

The Challenge of 'Better Regulation': Perspectives from the OECD (& Australia)

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Civil Service College Seminar

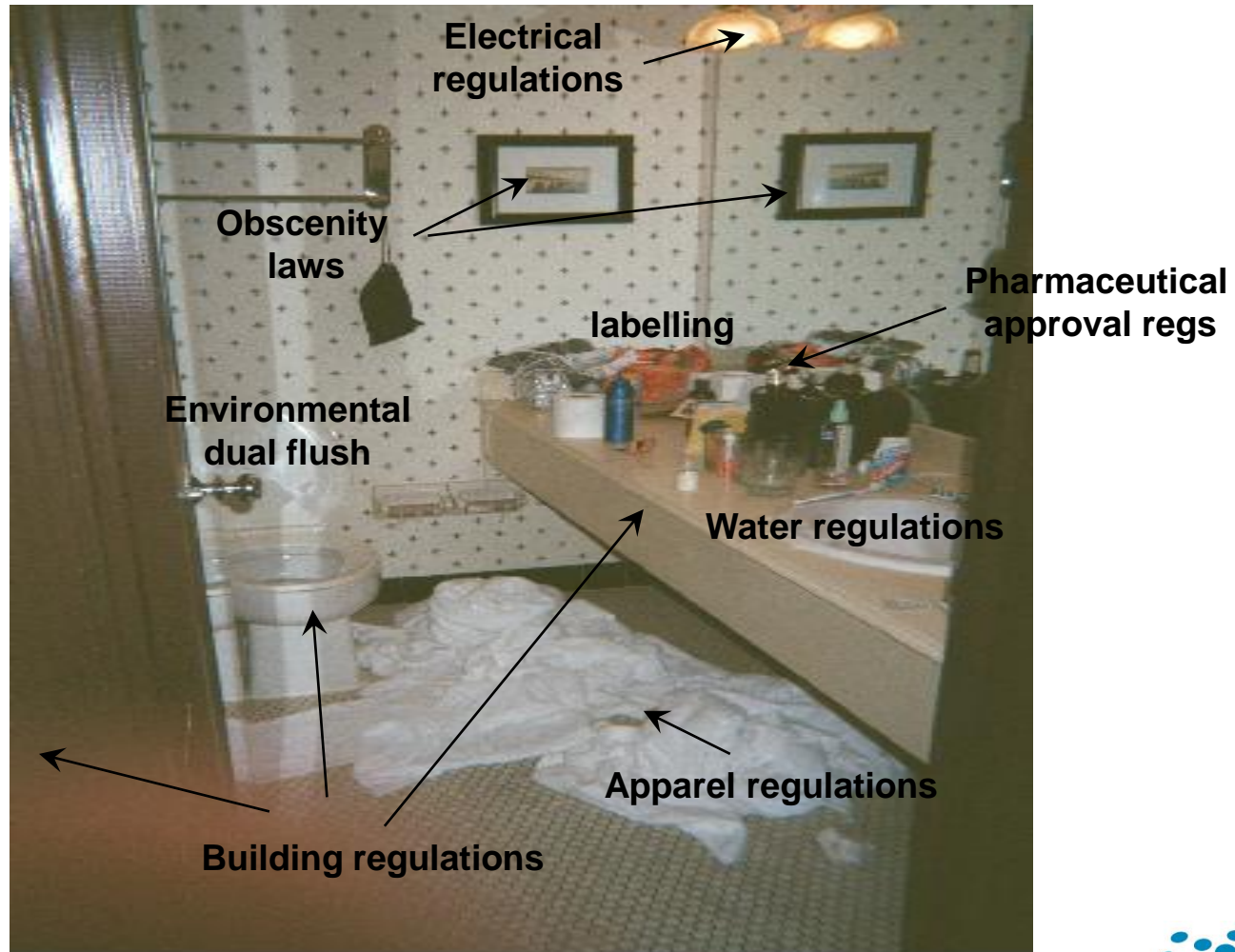
9 November 2015

Singapore

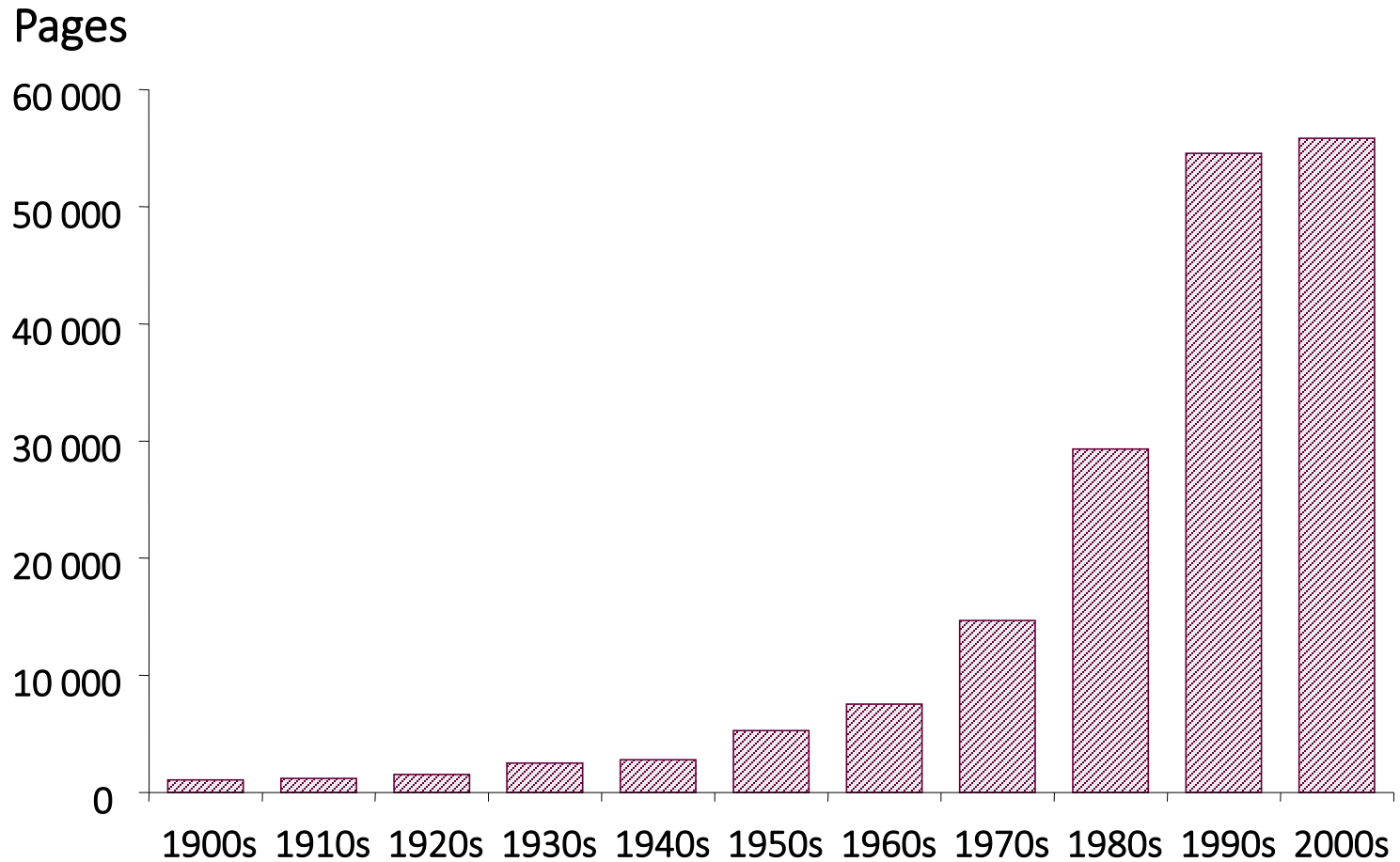


the Australia and New Zealand
School of Government

Regulation follows us everywhere!



Growth of new legislation in Australia



The costs have risen too

- Australia estimated 'red tape' costs = \$12bn GDP foregone (PC 2010)
 - Overall 'welfare' losses from all costs = 5+ per cent of GDP
- OECD estimated GDP gains of 1 – 2% from 25% reduction in administrative burdens

What forces are at work (OECD)?

- Societal expectations (wants and needs) have risen with increasing affluence and knowledge
- Interest groups also proliferating
- An 'off budget' intervention (with opaque costs)
