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Governing Regulatory Systems: the UK and Australian experiences compared

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Introduction

In both Britain and Australia broad-based reform programs aimed at reducing the regulatory burden and improving the quality of their regulatory systems and the resulting output of regulation have been in place for several decades. Within that ongoing reform context both countries have had in place formal regulatory impact assessment (RIA) systems that aim to ensure the minimum appropriate, best quality regulation. In Australia in 2006 and in Britain in 2007, reports were released by the British and Australian Commonwealth governments in relation to their respective RIA (Regulation Taskforce 2006, Better Regulation Executive 2006). While both reports recognised the value of the RIA processes in place, both also indicated shortcomings and put forward a number of recommendations for their improvement. The bulk of the recommendations were accepted and revised RIAs incorporating the recommended changes were implemented in Australia in November 2006 and in Britain in 2007 (Australian Government 2006a, Australian Government 2006b, Office of Best Practice Regulation 2007b, Better Regulation Executive 2007a). Similarly, both sets of recommendations were implemented within the context of a broader set of regulatory reforms (COAG 2007, Department for Business Enterprise and Regulatory Reform 2007a).

The aims of this paper are to: one, identify and compare the motives for the reforms, which is considered in the first section; two, in the second section compare a selection of the major reforms endorsed and implemented; three, in the final section examine the role of the national audit offices in relation to regulatory performance and assessment. The paper argues that while the reforms to the systems in Australia and Britain have similar objectives there are a number of significant differences, including the roles of their respective national audit offices in relation to regulatory assessment and performance.

Reforming established regulatory impact assessment processes: motives

The Australian motives

The Australian motives for reforming its RIA can be found in two major sources. The first is a decades long, continuing concern for Australia's economic performance and, as a result, a constant focus on factors that might promote or hinder that performance, especially at the microeconomic level. The second source is an increasing recognition of the inadequacies of the existing RIA system, resulting in what was seen as an often unnecessary proliferation of poor quality regulation, despite a number of major reforms intended to strengthen the process that had been introduced in the period 1996-98 (Carroll 2008). Four major inadequacies were identified: there was inadequate consultation with business; a lack of analytical capacity and expertise,

especially in regard to cost benefit analysis and risk assessment; the RIA process did not prevent inadequate regulations being submitted to, and accepted by, decision makers and Cabinet; there was a lack of reliable regulatory performance indicators (see Regulation Taskforce 2006).

The recognition of inadequacy was most evident in the annual reports on regulation of the Commonwealth Government's Productivity Commission and took more public and vocal shape in the increasing criticisms of peak industry associations, criticisms fuelled, at least in part, by the reports of the Commission (see, for example, ACCI 2005, BCA 2005, Productivity Commission 2005). In addition, there was increasing pressure from the state governments, largely under the control of the Australian Labor Party, and notably from Premier Bracks of Victoria, to launch what they described as a third wave of reform, including reforms to regulation and regulatory processes, within the context of the Council of Australian Governments (see, for example, Bracks 2005, COAG 2007).

The British motives

As with the Australian situation, the first source of motivation for the recent reforms to the British RIA process was a constant concern to maintain and enhance economic performance, including a concern to ensure that the least possible burden of costly regulation was imposed upon business. The second source of motivation again was similar to that in Australia, in the shape of continuing criticism of the existing RIA process from business, particularly the British Chamber of Commerce and its annual regulatory 'Burdens Barometer', purporting to measure the costs to business of new regulation, and the many reports on various aspects of regulation from the Better Regulation Commission (BRC, formerly the Better Regulation Taskforce) (see, for example, Chamber of Commerce 2007, Better Regulation Commission 2007). In addition, the reports on RIAs of the National Audit Office, an independent body reporting directly to Parliament, were of particular importance as they constituted a respected source of advice separate from the Government of the day - and they were constantly critical of varying aspects of the RIA process (see, for example, NAO 2001, 2007).

