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DO INVESTMENT ATTRACTION INCENTIVES CREATE DECENT JOBS? A STUDY OF LABOUR CONDITIONS IN INDUSTRY ASSISTANCE CONTRACTS

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DO INVESTMENT ATTRACTION INCENTIVES CREATE DECENT JOBS? A STUDY OF LABOUR CONDITIONS IN INDUSTRY ASSISTANCE CONTRACTS

John Howe and Ingrid Landau*

Abstract

Governments at all levels in Australia offer financial assistance in one form or another to private corporations in order to encourage and facilitate business investment in their respective jurisdictions. This disbursement of public funds is often justified on the basis of the number of jobs that will be created by the assisted firm. From a labour law perspective, this rationale begs the question of whether governments seek to influence the quality of jobs to be created by corporations receiving assistance.

This paper presents findings on how three state governments in Australia (NSW, Queensland and Victoria) use industry assistance to pursue public policy goals relating to job quality and the character of employment relations in assisted corporations. It also examines how any such conditions attached to the disbursement of financial assistance are monitored and enforced. State governments remain less than forthcoming as to the details of these grants. Nonetheless, it is possible to draw a number of observations as to the extent to which industry assistance is and could be used in the three Australian states as a means through which to regulate job quality. We conclude by discussing the potential use of investment attraction to promote job quality in subsidised corporations, drawing on existing regulatory approaches in the United States.

I INTRODUCTION

Like most governments around the world, State and Territory Governments in Australia offer investment incentives as a means of influencing the investment location decisions of private corporations. These incentives consist of disbursement of public funds and foregoing of taxation revenue to the value of billions of dollars, frequently justified on the basis that the investment will 'create jobs'. However, while State Premiers are quick to announce their success in luring large companies to the locality, they are much less forthcoming about the details of any incentives they offered to secure the investment. While the goal of assisting business to create jobs is laudable, how do governments seek to ensure that the recipients of assistance comply with job creation requirements? What sorts of jobs are being created? Is

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consideration given to the quality of the new jobs and the labour management practices of the recipient companies? This report inquires into if, and how, three Australian state governments use investment incentives to pursue objectives relating both to job creation and job quality. It also examines how any such requirements are monitored and enforced.

This research forms part of a broader project that examines the extent to which Australian state governments use regulatory mechanisms other than legislation to influence labour standards in the private sector.[1] While we accept that alternative regulatory strategies might be used to undercut or avoid labour legislation, the project is largely concerned with the use of alternative regulatory strategies both to secure compliance with existing labour law and to encourage the take-up of desirable but 'non-mandatory' employment practices.[2] One regulatory approach used widely by governments, and a dominant focus of the project, is the deployment of public wealth as leverage to improve labour standards in individual companies.[3] This may be achieved in a number of ways, including through attaching conditions to procurement contracts, the use of grants or awards to businesses and industry assistance. To date, the use of the latter strategy has received little attention in Australia.

There are a number of reasons why the relationship between investment incentives and labour standards merits investigation. First, industry assistance involves the expenditure of significant amounts of public money ostensibly linked to creation of jobs. As labour lawyers, we are interested in whether governments are endeavouring to create not only jobs, but 'good' jobs:[4] that is, employment practices which 'ensure quality jobs, progressive employer practices and meaningful representation and voice.'[5] Second, while the two areas of labour market policy – job creation and job quality - tend to be 'compartmentalised' in Australia,[6] developments in overseas jurisdictions suggest that investment incentives can be used as a regulatory strategy through which to pursue secondary or 'social policy' objectives, including

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[1] See, eg, John Howe and Ingrid Landau, '"Light Touch" Labour Regulation by State Governments in Australia' (2007) 31 *Melbourne University Law Review* 367.
[2] John Howe,' "Money and Favours": Government Deployment of Public Wealth as an Instrument of Labour Regulation' in Chris Arup et al, *Labour Law and Labour Market Regulation* (2006) 172.
[3] Ibid; Howe and Landau, above n 1.
[4] Sean Cooney, John Howe and Jill Murray, 'Time and Money under *Work Choices*: Understanding the New *Workplace Relations Act* as a Scheme of Regulation' (2006) 29 *University of New South Wales Law Journal* 215, 217–19. While we are interested in minimum standards, we do not presume that standards of decent work are confined to current legal minimums: ibid.
[5] John Godard, 'A Critical Reflection on the High Performance Paradigm' (2004) 42 *British Journal of Industrial Relations* 349, 350.
[6] Michael Quinlan, 'Contextual Factors Shaping the Purpose of Labour Law: A Comparative Historical Perspective' in Chris Arup et al (eds) *Labour Law and Labour Market Regulation* (2006) 21, 24.

fair labour practices.[7] In this respect, our research has been informed by work on linking public procurement with social justice criteria.[8] In arguing for recognition of the limits of governments taking a purely 'commercial' approach to contracting, McCrudden reasons, '…governments award public contracts on behalf of the communities they serve. It is not unreasonable that these communities expect that public contracts should go to contractors who do not violate the basic norms of that community.'[9] Investment incentives are a form of government contracting in that the terms and conditions of any incentives are governed by contractual mechanisms.

Thirdly, in examining the role of industry assistance in regulating labour standards, we are influenced by the broader shift in labour law scholarship from 'conventional' or 'core' labour law towards the inclusion of other aspects of social and economic policy which 'seek to regulate, or have the effect of regulating, the conditions under which individuals enter the labour market'.[10] Industry policy is one area in which these linkages remain under explored in Australia.

A final reason for conducting research in this area is that the actual or potential use of industry assistance as a means of regulating labour standards is of considerable interest from a regulatory and political economy perspective. Any attempt by government to influence job quality through an economic development strategy such as the provision of investment incentives will potentially come into conflict with the regional and international 'market for regulation' - 'the opportunity to attract inward investment by regulatory standards that place low costs on business',[11] or will at least be opposed by those who support the latter as an investment attraction strategy. This conflict raises questions as to the legitimacy of actual or potential regulatory initiatives and institutions, as well as questions relating to their effectiveness and accountability.[12]

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[7] See discussion in Part 6.
[8] McCrudden uses the term 'linkage' to describe the use of procurement to produce social justice results: Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement and Legal Change* (2007) 3. We adopt this term in discussing the use of investment incentives to create decent jobs.
[9] Ibid 124.
[10] Simon Deakin and Frank Wilkinson, *The Law of the Labour Market* (2005) 2; Chris Arup and Richard Mitchell, 'Labour Law and Labour Market Regulation' in Chris Arup et al (eds) *Labour Law and Labour Market Regulation* (2006) 3.
[11] Hugh Collins, 'Justifications and Techniques of Legal Regulation of the Employment Relation', in Hugh Collins, Paul Davies and Roger Rideout (eds), *Legal Regulation of the Employment Relation* (2000), 14.
[12] The overlapping concepts of legitimacy, effectiveness and accountability are frequently used to evaluate regulation and governance mechanisms, and are explored in greater detail in Part 6 below.

This paper is structured as follows. In Part II, we outline our methodology. Part III provides a brief overview of the nature and extent of industry assistance in the Australian states, before focusing on investment incentive programs in NSW, Queensland and Victoria. We summarise our findings as to whether the states attach job creation and job quality criteria to investment incentives in Part IV. In Part V we evaluate the monitoring and enforcement of agreements. In Part VI, we highlight the potential use of industry assistance to promote better labour practices through some examples from other jurisdictions. Part VII is our conclusion.

Our research demonstrates that it is common for state governments to make assistance conditional upon employment projections: that is, the number and type of jobs the company will create in the course of the agreement. However, there is little, if any, consideration within the investment divisions of the relevant state departments as to the *quality* of the jobs created. The states seek to ensure that any job creation targets are met by recipients through contract. These contracts generally include monitoring and enforcement provisions. However, based on the information available, there is some basis for concern over the current regulatory model. The capacity of companies (in Victoria at least) to negotiate out the monitoring and enforcement provisions of a particular agreement; the lack of third party disclosure as to the content of investment agreements and consequent lack of third party monitoring; and the lack of evidence as to enforcement of agreements are all inimical to basic precepts of good regulatory design.

Before proceeding, we would like to make two brief observations. First, this paper is not concerned with challenging the use of industry assistance per se. We accept that there are legitimate economic and social justifications for providing assistance to private companies in some cases. Nor does this paper evaluate claims as to the effectiveness and desirability of industry assistance as a means of job creation. Rather, we are concerned with the actual presence of employment-related criteria in state government investment incentive programs, and the potential for inclusion of such criteria. Second, industry assistance encompasses a broad range of government programs and strategies, including subsidies to 'major projects', business and industry development (including funding for research and development);

regional development and trade and investment.[13] In this report, we focus on one particular type of industry assistance - the investment incentive. We define investment incentives as financial assistance offered by government on a selective basis to individual businesses with the objective of attracting new investment to the jurisdiction. These incentives may be administered through established programs and on an ad hoc basis. We limit our analysis to three Australian states: NSW, Queensland and Victoria.

