG

Where possible or applicable, a numerical measure of the potential time or cost of meeting a current regulatory requirement has been provided. The growth in regulation impacting NAB's wealth management business, MLC, has been particularly pronounced. This document details the regulatory reporting requirements under *Stronger Super* and related programmes, a more detailed submission and representations on this matter have been made to the Government. NAB notes with broad approval the recent announcements the Federal Government has made with respect to refining the Future of Financial Advice (FOFA) requirements.

NAB has a long history of putting the customer at the centre of everything we do. Since 2009, through our *Fair Value* agenda, NAB has made a number of changes to products aimed at ensuring a fair exchange of value exists with its customers. These include being the first bank to remove dishonour fees on personal transaction accounts and abolishing monthly account-keeping fees on our most popular everyday transaction account. NAB's wealth business was also the first wealth manager to remove volume related bonuses in 2004 and in 2006, MLC was the first Australian wealth manager to move away from commission based remuneration for financial advisers in favour of a fee-for-advice model.

NAB seeks to further improve the customer experience through working with the Government to support these deregulation measures.

Benefits of Regulation

NAB supports a strong and competitive banking system. A well regulated sector has the benefits of attracting capital, preserving the safety of deposits and underpinning the judgement of consumers.

Regulation plays an important role in the financial system and helps ensure the key foundations of the system are upheld – such as stability, market integrity, competition and consumer protection. Australia's strong regulatory framework, assisted by prudent and conservative management practices, enabled the banking sector to avoid the problems experienced by many northern hemisphere financial institutions during the global financial crisis (GFC).

Importantly, regulation assists with market efficiency and transparency, such as information asymmetry – where all relevant information is not known by interested parties, here, regulations requiring continuous disclosure of all materially relevant information to the market in a timely manner, provide a solution. The release of this information ensures current or potential investors can make informed investment decisions.

Regulation can also help protect consumers from market failures and better align incentives. The Australian Competition & Consumer Commission (ACCC) is an independent statutory body whose role is to enforce the competition and consumer laws, it can rule the conduct of private firms as anti-competitive or harmful to consumers and seeks to promote competition across the economy. The right regulation can help encourage competition in a market-based economy which in turn can benefit consumers through lower prices and a wider array of choice. Importantly, the benefits of regulation should always be weighed against its costs to ensure the costs are, at the very least, no higher than the benefits.

A Model for Financial Regulation

"There's no such thing as the 'confidence policy lever'.. all the more reason then, to make sure that the accretion of regulatory actions being undertaken does not.. make it harder for business to plan with confidence, to achieve better cost and productivity performance to take a chance on a new product, a new investment or new worker…"

RBA Governor Glenn Stevens, 30 July 2013

Reviews of regulation are best done against independent frameworks which contain clear objectives. The combination of risk and uncertainty need to be accounted for in proper measure without interfering with otherwise acceptable market functions and modalities. Risk or the possibility of loss cannot be entirely eliminated by regulation and well intentioned attempts to do so can result in adverse outcomes.

With respect to financial services, the 2010 Organisation for Economic Co-operation and Development (OECD) *Policy Framework for effective and efficient financial regulation* provides an instructive guide for the sector. The OECD contends that financial regulation:

"can set out, in clear pre-determined fashion, certain outcomes for participants in the financial system (e.g. special rights for policyholders in an insolvency), or can seek to influence the behavior and actions of participants through compulsion, the alignment of risks and the incentives, and the establishment of governmental expectations (e.g. prudential regulation)." [1]

Further, the OECD framework identifies a four step high-level checklist aimed at optimising regulatory outcomes.

1. Analyse the current financial landscape, extent of transparency and assess the current levels of surveillance and analysis, particularly to address issues of market failure.
2. Establish the case for policy intervention, identifying policy objectives and determining who will be held accountable for those objectives.
3. The right policy instrument needs to be chosen to meet the objective. Important principles to consider are whether the regulation is risk-based, does it promote sound incentives, is it comprehensive, can it be applied consistently and how it interacts with international regulation.
4. The policy needs to be carefully designed, implemented appropriately and a structure for periodic review established.

Frameworks such as these provide a means of evaluating outcomes and provide a discipline that might otherwise be absent. Further, having the benefit of an independent checklist, militates against 'regulatory overshot' or the risk that heavy regulation may lead to additional administrative burdens, barriers to economies of scale, scope or innovation. Situations where regulation reduces or limits innovation that would otherwise improve the functioning of the economy are particularly problematic.

[1] *2010 OECD Policy Framework for Effective and Efficient Financial Regulation: General Guidance & High-Level Checklist, p20.*

Responding to Regulatory Change

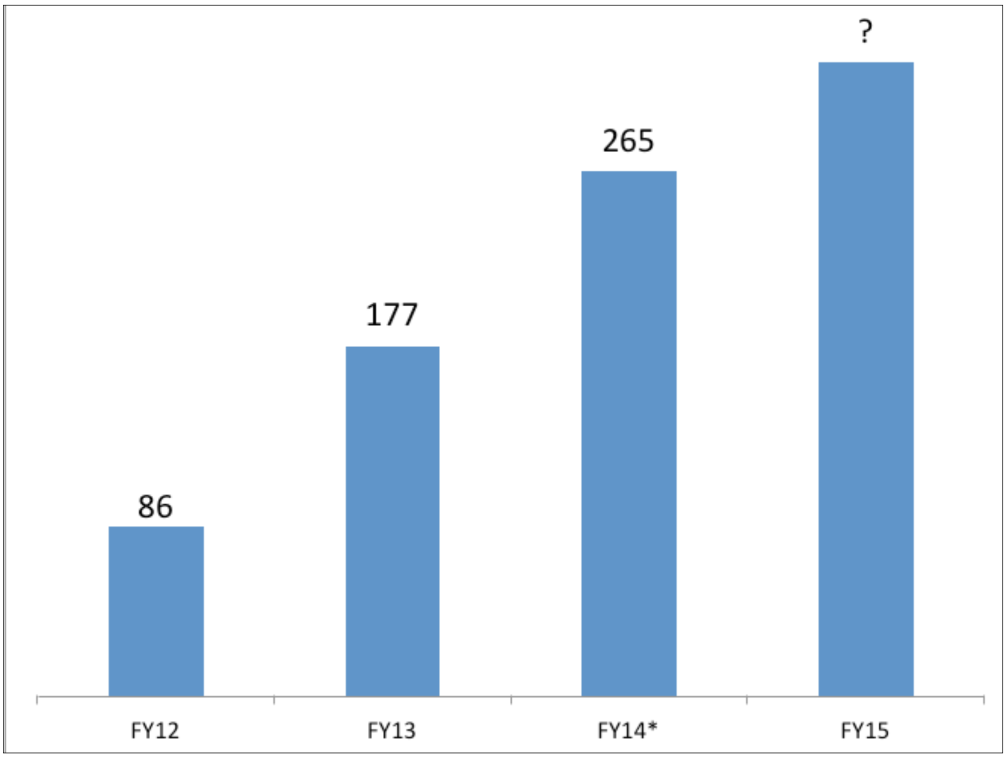
Since the GFC, NAB has encountered a significant increase in the volume and scope of regulatory obligations as noted by NAB Chairman Michael Chaney in December 2013 at the NAB Annual General Meeting:

"The last five years have seen an explosion of new regulation in the financial services industry with a resulting rise in the cost of compliance. We welcome the new Australian Government's announced three-year moratorium on significant new regulation. Any new regulation must take into account the potential impact on Australian banks' ability to be competitive in a global market."

NAB recognises the importance of ensuring a balance between imposing additional regulations on banks and providing protection for consumers. However, it is concerned that the pace and scope of regulatory change across the industry presents a risk of some reforms delivering unintended consequences to the detriment of market participants, including customers and shareholders.

In recent times, NAB's Australian project costs associated with meeting regulatory and compliance obligations, as measured by our spending on compliance/operational risk, have increased markedly from $86 million in financial year 2012 to $177 million in 2013 and are estimated to be $265 million in 2014.[2] The large increase in 2014 can in part be attributed to a larger number of wealth-related projects, associated with the *Stronger Super* reforms. NAB's spending across the Group on compliance/operational risk in FY13 was $240 million, which includes costs from offshore operations in the UK, NZ and the US. Continued growth in costs of this scale is not sustainable, more broadly the question of opportunity costs associated with this regulatory spending versus other productive investments (e.g. innovation, technology and continuous improvement to improve the customer experience and international competitiveness), looms large.

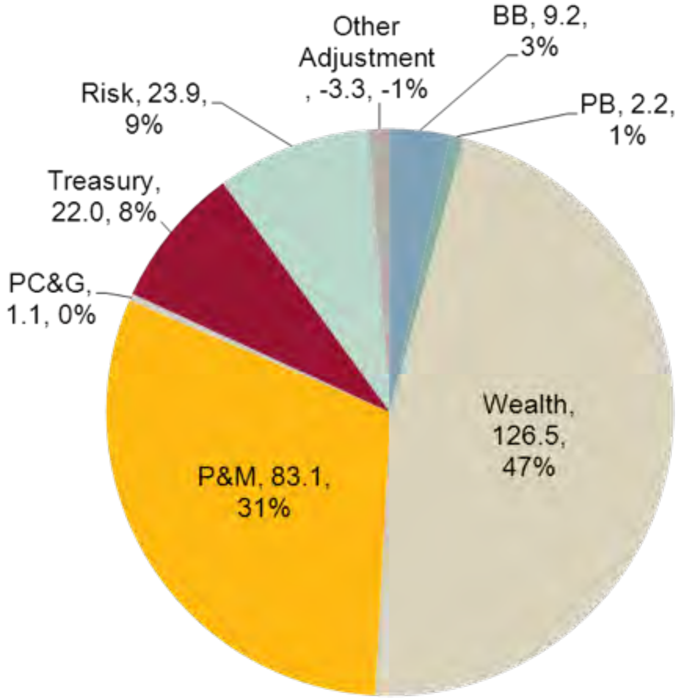
FY12-14 NAB REGULATORY SPEND IN AUSTRALIA ($M)



* FY14 figure is the best current estimate

[2] *NAB's current best estimate for FY14 Australian project costs*

FY14 REGULATORY SPEND BY NAB FUNCTIONAL AREAS IN AUSTRALIA ($M)



P&M = Product & Markets
PB = Personal Banking
BB = Business Banking
Wealth = NAB Wealth
PC&G = People, Communications & Governance

A portion of these regulatory and compliance costs are due to obligations originating offshore, underscoring the importance of assessing domestic impacts before global frameworks are accepted by Australian authorities. While the proponents of global frameworks cite the benefits of international homogony, in recent times there have been instances where the virtues of global consistency have given way to fragmentation by member states, leading to a balkanisation effect.

Assessing and complying with regulatory obligations requires significant investments of time. The Board and senior management teams are required to make extensive time commitments to matters relating to compliance and regulatory obligations; this necessarily crowds out more productive and strategic pursuits.

This is particularly the case for the growing burden of obligations on non-executive directors (NEDs) of financial services companies; the demarcation between traditional management and board responsibilities is progressively less distinct due to the increasing expectations regulators have of NEDs. There is a view that these growing obligations and expectations could act as a disincentive for people to make themselves available for directorships and the wider benefits of the independence of the NED model will be diluted.

Complying with regulation also impacts the bank's day-to-day operations. Adhering to new regulation will often require changes to NAB's information technology systems which are typically time intensive. In order to minimise disruptions to customers and maintain a consistent supply of financial services in the market at any one time, NAB's technology systems are only able to be reliably opened on a certain number of times a year in order to make business changes and variations necessitated by regulation, with adjustments best made during these windows of opportunity

This means even relatively minor changes take time to be implemented and cannot be done at the "flick of a switch". The wide variation of start dates for complying with different regulation can prove challenging in light of these logistical constraints; this IT challenge is not unique to NAB.

Recommendation 1

The Government should consider designating a predetermined number of dates each year for the purposes of commencement and compliance with all major regulatory initiatives. A 2006 Business Council of Australia proposal for all legislation to only come into effect on one or two possible dates each year should be revisited with a view to adoption, either across the economy or at an industry level.

Growth in regulation has a cumulative impact which can be greater than the sum of the constituent parts, often due to overlap and duplication of regulation. Consideration of prospective regulation in isolation without reference to existing regulation can add to this cumulative burden. It is important that any regulation is considered within the wider context of reform and existing obligations as well as an understanding of the compliance effort and required timeframes to make changes.

The Government's Five Deregulation Principles

1. REGULATORY VOLUME

"Onerous disclosure requirements can have the perverse effect of almost certainly ensuring the customer will not read the document,"
Dr Rodney Maddock, Red tape in finance and its discontents,
CEDA Economic and Political Overview 2014, p48.

