

# Reducing red tape: does government mean business?

Gary Banks



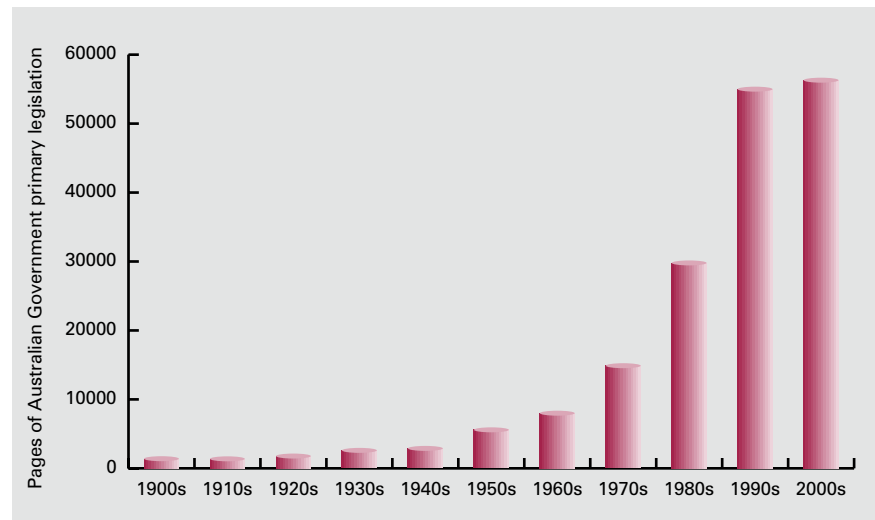
*Regulatory inflation has imposed substantial costs on business. The Regulation Taskforce made many recommendations to alleviate existing red tape burdens arising from a variety of sources. It also proposed changes to the way regulations are developed and administered, to avoid problems simply re-emerging. The Government has accepted most recommendations, but effective implementation will be the test.*

The remit to the Regulation Taskforce in October 2005 from the Prime Minister and Treasurer was a challenging one: to identify and propose remedies for areas of Australian government regulation that are 'unnecessarily burdensome, complex, redundant or duplicate regulations in other jurisdictions'.

It responded to mounting concerns from business about the growth



Figure 1: The growth in Australian government legislation since Federation



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of regulation and its cumulative burdens. The regulatory backlash was broadly based, but had a particular focus on regulation of financial services, taxation, employment and the environment. Among these, the Financial Services Reform Act appears to have been the last straw for some leading BCA members, who saw the promise of a light-handed, principles-based policy regime being compromised by the emergence of an increasingly intrusive and prescriptive regulatory apparatus.

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The Taskforce made 178 recommendations designed to remove

undue regulatory burdens and to improve the processes by which regulations are made. The majority were accepted by government. The challenge now is to ensure effective implementation of the agreed reforms.

### Regulatory inflation is costly

The stock of regulation in Australia has expanded greatly over recent years, in response to a variety of social, environmental and economic issues and pressures. For example, since 1990 the Australian Parliament has passed more pages of legislation than in the nine preceding decades since Federation (see Figure 1). And that is just the tip of the iceberg, with a bulging sub-strata of delegated and *de facto* regulation. Add to this the comparable regulatory stockpiles at state and territory level and the myriad of detailed municipal regulations — not to mention the 1400 or so regulatory bodies overseeing it all — and one is left wondering how, if all this is necessary, people ever *managed* in earlier decades?



Quantifying the aggregate value of the red tape burden on the Australian economy is no easy task. Estimates vary greatly. What they don't tell us is the extent of *unnecessary* costs. Some regulatory compliance activities are unavoidable or would have been undertaken by business anyway. But even if only 20 per cent of the more conservative survey-based estimates of gross compliance costs are avoidable, this equates to costs on business of several billion dollars.

The costs of regulation to business involve not just extra time, paperwork and capital outlays, but also the diversion of management from the proper business of the firm. The impact of this is greatest for small businesses, which do not have the in-house capacity to deal with the regulatory morass. Regulation can thus stifle innovation and crowd out productive activity in the 'engine room' of Australia's economy.

It is important both for business and the wider community to introduce reforms that can provide relief on a sustainable basis.

