

IMPROVING THE REGULATORY CLIMATE FOR BUSINESS: EXPERIENCES FROM AUSTRALIA.

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Good morning

I would like to sketch a brief outline of some of Australia's experiences in implementing policies to improve the business climate – at least from the regulatory perspective – and highlight some of the lessons from these.

Australia has been engaged in a broad program of economic reforms since the early 1980s. The starting point for these reforms was an increasing awareness of the decline in Australia's economic performance relative to that of other OECD countries. Rates of GDP and productivity growth had lagged in the 1960s and 1970s and, as a result, Australia's GDP per capita had declined in relative terms. Unemployment was also high and rising, exceeding 10 per cent in 1983, for the first time in many decades.

Key reform initiatives during the 1980s and early 1990s included the floating of the Australian currency in 1985, the substantial deregulation of the financial system (including opening the market to foreign banks and removal of a range of interest rate controls), substantial removal of industrial tariffs and reforms in wage fixing arrangements to encourage productivity based bargaining at enterprise level.

At the State Government level, there had been substantial moves toward corporatisation and privatisation of a range of government business enterprises, including those operating in the utilities sectors plus the opening of greater competition in the provision of services to government in a range of areas.

Within this broader context, a series of regulatory reform initiatives was commenced. Most governments established central units to promote and co-ordinate reform ("Regulation Review Units"). These initiatives initially proceeded from the view that the problem was "too much" regulation, and that the solution was to find which regulation could be done away with. As in many OECD countries, however, the perspective shifted over time to one of ensuring regulatory quality. This has increasingly been seen as involving ensuring that regulation does not inhibit competition, except where necessary to achieve clear public benefits and, in addition, using the regulatory tool as an instrument to promote competition in the economy.

While this general understanding of the objectives of regulatory reform has been fairly widespread, the specific tools employed to pursue reform activity have been numerous and have varied widely over time. This paper considers a selection of such tools and seeks to identify the lessons from their use, in terms of the design of effective regulatory reform mechanisms. The selection I have discussed includes a fairly wide range of different approaches. However, the specific selection also reflects the fact that I have been personally involved in each of these reform programs and so, I hope, can bring some insight into their performance.

1. Small Business Deregulation Taskforce (Federal Government)

The current Federal Government in Australia is strongly pro-business and has been particularly concerned with small business issues. Thus, one of its first actions, in 1996, was to embark on a program to improve the regulatory environment for small business. Its approach was to establish a committee that would identify key issues and recommend reforms. The terms of reference were ambitious. In particular:

The Task Force will have six months to report to the Government on revenue neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent.

The task was given to a group of businesspeople from both small and large business backgrounds, called the Small Business Deregulation Taskforce. They were to be supported by the Office of Small Business, a newly established arm of the industry department which was staffed by people with no real experience of regulatory reform.

The Committee managed to solicit public submissions and analyse them, despite the very short deadline. They also identified and drew on a range of relevant research. Their report “Time for Business” actually cited data that found that business only spent 16 hours per week on average on “administrative and compliance” activities and that only 4 hours of that were attributable to the Federal Government. Three of those 4 hours were attributable to tax compliance. However, it did not conclude that specific compliance burdens were relatively limited. Rather, the Committee highlighted a range of negative business perceptions of regulatory burdens.

The Committee made extensive and wide-ranging recommendations. For example, they wanted the entire tax law reviewed, including direct and indirect tax. They wanted planning and building legislation reformed, including both state and federal elements. They recommended major simplification and rationalisation of occupational health and safety law. They wanted a comprehensive review of all aspects of food law.

They also made some recommendations that were directly related to the “paperwork burden” aspect of their terms of reference – including attempts to limit the burdens imposed on business by the government’s own statistical agency.

The government’s response to this report “More time for Business”, indicated agreement with a range of specific recommendations but, perhaps unsurprisingly, rejected most of the really major review and reform proposals just noted. Some of the purported agreement with the Committee’s recommendations really amounted to presenting existing reforms or proposals in ways that appeared to be linked with the committee’s recommendations. Interestingly, one recommendation that was rejected – the simplification of the indirect tax system – was in fact implemented only a couple of years later, when the bold step of replacing the existing piecemeal structure with a single rate “Goods and Services Tax” was taken.

