
Great Expectations: Management (and other) Lessons from the Regulation Taskforce¹

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Introduction

It is a pleasure to be able to contribute to this Leadership Conference, with its ambition of “defining, developing and nurturing leadership in today’s public service”. I observe that many of those addressing the conference are leaders of major public service departments, with responsibility for large budgets and major policy programs. By contrast, my own organisation, the Productivity Commission, is relatively small and has no executive responsibilities. It also has a special role among public sector entities, with statutory powers to undertake public reviews of government policies and programs and to inform the community about what is at stake in pursuing reforms.

The leadership and management requirements of such a body are therefore likely to differ in a number of respects from those elsewhere in the public service. At the same time, the core business of the Productivity Commission — conducting (public) inquiries and reviews — is becoming an increasingly prevalent feature of contemporary policy development, involving the appointment by governments of an array of taskforces and eminent individuals or specialists from the public and private sectors.

Some examples from the last couple of years of such ad hoc reviews include Professor Hogan’s Aged Care Review, Andrew Podger’s Health System Review, the Fisher/Ergas/Moore-Wilton Taskforce on Export Infrastructure, the Biofuels Taskforce, Venture Capital Review Committee, Warburton/Hendy study of

¹ Address to the L21 Public Sector Leadership Conference, Sydney, 15-16 May 2007. This paper has benefited greatly from a note previously prepared by Ian Monday, as well as from comments on an earlier draft by other members of the Taskforce and its Secretariat. However, the views expressed remain my own responsibility.

Australia's Comparative Tax Burden, Tourism Strategy Consultative Group, Nuclear Energy Review (Switkowski), Agricultural and Food Policy Reference Group, Wheat Export Marketing Committee (Ralph) and, among those in train, the Prime Minister's Task Group on Emission's Trading and the Opposition's Garnaut Review of Climate Change and its Economic Impact.

Some of these dealt with issues for which my own organisation could be said to have had legitimate claims, and some not. The reasons for taking the special-purpose or *ad hoc* review approach, notwithstanding generally higher set-up costs, possibly include a need to achieve an early breakthrough (the Productivity Commission's public processes need time), a wish to specify who is involved, particularly in achieving a blend of private as well as public sector experience (although this can also be achieved through the appointment of Associate Commissioners on particular reviews) and, following the old maxim about Royal Commissions, a desire to avoid 'surprises'.

Regardless of the particular motivating forces, once set in train, *ad hoc* reviews face many of the challenges with which the Productivity Commission has had to grapple over the years, and its experience can provide some useful guidance. However, as I discovered when heading such a review myself, they also present distinct challenges of their own. With this in mind, I have sought in this paper to outline some of the particular lessons that emerged from the Regulation Taskforce, which may be of benefit to other such reviews in the future.

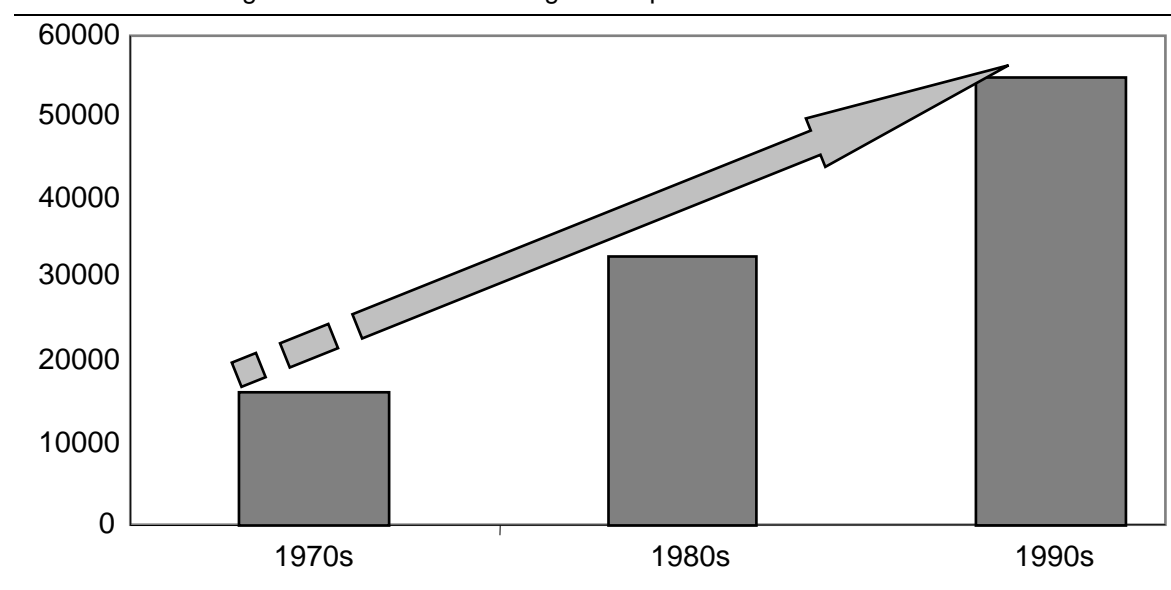
The context

Australia has undergone a major program of microeconomic reform over the past two decades, which has contributed significantly to this country's unprecedented run of economic growth. Much reform has been regulatory in character. It has in many cases been concerned with removing or reforming anti-competitive regulation of various kinds across the economy. The irony is that this era of 'deregulation' has also seen the fastest growth in *new* regulation in the nation's history. For example, at the Commonwealth level, there has been more primary legislation (measured in pages) passed since 1990 than in the nine preceding decades since Federation (Figure 1).

Much of this regulatory inflation has been in response to the heightened social and environmental demands of an increasingly affluent and risk-averse society. For the most part, these demands are legitimate and probably hard for governments to resist. But in many cases they have been addressed through regulatory interventions which have shown more concern for the potential benefits than appreciation of the inevitable costs, and the need to balance the two.

Small business, having least capacity to absorb or pass on regulatory costs, was the first to complain. A Taskforce headed by the late Charlie Bell (CEO of McDonalds) was established in 1997 to address their concerns and, notwithstanding some suggestions to the contrary, many of its recommendations were implemented (Bell 1996). However, the target of cutting red tape by fifty per cent proved elusive and small business remained a vocal critic of regulation in subsequent years, particularly after the introduction of the GST.

