

Business regulation
promises, realities, futures.

Advance or ossify ?

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to the

Independent Scholars' Association of Australia

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- Scene setting
 - Three phases of regulation review
 - Outcomes – beyond outputs
 - Why is regulation reform so difficult ?
 - Directions, costs, change drivers
 - Principles for new-era regulation
 - This decade, whoever in power

Scene setting



- 2004. Boom tide turning? Red-tape in media
- Reminiscent – early 1990s
- Election 2004 non-issue
 - see a prosperous rewarding, robust economy
- Contrast 1994 – slow decades, recession, unemployment, milkbar economy
- Bipartisan calls 1995-1996 - for entrepreneurs to innovate, invest, compete, export, employ

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- To me, puzzling disconnects
 - Blocks of rules and new regulators
 - Regulatory stresses, inefficiencies, power plays
 - Sharper industry reports
 - 1993 BCA, *Australia 2010, Creating the future*
 - 1994 ACCI, *Building a Competitive Future*

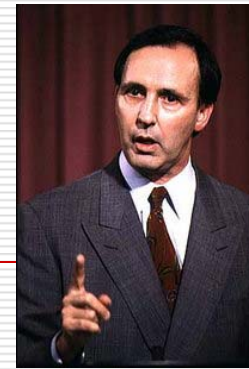
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- Business + some public leaders speaking out

We need to simplify and reduce the running cost of all the bureaucracies and the maze of regulations and impediments to getting things done.

Adrienne Clark, Chair CSIRO, The Australian 3.1993

- 1993 election, Labor and Coalition
 - big on innovation, trite on red-tape
- Curious, began 12 years of research, empirical study, analysis into *Laws Regulating Business*

Into the 1996 election - priorities, promises



- Innovation in science, technology, business urged by all

Australian industry needs to embrace an 'innovation culture' to drive economic growth and lift the quality of life ... competitors ... innovating at an awesome pace ... we need to innovate to survive and succeed.. . *PM Keating 1993*

Nothing is ever going to take the place of entrepreneurship, of investment ... of the raw employment that comes with it.
PM Keating, ALP and Business dinner, 1995

- To regenerate genuine entrepreneurial spirit
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Stalked by realities



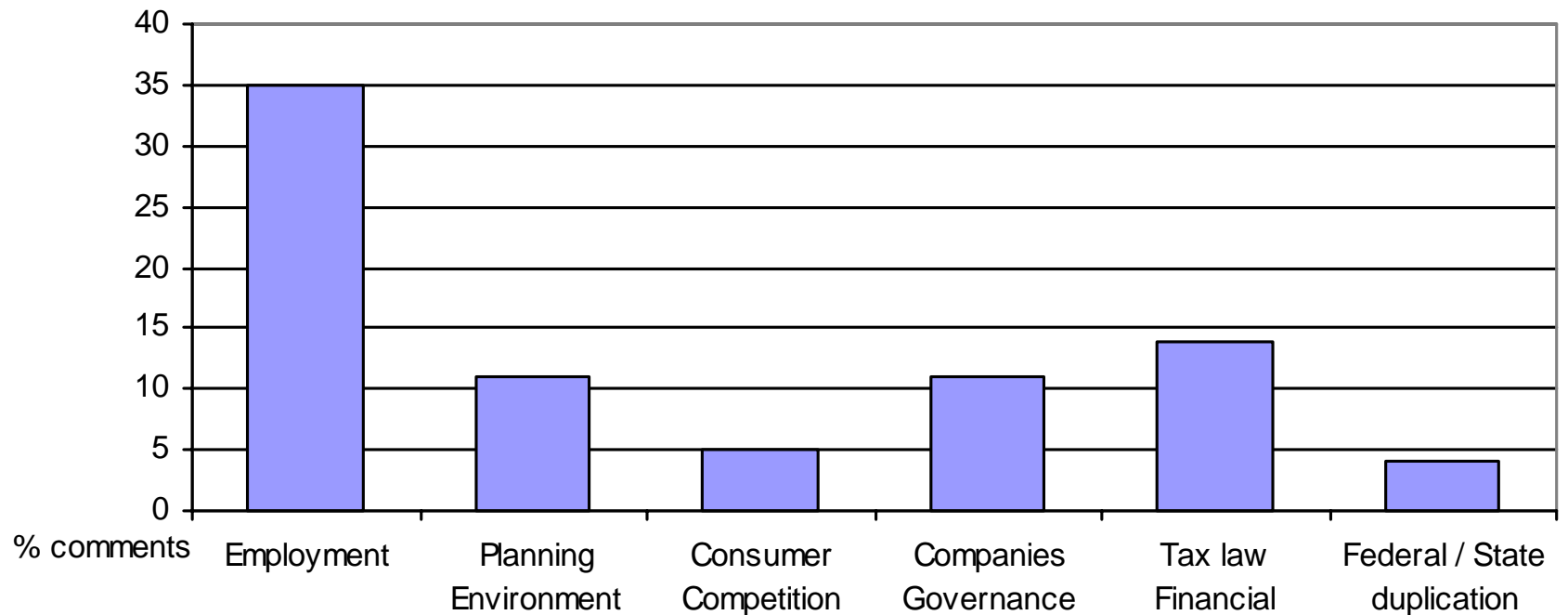
- Escalating regulation - holding business back

