

Regulatory performance indicators in government departments

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Title: Regulatory performance indicators in government departments**Abstract**

This paper describes and evaluates a system of regulatory performance indicators used by Commonwealth government departments in the 1998-06 period. Its conclusion is that the indicators were of limited value, caused by the neglect of output and impact measures, the limited range of regulations covered, and a failure to integrate the indicators into departmental performance management systems. The indicators did provide some useful information, suggesting that departmental performance in relation to process requirements was at best variable and for several indicators, displayed a worrying, downward trend.

Introduction

There has been a recent, but rapidly growing trend in the use of performance indicators for measuring various aspects of regulation, strongly supported by the OECD. The aim of this paper is to describe and assess the use of a system of regulatory performance indicators (RPIs) by the Australian federal government in the period 1998-2006. Its conclusion is that the indicators were of limited value and use, caused by a number of design limitations, particularly the neglect of output and impact measures, the relatively limited range of regulations covered by the system, and a failure to integrate the indicators into departmental performance management systems. The indicators did suggest that departmental performance in relation to process requirements was variable and for several indicators, displayed a worrying, downward trend. The paper is divided into three parts and a conclusion. The first part describes the context in which the system of RPIs was developed. The second identifies and discusses major design limitations of the final set of nine RPIs that were developed. The third assesses the performance of departments as indicated by the RPIs, including an assessment of the value of the performance data.

Context: the Regulatory Impact Statement (RIS) and the RPI

The immediate origins of the present system of RPIs in the Australian federal government can be found in the Report of the Small Business Deregulation Task Force (SBDTF, 1996), established following a National Small Business Summit in June 1996, and electoral promises to assess and reduce the regulatory burden on small business (Howard, 1997). The Report referred to the need for more detailed sets of

indicators at the 'broadest policy level', and recommended ten indicators, one each in relation to: transparency, accessibility, appropriateness, predicability of regulatory framework, flexibility, lower cost to business, administrative efficiency, fewer and simpler forms, better instructions, reduction in perceived burden, and cultural change (SBDTF, 1996).

The Government's response to the Report was generally positive. In particular, it agreed to recommendation sixty two, that a national set of performance indicators and a benchmarking strategy should be developed (Howard, 1997). The response suggested six indicators needed to be developed, addressing all of the areas recommended in the SBDF's Report, with two exceptions: one, the indicator intended to measure the achievement of a 'lower cost to business'; two, the indicator for administrative efficiency. The Government noted only that there was the need for an indicator that would show that new or revised regulation would confer '... a net benefit on the community', without any mention of reducing costs to business, although this could reasonably be implied, given the context of the Prime Minister's message (Howard, 1997). It made no mention of an indicator related to administrative efficiency and provided no explanation as to why indicators for these two areas had been omitted.

While the members of the SBDF and their supporters inside and outside government might well have been satisfied with their success in gaining acceptance for the bulk of their recommendations, with the exception of the 'lower cost', and administrative efficiency indicators, there were limitations and significant challenges in what they had proposed and what the Government endorsed. The first was the failure to specify

an indicator in regard to business costs, although any calculation of the net benefit to the community of regulation, an indicator specified in the fifth dot point, above, if sufficiently rigorous, would necessitate the calculation of business costs as part of the calculation.

The second limitation was the neglect of any recommendations for indicators that would enable departments, agencies and, ultimately, at least in aggregated form, Cabinet, to measure the performance of *existing* business regulation in actually achieving its specified objectives. This was in marked contrast to its very clear view that the existing systems or processes for indicating the quality of *new* and *modified* regulation needed improvement. The neglect may have been deliberate, an implicit acknowledgement of the difficulties of such a task, but it was a limitation that left the Government and, importantly, the working party of officials charged with developing policy options, and federal departments and agencies, free from the explicit requirement to consider and recommend how such a system might be developed and implemented. This was unfortunate, for, in a parallel development, departments at this time increasingly were being required to introduce systems of output and outcome plans and budgets with associated performance indicators, within which any desired RPIs could have been embedded (Department of Finance and Administration, 1999, 2007, Department of Prime Minister and Cabinet, 2007).