Figure 1 The rising volume of legislation
Pages of Commonwealth Legislation passed



In this more recent period, big business also became increasingly vocal, with a particular focus on competition regulation and, most recently, the onerous obligations of the Financial Services Reform Act. This culminated in a major report by the Business Council of Australia in May 2005 and heightened public advocacy of the need to reduce red tape (BCA, 2005).

On 12 October 2005, the Prime Minister and Treasurer jointly announced the appointment of a 'Taskforce on Reducing Regulatory Burdens on Business'. Appointees to the Taskforce comprised Richard Humphrey (former CEO of the Stock Exchange), Rod Halstead (Corporate Lawyer), and Angela MacRae (tax and small business specialist), with me as its Chairman. Our remit was wide-ranging (Box 1), enabling us to identify reforms to reduce regulatory burdens across all areas of Commonwealth regulation and their intersection with State and Territory regulation.

The most obvious challenge faced by the Taskforce was the reporting deadline — with Christmas in the middle it left 3 months for the task. This was compounded by the potentially open-ended scope of the exercise, and the fact that neither the

Taskforce nor most of its secretariat had worked together before, and most secondees had had no previous experience working on a project of this nature.

Box 1 ‘Terms of Reference’ for the Taskforce on reducing regulatory burdens on business

The Taskforce will examine and report on areas where regulatory reform can provide significant immediate gains to business. The Taskforce will:

- identify specific areas of Commonwealth Government regulation which are unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions;
- indicate those areas in which 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 duplication and increase harmonisation within existing regulatory frameworks; and
- provide practical options for alleviating the Commonwealth’s ‘red tape’ burden on business, including family-run and other small businesses.

The Taskforce will report by 31 January 2006.

While the Taskforce will focus on areas that are predominantly the responsibility of the Commonwealth Government, it is to identify key areas in which the regulatory burden arises from overlaps with State and Territory legislation. The Taskforce will consult closely with business groups and other stakeholders.

It will be supported by a small whole-of-government secretariat and consult closely with the Secretaries of the Departments of the Prime Minister and Cabinet, Treasury and Industry, Tourism and Resources.

Source: www.regulationtaskforce.gov.au

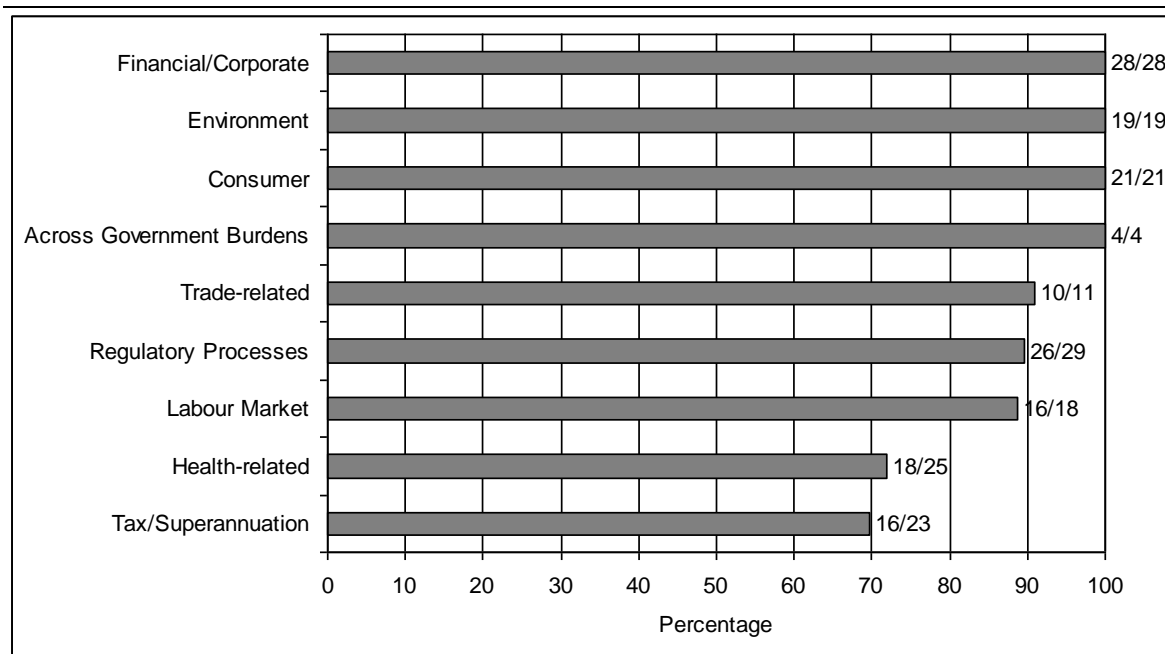
The challenges were made more acute by the high profile nature of the exercise — presented by government as the means by which it would be able to address business’s concerns (Prime Minister and Treasurer, 2005).

The reception by business itself to the Taskforce announcement was ambivalent. Behind the necessary public support for an initiative that was directed at meeting its needs, was a degree of scepticism about what any such review could achieve in the allotted time. At the same time, business leaders seemed encouraged by the composition of the Taskforce, and the way it proposed to go about its task.

In the event, the outcome of the review has generally been regarded as successful, with government accepting most of the Taskforce’s recommendations (Figure 2). Actions taken comprise many reforms to the stock of regulations, but also to the

processes and institutions responsible for new regulation, which had been a particular concern of business and other groups (Banks, 2006a,b).

Figure 2 Acceptance rate high for recommendations in most areas



Source: Costello 2006 (see also Costello 2007)

The success of the Regulation Taskforce in discharging its challenging brief is in large part attributable to the strategies it developed to deal with those challenges. In this paper, I deal with eight of these, on the basis that most of them are likely to be present to some extent in any future policy reviews. They are as follows:

- Making the task manageable
- Forging a cohesive project team
- Devising an effective work plan
- Optimising community participation and consultation
- Testing ideas without a (public) draft report
- Producing an accessible document
- Attention to implementation priorities
- ‘Selling’ the report.

