Comprehensive Assessment of Regulatory Programs: Lessons from a Rapid Review

January 2019

Abstract

Regulation — rules where government has an expectation of compliance — is ubiquitous in modern society. From food safety to environmental protection, Canada has over 2,600 federal regulations enabled by 800 Acts which are currently under review through the Government of Canada's Horizontal Regulatory Review Initiative. We present a synthesis of how to assess regulatory programs in a horizontal and comprehensive manner. This paper addresses several critical issues relevant to the Canadian review. First, we describe different levels or scopes of review (regulatory systems, bodies, and processes, and regulations), then outline principles to make reviews successful within a chosen scope. Second, we provide a detailed discussion of the experiences of Australia, the European Union and the United States in performing regulatory reviews, outlining the process and outcomes, and present lessons for Canada. Third, we summarize tools to use in horizontal reviews, drawing on the literature examined and lessons from jurisdictional case studies.

Introduction

Regulation — rules where government has an expectation of compliance — is ubiquitous in modern society. As an example, Canada has over 2,600 federal regulations enabled by 800 Acts involving 50 departments and agencies (Treasury Board of Canada Secretariat 2018). Given the amount and scope of interactions between businesses, individuals and governments ruled by regulation, the quality of regulation and regulatory processes are important for economic growth and overall societal wellbeing. Therefore, it is appropriate for governments to comprehensively review regulatory systems on a periodic basis, ensuring the systems meet policy objectives and do not unnecessarily constrain economic activity. Reviews of regulation typically focus on reducing regulatory burden by reducing inter-jurisdictional overlap and improving the quality of regulation. Moreover, governments should have processes for quality-checking regulation and regulatory processes independent of comprehensive review initiatives.

We review the extant literature on how to assess regulatory programs in a horizontal and comprehensive manner that is relevant for government regulatory reviews. We describe relevant conceptual frameworks and policy design principles identified in academic and policy literatures on the topic of effective regulatory governance, as these form the basis of reviews of the quality and effectiveness of regulatory systems. The methodology used for this paper is a rapid review of peer-reviewed articles, grey literature and government documents. Australia, the European Union, and the United States were examined to find learnings from the jurisdictions' regulatory reform initiatives. The recommendations and changes made are informative for jurisdictions considering regulatory system reviews.

We address several critical issues. First, we describe different levels or scopes of review (reviewing regulatory systems, regulatory bodies, regulatory processes and regulations), as well as principles to help make reviews successful within a chosen scope, drawing on the relevant literature. Second, we provide a detailed discussion of the experiences of Australia, the European Union and the United States in performing regulatory reviews, outlining the process and outcomes, and present lessons from these case studies. Third, we outline tools to use in horizontal reviews suggested by the literature and the experiences of Australia, the European Union and the United States.

The Australian example gives insight into institutional features that support regulatory reform and good regulatory governance. Notably, reviews and reforms are coordinated through a central agency, maintaining a whole-of-government approach and ensuring policy consistency. In addition, federal and state cooperative processes support minimization of regulatory overlap. In the European Union, focus is on the principles of smart regulation and closing the policy cycle, linking prospective and retrospective assessments. Evaluation is used to inform new policy development, reduce policy overlap and thereby reduce regulatory burden. Recent reforms in the United States target reducing the costs of regulation. While individual regulations must pass a net benefit test, there is an overall regulatory 'budget' which constrains implementation, and is likely to have a net negative effect on overall welfare.

Six themes arise from the analysis. First, to the extent possible, governments should initiate reviews using a whole-of-government approach and include sub-national jurisdictions where possible. Second, support at the executive level of government is crucial for advancing a review agenda and ensuring learnings from the review process are implemented. Third, a mandated coordinating body for the review ensures policy coherence and consistency of evaluations across departments. Fourth, reviews should consider a wide variety of factors in the assessments, and include costs and benefits of policy action in the assessments. Fifth, reviews should prioritize policy overlap horizontally and vertically, as these are areas with the highest likelihood of regulatory overlap and potential regulatory inconsistency. Sixth, reviews should be based on

a clear and comprehensive set of metrics, based on principles of good regulatory governance, which are applied to all agencies.