The third limitation was the failure of the Government to specify indicators of administrative efficiency in relation to the implementation of regulations. This may have been because it was realised that several systems were already in place, or being put in place, and that they were regarded as sufficiently informative, for example, the

annual parliamentary reviews of departmental expenditures, the effectiveness audits of the Australian National Audit Office, and the departmental annual reports. The latter contained the departments' report of their performance against their agreed outputs and outcomes, using performance indicators specified in the PBS, but *not* the desired RPIs, though there was nothing to prevent such indicators being developed and used by departments. It is interesting that they have not included RPIs in their reports, even though, in conjunction with the PBS performance reports, they would have provided departments, Parliament and the electorate with a fuller picture of their regulatory performance.

The fourth limitation was the SBDF's failure to recommend that responsibility for RPIs at the 'broad policy level' be established under the control of the then Office of Regulation Review (ORR). The Australian Cabinet had required that, from 1986, regulators would have to prepare regulation impact statements (RIS), for all new legislative proposals that would have an impact on business, a process that would be coordinated by a new Business Regulation Review Unit (BRRU, later to be renamed the Office of Regulation Review, or ORR.) The RIS is both a document (the detailed statements, including a detailed justification for the proposed regulation), and most importantly, a mandated process and approach to policy analysis intended to improve the quality of the Australian federal government's business regulation and ultimately, to better achieve community objectives at least cost. RIS's impact, along with that of ORR, seems to have been limited (Carroll, 2006). Indeed, in so far as the departments and agencies responsible for making and implementing regulation were concerned, there was no new system. Rather, at best, ORR had encouraged them to view the development of new or amended regulation in regard to business somewhat more

critically, in line with the government's principle of the minimum of effective regulation. In turn, ORR provided advice to Cabinet in regard to the regulations related to business that were submitted to it, advice that seems to have had little impact (Carroll, 2006). The SBDF Report, hence, recognised the need to strengthen the existing RIS system and the capacity of the ORR in regard to the improvement of new and modified regulation, viewing ORR as a '...key institution in Commonwealth regulation review and reform.' (SBDF, 1996). However, as noted, unfortunately it did not recommend that responsibility for policy level RPIs should be assigned to ORR, or any other body, although it did recommend that ORR should have responsibility for annual reporting on compliance with RIS by departments and agencies, a recommendation accepted by the Government (Howard, 1997). As ORR was a unit in the federal government's influential Productivity Commission, within the broader Department of Treasury portfolio, this might have provided it with an important source of power in relation to the design and implementation of RPIs.

Design limitations of the RPI system: regulatory coverage, integration and type of RPI

A working party was organised through the Office of Small Business (OSB) in the Department of Industry Tourism and Resources to develop a set of nine RPIs (DITR, 2006). The task was difficult and, in addition, there were contentious issues in relation to the specific objectives of the exercise, the number and type of indicators that should be developed, the potential for overlap with other indicators, the extent to which indicators should be incorporated within a modified RIS process, and which body should be responsible for the indicators. Nevertheless, a set of nine RPIs was

developed and agreed to by the Government, designed to provide performance information in relation to the six objectives specified by Prime Minister Howard (1997):

- to ensure that all new or revised regulation confers a net benefit on the community;
- to achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved
- to ensure that the regulatory decision making processes are transparent and lead to fair outcomes;
- to ensure that information and details on regulation and how to comply with it are accessible and understood by business;
- to create a predictable regulatory environment so business can make decisions with some surety of future environment; and
- To ensure that consultation processes are accessible and responsive to business and the community (DITR, 2006).

As with the Prime Minister's 1997 statement, the objectives in relation to this final set of RPIs did not contain a specific indicator intended to measure the achievement of a 'lower cost to business' (although this might be estimated from the calculation as to net benefit to the community), or an indicator for administrative efficiency.