Making the task manageable

The scope of the Taskforce's brief was potentially very wide. It was asked to identify problem areas and solutions from across the entire spectrum of Commonwealth regulation in Australia, including areas of overlap with State/Territory regulation.

At first blush this seemed to many an impossible task, especially in a few months. After all, taking into account primary and subordinate legislation and quasi-regulation, there are over a thousand new instruments made each year. And, while the sobering reality is that no-one really knows precisely the extent of the stock of regulation, it is undoubtedly many multiples of the annual inflow.

Clearly, it was not going to be possible for the Taskforce to comb through the entire regulatory morass in any comprehensive way. A more selective or targeted approach was called for. Achieving this, while meeting the expectations of government and business, was going to be crucial to the success of the exercise.

That the Taskforce was asked to identify areas where regulatory reform could provide significant immediate gains to business proved an important escape clause. Rather than scan the body of regulation itself, the Taskforce initially called on business groups to identify priorities from their perspective. This is a different approach to that normally followed by the Productivity Commission, which treats the advice of business (and other groups) as supplementary to the Commission's own investigations. For obvious reasons, in many cases it would be unwise to rely too heavily on the advocacy of sectional interests when seeking to advance the public interest. However, since in this case the focus was on reducing business compliance burdens, business was obviously best placed to identify the areas where such burdens were greatest.

The focus in the terms of reference on addressing regulations that were 'unnecessarily' burdensome, provided a second important avenue for narrowing the scope of the task. The Taskforce took from this that its job was not to examine or analyse policies as such, but rather to focus on undue (avoidable) costs associated with their implementation through regulation. It was a critical distinction. It was also not understood by some commentators, who thought we should have made recommendations for more far-reaching policy reforms. It also contrasted with my accustomed role at the Productivity Commission. But it was essential to the tractability of the task. (It also proved a liberating experience, given the significantly lower analytical hurdles, discussed later.)

Nevertheless, it was anticipated that, in some cases, the compliance costs would be intimately connected with the nature of the policy approach itself. The Taskforce

took the view that, where justified, such areas should not be ignored, but recommended for more detailed follow-up reviews. Similarly, it was clear that in the time available the Taskforce would not be able to confidently make recommendations in all the areas that it considered significant. So an approach that involved early actions where the appropriate course was clear, together with an agenda of follow-up reviews, was an important way of credibly managing the potentially wide range of regulatory problems that business was likely to put forward. The Taskforce further limited the dimensions of its work by excluding from consideration regulations that were still ‘in play’ (which included parts of the Trade Practices Act and the then forthcoming Workchoices framework) or those already subject to effective review processes (such as export infrastructure).

In making these ‘boundary’ decisions, the Taskforce sought confirmation from within Government that its interpretation of the task was appropriate. Such confirmation was generally forthcoming. However, in one important respect, the Taskforce chose to interpret its Terms of Reference more liberally than some within Government had anticipated.

It was clear from the earliest meetings with business groups that, if the Taskforce was to be seen to have discharged the requirement in its terms of reference to “provide practical options for alleviating the Commonwealth’s ‘red tape’ burden on business”, it would need to look at ways of reforming not only the existing regulatory stock, but also the processes and institutions responsible for *new* regulation, to avoid problems simply re-emerging.

The appropriateness of this more expansive interpretation was confirmed by the attention given to deficiencies in regulatory processes and administration in many of the 150 submissions to the review and, ultimately, by the Government’s acceptance of most of the Taskforce’s recommendations in this area.

Forging a cohesive project team

Having a team of good people who work well together and are committed to a common objective is obviously crucially important to the success of any such project, particularly one facing severe time constraints. Within the Productivity Commission, assembling the best available teams for particular tasks is a priority for senior management. Get the team wrong and the quality of the outcome can be compromised before a project is even underway. The Commission has the advantage of a stable reserve of experienced researchers and Commissioners who share the organisation’s core values of independence, transparency and the need for a community-wide perspective, as well as appreciating the need for analytical rigour.

Ad hoc reviews typically do not commence with that advantage. Their mixed record of achievement can on occasion be explained by the origins and make-up of their secretariats. The biggest problems typically arise where an appointed review is fitted up with a secretariat drawn from the department responsible for the policy area under review. The dominance of the department's own interests and views can be hard to shake unless the reviewer is already expert in the area being reviewed and has a diligent hands-on approach. As Sir Humphrey put it, "I don't care who chairs the meeting, Minister, as long as we write the Minutes."

Our review started with the considerable advantage of an appointed Taskforce comprising four people of an independent cast of mind, whose experiences, skills and inclinations proved highly complementary. We also got on well together, which was a further advantage.

The Secretariat was drawn from across government. It included officials nominated by the three 'stakeholder' departments (Prime Minister and Cabinet, Treasury and Industry, Tourism and Resources) as well as one each from the Departments of Health and Ageing and Employment and Workplace Relations. The person appointed to head the secretariat, Sue Weston, was head of the Office of Small Business within DITR. In addition, I was permitted to appoint several researchers from the Productivity Commission, including an SES Band I officer (Ian Monday) to act as the deputy project manager.

Those appointed to the secretariat generally had skills and work experiences well-matched to key areas of regulation and policy issues raised in the brief. Apparent gaps in coverage, such as the environment portfolio, were compensated for by choosing staff from the Productivity Commission with knowledge in those areas. In addition, the Taskforce asked each department to nominate an executive contact to facilitate interaction and access to information.

The advantage of such a 'whole-of-government' secretariat is that it was able to bring relevant skills and experience, as well as providing conduits for communication with relevant areas of government, without the problems just alluded to that can arise with a concentration of people from an interested portfolio. This was assisted by having people seconded to the secretariat who were experienced and knowledgeable, but not too senior (below Senior Executive level).

Nevertheless, apart from the Productivity Commission cohort, most members of the secretariat had never worked together, and most had had no experience working in such a setting. It was important to establish quickly a sense of belonging and of commitment to the exercise, over and above the particular interests of home departments. In this I believe we were successful.