II METHODOLOGY

Our research has been shaped, and limited, by the lack of publicly available information on industry assistance in Australia. A great deal of information on industry incentive policy and practice – including the nature and extent of state assistance to particular companies and departmental policies and procedures that regulate the disbursement of incentives – is inaccessible to the public. The 'accountability vacuum'[14] surrounding industry assistance in Australia has been the subject of repeated criticism by state audit offices, parliamentary committees, the Productivity Commission and business representative groups; all who have called for greater accountability and transparency in the administration of industry grants and incentive payments.[15] State governments defend their decision not to permit public access to this information by reference to two main factors: competition between the States[16] and commercial confidentiality.[17] Each of these rationales is explored in greater detail in Part VI

[13] The *Productivity Commission Act 1998* (Cth) defines government assistance to industry as 'any act that, directly or indirectly: (a) assists a person to carry on a business or activity, or confers a pecuniary benefit on; or (b) results in a pecuniary benefit accruing to, a person in respect of carrying on a business or activity': s 10(6).
[14] Ches Baragwanath and John Howe, 'Corporate Welfare: Public Accountability and Industry Assistance' (Discussion Paper No. 34, The Australia Institute, October, 2000) vi.
[15] See, eg, Auditor-General, Australian Capital Territory, *Financial Incentive Package for Fujitsu Australia Ltd (FAL)*(2003); Audit Office of New South Wales, *Performance Audit Report: Department of State and Regional Development: Provision of Industry Assistance* (1998); Public Accounts Committee, NSW, *Industry Assistance,* Report No. 130 (2001); Auditor-General of Queensland, *A Review of Grants and Other Incentives at the Department of State Development (Including those provided to Berri Limited and Cutting Edge Post Pty Ltd* 2002); Economic and Finance Committee, Parliament of South Australia, *South Australian Government Assistance to Industry* (2000); Auditor-General, Tasmania, *Assistance to Industry (*2000) and Auditor-General, Victoria, *Investment Attraction and Facilitation in Victoria* (2002). See also Productivity Commission, *Trade and Assistance Review 2001-02* (2002) and Commerce Queensland, 'Queensland Business Incentives: Issues Discussion Paper' (2006) Available at <http://www.commerceqld.com.au/www/index.cfm?pageid=536> (last accessed 21 January 2008).
[16] See Gary Banks, 'Inter-State Bidding Wars: Calling a Truce', Speech to the Committee for Economic Development of Australia, Brisbane, 6 November 2002, available at <http://www.pc.gov.au/speeches/cs20021106> (last accessed 12 August 2008); B Schneiders, 'States Back Bidding Truce', *The Australian Financial Review*, 11 March 2003, 7; and R Skeffington, 'Almost All Together Now', *Business Review Weekly,* 30 October 2003, 30; S Murdoch, 'The Poaching State Has Got a Deal for You', *Courier Mail*, 29 March 2004, 23.
[17] Baragwanath and Howe, above n 14, 24.

of this paper. Whatever the merits of these claims, the upshot is that it is very difficult to research the use of investment incentives as a regulatory technique in Australia.

We sought to collect data for this study through a range of methodologies. We began our investigations by analysing publicly available documentation published by the relevant state departments: the Department of State and Regional Development (DSRD) in NSW, the Department of State Development (DSD) in Queensland (recently reconstituted as the Department of Tourism, Regional Development and Industry); and the Department of Innovation, Industry and Regional Development (DIIRD) in Victoria. We collected any relevant information and publications on their websites, including annual reports. This documentation, however, tends to be general in nature and provides little detail on the eligibility criteria or assessment process for development incentives. It gives no information on the nature and extent of any monitoring or enforcement related to the granting of assistance.

We then conducted a search for any relevant media reports and secondary literature, both of which are scarce. Exceptions are the reports produced by various state audit offices and parliamentary committees in the late 1990s and early 2000s.[18] These reports evaluated the adequacy of process underpinning industry assistance and the management and administration processes. There have also been reports published on particular deals by the relevant auditor department or by a parliamentary committee.[19] Many of these reports, however, are now outdated.

In light of the dearth of information available in the public domain, we wrote to the heads of each relevant section within the three state departments, inquiring into the use of investment incentives as a means of pursuing objectives concerning job creation and labour standards. We also asked for details concerning the monitoring and enforcement procedures accompanying the use of development incentives. These letters were followed up by semi-structured interviews with key departmental personnel in NSW, Queensland and Victoria.

[18] See above n 15.
[19] See, eg, The Audit Office of NSW, *Sydney Showground, Moore Park: Lease to Fox Studios Australia*, (1997) and Auditor General, Australian Capital Territory, above n 15.

Having still obtained remarkably little information, we pursued a number of other means of obtaining the data we needed to answer our research questions. We submitted Freedom of Information (FOI) requests to two of the three state departments, asking for details on particular investment incentive programs. Similarly to earlier FOI requests made by others on this issue,[20] we were largely unsuccessful. We were given access to 63 of 158 relevant documents in Queensland and denied access to all requested documents in Victoria. In denying our requests, the states relied on the exemptions within the relevant FOI statutes which exempt cabinet documents and documents containing specific types of commercial information.[21]

Finally, we sent a brief questionnaire to companies in the three jurisdictions that we knew had received over $50,000 worth of financial assistance directly from the state governments over the last financial year.[22] The questionnaire was intended to elicit qualitative information on the nature of assistance they received from the relevant state governments and their undertakings, with particular focus on any employment-related criteria. We also asked how their agreements with the state were monitored and enforced. We mailed out ninety questionnaires and received a total of 13 responses (a response rate of around 15 percent). We drew upon the data provided in these questionnaires as supplementary evidence on the nature and extent to which the three state governments imposed employment-related criteria on investment incentive recipients and monitoring and reporting requirements.

[20] See, eg, *Seeney v Department of State Development and Berri Ltd*, Decision No. 04/2004, Application S 105/02, Office of the Information Commissioner (QLD); *Bracks v the Department of State Development*, VCAT Decision No. 1997/058523; *Honeywood v DIIRD*, VCAT Decision, 27 August 2004; *Louise Asher MP v DIIRD* [2005] VCAT 1734 (24 June 2005); *Asher v DIIRD* [2005] (20 December 2005).

[21] Common exemptions within the Acts relied upon by state governments to refuse FOI requests (and relied upon to deny proportions of our FOI requests in Queensland and Vic) include: cabinet documents (this extends to committee or sub-committees of cabinet); documents which are confidential to, or may prejudice relations between, the State and Commonwealth or other States and territories; documents prepared to provide opinion or advice or recommendation by a Minister or Officer of the Department; and documents which disclose information acquired from a business undertaking related to trade secrets or business commercial or financial matters, the disclosure of which would unreasonably disadvantage the Agency or Minister. See, eg, *Seeney v Department of State Development and Berri Ltd,* Decision No. 04/2004, Application S 105/02, Office of the Information Commissioner (QLD); *Bracks v the Department of State Development*, VCAT Decision No. 1997/058523; *Honeywood v DIIRD*, VCAT Decision, 27 August 2004; *Louise Asher MP v DIIRD* [2005] VCAT 1734 (24 June 2005); *Asher v DIIRD* [2005] (20 December 2005).

[22] The mailing lists for this questionnaire were compiled from departmental annual reports, which generally list the name of recipient companies, the program under which they received assistance and the total amount of assistance granted.

III INVESTMENT INCENTIVES IN NSW, QUEENSLAND AND VICTORIA

State and Territory Governments use financial incentives in a variety of ways in pursuit of labour-related objectives. Common regulatory strategies in this area include grants to encourage desirable workplace practices (such as Victoria's Partners at Work and 'Better Work and Family Balance' grants programs); programs which are designed to reduce unemployment in a particular region or to enhance skills development in a particular industry, and investment attraction grants. Considerably more money is spent on the latter objectives. In the period 2003-2004, for example, the Victorian government spent $3.1 million in total on industrial relations grants (which consisted of grants under the Partners at Work and Better Work and Family Balance Grants Programs and support funding for two non-profit organisations), while it gave investment attraction grants directly to businesses worth $42.2 million.[23]

All State and Territory Governments in Australia provide industry assistance to private sector businesses as a means through which to achieve public policy objectives concerning economic growth and development.[24] At the state level in Australia – the focus of this study – there is generally a Ministerial portfolio and department responsible for industry assistance. Each department has an agency or program dedicated to investment attraction and promotion.

Industry assistance is delivered both through established programs and on an ad hoc basis. The former may be targeted at particular industries (such as Victoria's Agenda for New Manufacturing) or at particular regions (such as the Hunter and Illawarra Advantage Funds). States also have a general fund which is used to finance assistance on an ad hoc basis to major investment projects. Figure 1 lists the industry assistance programs currently operating within the three states.

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[23] Department of Innovation, Industry and Regional Development, *Annual Report 2003-04*, pp. 102, 86.
[24] Industry assistance is also disbursed by governments at the commonwealth, regional and local levels. This report focuses on state departments.

NSW	Queensland	Victoria
Industries Assistance Fund (IAF)	Queensland Investment Incentive Scheme (QIIS)	Investment Support Program
Hunter and Illawarra Advantage Funds	Queensland Industry Development Scheme (QIDS)	Agenda for New Manufacturing
Regional Business Development Scheme (RBDS)	Queensland Regional Development Scheme (QRDS)	Regional Investment Initiative
Regional Economic Transition Scheme	Small Business Accelerator Program	Community Regional Industry Skills Program (CRISP)
Payroll Tax Incentive Scheme		Grow Your Business
NSW High Growth Business Program		Small Business Grants Program
Small Business Development		

Figure 1: Programs in NSW, Queensland and Victoria that provide financial assistance directly to companies[25]

State Government assistance to industry may take a variety of forms. Non-financial assistance, often termed investment ‘facilitation or ‘support’, includes the provision of assistance with feasibility studies, site location and regulatory approval processes. Financial assistance may take the form of loans, tax concessions or cash grants. The most common forms of assistance are outlined in Figure 2.