Research Approach and Methodology

We summarize and synthesize existing knowledge, from academic and grey literature and policy documents, on reviewing regulations and regulatory bodies. The synthesis presents principles of good regulatory governance for assessing regulatory programs in a horizontal and comprehensive manner. We performed a rapid review of academic literature, grey literature and government policy documents. The review covered the topic of reviewing and assessing regulatory programs, specifically focusing on horizontal reviews. Second, we engaged in a detailed examination of three jurisdictions' experiences with regulatory review and reform.

Rapid reviews deliver a synthesis and overview of a literature or set of documents (Ganann, Ciliska, and Thomas 2010). Unlike traditional reviews, however, rapid reviews involve a shortened time frame and less comprehensive analysis (Grant and Booth 2009, Ganann, Ciliska, and Thomas 2010). Rapid reviews typically summarize what is known about a policy issue, and are frequently used to provide an evidence base for policy makers who require a quickly-produced summary to respond to emerging issues or specific timelines (Grant and Booth 2009). Rapid reviews are less exhaustive than systemic reviews, but do not necessarily sacrifice rigor and are typically more wide-ranging. We present results using a narrative approach, organizing the information around common themes. A narrative approach is appropriate here as the review resulted in a range of materials (theoretical and conceptual pieces, cases studies, reports, policy analysis, and policy statements) which need to be collated and presented in a logical way.

We utilized a broad search of various electronic databases in the rapid review (e.g. Google Scholar, EBSCO, Scopus) to identify relevant documents. The search involved using combinations of several keywords: "regulation", "horizontal review + regulation", "assess regulation", "evaluation + regulation", "regulatory governance", "evaluate regulation", "regulation + impact assessment", and "regulation assessment + [jurisdiction]". Sources were eliminated manually if they were deemed to be of too little relevance. A snowballing process was used to identify additional literature, whereby the bibliographies of retrieved sources were scanned, and we searched for works citing the retrieved sources. Grey literature was collected by examining the publications of think tanks and other organizations that produce reports in the field of regulation, as well as a more general internet search.

Australia, the European Union, and the United States were reviewed to find learnings from past regulatory reviews. This involved a more exhaustive review of relevant policy documents, government websites, and reports, and academic work where relevant. All three jurisdictions have a current policy goal of reducing regulatory burden. Australia was chosen because it has engaged in several reviews of regulation and its regulatory system over the past 20 years, resulting in academic work reviewing the regulatory changes and a large collection of policy documents. The European Union was chosen because of its approach to policy coordination and development, and a large academic and policy literature examining its policy framework. The U.S. was chosen because of its current approach to reducing regulatory burden.

Analysis and Results

We present the results in three parts. First, we explore lessons from the literature on different levels or scopes of review, as well as principles to help make reviews successful within a chosen scope. Second, we examine in detail the experiences of Australia, the European Union and the United States in performing

regulatory reviews, outlining the process and outcomes, and presenting lessons. Third, we describe tools to use in horizontal reviews suggested by the literature and the experiences of the three jurisdictions examined in detail.

The academic literature on policy appraisal suggests a four-part typology to research approaches (Adelle, Jordan, and Turnpenney 2012, Smismans 2015), that is useful in categorizing policy appraisal in practice. The four types are: design of appraisal tools and methods; performance (quality or effectiveness) of appraisal practices; evidence of policy change prompted by learnings from appraisal; and the politics (motivation) of policy appraisal processes (Adelle, Jordan, and Turnpenney 2012). As noted by Smismans (2015), these four research areas provide a broad categorization for types of regulatory program evaluation. Coglianese and Kagan (2007) characterize the research literature slightly differently: the process of creating regulation, including political and institutional aspects of decision-making; the process of enforcing regulations; the effect of regulation on businesses' behavior; and models of regulation (such as performance-based or prescriptive).