In part, this reflected the qualities of individual members of the team (to the credit of the agencies which appointed them) and the motivation that came from being part of an enterprise to which business, government and the media attached obvious importance. From the Taskforce members down to the most junior member of the secretariat, there was a sense of having been handed an opportunity to make a difference. There was also a shared recognition that business's expectations had been elevated (partly by our own efforts, as discussed later) and that we would need to deliver something pretty good if we were not to disappoint them.

Beyond these inherent factors, a number of deliberate initiatives contributed to the team's effectiveness.

'Operation control'

A key early decision was to bring the team together in one location, at the Productivity Commission's Canberra office. The Commission's Function Room was commandeered for the departmental appointees and also served as a meeting place for the whole secretariat. This soon created a hothouse atmosphere for discussion and team bonding. (The hothouse was literal when the air-conditioning failed, one Canberra summer's day!)

In my view, the proximity of team members is absolutely essential for a 'short, sharp review'. It allows individuals to stay in touch more readily with what their colleagues are doing and to engage in informal exchanges of ideas and information. It thus enables individuals to maintain a better sense of the big picture. It also enables a shared sense of mission to develop, which is difficult when team members are dispersed.

Team meetings (and 'get togethers')

A guiding principle behind a number of operational practices within the Productivity Commission is that ideas must be able to withstand robust internal scrutiny and debate if they are to have any prospect of prevailing externally. Through the course of a project there are regular team meetings at which all members are encouraged to have a say. Respect for hierarchy must not extend to ideas. (I have more than once been corrected by the most junior member of an inquiry team.)

This culture was fostered within the Taskforce as well. Debate and discussion within the project team was promoted through daily planning meetings, as well as ad hoc meetings on key issues as they emerged. These were in addition to several

meetings involving all members of the Taskforce, which served to make higher level judgements and establish directions for the secretariat's efforts.

'All work and no play' is a proverb which our team took seriously. It soon became evident that they were not just working long and hard. Evening drinks and social events soon became part of the routine, no doubt contributing to the cheerful harmony that seemed to pervade the workplace. In this respect, a more youthful and energetic team clearly has much to offer!

Devising an effective work plan

The strong team morale that emerged also reflected the close attention given by the Taskforce and secretariat to the development of a work plan, and to the allocation and structuring of tasks.

Drawing on the Productivity Commission model, but adapting it to a relatively truncated timeframe, the following phases of the review were established at the Taskforce's first meeting on 20 October (a week after its announcement):

- *initial visits to some key stakeholders* to test ideas about scope, etc (20-25 October);
- preparation and release of an *Issues Paper* (by 25 October) to guide submissions (due by 22 November);
- *consultations* (see below) with business and other groups (26 October to end-November);
- preparation of *briefing papers* on possible report structure and reform options for Taskforce consideration (November);
- *preliminary proposals for departmental feedback*, as they were developed (November, December);
- '*early bottom lines*' report to the three stakeholder departments (by Christmas);
- a short Christmas break (to re-charge batteries) while awaiting feedback;
- *the bedding down of reform proposals*, including final interaction with departments (early January);
- *finalisation of the report*, including a preliminary version for final feedback from the three stakeholder departments (from mid-January); and
- A4 printer-ready copies to the Prime Minister and Treasurer (31 January).

The importance of testing proposals with government ahead of the final report (see below) led inexorably to the need for preliminary outputs before Christmas. This in

turn conditioned both the work schedule and approach. It placed a premium on having streamlined processes for culling and assessing information, developing and presenting potential recommendations and progressing the report itself.

First, team members were assigned areas of responsibility that corresponded with their backgrounds and skills. Their task was to gather information and present proposals, under the supervision of the managers.

As submissions arrived, they were reviewed to extract information in accordance with a summary template, which had been developed to present in condensed form an overview of issues/problems relating to specific regulatory areas or processes, and possible solutions. Information in this template form was placed on an internal web-site for the taskforce to use as a resource. (This website greatly facilitated communication with the three taskforce members who were not based in Canberra.)

This process facilitated the preparation of an initial list of reform proposals, following review by the secretariat, for consideration by the taskforce members.

Together, these arrangements expedited the assessment and review process and allowed the taskforce to meet its objective of circulating its preliminary proposals, covering specific regulations, to relevant government departments just ahead of the Christmas break. The Taskforce also drew on these proposals, together with its early ideas about reforms to regulation-making processes, to prepare the early-bottom-lines brief for the three stakeholder departments.

The Taskforce also devoted time at its early meetings to developing a structure for the report and a format to guide drafting. In late-November, it decided to prepare the report around three work streams or modules, comprising:

- a ‘contextual’ stream concerned with the nature, extent and drivers of regulatory burdens;
- a stream covering specific regulatory reform proposals; and
- one covering reforms to regulatory processes and institutions.

Work on the specific regulation proposals progressed as part of the process of reporting to government agencies ahead of the Christmas break. The Taskforce agreed that it would need to review initial drafts for the other two streams during December to ensure that the overall work plan was on track. Earlier work on developing a key-point format to guide drafting paid dividends at this stage.

Drawing on departmental feedback, a series of Taskforce meetings were held throughout January to review progress in each work stream and guide the preparation of a semi-final version of the report, which was circulated to key

stakeholder departments in late-January. The final feedback from these three agencies was then reviewed prior to finalising the report.

Optimising community participation and consultation

Lack of consultation with those affected by a proposed regulation is often the main cause of poor regulatory design and excessive burdens on business. Government agencies have generally been poor at consultation and this was one of the main complaints of business. (A topical illustration at the time of our review was the first round of anti-money-laundering legislative proposals. These had been developed with little business input and were stopped at the final ‘decision-making stage’ only when the financial sector’s petitions to senior ministers made it clear that the compliance costs would have been prohibitive. The Business Council of Australia noted in its submission:

One BCA member ... estimated that the cost of customer identification for all its customers, as originally proposed, would have been \$100 million. Ultimately, the original 800 page Bill was rejected by Cabinet. (BGA, Submission no. 109, pp 29-30.)