The third source of motivation in the UK, closely linked to the second, was a more general desire to improve the regulatory environment for business, including the reduction of administrative burdens. This desire can be seen, for example, in the Government's very public commitment to reduce administrative burdens by 25%, and to reduce by 25% the cost of the administrative burden imposed by the European Union's regulatory requirements (Department for Business Enterprise and Regulatory Reform 2007a: 7). Hence, any reform that could help identify and reduce costs to business, such as those recommended by the Business Regulation Executive for the reform of the RIA, was likely to be well received by the Government.

The motives compared

As noted, several of the motives leading up the acceptance of the reforms to the RIA systems in both the UK and Australia were very similar, notably one, the general concern to maintain and enhance economic performance, especially by reducing the costs of regulation for business, and two, the growing criticisms of the performance of the existing RIA systems. While governmental concern for economic performance is probably as old as government itself, its increasing focus on microeconomic

performance and the impact of regulation on business is relatively new. It is a focus that emerged strongly in the USA in the 1970s and that was taken up in the 1980s, to varying extents and at varying paces, by its OECD colleagues, following the painful experience of stagflation and constant encouragement by the USA in the OECD and other international economic institutions (OECD 1987).

In regard to the performance of their RIA systems, a further similarity lies in the important influence of the advice of two relatively independent bodies, the UK's National Audit Office and Australia's Productivity Commission, both of which repeatedly stressed the weaknesses of the existing processes. In turn, the credibility of their advice and its acceptability to the respective governments was enhanced by the OECD's constant and articulate support for the improvement of RIA systems and continuing regulatory reform (OECD 2007). Both governments make regular reference to OECD advice in relation to the economy, especially to the high, comparative rankings they have received from that body for their microeconomic reform efforts (see, for example, Department for Business, Enterprise and Regulatory Reform 2007a: 10, Minchin 2006: 20).

The reforms and their prospects

In Australia in 2006 and in Britain in 2007, new reports were released by the British and Australian governments in relation to their respective RIA (Regulation Taskforce 2006, Better Regulation Executive 2006). It is these reports and the governments' responses to them that are focused on in the remainder of this paper. While both reports recognised the value of the RIA processes in place, both also indicated shortcomings and put forward a number of recommendations for their improvement. The bulk of the recommendations were accepted and revised RIAs incorporating the recommended changes were implemented in Australia in 2006-07 and in Britain in 2007 (Australian Government 2006a, Australian Government 2006b, Office of Best Practice Regulation 2007b, Better Regulation Executive 2007a). Similarly, both sets of recommendations were implemented within the context of a broader set of regulatory reforms (COAG 2007, Department for Business Enterprise and Regulatory Reform 2007a).

The reforms

In summary, the reforms accepted and implemented by the Australian Government were intended to:

- Improve the extent and quality of consultation with business in regard to regulatory proposals.
- Improve the analytical capacity and expertise of those responsible for regulation.
- Ensure that inadequate regulatory proposals were not accepted by implementing a set of required standards and processes, instituting a procedural barrier or gatekeeper that would prevent inadequate proposals reaching Cabinet, including a minister with designated responsibility for overseeing the government's regulatory processes and reform program adding political 'muscle', to the reform RIA process (Regulation Taskforce 2006, Office of Best Practice Regulation 2007b).

The British reforms, in summary were:

- A change in the name of the process, from RIA to Impact Assessment (IA).

- A simpler more transparent process using a revised template for documenting IAs.
- The development of an online database of all IAs to allow greater public scrutiny.
- A strengthened Ministerial declaration accompanying IAs to bolster the quality of the analysis in IAs, supported by improved arrangements within departments.
- Encouraging IAs to be undertaken earlier in the policy process when their results can be more influential.
- Revised guidance for policy makers to make it easier for them to produce high quality IAs focused on the burden of the regulations they are developing.
- An increased emphasis on post-implementation review, with the IA being more transparent to stakeholders and policy-makers (Department for Business, Enterprise and Regulatory Reform 2007b, National Audit Office 2007: 3).