With hindsight, while some worthwhile reforms were made in subsequent years that drew on the report's recommendations, I think that relatively few people would see this process as being a major landmark in improving the business climate in Australia. What were some of its lessons? I would suggest the following:

- Peopling the Committee with business representatives was an effective way of ensuring that business' priorities for reform were identified and that their ideas for change were harnessed. However, the lack of any other expertise on the committee – such as that of regulatory policy-makers – meant there was little opportunity for a sharing of different perspectives and areas of expertise. Committee recommendations might have been more realistic in many areas and better “prioritised” if some senior policy officials were also involved;
- The six month deadline for the Committee's report was far too short, given the ambitious nature of its task;
- The “one off” nature of the initiative – with the Committee being disbanded after its report was complete – meant that there was no continuing pressure for reform or opportunity to develop expertise over time. The long-term nature of many of the recommended reforms suggested, instead, that a continuing role for the Committee was appropriate. A good example of this “standing committee” role is that of the United Kingdom's Better Regulation Taskforce.
- The Terms of Reference, and the resulting report, were broad ranging and essentially unfocused. There was little chance of a central “reform thrust” being developed.
- Many of the recommendations that were taken up and successfully implemented were “win/win” in nature, offering benefits to government as well as business. It may be that the decisions to implement them was ultimately largely driven by the prospect of the budget sector making gains. An example is the “Australian Business Number”, a unique identifier for businesses in all dealings with government. This was essentially conceived by the committee as a paperwork reduction scheme, but was especially attractive to government due to its potential to reduce tax avoidance. Similarly, governments moved to introduce the “Business Activity Statement”, which reduced tax-related paperwork, as a means of reducing opposition to the introduction of a Goods and Services Tax.

2. Business licence simplification (Victorian State Government - Office of Regulation Reform)

A much more specific and focused initiative aimed at improving the business climate was pursued by the Victorian Government in 1993-5. The Office of Regulation Reform was asked to design and implement a “Business Licence Simplification Program”. This was based on the idea that business licensing represented a major impediment to business start-ups in particular and that a reduction in licensing requirements would allow both easier, faster start-ups and a lower level of compliance burdens for existing businesses.

In practice, this was a very de-centralised program. The ORR sought the co-operation of all regulating ministers, asking them to identify business licences that could be removed. ORR provided a set of criteria to them to assist them in identifying such licences.

The result, at first sight, looked impressive. ORR reported that around 25 per cent of the total number of business licences in Victoria were to be abolished as a result of the program. The Minister was pleased, and regulatory agencies were unconcerned. Why was this the case?

The program was audited by the Victorian Auditor-General. He found that:

...the reduction in the number of licences achieved under the Licence Simplification Program substantially met the target of 25 per cent by 31 December 1995, but the licences revoked as a result of the Program had only a minimal impact on reducing business regulation costs. In addition, according to information provided by agencies to audit, only 7 per cent of licence reductions could be directly attributed to the Program.

What had happened was that Departments had nominated for abolition those licences that were going to be abolished anyway, as well as those that were only infrequently used or enforced in practice. Why did it work out this way?

The key lessons from this initiative were:

- The program had little political authority behind it:
 - i. the Cabinet decision authorising it did not clearly set out criteria for the program and duties on the participants.
 - ii. As well, the responsible Minister (the Minister for Small Business) had junior status and little ability to support the program.
- The main performance indicator chosen – that of a 25 per cent reduction in licences – was only loosely related to the real goal of reducing burdens on business and impediments to business entry.
- As well, the main indicator was easily manipulated, being achievable without major change.
- There was no broader context for the review;
- Responsibility for program elements was poorly distributed, with too much reliance being placed on regulators in terms of generating reform proposals; and
- There was no clear and shared view among regulators of the need for action in this area.

3. Regulatory Efficiency Legislation (Victorian Government)

Also in Victoria, in 1995-7, attempts were made to introduce “Regulatory Efficiency Legislation”. The purpose of this proposed reform was to make it easier for business to comply with regulations. The basic mechanism was to allow business to propose its own means of regulatory compliance. This would not meet the specific requirements of the regulations, but would meet the underlying objectives just as well – obviously it relied on regulators being able to identify clearly these underlying objectives. If a business proposal was assessed by the responsible regulator as meeting underlying the objectives of the regulation, it could be approved and business could adopt this less costly and more efficient means of compliance.

The model had been developed in Canada, where it was defeated by a coalition of regulators, consumer groups and others. In Victoria, the approach taken was to convene an inter-departmental committee to consider the Canadian experience and explore ways to overcome the criticisms that had been raised. The Office of Regulation Reform chaired the committee and distributed papers.

The Committee got nowhere. While many regulators were sympathetic – or at least not totally opposed to the idea, some others were vigorously opposed, seeing this as a development that would fatally undermine their ability to achieve their regulatory objectives. In the event, the concept was referred to the Parliament’s Law Reform Committee, which produced an extensive report on the subject, recommending that such legislation be passed. Even though the Committee was chaired by a prominent backbencher from the Government parties, this recommendation was never accepted.