1a) Variations to substantial share holdings – Corporations Act (Part 6C.1)

The substantial holding provisions in the Corporations Act ("Act") require disclosure by persons that have a substantial holding in a listed entity: 671B. A person is deemed to have a substantial holding in a listed entity if they, together with their associates, have a relevant interest in 5% or more of a listed entity. Accordingly, a substantial holder must disclose their holding to the ASX within two business days of becoming aware of the information and subsequently when there has been a change of 1% or more in their holding. Mostly, the ownership is held on behalf of NAB clients or customers through our custodian or wealth management subsidiaries.

There have been recent changes by ASIC to their interpretation of the rules regarding substantial shareholding notices. In June last year, ASIC released updated and consolidated guidance in respect of substantial holding notices (ASIC Regulatory Guide 5 – *Relevant interests and substantial holding notices ("RG5")*). RG5 requires NAB and other listed entities to provide a far greater level of detail in disclosure, including the listing individual trades, with little, if any appreciable upside for any party. This granular, transactional level data creates a significant administrative and cost burden in producing the notices for little market or regulatory benefit.

In most cases the requirement has resulted in NAB preparing voluminous data and submitting notices up to 100+ pages from the previous average of 15-20 pages. Minor variations in share holdings and routine trading activity now trigger a significant compliance burden. This level of detail and associated cost goes beyond what is reasonable and proportionate to ensure market integrity and informed trading. NAB is particularly impacted by RG5 due to its asset servicing business[3] which routinely holds shares under custody on behalf of clients. Along with NAB Wealth's 'manager-of-mangers model' (involving in excess of 70 fund managers), the nature of NAB's business[4] gives rise to numerous relevant interests which requires the inclusion of significant data in NAB's substantial shareholding notices in order to comply with requirement RG5.

This recent development could lead to a reassessment by current Australian market providers of their future involvement in the custody business. NAB questions the value of being required to provide such granular data which requires approximately 6560 hours of management time to produce each year. NAB does not believe an appropriate balance is being achieved between an informed market and level of disclosure. Direct costs for this change are incurred for the preparation of notices and unquantifiable indirect costs for improving internal systems to produce the level of granularity required in the reporting process. Removing this additional burden would require changes to the ASIC guidance contained in Regulatory Guide (RG5).

Recommendation 2

NAB recommends the government incorporate this item in its deregulation agenda and start an immediate dialogue with ASIC urging an alternative approach to Regulatory Guide 5.

[3]NAB Asset Servicing holds $567 billion in assets under custody for Australian investors. It provides custody, master custody, investment administration and other related services to a range of locally and internationally domiciled clients. These include government agencies, investment managers, superannuation funds, insurance companies and banks.

[4]NAB's Securities Lending business engages in a Principal program structure, whereby underlying lenders lend stock to NAB and then NAB on-lends as principal to third party borrowers. This is different to other major custodian lenders in Australia, who are predominantly agent lenders.

1b) Financial and prudential reporting

"The cost of data and information collection must be carefully considered, and weighted against expected benefits."[5]
2010 OECD framework.

The 2006 Taskforce on *Rethinking Regulation* by Productivity Commission Chairman Gary Banks, said stakeholders had "consistently queried the need for the current level of information provided to government agencies" and "suggested that APRA and ASIC may not be able to assess all the data and reports currently required".[6] The substantive growth in information and reporting requirements in recent years would suggest the original concerns of the Productivity Commission persist, particularly how regulators are able to meaningfully utilise all information provided to them.

NAB accords a high premium in providing timely and accurate data noting the importance of regulators receiving such information from supervised entities. The benefits in providing this information should be carefully weighed against its need and the considerable preparation time required. The frequency, timeframes and content required in all reports should be regularly evaluated to ensure they remain relevant and the information continues to be required. Requests for new or additional information should at least be offset by the removal of requirements considered redundant.

Inconsistency and duplication should also be minimised in respect to reporting requirements. One example of duplication is the requirement to provide financial information to regulators in different formats than what is required by statutory remittances, essentially requiring the reproduction of publicly available information. While some differences between statutory and regulatory reporting requirements are understandable, greater standardisation in definitions and information would assist reducing duplication.

NAB devotes significant time and resources to meeting its financial and prudential reporting requirements. In 2012, NAB submitted 3,150 external reports (149 public and 3,001 non-public reports) totalling 80,000 pages at a cost of approximately $50 million. For perspective, 80,000 pages in a stack would be 10m high and only 5 per cent of these pages are released publicly, with regulatory reports making up the majority of information. Both the time required and cost of providing this information has expanded in recent years.

APRA Reporting Forms (ARF) 320.0, 330.0, 330.1, 330.2, 330.3 all pertain to quarterly financial statements. They are invariably consistent with the profit & loss disclosures made at our half and full year financial results. Greater alignment of these financial returns with our statutory requirements would reduce duplication. NAB estimates these ARFs take over 200 hours per month to prepare totalling 1536 hours annually (see Appendix A).

Recommendation 3

NAB encourages the Government to commence initiatives aimed at streamlining the remittances of reports relating to quarterly financial statements. Further, a regular reassessment of the regulator's requirement for market data should take place and protocols adopted following industry consultation.

1c) APRA reporting and look-through design

Under ss13(4A) and (4B) of the *Financial Sector (Collection of Data) Act 2001* (FSCOD), any registrable superannuation entity (RSE) licensee related to the issuer of an underlying investment structure is subject to look-through reporting to the Australian Prudential Regulatory Authority (APRA).

Section 13(4B) of FSCOD, which relies on the concepts of "related body corporate" and "awareness", requires notices and disclosures to go through the investment structure, which is sometimes quite complex depending on how the RSE's or related body corporate's investment options have been structured. In such a structure, look through stops when the last associated entity in the structure sends a notice to an external non-associated entity.

In contrast, RSE licensees who are not related to the provider of an underlying investment vehicle do not need to send notices to managers external to that structure, because it is the underlying investment vehicle itself that is the first non-associated entity to the unrelated RSE licensee. As a result where the RSE licensee happens to be related to the provider of an underlying investment vehicle, look-through is required to go further down than when the RSE licensee is not related to the underlying investment vehicle.

This disadvantages corporate structures where the investment vehicle is related to the RSE licensee in that an additional layer of notices and disclosures are necessary along with the processes, systems and resources that are required to administer that additional layer.

[5] *2010 OECD Policy Framework for Effective and Efficient Financial Regulation: General Guidance & High-Level Checklist, p11.*

[6] *Regulation Taskforce 2006 p96, Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, Canberra, January.*

Conversely, it is arguable that there is less transparency for members of an RSE where the RSE licensee is not related to the provider of the underlying investment vehicle because of the limited look- through.