Changed settings and their impact on the reforms

In the short period since the recommended reforms to the respective RIAs were, for the most part, accepted, there have been significant changes to the relevant institutional settings and machinery of government situations with clear implications for their respective processes. In Britain two changes have the potential to impact, possibly adversely, on the new IA process, the creation of the Business Council for Britain and the move of the Better Regulation Executive from the Cabinet Office to the new Department of Business, Enterprise and Regulatory Reform (BERR).

On taking office as Prime Minister Gordon Brown replaced the Department of Trade and Industry with a new Department of Business, Enterprise and Regulatory Reform (BERR). The Better Regulation Executive (BRE) formerly a unit within the Cabinet Office, was transferred to BERR, along with its existing functions, responsible to , Baroness Shriti Vadera. It is difficult to judge the precise significance of this development. On the one hand it suggests that the status and importance of the BRE and the associated IA process has been somewhat downgraded, given its relocation from the powerful Cabinet Office to a line department and a non-Cabinet minister within the BERR portfolio. This, in turn, might lead departments to reduce their efforts to produce good quality IAs. Yet, if accurate, this view seems to contradict the intent of the Government's establishment of the new Business Council for Britain, unless one adopts the somewhat cynical view that the new Council is merely a symbolic gesture, aimed at appeasing business pressure. Whatever the case – and it will take some time before a final conclusion can be drawn – the move to BERR, combined with the recent review and resulting creation of the IA process has caused some confusion, as alluded to in a recent NAO report (National Audit Office 2007: 3). In 2007 a new Australian Labor Party Government under Prime Minister Kevin Rudd came into office. It was committed to a continuing program of regulatory reform, including those put forward by the Taskforce on Regulation in 2006, arguing that the Howard Government's had failed to continue the microeconomic reform process instigated by Labor Governments in the 1980s and 1990s, with the result that the regulatory burden had grown and Australian productivity had fallen (Emerson 2007). In relation to the RIA process three significant changes were introduced in late 2007 that signified the new Government's reform commitments: one, the renaming of the existing core Department of Finance and Administration as the Department of Finance and Deregulation (DFD); two, the transfer of responsibility for regulatory reform from Treasury to DFD; three, the relocation of the Office of Best Practice Regulation (OBPR) from the Productivity Commission to DFD, within its Financial

Management Division, with a new Minister Assisting the Finance Minister on Deregulation, Dr Craig Emerson.

In essence, the three changes constituted a centralisation within one organisational location of the previously separate areas largely responsible for regulatory reform in the Commonwealth administration. Moreover, the DFD, with its long tradition of rigorous assessment of the budgets and financial management practices of the line departments, was in a position to add both experience and increased competence to the scrutiny of departmental RIAs. The decision to use the term 'deregulation', in the Department's title is significant, implying a commitment to cut what many see as the increasing regulatory burden on business, not merely to engage in regulatory reform. It sends a clear and very sympathetic signal to the peak business associations and the Productivity Commission that had been arguing for more effort in this regard, although the extent to which deregulation actually occurs remains to be seen.

Thus, in terms of institutional setting for the operation of RIAs, both the British and Australian governments have moved in the same general direction, by embedding responsibility for the process in a departmental context. It could be argued that there the similarity ends, for the DFD is a core executive department with considerable authority and power in relation to line departments, while BERR is not a member of the core executive and its power and influence remains to be seen, but is unlikely to be as wide-ranging as that of the DFD. This might imply, further, that the influence of those pushing for more effective regulatory reform and impact assessment in British government is on the wane. However, the Blair Governments paid a great deal more attention to regulatory reform in the 1998-2007 period than did those of John Howard and it could be argued that the resulting reforms, including those to the RIA, have become more firmly embedded in British departmental culture, obviating the need for the core executive to drive their acceptance. Indeed, there was and to date still is considerably greater ministerial attention to the quality of regulation and the RIA process in the British context. This is indicated, for example, by the establishment and continuing existence of the Cabinet's Panel for Regulatory Accountability, chaired by the Prime Minister. While its exact role and influence was and is uncertain, the establishment of the Panel sent a clear signal to all departments and their ministers as to the importance attached to the RIA process by the Prime Minister and his most senior colleagues, hopefully encouraging the submission of better quality proposals.

