

# Chapter 6. Rethinking Regulation

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## Introduction

The aim of this chapter is to assess the *Report of the Commonwealth Government's Taskforce on Reducing the Regulatory Burden on Business* (the *Banks Report*), released in April 2006 and the government's endorsement of those recommendations (Australian Government 2006a; 2006b). The endorsement, followed by the beginning of the implementation of the recommendations, constitutes, together with the items encompassed in the National Reform Agenda, a centrepiece of the third wave of regulatory reform in Australia. The focus of the chapter is the report's recommendations with regard to the system for making regulation with regard to business, particularly the regulation impact statement process (RIS), as discussed in chapter two. In summary, the overall assessment is that there is much in the report to be commended but that it is, for the most part, one that calls for greater commitment and support for existing systems for making and implementing business regulation, rather than a fundamental rethinking of the existing system.

## The *Banks Report*: origins

The origins of the Commonwealth Government's 2005 decision to establish the Taskforce on Reducing the Regulatory Burden on Business can be found in the long-standing commitment of successive Australian Governments to a minimum of effective business regulation as a primary means of ensuring the international competitiveness of the Australian economy, combined with pressure from peak business associations such as the Australian Chamber of Commerce and Industry (ACCI), the Business Council of Australia (BCA) and from the Productivity Commission, part of whose role is to provide advice in relation to the regulation of business (see, for example, Howard 1997; ACCI 2005a; 2005b; BCA 2005a; 2005b; Productivity Commission 2003; 2004; 2005; Banks 2003a; 2003b; 2004). The Taskforce was designed primarily to identify the views of business, for the benefit of business and with its members being drawn from business (Australian Government 2006a: A1). The Taskforce's Report was submitted on 31 January 2006 and released, together with the government's Interim Response to its recommendations, on 7 April (Banks 2006; Australian Government 2006).

## The core arguments of the *Banks Report*

The Report's core arguments for reform are contained in the first three chapters. In summary, chapter one sets the scene by noting that all societies need an

appropriate level of regulation, that there have been substantial gains from regulatory reform over the past 20 years but, also, that there has been a rapid increase in both the volume of regulation, some justified, some not, with rising concern from business as to the increasing cost of compliance, leading to the need for a new wave of reform. Chapter two of the report expands on the basic arguments put forward in chapter one, stressing, in addition, that, while much of the new regulation might be appropriate, some was not and, importantly, that it was the cumulative burden of regulation on individual businesses that was of especial concern, leading to increasing compliance costs and the displacement of time and resources that otherwise could be spent on more creative and innovative behaviour (Banks 2006: 5). It then puts forward the core of its argument in favour of reform, indicating that the fundamental cause of increasing regulation is 'increasing risk aversion in many spheres of life' (Banks 2006: 14). In turn, the report argues, while an effective regulation-making and administrative system should 'mediate', the impact of the increasing demands that arise from an increasingly risk averse society, this was not happening for four basic reasons (Banks 2006: 15):

- the real costs of regulation are 'hidden', from view as they are the 'off-budget', costs of business and society compliance with regulation;
- the cumulative cost of regulation is not often considered as most departments and agencies have responsibility only for specific regulation and little concern for its cumulative nature;
- the culture of some regulators fosters excessive and poor regulation as they respond to incentives to 'protect' consumers with heavy handed, prescriptive, legalistic enforcement, a 'government knows best' attitude and a general distrust of business people; and
- the regulation impact statement (RIS) system — introduced to minimise the externalities noted above — helped, but, the report notes, was often circumvented or treated as an afterthought.

The report underlines a pressing need for regulatory reform encompassing the reform of specific regulations, regulation-making and implementation processes. In addition, the report places special emphasis on reducing the compliance burden (Banks 2006: 15-16). The reform imperative, says the report, is heightened by the challenges posed by the following:

- an ageing society;
- increased competition from low-cost and lightly-regulated industries in China and India;
- the inherent limitations of small scale operations in a small economy;
- substantial distances between domestic and international markets; and
- the increasing rate of regulatory reform taking place in other countries such as the UK and the USA (Banks 2006: 16).