Recommendation 4

Unless all providers are required by the law to provide the same data, sections 13(4A) and (4B) of the *Financial Sector (Collection of Data) Act 2001* should be repealed.

Currently there are situations where information needs to be produced solely for the purposes of meeting a remittance requirement. There should always be clear and tangible benefits for regulators when requesting information which bears no direct relation to customers and shareholders. Regulators should not adopt a default position that requires the remittance of certain information and data without regular assessments – obligations should not exist in perpetuity.

In 2011, APRA launched a Data Collection Review to assess the data and reporting requirements of Authorised Deposit-taking institutions (ADIs). Since its inception APRA have repealed only four regular submissions and have introduced (or are in the process of introducing) four new regular submissions. The review has made slow progress to date and NAB understands APRA, together with the Reserve Bank of Australia (RBA) and Australian Bureau of Statistics (ABS), are due to commence consultations on this matter. While APRA's role in collecting data on behalf of other agencies, notably the ABS and RBA, can add complexity to the review process, NAB encourages all agencies to efficiently work together and accord a high priority to this review.

Recommendation 5

NAB urges the Data Collection Review to deliver clear and tangible recommendations in assessing current reporting requirements. In line with recommendation 5.11a of the 2006 Banks Taskforce, the government should have a visible presence in the review process.[7] Regulators should be given clear direction of the Government's deregulation objectives and report accordingly.

NAB recommends the following reports form part of a future review:

I. **APRA Reporting Form (ARF) 324 - Domestic Housing and Lending.** This report was introduced in April 2009. It has been lodged monthly since then but no queries from APRA have been received on the report since late 2009. It continues to be lodged via excel, outside of the normal returns process of submission via the electronic data submission system D2A (Direct to APRA). We are unsure if this information is still required or utilised by APRA or other agencies so clarification on its status or a reduction in reporting frequency should be considered. NAB estimates this form takes 21 hours per month to prepare totalling 255 hours annually.

II. **APRA Reporting Forms (ARF) 390s series (consisting of ARF 391 Commercial Finance Return; ARF 392 Housing Finance Return; ARF 393 Lease Finance Return; ARF 394 Personal Finance Return).** These four reports are prepared monthly and must be lodged by Business Day (BD) 10, the shortest lodgement period. Preparation is onerous due to the high level of granularity required – 32 forms per month across the four reports with a large number of reporting elements in each form. NAB estimates this series of reports takes approx. 250 hours per month to prepare totalling 2912 hours annually (see Appendix A).

Recommendation 6

The frequency of submission, required detail, submission method and lodgement date for APRA Reporting Forms 324 and the 390s series should be re-assessed against the principles and objectives of the Government's deregulation programme.[8]

1d) Taxation – Global Common Reporting Standards

The OECD, at the request of the G20, has proposed a common reporting standard for the automatic exchange of tax and financial account information between G20 nations. The standards are based on the US Financial Account Tax Compliance Act (FACTA) which comes into effect on 1 July 2014. The global common reporting standards will require financial institutions to identify the tax residency of all customers and produce relevant reports to tax authorities on those accounts.

[7] Recommendation 5.11a said: "The Australian Government, in consultation with the relevant agencies and industry stakeholders, should review the data collection and regulatory reporting obligations imposed on regulated entities to ensure the information obtained is essential for supervision and other economic functions. There should be a particular focus on eliminating overlaps in information provided to the regulators."

[8] We understand the 390 reports are used by the ABS for publication of monthly releases so they may prefer the reporting periods remain monthly but more time to prepare the reports would be beneficial.

NAB is supportive of global initiatives for providing greater tax transparency. However, we strongly encourage the government to consider the views of industry in determining when the requirements should be implemented. The current timeline of the standards commencing from 2016 is extremely problematic and for NAB, meeting the requirements by 2016 would require the upgrading of existing systems at an initial estimated cost of $100 million. Extending the implementation date to 2018 would significantly lower this cost by reducing the need to extensively modify legacy systems as a tactical solution to meet this compliance date.

Recommendation 7

NAB recommends extending the implementation date for this reform to 2018 and strongly encourages the government to consult widely with industry on implementation costs ahead of the flagged implementation plan announcement for the reforms at the G20 Finance Ministers and Central Bank Governors meeting in Cairns in September 2014. [9]

1e) Reporting requirements under *Stronger Super*

These and other issues relating to *Stronger Super* have been detailed in MLC's submission to the Government's Discussion Paper, *Better regulation and governance, enhanced transparency and improved competition in superannuation.* The proposed regulatory reporting requirements under *Stronger Super* are discussed below.

These requirements are extensive with significant duplication across different reporting forms including those required by APRA. Analysis by MLC, indicates there are 1,295 unique data attributes required across 35 new APRA reporting forms. MLC has found that of these attributes, over 300 are required in two or more of the reporting forms. Minimising duplication across these forms could reduce the regulatory reporting burden of gathering and publishing data by as much as 10 per cent. It should be noted that in some instances trustees have approved the use of fund members' money to meet these new compliance costs.

Many APRA Superannuation Reporting Standards (SRS) reports are currently required at a Choice or Select Choice Investment option level. This results in NAB having to submit over 1,500 reports annually at a significant upfront implementation and ongoing BAU cost.

An example of duplication is *APRA SRF330.0 Statement of Financial Performance* which requires reporting of contribution types. Much of this data is already provided to the ATO and is currently not recorded within the timeframes required for APRA quarterly reporting requirements.

SRS710.0 requires reporting of conditions of release for both lump sum benefit payments and pension benefit accounts opened. Conditions of Release are broken down into 15 categories and it is questionable what value this granularity will provide compared to the cost to uplift business processes and systems to capture the required data.

A further example of duplication is the requirement for *APRA Report SRS 160.0 Defined Benefit Matters and SRS 160.1 Defined Benefit Member Flows.* NAB already sends APRA Financial Position Updates and Quarterly Finance and Audit Committee updates. In addition these obligations require reporting at a registrable superannuation entity aggregated level and then at a sub fund level which duplicates reporting and results in excessive reporting volume.

Recommendation 8

NAB recommends that reporting form SRF 701.0 Product Dashboard (Choice Products) should not be pursued. The government is also encouraged to discuss with APRA the phase out of SRF 330.1, 533.0, 702.0 and 703.0 noting their negligible contribution to improving fund member outcomes.

Recommendation 9

NAB recommends that SRS710.0 should be limited only to reporting either lump sum benefit payments by conditions of release or by pension benefit accounts opened. The Conditions of Release categories should be removed or simplified to only include those that are currently reported. NAB further recommends that SRS 160 and 160.1 should be reported at a registrable superannuation entity level only.