- Regulatory ping pong and 'layering'
- Proclivity to 'regulate first...'
- Inadequate procedural filters

How (bad) regulations often arise

1. An 'issue' or problem suddenly emerges
2. A public promise to regulate
3. Then analysis to justify it
4. A poorly informed decision to proceed
5. Poor statutory guidance to the regulator
6. Risk averse implementation/enforcement



A case: Australia's live cattle exports to Indonesia

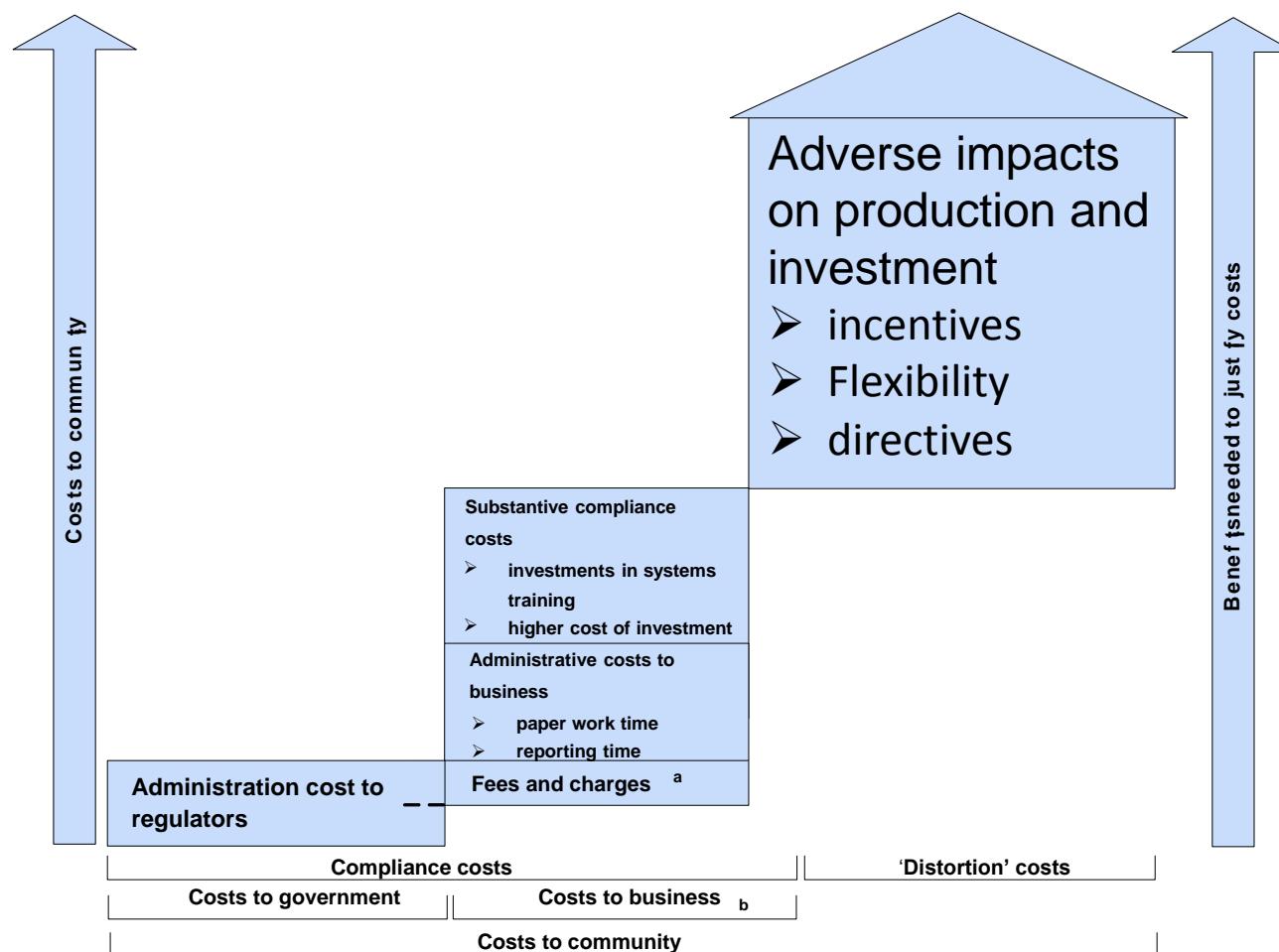
- 30 May 2011: ABC TV exposé of maltreatment of cattle in Indonesia
- 8 June 2011: Australian Government bans exports
- 9+ June 2011: Protests by Australian farmers and Indonesian government
- 6 July 2011: Ban *removed*. 'Protocols' developed
- 2012 - 2014: Indonesia imposes its own import restrictions
- August 2015: Indonesian Government reconsiders following rising beef prices for consumers