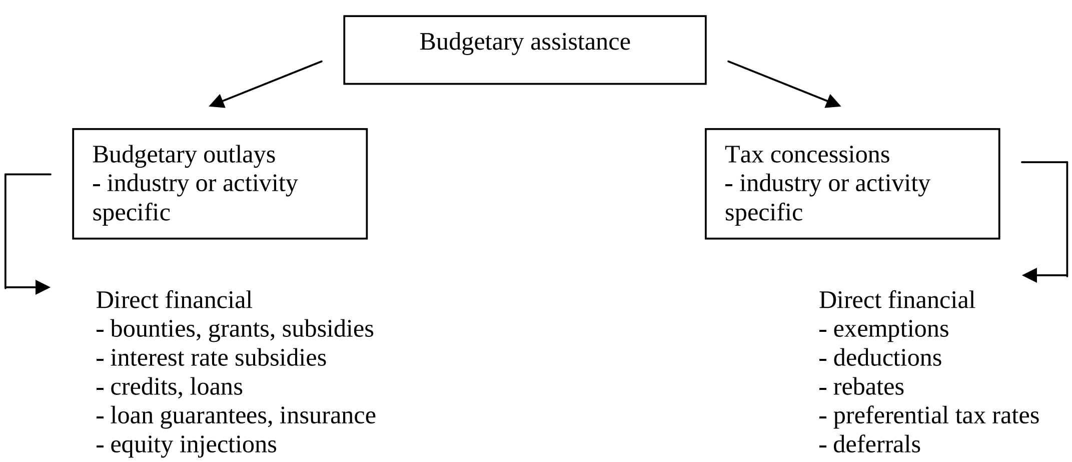

Figure 2: Forms of budgetary assistance[26]

[25] Compiled from the three departments’ websites and annual reports.
[26] Productivity Commission, *Trade & Assistance Review 2006-2007* (2008) 2.

It is very difficult to measure the precise extent of state budgetary assistance to industry, either in general or under specific programs.[27] In its 2001-02 report, the Productivity Commission estimated that state and territory budgetary assistance to industry totalled around $3.3 billion annually, having grown steadily in real terms since the mid-1990s.[28] State expenditure on investment incentive programs is detailed below.

This paper focuses on investment attraction programs operating within the three states. Each of the three state departments has a division that is responsible for facilitating and attracting investment to the jurisdiction. These divisions generally target their investment attraction efforts at industries that are identified as playing key roles in the development of the state economies. Industry assistance programs within the three states are generally funded out of departmental funds, statutory funds or a combination of both.

A *New South Wales*

Within the NSW Department of State and Regional Development (DSRD), responsibility for attracting business investment to the State lies with the Investment Division. This Division focuses on securing investment from domestic and international markets within the five key industry sectors identified in the *NSW Innovation Statement*. In the 2006-07 financial year, the Investment Division secured 29 investment projects. According to the Department, these projects represent an investment of $1.66 billion and will employ 2,130 people.[29] Overall, under the program umbrella of 'Development of the NSW Economy', the DSRD spent $20,855,000 on 'grants and subsidies' in the 2006-07 financial year.[30]

The Investment Division is also primarily responsible for managing and facilitating projects in the name of the Ministerial Corporation for Industry.[31] This Corporation's functions are '…[t]o promote, encourage and stimulate: (a) the establishment, expansion or development of industries; and (b) the carrying out, by business undertakings and prescribed institutions, of

[27] See Productivity Commission, *Trade & Assistance Review 2001-02* (2002), B-1 – B-19.
[28] Note that these figures do not include most business payroll tax concessions, which are estimated by the Productivity Commission to amount to several billion dollars.
[29] New South Wales Department of State and Regional Development, *Annual Report 2006-2007*, 28.
[30] Ibid, 71. This program is described as follows: 'The provision of business information on Government policies applying to industries. Marketing regional and metropolitan New South Wales as an investment location. Project facilitation and the provision of limited financial assistance. Provision of business counselling and consultancy': at 81.
[31] Ibid, 98.

projects that are likely to assist the establishment, expansion or development of industries.'[32] Under the relevant statute, the Corporation is responsible for administering the Industries Assistance Fund (IAF). Essentially, the Corporation acts as a vehicle for providing financial assistance to investors.[33] In the 2006-2007 financial year, the Corporation spent $3,086,000 on 'grants and contributions'.[34] The Corporation has $12,009,000 in Industry Assistance Fund Commitments approved but not paid[35] and $1,973,000 in 'loans to industry,' (most of which it considers 'not to be collectable).[36]

The DSRD provides financial assistance to around 25 percent of projects.[37] The Director-General generally approves projects, however if over $1 million is recommended, the project must be approved by the Minister.[38]

B *Queensland*

The Queensland Department of Tourism, Regional Development and Industry (formerly the Department of State Development, Trade and Innovation (DSD)) focuses its investment attraction activities on a number of key target industry sectors in line with the Queensland Government's Smart State Strategy. The Department is responsible for administering the Queensland Investment Incentive Scheme (QIIS), which is the main scheme through which the Department seeks to attract interstate and international investors who would not otherwise locate in Queensland.[39] The QIIS offers a range of incentives including payroll tax, stamp duty and land tax refunds, establishment grants and other forms of assistance, such as infrastructure works. It is a discretionary scheme, with all projects being considered on a case-by-case basis. To be eligible for consideration, a company must meet the QIIS eligibility criteria.[40] A departmental committee considers applications for assistance and all offers are made only after approval of the Minister for Tourism, Regional Development and Industry.[41] In 2006-07, the DSD attracted a total of 18 projects to the State: which, according to the department, resulted in the creation of 1,108 new jobs and $900 million in capital

[32] *State Development and Industries Assistance Act 1966* (NSW).
[33] New South Wales Department of State and Regional Development, above n 29, 119.
[34] Ibid, 94.
[35] Ibid, 104.
[36] Ibid, 101, 105.
[37] Telephone interview with DSRD representative, 13 February 2007.
[38] Telephone interview with DSRD representative, 26 April 2007.
[39] Letter from DSD Queensland, 9 March 2007.
[40] The QIIS guidelines, including eligibility criteria, are subject to Cabinet approval: Auditor-General, Queensland, above n 15.
[41] Ibid, 7. Note there is consultation with Queensland Treasury where a proposed offer comprises a cash grant of $2 million or more, or involves a significant departure from the standard QIIS payroll tax rebate formula. Ibid, 8.

expenditure.[42] $11,884 million was spent through the QIIS in respect of agreements signed in 2006-07.[43] The Department also had $164,115,000 in commitments under formal agreements (provided the recipients met the performance criteria).[44]

C *Victoria*

In Victoria, the Department of Innovation, Industry and Regional Development (DIIRD) administers the Investor Support Program. The purpose of the program is to provide financial incentives to attract new industry investment that may not otherwise be located in Victoria.[45] Applications for financial assistance under this program are assessed on a case-by-case basis, first within the program and then by a Cabinet Committee chaired by the Premier.[46] In 2006-07, the Victorian Government paid a total of $62.5 million to 32 companies for investment attraction (DIIRD, 2007: 86), and committed $83.7 million to businesses through its Investor Support Program (DIIRD, 2007: 17). These latter contracts are anticipated by the department to result in $2,028 million in capital investment and to create 2,348 'full time direct jobs'.[47] Most companies, according to a DIIRD representative interviewed for this research, are assisted through facilitation services, with only around 10 percent of companies receiving financial assistance.[48]

IV JOB CREATION AND JOB QUALITY CRITERIA

All three states use investment incentives as a means through which to pursue job creation objectives. In Queensland, for example, the eligibility criteria for assistance under the QIIS include the extent of employment opportunities it will bring to the state.[49] The scheme requires that a company or project, in order to be eligible under the scheme, 'provide a significant Net Economic benefit to the State including an increase in sustainable jobs.'[50] The Victorian and NSW Investment Divisions may include job creation targets in project agreements, depending upon the reasons for the assistance: for example, job creation targets

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[42] Queensland State Budget 2007-2008, Ministerial Portfolio Statement: Minister for State Development, Employment and Industrial Relations, 2007, 1-7.
[43] Queensland Department of State Development, *Annual Report 2006/2007* (2007) 119.
[44] Ibid 124.
[45] Auditor-General, Victoria, above n 15, 43.
[46] Interview with DIIRD representatives, 7 May 2007.
[47] Department of Innovation, Industry and Regional Development, *Annual Report 2006-2007* (2007), 17.
[48] Interview with DIIRD representatives, 7 May 2007.
[49] Letter from Department of State Development, Queensland, 9 March 2007.
[50] See QIIS Application Form and Guidelines, Eligibility Criterion 4.

are not relevant where assistance is intended to facilitate investment in biotechnology.[51] Where they are included, job creation criteria relate to the number of full-time or full-time equivalent (FTE) jobs created.[52] There is also, according to our interviewees, 'some focus' on attracting skills and/or up-skilling.[53] DIIRD, for example, may look at average salary of employees as an indicator of higher value, higher skill jobs.[54]

We found that there was very little evidence of linkages being made between investment incentives and criteria pertaining to the quality of jobs created, or which addressed the extent to which jobs were created for those who needed them. Job creation appears to be conceived by all three states quite narrowly: that is, as number of FTE jobs created. From the information made available to us, the QIIS appears to have the most detailed employment criteria. According to our interviewee, Queensland focuses on attracting highly skilled positions and so, when considering applications for assistance, the department reviews and considers the total number of new jobs created, and the structure and skill levels of the proposed workforce. The QIIS application form requires detailed project employment details for the construction/establishment and operation phases of the project, including (where relevant): details of employees, sub-contractors and consultants to be involved in the project; projected average salaries for employees and contractors involved; breakdown of existing employment levels by category and skills base on a FTE basis and average salary level by category; details of all employees for the proposed project on an FTE basis and projected average salary by category for each of the 'ramping up' years and the number of employees to be (1) sourced locally, (2) the rest of Queensland and (3) relocated from elsewhere. It also requires details of the number of employees to be relocated from other company facilities and proposed training needs during the initial start up phase and approximate training costs per employee.[55] Under eligibility criterion 2 (demonstrate that the project is commercially viable in the absence of incentives), the QIIS requires details of project risk management, which includes outline of any enterprise bargaining agreement or workplace agreements.