Coverage of the indicators

The coverage of the new RPIs was to be limited, for the most part, to only *new* or *modified* primary, secondary or quasi-regulation related directly or indirectly to business and that would have a significant impact on business, excluding tax

regulation. While this seemed to neglect both the very large stock of *existing* regulation and the importance of tax regulation, a matter of some concern for all businesses, this was not entirely the case, for all of the Australian governments had agreed to review existing regulation impacting on competition in a separate, National Competition Policy, review process (Carroll, 2006b). In relation to the exclusion of tax regulation, the argument was that public consultation on new or modified taxation measures could be used by taxpayers to avoid or minimise their tax obligations. It was also argued, less convincingly, that it was difficult to assess the impact of specific tax measures in isolation from their implications for the overall tax system (Industry Commission, 1997). The fact that public consultation on new or modified taxes, especially where they might increase the overall tax burden, tends to have negative electoral impacts was not noted, at least in government publications. In the case of appeals against decisions made under regulations, RPIs 4 and 5 do apply to existing regulation, somewhat expanding the coverage of the indicators, although the coverage is restricted by the constraints applied as to the types of appeal process covered by the system, as discussed in regard to RPI 4, below.

The coverage of the RPIs was further restricted by applying them only to regulation that was subject to the RIS process managed by ORR in the year in question (DITR, 2006). The RIS process, in turn, excluded regulation of a minor or 'machinery', nature and involved only regulation for which the federal government or the Council of Australian Governments (COAG), was responsible, excluding state, territory and local government regulation. The decision to exclude minor and machinery changes in regulation, largely on the grounds of the high administrative costs of reviewing all such regulation, was understandable from the perspective of both the departments and

ORR. However, the exclusion meant that it would not be possible to assess the cost of the overall, cumulative regulatory burden on business, a topic of considerable concern for individual businesses and peak associations.

While the considerable restrictions on the coverage of RPIs may seem somewhat unreasonable, they were intended to focus the attention of those monitoring and reviewing regulatory performance on performance that was deviating, positively or negatively, from regulatory objectives at an *aggregate*, whole of department or whole of government level. They were not intended to provide detailed information about regulatory performance at the level of specific regulations, which should be provided, more appropriately, by detailed indicators at the departmental level. As noted above, departments were being encouraged to either introduce, or to improve such detailed indicators at this time in relation to the PBS. While not the topic of this paper, it should be noted that departments have, in practice, developed and incorporated very few, if any, specific RPIs within their PBS reports.

An integrated set of regulatory performance indicators

The new system of RPIs was not put in place as part of an integrated, overall system for measuring regulatory performance. Rather, it was only one element in a loosely coordinated set of changes introduced over a period of several years from the later 1990s. The other major changes were: one, a requirement for annual regulatory plans (OSB, 2003); two, an improved and somewhat better resourced RIS system (Productivity Commission, 1998), and an output and outcome focused PBS system as noted above (Department of Finance and Administration, 1999). The danger in such a

situation was that the information provided by RPIs might be considered in isolation from the information provided by these other systems, reducing their value to senior decision makers. The probability of this occurring was increased with the decision to divide responsibility for the various reform elements among several departments and agencies. The annual regulatory plans were to be developed by departments, though initially coordinated by the OSB. The annual PBS was to be developed by departments, including appropriate indicators, and reported on in their annual reports. The strengthened RIS was to remain with ORR. Overall responsibility for the RPIs was given to the Office of Small Business, though responsibility for collecting, monitoring and assessing relevant data was split between ORR (in regard to RPIs 1, 2, 3, 8) and the OSB (RPIs 4, 5, 6, 7, 9), with ORR providing relevant data to the OSB for collation into an annual report on the RPIs (DITR, 2006).

The types of RPI

RPIs can be of a variety of types, addressing various stages or dimensions of the regulatory process, such as those related to input, process, content, output and outcome. Some indicators can provide information about more than one stage, as with RPIs 3 and 4 in Table 1. The nine RPIs put in place were, as Table 1 indicates, very much focused on process, with none directly addressing input, content or outcome, and only two addressing output, so that they provided no direct information as to whether or not a regulation was achieving its objectives. The lack of outcome-focused indicators is understandable, for it is an inherently difficult task, as the voluminous literature on policy evaluation demonstrates. Also, the primary intent of the reformers at this stage was to improve the quality of the processes involved in making regulation