[9] The Communique from Sydney Meeting of Finance Ministers and Central Bank Governors, 22-23 February 2013-14 said: "We endorse the Common Reporting Standard for automatic exchange of tax information on a reciprocal basis and will work with all relevant parties, including our financial institutions, to detail our implementation plan at our September meeting. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call for the early adoption of the standard by those jurisdictions that are able to do so. We call on all financial centres to match our commitments."

Meeting requirements for off sale/discontinued products

Significant investment is required to modify legacy systems which manage closed or off sale products and there is little rationale to invest money in these systems other than to meet APRA reporting requirements. The costs to upgrade these systems could lead to upward pressure on member fees and NAB believes the addition of these costs will not be accompanied by a commensurate benefit for members. For MLC's two flagship registrable superannuation entities, there are two core systems which hold 95 per cent of investments assets (representing approximately 85 per cent of membership). Four other systems hold the remaining five per cent of investment assets which are for products no longer available for sale. The work required to make the four off sale product systems compliant is much greater due to their age and existing data gaps. It is estimated it will cost more than $5 million to make these systems fully compliant for reporting purposes.

Recommendation 10

NAB recommends the government move to exempt closed/off sale products from regulatory reporting requirements, or alternatively providing an exemption for those being migrated to newer versions. For non-exempted products, consideration should be given to allowing reporting on a 'reasonable estimation' basis rather than extracting actual data.

2. DUPLICATIVE REQUIREMENTS

Duplication is a key source of inefficiency for private enterprise and something which firms seek to minimise or eliminate. For financial regulation, duplication can exist where there are requirements to provide the same or similar information to different parties or, alternatively, information on multiple occasions.

Overlapping regulatory reporting adds to costs, for example, the ATO requires APRA regulated superannuation funds' member account and contribution details, and unclaimed monies, information APRA currently requests in a summarised form. A variety of agencies (ATO, APRA, ASIC, Centrelink) are requiring member account and transaction information. There is an obvious benefit in a more coordinated approach from government agencies in soliciting data from market participants.

Another example of providing similar information on multiple occasions is the process by which large Australian companies submit annual company income tax returns.

2a) Annual Company Income Tax Returns

Companies provide the ATO with information on a monthly and quarterly basis thereby providing the ATO with a clear understanding of a company's tax profile, expected tax payments and taxable income throughout the year. In addition, from 1 Jan 2014, large public companies are required to pay tax monthly under changes introduced by the previous government, giving the ATO further insight into the expected annual taxable income of a company. The benefits of submitting an annual tax return are now largely historical, dating back to when the only tax information the ATO received from large listed corporations was their annual return. NAB's annual tax return currently takes approximately 1000 hours to prepare and runs to 360 pages.

Recommendation 11

The ATO should consider rationalising the current annual return process by only requiring the inclusion of information not previously submitted in other forms throughout the year. [10]

2b) SuperStream – eContributions

The second phase of the SuperStream policy, which is focused on standardising and automating contribution flows from employers to funds, known as e-Contributions, is an area of major concern for the wealth industry. Despite a welcome and recently revised transition timeframe proposed by the ATO with a revised start date of 1 October 2014, there remains significant issues for resolution. These include: the capacity to cater for existing investments in electronic portals (bridging systems); and an ability to adopt phased induction processes between funds and their employer clients.

[10] *These could include public companies providing: a detailed profit & loss account which has been subject to external audit; a schedule of reconciling items from the detailed profit & loss account to the final taxable income and the ATO accessing other schedules such as depreciation on request.*

While e-Rollovers (the first phase of SuperStream) replaced a largely paper-based system between funds (bilateral engagement), e-Contributions requires multilateral connections across a range of participants. Importantly, there are already existing electronic contributions frameworks in place between many employers and superannuation funds which deliver significant efficiency benefits. Regulation now proposes that these existing well-functioning bridging solutions are required to be adapted to include additional data fields and be mapped to the new standards causing increased cost for employers and funds. As part of eContributions, these existing electronic contribution frameworks are required to cease use in 2017, so there is no case for reinvesting in existing solutions now.

NAB believes that with large sections of the industry already receiving contributions electronically (especially from large employers), future adherence to the current proposed ATO standards and timing may limit further productivity benefits being realised and amount to duplication. A more flexible approach with staged transition to 2017 will assist all industry participants – including funds, employers and software and payroll providers – in providing a better service to members and delivering further efficiencies.   A more detailed representation on this matter has been provided to Treasury and the Government.

Recommendation 12

NAB encourages the government to delay the commencement of the e-Contributions start date by one year, with leeway for an extension and adopt a transition process which recognises existing capabilities during the transition period to 1 July 2017. This will allow more time for industry to develop cost effective plans and avoid the need to adopt higher priced interim solutions to meet the current compliance deadline.

3. IMPROVING THE QUALITY OF CONSULTATION

"Regulation without consultation is like a shot in the dark".
Productivity Commissioner Chairman Gary Banks, 17 May 2006.[11]

NAB welcomes the government's approach to improve the consultation process between government and those affected by any new regulation. Consultation is an important part of the regulatory process as even the best intentioned and necessary piece of new regulation can usually be improved through consultation with key stakeholders.

Consultation must occur early enough for the feedback to be considered, along with preparedness for a range of alternative policy options to be assessed. It should also occur at the appropriate time and not continue too proximate to compliance.

A lack of effective consultation can significantly add to the cost of compliance by causing sunk costs. These can occur when revised guidance issued by regulators during the implementation phase renders initial work to achieve compliance as no longer applicable or relevant. If the revisions are significant enough they can require the development of a separate 'tactical' solution to meet a short-term deadline while a project team works on a more sustainable approach for longer-term compliance, both of these situations can lead to inefficient use of resources and increased costs.

The use of shorter term tactical solutions to meet compliance dates increases operational risk; often tactical solutions require inefficient manual processes before automation can be achieved incurring further costs. An example of this is the process of eRollovers as part of the *Stronger Super* compliance requirements (see above).

Another example which highlights the importance of consultation is the Australian Transaction Reports and Analysis Centre's (AUSTRAC) proposed reforms to the customer due diligence requirements under the Anti-Money Laundering/Counter-Terrorism Finance (AML/CTF) Rules. The proposed changes will have a significant impact on all areas of NAB requiring extensive changes to existing processes, procedures and systems.