The past decade ... reform, deregulation and less government in many areas. But regulation in other areas has increased dramatically, and government [is] more intrusive in ... business activity. *CIE 1993*

- Especially small-medium enterprises (SMEs)

We need less tax, and less regulation ... please look at what it takes for small businesses to survive and prosper. *A Harris 1992*

811 concerned statements 1991-1996



A long and promised road



1995 John Howard Opposition Leader, emphatic

In government, [the Coalition] has an obligation to create a stable economic environment and to implement policies that will unshackle business from the many regulatory burdens imposed on it.

2005 Howard Government appoints a new Regulation Taskforce

- T of R suggest minimal advance in ten years

Taskforce report adds to string of reviews

- 1990. HoR Committee on Industry, Science & Technology, *Report on Small Business in Australia* (Beddall)
- 1992. Administrative Review Council, *Rule Making by Commonwealth Agencies*, Report No. 35
Council of Australian Governments, Intergovernmental Agreement relating to Mutual Recognition
Industry Commission, *Pro-competitive Regulation* report
NSW State Development, *Encouraging Enterprise - Towards an Internationally Competitive Economy*
- 1993. Business Council of Australia (BCA), *Australia 2010 - Creating the future Australia*
Committee on Employment Opportunities, *Restoring Full Employment - A Discussion Paper*
Corporations Law Simplification Program Taskforce, Plan of Action
National Competition Policy, Report of the Independent Committee of Inquiry (Hilmer)
NSW Joint Regulation Review Committee, *Future Directions for Regulatory Review in NSW*, Report 23
- 1994. Subordinate Legislation Act (Victoria). The Joint Regulation Review Committee reports annually.
Australian Chamber of Manufactures, *Building a Competitive Future: Strategy to develop manufacturing*
Commonwealth - *Working Nation - The White Paper on Employment and Growth*
Sturgess, *Thirty different governments* - Report of the NSW Commission of Inquiry into Red Tape
- 1995. COAG, *The National Competition Policy Reform Package: The Competition Principles Agreement etc*
HoR Standing Committee on Legal & Constitutional Affairs, *Report on Legislative Instruments Bill*
Minister for Industry, Science & Technology, *Innovate Australia - Developing an Innovative Culture*
COAG, Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies (updated 1997, 2004)
- 1996. Coalition Parties, *Creating Jobs through Small Business*.
Industry Commission, *Regulation and its Review*, then annually from the Office of Regulation Review.
Productivity Commission, *Stocktake of Progress in Microeconomic Reform*.
NSW, *Regulatory Innovation - Regulation for results*.
Small Business Deregulation Task Force Report (Bell Report)