The concept failed in Canada and in Australia. It has been discussed in the OECD context as a promising regulatory reform and yet, to my knowledge, has never been implemented anywhere, other than in a very specific and restricted context, within the framework of one particular piece of legislation.

What were the lessons from the failure of the regulatory efficiency project? I believe that they relate primarily to the nature of the idea itself, rather than to the means of its execution. The experiences in Canada and Victoria tells us that:

- Regulatory efficiency was seen by its proponents as a “shortcut” to achieve substantial reform. But its detractors equally saw it as a shortcut: it was seen as unpredictable in its outcomes and as having the potential to fatally undermine much important regulation.
- In particular, the concern was with the idea of giving business control over the development of regulatory compliance strategies (despite the fact that “performance based”, or “outcome focused” regulation does precisely this).
- Government was, in essence, seen as giving up too much control. This concerned regulators and activists. It also concerned lawyers, who saw great difficulties in retaining accountability under the regulatory efficiency concept.
- Finally, the concept – and particularly some of the safeguards that would make it potentially feasible – was too complex. This meant that

the potential beneficiaries – business – failed to understand it and, as a result, failed to lobby strongly in favour of it.

4. Some common elements

All of the above programs failed in substantial degrees, if not wholly, to meet the expectations that were set for them at the outset. I believe that several common elements go a long way to explaining these failures:

- The programs were essentially short-term in nature;
- They had limited links to a broader reform strategy;
- They were lacking in a strategic approach – with only general links to a more broadly understood concept of “business environment”
- All lacked institutional support within government

5. National Competition Policy

I would now like to turn to a substantially more successful set of initiatives. The National Competition Policy was agreed between the heads of Australia’s Federal and State Governments in 1994. The program has been underway ever since. A recent review of the program proposes launching a “second phase” in the near future. If launched, it would last several more years.

Surely such a long duration points to a failed program? In fact, the program was always intended to stretch over a number of years, though it has, inevitably, been slower than expected in meeting many of its objectives.

5.1. Structure of the program

Some of the key elements of the program are these:

- ***Legislated restrictions on competition*** were to be reviewed and reformed. All governments were to identify all legislation for which they were responsible that contained significant restrictions on competition and develop a schedule for its review and reform (initially to be completed between 1996 and 2000). The review activity was subject to the “Guiding Legislative Principle”, established in the agreements. This stated that

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- *The benefits of the restriction to the community as a whole outweigh the costs; and*
- *The objectives of the regulation can only be achieved by restricting competition.*

The legislative review program includes a dynamic element: all newly proposed legislation must be subjected to the same tests (i.e. be assessed under the *guiding legislative principle*, above), while all reviewed and reformed legislation must be subject to further review at an interval of not more than ten years.

The legislative review process was conducted according to a number of process guidelines which emphasised the need for reviews to be open to the public and transparent in their analysis and conclusions. These provisions appear to have been important contributors to assuring the quality of the reviews undertaken in practice, though there have inevitably been significant instances of flawed reviews being conducted in an apparent attempt to deliver pre-determined outcomes.

- ***Infrastructure and other public monopolies*** to be reviewed and reformed and rules regarding access to essential facilities to be developed and implemented. Most of these monopolies were publicly owned at the commencement of the NCP process. The NCP did not require privatisation, but did require that opportunities to create competitive markets be assessed systematically. In many cases, structural separation of monopoly infrastructure elements and upstream and downstream industries was achieved (e.g. gas and electricity). In other cases, (e.g. telecoms) where separation was not achieved, reliance was placed on the development of access rules in relation to the monopoly infrastructure elements. In all cases, regulatory restrictions were removed in relation to potentially competitive areas parts of the industry.

Access rules are subject to scrutiny and approval by the National Competition Council and must meet requirements designed to ensure that they facilitate upstream and downstream competition as far as possible, while having due regard to the interests of the monopoly infrastructure owner.

- ***Competitive neutrality (CN)*** was to be established to ensure fair competition between government business enterprises and private competitors. CN has now been implemented in virtually all large government business enterprises at Federal, State and local levels. In practical terms, establishing CN has meant ensuring that government businesses pay tax equivalents, that they are required to provide a return on public capital employed and that their prices reflect the full costs of production. They have also been required to conform to planning and other laws, where previously exemptions were sometimes available.
- ***Monopolistic conduct.*** As a result of the federal structure of Australian government, the ambit of the main competition law (the Federal government's *Trade Practices Act 1974*) was less than extensive. Thus, State governments agreed to adopt legislation mirroring the TPA's prohibitions on various kinds of monopolistic conduct so that equivalent arrangements would apply in those parts of the economy for which they were responsible. This affected various professionals and other kinds of unincorporated bodies, for example.
- ***Water reform.*** The process of water reform pre-dates the NCP, but was brought within the process. Reform has had both economic and ecological objectives. A key has been reforming pricing to create incentives for efficient

service provision and consumption. This has involved changes in domestic, industrial and agricultural markets. Community Service Obligations have been identified, costed and made transparent. Ecological objectives have been served by governments buying back water entitlements from irrigators and others to restore “environmental flows”. Reforming and expanding the market in water rights has been a key element in enabling these ecological moves to proceed successfully.