### Culling the stock of red tape

At the urging of the Taskforce, business identified a wide array of regulatory 'sore thumbs'. However, to recommend a reform we had to be convinced that it would also generate a net benefit to society as a whole. Some proposals did not pass that test, but over 100 did. Among these, the key priorities tended to exhibit the following characteristics:

- *Regulatory creep:* We identified a number of regulations that caught more activity than warranted. Often the coverage had become more extensive over time as the

real value of thresholds had been eroded by inflation. This was found to have been particularly problematic in the tax area (e.g. GST and FBT) and in relation to the superannuation guarantee exemption. Such 'regulatory creep' can have pervasive effects, particularly on small business.

- *Inter-jurisdictional collisions:* There are some overlapping and inconsistent requirements between different areas of Australian government regulation, but the more vexed instances occur across jurisdictions. Of these, the undisputed priority is the need to implement nationally consistent occupational, health and safety standards. Other jurisdictionally conflicted zones of regulation include workers' compensation, environmental protection and building standards.
- *Redundancies or regulation not justified by policy intent:* In some cases, poor regulatory design has given rise to unintended or even perverse consequences. In others, regulation has become ineffective or unnecessary as circumstances have changed over time. The upshot is that businesses continue to incur compliance costs for no good reason. Priority areas for reform include country of origin food labelling; native vegetation and biodiversity regulations; and further refining the regulation of financial services.
- *Excessive reporting and recording burdens:* Businesses often face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary.



A number of reforms have the potential to significantly reduce compliance burdens across a range of businesses, including developing a 'whole-of-government' business reporting standard to make it easier for businesses to submit information to multiple government agencies.

- *Inconsistent definitions and criteria:* There is a surprising degree of variation in definitional and operational reporting requirements across areas of regulation. Some of these create considerable uncertainty, require variations in products or procedures, and add to the risk of unintended compliance breaches. For example, we saw a need to: align the definitions of 'employee' and 'contractor' used for superannuation guarantee and pay-as-you-go withholding purposes; and limit the use of 'uniquely Australian' variations from international standards in such areas as chemicals and plastics and therapeutic products.

There were more problem areas than these, of course. Our report contained recommendations for reforms to rationalise 'belt and braces' regulation, reduce undue complexity, prescription and micromanagement, sharpen up blunt or poorly targeted regulation and improve timeliness of regulatory decisions.

### Priorities for further review

In the time available, we identified many more regulatory problem areas than we could confidently make specific recommendations about. We therefore recommended more detailed examination of over 50 regulatory areas, including:

- *Superannuation tax provisions*, which are extremely complex and impose high compliance costs on business;

- *Chemical and plastics regulations*, which envelop the sector in a complex web, impairing its competitiveness.

Interjurisdictional reviews should focus on options for achieving harmonisation or, at least, greater consistency. They should also consider the scope to rationalise the number of regulatory bodies involved.

### Tackling the underlying causes is fundamental

While periodic culling of bad regulation is beneficial, in the meantime, the costs of living with such regulatory deficiencies can be high. Moreover, changes to even badly designed regulation to which business has eventually adjusted can bring costs of their own. A common refrain

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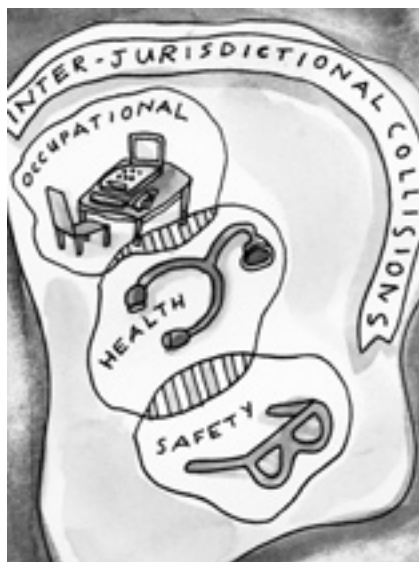


- *Directors' liability provisions under the Corporations Act*, which appear to be creating uncertainty and driving excessively risk averse compliance behaviour;
- *Privacy laws*, the requirements of which contribute significantly to cumulative regulatory burdens, while constraining beneficial information-sharing by government agencies;
- *Consumer protection policy and administration*, which involve growing divergences among jurisdictions and raise questions of effectiveness; and

from business was that 'prevention is better than cure'.

Most regulation did not just happen. As one Departmental Secretary indicated, 'no regulation is an orphan'. Each originated from a problem or need that was brought to government's attention, to which it responded. That, of course, is what governments do in democratic societies. The problem is one of proportion, both in society's demands and in governments' responses.