While the government's responses to the report do not formally and explicitly indicate its agreement with its analysis of the underlying causes of regulation, the fact that it commended the Taskforce on its work and, at least in relation to those recommendations related to the making and implementation of regulation, accepted all but two of its 29 recommendations, suggests that it was sympathetic to that analysis.

The risk-averse society proposition is contentious, similar to that expressed by UK Prime Minister, Tony Blair, with regard to British society (Banks 2005: 4; 2006a: 14). Whatever strength it has is markedly lessened by the following three flaws. The first is the report's failure to explain adequately how an increasingly risk-averse society could have tolerated the major microeconomic reforms in the later 1980s, 1990s and the earlier part of the 2000s — the same period in which social risk-averseness was allegedly growing (Banks 2006: i). This is not to deny that there may well have been a rise in the extent and type of regulation in recent decades, however, this is as likely to have arisen because of established, if variable, patterns of interest group pressure (including from business), as from a change in the risk tolerance of Australian society. The second flaw is the report's failure to produce any systematic, empirical evidence as to past and present trends in the 'risk averseness' of Australian society to support its argument. The third flaw is the somewhat circular nature of the risk averseness argument, with the cause of the increasing volume and poor quality of some regulation being identified as risk averseness and the only 'evidence' of risk averseness being the growth in volume of regulation measured, very crudely, by reference to the number of pages of legislation per annum.

The report does provide some fascinating statistics to illustrate and support its claim for the growth in volume of regulation, noting that the Australian Parliament had passed more pages of legislation since 1990 than it had in the first 90 years of federation (Banks 2006: 6). It notes that the growth in the number of pages does not necessarily indicate a similar, dramatic growth in regulations, however, the statistics clearly are meant to impress the reader and imply that there has been a similar, if not quite as dramatic growth in regulation. However, it could be convincingly argued that the spectacular growth in volume of regulation at the height of the microeconomic reform program in the 1990s was, in addition to the promulgation of new regulation, at least partly a result of attempts to render existing regulation into 'plain English' in order to make its intent clearer and more specific. The use of 'plain English', while important, does not bring with it any necessary reduction in the number of words needed to expound complex regulation.

The report also stresses that the compliance cost to business 'may well total billions of dollars' (Banks 2006:13). It provides estimates from various studies that indicate the total, annual cost is anywhere from \$11 billion to \$86 billion,

indicating its preference for the more conservative estimates (Banks 2006: 14). However, the value of presenting such wildly differing estimates, other than to convince the less-informed reader of the cost of regulation, is highly questionable, especially given the view expressed in the report that none of the studies quoted estimate the net cost of regulation and that they should not be viewed as 'robust estimates' (Banks 2006: 13-14). This begs the question as to why they were included for they can hardly contribute to informed debate, given their wildly varying estimates.

The argument that the real costs of regulation are the hidden, off-budget costs of business and society compliance is similarly difficult to accept as a fundamental cause of over-regulation. If the costs were so well hidden, would it not have been far more difficult for business interests and the Productivity Commission (and its predecessors) to persuade successive governments of both political persuasions to undertake major waves of regulatory reform? Moreover, both directly and indirectly, the annual reports of the Commission have drawn attention to such costs. This is not to reject the fact that the full costs are not known with any degree of precision and that, if they were, governments might be more reluctant to impose regulation without fuller evaluation of those costs.

The argument that the cumulative cost of regulation is rarely considered as most departments and agencies have responsibility only for specific regulation and little concern for its cumulative nature, is a good, if not fully convincing point. However, in the shape of the Productivity Commission, it is an argument that has had a powerful, articulate and well-publicised proponent for many years, backed by business voices and, again, in the shape of successive waves of regulatory reform since the mid-1980s, has had some impact. Perhaps, an at least as important a cause has been the failure of the Commission and business to provide accurate and convincing data as to the net impact of business regulation to support the argument. This author, for example, has not been able to identify any convincing estimates of the typical, net cost to a small business and to society of the full range of regulation to which they are subject.