Sources of regulatory cost

- Type I errors ('false positives')
- Over-reach / undue prescription
- 'Sledgehammers'
- 'Cocktails' / inconsistencies
- Belts and braces / duplication
- 'Paperwork'
- Passing the 'use by' date

Multiple categories of 'cost'



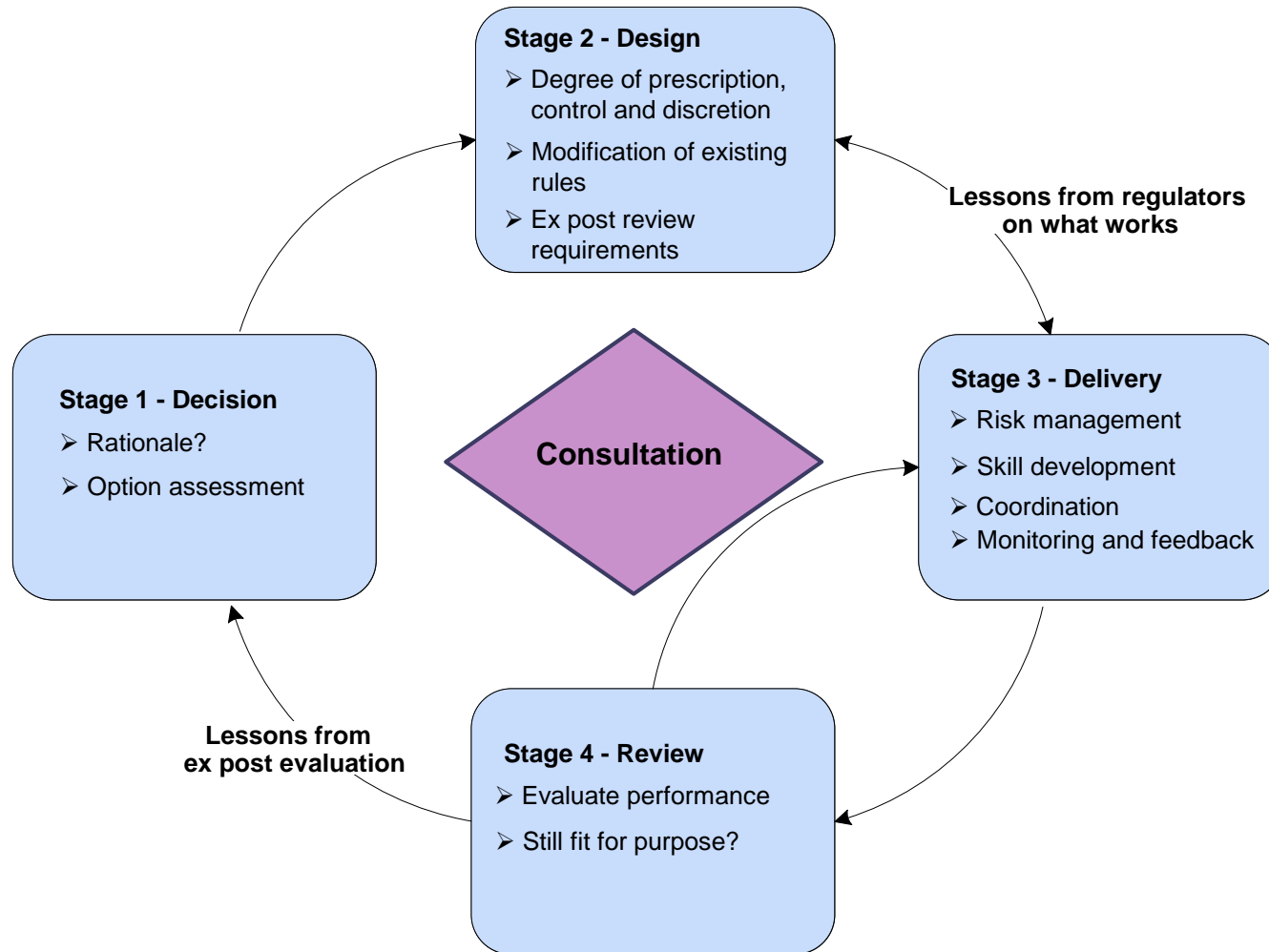
Forces for 'Better Regulation'

- Business backlash against 'Red Tape'
- Global Financial Crisis
 - Effectiveness issues
- 'Going for Growth' (OECD)
 - Pro competition and pro productivity

What is 'good' regulation?

