



MONASH University
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Regulatory reform in Australia

Dr. David Cousins AM Professorial Fellow

Australia has been recognized as a leader in regulatory reform by the OECD

- **Regulatory reform aims to ensure the most efficient and effective regulatory approaches are in place**
- **Three waves of regulatory reform in Australia**
 - Increased international competition in the 1980s
 - Domestic competition reforms in the 1990s
 - Burden reduction initiatives of the 2000s
- **Competition enhancement is seen as driving a significant lift in productivity in the 1990s**
- **Good regulatory frameworks have been an important factor allowing Australia to weather the Global Financial Crisis better than most**

The Australian Federation



Brief background to the Federation

- **European invasion and settlement occurred in 1788**
- **States were established over the next 60-70 years**
- **Commonwealth of Australia (federation) established in 1901**
- **Constitution set out functions of the Commonwealth (no reference to competition or consumer protection); other things remained with the States**
 - Commonwealth could legislate with respect to corporations
- **Over time the Commonwealth has gained financial superiority through its taxing powers and gained from interpretation of the Constitution**
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Inconsistency and duplication of laws

- **Each jurisdiction has its own Parliament and makes laws as it sees fit**
- **This has inevitably led to some inconsistency in the approaches adopted**
 - The States may be inconsistent – the ‘rail gauge’ problem
 - Where concurrent powers are exercised the Commonwealth and the States may be inconsistent
- **There have been mechanisms in place to try to achieve coordination but these have not always been successful**

Competition legislation

- **A very early 1906 act modeled on the Sherman Act of the USA was found largely to be unconstitutional and was ineffective**
- **Restrictive Trade Practices Act 1965**
- **Trade Practices Act 1974**
- **National Competition Policy initiative from 1995 – resulted in a single law single regulator model for competition law**
- **Competition and Consumer Act 2010**

Consumer legislation

- **Consumer empowerment is now seen as a key driver of competition**
- **Victoria introduced the first general consumer law in 1965; other States followed**
- **The Commonwealth Trade Practices Act 1974 (TPA) contained consumer protection provisions**
- **States and Territories modeled the main provisions of the TPA in their Fair Trading Acts**
- **Schedule 2 of the Competition and Consumer Act contains the new Australian Consumer Law which is consistent across all the jurisdictions.**
- **A single law multi-regulator model applies in relation to the consumer laws**

National Competition Policy

- **Initiated by the Hilmer report in 1993**
- **It was a comprehensive process involving in particular:**
 - significant structural reforms of government business enterprises and monopolies;
 - access arrangements for essential facility services
 - full exposure of government enterprises and non-corporate bodies to competition law;
 - Competitive neutrality arrangements affecting government enterprises
 - change in prices oversight arrangements
 - comprehensive reviews of all legislation restricting competition;