The argument that the culture of some regulators fosters excessive and poor regulation, however accurate as a portrayal of business views of regulators, lacks any firm basis in systematic research. Only if and when convincing, reliable data is provided should it be given any credence. This is not to deny that some individual regulators may have such attitudes and approaches, similar to attitudes and approaches displayed by some businesses toward some clients.

The final argument, in relation to the weaknesses of the RIS process and the associated systems for making and implementing regulation, is elaborated at greater length in chapter seven of the report and is discussed at length in the following sections.

## Recommendation 7.1: six principles of good regulatory process and the RIS system

In recommending the adoption of six principles for the making and implementation of regulation, the Taskforce is doing little more than asking the government to re-endorse a system for the making of regulation in relation to business that it had endorsed since entering office — the RIS system. Why the Taskforce should be asking, in effect, for a re-endorsement of the basic principles underpinning the RIS system is explained by its ambiguous view of RIS. It identifies its weaknesses as a major factor contributing to the growth of regulation and its cost but also notes that it is ‘...sound in principle’ but, unfortunately, that it had not been consistently applied, a barely veiled criticism of both the executive and administrative arms of government (Banks 2006: 15). There is no suggestion that RIS may *not* be ‘sound in principle’. The business submissions to the report expressed strong support for the RIS system but also noted that it needed strengthening, a view that the Taskforce endorsed in recommendations 7.2, 7.3, 7.4, 7.8, 7.9, 7.10, 7.12, 7.13, that, in summary proposed: one, the standard of analysis considered acceptable for a regulation impact statement should be increased for the regulation in question to be approved; two, that it should be made harder for a regulatory proposal to proceed to a decision if the government’s requirements for good process had not been adequately discharged; and three, that several basic elements of the system needed substantial strengthening (Banks 2006: vi).

While this author has a great deal of sympathy with the need for a rational, systematic approach to policy-making, whether it be with regard to business or any other area, the claim that RIS is sound in principle might be questioned, at least as regards its degree of ‘fit’ with the dynamics of politics in a democracy such as Australia’s. In particular, it has to be remembered that any system for policy-making in a democracy will inevitably be subject to competing political forces — from those wishing change for the benefits they hope it will bring to those who resist change for fear the benefits that they currently receive will diminish or be eliminated. Policy-making — whether or not it is referred to as regulation-making — is an intensely political process, an arena in which regulation-making is determined as much by the relative power of the participants as by process and the quality of regulatory content. Efforts to promote a greater degree of rationality, such as the recommendations of the Taskforce in relation to RIS, are to be welcomed for the improvements in content and process performance they might bring but they are not immune from the exercise of power in the policy process. This is the central problem faced by those concerned at the growth of regulation and by RIS and its adherents. It is the reason that popularly elected ministers will always vary in their degree of support for such a system, for they are players in the policy process, acutely sensitive to its demands and constraints. If they are not they do not remain as

ministers for any length of time. RIS may be sound in principle, if the principles involved are those derived from the assumptions that humans are perfectly rational in their motives and actions. Unfortunately, they are less sound when faced with the realities of a political system in which rationality is limited and motives often short-sighted and selfish.

### **Consulting with business: recommendations 7.5, 7.6, 7.7, 7.19, 7.20, 7.21, 7.22**

The report expressed serious concern regarding inadequacies in consulting with business, noting, in particular, a survey undertaken by the Australian Public Service Commission that found that only 25% of regulatory agencies had engaged with the public when developing regulations (Australian Public Service Commission 2005: 56, as noted in Banks 2006: 152). Not unreasonably, it was felt that less than adequate consultation tended to result in poorer quality regulation and the report recommended that the government develop: in recommendation 7.5, a whole of government policy on consultation, with detailed principles to be followed by all departments and agencies; in recommendation 7.6, for major, proposed regulation, the preparation and release of an initial 'green chapter', to all relevant parties, followed by successive 'exposure', drafts to test out options with business interests; and in recommendation 7.7, a business consultation website that would automatically notify, on a voluntary basis, registered businesses and government agencies of new developments (Banks 2006: 154). All of these recommendations were accepted.