- A sound rationale and clear objectives
- Targets the main source of a problem
- Proportionate to scale/risk
- Avoids undue prescription
- Complements other regulations
- Understandable and consistent
- Can be effectively administered and enforced
- ('Up to date')

The regulatory 'cycle' (OECD)



2012



RECOMMENDATION OF THE COUNCIL ON REGULATORY POLICY AND GOVERNANCE

OECD's '12 Commandments':

1. commit politically to 'good regulatory governance'
2. be consultative, inclusive and transparent
3. establish effective oversight institutions
4. embed RIA principles for the 'flow'
5. conduct reviews of the 'stock'
6. report regularly on system performance
7. ensure regulators are objective and impartial
8. provide for procedural fairness
9. be risk-based and responsive
10. promote cross-jurisdictional coherence
11. foster capacity within all jurisdictions
12. account for international standards and impacts

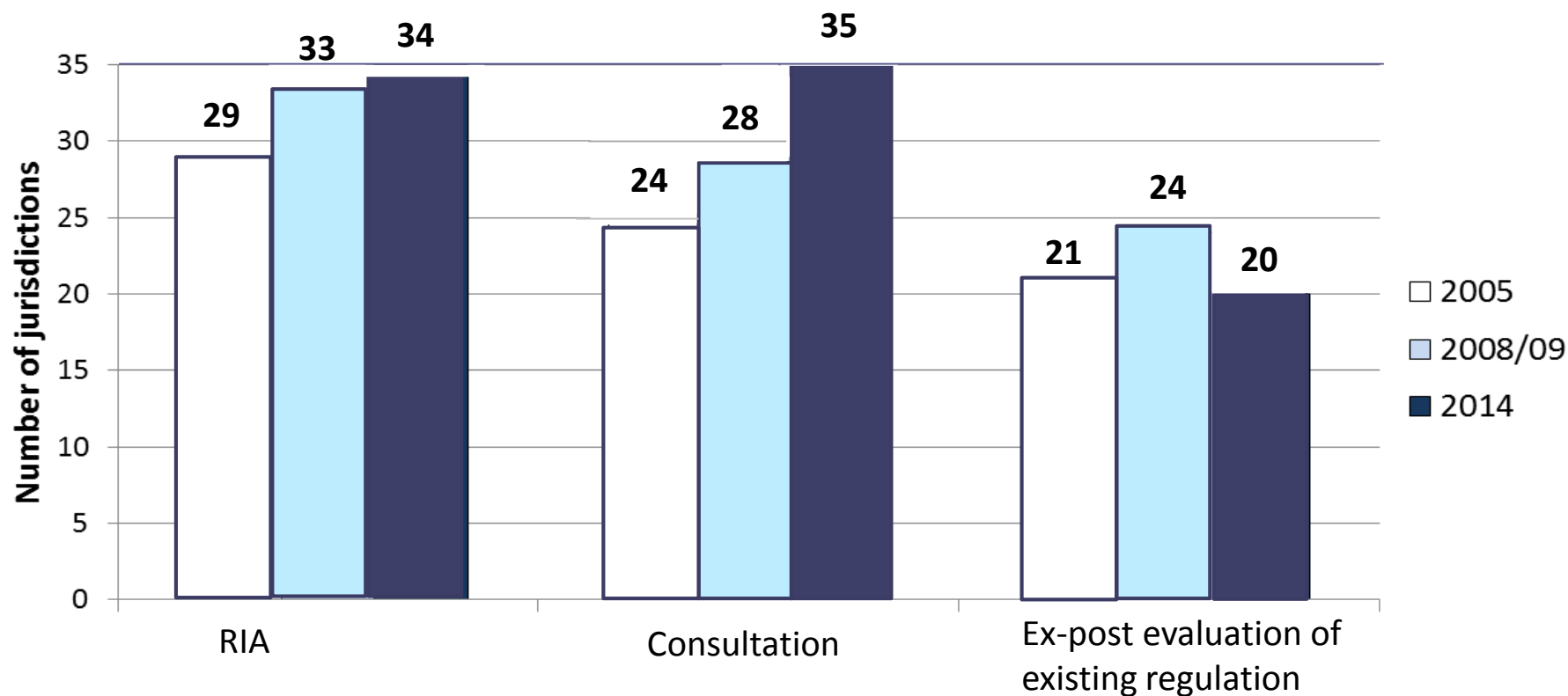
Recommendation #1

- *Governments should commit at the highest political level to an explicit policy for regulatory quality*
 - *containing clear objectives and implementation frameworks to ensure that the economic, social and environmental benefits justify the costs.....*

OECD conducted a survey of members in 2014 targeting 3 key areas

- Regulation Impact Analysis (RIA)
- Stakeholder engagement
- Ex post review

“Formal requirements are in place”

