Monitoring of regulation from the Australian point of view: lessons and results

Jonathan Coppel
Commissioner
“Excessive regulation is costing America as much as $2 trillion a year. And I will end it very, very quickly”
What will we cover?

About the Productivity Commission

Ex-ante regulation evaluation

Ex-poste regulation evaluation

The digital challenge

Questions
Independent research and advisory body on economic, social and environmental issues

Vehicle for exploring

Independent

Irritating

Diverse views

Evidence-based

Counterweight to vested interests

About the PC
Work streams

FOUR BROAD WORK STREAMS

References from Government
- Inquiries
- Studies

Performance reporting
- Government services and agreements
- Indigenous

Other regular reporting
- Industry support
- Productivity
- Indigenous

Self-initiated research
- Research projects

Better informed policy decisions
Enhanced public awareness

About the PC
Resourcing

4-12 COMMISSIONERS

ABOUT 167 TOTAL STAFF

Around $33 million annual appropriation

About the PC
### Some recent and current projects

<table>
<thead>
<tr>
<th>Year</th>
<th>Project</th>
<th>Year</th>
<th>Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Superannuation</td>
<td>2019</td>
<td>Review of National Disability Agreement</td>
</tr>
<tr>
<td>2018</td>
<td>Horizontal Fiscal Equalisation</td>
<td>2018</td>
<td>National Water Reform</td>
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<tr>
<td>2017</td>
<td>Productivity Review</td>
<td>2017</td>
<td>Data Availability and Use</td>
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<tr>
<td>2017</td>
<td>Transitioning Regional Economies</td>
<td>2017</td>
<td>Collection Models for GST on Low Value Imported Goods</td>
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<tr>
<td>2016</td>
<td>Digital Disruption</td>
<td>2016</td>
<td>National Education Evidence Base</td>
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<tr>
<td>2019</td>
<td>National Transport Regulatory Reform</td>
<td>2019</td>
<td>Economic Regulation of Airports</td>
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</table>
Ex-ante regulation evaluation in Australia
“Every political party believes in the idea of better regulation. And yet every political party, once in government, fails to achieve better regulation.”

Keith Boyfield (2007)
Objectives of RIA

1. To inform decision makers on whether to regulate and how to regulate

2. To communicate information about the expected effects of regulatory proposals
Stylised schematic of good RIA practice

1. Identify problem
2. Identify all options
3. Assess impacts of all options
4. Design final proposal
5. Independent assessment of RIS adequacy
6. Government policy decision
7. RIS published
8. Implementation of policy
9. Ex-ante evaluation
10. Ex-post monitoring and evaluation
Ten RIA processes in Australia

- Northern Territory (2003)
- Queensland (1990)
- South Australia (2003)
- Western Australia (2009)
- New South Wales (1989)
- Victoria (1985)
- Tasmanian (1995)
- Australian Government (1985)
- Council of Australian Governments (1995)
- Australian Capital Territory (2000)
RIA is not used where it is most needed

Ex-ante evaluation

Number of proposals

Highly significant proposals

Other less significant proposals

Exempted
Non-compliant
Compliant RIS

Ex-ante evaluation
RISs often lack thorough discussion of the problem.
Often no serious discussion of feasible alternatives

- Considered more than one distinct option: 39%
- Did not consider more than one option: 32%
- More than one option - but essentially all variations of same option: 29%
Consideration of impacts in RISs is partial

- Social: 61%
- Competition: 42%
- National markets: 38%
- Environmental: 37%
- Small business: 35%
- Regional: 28%

Ex-ante evaluation
Failure to fully assess costs and benefits

- **Ex-ante evaluation**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil, or very basic, quantification</td>
<td>Extensive quantification for most/all aspects</td>
</tr>
<tr>
<td>Quantification of some aspects, but with gaps</td>
<td>Extensive quantification for most/all aspects</td>
</tr>
</tbody>
</table>

Costs: 47, 36, 18
Benefits: 60, 30, 10
Main barriers to better RIA: Agency perspective

- Lack of support from minister
- Lack of support from senior management
- RIA is irrelevant
- Lack of in-house skills
- Minister needs to respond quickly
- RIA not flexible
- Administratively burdensome
- Policy already decided by minister
- Lack of data

Ex-ante evaluation

Per cent
In summary…

RIA is great in principle, but does not work so well in practice

- RIA is not integrated well into policy development
  - Can start too late to influence outcomes
  - Not undertaken for the most significant proposals

- Often no serious consideration of feasible alternatives

- Failure to fully assess costs and benefits of proposals

- Poor quality consultation processes
  - Limited involvement of, and feedback to, stakeholders
There were positive findings too

Some agencies view RIA as integral to informing policy development process, leading to:

- More thorough analysis of policy problem
- More systematic consideration of costs and benefits
- Better policy decisions

This is more likely when:

- RIA has been in place for many years
- The proposal is not subject to time pressure
- Agencies undertake a large number of RISs
- Agencies have centralised RIA units
Key lessons learnt on improving RIA processes

- Strong political commitment is essential
- Exemptions must be limited
- Need sanctions for RIA non-compliance
- Targeting of RIA resources for efficiency
- Transparency and accountability
Ex-poste regulation evaluation
Ex-poste regulation evaluation: 3 broad approaches

Programmed reviews

- Sunsetting
- Embedded in statute
- Post-implementation reviews
  - process failure
  - catch-all

Ad hoc reviews

- Public stocktakes
  - economy-wide
  - sectoral
- ‘Principle-based’ reviews
- Benchmarking
- ‘In-depth’ reviews

Ongoing ‘management’

- Regulator strategies
- Stock-flow linkages
  - Budgets
  - ‘In-Out’ / ‘Offsets’
  - RIA based consideration
- Red tape reduction targets
### Effort versus impact: which tools?