5.2. Institutional arrangements

A number of institutions have either been established specifically to facilitate the implementation of the NCP, or have had their responsibilities broadened to include specific NCP-related elements. The most important are:

National Competition Council

The central institutional element of the policy was the creation of the National Competition Council under the auspices of the Federal Government. The Council’s purposes are twofold. First, it is required to monitor and report on governments’ progress in implementing their NCP obligations. Each participating government is required to provide annual progress reports to the NCC, which are used as the basis for its assessments. A summary report is provided to the Federal Government each year which includes an overall assessment of progress, details of progress in particular areas and recommendations regarding the “competition payments” for which State and Territory governments are eligible.

Second, the NCC is required to decide on applications for infrastructure assets (e.g. gas transmission pipelines, electricity transmission lines) to be “declared” as essential facilities. Such applications are made by parties who wish to obtain access to the services provided by the facilities, in cases where they have failed to agree terms with the asset owner. The effect of an asset being “declared” is that the Australian Competition and Consumer Commission has the right to approve (or not approve) the terms of access arrangements or to impose terms. This mechanism is used in practice to ensure that infrastructure owners do not deny third parties access to their assets on anti-competitive grounds. However, the scope of the mechanism has been deliberately limited to those assets that are declared to be of national significance due to an appreciation of the need to minimise perceived “sovereign risk” issues associated with the ACCC’s power to set access terms.

The NCC is composed of five part-time commissioners, who are eminent businesspersons from a range of backgrounds. They are supported by a small Secretariat of Federal public servants.

Australian Competition and Consumer Commission (ACCC)

The ACCC is the principal competition regulator in Australia and has the major responsibility for enforcement of the Trade Practices Act. As noted above, the major

extension to its role consequent upon the NCP relates to access arrangements for “declared” infrastructure facilities.

Competition Policy Units (and Competitive Neutrality Units)

Each participating government created a CPU, generally within the finance department. The CPU is responsible for the co-ordination of review and reform activity across government, for reporting to NCC and for liaison with NCC more generally. Participating governments were also required to establish specific units to deal with complaints regarding competitive neutrality – i.e. cases in which it is alleged that a government enterprise is competing unfairly in that it gains an advantage by virtue of its status as a government body. These competitive neutrality units are, in most cases, co-located with the CPU.

5.3. Measurable impacts of the reforms

The NCP reforms are unusual in that they have been subjected to both *ex ante* and *ex post* evaluations. The initial, *ex ante* evaluation was carried out by the then Industry Commission¹ (now the Productivity Commission), a statutory body that constitutes the Federal Government’s primary independent source of micro-economic policy and regulatory advice. The *ex ante* assessment was intended to promote the case for engaging in the NCP reform process. The Industry Commission assessment estimated that the full implementation of NCP would add around 5.5 per cent to annual GDP, with the majority of this gain (4.5 per cent) being the result of reforms required to be implemented by State and Territory governments.

Among *ex post* assessments, the most recently published is the Draft Report of the Productivity Commission’s review of the NCP program. This has identified both general and specific indicators of the impact of NCP on the economy. Some highlights are:

- 1. Generic indicators of Australian economic performance since the adoption of NCP**
 - there have been 13 years of uninterrupted output growth — one of the longest expansion phases on record;
 - the rate of increase in real per capita incomes in the second half of the 1990s was as high as at any time during the 20th century; and
 - the unemployment rate is currently around a 23 year low, with labour force participation at its highest level since WWI.
 - in the five year cycle to 1998-99, productivity growth rates were the highest for at least forty years, with the increase effectively yielding an additional \$7000 to the ‘average’ Australian household’s income. In

¹ *The Growth and Revenue Implications of Hilmer and Related Reforms*. Industry Commission, Canberra, 1995.

contrast to the 1970s and 1980s, Australia's productivity performance has also been very strong by international standards