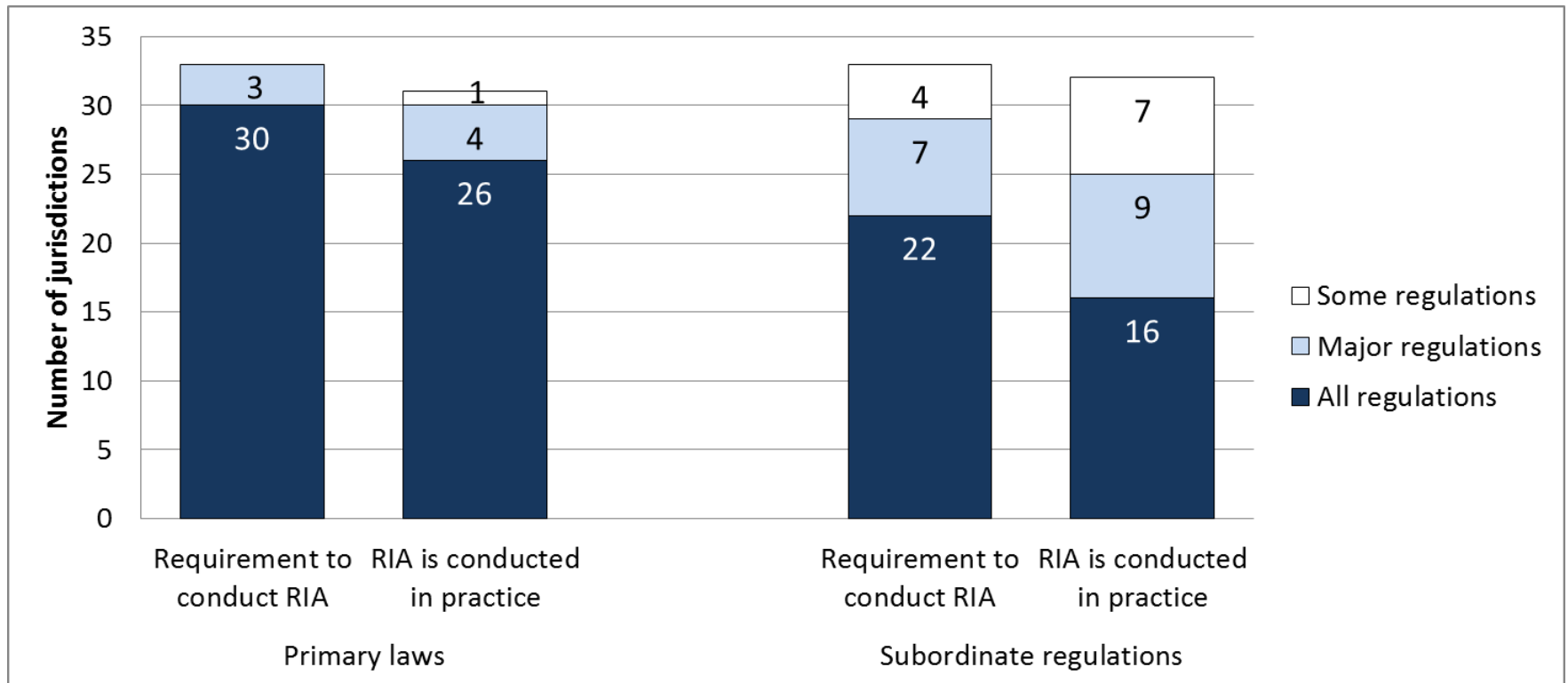


Source: 2015 Regulatory Policy Outlook

The key questions in Regulatory Analysis

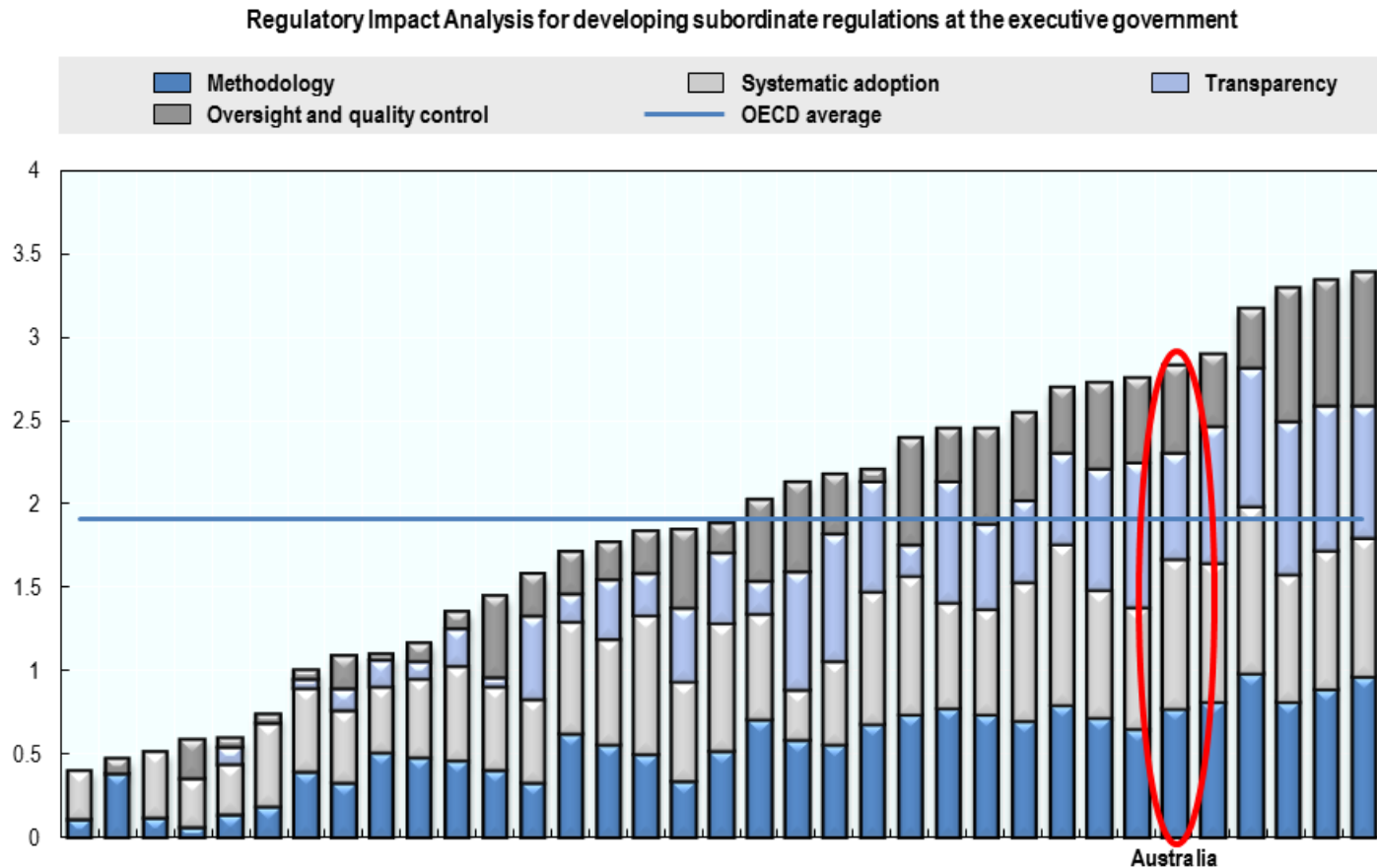
1. Why is government action needed?
2. What policy options are there (incl. non-regulatory)?
3. Which are the better options and why?

“RIA: Implementation remains behind requirements”



Source: 2015 Regulatory Policy Outlook

How do OECD countries measure up?



Source: OECD, Regulatory Policy Outlook 2015

<http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm>

Is Australia overcoming 'regulate first'?