Consultation reforms

In regard to the role of consultation in the RIA process a first examination of the reforms suggests that in general the bulk of the British reforms in this area are of a lesser magnitude than the Australian, as indicated in the two key sources (Australian Government 2006b, Better Regulation Executive 2006, 2007c). In Australia consultation was to be improved by:

- Adopting a mandatory, whole of government policy on consultation with business.
- Requiring the development and circulation to interested parties, including business, of a policy 'Green Paper', for major regulatory proposals.
- Broadening an existing business-focused website to allow registration of businesses prepared to be consulted on particular regulations and to automatically notify businesses and government agencies of consultation processes in areas where they have registered an interest.
- Requiring all regulators to issue protocols on their public consultation procedures that are consistent with the new, whole of government policy on consultation.

- Encouraging all regulators to establish consultative bodies in order to enhance consultation with stakeholders.
- In general, encouraging regulators to appoint relationship managers to facilitate cost-effective interaction with businesses with which they have frequent dealings.

The British report, in contrast, makes little mention of consultation in any of the above respects, for the simple reason that it had already introduced most of the Australian changes, in one form or another. It had, for example, introduced a whole of government Code of Practice on Consultation in 2001 and revised it in 2004. In 2007 it again revised it, but in a separate report, applicable throughout Government, including the RIA process (Department for Business, Enterprise and Regulatory Reform 2007c). In Australia there was no whole of government policy on consultation in Australian Commonwealth Government until the Howard Government's acceptance of the Taskforce on Regulation's recommendation for a whole of government policy on consultation in relation to business, based on the UK example (Australian Government 2006b: 78, Office of Best Practice Regulation 2007a). Indeed, most, if not all of the Australian changes were based, at least in part, on the existing British practices, a not uncommon phenomenon (Canberra Interview 2007). What is of concern is that the earlier attention paid to improving consultation with business in Britain does not seem to have improved to any marked extent the quality of regulatory outputs or a reduction in the burden of regulation. This suggests that the Australian changes might be subject to the same fate.

While the British reforms are less significant in relation to consultation, two of the new changes might lead to greater transparency and, in turn, to more effective consultation that is enabled by the greater business and public knowledge that would result from the transparency. The first is that related to the intention to develop an online database of all IAs to allow greater public scrutiny, making access easier for business and other interests and, hopefully, more informed contributions to the post-implementation assessment of the regulation in question. The knowledge that IAs are so easily available to potentially critical scrutiny might also act as an incentive for those preparing IAs to strive for a higher quality of analysis and recommendation – assuming that departments make the appropriate resources available. However, it has been increasingly easy to access IAs on departmental websites in Britain for some years and, to date, this does not seem to have resulted in any significant increase in the extent or quality of consultation and resulting regulation.

The second change is, apparently, an increased emphasis on post-implementation review (Department for Business, Enterprise and Regulatory Reform 2007b). The purpose of such review is to identify whether the aims of the regulation are being achieved in practice, with the information available to policy makers and stakeholders. The assumption is that, again, this will enable more meaningful consultation with business and other groups that are better informed as to actual outcomes. Unfortunately, on examining the details of the new IA system the authors could not identify any significant changes in either the Impact Assessment Guidance or Impact Assessment Toolkit documentation provided to departments in relation to implementation (Department for Business Enterprise and Regulatory Reform, 2007e, 2007f). Both documents have been rephrased and are shorter, but indicate no significant change in terms of technique or approach.

Hence, presumably, the change referred to will take the form of increased pressure on departments to improve their existing systems of post-implementation review, combined with a more rigorous assessment of the descriptions as to how such reviews will be undertaken. However, implementation, monitoring and review plans were required under the previous RIA system and, again, did not seem to result in more effective consultation and better quality regulation. As the National Audit Office noted in its most recent report

There continues to be an unstructured and ad hoc approach to post-implementation review across all departments. The Department of Health and the Department for Communities and Local Government have begun to develop a more systematic approach to evaluating the impact of policy changes, but have not yet begun a rolling programme of reviews. Our census of departments highlighted resource constraints and time pressure as the main reasons why reviews were not more widespread (NAO 2007: 3).