In all three states, there appears to be little, if any, consideration of the quality of jobs to be created. The investment divisions consider employment practices and labour standards to be

[51] Interview with DIIRD representatives, 7 May 2007; Interview with DSD representative, 13 February 2007.
[52] Interview with DIIRD representatives, 7 May 2007.
[53] Interview with DIIRD representatives, 7 May 2007; Interview with DSRD representative, 13 February 2007
[54] Interview with DIIRD representatives, 7 May 2007.
[55] QIIS Application Form and Guidelines (on file with authors).

the domain of the industrial relations divisions or departments.[56] According to one interviewee in NSW, it generally wasn't considered necessary to include comprehensive labour criteria as part of arrangements as the department generally dealt with "… blue chip companies, and they generally follow better labour practices anyway."[57] In Victoria, when considering whether to provide financial assistance for a particular project, DIIRD does not seek to ascertain under what terms and conditions the (prospective) employees are employed. Nor do they consider any other form of work arrangement within the company.[58] The only requirement of apparent relevance to labour standards appears to be the inclusion within assistance agreements of the requirement of equal employment opportunity.[59] The investment departments rarely consult with their state IR departments when considering a funding proposal.[60] As will be discussed further in Part VI, there is significant potential for greater cooperation between investment attraction and industrial relations divisions.

The absence of any job quality criteria in investment incentives is further evidenced through questionnaire responses. The questionnaire asked respondents to specify whether their company was required to meet specific criteria to be eligible for state assistance and, if so, to select from a number of options which areas of management these criteria related to. All the respondents indicated that the assistance was subject to specific eligibility criteria. This criteria related to a range of areas, such as the type of industry in which the company is located; introduction of new skills and technology; capital investment; number of employees; building completion. Five of the thirteen respondents indicated that these criteria were negotiable. Only three respondents reported that the eligibility criteria related to 'employment practices' or 'industrial relations'. Over half of the respondents reported that non-managerial employees of their firm were covered by Australian Workplace Agreements (five companies) or non-union collective agreements (two companies).

[56] Interview with DSRD representative, 13 February 2007.
[57] Ibid.
[58] Interview with DIIRD representatives, 7 May 2007.
[59]Ibid.
[60] Ibid and Interview with DSRD representative, 13 February 2007.

V Monitoring and Enforcement of Agreement

Monitoring and evaluation of compliance with standards and enforcement of standards or norms in cases of non-compliance are essential elements of an effective regulatory regime.[61] To the extent that the state governments do make financial assistance conditional upon specific job creation or job quality criteria, how do they ensure that the recipients meet their commitments? This section provides a brief overview of monitoring and enforcement of assistance arrangements in the three states. It is important to note, however, that while there are internal procedures and guidelines with the state departments governing the content of assistance agreements, much of this is negotiable with the individual company. In Victoria, while there is common practice, there is no 'standard agreement' and 'everything is negotiable'.[62]

In all three states, recipients of financial assistance sign a formal agreement with the state, which generally includes relevant performance undertakings and milestones. Recipients of investment assistance are thus contractually bound to the content of the agreement, including any performance criteria or milestones relating to job creation targets.

Financial assistance agreements generally include provisions that enable the state government to monitor the company's progress and compliance throughout the course of the agreement. Recipients of assistance under the QIIS, for example, are required to report regularly to the Department on the project's progress and the Department will typically visit the company on an annual basis to review their operations and books to ensure that all milestones are achieved.[63] There is some evidence to suggest that the department does encounter problems in monitoring the performance of recipient companies. In 2001, for example, Virgin breached its agreement to supply the government with business plans and financial arrangements one month after the deal was signed. It took 10 months for these documents to be supplied.[64] In Victoria, recipients are required to report regularly on compliance with the agreement, and

[61] See, for example, Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' [2001] *Public Law* 329.
[62] Interview with DIIRD representatives, 7 May 2007.
[63] Letter from DSD Queensland, 9 March 2007.
[64] See Part 8.1: Current and Emerging Issues: Commercial-In-Confidence Arrangements' in Auditor-General, Queensland, 'Results of Audits Performed for 1999-2000', Queensland Audit Office, Report No 2, 2000-2001: 82.

DIIRD requires the companies to provide them with audit certificates, which may include independent verification of employment levels.

All respondents to our questionnaire indicated that the grant of state government assistance was subject to signing a formal agreement that included performance criteria and milestones. Nine of the thirteen respondents indicated that the relevant state government monitored compliance with the agreement (one indicated that their agreements with the government did not contain performance criteria; one indicated that there was no monitoring; and two failed to complete the relevant question). Means of monitoring included: submission of regular progress reports by the company; inspections of company documentation by state government departments; on-site inspections and/or interviews with company officials by the state government department; independent verification of employment levels and independent verification of company finances.

Financial assistance agreements generally include 'clawback' provisions, under which the state may recover some proportion of the assistance already disbursed if the business does not meet the performance milestones.[65] States may also employ other practices to protect their investment. Victoria, for example, tends to structure agreements so that assistance is disbursed in instalments, based on the company meeting milestones specified in the agreement. In Queensland, where recipients of assistance under the QIIS are given a cash grant, the State seeks a bank guarantee from the company for the amount of the cash assistance.[66]

Enforcement generally occurs within the State Government bureaucracies and states appear to have a great deal of discretion in deciding whether or not to enforce the agreements.[67] In NSW, a departmental representative explained that failure to comply with the criteria 'might'

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[65] Auditor-General, NSW, 'Follow-Up of Performance Audit' September 2003, Appendix 1, 22. In its response to this report, the Department noted that it had taken the Auditor-General's advice and improved the performance indicators and clawback provisions in the Deed of Agreement.

[66] Department of State Development, *Annual Report 2006-07* (2007) 124. As of June 2007, the total value of bank guarantees held by the QIIS for the 41 investment programs was around $40 million: at 124.

[67] According to DIIRD's most recent annual report, of the projects that received investment-related grant payments in the 2006-07 financial year and whose legal agreements were signed after 1 July 2002, 95 percent of the grant value has been expended by the Government. These have achieved 135 percent expected capital expenditure and 81 percent of the expected employment against their contractually agreed targets. The companies that did not meet their expected employment targets did not receive the full grant payment. DIIRD, Victoria, *Annual Report 2006-2007* (2007) 17.

result in the imposition of sanctions, such as the pro-rata recovery of subsidies.[68] In Victoria, the relevant Minister has the discretion to determine whether companies who default on their agreement must repay the assistance and the extent of any repayments.[69]

Both the NSW and Victorian Departments said they have enforced clawback provisions in the past.[70] There are media reports to suggest that Queensland has also sought to recover incentive payments from companies in the past.[71] Nine of the thirteen questionnaire respondents indicated that the assistance they received from the state government was subject to sanctions, with eight reporting that sanctions included recovery of the cash component of the grant.

There is evidence to suggest, however, that the departments are reluctant to enforce agreements.[72] As discussed below, this reluctance may be attributable to a perception that public enforcement of industry assistance agreements may discourage potential investors.[73]

VI DISCUSSION: THE POTENTIAL FOR LINKAGES BETWEEN INVESTMENT INCENTIVES AND JOB QUALITY CRITERIA

Having established that there has been very little done to link investment incentives with job quality by State Governments in Australia; in this section we discuss three issues. First, we address the normative issue of whether there should be linkages between investment incentives and job quality. The answer to these questions will impact on the legitimacy of any attempt to link investment incentives and job quality, and thereby the effectiveness of such a strategy. The legitimacy of regulatory regimes or actions depends on whether they are 'worthy of public support'.[74] At one level, this refers to the level of public support for the goals of a particular regulatory scheme or regime. However, it also refers to the manner in

[68] Interview with DSRD representative, 13 February 2007.
[69] Interview with DIIRD representatives, 7 May 2007.
[70] Interview with DSRD representative, 13 February 2007.
[71] A Fraser, 'Beattie Chases Citibank's $1m', *The Australian*, 30 July 2004, 3. In this case, the Beattie Government provided more than $1 million in incentives to Citibank in 1999 to locate a call centre in Brisbane. In return for what is understood to have been a cash grant and payroll tax rebates, Citibank undertook to employ 250 staff. Within months of when its payroll tax rebates were due to expire, Citibank announced its plan to transfer its operations to the Philippines. According to Premier Beattie, Queensland had suspended its payroll tax rebates several years earlier due to Citibank's failure to meet its employment milestones (it only ever created around 100 jobs).
[72] See Baragwanath and Howe, above n 14, 23.
[73] Ibid 23.
[74] Robert Baldwin and Martin Cave, *Understanding Regulation: Theory, Strategy and Practice* (1999) 77.

which a scheme is implemented. The less accountable and transparent a regulatory scheme is, the less legitimate it will be in the eyes of the public. Second, presuming it is desirable to link investment incentives and job quality, we consider what kind of linkages could be made. Finally, assuming that these linkages should be made, we give consideration to what might be the appropriate design and structure of regulation to maximise their legitimacy, effectiveness and accountability.