Before proceeding to the detailed presentation of results, it is worth addressing institutional and structural features of regulatory systems and policy frameworks that help to make policy reviews successful. A basic (if obvious) point is that clear policy principles adhered to by regulatory bodies and government agencies support a well-functioning regulatory system and provide consistent criteria for a review (Deshman 2011, Radaelli and Fritsch 2012). A second principle is effective and timely consultation across the policy cycle, which ensures stakeholder feedback is incorporated into the review in a meaningful way. Third, applying a whole-of-government approach to the review, which supports policy coherence, coordination and allows for identification of regulatory overlap (Leeuw and Furubo 2008). Fourth, multiple levels of governments agreeing upon and adhering to a set of principles outlining 'good regulation'. Finally, and perhaps most crucially, serious evaluations require external pressure to occur, and without pressure on the part of the public and political leaders, the practice of informed review and feedback is not guaranteed to continue (Deshman 2011, Meuwese, Scheltema, and Velden 2015). Relatedly, Smismans (2015) outlines four key objectives of ex ante and ex post appraisal that are relevant at all levels of regulatory review and analysis. These are ensuring evidence and learning; accountability, transparency and participation; policy coherence; and reducing regulatory burden.

Deshman (2011) examines the structural and institutional features that allow an inter-institutional horizontal review to take place, using as a case study the European Union's review of the World Health Organization's (WHO) performance during the H1N1 pandemic, precipitated by criticisms of the WHO's transparency and accountability. This specific example is relevant as Deshman explores an inter-institutional horizontal review; large-scale reviews like the one proposed by the Government of Canada (Government of Canada 2018) are inter-institutional in nature. Deshman finds four features support a horizontal review. First, a common standard of transparency or accountability to measure all agencies against. Second, executive levels of government supporting the review of existing processes, as they are the ultimate decision-makers. If the executive believes existing legislation is adequate, then a review will be difficult to conduct and is unlikely to result in substantive changes. Third, the review must take place at the same time for all institutions involved, to eliminate bias or sudden withdrawal of individual units. Lastly, all institutions must be open to facing criticism.

Højlund (2015) shows how internal and external factors shape an evaluation system for assessing policy learning and accountability, using the European Commission as a case study. He defines policy learning as "learning from past experience to improve policies and drive integration" and accountability as "pressure to hold the government accountable to institutions, corporations, and citizens." Højlund describes four types of accountability: hierarchical (internal accountability within government), legal (legal obligations),

financial (budgetary execution), and democratic (external accountability to the public). In examining the EU policy evaluation process, he finds financial and legal accountability overshadow the focus on policy learning, but that accountability can sometimes induce policy learning.

Considering the objectives of a policy review is helpful in framing what makes horizontal reviews comprehensive. Leeuw and Furubo (2008) propose four criteria of evaluation systems that can also be thought of as characteristics of successful systems. First, participants agree upon (or at the very least understand) the purpose of the evaluation and how the purpose will be achieved. Second, the evaluation process has a formal organizational structure and organizational responsibilities are assigned to each unit across government. As part of this structure, Leeuw and Furubo emphasize the importance of an agency within government to lead the evaluation and active involvement (using the information gathered and the evaluation's results) by other units. The third criteria advanced by Leeuw and Furubo is permanence of activity, such as through a continual policy process with set objectives. Finally, the fourth criteria is the presence of an institutional link between the evaluation activities and decision-making and implementation processes. That is, policy learning is also a result of the evaluation.

