



**CEDA**  
**2006 State of the Nation**  
**Connecting Business with**  
**Government**

**Regulatory Reform – The Challenge**  
**of Change**

Simon Uthmeyer, Partner

## A broad ranging brief

- Identify specific areas of regulation that are unnecessarily burdensome, complex or redundant, or duplicate regulations in other jurisdictions;
- Indicate areas where regulation should be removed or significantly reduced as a matter of priority;
- Examine non-regulatory options (including business self-regulation) for achieving desired outcomes and how best to reduce publication and increase harmonisation within existing regulatory frameworks; and
- Provide practical options for alleviating the Australian Government's 'red tape' burden on business, including family-run and other small businesses.



## Rough indicators of the extent of regulation in Australia

- There are more than 1500 Commonwealth Acts of Parliament. There are also around 1000 statutory rules in force, plus an unknown amount of other Commonwealth 'subordinate' legislation.
- Each state and territory government administers a large body of its own legislation and regulation. For instance, NSW has about 1300 Acts and 650 principal statutory instruments, with a further 5500 local government planning instruments (Business Council of Australia 2005, pp. viii, 8).
- One particularly striking indicator of the extent and complexity of regulation affecting business is that, in mid-2003, the three levels of government appeared to administer more than 24,000 different types of licences for businesses and occupations (Human Solutions 2005).



## Business complaints about regulation

“It is the experience of Science Industry Australia members that 'over zealous' black and white implementation of regulations is a major component of the angst and therefore opportunity costs of most regulations. Regulators need to become more aware of, and responsive to, the impact of the detail of their regulations at the small to medium enterprise level.” Science Industry Action Agenda, sub, 56, p. 4.

“Too many times COAG agree on principles, but then state government departments develop inefficient, inconsistent regulatory approaches in each State, adding to the costs of running business. QFF believes that there needs to be more consistent, national approaches across a whole raft of areas that impact on primary producers, including food safety and quality assurance; biosecurity and quarantine matters; occupational health and safety; natural resource management; and transportation.” Queensland Farmers' Federation, sub. 50, p. 5.



## Crude estimates of the total costs of regulation

- A Productivity Commission staff research paper (1998) estimated regulatory compliance costs at around **\$11 billion** in 1994-95.
- A 2001 OECD study estimated that Australian tax, employment and environmental regulations imposed some **\$17 billion** in direct compliance costs on small and medium enterprises in 1998.
- A 2005 study by the Australian Chamber of Commerce and Industry, claimed that the total costs of regulation to the Australian economy (including potential efficiency losses as well as compliance costs) could be as high as **\$86 billion**, or 10.2% of gross domestic product.



## Priority reforms to existing regulation

Issue	Reform proposals
Excessive coverage	<ul style="list-style-type: none"> <li>– Raise thresholds for the superannuation guarantee exemption, FBT minor benefits, PAYG withholding, etc</li> <li>– Change definition of ‘large proprietary company’</li> </ul>
Overlap/inconsistency	<ul style="list-style-type: none"> <li>– Implement national OH&amp;S standards (especially ‘duty of care’)</li> <li>– Conclude bilateral agreements under the EPBC Act</li> </ul>
Not justified by policy	<ul style="list-style-type: none"> <li>– Freeze country of origin food labelling</li> <li>– Implement remaining GP red tape reforms</li> </ul>
Excessive reporting/recording	<ul style="list-style-type: none"> <li>– Develop a whole-of-government business reporting standard</li> <li>– Allow website annual reporting unless hard copy requested</li> </ul>
Variations in definitions/criteria	<ul style="list-style-type: none"> <li>– Align definition of ‘employee’ for SG and PAYG purposes</li> <li>– Ensure consistency with international standards for chemicals and other products</li> </ul>



## Recommendations to address the underlying causes of over-regulation

- Endorse principles of good regulatory process
- Improve the regulation making process
- Ensure good performance by regulators
- Avoid overlap, duplication and inconsistency
- Ensure that regulation delivers over time.



## Principles of good regulatory process

- Governments should not act to address 'problems' through regulation unless a case for action has been clearly established.
- A range of feasible policy options need to be assessed within a cost-benefit framework
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.
- There needs to be effective consultation with regulated parties at the key stages of regulation-making and administration.