Table 1 Types of RPI

RPIs	Input	Process	Content	Output	Outcome
RPI 1		*			
RPI 2		*			
RPI 3		*		*	
RPI 4		*		*	
RPI 5		*			
RPI 6		*			
RPI 7		*			
RPI 8		*			
RPI 9		*			
Total	0	9	0	2	0

impacting on business, based on the assumption that good regulation making processes will tend to result in more effective regulation. In retrospect, it is disappointing that the opportunity to develop at least some outcome indicators was not taken. It suggests that at the time the RPIs were being drawn up departments either did not have performance data about regulatory outputs and outcomes, or, if they did possess such data, that it could not be aggregated in a meaningful fashion to provide useful performance information – or, more cynically, that they were fearful that their regulatory performance would be disappointing. Yet, as noted above, the introduction of the PBS system in the same period as the development and introduction of the RPIs, with the former's requirement that departments introduce clearly defined outputs, outcomes and related performance indicators, linked to planned and actual expenditures, provided just such an opportunity to develop useful output and outcome indicators.

The RPIs; performance and practice

In this section the aim is to provide an assessment of the RPIs in practice. It is divided into a number of sub-sections each of which focuses on one or more of the RPIs in relation to the objective in question.

Objective 1. to ensure that all new or revised regulation confers a net benefit on the community

Progress in relation to this objective was measured by RPI 1, the proportion of regulations for which the RIS documentation ‘adequately addressed net benefit to the community’. The assessment of the adequacy with which a regulation’s net benefit was calculated was the responsibility of ORR, which then submitted it to the OSB for inclusion in its annual report on RPIs. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 1 was 88% , with a range from 81% to 92% (see Table 2). It should be noted that ORR increased the rigour with which it assessed performance over the period, as departments gained familiarity with the RPIs, so that it is not possible to compare year on year performance with any degree of precision, although, where the annual performance increased year by year, despite the increased rigour of the assessments, then performance is likely to have increased.

Table 2 Aggregate RPI scores for all agencies 1998-2005

	No of RIS	RPI 1	RPI 2	RPI 3	RPI 4	RPI 5	RPI 6	RPI 7	RPI 8	RPI 9
1998-9	270	88	91	39	31	77	91	27	92	59
1999-0	225	92	94	77	61	67	100	47	96	74
2000-1	167	92	92	66	70	50	100	73	91	68
2001-2	225	92	94	77	61	67	100	47	96	74
2002-3	139	81	85	82	70	65	88	70	87	58
2003-4	115	91	91	86	62	75	95	76	91	48
2004-5	83	82	81	100	58	72	89	78	82	56
Average	175	88	90	75	59	68	95	60	91	62

Source: OSB Annual Reports 1998-9 to 2004-5

The use of the phrase ‘adequately addressed net benefit’ in RPI 1, was a clear indication that its designers were well aware of the substantial difficulties involved in costing the likely or actual impact of a regulation. The phrase implies, for example, that cost benefit analysis will be the means for calculating net benefits, but it does not specify or require that this must be the case, leaving considerable discretion in the hands of those submitting a proposed regulation to the RIS process. In addition, the use of the word ‘adequate’, rather than more specific criteria for the assessment of net benefit, enables a wide range of calculations of net benefit, more or less precise, to be judged as ‘adequate’. While this might have been realistic, it meant that the value of this measure was distinctly limited for those concerned to see if regulations were likely to achieve a net benefit to the community. It was of somewhat more use for indicating broad trends over time, especially combined with the increasing rigour of ORR’s assessments. Unfortunately, as indicated in Table 2, performance as measured by RPI 2 fell somewhat over the period, suggesting that there was no significant improvement in the estimates of net benefit incorporated in the RIS assessed by ORR.

In practice, the ORR in its ‘A Guide to Regulation’, did specify the type of costs and benefits to be included by departments in their RIS documentation, noting that there were considerable difficulties in gaining precise, quantitative estimates of costs and benefits, but encouraging departments to at least identify and, where possible, assess the fullest range of costs and benefits, admitting that

In practice, such quantification is not always possible, nor is it always necessary. For instance, some items may be too difficult to quantify (this is particularly so for ‘intangibles’ such as enjoyment), or the availability of time or other resources may limit the amount of quantification that is possible. At

times, quantification of all items may be superfluous as it is clear that a proposal will result in a significant net benefit for the community. In other cases, attempts to put values on all benefits and costs could involve false precision, be costly and reduce the RIS to a mechanistic process. That said, however, the onus of proof lies with the proponent of a regulation; some form of evidence must be produced to justify why a particular proposal has been recommended (ORR, 1998).