A *Should job quality be linked with investment incentives?*

There is a vigorous debate among economic development experts regarding the effectiveness of industry assistance and incentives as generators of new economic development.[75] Moreover, within federal systems of government, concern has been raised by both conservative and progressive commentators regarding the national benefit of states or provinces competing for business with subsidies and incentives.[76] We do not address these arguments in any detail, except where incidental to our report. We have assumed for the purposes of this paper that industry assistance, if used appropriately, has the potential to be an effective way for governments to stimulate sustainable economic development which delivers social benefits. This section canvasses some arguments about the extent to which governments can use corporate subsidies to effectively leverage corporate responsibility for social criteria such as job quality.[77]

One argument against linking job quality criteria to investment incentives is that economic development and growth will automatically generate social benefits and there is no need to attach specific social targets to economic development subsidies. According to this argument, to the extent that social rights are accepted as a legitimate concern of government, such matters are better left to labour law and welfare systems and the administrators responsible for these agencies.[78] This position ties in with debates about the desirability of compartmentalisation of regulation that we will address shortly. A related argument is the one which suggests that companies who receive investment incentives are largely multinationals with a 'best practice' approach to employment relations. As noted earlier, one

[75] See, for example, Timothy Bartik, 'Solving the Problem of Economic Development Incentives' (2005) 36 *Growth and Change* 139; Banks, above n 16 and R Weber, 'Do Better Contracts Make Better Economic Development Incentives' (2002) 68 *Journal of the American Planning Association* 43.
[76] Banks, above n 16.
[77] For a detailed consideration of similar arguments for and against linkages in the context of government procurement see McCrudden, above n 8, 114–128.
[78] See, eg, S Fredman and G Morris, 'The State as Employer: Setting a New Example' (1989) 21 *Personnel Management* 29.

of the government officials we interviewed maintained that the companies targeted by investment attraction agencies were largely 'blue chip' companies with reasonable labour practices.[79] However, this claim flies in the face of contradictory evidence regarding the types of business targeted by governments seeking to lure new investment. Frequently, governments seek to attract 'footloose' businesses which are easily able to move location in search of lower labour costs and further subsidies, such as call centres.[80] The poor working conditions which have been found in many call centres suggests that economic development officials need to be wary of assuming that large multinationals necessarily follow decent labour practices.[81]

Another argument which is made against attachment of social criteria to investment subsidies is that it will impede government efforts to attract new investment, thereby undermining economic development. This is based on the assumption that imposition of social criteria such as labour standards by governments seeking to attract new investment will discourage investors, who will likely go somewhere else where there are no conditions, or very few conditions, attached to assistance.[82] A related argument is that this competitive pressure on states to attract investment is healthy, or at least inevitable, because it will encourage governments to remove restrictions or controls on private economic activity which it is assumed will lead to economic development.[83]

Other arguments against linkages are more focused on regulatory concerns. It has been argued that government agencies responsible for attracting investment should focus on this endeavour, leaving the departments or agencies with expertise in labour matters and responsibility for labour regulation to worry about labour practices. It has been suggested that doing otherwise leads to excessive regulatory complexity. A similar argument cautions against the danger of 'smorgasbordism' or a 'kitchen sink' approach to regulatory design, using all possible instruments to attain a social objective such as the improvement of job

[79] Interview with DSRD representative, 13 February 2007.
[80] Baragwanath and Howe, above n 14. Bartik argues that it is because businesses are increasingly footloose that incentives can have a greater impact on business location decisions: Bartik, above n 75.
[81] On labour standards in the call centre industry, see, eg, ACTU, 'On the Line – the Future of Australia's Call Centre Industry', 22 June 2002. Available at <http://www.actu.asn.au/public/callcentral/ontheline.html> (last accessed 29 February 2008). See also 'Symposium – Working in Call Centres', *Special Issue of the Journal of Industrial Relations* (2008) 50(2).
[82] See Collins 2000, above n 11, and Robert Howse and Brian Langille with J Burda, 'The World Trade Organization and Labour Rights: Man Bites Dog', in VA Leary and D Warner (eds) *Social Issues, Globalisation and International Institution: Labour Rights and the EU, ILO, OECD and WTO* (2006) 157.
[83] Banks, above n 16.

quality, rather than the minimum necessary to attain the objective.[84] It is suggested that this can lead to fragmentation and incoherence in regulation, with a danger of overlapping and contradictory rules and approaches. However to some degree this is the present state of regulation, with a range of state departments and institutions pursuing often contradictory or overlapping norms and strategies, apparently with little communication between them. [85]

Finally, an apparent reluctance to use legislation to regulate investment incentives in Australia means that attachment of social criteria to investment incentives is often achieved through contract. A number of authors have raised concerns over the use of contract by government as a mechanism through which to pursue public objectives. [86] As Seddon observes,

> 'Contract is traditionally about secrecy, no duty to act fairly, participation of the immediate parties but otherwise not concerned with third parties, no duty to act impartially, accountability only to the extent required by the contract and then only to the other party and no duty to act rationally. When traditional contract values are combined with the public purpose, the mix does not necessarily work very well.' [87]

The problem posed by commercial-in-confidence for the traditional public law values of transparency and accountability is a good example.[88] Further consideration is given to this problem below, however such concerns don't preclude the use of contract as a regulatory mechanism, but necessitate consideration of how appropriate accountability mechanisms can be built into public contractual regimes.[89] These might include greater transparency in terms of the processes for award of contracts, and in relation to the contracts themselves. This will enhance another key mechanism of accountability: that is, monitoring of compliance with key eligibility criteria and compliance terms. While having adequate government monitoring and evaluation of contracts will be an important accountability mechanism, greater transparency will foster informal monitoring by external stakeholders. An even better accountability

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[84] Neil Gunningham and Darren Sinclair, 'Integrative Regulation: A Principle-Based Approach to Environmental Policy' (1999) 24 *Law & Social Inquiry* 853, 856 and 859-60.
[85] For example, in discussing our research with the industry assistance officials, it was apparent that there was very little interaction between their office and government departments and or units responsible for industrial relations.
[86] For example, Terence Daintith, 'Regulation by Contract: The New Prerogative' (1979) *Current Legal Problems* 42; Mark Freedland, 'Government by Contract and Public Law' [1994] *Public Law* 86; Janet McLean, 'Government to State: Globalization, Regulation, and Governments as Legal Persons' (2003) 10 *Indiana Journal of Global Legal Studies* 173; and Nick Seddon, 'The Interaction of Contract and Executive Power' (2003) 31 *Federal Law Review* 541.
[87] Seddon above n 86, 548.
[88] See, for example, Moira Paterson, 'Commercial in Confidence and Public Accountability: Achieving a New Balance in the Contract State' (2004) 32 *Australian Business Law Review* 315**.**
[89] P Vincent-Jones *The New Public Contracting: Regulation, Responsiveness, Relationality* (2006).

mechanism would provide for some formal involvement of external third parties in monitoring of contract eligibility and compliance.

Of course, contract is not the only legal mechanism by which these linkages can be made. Many States in the US enact legislation to ensure some level of public accountability of industry assistance. In Minnesota, for example, the 2002 Business Subsidies Law requires, among other things: uniform criteria for all subsidies (including specific wage floors); public hearings to be held before subsidies worth more than US$100,000 are granted; all businesses receiving more than a specific amount in loans or grants to enhance jobs or create a net increase in jobs within the state within two years; subsidy recipients to continue operations on the site for at least five years; and businesses who fail to meet job creation and wage-related criteria to repay the subsidy with interest and to be ineligible for future subsidies. Under the statute, public agencies are also required to publicly disclose subsidy agreements, and the progress of recipient's in achieving these goals, on an annual basis.[90] Since Minnesota first enacted its first corporate subsidy accountability law in 1995, a number of other US states have enacted similar legislation.[91]

In our view, there are strong arguments in favour of linking investment assistance with job quality and other labour market criteria in circumstances where appropriate accountability mechanisms are in place which outweigh the objections we have outlined in the paragraphs above. Before we consider some of the economic and regulatory justifications for linkages,, we think it is important to point out that there is a moral and ethical imperative for governments to seek to promote better labour standards through deployment of public wealth. Until relatively recently, there has been a long tradition of government as 'model employer', whereby public sector employment conditions either bettered or at least matched the most progressive private sector employment practices, thereby encouraging improvements in firms with poor employment records.[92] While the post-war consensus about what constitutes model employment practices has broken down, there is still a persuasive argument which can be made that governments should set an example in terms of the job quality criteria identified in

[90] Minn. Stat. §116J. See also Minnesota Trade and Economic Development, 'Fact Sheet: 2002 Business Subsidy Law' (22 January 2003). Available at <http://www.positivelymn.com/Community/pdf/factsht2002.pdf> (last accessed 2 May 2008). For the history behind this law, and an analysis of its operation, see Ann Nolan and Greg LeRoy, 'Get Something Back! How Civic Engagement is Raising Development Expectations in Minnesota (Good Jobs First, Washington DC, October 2003).
[91] These include Maine and Illinois.
[92] See, for example, Fredman and Morris, above n 78.

our introduction - perhaps with reference to ILO standards. As governments increasingly act as purchasers of services and facilitators of economic activity rather than, or in addition to, their role as direct provider of services and economic actor, it would seem logical and legitimate for there to be some extension of this notion of government as best practice standard-setter to those organisations benefiting from public purchasing power or other forms of state economic subsidy.

This would bring Australia into line with a number of other jurisdictions around the world which identify job quality as a principle criterion against which to assess assistance proposals. Aside from various state and local government entities in the US, of which some examples are discussed in the remainder of this section of the paper, several countries in Europe also assess state aid in terms of job quality. For example, Belgium requires evidence of 'the inclusion of job creation and job quality in business objectives.'[93] In Ireland, the main criteria used to determine offering incentives are (i) the quality of employment created; and (2) location chosen within Ireland.[94]

Next, addressing the economic arguments, we disagree that the imposition of social criteria in return for financial and other incentives will necessarily discourage investment and impede economic development. Evidence from the United States suggests that investment will not necessarily be deterred by imposing accountability and job quality requirements on the disbursement of subsidies and grants.[95] There are a range of factors which influence a company's decision to invest in a particular locality, and many of these factors will be unrelated to costs of labour.[96] Moreover, where states adopt a cooperative approach to attracting investment, there is less chance of negative economic outcomes when the benefits of assistance are assessed from a national perspective.

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[93] See, eg, <http://www.investinwallonia.be/ofi-belgium/investir-en-wallonie/environnement-des-affaires/acces-aux-capitaux.php> (last accessed 17 March 2008).
[94] See <http://www.idaireland.com/home/index.aspx?id=80> (last accessed 17 March 2008).
[95] Research by non-governmental organisation Good Jobs First in 2003 reported that only 16 of the 119 'development officials' interviewed reported hearing complaints that job quality standards negatively affect development efforts: see Anna Purinton, *The Policy Shift To Good Jobs: Cities, States and Counties Attaching Job Quality Standards to Development Subsidies* (Good Jobs First, Washington DC, 2003). See also Weber, above n 75,,51. Similarly, Banks (the Australian Productivity Commission chairman) has pointed to an extensive empirical literature (including Australian-based research) that suggests commercial or market-related factors are more important in their locational decisions than government policies. See Banks, above n 16, 6–7.
[96] Banks, above n 16, 6-7.