<table>
<thead>
<tr>
<th>Low Impact</th>
<th>High Impact</th>
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<tbody>
<tr>
<td><strong>High effort</strong></td>
<td><strong>Low effort</strong></td>
</tr>
<tr>
<td>- Broad redtape cost estimation</td>
<td></td>
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<tr>
<td>- Regulatory budgets and one-in one-out</td>
<td></td>
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<tr>
<td>- Frequent stocktakes</td>
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<tr>
<td>- In-depth reviews</td>
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<tr>
<td>- Embedded statutory reviews</td>
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<tr>
<td>- Benchmarking</td>
<td></td>
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<tr>
<td>- Packaged sunset reviews</td>
<td></td>
</tr>
<tr>
<td>- Sunsetting</td>
<td></td>
</tr>
<tr>
<td>- Regulator stock management</td>
<td></td>
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<tr>
<td>- Red tape targets</td>
<td></td>
</tr>
<tr>
<td>- RIS stock-flow link</td>
<td></td>
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<tr>
<td>- Known high cost areas and known solutions from past reviews</td>
<td></td>
</tr>
<tr>
<td>- Regulator management strategies where weak in the past</td>
<td></td>
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<tr>
<td>- Periodic stocktakes</td>
<td></td>
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Better ex-poste evaluation: lessons from Australia

- More systematic identification of review needs
- More attention to prioritisation and sequencing
- Better communication and consultation
- Skill development and resourcing
Applying the tools across the regulatory cycle

Stage 1 – Decision
- RIS tirage
  - Identify need for embedded reviews
  - Set sunset flags
- Stock-flow linkage rules

Stage II – Establishment
- Design to include embedded reviews
- Development of regulator management strategies

Stage III – Administration
- Regulator management strategies
- Monitoring review requirements

Stage IV – Review
- Programmed reviews
  - Sunsetting
  - Embedded
  - PIRS
- Ad hoc reviews
  - In-depth
  - Specific benchmarking
  - Public stocktakes

Lessons from regulators on what works
Lessons from ex-post evaluation

Ex-poste evaluation
The digital challenge
The digital economy is the economy

- Few activities in a modern economy are unaffected by digital technologies.

  Consumers purchasing goods and services online, 2016
  Firms using the internet, 2016

  63%  95%

- Many digital markets have ‘winner-takes-most’ dynamics, so firms will need to adjust … or fail.

- Digital technologies bring many benefits, some of which are not reflected in GDP …
  … but they can also bring disruption and new harms.
We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten. Don’t let yourself be lulled into inaction.

Bill Gates
## Digital disruption: some initial taxi regulatory responses

<table>
<thead>
<tr>
<th>Rule, implemented or proposed</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Must charge at least five times the taxi flag fall and fees must be at least as high as taxis</td>
<td>• Washington DC</td>
</tr>
<tr>
<td>• Cap number of ‘rideshare’ cars on the road</td>
<td>• Seattle</td>
</tr>
<tr>
<td>• Uber cars must return to depot after each job</td>
<td>• Germany</td>
</tr>
<tr>
<td>• 15-60 minute pick up delay for hire cars (taxis exempt)</td>
<td>• France, Washington DC, Florida</td>
</tr>
<tr>
<td>• No drop offs at airport</td>
<td>• Illinois, Saudi Arabia</td>
</tr>
<tr>
<td>• $80 minimum charge for hire cars</td>
<td>• Florida</td>
</tr>
<tr>
<td>• Minimum time for a ride in a private car is one hour</td>
<td>• Las Vegas</td>
</tr>
<tr>
<td>• Make booking rideshare by GPS illegal</td>
<td>• France</td>
</tr>
</tbody>
</table>

Source: *Grattan Institute*
Implications for regulators

YOU WERE SO PREOCCUPIED WITH WHETHER OR NOT YOU COULD

YOU DIDN'T STOP TO THINK IF YOU SHOULD
Regulator disruption

How we regulate

What we regulate

How we enforce regulation

No common approach
Implications for regulatory policy

- Stronger case for risk-based approach
- Multiple regulatory models and tools to use
- Regulator culture needs to adapt
- Harness “RegTech” opportunities
Good regulatory practice

Key questions for regulators

- Does regulation get in the way of innovation?
- Does digital empower consumers?
- Does digital provide new sources of information for regulators?
- Does digital offer ways to lower the costs of regulatory transactions?
Consumers as drivers of change
Finally, the road to success...
Stamina, Failure, Sacrifice, Hard work, Dedication, Perserverance
Thank you
Jonathan.coppel@pc.gov.au