

Draft OECD Recommendation on Regulatory Policy and Governance

Comments from Australia

Australia welcomes the opportunity to contribute to the Draft OECD Recommendations on Regulatory Policy (the 'Draft Recommendations').

Australia considers that the draft recommendations prepared by the Secretariat are comprehensive and have captured the major elements of contemporary best practice regulatory management.

Our comments on the text are minor and are set out below.

Australia remains concerned, however, that the Draft Recommendation is not set in a context which assists governments to determine the extent to which regulatory management policy should be a priority .

The paper at paragraph 22 asks *"How can we ensure that the new Recommendation on Regulatory Policy and Governance will be useful for member countries and facilitate the practical application of the OECD analytical framework for regulatory governance?"*

Representative at recent meetings of the Regulatory Policy Committee, including Australia, have drawn attention to the difficulties which governments face in quantifying the benefits of regulatory management functions in the face of budget pressures and the scepticism of business that such activities yield benefits in the form of reduced costs.

Paragraph 28 of the Draft Recommendation claims that *"Reduction of unnecessary burdens helps to boost the economy, support innovation and competition. It also contributes to regaining public trust in the administration as an effective rule-maker among the users of regulation."*

In the absence of a body of evidence or even comparative studies of the regulatory management approaches of individual countries, many governments remain sceptical of such claims and have embarked upon policies aimed at reducing gross and net regulatory burdens, often without a clear understanding of the extent of current burdens. As a result they often struggle to demonstrate a coherent policy to stakeholders, particularly in an environment where global pressures and community expectations inevitably lead them to increased regulatory activity.

While many of us are able to demonstrate the competitive and productivity benefits of individual regulatory choices through application of RIA processes, we struggle to provide the evidence which governments legitimately seek to test the propositions set out at paragraph 28.

Also, governments seek advice on those interventions which are more likely to assist the reduction of unnecessary regulatory burden and the absence of comparative evaluation in this area can be a source of significant frustration to governments who have spent significant resources testing the menu of regulatory management interventions.

As the OECD has noted, regulatory policy is one of the levers available to governments to shape economic and social outcomes. As presently structured, the Draft Recommendations tend to lose the sense that regulatory management policy should be facilitative rather than an end in itself.

One option could be to encourage governments to consider regulatory management as an input to the delivery of broader government policy objectives such as competition and trade policy.

Regulatory changes could be considered in terms of their ability not only to generate a net community benefit but also in terms of their ability to contribute to broader policy outcomes. This could assist quantification of the benefits of regulatory reform and could also assist in making links between good regulatory and good macroeconomic outcomes. It may also assist in encouraging responsible Ministers to take greater ownership of regulatory policy.

Detailed comments

Draft OECD Recommendation on Regulatory Policy and Governance, p5, paragraph 7

Not all regulatory agencies may be able to be captured by a “consistent policy covering the role and functions of regulatory agencies.” , particularly as the role and functions are often set out in enabling legislation which may extend beyond the life of individual governments. We suggest that it is more important that the role and functions of individual regulatory agencies is explicit.

Page 7, paragraph 18: while the appointment of a Minister may assist to ensure “political commitment to the goals of regulatory policy” the paper could usefully suggest to governments that in the first instance, they should consider and articulate clear goals for regulatory policy.

Page 11; Box 2-Draft recommendation on users of regulation; para 2.4. We suggest that a requirement to continuously consult with stakeholders through the whole regulation-making process could in some instances be extremely onerous for governments and stakeholders alike and yield little of benefit. Stakeholders in Australia complain from time to time concerning constant or badly organised consultation. Our preferred approach is to encourage consultation which is commensurate with the impacts on stakeholders of the proposal.

Para 2.7 this paragraph seems superfluous, given the requirement in 2.6 to “eliminate unnecessary regulatory costs imposed on users of regulation”.

Page 12, Regulatory Oversight, paragraph 34: we suggest that the role of an oversight body should concentrate on quality assurance and training and not assume responsibility for the development of good regulatory outcomes. In this way, line Ministers remain accountable for the quality of portfolio regulation.

Page 19, Risk and Regulation, paragraph 58: as previously advised, Australia does not support the development of central or template advice to regulators concerning the approach they should take to the assessment of management of risk. Successive Australian Governments have sought to appoint skilled regulators who are required, on the basis of their subject matter knowledge, to develop risk management strategies appropriate to the sector they are regulating and to be held directly accountable for outcomes.

Page 21, Regulatory Coherence across Levels of Government, paragraph 62.: Australia has had considerable experience in developing national approaches both to the management of regulation and to the delivery of national reforms. The current Seamless National Economy initiative, which seeks to harmonise 27 areas of regulatory activity across jurisdictions, is supported by payments to States and Territories of \$550 million (AUD), \$450 million of which is subject to the successful delivery of the reforms. This acknowledges that jurisdictions experience costs and foregone revenue in aligning to national approaches.

National harmonisation exercises such as this are, however, complex and resource-intensive. They are only employed for those reforms which are capable of delivering significant national benefits. Other approaches such as mutual recognition, may be more appropriate for some reforms.

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