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1997. Industry Commission, *Reducing the Regulatory Burden – Does Firm Size Matter? More Time for Business*, Australian Government Statement. Introduced Regulatory Impact Statements. *Grey-Letter Law*. Report - Commonwealth Interdepartmental Committee on Quasi-regulation COAG, *Principles and Guidelines for National Standard Setting and Regulatory Action* (as amended)
1998. Department of Industry Science and Tourism, *Codes of Conduct Policy Framework* Office of Regulation Review. *A Guide to Regulation*
2000. Report by the Public Management Service of the OECD, *Regulatory Impact Assessment in NSW* NSW Regulation Review Committee, *Re-engineering Regulations in NSW for the 21st Century Taskforce on Industry Self-regulation* Productivity Commission, Conference on Achieving Better Regulation of Services.
2001. NSW - International Conference on Regulation Reform Management and Scrutiny of Legislation
2002. Victorian Scrutiny of Acts and Regulations Committee, *Inquiry into Subordinate Legislation*
2003. Commonwealth Legislative Instruments Act 2003, and Digest of iterations from 1992 to 2003
2004. Victoria, Scrutiny of Acts and Regulations Committee, Annual Review 2003, Premier's Guidelines 2004 Victorian Competition and Efficiency Commission Order 2004
2005. Productivity Commission, *Review of National Competition Policy Reforms* report. Victoria, *A Third Wave of Reform – a New National Reform Initiative for COAG*. Business Council of Australia, *Locking in Prosperity, An Action Plan*.
2006. NSW Premier 1.06: Renewed focus on Regulatory Reform; Small Business Regulation Review COAG Council of Australian Governments' Meeting 10 February 2006, Communiqué. Federal Regulation Taskforce inquiry (established 10.2005) submissions and report (2.2006).

Three phases of regulation review

Over 12 years Australian businesses and communities have experienced

1. Ongoing promises to reduce regulatory load - reviews, wider consultation, regulation reporting (red tape reduction)
2. Impactful National Competition Policy reviews from 1996 to 2002 (NCP)
3. From ~ 1998, busy overhaul of State and Federal processes (streamlining)

2. National Competition Policy (NCP) ...

1995 COAG – impressive agreement to review all Federal and State legislation + formal regulations

- Regulations ‘restrictive in principle’
- Onus to prove net public benefit, or
- rule removed or ‘rewritten in non-restrictive form’
- Legislation Review Program 1996-2002, NCC audit
- Competition payments to States on effective action

3. Streamlining ...



- Reports rebuked governments for process
 - *Thirty Different Governments NSW 1994*
 - *Federal Small Business Deregulation Task Force 1997*

- Re-engineering eg. *More Time for Business*
 - one-stop shops - physical, electronic
 - simpler permits, licence procedures
 - time limits for decisions, time use boxes
 - compliance support for SMEs

3. Streamlining ...

- But ... OECD international review
- *From Red Tape to Smart Tape 2003 ...*
 - procedural simplification 'generically popular' with departments, authorities and interest groups in 7 nations
 - However diverts energy from fundamental, difficult and contentious regulatory review and change

Outcomes – beyond outputs

- NCP delivered substantial benefits to the Australian community ... greatly outweighed costs. *PC 2005*
 - contributed to productivity surge 1995-99
 - lower prices some goods/services - electricity, milk
 - innovation, expanded product ranges
 - helped some environmental and social goals
- PC priorities next NCP
 - electricity, water trading, freight, health, voc-education, pharmacies, wheat marketing
 - also greenhouse and consumer protection rules

Societal regulation skipped



- 1995 NCP Principles -- rigorous review of *societal* regulation too
- Large rolling program plus media contention warned off deeper investigation
- NCP far short of promise of systematic overhaul of societal regulation
 - manufacturing and workplace rules along food industry chains
 - environment / land use planning rules + process

Little advance in regulation climate

As NCP bustle faded, my 2004 analysis ...

- Australia overstating depth and impact of reforms
- Industries restructured
 - but regulation climate for businesses little better
- Rulemaking high-octane. New regulators + schemes
- Detail multiplying, but underground
- Few analysts dissecting regulation from business angles

Next reforms need 'high-principle' and 'micro' levels

Little advance ...