The authors of the report seem not to have appreciated the irony of calling for greater and more effective consultation with business at the same time as it was suggesting that existing consultation practices had partly resulted in too much inappropriate regulation in a risk-averse society. It seems to have been felt that business groups were perhaps not so risk-averse: that their more effective participation would lead to greater business influence and, hence, better quality and less regulation. While a cynic might feel otherwise, the call for more systematic consultation is appropriate, given the somewhat surprising lack of consultation, provided that safeguards are built in to the system to ensure that those being consulted do not 'capture', the regulators to the extent that their views become those embodied, untested, in regulation. In part to provide such a safeguard, the report recommended the establishment of standing consultative bodies consisting of stakeholder representatives for each regulation with a major impact on business and the development of a consultation code of conduct modelled on the UK's new system (Australian Government 2006a: 165).

## **Increasing analytical capacity: recommendations 7.2, 7.3, 7.4, 7.13**

The lack of analytical capacity and expertise, especially with regard to cost/benefit analysis and risk assessment, was identified as a major failing and recommendations 7.2, 7.3, 7.4 and 7.13 were aimed at its improvement. The Report argued that improvements in this area were one of three key areas where reform was most needed as part of a concerted effort to identify and contain the compliance costs to business of increasing regulation, especially for small business. Its concerns were those that had been voiced in several reports from the Productivity Commission (see Productivity Commission 2005: 26).

Hence, the recommendations to increase analytical capacity are to be welcomed and all were accepted, although a few points can be made in relation to them. Recommendation 7.2, to use cost benefit analysis (CBA), to compare different regulatory options could, perhaps, have gone a little further. What type and range of regulatory options, for example, should be subject to CBA? What constitutes 'adequate risk analysis', as recommended by the report and who is to judge what is adequate? If ORR (now the Office of Best Practice Regulation), is to have this function, then, even accepting the government's commitment to the bulk of the Taskforce's recommendations it is difficult to see how it will be able to prevent a determined minister and department proceeding with regulations deemed inadequate by the ORR.

Recommendation 7.13, that departments and agencies should ensure that their capacity to undertake good regulatory analysis is adequately resourced is yet another 'motherhood', assertion for, in principle, no government could object to it, nor did the Australian Government. However, no specific resource allocation is suggested and, apart from the relatively minor amounts for an improved website, it is unlikely to result in substantially greater allocations to policy-making units within other departments and agencies unless their ministers and, ultimately, cabinet, agree to increased allocations in the annual budgetary processes. At best, in accepting the recommendation a signal has been sent to departments that appropriate resourcing for regulatory analysis is a government priority, so that if they feel current resources are not adequate and make a reasonable case, they will get a sympathetic hearing in budget negotiations. Those who gain the support of the ORR for their claims for greater funding might be somewhat more successful, assuming that the ORR achieves the greater power suggested above.

## **Saying 'no', to inadequate regulatory proposals: recommendations 7.8, 7.9, 7.10, 7.12**

The development of appropriate analytical capacity will not, in itself, prevent inadequate regulatory proposals being considered and accepted by

decision-makers — including cabinet. These four recommendations are designed to minimise the chances of this occurring. Recommendation 7.8 specifies the grounds on which an RIS can be judged inadequate; 7.9 recommends that ‘institutional barriers’ be put in place to prevent an inadequate proposal proceeding to a decision-maker; 7.10 recommends that cabinet agree to a revised ‘Guide to Regulation’ containing strengthened requirements on departments and agencies making regulation; 7.12 recommends that ministerial responsibility for overseeing the government’s regulatory processes and reform program be elevated to cabinet level, thereby adding political ‘muscle’, to support rigour in the RIS process.