Scope of Review

There are several potential approaches to reviewing regulatory programs in a comprehensive manner. At the most macro level, governments can choose to review the *regulatory system* against broad policy objectives such as support for innovation or the principle of correcting market failures. Slightly less expansive, governments can review *regulatory agencies*: their scope, mandate, authority, and capacity to regulate effectively. Moving from macro to micro, governments can review *regulatory processes*: how regulations are developed and implemented, how firms and government interact through regulatory bodies, and how regulations are enforced. At the most micro level is reviewing the *stock of regulations*. In all cases, the review must utilize a set of criteria or metrics to evaluate the regulatory programs against. Coglianese (2012) notes that regulatory policy and regulations have similar goals: changing behaviour to reduce negative impacts or enhance positive impacts. The difference is in whose behaviour governments seek to change; with the former, regulatory agencies, and with the latter, businesses and individuals. Therefore, "anything that can be said about evaluating regulation will apply to evaluating regulatory policy" (Coglianese 2012).

As regulatory policy aims to change behaviour, evaluations of regulatory programs at a broader scale need to assess whether the programs result in the desired outcomes. These metrics should be comprehensive and flexible enough to provide equitable treatment across regulatory bodies. A review can also incorporate some or all of the elements listed above, as there is often overlap between 'levels' in evaluation.

Coglianese (2012) identifies three "core elements" of regulation: regulation (rules, implementation and enforcement); behaviour (responses to regulation); and outcomes (results of the behavioural change, anticipated and unanticipated). Based on this, Coglianese hypothesizes three potential definitions of the word 'evaluation' in the context of assessing regulatory policy: regulatory administration, behavioural compliance, and outcome performance. Regulatory administration refers to how effectively a regulation or regulatory policy is implemented by the relevant officials. Behavioural compliance evaluates the number of regulated entities who comply or not with the rule. Outcome performance assesses the costs and benefits of the regulations adopted. This can be based on an "indicator" (whether a policy worked) or "attribution" of positive results to the policy. These types of evaluation are also informative for the scope of a review, as they determine the metrics that regulatory programs are assessed against.

Assessing Regulatory Systems

A starting point for assessing regulatory systems is whether they adhere to principles of good regulation or good regulatory governance, which reflect consistency and policy coherence. Bull (2018) notes that there is no easy way design a regulatory system that can respond to evolving market forces; as technology, businesses and values change, the regulatory system is forced to adjust or stifle innovation. Bull stresses the importance of a regulatory system designed to correct legitimate market failures and to adjust the level of intervention as the market evolves. Moreover, a profound problem in policymaking and regulation is that market failures can be temporary: regulations that previously were eminently sensible are anachronistic as technology evolves. When reviewing regulation, it is important to consider that some implementation costs are now sunk, and deregulation will not result in any savings (Robinson 2018).[1] This may be true even when the market failure is no longer present. The deregulatory action may still be worth doing, it just may not result in substantive cost savings for governments or society.

Radaelli and Fritsch (2012) examine countries' practices for measuring the performance of regulatory policy and develop options for a set of indicators, leading to the OECD *Framework for Regulatory Policy Evaluation* (OECD 2014)[2]. Radaelli and Fritsch note the importance of design activities to ensure consistency in regulation, such as a standard cost model for estimating administrative burden and impact assessment or establishing a regulatory oversight body.

Stern and Holder (1999) discuss the theory of regulatory governance and its implications for institutional design, deriving six criteria for appraising the performance of regulatory frameworks.[3] First, whether there is clarity of roles and objectives: primary legislation should set out a clear definition of regulators' functions and duties. Second, whether the regulator has independence, and what are the constraints on the relationship between the regulatory body and government. Third, the accountability of the regulatory bodies, and whether there is a formal mechanism for regulated firms or other parties to challenge decisions. Fourth, the level of participation (formal or informal) of regulated firms and other parties in major decisions. Fifth, the transparency of the regulator's decisions and decision-making process. Sixth, the predictability of the regulator's functions and duties: how easily can they be changed and what is required?