While AUSTRAC undertook a lengthy consultation period and acknowledged a number of concerns in relation to the rules, the proposed implementation date of 1 June 2014 was only made known to the industry in late February this year. The industry had previously suggested that a two year (minimum) time frame would be required to effectively implement the proposed changes. A number of industry participants including NAB will be unable to comply with the new requirements within the timeframes and will be required to undertake a remediation program during AUSTRAC's proposed assisted compliance period (1 June 2014 - 31 December 2015). While NAB is aware of the challenges faced by AUSTRAC in relation to meeting international obligations under the Financial Action Task Force (FATF) Mutual Evaluation, due weight should be accorded to domestic challenges encountered by Australian companies.

This example of a very late nomination of a compliance date highlights the importance of any consultation process being wide-ranging and covering all relevant issues. Even the most extensive consultation process can be undone by the failure to detail and cover key information such as compliance dates.

[11] Gary Banks, *Reducing the regulatory burden: the way forward*, Inaugural Public Lecture, Monash Centre for Regulatory Studies, University Law Chambers, Melbourne, 17 May 2006, p12.

Recommendation 13

The Government should be involved in current dialogue between AUSTRAC and the industry with a view to removing the requirement to undertake a remediation program during the assisted compliance period.

4. RIGOROUS AND MANDATORY POST IMPLEMENTATION REVIEWS

"The quality, implementation, and impact of regulation should be assessed after a sufficient length of time has passed since its adoption. This assessment should evaluate whether the regulation achieved its specific objective(s), whether it did so in a cost-efficient manner, and whether the decision-making process could be improved."

2010 OECD framework. [12]

Regulation must remain relevant and appropriate with the passage of time. It should not be a case of 'set and forget' and requirements should be regularly assessed for ongoing relevance. This is particularly important for financial services which is a typically dynamic industry impacted by technological advancements, product innovation and changing consumer behaviours.

The use of post-implementation reviews (PIRs) or sunset clauses are excellent means to measure the ongoing appropriateness of regulation. If a regulation is no longer meeting its desired objective or indeed the objective itself is no longer relevant then a timely repeal should be considered. Consideration should be given to the timeliness of PIRs or sunset clauses; in some cases the impacts of regulation will be quickly apparent but, in other cases, the unintended consequences of regulation will only be revealed over time. A case-by-case approach to the timeliness of such reviews is encouraged, and could be canvassed as part of the initial consultation.

5. ENSURE REGULATORS ARE TRANSPARENT, ACCOUNTABLE AND EFFICIENT

The ceding of power and functions to industry regulators which have traditionally been the remit of the executive government has been a problematic trend of recent years. NAB would encourage the government to be alert to the consequences of this trend, including mission creep by regulators and the independent development of new policy, a function which properly sits in the realm of the Executive.

One way this can be prevented is by providing regulators with clear guidance on the aims and intent of legislation at the point of introduction. In 2006, Productivity Commission Chairman Gary Banks said "regulators needed clearer guidance about the policy intent behind regulation, including in enabling regulation".[13] The increase in the volume of regulation over the past five years means providing regulators with this guidance is now more important than ever.

It is also important all regulators work collaboratively when administering regulatory regimes. NAB's experience has been that during the course of discussions, one regulator may say it no longer requires a certain report or piece of information only for another regulator to say it still requires some or all of the same information. A collaborative approach among regulators is likely to deliver better results and NAB welcomes the government's instruction of the Productivity Commission to establish an auditing framework to assess the performance of regulatory authorities on deregulation measures. The importance of APRA and ASIC demonstrating a high level of cooperation and coordination to minimise compliance costs was detailed in the 2006 Banks Taskforce. The imperatives of such collaboration have only become more acute since that time.

Recommendation 14

Memorandums of Understanding (MOUs) between regulators should be reviewed annually and publicly available so industry participants can better understand how regulators are collaborating.

[12] 2010 OECD Policy Framework for Effective and Efficient Financial Regulation: General Guidance & High-Level Checklist, p32.

[13] Gary Banks, Reducing the regulatory burden: the way forward, Inaugural Public Lecture, Monash Centre for Regulatory Studies, University Law Chambers, Melbourne, 17 May 2006, p13.

Additional deregulation themes identified by NAB

6. INHIBITORS TO THE EMERGING DIGITAL ECONOMY

"(Australia must ensure) its innovation, competition and regulatory settings allow businesses to adopt new technologies and change business models quickly and allow governments to use digitisation to offer better and cheaper services."
BCA Action Plan for Enduring Prosperity: Summary Report, July 2013, p16.

The trend towards digital usage is one of the fundamental changes reshaping the financial services sector along with product innovation, competition and changing consumer preferences. Consumers are leading this trend with more than 50 per cent of logins to NAB internet banking in the 2013 December quarter occurring from mobile devices. Logins via mobile devices have also increased 49 per cent year-on-year to December 2013.

It is important that regulatory frameworks keep pace and are updated to reflect this change and how people choose to interact with financial service providers. Many requirements have been updated to reflect these changes such as the option to provide annual company reports online rather than via hard copy, based on the nominated preference of individual shareholders.

There remain some regulatory requirements which could benefit from being better attuned to digital operations, including the alignment of existing regulatory requirements for electronic communications.

The general move to electronic communication and transacting was recognised through the implementation of the *Electronic Transactions Act 1999* (Cth), together with its state-based equivalents. The stated objective of the Act is to implement a regulatory framework that, amongst other things, "recognises the importance of the information economy to the future economic and social prosperity of Australia" and "promotes business and community confidence in the use of electronic transactions ".

The *Electronic Transaction Act* (ETA) takes a facilitative approach to electronic contracting and communication. It does not generally seek to impose onerous requirements on those wanting to contract or communicate electronically. There are, however, some exceptions under the Act.

The regulations under the ETA provide additional requirements that apply to electronic communications under the *National Consumer Credit Protection (NCCP) Act 2009 (Cth)*. Importantly, the regulations provide that:

- The customer must provide "written" consent to the giving of documents electronically. This means that customers who apply for a credit product over the phone, and who give their clear consent to receiving documents electronically, must provide "written" consent before those documents can be sent.
- The consent to receiving electronic communications can be withdrawn at any time. This ignores the fact that many products and services are now sold and serviced exclusively through electronic channels. While a credit provider may require a customer to agree to electronic communication as a condition of taking out the product, it is then open to the customer to withdraw this consent. This means that the credit provider must maintain two separate methods of providing required account documentation (e.g. periodic account statements). The only alternative is for the credit provider to terminate the product if the consumer withdraws their consent. This is not ideal, nor is it always a feasible answer.