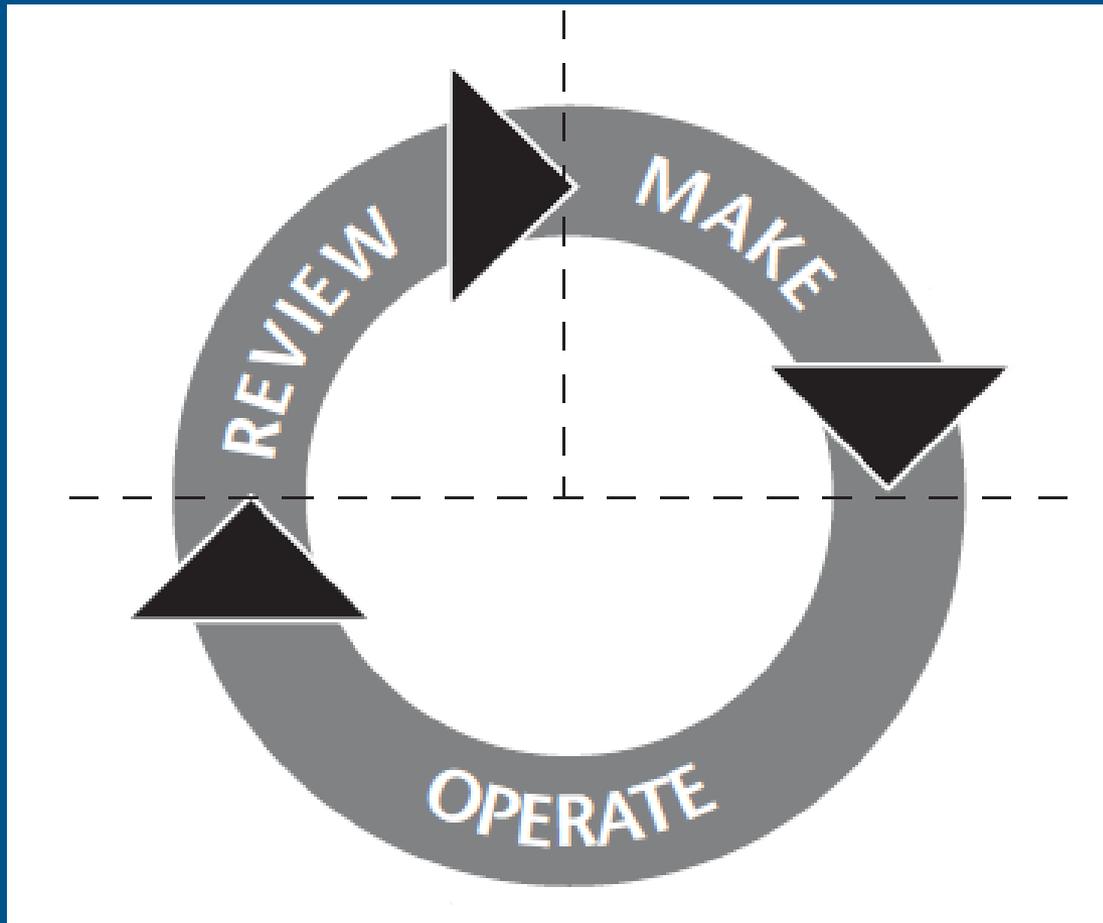
Follow up to the NCP has been the National Reform Agenda and National Reform Initiative

- **The Council of Australian Governments agreed to the NRA in 2006. It was influenced especially by Victorian Government proposals (Bracks, *A Third Wave of National Reform*, August 2005) and a report prepared for the Commonwealth (Banks, *Rethinking Regulation*, January 2006)**
- **A new Commonwealth Government and alignment of political interests across the jurisdictions gave significant impetus to the reform program (now known as the NRI) in 2007**
- **The NRI covers human capital, but also has a significant competition and regulatory reform component**
- **Key objectives have been to move to a seamless national economy and reduce unnecessary burdens on business**

The seamless economy reforms

- **Initially included 27 regulatory reform initiatives and 8 competition reforms but some further reform areas have been added since**
- **Establishing a sound management framework for the reform process was considered essential. Key aspects here are:**
 - The role of the Council of Australian Governments
 - The role of the Business Regulation and Competition Working Group
 - A National Partnership Agreement providing additional funding to the States/Territories for satisfactory and timely completion of reforms
 - A COAG Reform Council which is independently monitoring performance

Current reform initiatives extend across all elements of the regulatory cycle



COAG principles of regulation reform

- 1 Establish a case for action before addressing a problem;**
- 2 A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their costs and benefits assessed;**
- 3 Adopt the option that generates the greatest net benefit for the community;**
- 4 Legislation should not restrict competition unless it can be demonstrated that:**
 - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b. the objectives of the regulation can only be achieved by restricting competition

COAG principles of regulation reform (cont.)

- 5 Provide effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are not unclear;**
- 6 Ensure that regulation remains relevant and effective over time;**
- 7 Consult effectively with affected key stakeholders at all stages of the regulatory cycle; and**
- 8 Government action should be effective and proportional to the issue being addressed.**

Regulatory Impact Assessments

- **All jurisdictions have well established RIA requirements which apply the COAG Principles**
- **Consultation requirements apply and RIAs are reviewed by independent agencies**
- **The RIA process has over time been applied to a wider range of regulatory instruments which constrain business behavior**
- **There has also been a stronger emphasis on quantifying costs and benefits**
- **The RIA process has mainly applied ex ante but ex post evaluation has been increasingly emphasized also**

Targets for regulatory burden reduction

- **The Commonwealth has not set specific reduction targets but has encouraged measurement of the costs of regulation**
- **State governments have tended to follow the Dutch cost model in measuring administrative costs and setting targets for reduction**
 - Victoria committed to reducing administrative burdens by 25% over 3 years
- **The Commonwealth is encouraging the one in one out approach and is looking at the idea of developing regulatory budgets**