It did note that many departments were seeking to improve their systems for post-implementation review, with several indicating that pressure from external stakeholders was an incentive to complete reviews, so it is possible that improved performance will result in the medium to longer term (National Audit Office 2007: 22-3).

While there can be no criticism of the general need for effective consultation with business in the development and implementation of regulation, neither the British or Australian reports seem to have appreciated the irony of requiring more extensive consultation, with its implication of enabling more effective business participation in government, at the same time as they were suggesting that the existing, limited, consultation practices had resulted, in part, in too much inappropriate regulation from a risk-averse society. Logically, increased consultation, at least without appropriate safeguards, might result in even more inappropriate regulation. It seems to have been felt, perhaps, that business groups were not so risk-averse, that their more effective participation would lead to greater business influence and, hence, less and better quality regulation. While a cynic might feel otherwise, and history suggests that the bulk of existing regulation owes its origins to proposals from the business sector, the call for more systematic consultation is appropriate, given the somewhat surprising lack of consultation identified (see, for example, a survey undertaken by the Australian Public Service Commission that found that only twenty five per cent of regulatory agencies had engaged with the public when developing regulations). This is provided, of course, that safeguards are built in to the system to ensure that those being consulted do not 'capture' the regulators to the extent that their views become those embodied, untested, in regulation (Regulation Taskforce 2006: 152). In part to provide such a safeguard, the Australian reforms recommended the establishment of standing consultative bodies consisting of representatives from a range of different types of stakeholders, for each regulation with a major impact on business (Australian Government 2006a, 165).

Improving analytical capacity and the quality of regulation

Both the British and Australian reforms were intended, in part, to improve the analytical capacity and expertise of those responsible for regulation, with the aim being to improve the quality of assessments and, in turn, the resulting regulation. The key British reform was the requirement for a strengthened Ministerial declaration to accompany each IA, supported, in turn, by improved 'arrangements', within

departments. The BRE, in its consultation document proposing changes to the RIA process had suggested that in addition to the existing requirement that ministers sign off on the final RIA that accompanies each regulatory proposal, that the Department's Chief Economist also be required to sign off that

I have read the Impact Assessment and I am content the evidence base supports the proposed costs, benefits and impact of the policy options (Better Regulation Executive 2006: 15, 22).

The assumption was that, in the case of the Chief Economists, this requirement would lead them only to sign off for IAs whose evidence base did support the policy options, in turn acting as an incentive for those undertaking the assessment to achieve the appropriate standards of performance.

While the BRE's consultation document does not mention the point, there is a clear implication that the requirement for ministerial sign off had not helped improve the quality of RIAs, so that it needed further support. The BRE received mixed responses to the proposal and, as a result, decided that the improvement of the analytical quality of IAs could 'be better addressed', by amending the ministerial declaration and by improving internal management methods in departments, dropping the proposed requirement for Chief Economists to sign off (Better Regulation Executive 2007a). The amendment was not dramatic, merely requiring a ministerial declaration after the consultation stage IA, indicating that

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options (Better Regulation Executive 2007b).

And, in addition, a slightly modified declaration was required after the final IA,

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and (b) that the benefits justify the costs (Better Regulation Executive 2007b).

It is difficult to see how these modest changes in wording will bring about any significant improvement in analytical quality compared to the previous ministerial sign off. Improvements may, however, be achieved as a result of greater involvement of departmental economists and analysts in preparing the IAs, although this is yet to be demonstrated.

The improved 'internal management methods', referred to above took the form of 'draft advice', from the Cabinet Office to departments indicating that

..departmental processes should include a requirement that all submissions to Ministers, or other statutory decision makers, that address policy matters that require an impact assessment should include a contribution from the Chief Economist (Analyst) that summarises the key findings of the impact assessment and confirms their validity (Better Regulation Executive 2007b).