Assessing Regulatory Bodies

The theory of regulatory governance is helpful in developing criteria for assessing regulatory bodies, as these agencies are directly affected by governments' regulatory frameworks. (Other entities are also affected, but more indirectly through regulators' actions.) Arguably, the overarching question and metric for evaluating regulatory agencies is whether strategic objectives vis-a-vis policy are achieved. That is, are regulatory bodies 'successfully' implementing policy by producing outcomes in alignment with their mandate? Subordinate key principles for assessing regulators include clarity of role and objectives, the level of autonomy, transparency, accountability, predictability of mandate, responsibilities and actions, coherence with other policy, and capacity to fulfill responsibilities (Stern and Holder 1999, Deshman 2011, Luchetta 2012, Parker and Kirkpatrick 2012, Smismans 2015).

As noted above, the work of Stern and Holder (1999) is relevant here. Specifically, evaluating regulatory bodies on their inclusivity in decision-making; the level of accountability, including a formal mechanism to challenge regulatory decisions; and transparency of decisions and the decision-making process. Coglianese (2002) suggests the courts as a mechanism for reviewing the legality of regulations. However, the Canadian experience suggests utilizing the courts in such a fashion is a lengthy process that could be better served by alternative mechanisms, such as quasi-juridical review boards.

Dunlop et al. (2012) note that regulatory agencies should periodically revisit existing rules to determine if they are still appropriate. This implies that part of a review of regulatory bodies should assess whether they have an internal self-evaluation process and whether it is followed. Relatedly, Parker and Kirkpatrick (2012), based on a literature review of measuring regulatory performance, argue that the principles of open government underpin good regulation and good regulatory governance. These principles (transparency, accountability, and consultation, among others) mean that regulation is responsive to the needs of those who are affected by the regulation, directly or indirectly. However, regulatory agencies must also ensure they are responding to *legitimate* needs of the regulated, balancing public and private interests. As an overall policy imperative is regulation that serves the public interest, 'open' regulation enables this outcome. Further, Parker and Kirkpatrick suggest utilizing these principles in regulation "[reduces] the risk of regulatory policy failure, [improves] policy consistency and [lowers] corruption" (Parker and Kirkpatrick 2012, 32). Finally, they acknowledge the role of open government principles in promoting trust. In addition, reviews of regulatory systems should include an assessment of opportunities for administrative simplification and streamlining regulatory processes, such as a one-window system for interacting with governments (Parker and Kirkpatrick 2012).

Carroll et al. (2008) assess the development and use of regulatory performance indicators (RPIs) in Australia over the period 1998-2006. Suggested performance indicators from a 1996 task force related to: transparency; accessibility; appropriateness; predictability; flexibility; lower cost to business; administrative efficiency; fewer and simpler forms; better instructions; reduction in perceived burden; and cultural change (Carroll 2008a). This led to the eventual adoption of nine performance indicators. The RPIs were used to assess the performance of government departments and agencies, and were seen as an important compliment to the Regulation Impact Statement (RIS) system, providing information on implementation of regulatory reform and allowing benchmarking of agency performance (Carroll 2008b). Carroll (2008a) concludes the value and use of RPIs was limited, as the RPIs were not outcome-focused. However, he notes that the primary intent of reform was to improve the quality of processes for developing regulation; in that sense, it is not surprising the RPIs focused on process rather than outcomes.

Assessing Regulatory Processes

There three different aspects of regulatory processes to consider when assessing their performance. How regulations are developed and implemented, how firms and government interact through regulatory bodies, and how regulations are enforced, are all aspects of regulatory process that are reasonable to consider separately.

When considering how regulations are developed and implemented, important features are the level of participation of stakeholders and the level of consultation, if there is clarity regarding the objective of the process, accountability (whether there is a formal mechanism for challenging decisions), risk assessment in decision-making, the presence of evidence-based analysis, the transparency[4] and predictability of decision-making, and whether the regulations themselves align with the agency's mandate (Stern and Holder 1999, Parker and Kirkpatrick 2012, OECD 2014). Further, an important consideration is whether good regulatory practices and processes contribute to improved quality of regulations (OECD 2014).