Reform of regulators

- **Much of the focus of efforts to reform regulation has been on managing the stock and flow of new regulation**
- **However, what regulators do in administering and enforcing regulation can have at least as much impact on business and the community as the regulation itself**
 - Good regulators can mitigate the effects of bad regulation and bad regulators can turn good regulation into bad regulation

Some observed weaknesses of regulators

- **Failure to act swiftly and decisively in response to emerging problems in markets; adds pressure for governments to apply further regulatory fixes**
- **Failure to apply risk-based regulation - results in inappropriate priority setting and inefficient allocation of scarce resources**
- **Inefficient practices adds further to costs for business and the community**
- **Regulators frequently suffer from lack of funding, training and capacity to perform important tasks**

Four approaches to improving regulator performance

- 1. Improve the governance arrangements under which regulators operate**
- 2. Review administrative processes associated with regulation and develop process performance indicators to use in conjunction with efficiency and effectiveness performance indicators**
- 3. Enhance co-ordination and oversight of regulators**
- 4. Consolidate regulators**

1. Principles for good external governance for regulators

- **Role clarity**
 - Specifying objectives
 - Dealing with conflicts in objectives
 - Separation of policy and regulation
- **Degree of independence**
 - What does independence entail?
 - When is regulator independence important?
 - General v industry-specific regulators
- **Accountability and transparency**
 - Guidelines and known processes
 - Internal and external appeal provisions
 - Annual reports tabled in the Parliament

1. Principles for good external governance for regulators (cont.)

- **Engagement**
 - Consultation processes
- **The composition of the governing body**
 - Single or multiple-member decision-makers
 - Relationship between decision-makers and CEO
 - Stakeholder representation
- **Funding**
 - Covering efficient costs
 - General v sector-specific regulators
- **Legislative framework (and other governance tools such as Statements of Expectation)**

2. Review of administrative processes

- **Identify the activities and tasks that should be undertaken by regulators if they are to adhere to good regulatory principles**
- **Assess the ‘process maturity’ of these activities and tasks eg.**
 - Level 1 Informal and person dependent
 - Level 2 Partially documented processes
 - Level 3 Fully documented processes
 - Level 4 Level 3 plus measured processes
 - Level 5 Level 4 plus continuous improvement
- **Aim over time to achieve higher levels of process maturity**

3. Enhanced co-ordination and central oversight of regulators

- **Roles of central agency and other portfolio ministers in over-sighting regulation and regulators**
- **Formal Memoranda of Understanding where appropriate to clarify regulator roles and promote coordination**
- **Regulator forums and communities of practice for regulators to share experiences and identify best practice**
- **Central agencies could facilitate training for regulators; monitor the performance of regulators including through benchmarking**

4. Consolidate regulators

- **Often regulators are very small scale and based on specific industries**
- **An alternative approach would be to establishing domain or theme-based regulators**
- **Benefits of doing this may be:**
 - Increased efficiency
 - Increased capacity to perform tasks
 - Better training and use of skills
 - Reduced industry capture
- **Costs, including combining different cultures, may be incurred in the transition**

Challenges in regulation reform

- **Convincing politicians and others that regulatory reforms will bring significant dividends**
 - Crucial to have strong advocates for reform
 - Measurement of benefits can be difficult
 - Benefits of reforms may often be long term but the costs short term
 - The beneficiaries may be dispersed but the losers concentrated
 - Budget pressures may affect the ability to assist transitions

Challenges in regulation reform (cont.)

- **Maintaining the vibrancy of the regulatory management system to ensure continuous improvement**
 - Strong political leadership is vital
 - Ensuring good regulation processes are embedded in the practices of regulation policy makers and regulators
 - Reform fatigue can occur if the program is too ambitious
 - Funding pressures can undermine good practices

Conclusion

- **Australia's experience is that regulation reform is an important aspect of improving market and economic performance**
- **Establishing an effective system for managing regulation and identifying opportunities for reform is important**
- **Promoting more competitive markets is also central to regulation reform**
- **Reform should extend beyond just the rules to also focus on achieving improvements to the performance of regulators**