Recommendation 15

Remove Part 3 of the Electronic Transactions Regulations 2000, which deals with electronic communications under the National Consumer Credit Protection Act so that such communications are subject to the ordinary rules under the ETA.

In addition to imposing the above NCCP-specific requirements, the regulations under the ETA also provide for a particular type of delivery of electronic communications under the NCCP. This delivery method involves making the document available on the credit provider's information system for retrieval by the customer and sending an electronic message to the customer telling them that it is available ('the self-retrieval approach').

This delivery method is utilised by a large number of credit providers. For example, many credit providers use this method to deliver account statements required under the NCCP.

It has, however, been noted that this method of delivery may go beyond the concept of 'giving' a document that is contemplated under the ETA and that, as a result, the regulation may be ultra vires. This lack of clarity may have significant implications for credit providers who rely on the 'self-retrieval approach' to document delivery.

Recommendation 16

Clarify that the 'self-retrieval approach' is permitted by updating the *Electronic Transaction Act* 1999 to specifically contemplate this delivery method.

A further example is the ASIC Act s.12DL on the provision of unsolicited credit cards and debit cards. Currently NAB is prevented from sending customers a credit or debit card until we have their consent in writing. There are some limited exceptions allowed; including a card replacing a card with the same essential features. This means customers who apply for a product over the phone still need to provide a 'written request' for the card, despite having clearly shown their desire to receive it by virtue of their original application.

This can lead to a poor experience for customers who in applying for a product over the phone have shown a preference for interacting with their financial institution in that way. The existing requirement appears to have its origins when the majority of banking business occurred in person, usually at a branch, meaning written consent could be provided more easily. NAB receives approximately 90 over-the-phone applications for credit and debit cards each day. On average, 65 per cent of applications will be approved.

There has been encouraging developments in this area, in 2013 the *Insurance Contracts Act* was amended to allow the electronic communication of product disclosure statements, NAB believes there is scope for further reform to better accommodate the changing way consumers prefer to receive information and interact with financial services providers.

Recommendation 17

Remove the 'written consent' requirement of ASIC Act s.12DL to allow a new card to be sent on the 'request' of customers, capturing verbal, electronic and traditional written requests on paper. Applications would be subject to the existing identification verification procedures NAB undertakes when dealing with customers online or over the phone.

6A. UBANK CASE STUDY

UBank is NAB's digital-only offering aimed at customers who wish to deal with their bank exclusively online or over-the-phone. It offers customers products including home loans, transaction accounts, high interest online savings accounts and term deposits. Applications for all these products already occur and are processed entirely through online channels. In February 2011, UBank launched UHomeLoan which was the first product that allowed customers to apply for their home loan end-to-end online with customers able to track the progress of their application online. In August 2013, UBank launched a transaction account, USaver Ultra, which offers customers a Visa Debit Card. Electronic customer verification for all product applications occurs via customers providing details from a document such as a Passport or Medicare card. This shows NAB's capability to process online applications in other parts of the Group.

Recommendation 18

All financial services Regulatory Impact Statements should reference and specifically examine digitisation and e-commerce capabilities and benefits of relevant service providers.

Record retention requirements

NAB retains a significant number of records in the course of business, relating to customers, staff and corporate operations and spends approximately $10 million per annum on the storage of records with a specialist third-party provider.

Historically many of these have been held in paper format, but increasingly NAB is seeking to hold these records in electronic form to reduce costs and improve efficiency of document recall.

There is a lack of consistency around the length of time records must be retained, which creates additional cost and complexity. For example, under various state based legislations, contracts generally need to be retained for seven years, while deeds need to be retained for around 15 years. Another example of differing retention periods is taxation records, which are usually required to be retained for five years after the relevant transactions (in accordance with various tax acts). But these records also often qualify as financial records which must be maintained for seven years after the end of the relevant fiscal year (Corporations Act).

There is also inconsistency around the 'trigger' events which determine retention length. Examples include records having to be held for seven years after the making of a record, seven years after the giving of the record, seven years after the day on which the transaction takes place or seven years after an account is closed. Open-ended retention periods, such as seven years after the day on which an account is closed, can prove problematic as customers may consciously allow accounts to become dormant rather than close them (e.g. for the purposes of retaining embedded insurance cover).

Recommendation 19

The Government should commence a revision of relevant legislation with the aim to standardise retention periods under the various state-based Limitations Acts and trigger points which determine future retention requirements.

7. LACK OF CLARITY IN EXISTING REGULATION

Uncertainty in any facet of business or government is not conducive to a strong and prosperous economy. In financial regulation, uncertainty in the application of regulation can add significant cost to compliance and, perhaps more importantly, stifle innovation.

Uncertainty can stem from a lack of consistency in regulators issuing policy guidelines, movements in compliance dates and delays in making decisions on applications to provide temporary relief from certain requirements. It can also be prolonged by small things, such as a delay in a regulator announcing a decision. A lack of timeliness in regulatory decisions can both create and prolong uncertainty.

Steps to reduce uncertainty can include providing clear regulatory guidance as early as possible, responding promptly to requests for relief and announcing decisions quickly. Uncertainties relating to the Financial Claims Scheme and OTC derivative reporting requirements are currently subject to ongoing dialogue with regulators.

8. LACK OF NATIONAL CONSISTENCY – CONSIDERATION FOR COAG

A lack of consistent regulation across jurisdictions can pose significant challenges for business, adding both cost and complexity to a firm's operations. In Australia these differences have largely been between state and territory governments and a lack of nationally consistent laws.

NAB welcomes the Council of Australian Governments (COAG) renewed focus on deregulation as detailed in the December 2013 meeting Communique. Along with seeking to reduce red tape in the four identified areas of manufacturing, higher education, early childhood and small business, there are other areas that may be worthy for consideration at future meetings. These are areas which NAB and other companies are impacted by inconsistencies between States, a lack of harmonisation can add complexity to the processing of documents and require specific rather than uniform training for all relevant staff.

8a) Leasing requirements

With 784 retail outlets across Australia and commercial sites in major Australian cities, NAB has significant involvement in the retail and commercial leasing industry and regularly assesses the bank's physical footprint to ensure outlets are positioned in the best and most accessible locations for customers. There are differences between states and territories in the retail consumer protection legislation for lessees, which adds cost and complexity to negotiation of leases across Australia. In addition, legislation regulating the registration and renewals of leases varies across state and territories. These inconsistencies add cost and complexity to managing NAB's national leasing portfolio.