It also suggested a number of ways in which more rigorous assessment could be achieved, though these were not required, such as the use of internal or external panels of experts to advise on assessments.

The requirement that departmental Chief Economists or the equivalent summarise findings and confirm their validity might have some value in reminding recalcitrant departments that such a contribution was necessary. But, is it likely to improve the quality of IAs? Assuming that the act of confirming the findings of an assessment where they are not in fact valid, or confirming them by mistake, has a negative impact

on the status and future career of Chief Economists, then the requirement might have a positive impact. However, there is nothing to prevent Chief Economists confirming the validity of findings 'subject to the limited evidence and analytical resources available', a confirmation of little value in so far as the improvement of assessment is concerned. Indeed, it would be a most unwise Chief Economist that did not sign off in such a fashion, given that all assessments are, in practice, limited by the available evidence and analytical resources. In essence, the new requirement seems likely to have little impact.

As with consultation, there were several more changes introduced in Australia than in Britain regarding the improvement of analytical capacity, an area regarded as the weakest aspect of RIA performance by the National Audit Office and the Regulation Taskforce (National Audit Office 2007: 7, Regulation Taskforce 2006). The major changes were:

- The introduction and mandatory use of a Business Cost Calculator software package for costing regulatory burdens on business.
- The recommendation that departments responsible for regulation build a capacity, or increased capacity for cost benefit and risk analysis.
- The provision of training and technical support in cost benefit and risk analysis by the OBPR.

Again, the reason for the relative lack of changes in Britain was that similar changes had been introduced at a slightly earlier date on the basis of earlier reviews.

The British experience with its Administrative Burdens Calculator, although of limited duration, suggests that its impact on the quality of RIAs will be limited, at least in the short run. The National Audit Office, for example, in reviewing nineteen recent RIAs found that ten used primarily qualitative data to estimate costs and benefits, which is a weak evidence base on which to develop regulation, and four had serious weaknesses, with eleven providing only descriptions of the data, rather than an economic evaluation. The primary causes identified were: reliable data was often not available; that further research would not be practical or cost effective; that there was either insufficient involvement by economists or it was too late in the process and limited in scope (National Audit Office 2007: 11-14). The lack of relevant skills, experience and data was also recognised in the Australian context and departments have been urged to increase their staffing capacities in relation to the costing of proposed regulations, and the OBPR has been given a more important role in providing training in cost benefit analysis and support for departmental use of the Business Cost Calculator (Productivity Commission 2006).

Procedural barriers

A continuing concern with the poor analytical quality of several aspects of RIAs also lies behind the new procedural barriers instituted as part of the Australian reforms. In essence, every six months departments are now required to provide to the OBPR:

- a list of all new and amended regulations made, including: whether preliminary assessments were undertaken; whether compliance costs were quantified using the Business Cost Calculator (BCC) or an approved equivalent; and whether an adequate RIS was prepared;
- for matters of major significance (as determined by the OBPR, not the department), departments are to report if an initial policy green paper was made available to relevant parties; and, for complex regulations, a report on whether they were tested with relevant business interests, including through exposure drafts;

- a list of all new and amended regulation granted ‘exceptional circumstances’ by the Prime Minister so they did not have to undertake an RIA;
- a list of all post-implementation reviews undertaken;
- from 2012, a list of all five-yearly reviews undertaken (Australian Government 2007).

In addition, the OBPR will receive all Cabinet submissions and memoranda proposing regulation and, in turn, report to the Cabinet Secretariat on the extent to which the submission complies with RIA requirement, notably as to whether the level of analysis is adequate. The Secretariat then performs a gate-keeping role by not circulating final Cabinet submissions or memoranda that do not contain adequate RIAs or compliance cost assessments, unless the Prime Minister deems that exceptional circumstances will apply. Even in this latter case, the regulations granted exceptional circumstance status will be required to undertake a post-implementation review similar to a RIA, as described below.