Parker and Kirkpatrick (2012) review literature attempting to measure the contribution of regulatory policy to improved performance, which speaks to the importance of best practices in the *process* of regulatory development. They argue that ex ante evaluation, such as regulatory impact assessment, has an important role in improving the quality of regulations. The improvement arises through the impact assessment process itself: the problem is analysed, alternative policy interventions are assessed, and positive and negative impacts of the policy choice are determined. That said, the quality of the regulation will be a function of

the resources devoted to the ex ante assessment and the level of agency and governmental support for such evaluations.

Parker and Kirkpatrick (2012) also emphasize the role of ex post evaluation in maintaining the quality of existing regulations. In particular, retrospective assessment ensures "regulations remain up to date, cost-justified, cost-effective and consistent and [deliver] their intended policy objectives" (Parker and Kirkpatrick 2012, 27). As noted above, also of relevance is consultation, transparency, and accountability in regulatory institutions. Parker and Kirkpatrick (2012) stress the role that these principles play in maintaining quality of processes, which in turn ensures regulations reflect the public interest.

In evaluating how firms and governments interact through regulatory bodies, the literature points to two key points. First, the role of public participation in the development and review of regulations. Second, interactions in compliance and enforcement. Coglianese, Kilmartin and Mendelson (2008) argue that when regulations are created in isolation from the public, they are not the most effective or accepted rules. Public participation improves the quality of regulations, increases the probability of compliance, and provides a case to review the regulation if necessary. Effective and comprehensive consultation can also increase the legitimacy of the regulatory process (Coglianese, Kilmartin, and Mendelson 2008, Luchetta 2012). Effective public participation is an important pillar of ex ante and ex post assessment of regulation. Embedding public participation in an ex post evaluation allows regulated parties and other stakeholders to inform regulators of how they were affected by the regulation (OECD 2012). This can strengthen analytical capacity within the regulatory agencies, by identifying unexpected impacts which can then be used to inform future ex ante and ex post assessments. However, when obtaining input from the public, policymakers should recognize possible sources of bias that can affect the outcomes of regulatory processes and the quality of subsequent regulation (Fowler Jr. 2014). Sources of bias relevant here are response bias (respondents may not be representative of the population) and strategic bias (respondents may act strategically to influence results in a favourable way, based on their perception of the purpose of the survey or consultation process).

Technology can play an important role in improving public participation and supporting enforcement, by streamlining and improving regulatory management, providing an alternative input process, granting regulators' staff the capability to analyse significant amounts of information from diverse sources, and utilizing software in evaluating different alternatives (Coglianese 2004, Niblett 2018). Kang et al. (2013) show how social media can be a source of information for regulators and government agencies to evaluate and enforce regulations. Social media can help in the allocation of scarce resources, by mining public opinions from social media to target inspections. It can also be used to gather public opinion on the effectiveness of policy. As with other information-gathering tools, policymakers mining social media for public opinion should be cognizant of potential biases.

When assessing enforcement processes, important aspects are predictability, equity and transparency in enforcement actions, the impact of enforcement on behaviour, whether tools fit the violation, and the level of resources available for enforcement (Stern and Holder 1999, Coglianese and Kagan 2007). Coglianese and Kagan (2007) review how regulators enforce. They note the ultimate impact of any regulatory policy depends not only on how that policy has been drafted and designed, but also on how enforcement officials take actions to implement those policies in practice.

Coglianese and Kagan (2007) argue that there should be a balance between enforcement types (legal and social) for effective implementation of regulation, as one may lead to better results than the other. Enforcement as a legal process means regulations are authoritative legal rules, and violation results in punitive action. Enforcement as a social process a cooperative problem-solving process between regulators and the regulated, with a focus on correction of violations rather than punishment.