8b) Lack of power of attorney uniformity

There exists a lack of consistency and uniformity with power of attorney, enduring power of attorney and court appointed administrators across Australian jurisdictions. These can add difficulty in verifying the legitimacy of documents and providing uniform training for staff to process such requests which can in turn cause delays in the processing of documents for customers who are often in difficult personal situations.

8c) UBank and probate difficulties

The process for an executor or administrator of a will obtaining probate can prove difficult due to differences between states. Currently a grant of probate or letters of administration is only effective in the state of the court that makes it, meaning a grant made in one jurisdiction cannot be relied upon for the administration of the deceased's estate in another jurisdiction.

Unlike NAB where accounts are generally tied to the location where customers opened an account, all accounts for the online-only UBank are considered to be located in NSW where it operates. To avoid liability to make good on a contested will, UBank requires customers to have probate/letters of administration recognised in NSW even if the customer has already had probate/letters of administration granted in the state they reside. In NSW, the original probate grant must be resealed with the seal of the NSW Supreme Court, in accordance with Section 107 of the *Probate & Administration Act 1898 (NSW)*. This process usually costs customers over $1000 without experiencing any tangible benefit and involves some delay.

If UBank and other online service providers were able to rely on the granting of probate, or letters of administration, irrespective of which Australian jurisdiction or state made the grant as if it were made in NSW (where the assets are held for UBank), then this resealing process would not be required. This would significantly improve the customer experience for people who are managing the estate of a deceased person, often during a difficult time. Better legal uniformity would also reduce administration time and cost for all parties involved and is worthy of consideration by the government and COAG.

Recommendation 20

The Federal Government should direct COAG to pursue greater consistency and uniformity in state-based leasing requirements, in power of attorney, enduring power of attorney and court appointed administrators.

Summary of Recommendations

	RECOMMENDATION	IMPROVED CUSTOMER EXPERIENCE	ENHANCED SHAREHOLDER VALUE
1.	Consider designating a predetermined number of dates each year for the purposes of commencement and compliance with all major regulatory initiatives	√	√
2.	Review the effectiveness of ASIC Regulatory Guide 5 on ‘substantial holding notices’ and start an immediate dialogue with ASIC urging an alternative approach to Regulatory Guide 5		√
3.	Commence initiatives aimed at streamlining the remittances of regulatory reports relating to quarterly financial statements (e.g. APRA Reporting Forms 322.0 & 330.0-330.3) to reduce duplication		√
4.	Unless all providers are required by the law to provide the same data, sections 13(4A) and (4B) of the Financial Sector (Collection of Data) Act 2001 should be repealed		√
5.	APRA’s Data Collection Review to deliver clear and tangible recommendations in assessing the reporting requirements of ADIs with the Government having a more visible presence in the review process	√	√
6.	Review the frequency of submission, required detail, submission method and lodgement date for APRA Reporting Forms 324 and the 390s series		√
7.	Extend the implementation date for the G20 common reporting standards on exchanging taxation information to 2018 with further industry consultation on implementation costs		√
8.	Reporting form SRF 701.0 Product Dashboard (Choice Products) should not be pursued. The government is also encouraged to discuss with APRA the phase out of SRF 330.1, 533.0, 702.0 and 703.0 noting their negligible contribution to improved outcomes		√
9.	NAB believes that SRS710.0 should be limited only to reporting either lump sum benefit payments by conditions of release or by pension benefit accounts opened. The Conditions of Release categories should be removed or simplified to only include those that are currently reported		√
10.	Move to exempt closed/off sale products from regulatory reporting requirements or provide an exemption for those being migrated to newer versions. Consider allowing reporting for non-exempted products on a ‘reasonable estimation basis’	√	√

	RECOMMENDATION	IMPROVED CUSTOMER EXPERIENCE	ENHANCED SHAREHOLDER VALUE
11.	The ATO should consider rationalising the current annual company income tax return process by only requiring the inclusion of information not previously submitted in other forms throughout the year		√
12.	Delay the commencement of the eContributions start by one year to allow more time for compliance and avoid the need to adopt higher priced interim solutions to meet the current compliance deadline	√	√
13.	The Government should be involved in current dialogue between AUSTRAC and the industry on customer due diligence rules with a view to removing the requirement to undertake a remediation program during the assisted compliance period	√	√
14.	Memorandums of Understanding (MOUs) between regulators should be reviewed annually and publicly available so industry participants can better understand how regulators collaborate	√	√
15.	Remove Part 3 of the Electronic Transactions Regulations 2000, which deals with electronic communications under the National Consumer Credit Protection Act so that such communications are subject to the ordinary rules under the ETA	√	
16.	Remove the risk that the "self-retrieval approach" is ultra vires by updating the Electronic Transaction Act 1999 to specifically contemplate this delivery method		√
17.	Remove the 'written request' requirement of ASIC Act s.12DL to allow credit and debit cards to be sent on the 'request' of customers, capturing verbal, electronic and traditional written requests on paper	√	
18.	All financial services Regulatory Impact Statements should reference and specifically examine digitisation and e-commerce capabilities	√	
19.	Commence a revision of relevant legislation with the aim to standardise retention periods under the various state-based Limitations Acts and trigger points which determine future retention requirements.	√	√
20.	The Federal Government should direct COAG to pursue greater consistency and uniformity in state-based leasing requirements, in power of attorney, enduring power of attorney and court appointed administrators	√	

APPENDIX A: REPORTING OBLIGATIONS

REPORT	FREQUENCY	EFFORT PER OCCURRENCE (HRS)	EFFORT PER ANNUM (HRS)
320.0 Statement of Financial Position - Domestic Books	Monthly	85	1021
324.0 Domestic Lending and Funding Statistics	Monthly	21	255
330.0 Statement of Financial Performance Consolidated	Quarterly	17	69
330.0 Statement of Financial Performance Licensed	Quarterly	17	69
330.1 Interest Income and Interest Expense Consolidated	Quarterly	15	60
330.1 Interest Income and Interest Expense Licensed	Quarterly	15	60
330.2 Other operating income Consolidated	Quarterly	15	60
330.2 Other operating income Licensed	Quarterly	15	60
330.3 Other operating expense Consolidated	Quarterly	17	69
330.3 Other operating expense Licensed	Quarterly	17	69
Total		235	1792

REPORT	FREQUENCY	EFFORT PER OCCURRENCE (HRS)	EFFORT PER ANNUM
391.0 Commercial Finance	Monthly	64	773
392.0 Housing Finance	Monthly	64	773
393.0 Lease Finance	Monthly	54	649
394.0 Personal Finance	Monthly	60	718
Total		243	2912