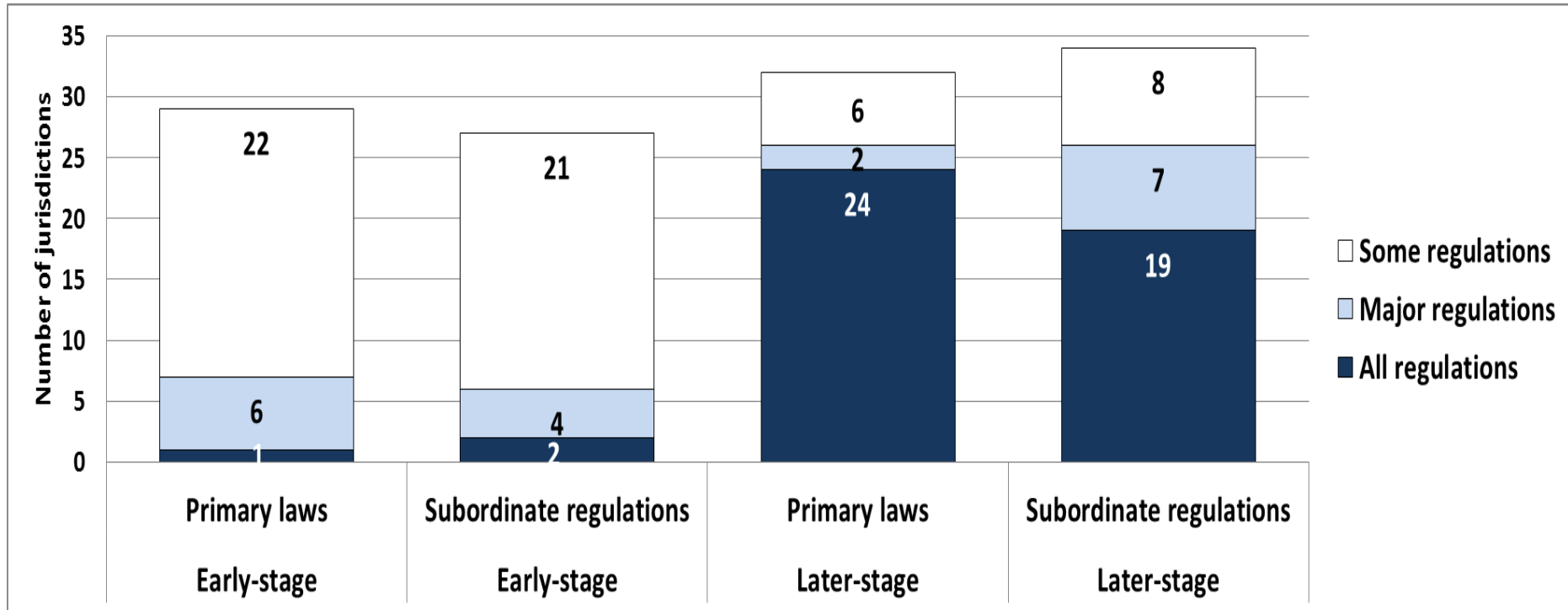
(Analysis of 180 RISs, 2012)

	No	'Sort of'	Yes
• Rationale for intervention offered?	7	41	53
• 'No action' alternative considered?	31	27	41
• Non-regulatory options considered?	51	18	31
• Net benefit from regulating calculated?	73	-	27

Best practice public consultation

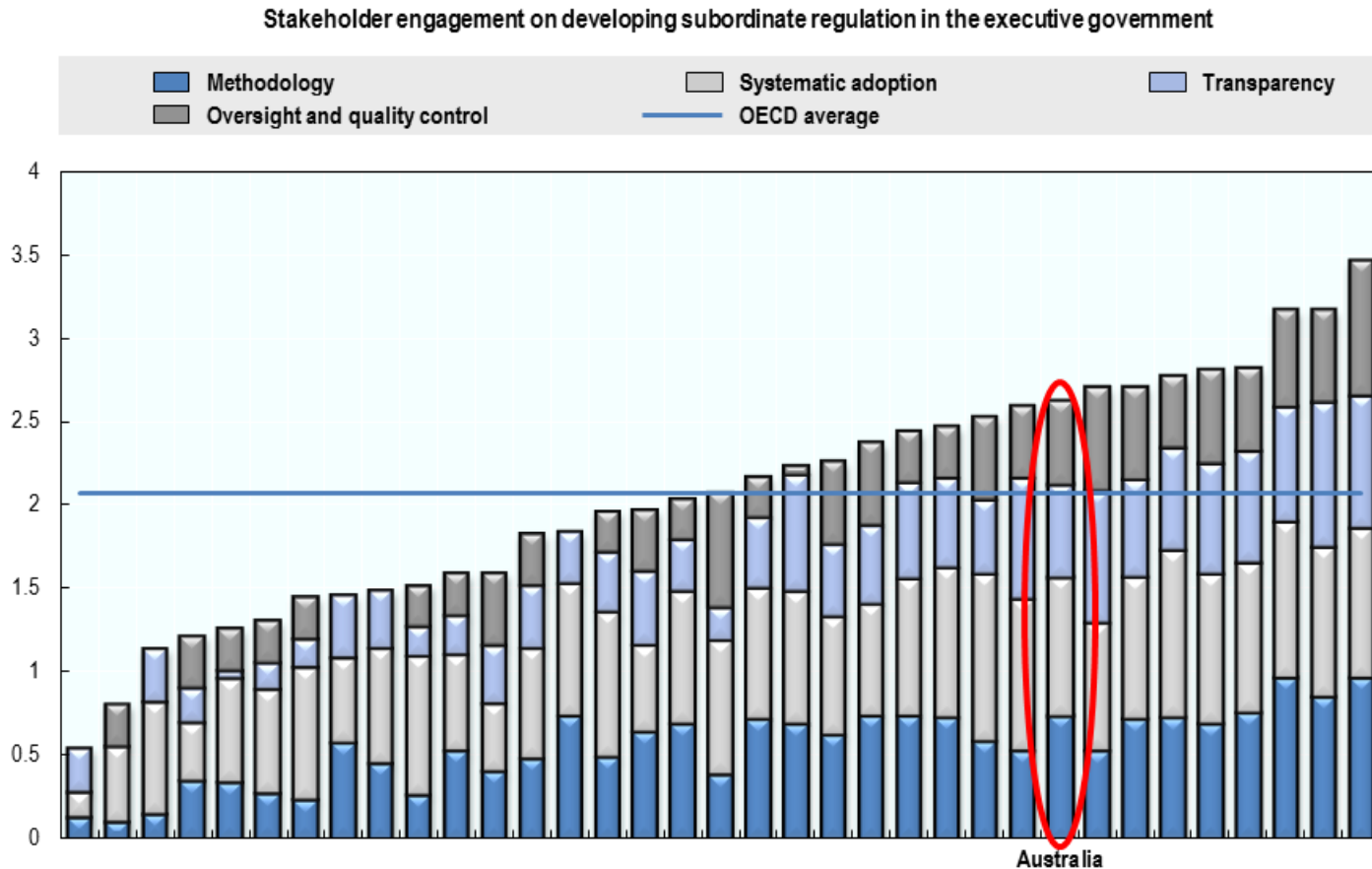
- *Why consult?*
 - To understand the problem
 - To avoid unintended consequences
 - To build public trust
- *Two best practice principles*
 - Consult early on the idea *and* late on the ‘detail’
 - Allow adequate time/opportunity