- ACCI *Reducing the Burdens of Regulation* 2003
 - tax, bureaucratic costs, employment law, multiplication
- AIG *Compliance costs time and money* 2004
- ACCI *Holding back the red tape avalanche* 2005
- BCA *Business Regulation Action Plan for Future Prosperity* 2005

PC, BCA

- Federal & States: 350,000+ legislation pages 10 yrs
 - 33,000 pages new laws and rules in 2003
 - New regulation growing 10% a year (3 x GDP)
 - 50% legislation by Cth Parliament since Federation passed in last 14 years
- 2003 data*

... the regulatory iceberg

To legislation, regulations, statutory instruments
(tabled in parliaments, subject to RIA)

- add ... guidelines, instructions, standards
- add ... judge-made law
 - *Perre v Apand Pty Ltd (1999) H Ct ... it's the vibe*

... all ice is the same

Businesses barely differentiate types of rules

- a regulation, license, order, standard, stories of court decisions = time + money + energy

Micro-climate for Australian business
not much changed in 10 years

Outcomes

My readings, 12 years



- Limited understanding of rule-business interactions
- Review processes not forestalling red tape
 - entwined social, technical, commercial drivers
 - regulation a competitive edge for some
 - rules are business too
 - lawyers, technologists, regulators ...
- Science-based standards, technical rules:
a new regulatory frontline

Outcomes

My readings, 12 years

- Judge-made law – unacknowledged regulation
- Self-regulation not as hoped.
Numerous codes, no less red tape.
- Some rules enable regulator-staff to 'stand in the shoes' of commercial decision makers

Australia positioned for a new-era of business regulation built on Australian circumstances and character? *Possibly*

Why is regulation reform so difficult ?

- Western jurisdictions tangled in red tape
- European Union - *euro sclerosis*
- UK, facing stark competition, leads serious reform
 - 1997 Better Regulation Task Force, long view
 - *Regulatory Reform Act 2001 plus Action Plan*but
 - 'Action not words for red tape reduction'
 - 'Government focus on delivery not design' ...

Why is regulation reform so difficult ?

- Australia, Legislative Instruments Bill 1996 to 2003
- Hard to disagree with 10 years of words promising action – assure, concern, progress and balance

Busy rulemaking continues even as governments issue statements on reform

Almost everyone has 'interests'

1

- *Regulation-optimists* in communities, governments ... 'divine imperfection everywhere'
- *Businesses* complaining, wanting support or protection
- *Industries, businesses, agents* influencing, capitalising
- *Industries, professions*: self-regulation, establishment first
- *Technologists* capturing rule and standard development
- *Specialists* with barrows, businesses - law, law, engineering, accounting, consulting, science

Almost everyone has 'interests'

2

- *Academics* dialogue among selves, 'achieving compliance'
- *Regulators* competing with departments, others, star bosses
- *Regulators* power, influence, popularity via instruments
- *Individuals* career profile, risk-rewards, status, power
- *Judges, tribunals, ombudsmen*
- *Governments, politicians* – financial influence, sidestepping, special urgency

Directions, costs, change drivers



- National productivity linked to regulatory climate
- Highly regulated, low competition economies decline
- Economies recover and grow as
 - competition rises
 - governments exit production, services
 - societal regulation achieves realistic balance
- BRICs - Brazil, Russia, India, China
huge growth 15% to 50% of G6 by 2025

Directions, costs, change drivers

Australia

- productivity growth record highs late 1990s
 - physical and human capital, economic openness, wide innovation
- GDP, productivity 30% below USA
 - human capital/education product, labour market policies geographic and historical context

Future

- Smaller workforce, large retired group
 - Voters expect age-specific support (health!) so higher government spending
-

Living standards, aging ...

