

## **Regulating for risk in Australia: governance and systemic issues**

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Productivity Commission**

OECD Group on Regulatory Policy  
Regulatory Reform and Risk  
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Productivity Commission

### **The Productivity Commission**

- Australian Government's standing public inquiry and research body on economic, social and environmental policy issues.
- Statutory independence; transparent processes; community-wide perspective
  - Unique currently within the OECD
- 10 Commissioners; 150 professional staff; annual budget of \$US20million.

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## Some recent risk-related inquiry reports

- Consumer protection policy (including product safety)
- Infrastructure regulation (3<sup>rd</sup> party access)
- Gambling regulation (social costs)
- Occupational Health and Safety
- Chemicals and Plastics regulation
- Medical workforce (accreditation)
- Drought policy (relief criteria)
- Heritage protection

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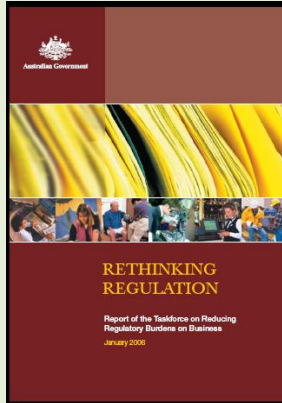
## Office of Best Practice Regulation (OBPR)

- 'Gatekeeper' on compliance with RIA requirements
- Technical support to regulation makers
- Monitors and reports annually on RIA compliance and regulatory performance across whole of government.

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## Regulation Taskforce ('Banks Report'), 2006



<http://www.regulationtaskforce.gov.au/>

## Common regulatory problems

- Unclear or questionable objectives
- Failure to target the regulation at the 'problem'
- Undue prescription and complexity
- Overlap, duplication and inconsistency
- Excessive reporting and paperwork
- Unwarranted differentiation from international standards.

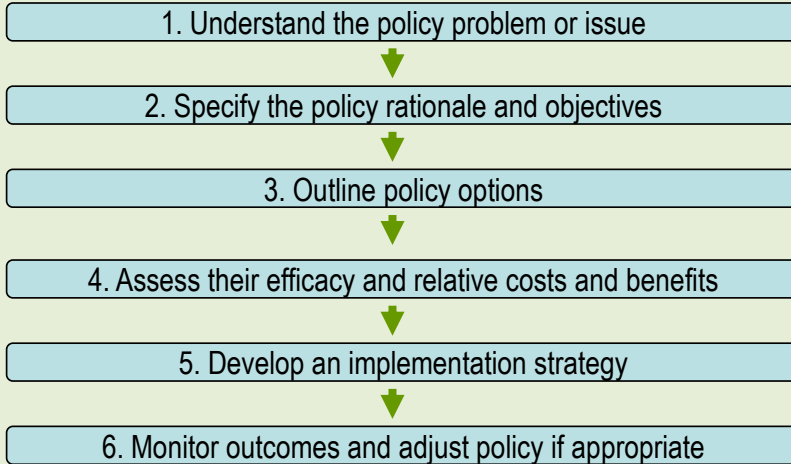
## What is causing regulatory problems?

- Society's own demands
  - rising prosperity, increased knowledge and risk aversion
  - seeking regulatory 'fixes'
- Governments' knee-jerk responses
  - 'regulate first, ask questions later'