“ Consultation tends to happen at a late stage in the rulemaking process ” (OECD)



Source: 2015 Regulatory Policy Outlook

How do OECD countries measure up?



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Consultation in Australia: 'could do better' (APC)

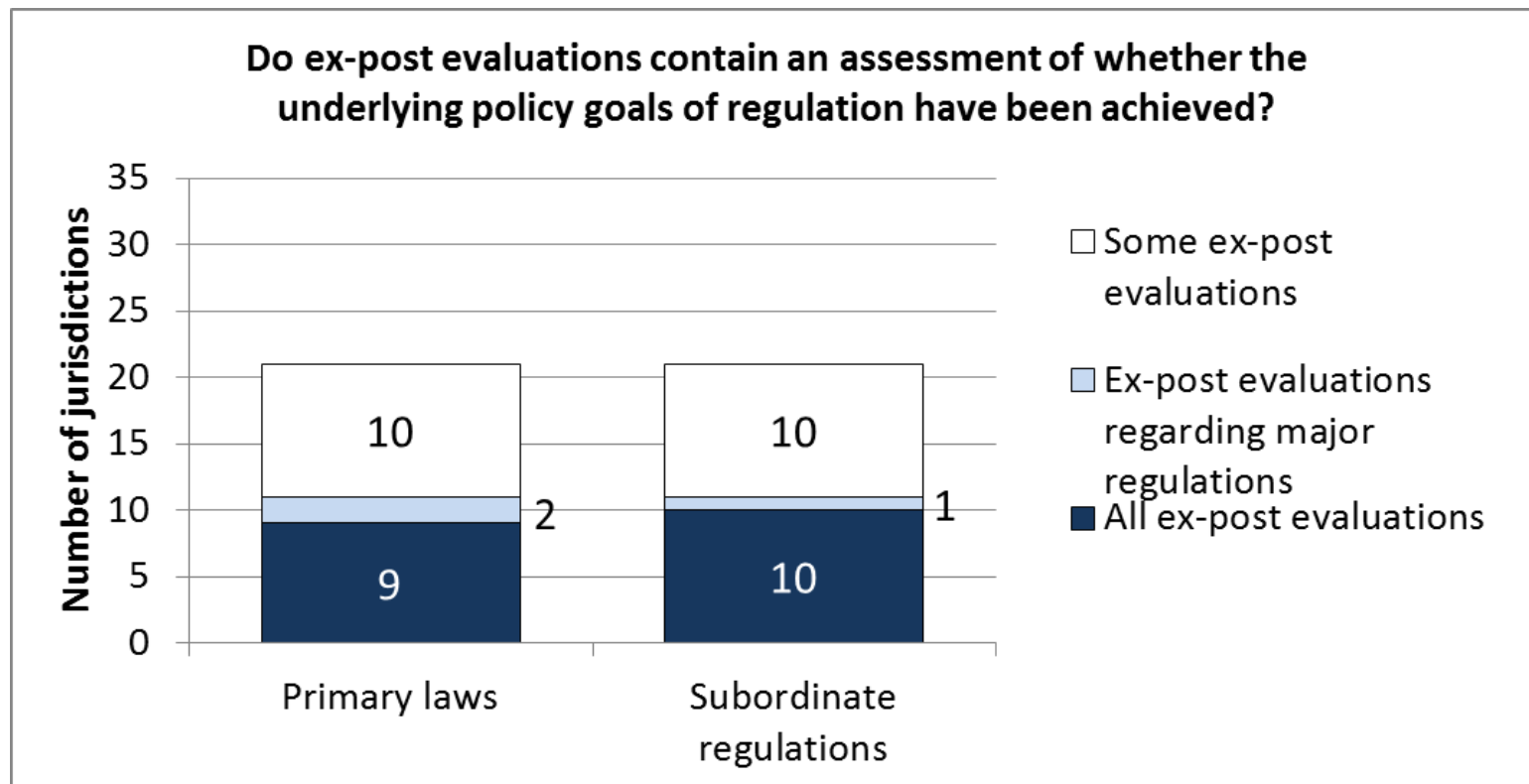
Agencies making regulations could do better against the following 'whole of government' principles:

- targeting those affected
- consulting both early (approach) and late (detail)
- transparency and feedback