Indeed, there may be economic benefits to states which limit economic development incentives to situations where immediate social benefits (such as job quality indicators) can be identified and built into performance criteria. For example, acquiring knowledge of a company's employment relations practices may be helpful in estimating the future productivity of a particular company and in gauging its future impact on the community. In addition, with regard to the use of incentives to promote better labour practices, evidence suggests that firms which are 'good' employers in terms of maintaining high labour standards, observing cooperative workplace relations practices with their employees and/or unions and adopting other forms of 'high performance work practices' which provide employees with the opportunity to participate in workplace decisions, increase workforce skills, and create incentives for workers to participate effectively are likely to be productive businesses.[97]

At a broader level, imposition of clear social benefit criteria may help states avoid wasteful expenditure and ensure that incentive deals achieve value for money.[98] For example, in the United States, cases of companies who had received government subsidies only to downsize their workforce or close their local operations, raised concern among local communities, and policy makers over the lack of accountability and enforcement associated with investment incentives.[99] Legal academics and activists argued that governments were not getting value for their money when funding the creation of 'low-wage, dead-end jobs that provide little benefit to employees or communities'.[100]

We also favour a perspective which highlights the potential of investment incentives to operate as a complementary regulatory technique alongside existing labour regulation. Use of complementary instruments can enhance the likelihood of compliance with and observance of regulatory norms as a 'multiplicity of regulatory signals have the potential to be mutually enforcing'.[101] The fact that this approach relies on linking standards with the deployment of wealth means that it is possible there will be less resistance to the social criteria than if the standards were being imposed through mandatory legal standards. Moreover, one of the

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[97] See, for example, E Appelbaum, 'The Impact of New Forms of Work Organization on Workers' in G Murray et al (eds) *Work and Employment Relations in the High Performance Workplace* (2002) 120; J Sung and D Ashton, 'High Performance Work Practices: Linking Strategy and Skills to Performance Outcomes' (Report funded by the UK Department of Trade and Industry, undated)**;** T Kochan and P Osterman, *The Mutual Gains Enterprise: Forging a Winning Partnership among Labor, Management and Government* (1994).
[98] Bartik, above n 75.
[99] Weber, above n 75, 45.
[100] Greg LeRoy, *The Great American Job Scam: Corporate Tax Dodging and the Myth of Job Creation* (2005).
[101] Gunningham and Sinclair, above n 84, 859. See also Weber, above n 75, 46.

benefits of economic incentives is that as well as being used to encourage compliance with existing legal requirements, they can be used to encourage actions beyond mere compliance with minimum standards.[102] Using economic incentives in this way ensures their complementarity with legal regulation, as otherwise incentives would reward behaviour which is focused on observance of minimum standards rather than on improvement of labour practices. The need for complementary approaches which encourage firms which go 'beyond compliance' with minimum standards is important given the context of declining minimum labour standards in Australia over the last two decades.[103]

We also acknowledge that competition between states for economic development is unlikely to provide value for money for taxpayers in the absence of cooperative arrangements or some set of norms imposed by the federal government. There are many examples of State Governments appearing to offer subsidies and exemptions from otherwise applicable charges and regulatory requirements in order to out-bid other States for investment by a particular corporation, rather than on the basis that this investment was unlikely to occur in Australia without assistance.[104] The remainder of this discussion therefore assumes that at a very minimum, State Government investment attraction should be governed by a set of agreed rules which prevents inappropriate competition for investment.

B *What labour practices could governments seek to influence through investment incentives?*

Assuming that governments should make investment incentives conditional upon recipient businesses meeting job quality criteria, what labour practices could governments seek to influence through investment incentives? There are a number of matters that governments might address here, ranging from decisions about sourcing of new staff, the form of employment and the conditions under which staff will be hired, through to when employment can be terminated. Many of these issues are addressed through widely applicable labour laws, such as safety net pay rates, maximum hours of work, occupational health and safety standards and so on. Labour legislation also prohibits particularly heinous labour practices such as forced labour, many forms of child labour, and many discriminatory employment

[102] Gunningham and Sinclair, above n 84, 883.
[103] See, eg, Christine Parker, 'Meta-regulation: Legal Accountability for Corporate Social Responsibility', in D McBarnet, A Voiculescu and T Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 207.
[104] See, eg, the examples listed above in notes 18-20. See also Banks, above n 16.

practices. At a minimum then, investment incentives could be expressly linked to compliance with existing laws to screen out ‘bad’ employers.

However, there are a number of labour management and labour relations issues that cannot be addressed through a compliance-based approach. For example, the claim that investment incentives create jobs implies that subsidies bring about a net increase in the jobs available in the labour market, thereby increasing employment levels and reducing unemployment. This raises the question of whether subsidised firms are required to hire at least some staff from the ranks of the unemployed, because otherwise the firm may simply be hiring people previously employed by other firms. For example, in the European Community, ‘state aid’ can only be granted if compatible with EC guidelines, which allow state aid for job creation purposes.[105] In order to be eligible under these guidelines, any new employees must never have had a job or must have lost their previous job.

Further, many relevant labour rights and standards are not the subject of mandatory regulation. For example, the minimum standards set by the Australian Fair Pay and Conditions Standard under the *Workplace Relations Act 1996* (Cth) are considered a minimum safety net for workers without the capacity to negotiate reasonable working conditions. These minimum standards are complemented by an enterprise bargaining regime which allows derogation upwards from those minimums for employees with the requisite motivation and bargaining power.

Finally, whether or not there is collective enterprise bargaining at a workplace, there is a significant literature in labour management and labour relations which identifies a variety of non-mandatory, progressive or responsible employment practices which can be adopted by businesses. Many responsible businesses may go above and beyond the law by, for example, adopting a cooperative approach to workplace relations and giving employees access to meaningful representation and voice mechanisms in relation to a range of governance matters, by offering employees the opportunity to improve their work/family balance, or by providing employees with opportunities for training, skills development and career advancement.

[105] Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment.

An example of the benefits that could be accrued through linking job quality to investment incentives is provided by the call centre industry in Victoria. The call centre industry is a major employer in rural and urban Victoria. A significant number of call centre companies have received investment incentives from the Victorian Government over the last decade to locate, or expand, operations within the state. At the same time as promoting investment in this industry, however, the Victorian Government has recognised that the industry suffers from poor regulation of labour standards: in particular, there are high rates of employee turnover and occupational health and safety issues.[106] Indeed, there have been labour-related problems in precisely those companies that the Victorian Government has provided grants. Examples include TeleTech, which refused to sign a collective agreement with its employees;[107] and Global Telesales Pty Ltd (GTS), which received investment incentives from the Kennett Victorian Government in 1998. After failing to secure agreement with GTS on the number of jobs that would be created by the company, the Victorian Government supported GTS in contesting its employees' attempts to gain award coverage in the Australian Industrial Relations Commission (AIRC).[108] GTS' industrial relations practices, more recently, have been the subject of a highly critical report by the Victorian Workplace Rights Advocate.[109]

To address concerns over labour standards in the call centre industry, Industrial Relations Victoria has developed the *Victorian Government Call Centre Code*, which sets out the key requirements for successfully operating call centres, including considerations relating to employee entitlements, occupational health and safety, training, representation and dispute settlement.[110] The Code is mandatory for the Victorian Government and to private sector organisations contracted to the Victorian Government to provide or perform call centre

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[106] Industrial Relations Victoria, Department of Innovation, Industry and Regional Development, *Victorian Government Call Centre Code* (2007) <http://www.business.vic.gov.au/BUSVIC/STANDARD/1001/PC_50511.html>. On labour standards in the call centre industry, see also ACTU, 'On the Line – the Future of Australia's Call Centre Industry', above n 81.

[107] See 'New Teletech Call Centre – 350 Direct New Jobs in Melbourne' (Media Release from the Minister for State and Regional Development, 15 March 2000) and Paul Robinson, 'Moe Call Centre Staff Threaten Strike over Conditions', *The Age*, 10 September 2002; ACTU, 'Call Centre Workers Stop Work Over Anti-Family Contracts', 9 February 2004, Available at <http://www.actu.asn.au/Campaigns/PastACTUCampaigns/CallCentral/CallCentreWorkersStopWorkOverAntiFamilyContracts.aspx> (last accessed 29 February 2008) and ACTU, 'TeleTech Staff Walk for Collective Agreement', 11 December 2003, Available at <http://www.actu.asn.au/Campaigns/PastACTUCampaigns/CallCentral/TeleTechStaffWalkForCollectiveAgreement.aspx> (last accessed 29 February 2008).

[108] See Baragwanath and Howe, above n 14.

[109] Office of the Workplace Rights Advocate, *Report on the Investigation into a Complaint Regarding Australian Workplace Agreements Being Offered By Global Tele Sales Pty Ltd* (undated).

[110] Available at <http://www.business.vic.gov.au/BUSVIC/STANDARD//pc=PC_50511.html>.

activities. The Victorian Government also encourages all private sector employers to adopt and follow the Code. Requiring those who receive investment incentives in this industry to comply with the Victorian Government's call centre code could be an effective means of promoting better standards on an industry-wide basis.

To conclude, in the present labour law environment in Australia, businesses can be compliant with minimum standards without necessarily being responsible employers. In our view, where government provides significant assistance to employers with the justification of job creation, then it should act to ensure that it only assists responsible employers who are, or commit to, going beyond compliance with minimum standards. We acknowledge that this position is difficult to reconcile with the recent role of the federal Government as key player in the individualisation of employment relations and as agent for corporations either willing or forced to drive down labour costs,[111] but there may be some potential for a shift in approach following the election of the Rudd Labor Government in 2007.