- Living standards - vexed question re regulation
- Communities - higher living standards include new protections, conservations, risk reductions

Much new regulation introduced over 20 years ... required by new developments ... societal expectations or government policy. *ACA 2005*

- Aging population – protective, peaceful wants may exceed need for material goods (not services)

Europeans tend to place more value than Americans on equality, or social cohesion ... [above] faster growth ... ageing, shrinking workforce ... no option but to 'go for growth'.



... income, costs ...

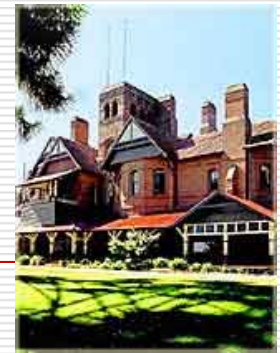
- Double-edged costs of business regulation
- UK. cost to economy 10%-12% of GDP
£100 billion (~annual income tax) **plus** 70% policy

Australia estimates

- 15 Cth regulators, 30000 staff, \$4.5b in 2001-02
+ departments, ministerial councils, inter-government
bodies, 8 states/territories, local govt, industry, SAA
- Business compliance \$11b 1994-95, \$17b 1998 and
distorted decisions, stifled entrepreneurship, innovation

Regulation costing economy \$86 billion a year
10% of GDP

... attitude to risk, opulence and change



- Clearly benefits also expected
- Cost:benefit = risk, probability, benefits/savings, full costs of rules
- Is benefit positive? eg. lead banned from petrol
- 'Acceptable risk' is pivotal
 - Views on standard of living, state of economy, threats (war, trade competition, wealth loss)
- Patterns of social expectations and acceptable risk

... attitude to risk, opulence and change



Sam Peltzman - a natural progress of opulence

- Growing wealth increases demand for personal health and safety. Met by markets and rules.
- Opulence also finances rule retention →

... attitude to risk, opulence and change



Peltzman –

“There is ... a symbiosis between the progress of opulence and much regulation ... even counterproductive regulation ... in a growing economy ... regulation is usually safe politically.

... you will not find an Endangered Species Act or a decade-long drug approval process in poor countries. The costs of such luxury are too palpable”

Advance or ossify – rules, economies

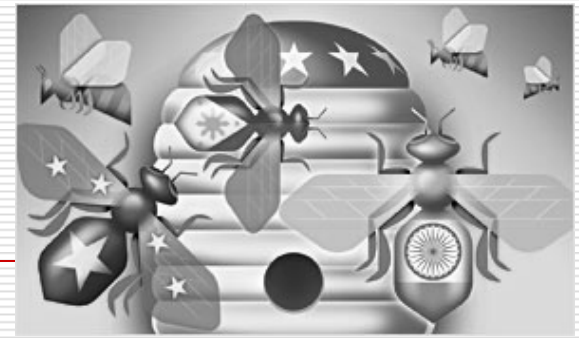
- Opulent ossification: rules outmoded, rigid, tangled

In this paper, 'advance or ossify' is wider

- Regulation overload → ossification of economies
True regulatory reform → socio-economic advance
- Australia 3 phases: red tape, NCP, streamlining
- Restructures, but regulation climate for business little improved in a long decade

Track record does not bode well for current rounds.

Change drivers – shockwaves, subtle



However, Australia well-placed for a new-era of
business regulation built on revived pioneer attitude

Shocks to jolt us along ...

- Stark competition
- Fiscal collision
- Living standards recast
- Fewer lawyers and analysts
- More risk, more return
- Business is exciting

Principles for 'new-era' regulation – impactful reform

1. **New-era architecture** for business regulation
2. **Remove** regulation as a national priority
3. **Rules are Rules** – see and address all types
4. Regulate **outer edges** of acceptable conduct
5. Set lines, **maintain** the business **space**
6. Recognise **interests**, ways rules are used

This decade - whoever in power



- Australia has a window to shape a new-era for business regulation
- **Pinnacle of advance**: a unique Australian regulatory scheme allowing business to act as it should
- **Ossification**: more reviews, reports, little progress
- Do businesses, entrepreneurs deserve this?
Not the issue.
- As demographics + world balances inexorably shift
- Economic + social advantages would be Australia's

end