

The Regulation Benchmarking study  
Productivity Commission  
Locked Bag 2  
Collins Street East  
MELBOURNE VIC 8003

16 January 2007

Dear Sir/Madam,

**Performance Benchmarking of Australian Business Regulation - Discussion Draft.**

I realise that the public comment period has lapsed, however I would like to draw your attention to a potentially more useful method of analysing the merit of regulation.

The methodology that you are considering is “old hat” and has not worked for anyone that has tried to use it.<sup>i</sup>

The world is a complex nonlinear system and regulation is a forcing function that influences the interaction of the people that are the system elements.<sup>ii</sup>

Performance benchmarking, as described in the discussion paper is also a forcing function, intended to act on State and Territory Governments. The discussion paper describes measures that are designed from deterministic principles. As such the regulatory system, which is probabilistic in nature will, respond in unpredictable ways.

Peter Checkland<sup>iii</sup> has designed an methodology for working with complex systems. His approach works from qualitative input rather than quantitative input. Qualitative information is easier to collect than quantitative information. Qualitative information is also more willingly provided than quantitative information.

Checkland's Soft Systems Methodology is taught at the John Curtin Institute of Public Policy by professor Lynn Allen<sup>iv</sup>.

It is always pleasing to see a Government and its instrumentalities trying to improve the overall wellbeing of the community that they serve, however these good intentions are often perturbed by Policy adjustments that are strongly connected to perception of the problem and sponsorship of corrective measures.

I submit that the burden of regulation is a convenient tag given to problems that have emerged from self-organisation in the complex system that is our society. It is an symptom of an underlying problem. The proffered solutions are linear deterministic and therefore unsuitable as solutions to the complex causes.

I believe that the achievements of the Productivity Commission would be enhanced by applying complex nonlinear systems considerations to the public policy framework that generates regulation.

As a start in this process, and as a solution to the regulatory benchmarking task I suggest that the benchmarks include:

Direct indicators

- The clarity with which regulatory instruments state their purpose and function.
- The degree of certainty with which the owner of the regulations knows what the regulation is achieving.
- The quality with which the regulation speaks to those persons and individuals that must respond too or administer the regulation.
- The “patch” occupied by the regulatory instrument and its compatibility with adjacent and overlapping regulatory instruments.

#### Indirect indicators

- The level of resource applied to administering the legislation.

The suggested indicators are relatively simple to derive and drive understanding rather than compliance. People change for their own reasons not for someone else’s reason. In developing the information required for the above benchmarks new understanding will be developed that promote action.

In this letter I have used a number of terms that have specific technical meaning. If the terms and/or subject matter are unfamiliar it is recommended that the reader uses the world wide web addresses embedded in the endnotes to find out about them.

An alternative is to use the “Wikipedia, a free encyclopaedia written in simple English for easy reading” [http://en.wikipedia.org/wiki/Complex\\_systems](http://en.wikipedia.org/wiki/Complex_systems) and follow the links.

I hope this late submission is of interest and useful to you.

Yours faithfully

SJ Hyam

---

<sup>i</sup> Sparrow, Malcolm K. (2000). *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance*, Brookings Press. <http://www.brook.edu/press/about.htm> (This book can be read over the internet).

<sup>ii</sup> Chapman J. (2002, 2004) *System failure, Why governments must learn to think differently*. DEMOS, London. Available from <http://www.demos.co.uk/publications/systemfailure2> (This site contains a number of papers that are relevant to complexity as a difficult problem for public administration and legislative design)

<sup>iii</sup> Checkland, Peter (1981). *Systems Thinking, Systems Practice*. London, John Wiley & Sons. An overview of the procedure can be viewed at <http://sern.ucalgary.ca/courses/seng/613/f97/grp4/ssmfinal.html>

<sup>iv</sup> Lynn Allen, John Curtin Institute of Public Policy, Curtin University of Technology.  
Email: [Lynn.Allen@curtin.edu.au](mailto:Lynn.Allen@curtin.edu.au)