

SUBMISSION - Productivity Commission

"Performance Benchmarking of Australian Business Regulation "

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This submission, by a private individual, contains no confidential information .

EXECUTIVE SUMMARY OF SUBMISSION

The issues covered in the submission are :-

- The scope of Australian Business Regulation
- What is benchmarking ?
- Who should be doing the benchmarking ?
- Why should they be doing benchmarking ?
- Score sheets, for use in benchmarking ?
- Conclusions

The recommendations made in this submission are :-

- (a) Regulators should be penalised for **not themselves following** the regulations they lay on business
- (b) Regulators should be rewarded for **conferring with other regulators** before introducing regulators
- (c) Ministers of the Crown should be rated by all regulators under their jurisdiction (rather than under their control, because no Minister is ever in control of anything) for their ability to deliver **“whole of business” regulation**



The above picture represents the current state of business regulation in Australia ; there are multiple holes in the regulations, created by the woodpeckers in the legal profession, who, because of the theoretical , obtuse language used in regulatory instruments, can create these holes, then sell them to those on the ark of business, so that it is possible thereby to escape the 'nuisance' of regulations and regulatory oversight .

The Scope of Australian Business Regulation

At this point in time, crimes against money are treated seriously, but crimes against people are very much ho –hum , so what ? offences.

Our regulators seem to have only two approaches; the sparrow approach or the hawk approach. These two approaches are discussed below :-

The “sparrow” approach is an enlightened application of the rules , whereas the “hawk” approach is one of zero tolerance, with little in between . This may be because of certain realities that face any regulator.

“Reality”, like truth and trust , is very difficult to incorporate into any regulation ; behind any regulation is a range of assumptions, which may start out having some basis in fact, but political realities, public expectations and financial pressures can distort these assumptions .

Everyone can understand quantitative measures ; “we issued 245678 infringement notices this year, which is 25% more than last year .” So what, if that meant that serious offences increased and no one paid the penalties incurred . ?? If the giver of the money, the recognition, the status values numbers, then the focus will be on things that can be easily measured, because what gets rewarded gets done .

Regulators can live in a one –dimensional world, making a “whole of government “ approach to any issue impossible . If there is no budget, no responsibility, no ostensible authority for doing anything , then this “anything”, no matter how necessary, will never get any attention.

This leads us to a most difficult, awkward, issue ; who is the customer of a regulator ?? . If the regulator is always in a state of “renewal”, changing anything becomes too hard, because one of the paradoxes of change is that it can only take place in a stable environment . Therefore, in this situation, the customer becomes whoever or whatever is the “renewal” authority, with the old culture simply being grafted on to the new “paradigm”.

Into the middle of all this comes a representative of the regulated, seeking an exercise of a discretion on the part of a regulator .

The regulator may see that common sense, natural justice , etc. etc, suggest, even require an exercise of discretion, but is unable to deliver a one –off, tailor made solution, because that will be taken as a green light by others, to advance their own commercial interests in unexpected ways that could not reasonably be anticipated

What is benchmarking ?

Hopefully, benchmarking in this context has a flavour of measuring the quality of the performance of the regulator. Here, we will look at some principles of quality management, rather than any particular system of quality accreditation, such as the ISO 9000 series.

PRINCIPLES OF QUALITY MANAGEMENT

- customer focus
- quality first
- continuous improvement
- prevention not detection
- identification of internal / external customers
- constancy of purpose
- eradication of waste
- excellence in leadership
- on –going education /training

PEOPLE ORIENTATION (the first application of these principles)

- managing the social processes involved in a service
- valuing human interaction as critical to survival
- recognition of need to appreciate and respond to customer perceptions as to image, culture, quality of enterprise as 'spoken' by staff
- never- ending development of skills and knowledge of employees of enterprises
- enabling employees to own outcomes of their actions

REGULATOR ORIENTATION (the second application of these principles)

- scope of guidelines
- references / benchmarks for level of service
- determination of systems to meet people needs
- regulator specific applications of quality principles

(NB : These are same as " Enterprise " orientation, as regulators are run using a business / enterprise model)

Who should be doing the benchmarking ?

It is recommended that there should be two groups doing the benchmarking :-

FIRST GROUP : Regulators should be allocated other regulators to benchmark

SECOND GROUP : Regulators should benchmark the performance

of the Minister they report to . If they do not report to a Minister, then they should be allocated one .

Why should they be doing benchmarking ?

The primary reason is to ensure that regulators are complying with their own regulations .