2. Specific estimates of the benefits of the NCP program

- Previous model-based projections by the Industry Commission suggested that the major elements of NCP could potentially generate a net benefit equivalent to 5.5 per cent of GDP.
- More selective analysis, undertaken for this inquiry, indicates that the observed productivity and price changes in key infrastructure sectors in the 1990s — to which NCP and related reforms have directly contributed — have served to increase Australia's GDP by 2.5 per cent, or \$20 billion.
- This total is based on quantification of the economy-wide gains from productivity improvements and price changes observed over the 1990s in the electricity, gas, urban water, telecommunications, urban transport, ports and rail freight sectors. In a number of these sectors, NCP and related reforms are widely acknowledged to have been key (though not the only) drivers of productivity improvements and ensuing price benefits for service users.
- This modelling does not pick up the 'dynamic' efficiency gains from more competitive markets, nor does it take into account gains achieved since 2000. [As substantial further reforms have been implemented since that time, large additional gains can be anticipated. It is not immediately clear why the analysis fails to pick up on post-2000 reforms]
- Attempts have also been made to estimate price impacts. Clearly, it is not possible to separate with any precision the impacts of NCP from the myriad of other factors influencing prices in the market place. However, it is telling that in a number of areas targeted by NCP and related reforms, there have been significant price reductions. For example:
 - In the electricity sector, notwithstanding some variation, average real prices across Australia have fallen by 18 per cent since the early 1990s.
 - There were substantial reductions in rail freight rates in the second half of the 1990s — ranging from 8 per cent for wheat, to as much as 42 per cent for some coal traffic.
 - Real port charges fell by as much as 50 per cent during the 1990s.
 - Since the mid-1990s, average telecommunications charges have fallen by more than 20 per cent.
 - The average retail price of drinking milk has fallen by 5 per cent in real terms since full deregulation in 2000, despite the imposition of an 11 cents a litre levy to fund an assistance package for dairy farmers

Other indicators have been supplied by the National Competition Council, in its 2003 progress report. These include:

- The net present value of the benefits flowing from implementation of a national electricity market (operating in southern and eastern Australia only, at present) is estimated at A\$15.8 billion (2001 prices). Household electricity

prices fell by 1 – 7 per cent in Melbourne and Sydney in the decade to 2001, while some business users have seen substantially larger gains.

- Gas market reforms have seen substantial increases in new investment in the industry, including an approximate doubling of pipeline (length) from 1989 to 2001.
- Water industry reform has seen the implementation of consumption based pricing, encouraging efficient water use. In Victoria alone, the increased “irrigation return” (i.e. value of product produced using irrigation water) was \$12 million in 2000-01, although most of the gains were accrued in other States due to water being traded out of Victoria to higher value uses elsewhere.
- Shop trading hours reforms have seen 35 per cent of consumers buying groceries in some states, while in others that have yet to reform the figure is only 7-8 per cent.

Other reform outcomes that have been identified include reduced rail freight charges, reduced gas costs, particularly for businesses, and reduced postal rates.

While important benefits have been attained, it is also clear that the competition policy reform program remains incomplete, even ten years after the initial reform agreement was adopted. Unfinished reforms include significant elements of the electricity and water market reforms. As well, the legislative review program, which forms a central element of the NCP agreements remains incomplete. The 2003 NCC assessment indicated that, of the 1,800 pieces of legislation identified for review, only 70 per cent had been reviewed and, where required, reformed or repealed. Worse, among the 810 pieces of legislation identified as constituting priority areas for reform, only around 56 per cent of review and reform activities had been completed.

The incomplete nature of the reforms implies that substantial additional benefits are capable of being achieved through further reform effort. It also points to the long-term nature of reform and the need for a sustained commitment to reform.

I would now like to turn to the identification of some of the key determinants of the success to date of the NCP program, as well as identifying some continuing challenges.

5.4. Critical success factors

Political consensus for reform, supported at the administrative level

Both sides of politics in Australia’s essentially two-party political system broadly supported the 1980s program of micro-economic reform and the development of the NCP agreements which constituted the “next step” in that process of reform. This meant that the negotiation of the agreements in the first instance was made more feasible (given the context of State and Federal governments representing both sides of politics). It also meant that continued progress toward implementation of the agreements in the longer term would not be compromised by change of government in

different jurisdictions. Thirdly, it meant that the public received consistent messages regarding the benefits of reform, enhancing the credibility of the reform process with the populace and, hence, broader support for it.

A supportive bureaucracy (particularly at the level of central agencies) has also been identified as a significant factor. In a number of cases, political oppositions were more or less opposed to the NCP arrangements but moved toward more supportive positions once in government, partly due to efforts by finance departments to provide a better understanding of the nature of the NCP agreements and the benefits that would flow from them.