On the basis of the six monthly departmental reports, where the OBPR detects a regulation may have been introduced or amended without the appropriate level of analysis being undertaken, it will determine, following consultation with the department, whether or not the requirements have been met. Where they have not, the department will have to undertake a ‘post implementation review’ and, in addition, it will be reported as non-compliant in the OBPR’s public, ‘Best Practice Regulation Report’ (Australian Government 2007: 36-7). The post implementation reviews will, in essence, undertake the entire requirement for a RIA and are evaluated by the OBPR.

These new ‘procedural barriers’, do send a strong message to departments as to the importance with which the Prime Minister views the revised RIA process and the need for quality regulation. Similarly, it makes it more difficult, if not impossible, for a minister’s inadequate regulatory proposal to be ‘pushed’, past the gatekeepers in the OBPR and the Cabinet Secretariat. However, it also places considerable, if constrained power in the hands of public servants in the OBPR and the Cabinet Secretariat to argue for changes in a regulatory proposal. While the senior public servants in the Cabinet Secretariat have had considerable power in this regard for many years, for those in the OBPR it is a substantial increase in their power, at the expense, it could be argued, of the power of ministers, in contrast to the British IA process.

The role of national audit offices

In Britain the National Audit Office (NAO) has played an influential role in relation to the recent reforms to the impact assessment process by virtue of a series of reports on the quality of those assessments. Hence, in this section we provide a brief, comparative examination of the role of the national audit offices in Australia and the UK, although focusing for the most part on the latter.

The supreme audit institutions (SAIs) of the UK and Australia are similar in terms of their independence, statutory remit and work. Their involvement in the audit and evaluation of regulatory process and agencies does, however, vary. In Britain, the NAO has had a role in reviewing impact assessments since 2001 (National Audit Office 2001). The report assessed the way in which Government departments used

impact assessments on the basis of an examination of twenty three published impact assessments from across government. The House of Commons Committee of Public Accounts considered the NAO report in 2001. The report had found that the quality of impact assessments varied greatly between government departments and also identified three main characteristics of an effective impact assessment, which were:

- starting the process early;
- consulting effectively with those affected; and
- appropriate analysis of the likely costs and benefits.

The Committee concluded that an evaluation of even a selection of impact assessments

...should encourage departments and agencies to give sufficient attention to preparing and consulting on [impact assessments] in accordance with best practice and help to raise confidence in the process (Public Accounts Committee 2002).

It went on to recommend that the Cabinet Office should work with the NAO to 'develop a programme of external evaluation.

In response to this recommendation the then Cabinet Secretary invited the NAO to annually evaluate a sample of impact assessments to identify good practice, with the goal of improving performance across government departments. The NAO agreed to this request and an annual report has been published each year since 2004, although the approach used has evolved. The first two examinations focused on a sample of ten impact assessments from a variety of Whitehall departments and primarily looked at their quality and the processes for development. In 2005/06, the focus shifted away from examining only the quality of impact assessments and focused in addition, on how selected departments were embedding impact assessment into their processes and culture. The most recent report, published in July 2007, continued the departmental focus and further expanded the scope to include a consideration of the source of the policy proposal at the front end, and post implementation review and the use of IAs in the parliamentary processes at the back end.

The small sample sizes and the inclusion of various departments means that the NAO has not found it possible to argue that there has been a definitive improvement in the quality of impact assessments over the past four years. Perhaps a more pertinent trend, however, is that the same areas of concern (ie: inadequate analysis of costs and benefits, a relative lack of focus on monitoring and post implementation review) continue to be identified. This suggests that the work of the NAO, and indeed the BRE and others, to increase the quality of impact assessments has had limited influence.

At a departmental level, however, anecdotal evidence suggests that NAO's reports on impact assessments has provided a catalyst for an increased focus on better regulation and the development of higher quality impact assessments. The reports have been used to raise awareness with both senior management and policy teams and it could also be argued that the possibility of an NAO examination may provide an incentive for departments to improve their performance although this should not be overstated.