Hence, it was quite possible that the ORR might judge the calculation of net benefit in an RIS as 'adequate', even where little or no quantitative data or assessment was included. If those relying on such performance data were aware of such limitations, it could be argued that at least it gave a rather crude, largely qualitative indicator of some value, although the lack of an upward trend in performance over the period was disappointing. However, even this limited value has to be questioned as, in practice, what was reported in the annual OSB report was only the proportion of a department's regulations that were judged as adequate in the year in question, in the form of a simple percentage figure, for example, 75%, with very little further explanation or clarification. Further, given that in any one year a department might have submitted only one or two RIS, then the value of providing a percentage indicator as a measure of performance was of questionable value for senior decision makers and, of course, for Parliament, business and the community.

Objective 2: to achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved

Objective 2 was measured by two indicators, RPI 2, the proportion of regulations for which the RIS adequately justified the compliance burden on business, and RPI 3, the

proportion of regulations which provide businesses and stakeholders with some appropriate flexibility to determine the most cost effective means of achieving regulatory objectives, both to be monitored by ORR. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 2 was 90%, with a range of 81% to 94%, and for RPI 3 was 75%, with a very large range of 39% to 100%. While the average of 90% for RPI 2 might have been reassuring, in the last three years there was an increased variation in regard to the annual performance, to a low of 81% in 2004-5, which was of concern. In contrast, performance in relation to RPI 3 increased dramatically over the period, even with the increase in the rigour of ORR's assessments. Unfortunately the OSB annual reports provide no indication as to why performance improved (or fell), for any of the indicators.

If, as indicated above, it was difficult to provide accurate estimates of the costs and benefits of proposed regulation, then RPI 2 at least required departments to provide clear, logical arguments to support their proposals and, hopefully, to think through the compliance implications for business. If backed up by accurate, quantitative estimates of compliance costs and benefits, so much the better. In practice, its value, as with RPI 1, was limited by the lack of quantitative estimates provided in practice by departments. As the annual reports of ORR very clearly indicate, the departmental estimates of regulatory costs and benefits were often unsatisfactory. Indeed, Gary Banks, the Chairman of the Productivity Commission (of which ORR is a unit), indicated that, for example, in 2004 only 20% of tabled RIS contained even an attempt at quantifying the costs related to proposed regulations (Banks, 2005, 10). If Banks was correct in his estimate, then it is difficult to see how, for example, 82% of

all regulations assessed in 2004-5 could be assessed as adequate in relation to RPI 1, and 81% in relation to RPI 2, as noted in the annual report on RPIs, despite the fact that 20% of all RIS did not even attempt to quantify the costs related to the proposed regulations (OSB, 2006). It suggests a very flexible interpretation as to the meaning of adequacy and, importantly, makes the value of both RPIs very questionable as reliable measures of regulatory performance.

RPI 3 was based on whether or not a department's RIS contained any one or more of the following measures:

- a performance or outcome based standard which did not prescribe how a business was to comply with the standard
- provision for a business to seek acceptance of an alternative mechanism for achieving compliance than that prescribed in the regulation
- the use of a market-based mechanism such as tradeable permits to allow businesses flexibility in determining a compliance strategy
- it included a range of means for businesses to have flexibility in deciding what steps to take in compliance (Department of Industry Tourism and Resources, 2006).

While the intent of RPI 3 is clear, the measurement of the degree of flexibility that a proposed regulation permits businesses in their compliance with regulation, the assumption it contains of the attractiveness of regulatory flexibility to business is problematical. A small business, for example, has limited resources of both money and time. Hence, the need to use those resources to determine how it should comply with a regulatory performance or outcome based standard, rather than simply complying in a way prescribed in a regulation, is not necessarily attractive. At the

least, for example, it requires the business to design an appropriate strategy, or to purchase a ready-made strategy, or to employ a consultant to design the strategy. Faced with such choices, how many small businesses would not welcome a helpful regulatory prescription as to the required strategy, assuming the prescription is cost effective and meets compliance needs?