A fundamental driver of the demand for regulation in recent years has



been increasing risk aversion in many spheres of life. Regulation has come to be seen as a panacea for many of society's ills and as a means of protecting people from inherent risks of daily life. Any adverse event — especially where it involves loss of life, possessions, amenity or money — is laid at government's door for a regulatory fix.

In responding to such pressures, governments themselves are often attracted to regulatory solutions as a tangible demonstration of government concern. Regulatory solutions are also more convenient politically, because the costs are typically off-budget, diffuse and hard to measure. Moreover, each regulatory solution tends to be devised within policy 'silos'. The cumulative impact of regulation across government is poorly understood and rarely taken into account.

In this climate, a 'regulate first, ask questions later' culture has developed within governments. Further, agencies responsible

for administering and enforcing regulation have tended to adopt strict and often prescriptive approaches, to lessen their own exposure to criticism if things go wrong. This, in turn, has contributed to defensive and costly actions by business to ensure compliance.

regulators were compounding the problems they faced with regulation, including overly risk-averse and prescriptive approaches. We agreed that there was a need for a more balanced approach, but came to the view that this needed to start with clearer guidance from government

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### Enforcing good regulation making

Given the pressures and incentives for government to 'regulate first', mechanisms to enforce good regulation-making processes are essential. Following the Bell Report in 1997, government agencies proposing any regulation with potential impacts on business have been required to prepare a regulation impact statement, with compliance monitored by the independent Office of Regulation Review.

Business expressed strong support for these arrangements, but argued that they needed strengthening. The Taskforce endorsed this view. It considered that this should be achieved by: 'raising the bar' on the standard of analysis considered acceptable for a regulation impact statement to be approved; and making it harder for a regulatory proposal to proceed to a decision if the requirements have not been met.

### Ensuring good performance by regulators

Many business groups considered that the culture and behaviour of

itself. Regulators should also be required to report against a wider range of performance indicators, to develop codes of conduct and establish standing consultative bodies with stakeholders.

### The Government's response

In its final response to the Taskforce's Report, the Government accepted 158 of our 178 recommendations. While a minority involved immediate actions, many reforms require time to implement, particularly where the issues involve more than one jurisdiction. Assessing the success of the reform process will thus also require time. But a 90 per cent acceptance rate for the Taskforce's recommendations is clearly a good start.

Moreover the acceptance rate was high across most of the regulatory areas we addressed. Two areas with lower strike rates were health/aged care (one-third rejected) and taxation/superannuation (half rejected). The predominant reason was fiscal, either because of likely expenditure

increases or tax revenue reductions. The Taskforce's view, anticipating the latter, was that it should be possible to find better ways of raising such revenue.

Perhaps the most promising aspect of the Government's response for the longer term has been its endorsement of the need for systemic changes to address the causes of excessive or badly designed regulation. In this important area, the Government accepted 26 of the Taskforce's 29 recommendations, including the need for better consultation, the quantification of compliance burdens and, most importantly, the blocking of regulatory proposals that fail to clear the more stringent hurdles. If followed through and enforced, this would constitute a minor revolution in the workings of government.

Complementing these reforms, the role and functions of the Office of Regulation Review have been upgraded as the new Office of Best Practice Regulation. It will become a

'one-stop shop' to assist departments and regulatory bodies in following best practice, including by providing technical assistance on cost-benefit and risk analysis, and measuring compliance costs. It will also assess whether regulatory proposals have adequately complied with the new requirements and, therefore, whether they should be allowed to proceed.

Time will tell whether all this makes a significant difference. Given ingrained regulatory cultures and the pressures that will inevitably arise, ongoing political leadership will be instrumental to sustained progress. Adequate monitoring of the reform processes will also be needed. Periodic assessments have been built into the implementation process within government. And business has put government on notice that it will be watching closely.

The signs thus far are good. If this promise is borne out in practice, business will benefit and so too will the Australian community. ■

## Gary Banks

Gary Banks is Chairman of the Productivity Commission. He chaired the Taskforce on Reducing Regulatory Burdens on Business, which submitted its report *Rethinking Regulation* to the Prime Minister and Treasurer on 31 January 2006. Other members of the Taskforce were Richard Humphry, Rod Halstead and Angela MacRae. The report, as well as the Government's response, can be found at [www.regulationtaskforce.gov.au](http://www.regulationtaskforce.gov.au). Email: [gbanks@pc.gov.au](mailto:gbanks@pc.gov.au)