The subsidiary reason is that in choosing a model to use, flowing on from the quality principles mentioned earlier, practical professional development of staff of the regulator doing the benchmarking should be an enormous bonus, in their creation, management and monitoring of the regulations they are responsible for .

One model that regulators could consider is set out below:-

AIM :

To capture the essential ingredients of that being analysed and to evaluate the findings against a preferred norm.

KEY OPTIONS

- Specifications set before team chosen
- Specifications set by team when chosen
- Levels of involvement of stakeholders

FACTORS TO CONSIDER IN CHOICE OF OPTIONS

- What resources are available ?
- Scope and size of project /task ?
- Motivation for /genesis of this ?

CHANGE MANAGEMENT CONSIDERATIONS

- Who will be challenged by this ?

- What pace of change will be involved ?
- What “change management” processes ?
Will be integrated into the project /task ?

Score Sheets for use in benchmarking ?

There is a question mark here, because it may be seen as one of the regulated, indicating how they want the regulator to work !!.

However, be that as it may, two forms of possible checklist follow :

CHECKLIST – version one – for use with Regulators

Top score is 100 points ; anything below 85 is a fail (yes, a fail – if a Regulator or a Minister fails, there should be some penalty)

- ❖ Has a regulator obeyed the regulations it enforces?
- ❖ Is there are a balance between qualitative measurements of compliance and quantitative measurements?
- ❖ How many regulations were created in the past twelve months?
- ❖ How many regulations were removed in the same period?
- ❖ Has the staff of the regulator increased or decreased?
- ❖ What proportion of the staff of the regulator deal with those regulated?
- ❖ How many staff of the regulator conduct on –going educational events for other regulators, those representing the regulated and those who are regulated?
- ❖ How many of the regulated have accessed the complaints and /or dispute resolutions services of the regulated?
- ❖ How many times have enforcement proceedings been used?
- ❖ How often is the information on the website of the regulator updated ?

Each question would be scored out of 10 ; if any one question rated below 7, then a **FAIL** assessment should be made, even if the total is 85 or more .

CHECKLIST – version 2 – for use with Ministers of the Crown

(The same scoring system would apply here)

- ✚ Has the Minister met with the CEO of the Regulator in the past twelve months? If so, how often have they met?

- ✚ How many conferences has the Minister addressed?
- ✚ How often has the Minister referred matters, of whatever nature to the Regulator?
- ✚ Has the Minister held any round table meetings with representatives of the regulated?
- ✚ Are any Ministerial guidelines to the Regulator reviewed on a regular basis, by the Minister and the regulator?
- ✚ How often has the Minister met any of the regulated?
- ✚ Who, in the office of the Minister, has responsibility for ensuring that regulations are “user friendly”? How many meetings has this person had with senior officers of the regulator?
- ✚ Who, in the office of the Minister, meets, on a regular basis, their equivalents in offices of other Ministers, to discuss problems faced by regulators in general?
- ✚ What process is in place, for ensuring that regulations which have a sunset clause , are reviewed, around six months before the sunset clause comes into effect?
- ✚ If a new Minister is appointed, what protocols are in place for ensuring the new Minister understands the role of the regulators who now fall within his jurisdiction ?

CONCLUSIONS

Each regulator should have, as a very senior member of its staff, a person who would fill the role of a “sounding board”, who would be the public face of the regulator, able to as a bridge between the regulator, the regulated and those who represent the regulated .

This person, or persons, would be removed from the day to day regulatory activity of the regulator , so would be able to concentrate on their role as a bridge builder . In this role, engagement rather than enforcement and then explanation of the rationale for the relevant regulatory regime would be the principal tasks of this position ; a suggested list of qualities such tasks would require concludes this submission :-

- own, authentic, style (open, transparent, honest)
- style amenable to the organisation and its culture
- able to exert significant degree of personal power, without any influence, or position in the organisation
- earns respect from all those involved ,from the least important to the most important
- intuitively understands where the real power lies, able

to secure support from all, for all.

- “what is said is what is done” ; there is no difference, no playing favourites, no divide and conquer games played.
- skilled in areas of facilitation, mentoring, training, with a detailed knowledge and understanding of strategic and operational management, principles and practices of adult education.
- very experienced in articulating the unspoken fears, hopes and aspirations of all stakeholders, uses humour effectively in developing the organisation as a learning community and in acting as a catalyst in taking the compliance requirements into a way of life.
- knows and practices servant leadership, how to lead without being seen to lead, is an encourager and an enabler of individuals
- finally, has sufficient mental toughness and agility to ethically build bridges between warring factions and to leave the organisation better and stronger than when they arrived.

END OF SUBMISSION