In summary, RPIs 2 and 3 provided a rather mixed message for decision makers, suggesting that regulations were providing an increase in the flexibility with which businesses could comply with regulations but, worryingly, a decline in the extent to which departments provided an adequate justification for the regulations in question. When the trend for RPI 2 is combined with the downward trend in RPI 1, performance related to the calculation of net benefits, it suggests, if rather speculatively, that the efforts of ORR and the OSB to encourage departments to improve regulatory quality in these important dimensions was unsuccessful, despite their increased efforts following the boost to their resources following the Bell committee report.

Objective 3: to ensure that the regulatory decision making processes are transparent and lead to fair outcomes

This was to be measured by RPI 4, the proportion of cases in which external review of decisions (as defined) led to a decision being reversed or overturned, and RPI 5, the proportion of regulatory agencies whose mechanisms for internal review of decisions meet standards for complaints handling outlined in 'Principles for Developing a Service Charter', published by the Department of Finance and Administration. Departments and agencies were to provide the relevant information to OSB for

inclusion in its annual report. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 4 was 59%, with a range from 31% to 70%, but a declining trend from 2002-3. This was a disturbingly poor level of performance. The average annual score for RPI 5 was 68%, with a range from 50% to 77%, with a slight upwards trend in the latter three years, following an initial and very sharp fall in performance. In the case of RPI 5, where departments had only to meet the standards for complaints handling quite clearly specified by the Department of Finance and Administration, the average score of 68% was surprisingly low.

Unlike RPIs 1 to 3, RPI 4 focused attention on the performance of departments in administering regulations, though not on their administrative efficiency, but on whether or not they had followed due process. The assumption was that if the proportion of cases where a decision was reversed or overturned by an external body was low, then the quality of the decision process, at least in regard to due process, was relatively high. While there is no doubt that RPI 4 might provide a valuable, more objective indicator of due process performance, two limitations need to be considered: one, limitations as to the sources of external decisions to be considered and reported upon; two, small business resource limitations.

In regard to the sources of external decisions to be included the formal advice to departments was that they should only consider decisions of external review agencies that were empowered to overturn or reverse the department's decision (Department of Industry Tourism and Resources, 2006). This meant that, for example, complaints from businesses to the Commonwealth Ombudsman would not be considered, even if

the Ombudsman supported the complaint, as the Ombudsman had no power to overturn or reverse decisions. In addition, decisions resulting from departments' internal review processes were excluded, even if they supported the complainant. In this latter case, while a degree of concern as to the objectivity of reviews from internal review sources is not surprising, it is surprising that they were not to be considered, even, for example, where they might have led to the overturning of an earlier decision. If they had been included as a source of performance data, this might have encouraged departments to adopt internal review processes where they did not exist and, where they did exist and indicated poor levels of performance, to improve their procedures and related decisions, especially if such information was made public in the RPI reports.

The second limitation springs from the limited resources small businesses have to take complaints about regulation and its implementation to external review bodies such as the courts or the Administrative Review Tribunal. Faced with this reality, the decision to exclude from consideration those decisions overturned within the potentially less costly and less formal internal review processes of departments was unduly restrictive. In part, the impact of this restriction might have been mitigated by RPI 5, the proportion of regulatory agencies whose mechanisms for internal review of decisions met standards for complaints handling outlined in the 'Principles for Developing a Service Charter'. Some twelve criteria had to be satisfied in order to meet these standards, as decided by the Department of Finance and Administration (Department of Industry Tourism and Resources, 2006). The assumption was that if a department's processes satisfied these criteria then it was likely that its internal processes were at least adequate in so far as complainants were concerned. Thus,

departments were required only to answer yes or no in regard to RPI 5, and to provide a brief description of their internal review processes in their first report, but not thereafter. It hardly needs pointing out that having sound processes does not guarantee good decisions and, given that the average annual score for all departments for the whole period for RPI 5 was only 68%, on a self-declared basis, then there is room for legitimate concern as to the adequacy of departmental performance in ensuring transparency or fair outcomes, the objective that was measured by RPI 4 and 5.