It was essential therefore that the Taskforce not be accused of the same neglect. More importantly, as noted previously, we deliberately chose to rely heavily on the views and information from business in order to do our job. It was essential, therefore, that we get extensive business participation in the review and that we extract quality information from business. How to achieve this in a tight timeframe was perhaps the biggest challenge of the whole review.

Again, the Productivity Commission’s experience in this area proved very useful, but the more restricted time available to the Taskforce called for some innovations and the cutting of some corners. Broadly the main elements of the strategy, more or less in sequence, were as follows:

- immediate contact with heads of the largest business associations, to encourage their support and active participation;
- immediate advertising of the review and call for submissions in the national press, plus some media interviews to raise the review’s profile;
- release of an Issues Paper and meetings with key individual stakeholders, to obtain views and solicit (substantive) submissions;
- a series of roundtables and forums to enable better interaction with some stakeholder groups (eg small business, aged care industry) and more focussed discussion in key areas (eg social/environmental regulation and economic/financial regulation); and
- follow-up interaction on an *ad hoc* basis in response to particular submissions.

The Issues Paper and early meetings helped encourage participation by demonstrating the potential payoff, as well as by providing guidance on the sort of input that was needed. We made it clear that business would have to do more than make general complaints if it was to be persuasive with the Taskforce. We would need advice about specific regulation, the associated burdens, why these were excessive and what could be done about them (without compromising policy objectives). This was a big ask, but business rose to the challenge. The Taskforce received 150 submissions, most of which were of high quality.

In the Commission's experience, visits to stakeholders during a review and the relatively informal discussions that they entail, can be just as valuable as formal submissions and public hearings. They provide early, and usually more direct (or frank) signals about what matters to the stakeholder. They can also allow such views to be quickly tested with other stakeholders — in this case, with consumer and environmental groups (apart from government itself — see below). In addition, they often give leads about information sources or useful contacts that might otherwise not have been discovered. (Even in this internet age, much information is still carried in people's heads — requiring personal contact to 'download'.)

Visiting stakeholders at their premises, rather than expecting them to make all the effort, can be valuable in demonstrating the importance attached to hearing their views (and thus in encouraging submissions) as well as in enabling some smaller or more poorly resourced stakeholders to have a say.

It is important though that meetings of this kind do not *substitute* for public submissions and the value of such submissions was emphasised at the meetings. Like the Productivity Commission, the Taskforce placed all submissions on its website as soon as they arrived, to give everyone the opportunity to see what others were saying and to respond if necessary.

The Taskforce ended up visiting some 60 organisations within a six week period. As a practical matter, this required some specialisation among Taskforce members, based on pragmatic considerations of geography, area of expertise or interest, and availability (no Taskforce member could devote all of his or her time to the review). This is not ideal, as much learning occurs through such visits. And some stakeholders will expect to see the whole Taskforce, particularly its chair. We handled this by reserving certain meetings for all or most members to attend. In all cases, meeting notes were made and disseminated to all members of the Taskforce and its secretariat. These again followed a template format, in which key ideas and proposals were identified.

The roundtables and other forums proved to be a valuable part of the consultation process. Again, the Productivity Commission's experience was useful – particularly

in reinforcing the need to be strategic and selective. The lesson from some Commission projects is that there needs to be a well-defined target group and set of issues. It is also important to have a clear agenda, which participants see in advance and can prepare for. That way, there is more prospect of an informed discussion that focuses on issues important to the review, and from which useful information and insights can be gained.

Consulting with government

In addition to consultations with business and community organisations, there was also extensive interaction with government. Much of this was through correspondence related to preliminary proposals for reform (see below), but there were also opportunities to speak to senior officials from various departments. As noted, the terms of reference specifically asked the Taskforce to consult closely with the Secretaries of Prime Minister and Cabinet, Treasury and Industry, Tourism and Resources. This was discharged through meetings with individual Secretaries in the early stages of the review, and a subsequent meeting with all three Secretaries at the ‘early bottom lines’ stage, where attention was also given to the proposals bearing on systemic reform.

An opportunity was also offered to State and Territory Governments to make a submission to the Review in a letter to Premiers and Chief Ministers. The Taskforce’s remit extended to areas of Commonwealth regulation where regulatory burdens arose from overlaps with State and Territory regulation, and it was important therefore that other governments have the opportunity to comment on these. In the event, submissions were received only from Victoria and Western Australia. The parallel processes through the Council of Australian Governments (COAG) for addressing inter-jurisdictional ‘hot spots’ naturally took precedence for State and Territory Governments.

Testing ideas without a (public) draft report

The testing of preliminary thinking through a draft report is fundamental to the Productivity Commission’s processes. It maximises the opportunity to detect error (factual, analytical or judgemental) and it provides a ‘no surprises’ environment which can enhance a final report’s acceptability and enable government to discern the political implications of implementing it.

One downside is that all this takes time and the Taskforce did not have that luxury. This could have proven fatal if the Taskforce had been required (like the Productivity Commission) to make policy recommendations. However, the focus on

reducing *unnecessary* compliance burdens while ensuring that policy objectives were intact reduced the need for detailed scrutiny from the wider community.

That being said, the Taskforce received many proposals and these needed to be vetted carefully if its final recommendations were to be credible and implementable. The vetting process that we developed had a number of strands.

- *First*, there was an initial assessment by the team itself, against a number of criteria that it had established, some of which have already been noted (Box 2).
- *Second*, those proposals that survived this initial scrutiny (over two-thirds) were submitted to the responsible policy department or regulatory agency for their feedback. Where agencies objected to a proposed regulatory reform they were asked to explain why and, in particular, indicate why it would not yield a net benefit to business and the wider community (rather than just from a government or agency perspective).
- *Third*, there was further discussion within the Taskforce where proposed reforms were modified or faced objections, to consider whether these were warranted. (Of the preliminary proposals that were opposed, we concluded that this was justified in about 40 per cent of cases.)
- *Fourth*, in making such final assessments, the views of expert ‘third parties’ within the public sector were sometimes sought (in confidence).