The emphasis on the use of relevant international standards in relation to the four recommendations is particularly interesting, with its stated presumption that their use in the domestic context is appropriate unless an adequate justification for a variation is provided in the RIS process. While the intent is clear — to reduce the costs to business of having to meet differing domestic and international standards — there are a number of potentially problematic issues such as:

- the presumption that existing, international standards are appropriate for the Australian context, unless proven otherwise, although regulators will have the opportunity of identifying their weaknesses;
- the increased attention that domestic regulators and business interests will have to give to the international institutions responsible for developing international standards if they are to participate effectively in the international decision-making processes involved;
- in a very real sense the locus of several, current, domestically focused decision processes will move to the international arena, requiring regulators to develop a thorough knowledge and expertise in operating in such arenas; and
- in turn, the accountability of the international institutions will have to be examined and assessed for adequacy otherwise a distinct threat to domestic democratic participatory processes might arise.

The unqualified acceptance of recommendation 7.9 is surprising because, on first reading, it suggests that the cabinet, ministers and relevant statutory authorities with regulation-making power will in future amend or even withdraw their proposed regulations following the decisions of public servants in the ORR regarding their compliance — or lack of it — with RIS requirements and the adequacy of their RIS. A second reading of the government’s response corrects this impression, for the institutional arrangements are not made explicit and they will not necessarily involve the ORR — although it is difficult to see how the ORR will not be involved, given the expansion of its management and evaluation roles with regard to the RIS system. Moreover, in ‘exceptional circumstances’, regulatory proposals can still proceed to cabinet or other

decision-makers for final, pre-parliamentary decision and the recommendation is restricted to regulatory proposals with undefined 'material business impacts'. Nevertheless, any new institutional arrangements that emerge will be of considerable interest for all those interested in government, for they may result in some form of self-denying ordinance that will restrict the capacity of ministers to submit regulatory proposals to cabinet and the associated capacity of regulators to submit, at an earlier stage in the process, regulatory proposals to their superiors.

Recommendation 7.12, that ministerial responsibility for overseeing the government's regulatory processes and reform program should be elevated to cabinet level was perhaps not well put, for ministerial responsibility for overseeing regulatory processes and reform programs ultimately does rest with cabinet. Therefore, the recommendation, as phrased, is redundant. What the Taskforce seems to have been recommending was that greater political support and commitment should be provided for the RIS process in general and, in particular, the ORR's judgements as to the adequacy of regulatory proposals that it scrutinises. At present, the minister responsible for the RIS process is a not a cabinet minister, although situated in the Treasury portfolio. While this provides somewhat more political muscle for the process than when RIS was first introduced, a minister with cabinet rank might be a more powerful advocate for RIS in speaking out against inadequate submissions in the cabinet room.

While the Taskforce's recommendation for the responsible minister to be of cabinet rank is understandable, all ministers are in a difficult situation with regard to processes such as RIS. In essence, they face a conflict of interest situation, on the one hand committed under the doctrine of collective cabinet responsibility to support cabinet's formal support for RIS but, on the other hand, as ministers responsible for departments, they face the prospect of a failed regulatory proposal if the RIS evaluation for proposals arising from their departments is negative. Moreover, the staff of ministerial offices and the heads of department and senior public servants are well aware of this situation. Whatever their personal feelings on the matter, it would be a very brave person who resisted the wishes of a minister by advising that a favoured regulation was not to be recommended and pursued following an adverse RIS assessment from the ORR.

In this context, if a cabinet minister was to have responsibility, for example, for arguing that a regulatory proposal should not be accepted for submission to cabinet on the grounds of an adverse RIS evaluation, that minister would be in a very difficult position. The minister whose department's submission was in question would undoubtedly resist, resulting in a conflict situation that would substantially increase tension in cabinet. Moreover, cabinet deliberations are not concerned only with the economic merits of regulatory proposals but with

their political feasibility, a factor not incorporated in the RIS process or evaluations.