Objective 4: to ensure that information and details on regulation and how to comply with it are accessible and understood by business

This was to be measured by RPI 6, the proportion of regulatory agencies having communications strategies for regulation, or formal consultative channels for communicating information about regulation. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 6 was 95%, with an initially impressive performance falling away somewhat after 2001-2.

Departments and agencies provided: a simple yes or no answer to the question of whether they had communication strategies or formal consultative channels; a brief description of the strategy or channels in question; and, where the department had a formal, written strategy, a copy of that document was submitted to OSB. Where such strategies, if possessed, had not been in place for the full reporting period, departments were advised to answer yes to the question (Department of Industry Tourism and Resources, 2006). In practice, there seems to have been no little or no checking by either ORR or the OSB as to whether the strategies or consultative channels actually enabled businesses to access and understand information on

regulations, other than as demonstrated in relation to RPIs 8 and 9, below. In other words the value of RPI 6 was limited, focusing only on the achievement of procedural targets, rather than any assessment of whether or not businesses actually found access achievable or regulatory details comprehensible. However, assuming that adequate processes might encourage accessibility and understanding, then an average performance level of 95% for the period was reassuring, even with the slight downward trend after 2001-2.

Objective 5: to create a predictable regulatory environment so business can make decisions with some surety of future environment

This was to be measured by RPI 7, the proportion of regulatory agencies publishing an adequate forward plan for introduction and review of regulation. Departments and agencies were to provide the relevant information to OSB for inclusion in its annual report. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 7 was only 60%, with a range from 27% to 78%, although some reassurance could be gained from the consistently upward trend in performance after 2001-2. In other words, assuming that this RPI did provide a reliable indicator as to the 'surety of future environment', there was a substantial lack of surety for those businesses affected by the 40% of regulatory agencies that did not publish an adequate forward plan in the period under consideration. In addition, the extent to which such a predictable regulatory environment can be anticipated on the basis of a business knowing that a regulatory review is planned, is questionable, given that the planned reviews could result in substantial change, with at least short term uncertainty.

Objective 6: to ensure that consultation processes are accessible and responsive to business and the community

This was to be measured by RPI 8, the proportion of regulations for which the RIS documentation included an adequate statement of consultation (to be monitored and assessed by ORR), and RPI 9, the proportion of regulatory agencies with organisational guidelines outlining consultation processes, procedures and standards, with departments and agencies to provide the relevant information to OSB for inclusion in its annual report. In part, RPIs 8 and 9 overlap with RPI 4, above, providing additional information as to the adequacy of consultation processes, based on the assessment by ORR of the documentation provided in the RIS process. Over the period 1998-9 to 2004-5, the average annual percentage score for all departments and agencies for RPI 8 was 91%, with a range from 82% to 96%, but a worrying, downward trend from 2001-2, to a figure of 82% in 2004-5. The average annual score for RPI 9 was only 62%, with a range from 48% to 74%, and a downward trend after 2001-2. Again, RPIs 8 and 9 provide performance information only in relation to departmental processes, not their actual impact on business, that is, whether they actually result in accessibility and responsiveness. Hence, given that that average level of process performance for RPI 9 was only 62%, one might speculate that the actual accessibility and responsiveness of consultation processes used by departments was of a rather low order, both for business and the community.

Conclusion

In summary, the performance information provided by the nine RPIs for the period under consideration was certainly interesting, of varying degrees of value and, for

RPIs 3 and 7, indicated improving regulatory performance. The other RPIs, however, suggested that regulatory performance in relation to process was at best variable and as indicated for several RPIs, in a worrying, downward trend. Combined with the coverage and design limitations noted above, it suggests that the Australian system of RPIs, while a step forward, indicating several areas of poor process performance, was of limited value. In regard to the use of the indicators by staff in departments, in the course of the research for this paper it proved difficult to locate persons within departments who were aware of the existence of RPIs and those that were aware and were interviewed indicated, for the most part, that the RPIs had been of restricted value and were rarely used by departments in considering their performance.

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