This process worked quite well not only in testing relatively ‘raw’ proposals based on business submissions, but also in helping the Taskforce to fashion regulatory changes that could be effectively implemented. Understanding the basis for an agency’s opposition to a proposal that we nevertheless intended to persist with also enabled us to make a more compelling case for action by addressing the specific areas of concern. (A common concern related to the fiscal implications, for which the Taskforce generally had little sympathy from a wider cost-benefit perspective, but proved only partly successful in convincing government!)

Producing an accessible document

Contrary to the Government’s expectations when commissioning the review — and indeed my own at the outset — it became increasingly apparent that, to do justice to the response from business, the report would need to include a large number of recommendations.

That posed obvious presentational challenges for the report itself. The Government’s desire for a ‘short sharp report’ (akin to the report on export

infrastructure that immediately preceded it) was shared by the Taskforce, but how short and sharp can a report be when it contains 178 recommendations?

Again, had it been a Productivity Commission product, the outcome would necessarily have been a relatively long and detailed report. This is because of the nature of the Commission's recommendations which bear on policy choices which, in many cases, create losers as well as winners, and therefore necessitate a high burden of proof. People expect that the Commission's recommendations will be backed up by in-depth analysis that is readily available for public scrutiny.

Box 2 The Taskforce's criteria for 'filtering' proposals for regulatory reform

- Consistent with the terms of reference, regulation should be the responsibility of the Australian Government, or a state or territory regulation that *overlaps or interacts* with Australian Government regulation.
- Regulation should be unnecessarily burdensome, complex, redundant or duplicative. The Taskforce focused on regulations where the compliance burden appeared unnecessarily high and therefore where there was an avoidable burden on business, and a likely net benefit from reform.
- Reforms to the regulation would not raise fundamental policy issues. The Taskforce's brief was to identify practical options for alleviating the compliance burden on business — rather than addressing underlying policy matters.
- A regulatory reform was likely to have an impact on a large number of businesses or industries or have a potentially significant impact on the productivity of business across the economy. An early indicator was the extent to which a regulatory issue was raised across submissions.
- Practical reform options were readily apparent, with associated complications or uncertainties not obvious or insurmountable. Where a reform need was clear, but the best way forward was not, the Taskforce advocated a more in-depth examination.
- Regulations that were recently enacted or yet to be effectively implemented were generally not considered.
- The regulation was not the subject of a recently completed review for which the relevant recommendations were being considered by government or had recently been acted on.

Source: Regulation Taskforce, 2006, p18.

In contrast, the different character of most of the Taskforce's recommendations meant that it could credibly opt for breadth without depth. Moreover, as noted, in

most cases the recommendations had the advantage of business support and departmental acceptance. Where both agreed (and third parties were not affected) the burden of proof was considerably lightened. So we adopted the 80:20 rule, providing the minimum explanation necessary to indicate why a particular reform was advocated.

The result was a report of eight chapters and 184 pages — equivalent to about a 1:1 ratio of recommendations to pages, compared to something like 1:10 (or more) for Productivity Commission reports.

The Commission seeks to balance the need for depth, detail (and therefore bulk), with reader accessibility, by providing a short overview and a consolidated list of findings and recommendations at the front of its reports. In addition, it has become standard practice to include a one-page ‘Key Points’ box at the beginning of the Overview itself. In that way, the needs of different users of the reports can be accommodated. (For example, at one extreme, boffins can delve into appendixes for analytical detail; at the other, Ministers and CEOs — and journalists — are able to extract the essence of our findings in six to eight dot points).

The Taskforce’s report broadly followed the Productivity Commission format, but with more economy. (Taskforce members placed a higher premium on brevity than Commissioners have typically done!). Given the large number of recommendations, rather than listing them word for word at the front of the report (which would have amounted to some 30 pages), we captured each as a one-line summary, together with its identification number and the page of the report where it could be located. This proved very effective as a quick entry-point to the report, as well as conveying the entirety of the report’s bottom lines in a dozen pages. Its utility was affirmed by the government’s adoption of the same format in summarising its response to the report.

Finally, and notwithstanding the time constraints, a decision was taken to enlist the help of a contract editor, to help achieve a common style across the various parts of the report in which different team members had had a hand. This was done with a light touch and, because it was done at the penultimate draft stage, did not slow things down.

Attention to implementation priorities

While these presentational devices helped make an extensive report more accessible and reader-friendly, the more important or substantive means by which the Taskforce accommodated the Government’s wish for a manageable agenda,

notwithstanding the breadth and scope of our report, was through the clear identification of priorities. As the Taskforce noted:

All the (178) recommended reforms and reviews clearly could not be done immediately and, while the proposed actions are likely to yield net gains, some will be more substantial than others. Decisions about not only what to do, but when to do it, could be very important to the overall outcomes. (*Regulation Taskforce*, 2006, p177.)

In identifying the priorities, the Taskforce considered the prospective gains, the likely ease of implementation and logistical issues, such as the need to avoid overloading COAG or particular portfolio areas. Its priorities encompassed both specific reforms and proposed reviews, and were listed under thematic headings in the report's final chapter. Ten of each of the most important stock reforms and proposed reviews were then highlighted in the Overview.

This was intended not only to assist the Government develop an effective implementation program, but also to reduce the risk of the more significant reform areas being neglected or put on the backburner. The Taskforce was conscious that reforms yielding the highest potential payoffs are often the most difficult to realise. For example, of the many regulations with potentially anti-competitive effects that were reviewed under the Legislation Review Program of the National Competition Policy, review failures of various kinds occurred disproportionately among those regulatory instruments with the largest economic costs.

As it has turned out, of the dozen reforms to existing regulation highlighted in the Overview, nine have been or are being implemented, and 10 of the 12 priority reviews have been announced or are underway. (Two of the most important of these reviews — into consumer protection regulation and chemicals and plastics regulation — have been referred to the Productivity Commission for public inquiry.) In addition, nearly all of the priority areas for systemic reform have been addressed. For the larger number of priority reform actions identified in the final chapter of the report, about 80 per cent have been accepted, not too much lower than the acceptance rate for other recommendations.