### **Measuring regulatory performance: recommendations 7.16, 7.17, 7.18, 7.27, 7.28, 7.29**

In accepting recommendation 7.16, for the development of a wider range of performance indicators for annual reporting, a much needed step — and a brave one — has been taken for, assuming that a useful set of performance indicators are developed and put in place, they will enable more accurate judgements of performance by the Opposition, the media and the electorate. There is little doubt that the existing set of regulatory performance indicators, managed by the Office of Small Business, have had little or no impact. No department or agency seems to be using them, at least explicitly and in published sources, as a means of identifying the causes of poor performance, or for improving on existing performance, a situation of which the Office of Small Business and the ORR are well aware.

However, the task of developing a useful and effective set of indicators is going to be difficult. In essence, for example, most regulations are akin to theories, requiring that their targets either engage or not engage in defined sets of behaviours. At best, as with all theory in the social sciences, regulatory theory will be only partially successful in achieving its goals, depending upon the adequacy of theory itself, the efficiency with which it is implemented, the degree of compliance of the target group and the context within which it is implemented remaining relatively unchanging. To design a useful set of indicators in these circumstances will be a challenge, for it is likely that they will have to cover not only regulatory outcomes (in other words, ‘did the regulation achieve its purpose?’) — perhaps the indicator of most use for the executive — but also indicators for outputs and implementation.

In the interests of justice and equity, the acceptance of recommendation 7.17, for the establishment of mechanisms for internally reviewing decisions where they do not exist, seems to have been accompanied by a degree of reluctance, for it is an acceptance only in principle to *request* — not *require* — regulators to ‘consider’, internal review mechanisms, where appropriate. It is difficult to understand this apparent reluctance, other than on grounds of possible costs for, as the Taskforce asserts, effective appeal mechanisms help ensure fairness for those adversely impacted by a decision as well as providing potentially useful feedback to regulators as to inadequate regulation and inadequate implementation. In many cases, for example, existing appeal mechanisms could be used, such as the Administrative Review Tribunal, by simply extending their coverage. A similar degree of reluctance may be apparent in 7.18, where there is only agreement in principle to the recommendation that there should be provision for merit review of any administrative decision that can significantly

affect the interests of individuals or enterprises. The Government notes that it will 'continue to scrutinise legislative proposals on a case-by-case basis', neatly side-stepping the fact that legislative proposals are not 'administrative decisions'. Hence, if this response is not simply careless drafting, the government has agreed only to examine new legislative proposals to ensure that, consistent with ARC guidelines, administrative decisions made under the legislative proposals are subject to appropriate merits review — which means that those presently existing are excluded. Yet, it can be presumed that the Taskforce made its recommendation, primarily, on the basis of a study of existing legislation and related administrative decisions. In effect, while not making it clear, the government seems to be rejecting the bulk of the intent of the recommendation.

Recommendations 7.27 and 7.28 are intended to ensure that all regulations are subject to review every five years, unless otherwise specified and, for those that 'escape' the RIS system or whose compliance costs are uncertain, they are to be subject to a review no later than two years after implementation. Both recommendations were accepted by the government. However, in what seems to be recognition by the Taskforce of the cost of such reviews, it recommended they take place 'following a screening process', 'with the scope of the review tailored to the nature of the regulation and its perceived performance.' While the realism of this recommendation can be appreciated, it does tend to contradict the intent of the six principles of regulation contained in recommendation 7.1, with its proposal for rigorous assessment of the need for any regulation, whether existing or new. Also, what is meant by a 'screening process', in recommendation 7.27, regarding the review of regulation that escapes the RIS system or whose compliance costs were uncertain? Its obvious meaning is that the result of the screening process will be that some regulation will not be reviewed in the two year period, presumably because it is performing appropriately and a review is, thus, not necessary. However, it has to be asked if it is possible to come to such a judgement merely through a 'screening' process. Why is not all regulation subject to such a screening process, rather than the more costly and time-consuming RIS process? Also, the lack of any specification as to what screening actually will involve does leave a great deal of discretion in the hands of the government of the day to determine the rigour of that process, a loop-hole that is sure to be taken advantage of by governments when pressing circumstances arise.