Clearly articulated principles and firm commitments

The NCP agreements contained a clear set of principle for reform – most notably the “guiding legislative principle”, that competition should not be restricted unless there was a net public benefit from the restriction that could not be achieved in some other way that was less restrictive of competition. This provided an agreed “benchmark” for all subsequent review and reform efforts. As well, the roles and responsibilities of the major players were clearly established from the outset, as were the “milestones” along the reform path. All of these factors favoured the establishment and maintenance of reform momentum.

Appropriate institutional structure

The establishment of a dedicated body (the NCC) to monitor and report on reform helped to create a view of objective assessment of reform efforts and ensure high levels of consistency and transparency in reporting. The fact that it was not directly associated with any pre-existing player in the bureaucracy probably assisted, at least initially, in bolstering confidence in its independence. The appointment of councillors from a business background was arguably important in maintaining the credibility of the NCC’s assessments, given that businesspeople from protected industries were in some cases strong voices in opposition to particular reforms.

On the other hand, the expectation that NCC would undertake national reviews may have undermined the intention that areas in which there were common review issues would be dealt with at the national level: NCC was seen as an interested party, in this context, given its role in assessing reform outcomes. As well, the lack of a “track record” (due to its being a newly created institution) meant that the NCC had to work to establish its economic and policy credibility. By contrast, the co-option of the widely respected ACCC for other roles in the process (see below) allowed positive views toward an existing institution to be harnessed.

Financial incentives

In the initial phase, the financial incentives offered by the Federal government were probably of some importance in convincing (at least some) States to become parties to the NCP agreements. Subsequently, while the NCC’s power to recommend the partial withholding of incentive payments was not very frequently used, it clearly affected the extent to which States were willing to implement reform recommendations in

certain key areas. In some cases, strong positions initially taken against reform were substantially modified only after payments were withheld.

State governments taking responsibility for own review activities

While national reviews were initially expected to be a significant feature of the process, NCC has come to see the state-based nature of the great majority of reviews as a strength. Because States were responsible for reviews conducted, and the resulting recommendations, there was seen to be a greater commitment to implementing those recommendations in practice.

Consistent approach to a wide range of policy issues

As noted above, a clear set of principles was articulated at the commencement of the process. This, plus the fact that review and reform efforts were assessed by a single body (i.e. the NCC) helped ensure that a consistent approach to reform issues was taken, enhancing the benefits achieved across the economy.

Annual reporting creates transparency, maintains pressure for reform

The annual progress reports prepared by the NCC are published immediately after the Federal government has responded to their recommendations. Thus a considerable degree of transparency is achieved as to the progress of reform, key areas of concern and, perhaps most importantly, the benefits achieved due to reforms undertaken.

That said, State governments in particular have argued that the resources required to be devoted to the annual reporting process are substantial and that it is difficult to justify this resource use by comparison with the perceived benefits of an annual reporting process. Key figures suggest that the frequency of reporting may be decreased in any “second round” of NCP reforms.

Requirements for periodic review plus assessment of new legislation help to preserve the gains

A key issue for regulatory reform is that it is “dynamic” and not static in nature. The gains from reform tend to dissipate over time, as economic and social conditions continue to shift, while lobbying from the losers from reform can also mean that there are pressures to reverse or undermine reforms achieved.

As noted above, the NCP agreements address this dynamic element of reform by requiring that all new legislative proposals pass the same scrutiny as that required via the review of existing legislative structures, while reformed legislation is itself required to be subject to further review. Some of these “second round” reviews are commencing at present. While it is clear that, in some cases, the context for the legislation has changed substantially since the first review, in other cases the subsequent reviews are seen as providing a “second chance” to secure reforms that political or other pressures saw defeated in the first instance, or to complete reforms that were only partially successful.

5.5. Challenges and constraints

Lack of financial or other means to ensure performance of Federal government

An increasingly noted tendency is for the Federal government to lag in its reform performance relative to many or most States and territories. A widely held view is that this relatively poor performance is largely a consequence of the lack of financial incentives and disincentives operating on the Federal government.

Lack of understanding of the implications of the agreements and inadequate communication of the policy and its merits

The NCP agreements, and the process undertaken, can generally be considered relatively transparent. Nonetheless, events suggest that, in many cases, participating governments did not fully perceive the implications of the agreements that they signed at the outset. This inevitably gave rise to potential blockages in the reform process.

A related issue is that the process was sometimes seen as promoting “competition for competition’s sake”, rather than being firmly fixed in notions of public benefit. This is largely the result of inadequate communication of the nature of the policy and the benefits being derived from it, particularly in the early stages of implementation. In this context, it can be noted that two inquiries into the NCP were conducted prior to the current Productivity Commission inquiry. These inquiries – one conducted by a Parliamentary committee – reflected widespread concern as to the direction of the reform program. In the event, however, their conclusions were broadly positive and the direct results were only marginal adjustments to the NCP process.