C *Regulatory challenges and design considerations*

If, as we argue in this paper, Australian governments should demand more for their money for investment incentives, the question then arises as to what should be the key features of the regulatory regime which governs this area of activity. This requires us to address some of the main challenges confronting any attempt to improve regulation in this context.

While there are many different ways to design an appropriate regulation or governance system, in this paper we take the position that the key criteria should be legitimacy, effectiveness and accountability.[112] We have already made a case for the legitimacy of using investment incentives to promote better labour practices. However, both the legitimacy and effectiveness of investment incentives will be improved by an appropriate regulatory regime which enhances accountability of these subsidies.[113] There is some consensus among commentators that reforms to the process by which incentives are offered and administered

[111] David Peetz, *Brave New Workplace: How Individual Contracts are Changing our Jobs* (2005), pp 192-196; Howe, above n 2.
[112] See, for example, Vincent-Jones, above n 89 and B Morgan and K Yeung, *An Introduction to Law and Regulation: Text and Materials* (2007).
[113] It is arguable that accountability is an avenue by which legitimacy is secured: Morgan and Yeung, above n 123, 228 and Vincent-Jones, above n 89, 107.

may help to eliminate ineffective economic incentives and improve the social benefits flowing from these incentives.[114]

A strong theme in this paper is the lack of accountability surrounding the disbursement of investment incentives in the Australian states. As noted earlier, the chief reasons given for non-disclosure of information concerning of key details of investment incentives are competition between States and foreign governments for capital and commercial confidentiality. Interstate competition for investment is central to understanding the nature and dynamics of investment incentives in Australia. In particular, the challenge of securing footloose investment, in competition with other jurisdictions, is frequently cited by governments as a reason for providing financial assistance; for limiting the number of conditions imposed on this assistance; and for not disclosing the details of grants. The dynamics of investment incentives competition in a federal system is well described by Weber:

> 'The political and legal environment in which economic development takes place resembles an auction in which a firm sells promises of jobs, income, and taxes to multiple cities and states bidding for these commodities. Local governments compete with one another, seeking to maximise their reputations, revenues and jobs.' [115]

In the past, intensive bidding wars between state and territory governments for major projects have attracted widespread criticism. In a 2002 speech, Productivity Commission Chairman Gary Banks observed that investment deals secured through 'outbidding' other states are 'difficult to justify on economic grounds' and 'the processes for clinching them are even harder to justify against basic principles of good government.'[116]

In August 2003, six state and territory governments signed the Interstate Investment Cooperation Agreement, intended to minimise the bidding wars between the states for major projects and events and encourage greater inter-state cooperation to promote Australia as an investment destination. This agreement, which built upon an agreement between the NSW and Victorian Governments in 2001, was renewed in March 2006. Queensland, however, continues to refuse to sign the agreement, meaning that the states continue to compete on major deals. Furthermore, competition between NSW and Victoria remains fierce: a recent

[114] Bartik, above n 75; Banks, above n 16.
[115] Weber, above n 75, 44.
[116] Banks, above n 16.

example of this competition is the battle to secure the location of the base of Australia's newest international air carrier, V Australia.[117]

The intensity of inter-state competition is well exemplified by the battle between Queensland and Victoria to secure the headquarters of low-budget airline carrier Tiger Airways in 2007. Following a 'neck and neck race' with Brisbane,[118] Victorian Premier Steve Bracks announced in May 2007 that Melbourne was to be the location of Tiger Airways' Australian headquarters.[119] This investment, according to the Premier and the airline, would create an estimated 1000 jobs (a recent departmental annual report reduced this estimate to 165 full-time jobs).[120] The Victorian Government withheld details of incentives provided to secure Tiger, though attributed Tiger Airways' final decision in part to 'government support'.[121] In addition to competing with each other, the Australian states continue to compete with overseas jurisdictions for investment.[122]

Reliance on the maintenance of commercial confidentiality as a basis for non-disclosure of investment incentive arrangements is in part justified by jurisdictional competition, but also because of the need to protect a benefiting company's competitive position, and to prevent potential investors from engaging in 'rent seeking behaviour'.[123] This justification is very important because, as noted earlier, documents which might breach commercial confidentiality can be exempted from the limited right of access to government documents under freedom of information legislation in all States, as well as the federal Act.[124] Confidentiality, according to the States, 'protects taxpayers' funds because it prevents

[117] Mathew Murphy, 'Brumby Keeps State's Offer in V Australia Bid Grounded', *The Age*, 2 April 2008.
[118] Mathew Murphy, 'Tiger Airways to Reveal Base Soon', *The Age*, 17 April 2007; and Matthew Murphy, 'Tiger Roars into Melbourne', *The Age*, 3 May 2007.
[119] 'Bracks Lays Bait for Tiger Airways', *The Age*, 5 March 2007; Mathew Murphy, 'Tiger Roars into Melbourne', *The Age*, 3 May 2007; Premier of Victoria, 'Tiger Airways Roars into Melbourne' (Media Release, 3 May 2007); Mathew Murphy, 'Bracks Cagey on Taming the Tiger', *The Age*, 4 May 2007.
[120] Department of Innovation, Industry and Regional Development, *Annual Report 2006-2007*, 17.
[121] See Daniel Hoare, 'Tiger Airways to Base Operations in Melbourne', ABC Radio, 3 May 2007. Transcript available at <http://www.abc.net.au/worldtoday/content/2007/s1913495.htm> (last accessed 29 February 2008). See also Invest Victoria, 'Tiger Roars into Melbourne', <http://www.investvictoria.com/030507TigerAirways> (last accessed 29 February 2008). See also Victoria, *Parliamentary Debates*, Legislative Council, 14 March 2007, 585 (Hon. T C Theophanous, Minister for Industry and State Development).
[122] Interview with DIIRD representative, Melbourne, 7 May 2007.
[123] See, for example, the discussion of the commercial confidentiality justification in Auditor General, Victoria (2002), above n 15, p 103.
[124] See discussion and case references in footnote 21, above.

bidding wars between companies vying for government grants.'[125] Former Queensland Premier Peter Beattie, for example, repeatedly argued that deals were classed as commercial-in-confidence so that they wouldn't 'cost taxpayers millions', as other states or companies could not take advantage of them.[126]

Interestingly, it is apparent that investment incentives are a source of competitive advantage for business. As one government agency explained to us, businesses within the same industry might be aware of their competitors' costs of doing business, but businesses would not know what subsidies a competitor was receiving from government.[127] It is on this basis that it is argued that disclosure of the details of assistance would harm a company's competitive position. State governments also argue that release of such material would compromise the department's negotiating positions with potential investors through raising the expectations of possible future financial assistance recipients and setting new benchmarks or starting points for negotiations (rent seeking behaviour).[128] This would ultimately lead to a higher level of public funds being outlaid to achieve a given investment outcome and be detrimental to the public interest.

These justifications for secrecy of investment incentive arrangements have been widely criticised, at least in part because the concept of commercial in confidence 'is both ill defined and poorly understood'.[129] A substantial proportion of government activities are of a commercial nature, and government increasingly engages private corporations with commercial interests in the conduct of those activities. Of all of the information relevant to these commercial activities, what is confidential and what is not? Various independent government committees and agencies have argued that only a relatively small proportion of

[125] 'Premier Releases Business Grant Details', Joint Press Release from the Premier and Minister for Trade, Peter Beattie and the Minister for State Development, Employment and Industrial Relations, John Mickel, 19 March 2007.

[126] Premier Beattie, Queensland Hansard, Legislative Assembly, 15 March 2000: 339. These comments were made in respect of the Queensland Government's recent success securing Brisbane as Virgin Blue's Australian base. The Queensland Government releases information of individual assistance deals eight years later. See, eg, M Ludlow, 'Incentive Carrot will Stay', *Australian Financial Review*, 20 March 2007, 6. Interestingly, a survey by Commerce Queensland of its members in 2006 found that 94% of respondents were in favour of increased transparency in investment incentive reporting: Commerce Queensland, above n 15.

[127] Interview with DIIRD representatives, Melbourne, 7 May 2007.

[128] See, eg, Public Accounts Committee, Legislative Assembly of Queensland, *Commercial-in-Confidence Arrangements* (Report No 61, November 2002) 11.

[129] Paterson, above n 88, 316. See also William De Maria, 'Commercial in Confidence: an Obituary to Transparency?' (2001) 60 *Australian Journal of Public Administration* 92; Public Accounts and Estimates Committee, Parliament of Victoria, *Commercial in Confidence Material and the Public Interest*, 35th Report to Parliament (2000).

government contractual arrangements are genuinely commercial in confidence, but this does not stop governments from routinely claiming that a much wider range of information is either contractually protected from disclosure or exempt from disclosure under freedom of information legislation.[130]

The Victorian Auditor General, while acknowledging that disclosure might increase the cost of providing industry assistance, and acknowledging improvements made in disclosure, has argued that greater transparency will improve the legitimacy of subsidies: 'lack of information on public expenditure undermines public confidence in the integrity of the process and creates suspicion of waste and corruption. Indeed, if there is widespread public support for the provision of assistance to industry then this can only be further enhanced by the provision of reliable information'.[131]

There is clearly a need for improvement of accountability if there is to be effective promotion of job quality through investment attraction incentives. It has been observed that this form of regulatory technique often avoids the accountability mechanisms associated with legal instruments, in part due to the use of contract as the primary legal mechanism for securing a *quid pro quo* between the recipient of assistance and the social benefits sought to be achieved, and also as a result of the secrecy which surrounds many subsidy deals.[132]

Assuming that job quality criteria are built into investment incentive arrangements, consideration must also be given to whether this approach is likely to be effective in creating jobs for those who need them, and improving the job quality of jobs in the relevant jurisdiction. It is recognised that, notwithstanding our earlier arguments in favour of including job quality criteria in investment incentive decisions, many companies will find it difficult to reconcile these social criteria with corporate self-interest.[133] It is important to ensure that the incorporation of job quality criteria into investment incentive programs is accompanied by a regulatory approach designed to ensure that firms make a genuine commitment to any job quality in return for government subsidies.