### **Review programs, harmonisation and regulatory competition: recommendations 7.24, 7.25**

Recommendation 7.24 is that the Council of Australian Governments (COAG), should consider establishing a series of reviews targeted at areas where there is significant overlap and/or inconsistency between the Australian Government and state and territory government regulations. In agreeing to the

recommendation, the government noted that COAG had already established such a review program. The COAG program continues the review of all relevant federal and state legislation with regard to business that was conducted under the National Competition Agreement in the 1996-2005 period, albeit on a smaller scale and focused on areas of unnecessary overlap and inconsistency and not primarily focused on anti-competitive elements. It recognises, if not explicitly, some of the limitations of some of the legislative reviews conducted under that agreement, as well as the continuing need to ensure that new, inadequate regulation is as far as possible, restrained. However, unlike the reviews considered under the agreement process, where all relevant legislation was reviewed, the reviews referred to in the COAG agreements will be at the discretion of each jurisdiction. This will enable governments to be selective in their choice of legislation for review, perhaps, in some cases, avoiding politically sensitive, but economically important, legislation. However, the fact that all Australian state and federal governments have agreed to the principles involved should enable substantial peer group pressure to be exerted on recalcitrant governments, in a manner somewhat akin to the OECD's peer review mechanism (see OECD 2003, for example).

Recommendation 7.25 — or an overarching institutional framework for the national harmonisation of regulation — has been accepted by Australian jurisdictions, noting progress in that regard in the context of COAG. However, the basic question of harmonisation in a federal system needs some more detailed consideration than that provided in the report. A requirement to examine ways of increasing harmonisation within existing regulatory frameworks was part of the brief given to the Taskforce (pA1 and p28) and several recommendations for harmonisation were made, both in relation to specific regulatory systems (for example, medical devices, 4.18, 4.27, consumer health and safety 4.44, conveyancing laws 4.63, tax 5.45 and in chapter seven, with regard to Australia-wide harmonisation, particularly recommendation 7.25). While the author does not dispute the value of appropriate harmonisation, it is of concern that the benefits of regulatory competition between jurisdictions in a federal system may be neglected, for a now voluminous literature indicates that regulatory competition can have substantial benefits. At best, however, the possible benefits of regulatory competition are referred to only indirectly in the report and the government's response, such as with regard to 7.25, where it notes that failsafe mechanisms should be put in place 'to ensure that any jurisdictional variations from national regulations are either legitimated by all parties or annulled', which implies that variations that are more efficient can be legitimated, if credible. However, the general tone of the recommendation and, indeed, of the Taskforce report, is that regulatory variation is for the most part unfortunate and unduly costly for business. Competition does have its costs, such as those imposed by the need to adjust products and services in order to

satisfy regulatory variation between jurisdictions but, given its well-founded if not absolute acceptability in promoting economic efficiency, it is surprising that it did not achieve more attention in the regulatory context. A world of harmonised regulation is not necessarily efficient.

## Conclusion

In conclusion, the Taskforce report provides a useful insight into the systems for making business regulation. However, several of its arguments, especially those relating to the alleged risk averseness of Australian society, are not convincing, at least without further refinement and more reliable data. In part, this may have been caused by the limited time available for such an important project. It is more convincing when it comes to the assessment of the RIS system and its recommendations for its strengthening, no doubt drawing upon its chair's knowledge and experience in the Productivity Commission. The Government clearly found the Taskforce's assessment convincing and accepted the bulk of its recommendations — most of which constituted improvements to existing processes and techniques rather than fundamental changes — although these will be re-interpreted in ways that will not unduly constrain government prerogative.

As the tenor of the specific comments made in this chapter suggest, a large proportion of the recommendations made and accepted by the government represent a plea for more effective support and resourcing for a system that is already largely in place but that lacks the full extent of political and senior, administrative commitment and support needed to make it effective. Its positive reception suggests that commitment and support has now been increased, which should provide some reassurance to those in the Productivity Commission and business who have been expressing rising concern over the volume and quality of regulation. But, any government's capacity to provide support and commitment is limited and variable, swinging from issue area to issue area in line with changing socio-economic realities. The greatest value of the report might be that it made the pendulum swing in the direction of regulation and its improvement.

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