Reform fatigue/backlash

The implementation of the NCP reforms has necessarily been a long-term endeavour. “Reform fatigue” has intervened at various points and even an element of “backlash”. Moreover, some reformers argue that obtaining commitment to a “second stage” of reform will inevitably be more difficult because there will be a greater understanding of what are the consequences of agreeing to a particular set of reform commitments. By contrast, the robustness of the NCP process to date is seen in part as a “happy accident”, resulting from the fact that many of the contracting parties – and other stakeholders – failed to understand fully what were the implications of the agreements they had signed.

Arguably, the failure to undertake substantial and visible action in some areas to compensate the perceived losers from reform is an important element in the generation of this backlash against reform. That said, however, some substantial assistance measures have been implemented. These have, in some cases, risked undermining support for reform in another dimension, since they have delayed substantially the delivery of consumer benefits from reform. While attempts have been made to target such “adjustment support” to the most heavily affected and most vulnerable groups, other factors such as lobbying strength and ability to mobilise public opinion have necessarily had an important impact.

Difficulties maintaining the financial incentives approach over time

As discussed above, the ability of the Federal government to link reform outcomes to revenue paid to state governments in the form of “competition payments” is widely seen as a significant factor in maintaining reform on track over time. However, several factors suggest that this approach is unlikely to be repeatable in any “second stage” NCP program. One of these is the general view of State governments that they are under-funded by the Federal government and that the Federal government tends inappropriately to use funding initiatives in a range of areas as means of exerting policy influence over areas of State responsibility. A second is that experience with the implementation of the policy has shown the states that there will be circumstances where they will be required to choose between loss of payments and bearing substantial political costs associated with implementing highly unpopular reforms. Third, the nature of tax reform undertaken since the initial NCP agreements were signed means that the previous rationale for payments from the Federal government (i.e. that it would receive a disproportionate benefit of the gains from reform via the tax base) is no longer particularly persuasive.

If the “linkage” of payments to reform actions is not to be retained, the issue arises as to what other means can be substituted to provide extrinsic incentives for the timely and thorough implementation of reform obligations.

Regional impacts (perceived) – compensating the losers

One of the most frequently heard criticisms of the NCP is that it has essentially benefited those in metropolitan areas, while those in rural and regional areas have borne the costs. This proposition was tested in an inquiry into NCP conducted by the Productivity Commission. The inquiry concluded that all but one regional area of Australia had benefited overall as a result of the NCP. The inquiry attributed the negative perceptions of NCP in this respect to a tendency to blame NCP for a range of other, generally less visible, causes of negative impacts on rural communities. These included long term declines in the relative prices of agricultural products, reduced levels of protection and increased international trade. Recommendations to counter these perceptions included better communication of the benefits of NCP, increased transparency in reform processes and enhanced community and stakeholder participation in NCP reviews.

A more general criticism of reform in Australia is that, while liberal economic reforms are themselves “value free”, governments have often been reluctant to use fiscal and other tools to compensate the losers from specific reforms². Thus, while reform is often justified on the basis that there are more winners and losers, and that the size of the gains at least theoretically allows losers to be compensated, the reality has often been that large groups of losers from different specific reforms have been generated, with little effort expended on ameliorating their position. It is arguable that a more active approach to compensating the losers of reform could have a disproportionate impact in improving the level of support for NCP type policies among significant groups in society who have an ambivalent attitude to the reform process.

² See Argy (2001).

Focusing reform effort – “materiality” and the legislative review program

The legislative review program involved the participating governments identifying some 1,800 pieces of legislation for review. The legislation to be reviewed was “self-selected” and the process revealed clearly that different governments applied the same tests of what should be reviewed in quite different ways. For example, over 400 of the 1,800 pieces of legislation to be reviewed were identified by Victoria – which was only one of nine participating jurisdictions. This occurred despite the fact that the Victorian legislative structure was probably, on average, less restrictive of competition than the average.

In fact, substantial numbers of Acts identified by the Victorian Government included only marginal restrictions on competition. This was, to a lesser extent, also the case with Acts identified by some other governments. This may have resulted from an inadequate “filtering” of proposed inclusions to ensure that only those with material impacts were put forward for review. However, in some cases, the NCP appears to have been used as a mechanism to drive reform that governments sought on more general grounds of improving regulatory policy, but which was not closely related to the NCP’s central rationale of removing restrictions on competition. While this might be seen as constituting a sound strategic move, a related problem was that the stated rationale of NCP came to be questioned by many regulators and stakeholders, who saw substantial pieces of social regulation being cast into question on the grounds of often marginal restrictions on competition.