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[130] See, for example, Senate Finance and Public Administration References Committee, Parliament of the Commonwealth, *Contracting Out of Government Services*, Second Report (1998), 71; Australian National Audit Office, *The Use of Confidentiality Provisions in Government Contracts*, Report No 38 (2001), [4.17]; Public Accounts and Estimates Committee, Parliament of Victoria (2000), ibid.
[131] Auditor General, Victoria (2002), above n 15, 103.
[132] See Howe, above n 2, 171 and sources cited in footnote 21. See also Weber, above n 75.
[133] Parker, 'Meta-regulation: Legal Accountability for Corporate Social Responsibility', above n 103, 224.

At a minimum, job quality standards must be incorporated into both eligibility criteria for investment incentives, and included in contracts between government and the subsidised corporation.[134] To ensure that firms are encouraged to go 'beyond compliance' with legal minimums, subsidies could be made conditional upon firms agreeing to government sanctioned 'codes of practice' regarding industrial relations, such as the Victorian Government's Call Centre Code.[135] In cases where governments were reluctant to impose criteria from the beginning of a contract, businesses could instead be required to negotiate and consult with government and other stakeholders to determine a process by which job quality targets would be achieved within a specified time period.[136]

It is also important that any job quality criteria are relevant to the particular business, industry or even geographical context. For example, ensuring that jobs created go to unemployed people will be important in areas with high unemployment, while ensuring skills development will be a higher priority in areas and industries with satisfactory employment rates but low skill levels.[137]

It will also be necessary to have adequate monitoring processes and enforcement capacities built into the contracts to ensure that there is some capacity for government and interested stakeholders to hold businesses accountable to job quality criteria. To some degree, our research indicates that the State Governments already have fairly sophisticated monitoring arrangements in place regarding the criteria which have been agreed between contracting parties. These include, for example, requirements to report on progress on a regular basis. It also appears that governments do include enforcement provisions in contracts with the recipients of subsidies which come into effect when a corporation defaults on a key contractual provision, such as quantitative job creation targets. These are mechanisms which could also be used to monitor and enforce job quality criteria, if included. However, it is also

[134] The imposition of job quality standards as eligibility criteria for government assistance is an essential component of an effective and accountable regulatory approach.
[135] Industrial Relations Victoria, above n 106. This code is otherwise voluntary outside the Victorian public sector and government contractors. For a discussion of the importance of requiring firms to go 'beyond compliance', see Parker, *The Open Corporation: Effective Self-regulation and Democracy* (2002); and Parker, 'Meta-regulation: Legal Accountability for Corporate Social Responsibility', above n 103.
[136] Parker argues that such an approach, similar to that taken by the Victorian EPA with its Environmental Improvement Plans, should enhance the likely effectiveness of the regulatory process: Parker, 'Meta-regulation: Legal Accountability for Corporate Social Responsibility', above n 103, 236.
[137] Bartik, above n 84.

apparent that governmental departments or units responsible for investment attraction do not utilise the expertise of government departments or units which oversee employment rights and standards and seek to promote better work practices within each jurisdiction. It is somewhat surprising given the job creation claims underpinning investment attraction programs that those with expertise in the regulation of work do not play more of a role in assessment and oversight of investment attraction arrangements.

On their own, these existing monitoring mechanisms are unlikely to be completely effective at ensuring the effectiveness and accountability of existing job-related criteria, let alone the additional job quality criteria we are advocating. What is missing from these regulatory arrangements are adequate disclosure and third-party monitoring and enforcement mechanisms. The lack of transparency and disclosure in relation to investment incentives means that there is very little capacity for stakeholders outside government to assess job quantity or job quality criteria, let alone measure corporate performance in relation to those criteria.

There are a number of possible solutions to these accountability problems. Many of these approaches are already utilised in other countries. A number of states in the United States now have laws which require recipients of state-funded incentives to file annual reports specifying the amount of the incentive, the public purpose to be served, the number and quality of jobs to be created and any other special treatment received. These reports may be collected and published by the relevant government department on an annual basis.[138] In Connecticut, recipient companies are required to make incentive reports available to employee representatives upon request.[139]

In Australia, a minimum, as part of the approval process for investment incentives for individual businesses, each jurisdiction's labour department could assess or audit a company's labour practices against set criteria. Investment incentive contracts could require companies to submit reports regarding their compliance with set labour criteria to the relevant labour department. Of course, having these reports made public would be an even bigger improvement in terms of accountability. Subsidies could be conditional upon an active role

[138] See R Weber and D Santacroce, 'The Ideal Deal: How Local Government Can Get More For Their Economic Development Dollar' (Good Jobs First and UIC Centre for Urban Economic Development, March 2007) 25.

[139] Connecticut Development Authoroity, Participating Loan Program and Direct Inducements, Master Guarantee Agreement and Connecticut Public Act No. 93: 218.

for workers themselves in monitoring the firms' use of subsidies, and requiring the firm to disclose detailed relevant information to workers.[140]

Even where governments do endeavour to monitor recipients of assistance and include enforcement provisions in government contracts, some authors have expressed doubt over the capacity of improved accountability provisions to make investment incentives more effective.[141] One of the difficulties with regulation by contract is that it relies upon enforcement by the parties to the contract. However, this means that in situations where government is reluctant to enforce a contract it has with a defaulting business, there is very little capacity for outsiders to know that there has been a problem with contract compliance, let alone any legal standing to enforce the contract. This is a major issue, especially where these arrangements are meant to have a public benefit.

One way of dealing with this is for government to make greater use of legislation in authorising expenditure on investment incentives and setting parameters for the deployment of these incentives. This is quite common in the US, where a number of state, city and county jurisdictions have enacted legislation regulating the disbursement of public monies through economic development programs. Programs have also been revised to ensure greater public benefits are achieved, including those relating to job creation and job quality. Many US states have legislation that specifies performance standards for job creation and retention that appear considerably more detailed than those in Australia. Statutes in Michigan and Iowa, for example, specify the minimum number of jobs that must be created before being eligible to an incentive under the program.[142] States may require incentives to be calibrated to successive employment levels, so that companies who hire more full-time employees receive more tax credits;[143] or include clauses which ensure that any jobs created are in fact 'new jobs'.[144]

[140] R Howse, 'Retrenchment, Reform or Revolution? The Shift to Incentives and the Future of the Regulatory State' (1993) 21 *Alberta Law Review* 455.
[141] See, for example, Weber, above n 75.
[142] *Michigan Economic Growth Act Tax Credit Agreement,* Public Act 24, 1995; *Iowa New Jobs and Income Agreement,* Iowa Statute 15.330.
[143] Vermont Small Business Investment Tax Credit, *Vermont Act Relating to Education, Taxation and Education Financing,* Public Act 71, Sec. 5930g, 1998.
[144] See, eg, Ohio Tax Credit Authority Agreement. Ohio Administrative Code 122: 7-1-05.

Another approach to the privity of contract problem that has been implemented by community groups in the US is to negotiate a direct agreement between the subsidised corporation and stakeholder groups in return for stakeholders' support for the relevant project, called 'Community Benefit Agreements' (CBA).[145] While government may be part of the negotiation of a CBA, the agreement is a direct contract between non-government organisations and/or trade unions and the corporations concerned. The CBA incorporates social criteria including minimum labour conditions and local source hiring as contractual standards to be met by the corporation receiving government assistance. The agreements generally facilitate monitoring of compliance with the terms of the CBA by community representatives, and because there are no privity of contract issues, stakeholders can play a direct monitoring and enforcement role which is not reliant on the role of government. The evidence from the US suggests that this approach is more likely to be successful where non-government organisations, trade unions and communities are in a position to effectively mobilise public opposition to particular projects, thereby providing an incentive for corporations to sign on to the CBA.

VII CONCLUSION

This paper has presented some preliminary findings on how three state governments in Australia (NSW, Queensland and Victoria) use industry assistance to pursue public policy goals relating to the quality of jobs and the character of employment relations in assisted corporations. One of the clearest observations drawn from our research is the dearth of publicly available information upon which to assess the current policy regime. This in itself is startling given the dollar value of industry assistance in Australia. Another conclusion is that there is no evidence of any regulatory innovation in Australia to match initiatives in the US which have sought to link job quality criteria and investment incentives in a transparent and accountable manner.

At the very least, there needs to be greater disclosure of the terms upon which investment incentives are granted in Australia. This would be sound public regulation because of its accountability benefits, but also enables monitoring by third party stakeholders of the

[145] See J Gross, G LeRoy and M Janis-Aparicio, 'Community Benefits Agreements: Making Development Projects Accountable' (Good Jobs First and California Partnership for Working Families, Washington DC and Oakland, USA, 2005). See also David A Marcello, 'Community Benefit Agreements: New Vehicle for Investment in America's Neighbourhoods' (2007) 39 *The Urban Lawyer* 657.

effectiveness of investment incentives. Lacking knowledge of the details of agreements, interested stakeholders such as unions, community organisations and business competitors are unable to ensure that firms comply with any job quantity or quality requirements by pressuring the government to enforce the agreement. This may be particularly important where a company who has received assistance is planning to relocate or downsize, as employee representatives could use the information in their own contract negotiations or to publicise the companies' obligations to the state.[146]

We have also argued that there should be more job quality criteria included as part of investment incentive arrangements. When combined with an appropriate regulatory framework to ensure adequate monitoring and enforcement of standards, this is likely to enhance job quality within assisted firms, but will also help ensure that investment incentives are effective in achieving their more general economic development goals.

[146] Weber and Santacroce, above n 138, 25.

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