Background

The Office for the Public Sector’s Simpler Regulation Team held the first Forum of the new SA Regulators Reform Network on Outcome and Risk-based Approaches to Regulation on 25 November 2015. Eighteen organisations were represented at the Forum, predominantly from State Government agencies.

The objective of the Forum was to explore how to get regulation that is better targeted, more effective and, ultimately, uses fewer of our scarce resources.

Background

- Australia ranks 124th on global competitiveness.
- Regulators are described as arbitrary, bureaucratic, box-ticking, with no knowledge of how business works.
- It’s not just the public sector that regulates, there is also self-imposed business regulation.
- One of the hardest things to do in strategic planning is to get people to say what they’re going to stop doing.
- How do we work with business as a partner? How do we help business to become self-regulating?
- Given the current transformation of the economy, the businesses that survive are the ones that change quickly and often regulation doesn’t keep up. Regulation needs to focus on the needs of the future, not what was done in the past.
- The public sector needs to view itself as a strategic advantage for South Australia.
- The biggest barrier for our state is our inability to take risks. There are far too many examples of businesses giving up trying to establish in SA and going elsewhere.

Outcome-based Regulation

- Enabling
- Visionary
- Consider the purpose of regulation
- Flexible
- Strategic
- Shared goals
- Measurable
- Performance-based

Risk-based Regulation

- Targeted
- Educating
- Analysing and modifying behaviour
- Avoiding harm
- Data
- Process
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Four Models

1. Foundation Concept: The Strategy Triangle (Mark Moore, Harvard)

2. Foundation Concept: Risk management is a process to generate a story:
   - Cause – event – consequences

   Focus on current events = issues management
   Focus on future events = risk management

   I.e. we’re predominantly issues-oriented – issues are what tend to form our KPIs

   Behaviour and culture:
   - Issues = reactive, panicked, adrenalin-driven
   - Risk = planned, preventative, predictive, proactive, early intervening

   Measures (e.g. KPIs) trigger behaviours, causes of regulations and consequences.
   - Can be sources of harm.
   We need lead indicator data, not lag indicator data.

   Three big questions:
   1. What data do we have?
   2. Is it the right data and if not, what is?
   3. Do we want to share it?

   Regulators would take on a greater data analysis role.
   Critical question: should government even be in this space?
3. Foundation concept: Program logic

Either as:
- A model
- Evaluation

Intent (political)  effectiveness
Outcome  effectiveness
Outputs  effectiveness
Activity / Process
Inputs (efficiency, productivity)

- Too much time spent around inputs
- Consider which level you’re focusing on

4. Foundation Concept: Regulatory Continuum (Malcolm Sparrow)

Self-regulation  Co-regulation  Regulatory compliance (interventionist)  Enforcement

Hypothesis: the modern regulatory framework requires us to work flexibly across this spectrum.

Criminal  Chancer (innovator?)  Confused  Compliant  Champion

Consider:
- What are our obligations as a sector according to the legislation? – are we required to prosecute non-compliance?
- Or can we fall back? – g. to education
- Then does I become a matter of implementation, organisational culture
  - Especially when operating under old / no-longer-relevant laws
- Goes to capacity and capability – moving to the left of the spectrum rather than reacting to the right
  - Eg. digital disruption – Uber challenging the highly regulated taxi industry
- Inter-operability between agencies needs to be called out
  - Eg. Defence has an obligation to do so – public policy and regulatory agencies would do well to learn from this. Eg. data-sharing is only achieved by aggregating / de-identifying agencies’ data
1. Knowledge Economy

Information market
(two is the data we seek – work out how you can collect it)

Issues

Compliance breeches

Risks

Organisational performance

Actuary data on performance allows you to understand likelihood and consequence

How do we formalise provision of data?

- MoU
- Contract
- Purchase

2. Malcolm Sparrow

- Break big problems down – parse, using data analysis (ie. this is the data analysis function)
- Approach as project(s) management
- This enables large regulatory organisations to become much more flexible and agile
- Non-portfolio/agency approach
3. Investment Development Model (NZ)

Eg. health system

So, apply data analytics to the secondary population to help you work out how to keep primary populations out of the tertiary level (operating rooms, etc).

Three data stories:
1. Collect
2. Analyse
3. Leads to targeted intervention

*The word “risk” is an early Italian word meaning “to dare.”*
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References for Outcome and Risk-Based Approach to Regulation

Reports, policies and guidance notes from Australian jurisdictions

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NSW Department of Premier and Cabinet, July 2014, Guidance for regulators to implement outcomes and risk-based regulation.


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Risk-based compliance and enforcement


Baldwin, R., Black, J. Really responsive regulation, 2007 (United Kingdom).
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Outcomes-based reporting


Other References

AELERT (The Australasian Environmental Law Enforcement and Regulators Network), 2013, Principles and considerations for using risk assessment in environmental regulatory agencies.


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