## Improving regulation-making

- Undertake cost-benefit analysis (including risk assessment) of regulatory options
- Adopt a whole-of-government policy on consultation
- For major or complex regulatory matters, produce a policy 'green paper' and/or exposure draft
- Strengthen RIS adequacy requirements
- Tighten 'gate-keeping' requirements for regulatory proposals
- Elevate oversight of regulatory processes and reform program to Cabinet level



## Ensuring good performance by regulators

- Provide clear guidance to regulators on policy objectives
- Develop broader performance indicators for regulators
- Establish internal review mechanisms for regulatory decisions
- Ensure timely merit review of administrative decisions
- Establish consultative bodies with stakeholders
- Ensure regulatory appointees have industry experience



## Avoiding overlap, duplication and inconsistency

- Review of areas with significant jurisdictional overlap
- Develop a framework for national harmonisation of regulation



## Ensuring that regulation delivers over time

- Amend the Legislative Instruments Act to provide for 5 year sunset clauses, rather than 10 year sunset clause following implementation.
- Conduct selective post implementation reviews after 1-2 years.
- Assess regulations not subject to sunset clauses every 5 years.



## The Government's response (thus far)

“Over-regulation is a major concern to all businesses and especially small businesses. Effective regulation is also an important tool for delivering Australia's social and economic goals. We are committed to getting the balance right ... This interim response [to a range of recommendations of the Taskforce ] is a downpayment on a our commitment to reduce regulatory burdens on business.” (*Prime Minister - Joint Press Release, 7 April 2006*)



## The Government's response (thus far) cont'd

### Controlling the flow

“Not only today are we announcing a downpayment on the reduction of red tape but this report also recommends a process, a framework by which new forms of regulation can be assessed and we can guard against new, excessive regulation being introduced in the future. And I think that process coming out of this report will be one of the long term structural reforms in relation to easing the business environment in Australia.”

*(Peter Costello, 7 April 2006)*



## Energy Networks Association Action plan for lower cost regulation (May 2006)

### Step 1 – Truly national and efficient energy market

#### Actions:

- Maintain commitment to achieving a 'borderless' energy market that delivers energy efficiently to customers.



## Energy Networks Association Action plan for lower cost regulation (May 2006) cont'd

### Step 2 – Clear and concise energy rules

#### Actions:

- Deliver one simple set of rules governing third party access to energy network infrastructure, drawing where appropriate on the best elements of current gas and electricity rules.
- Include clear 'best-practice' regulatory pricing principles in legislation



## Energy Networks Association Action plan for lower cost regulation (May 2006) cont'd

### Step 3 – Streamlined model for regulation

#### Actions:

- Adopt the proven 'propose-respond' approach to economic regulation used under the current gas access regime which defines the role of the regulator.
- Give direct guidance in energy laws that this 'lighter-handed' model should apply



## Energy Networks Association Action plan for lower cost regulation (May 2006) cont'd

### Step 4 – A positive environment for investment and network innovation

#### Actions:

- Provide a regulatory system that better reflects the commercial risks in delivery network investments.



## Exports and Infrastructure Taskforce (May 2005)

‘The greatest impediment to the development of infrastructure necessary for Australia to realise its export potential is the way in which the current economic regulatory framework is structured and administered. It is adversarial, cumbersome, complicated, time consuming, inefficient and subject to gaming by participants. There are too many regulators and regulatory issues are slowing down investment in infrastructure used by export industries.’

‘ There is need to rationalise our regulatory regimes, with consideration being given to the practicality and desirability of a single national regulator. However, perhaps even more important than the structure of regulation is improving the efficiency of our regulatory processes.’



## COAG's response (Feb 2006)

- Establish a simpler and consistent approach to economic regulation of significant infrastructure;
- Certify all state and territory access regimes for services provided by significant infrastructure;
- Develop a streamlined process for certification;
- Develop a consistent national system of rail access regulation;
- Review port regulation to determine if economic regulation is warranted at significant ports, it should conform to a consistent national approach.



## The challenge of regulatory reform

The challenge is to implement regulatory reform, including for the energy and infrastructure sectors, without increasing the regulatory burden.



*Questions?*