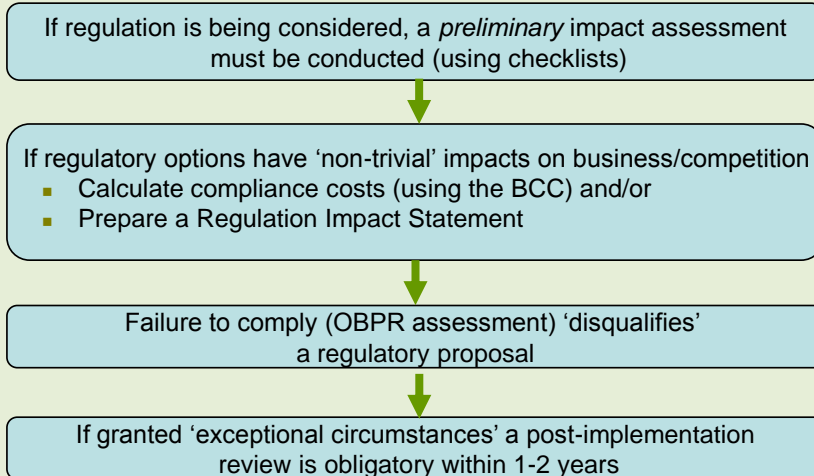
## A need for systemic solutions

- Entrench good processes for *making* regulation
- Improve incentives to administer regulation well
- Strengthen mechanisms for *consistency across jurisdictions*
- Introduce fail-safe systems to ensure regulation remains '*fit for purpose*'

## Best practice policy development: key steps



## Australian Government's new regulatory assessment process



## Addressing risk in a Regulation Impact Statement

Steps in RIS	Risk Considerations
1. Identifying the problem	'Baseline' risk – outcomes <i>without</i> action?
2. Specifying the policy objectives	Reducing probability and/or consequences of adverse event (not <i>zero</i> risk!)
3. Outlining all options	Regulatory <i>and</i> non-regulatory
4. Performing impact analysis	Costs and benefits relative to no action (risk reduction)
5. Undertaking consultation	To assess risks and effectiveness of options
6. Decision and implementation	Option with highest expected net benefit
7. A review strategy	Risk assessed accurately? Impact as intended? Other unintended effects (risks)?

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## "It's risky being a regulator"

(Headline in the Australian Financial Review, 25 August 2007)



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## Improving incentives to *administer* regulation well

- Clearer statutory and other guidance about policy objectives and principles
  - Ministerial 'Statements of Expectation'

## Australian Government's 'Statements of Expectation' for Financial Regulators

- APRA: "*Prudential **regulation cannot...guarantee a zero failure rate...** or provide absolute protection for market participants.*" "*It is important...[to] maintain a low incidence of failure...while not impeding improvements in efficiency...*"
- ASIC: "*...there is **scope for tension between...statutory responsibilities...** Measures to promote informed and confident participation of investors...may introduce significant costs for business and prevent efficient allocation and management of risk... **ASIC will comply with ...policy or best practice regulation on all regulatory proposals...***"

## Improving incentives to *administer* regulation well

- Clearer statutory and other guidance about policy objectives and principles
  - Ministerial 'Statements of Expectation'
- Better consultation
  - Whole-of-government policy
- Greater accountability/transparency
  - KPIs against all objectives
  - Charters, protocols
  - Accessible merit review mechanisms

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## Some lessons/issues from Australia's experience

- Good regulatory practice, including risk assessment/management, is very difficult to achieve
  - it must be systematically encouraged and enforced
- Regulators need legislative guidance and political support for a balanced approach to risk
  - especially during/following 'crises'
- A whole-of-government approach to basic principles/processes is necessary
  - with central oversight/coordination

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## Some lessons/issues from Australia's experience (cont'd)

- Ex post reviews are essential to ensure regulation remains 'fit for purpose'
  - including to reassess risks and their management
- Regulatory bodies need to be well resourced
  - especially financial regulators
- Political leadership is crucial to good risk regulation
  - both within government and to educate the community.

## Further information on regulation 'down under'

- Productivity Commission  
([www.pc.gov.au](http://www.pc.gov.au))
- Office of Best Practice Regulation  
(<http://www.finance.gov.au/obpr/about/index.html>)
- Regulation Taskforce  
([www.regulationtaskforce.gov.au](http://www.regulationtaskforce.gov.au))
- Council of Australian Governments  
([www.coag.gov.au](http://www.coag.gov.au))