6. Conclusion

What lessons can be drawn, taking a broad view of the Australian experience with regulatory reform? I think the experiences with the four programs bear out some general lessons, as follows:

- Successful reform is a long-run task and programs must be designed with this fact in mind. While it can be useful to set “milestones” along the way, a realistic view of the time horizon needed must be taken. Reform initiatives must be sustained and must recognise that reform is not a “once-only” activity, but rather a dynamic process of continually benchmarking regulatory systems against current economic, institutional and social conditions and updating them as required.
- Reform is likely to require a combination of approaches. This can include broad scale programs like the National Competition Policy, as well as more targeted efforts. It can be driven from within the administration, or make use of external advisory committees. However, regardless of the model pursued;
- A clear focus on reform objectives must be maintained, with each program being linked explicitly to them.
- Finally, program design must be sophisticated and well-considered at the outset. At a minimum, designers of reform initiatives must address the following:

- Ensuring reform initiatives have the necessary authority to be successful, including political support and a firm standing within the government administration;
- Appropriate institutional design elements, including ensuring that adequate expertise and authority are available to those charged with implementing the program and ensuring their impartiality;
- Identifying clear objectives and performance criteria for success;
- Regular reporting of results, including publication of these reports,
- Transparent processes for conducting program activities, including adequate communication and consultation with all stakeholders;
- Designing dynamic reform processes, including ex post evaluation and appropriate follow-up.

Rex Deighton-Smith

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Appendix: Links to some key documents and sources

The following provides links to documents that provide substantially greater detail on some of the reform programs discussed in this paper.

1. Time for Business

http://www.daf.gov.au/reports/time_for_business.pdf

[This is the original report of the Small Business Deregulation Task Force]

http://www.daf.gov.au/reports/more_time_for_business.pdf

[This is the Government response]

2. Business Licence Simplification Program

<http://www.audit.vic.gov.au/old/sr44/ags4404.htm>

This is the Auditor-General's report on the program.

3. Regulatory Efficiency

http://www.parl.gc.ca/35/1/parlbus/chambus/house/bills/government/C-62/C-62_1/12455bE.html

[The original Bill introduced to the Canadian parliament in 1994]

http://www.parliament.vic.gov.au/lawreform/Regulatory_Efficiency/re/r/title.html

Report of the Victorian Parliament's Law Reform Committee

4. National Competition Policy (NCP)

www.ncc.gov.au

<http://www.ncc.gov.au/pdf/PIAg-001.pdf>

The full text of the National Competition Policy Agreements, including all related agreements.

<http://www.pc.gov.au/inquiry/ncp/draftreport/index.html>

Discussion Draft of the Productivity Commission's current review of the National Competition Policy. Includes draft recommendations for future developments, as well as indicators of the benefits of reform to date.

<http://www.ncc.gov.au/publication.asp?publicationID=180&activityID=30>

<http://www.ncc.gov.au/publication.asp?publicationID=182&activityID=30>

The most recent (published August 2003) assessments by the National Competition Council of progress in implementing the NCP reforms.

5. Reform authorities

The following are the website addresses of key regulatory reform authorities in Australia.

1. *National Competition Council*

www.ncc.gov.au

The website of the National Competition Council, the agency with a range of primary responsibilities in respect of the NCP, including providing the Federal Government and the public with progress reports.

2. *Productivity Commission*

The main source of independent economic advice to Australia's Federal Government. The site includes full text of a wide range of past reports.

www.pc.gov.au

3. *Office of Regulation Review*

The Office is the central monitoring and co-ordination body for regulatory reform within the Federal Government. It is, formally, an arm of the Productivity Commission, but is operationally independent.

www.pc.gov.au/orr

4. *Australian Competition and Consumer Commission*

Australia's main competition authority, with responsibility for enforcement of the competition law (the Trade Practices Act 1974) and elements of the National Competition Policy, as discussed above.

www.accc.gov.au

See also:

1. OECD – Regulatory Governance Program

http://www.oecd.org/topic/0,2686,en_2649_37421_1_1_1_1_37421,00.html

This site contains a range of resources on regulatory reform processes, with an emphasis on best practices in OECD countries and beyond.

2. UK Government – Regulatory Impact Unit

<http://www.cabinetoffice.gov.uk/regulation/index.asp>

Located in the Cabinet Office, this Unit has primary responsibility for promoting and co-ordinating regulatory review and reform activity.

2. Office of Management and Budget – Office of Information and Regulatory Affairs

<http://www.whitehouse.gov/omb/oir/>

The United States Government’s primary regulatory reform agency.