Ex post evaluation

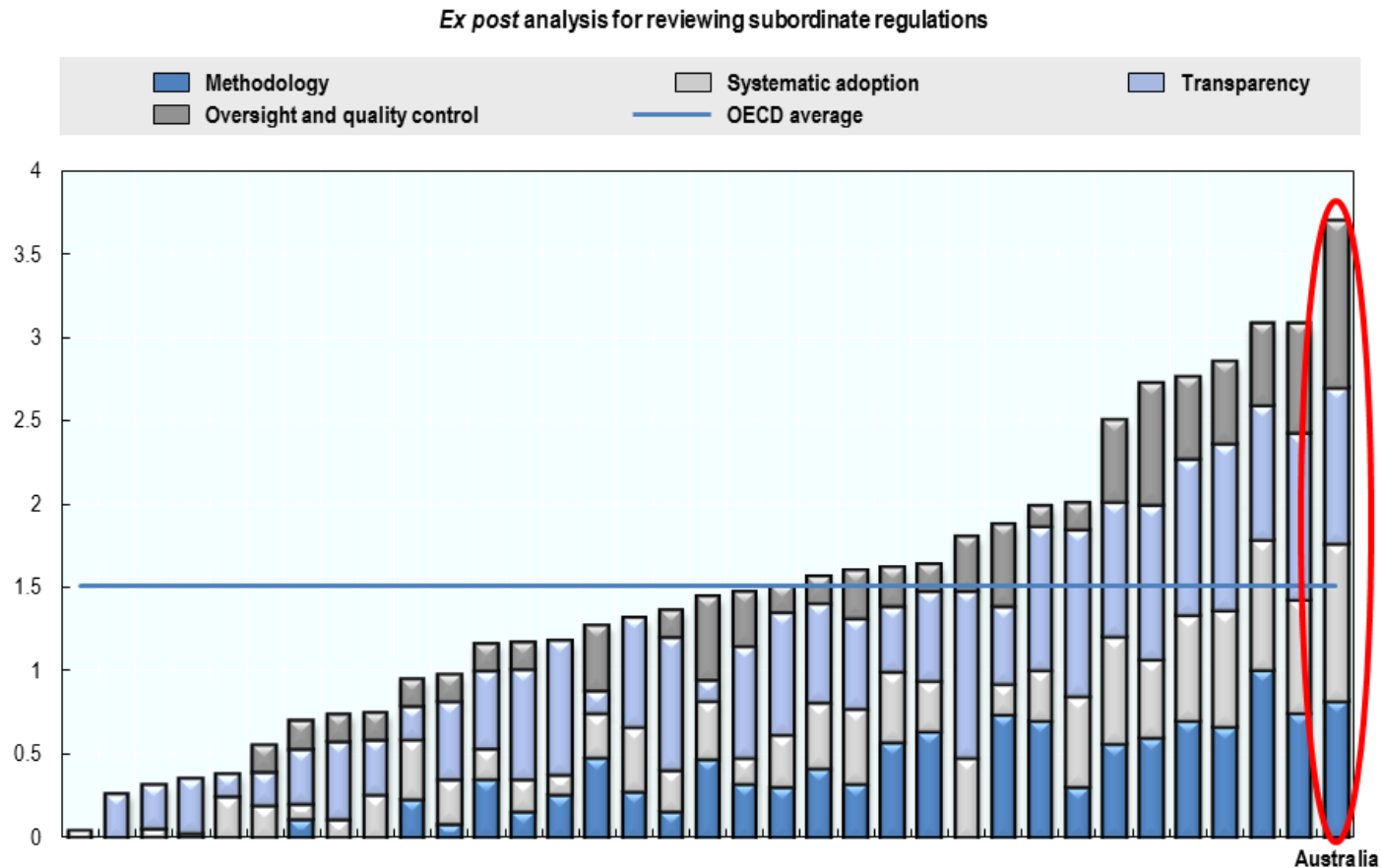
- Why do it?
 - most regulations are ‘experiments’
 - circumstances change
 - potential for big gains from reform
- Best practice principles
 - focus on both goal attainment and cost effectiveness
 - proportionality
 - timeliness

“Not enough focus on the achievement of underlying goals of regulation”



Source: 2015 Regulatory Policy Outlook

How do OECD countries measure up?



Source: OECD, Regulatory Policy Outlook 2015

<http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm>

Ex post reviews in Australia: a 'mixed bag' (APC)

Improvements needed in:

- embedding evaluations in regulatory design
- proportionality/quality of reviews
- prioritisation and monitoring
- timeliness

Recent reviews of 'regulator performance' in Australia and New Zealand

- Lack of risk-based targeting (proportionality)
- Excessive information demanded, not enough *supplied*
- Disputes hard to resolve
- Poor internal communication inhibiting 'learning by doing'
- Deficiencies in consultation and engagement
- Risk avoidance (to agency) can take precedence over risk-based enforcement

“It’s risky being a regulator” (News headline)



The regulatory 'balancing act' (AFR, 25 Aug 2007)

- Reducing harms vs raising costs
- Public interest vs fair private treatment
- Consulting/engaging vs 'capture'/clientelism



OECD Best Practice Principles: Governance of Regulators

- *Role clarity* – objectives, functions and scope
- *Independence* – avoid bias or undue influence
- *Accountability and transparency* – against legislated objectives/powers
- *Effective engagement* – through institutionalised processes/mechanisms open to all relevant stakeholders
- *Funding* – adequate levels and in forms that support objectivity
- *Performance evaluation* – to drive improvement over time

Australian Government's new 'Regulator Performance Framework'

- “to encourage regulators to undertake functions with minimum (cost) impact necessary to achieve objectives and to effect positive ongoing cultural change...”
- KPIs in six areas:
 1. ‘Facilitating *efficient* operation of regulated entities’
 2. ‘Communication: clear, targeted, effective’
 3. ‘Actions proportionate to issues’
 4. ‘Inspection/monitoring streamlined and coordinated’
 5. ‘Open and transparent dealings’
 6. ‘Contributing to improved regulatory frameworks’

How should regulators respond?

- By using available discretion well ('public value')
 - risk assessment
 - proportionality
 - 'responsiveness'
- By adopting best practices in assessment for 'own' regulations (including consultation)
- By giving feedback to policy makers on 'their' regulations

Summing up


- Regulation is essential, but it can also involve excessive costs
- Good regulation requires a 'life cycle' approach, to ensure net benefits over time
- OECD governments have endorsed best practice principles for 'regulatory governance'
- But all countries need to do better – the potential rewards are large

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