'Selling' the report

The attention given to the report's structure and readability no doubt contributed to its success. Once, at a public seminar hosted by the Productivity Commission, I asked Max Corden — the doyen of Australia's academic economists, and among the most influential — what he had done to encourage the uptake of his ideas by government. Did he lobby officials or ministers? Did he actively engage with the press? He replied that, no, he didn't do much of those things. He simply tried to

convey his ideas as clearly as he could in his books and journal articles, and let his readers do the rest.

Effectively engaging readers can usefully begin with the choice of a report's title. (A propos, Prof. Corden titled his Richard Snape Lecture for 2005 "40 million Aussies? The Immigration Debate Revisited" and a subsequent paper on higher education was given the lead title "Moscow on the Molonglo" — unsurprisingly, both received good press coverage!) Many reports have such boring or obtuse titles that they struggle to achieve any public recognition, and the more worthy ones end up having a title invented for them by the press. In many such cases, the report becomes synonymous with the name of the person heading the review, which I have always thought unfair to those others associated with it. (However this is often unavoidable. For example, is it little wonder that the 'Report by the Independent Committee of Inquiry into a National Competition Policy' became known as the Hilmer Report?)

Determined that this Taskforce would not squander the opportunity to have a meaningful and useable title for its report, a competition was set in train to see which team member could come up with the best one (with the added inducement of a bottle of wine.) The team went to it in good spirit, and a variety of entries were soon laid before me. (Some displayed an unsuspected sense of humour, which added much to this judge's enjoyment, but disqualified the entries. Two that come to mind are 'Over-regulated and over it?', which I subsequently borrowed for a speech to a business forum, and "Not another Red Tape Report!" — which, apart from its levity, was uncomfortably close to the bone.)

In the end, 'Rethinking Regulation' got my vote (and the assent of the Taskforce) for being not only catchy, but also for capturing the central message in the report about the need to address the underlying causes of bad regulation. The attention given to the title has been partly vindicated by its frequent use in official references to the report, and as the title for a number of subsequent conferences and seminars on regulatory reform. However, I have to admit that the convention of adopting the taskforce head's name (in this case my own) appears to have largely prevailed once again in common usage.

A second presentational feature relevant to our selling of the report was the inclusion of a foreword, signed by the Taskforce members. This again enabled the key messages of the report to be relayed at the outset in simple and direct language. Perhaps more importantly, it also signalled that all four members of the Taskforce had ownership of the report's recommendations. This helped avoid perceptions that have sometimes arisen in other such reviews that certain recommendations reflected the views of only a minority of members, which can weaken a report's influence.

Briefings and other direct interaction

Beyond the appeal of the report's contents, the scope to influence the take-up of its recommendations within government was more limited in some respects than for Productivity Commission reports, but more extensive in others.

On the debit side, the lack of a public draft meant that there was no opportunity to enlist public/business support for specific (draft) recommendations. However, given that many recommendations were based on business submissions anyhow, this was not much of a liability. Moreover, the staged nature of the Government's response meant that, with the release of the report at stage one, there remained scope for business to provide support for the balance of the recommendations ahead of the final response (Prime Minister and Treasurer 2006 and Costello 2006.) The release of the report in advance of the Government's final response also enabled members of the Taskforce to talk freely about its contents at various business forums and conferences (Banks 2006a,b).

Perhaps the most effective avenues for selling the report have been directly with government itself, where the Taskforce had more scope than typically occurs for the Productivity Commission. I have already noted the ongoing testing of proposals with departments as the review proceeded, which laid the groundwork for a number of the final recommendations to be supported. This was reinforced and extended through briefings to heads of the three sponsoring agencies (PM&C, Treasury and DITR) and other briefings to officials across affected portfolios.

In addition, the Taskforce had the opportunity, shortly after submitting its report, to present and discuss its findings with the Prime Minister and Treasurer. Similarly, I was able to brief the Parliamentary Secretary to the Treasurer, who had carriage for reforms to financial services regulation (Pearce 2006,2007ab.)

The return of officials seconded to the secretariat back to their home departments provided a direct opportunity to influence the responses to the report's recommendations of those agencies. (To the extent that this happened, it would have constituted a reversal of the 'taskforce capture' phenomenon noted earlier!) Indeed, a senior member of the secretariat was able to assist the work of the Interdepartmental Committee responsible for preparing a whole-of-government response for Cabinet consideration.

For most of the Taskforce's recommendations, these activities concluded with the Government's final response last August. The exceptions were the recommendations relating to reforms to regulation-making processes, where important implementation 'details' remained to be settled. Given the central role of the new Office of Best Practice Regulation within the Productivity Commission in

the reformed arrangements, I was fortuitously well placed to continue to provide further input through interactions with the responsible Steering Committee of officials, which would not normally be the case for the head of a review.

These experiences have been very worthwhile. They have also served to impress on me the vulnerability of such reports to the processes and individuals charged with their implementation. It is all too easy for carefully considered proposals to be subverted at the implementation stage by misinterpretation, even if not intentional. This argues for ongoing communication between review and advisory bodies and those responsible for developing the government's responses or for detailed implementation. I do not underestimate the contribution of those ongoing communication channels in this case to the generally positive outcomes. (That said, it is also crucial to the integrity of an independent process, where independence is called for, that the reviewing body not cross the line into policy implementation. The right balance is needed.)

Summing up

We are seeing a rising trend in the use by governments of special-purpose 'taskforces' and 'review groups' to assess and make recommendations about contentious or complex policy issues. This is a positive development, in terms of its potential to facilitate greater public involvement and the generation of objective, expert advice — and thus better informed policy decisions.

Whether that potential is realised in practice, however, is not a foregone conclusion. It depends on the ability of the reviewer to get on top of the issues and effectively engage stakeholders in the time allotted to the review. Moreover, to pave the way politically for policy actions flowing from the review, it needs to be seen to be relatively independent, especially where exercising judgement is crucial to its findings and recommendations.