The NAO reports are frequently cited by stakeholders of the regulatory reform agenda. The BRE, for example, extensively cited the NAO's work as evidence supporting their 2006 proposals to reform the impact assessment process (Better Regulation Executive 2006). On this basis it is therefore reasonable to argue that the report have

had at least some degree of influence which has resulted in improvements to the impact assessment system. The strong interest from external stakeholders has also ensured a continued focus on the benefits of robust impact assessments and the need to strive for continual improvements in the area.

As an evaluation of the policy making processes, NAO's work on impact assessments is not a traditional area of work for a SAI. Moreover, the degree of overlap and interaction between departmental policy development and related political processes increase the complexity and difficulty of such work and has resulting implications for the breadth and depth of such examinations. In addition, the statutory remit of the NAO which precludes it from examining government policy, imposes some limitations on the extent and depth of analysis it can undertake, and the need for sensitivity in its reports. Only full and final impact assessments, for example, for which the policy has been approved by the Parliament, are selected as part of the NAO sample, thus ensuring that the NAO does not influence policy development – although its reports can and do influence future amendments to policy, assuming their acceptance by Government and Parliament. The examinations are, therefore, completely ex-post and, as highlighted by the NAO, there is a resulting absence of any real time scrutiny since the BRE and the Cabinet's Panel on Regulatory Accountability have limited involvement in the majority of policy proposals and accompanying impact assessments (NAO 2007).

In Australia, the Australian National Audit Office (ANAO), in contrast, does not have any current role in evaluating the federal government's regulatory impact assessments. This is not unusual in relation to impact assessments still under active consideration by departments, given the political sensitivity of government policy development processes. Instead, as noted above, the scrutiny of 'active', impact assessments is fulfilled by the Office of Best Practice Regulation. However, the ANAO may have the capacity to evaluate, as with the NAO, final impact assessments, subject to Parliamentary authority. To date this capacity has not been explored. However, given that the previous placement of OBPR within the Productivity Commission gave it a degree of independence from departmentally-based policy development processes, and the possible impact of its recent transfer to the DFD on that perceived independence, then it could be argued that the ANAO, with its greater degree of independence, might have a role in relation to impact assessments.

Both the ANAO and the NAO have a role in the wider evaluation of the performance of regulatory agencies, as with all government departments and agencies. The ANAO examines the efficiency and effectiveness of a variety of regulatory agencies as part of its normal performance audit programme. In Britain, similarly, the NAO has a small team dedicated to examining the performance of economic regulators and regulatory agencies can also be examined as part of the general Value for Money work programme. An examination of the delivery of the regulatory reform objectives by either institution however, has yet to be undertaken.

Conclusion

Both the British and Australian governments have been undertaking similar, though not identical programs of regulatory reform over the last decade. Within that context they have attempted, repeatedly, to improve the quality of their regulation making

processes, focusing on their RIA in the 2006-07 period. Their motives have been similar, with the important difference being the British Government's commitment to reducing administrative costs by 25% by 2010, a powerful incentive for any regulatory reform seen as likely to reduce costs, including changes to RIAs. In the absence of such a commitment it is likely that the Australian reforms will be less urgently pursued, perhaps with a lesser impact.

In regard to the recent changes of government in both countries those introduced by the Brown Government seem unlikely to bring about significant change or improvement in the British RIA system, while those introduced by the Howard, then Rudd governments suggest there might be some modest improvement in the Australian RIA system. However, the impact of the RIA system in Britain seems to have been somewhat greater than in Australia, for it has been accompanied by a more extensive and influential monitoring and review system, including the NAO, the Panel for Regulatory Accountability and now the House of Commons Regulatory Reform Committee. The role of the NAO is particularly interesting and, there is scope to consider a system of independent scrutiny and Parliamentary oversight to improve the quality of RIA and of regulation in Australia, mindful of the point that what is appropriate in one country's institutional context is not necessarily so in another's. As ever, this ought to be considered in terms of the policy making processes of the individual countries.

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