Governments make and enforce rules to change business' behaviour and thereby achieve improved societal outcomes. However, the ability of governments to change behaviour is dependent on both the amount of resources allocated to fund regulatory programs' monitoring and enforcement mechanisms, and funding allocations for analytical capacity to develop appropriate regulations. Legislation is not always interpreted correctly at the point of implementation, highlighting the need for government guidance of regulators in monitoring and enforcement as well as guidance in setting the purpose of regulations. Niblett (2018) argues regulators can use predictive tools to reduce the gap between rules and principles. The former are clear but inflexible, while the latter are flexible but can have unpredictable results and provide less certainty for businesses; use of predictive tools such as machine learning can improve both monitoring and enforcement (Niblett 2018). Predictive tools also can automate part of the regulatory process, such as predicting likely violators of regulations. On the other side, predictive tools could allow regulated entities to better understand the legality of their sproposed actions.

Assessing Regulations

Assessing regulations, as opposed to regulatory systems, processes or agencies, can occur in two ways. First, quantifying the costs and benefits of the regulation using an analytical tool to measure regulatory burden and the net benefit to society from the regulatory action. Second, evaluating the regulations in a more theoretical sense of effectiveness. The concept of effectiveness can be further subdivided into comparing the outcome to the purpose, comparing the stated goal to the purpose, and evaluating if the end product reflects the process. As noted above, key goals in evaluating regulations as well as broader regulatory systems include ensuring evidence and learning; maintaining accountability, transparency and participation; ensuring policy coherence; and reducing regulatory burden (Smismans 2015). Reviewing regulations in a systematic way can help reduce the quantity of unnecessary regulations and improve the quality of the remaining body of regulation (Parker and Kirkpatrick 2012).

Common analytical tools for assessing regulations are impact assessments and benefit-cost analyses. Dunlop et al. (2012) show that impact assessments are malleable, and the use of impact assessments in practice is based on a vague, ambiguous or imperfect understanding of the tool and its purpose. They note the appraisal process is shaped and directed by different policy actors, and argue the result is that impact assessments can be manipulated to match disparate purposes, norms or values. This may impact the effectiveness of the policy and needs to be considered when evaluating regulations. On the other hand, a comprehensive benefit-cost assessment of all regulations can identify where regulatory dollars are better spent (Coglianese 2002). Niblett (2018) suggests technology such as machine learning may be an alternative way to prioritize regulatory dollars and enforcement and monitoring activities. Coglianese (2018) argues that any review of existing rules should consider both costs and benefits. Further, governments should adopt a strategic approach to retrospective reviews, where the reviewing body has a clear mandate to empirically determine whether a regulation has caused improvement or harm.

Coglianese, Kilmartin, and Mendelson (2008) argue the quality of regulations are determined by whether outcomes match the regulatory agency's stated mission or objective, and whether outcomes have a net positive impact. They maintain that regulations (before and after a proposed rule) should be reviewed through public participation, including small businesses, academia, nongovernmental organizations and the general public. They assert the result of increased public participation is improved quality and legitimacy of regulations, and increased compliance. Relatedly, Swinburn, Gill, and Kumanyika (2005) propose a set of "filter criteria" for assessing policy and regulatory action, and allocation of resources in support of said action. These include feasibility, sustainability, effects on equity, potential side-effects and acceptability to

stakeholders. They note that the criteria are typically qualitative, but nevertheless should be clearly stated and their inclusion justified.

As noted by Bull (2018), part of the review of regulations should be to assess whether the regulations are meant to solve permanent or temporary market failures. Parker and Kirkpatrick (2012) note reviews of regulations play an important role in determining the net benefits of current regulation, and in ensuring that regulations remain up-to-date and are the least-cost method of delivering policy objectives. Agencies can consider a wide variety of factors to decide what regulations to review, such as whether specific types of rules allow valuable innovation by industry, yield greater compliance, or are more prone to evasion (Coglianese 2018).