Seen in this light, the experience thus far is mixed. Some reviews have been influential in the short-term as well as having an enduring impact; others have achieved or resolved little and have been soon forgotten. (I will leave you to make your own lists!). In some of the latter cases, members of the review groups may of course not be to blame. Sometimes even the best report can get overtaken by events. Sometimes the reviewers' remit is too constraining, or loaded. Sometimes (often?) the amount of time that is allowed for the task is too little, especially to permit adequate consultation when major policy issues are being assessed. Nevertheless, the Taskforce's experience demonstrates that a review group can use the discretion and choices available to it to make the best of the hand it is dealt.

My secondment to the Taskforce obviously predisposed it to consider adopting a number of the processes that have worked well at the Productivity Commission. Indeed, I believe it is no exaggeration to describe the Commission's processes as the 'gold standard' for public policy reviews. (This is not just my view. It has been affirmed by a number of international reports, and interest in the Productivity Commission model has been growing internationally.)

In the circumstances faced by most *ad hoc* reviews, however, the bar set by the Commission's processes is probably too high. The modifications and innovations adopted by the Regulation Taskforce may provide a more relevant model. In this paper, I have tried to set out the key ingredients. Of the eight areas identified, the more important ones, in my view, relate to: team composition and development; strategies for consultation and the testing of ideas; developing implementation priorities, and providing ongoing advisory support in the implementation phase itself.

Consideration of the last of these leads to the broader question of what happens to a taskforce's accumulated expertise once it completes its work. Typically, the taskforce is disbanded and its collective knowledge scattered. For some topics or issues of a largely one-off character this doesn't really matter; but for others, the expertise may have continuing relevance that it would be desirable to maintain.

Regulatory reform is such an area. However, the Taskforce had anticipated the need for ongoing review activities and follow-up in its recommendations. And a number of these have been assigned to the Productivity Commission itself. They include the upgrading of the Office of Regulation Review to oversee the government's new regulatory assessment process (as the new Office of Best Practice Regulation); the establishment, with COAG's agreement, of a program to benchmark the performance of regulatory regimes across our Federation; a rolling sectoral stock-take of regulation, akin to a more selective and in-depth version of the Taskforce's own review, as well as a process to ensure five-yearly reviews of more recently introduced regulation with significant compliance implications. Together with the reforms already made to existing regulations in response to the Taskforce's report (Costello, 2007), and reviews of other important areas of regulation underway or imminent, these initiatives are likely to have an ongoing impact.

In conclusion, reaffirming my initial proposition, to the extent that the Regulation Taskforce has been successful in discharging its remit, this can be attributed not only to how the review was constituted by government, but also to how it was 'managed' by the Taskforce itself. Hopefully, some of what we learned will prove helpful to those contemplating how to handle *ad hoc* policy reviews in the future.

References

- ACCI (Australian Chamber of Commerce and Industry) 2005, *Holding Back the Red Tape Avalanche: A Regulatory Reform Agenda for Australia*, Position Paper, November.
- Banks, G. 2006a, *Reducing the regulatory burden: the way forward*, Inaugural Public Lecture, Monash Centre for Regulatory Studies, Melbourne, 17 May, <http://www.pc.gov.au/speeches/cs20060517/index.html>.
- 2006b, *Tackling the underlying causes of over-regulation: an update*, Speaking notes for a presentation to the Conference, Australian Regulatory Reform Evolution, 24–25 October, Canberra, <http://www.pc.gov.au/speeches/cs20061024/index.html>.
- BCA (Business Council of Australia) 2005, *Business Regulation Action Plan for Future Prosperity*, Melbourne.
- Bell, C. 1996, *Time for Business*, Report of the Small Business Deregulation Task Force, Department of Industry, Science and Technology (037/96), Canberra, 1 November, <http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectID=EB06805E-C50B-40D6-BF1E3DEED6033BEA>.
- Costello, P. (Treasurer) 2006, *Report of the Taskforce on Reducing Regulatory Burdens on Business — Final Government Response*, Press Release No. 088, Canberra, 15 August, <http://www.treasurer.gov.au/tsr/content/pressreleases/2006/088.asp>. (A full text of the Australian Government's Response is available at <http://www.treasury.gov.au/contentitem.asp?ContentID=1141&NavID=>.)
- 2007, *Reducing Red Tape and the Regulatory Burdens on Business*, Press Release No. 026, London, 12 April, <http://www.treasurer.gov.au/tsr/content/pressreleases/2007/026.asp>.
- Howard, J. (Prime Minister) and Costello, P. (Treasurer) 2005, *Taskforce On Reducing The Regulatory Burden On Business*, Joint Media Release announcing the appointment of a Taskforce to identify practical options for alleviating the compliance burden on business from Commonwealth Government regulation, Australian Government Regulation Taskforce, Canberra, 12 October, <http://www.regulationtaskforce.gov.au/media/mediarelease.html>.
- 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business: Australian Government's Interim Response*, Canberra, 7 April, <http://www.treasurer.gov.au/tsr/content/pressreleases/2006/019.asp>.
- Office of Best Practice Regulation 2006, *Best Practice Regulation Handbook*, Canberra, <http://www.obpr.gov.au/bestpractice/index.html>.

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- Pearce, C. (Parliamentary Secretary to the Treasurer) 2006, *Pearce Announces Progress Towards Simpler Regulatory System Bill*, Press Release No. 028, Canberra, 14 August, <http://parlsec.treasurer.gov.au/cjp/content/pressreleases/2006/028.asp>.
- 2007b, *Simpler Regulatory System Package*, 24 May 2007. <http://www.pc.gov.au/research/crp/nationalreformagenda/index.html>.
- Productivity Commission, *About the Commission*, Canberra, <http://www.pc.gov.au/commission/index.html>.
- Regulation Taskforce 2005, *Taskforce Issues Paper*, Paper prepared to assist individuals and organisations to prepare submissions to the Australian Government Taskforce on Reducing Regulatory Burdens on Business, Canberra, 25 October, <http://www.regulationtaskforce.gov.au/issuespaper/index.html>.
- 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, Report to the Prime Minister and the Treasurer, Canberra, January, <http://www.regulationtaskforce.gov.au/finalreport/index.html>.