

# Regulatory reform and Regulation Impact Statements: Challenges and future prospects

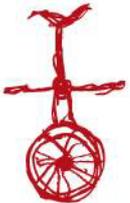
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# There is still scope for improvement...

According to the Banks report:

- More than 1500 Commonwealth Acts of Parliament;
- Around 1000 statutory rules in force;
- Each state and territory government administers a large body of its own legislation and regulation;



# Though Australia has made great progress in regulatory reform

According to recent OECD indicators of product market regulation:

- Only the UK and Ireland have lower obstacles to product market competition;
- Australia get top marks for low trade and investment barriers.



# Harmonisation is not deregulation

- While regulatory overlap between levels of government is a contributor to excessive regulation, substantive content of regulation is main concern, not harmonisation for its own sake.
- EU experience - harmonisation within the EU has been a source of more, rather than less, harmful regulation.
- Banks report on Environment Protection and Biodiversity Conservation Act:
  - The EPBC Act provides the ability to reduce duplication in environmental assessments and development approvals via bilateral agreements between the Australian Government and state or territory governments ...Where bilateral agreements are in place, the focus of negotiations on states achieving minimum legal requirements means there appears to have been little effort to encourage increased efficiency in state administrative and approval processes.



# Excessive harmonisation has its costs

- Excessive harmonisation can eliminate competitive tensions between jurisdictions in federal systems, including in terms of what they regulate.
- Such tensions are one reason federations tend to be less regulated than unitary states and perform well in terms of economic growth and employment.



# Implications of market integration

More integrated Australian economy creates both opportunities and risks.

- On the one hand, ***greater market integration facilitates better competitive federalism***. The power of 'exit' to reward good performers and punish bad ones is heightened.
- But this also creates temptation for governments that would enact and perpetuate inefficient regulation to get other jurisdictions to fall into line.
- This creates a risk that current enthusiasm for cooperative federalism can slide into ***collusive federalism***.



# Broadsheet vs tabloid approach to regulation

- **Broadsheet:** COAG commitment to productivity-enhancing regulatory reform in wide range of areas.
- **Tabloid:** Petrol Price Commissioners, inquiries into grocery price rises, renewable energy target on top of market-based solutions to climate change, re-regulation of labour market.



# Opportunities for improvement: RIS

- 'Market' for regulation can be made to operate better through greater discipline imposed on the assessment of what and when to regulate. This is what Regulatory Impact Statements (RIS) aim to do.
- In past, RIS subject to relatively low threshold test with only minority of RIS statements deemed 'adequate' showing quantification of costs and benefits, and even less including cost-benefit ratio.
- This continues to be the case.



# Survey of 22 RISs assessed as adequate under Australian govt/COAG requirements

Consideration of more than 1 alternative to status quo	15
Quantification of some costs and benefits	8
Quantification of benefit-cost ratio or net benefit/cost	4



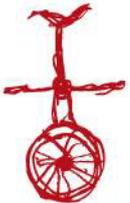
# Opportunities for improvement: RIS

- Wide variation in quality of RIS e.g. very detailed and extensive efforts ASIC in quantifying compliance costs of relatively minor variations to regulations vs few pages devoted to major government IR changes.
- In theory, RISs are required to be completed before the ultimate decision is taken. In practice RIS almost always favours options taken by decision-maker.



# Need for incentive-based approaches to regulation

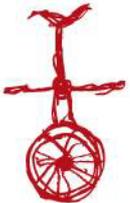
- Limits to RIS effectiveness because mere fact of executive requirement that is procedural in form and does not give rise to judicial review cannot alter underlying dynamics.
- Need incentive based approach to reduce both the demand for, and the supply of, inappropriate regulation.



# Case study 1: Land use regulation

Land use regulation currently subject to following incentives:

- Demand for regulation-created rents from developers, proponents of PPPs, etc.
- Supply of rents by politicians that sells them off to finance reelection.
- Extreme manifestation of this in Wollongong.



# Case study 2: Regulatory agencies

- Regulatory agencies are delegated wide-ranging regulatory powers with few effective checks and balances.
- This means they can combine the policy, rule-setting and regulatory roles.
- Recent example is ACCC's proposed removal of merger "safe harbours". This is clearly a policy decision delegated to agency which would secure greater effective power arising from this change in implementation of legislation.



# Conclusions

- Government's genuine, commitment to regulatory reform is very welcome.
- However, challenge is not merely procedural but substantive and must tackle incentives to regulate generated by current decision-making structures.
- This means
  - preserving checks and balances – ensuring cooperative federalism does not become collusive federalism
  - generating such checks and balances where they are currently inadequate e.g. in regulatory agencies.





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