The role of risk in regulators' decision-making is important for determining acceptable outcomes and punitive measures. Regulations should be based on the entire exposed population rather than the risk to a particular individual, and punitive measures should be proportional to the expected negative impact and the proportion of the population that will be affected (Adler 2005).

Lessons from Other Jurisdictions

This section presents lessons from three jurisdictions that have performed formal reviews of regulatory processes and the stock of regulation, and have procedures in place for ongoing reviews of regulation and regulatory burden: Australia, the European Union and the United States. The scope, mandate, process and output of the formal reviews are briefly explained, as well as any policy changes that resulted. Evaluation tools used in reviewing regulations and regulatory bodies are also highlighted.

Australia

Australia has experienced numerous waves of regulatory review and change since the early 1980s (Carroll et al. 2008). Carroll et al. characterize three waves of reform; the first two focused on microeconomic reform, which also included regulatory review and process reform, based on Regulation Impact Statements (RIS').[5] The third wave, according to Carroll et al., was a result of less-than-successful elements of the second wave, including national competition policy reform, regulatory reviews and regulatory process reform. Notable instances are the 2006 Taskforce on Reducing Regulatory Burdens on Business and the more recent Deregulation Agenda. Both include reforms to legislation and policy as well as processes for developing regulation.

Taskforce on Reducing Regulatory Burdens on Business

In 2005, the Government of Australia created an independent taskforce on Reducing Regulatory Burdens on Business to identify options for reducing the compliance burden of government regulation on businesses (OECD 2010, Australian Government n.d.-f). The Taskforce was mandated to identify specific areas of federal regulation that were "unnecessarily burdensome, complex or redundant, or duplicate regulations in other jurisdictions"; find priority areas where regulation should be removed or significantly reduced; examine how to reduce duplication and increase harmonisation within existing regulatory frameworks and describe non-regulatory options to achieve desired outcomes; and suggest options to reduce red tape burden on businesses (Regulation Taskforce 2006, 2). The Taskforce defined regulation as "any laws or other government 'rules' that influence or control the way people and businesses behave" and encompasses "the way particular regulations are administered and enforced" (Regulation Taskforce 2006, 3). This definition is notable as regulation is not limited to legislation and formal regulations, and included quasi-regulation

such as standards, rules and expected codes of conduct. The Taskforce's analysis and report focused on compliance burden rather than reducing regulation, identifying whether a regulation or its implementation imposed an "*unnecessary*, and therefore avoidable, burden on business; that is, whether the legitimate policy goals underlying the regulation can be achieved in a way that does not impose as high a burden on business" (Regulation Taskforce 2006, 2). The Taskforce only made recommendations for reform when it was satisfied there would be a net benefit to Australian society, as opposed to reforms that would shift costs from business to government (Regulation Taskforce 2006).

The Taskforce used seven criteria in choosing regulations to prioritize for its suggestions for reform (Regulation Taskforce 2006, 18):

- Regulation that was the responsibility of the Australian Government, or a state or territory regulation that overlapped or interacted with federal regulations
- Regulation where the compliance burden appeared unnecessarily high (burdensome, complex, redundant or duplicative) and therefore a likely net benefit from reform
- Reform of regulation would not raise fundamental policy issues
- Reform would likely have an impact on many businesses or industries, or have an impact on the productivity of businesses across sectors
- Reform options were apparent, with surmountable complications or uncertainties
- Regulations yet to be enacted or implemented were not generally considered
- Regulations were not recently reviewed.

The Taskforce identified five themes, related to compliance issues, in the proposed reforms (Regulation Taskforce 2006, 19):

- Progressive (unplanned) expansion in the coverage of a regulation over time, resulting in excessive coverage or 'regulatory creep'
- Overlapping and inconsistent regulatory requirements across jurisdictions
- Redundant regulations or reporting requirements, or regulation not justified by intent of policy
- The same or similar information required by different government departments, with no central agency to provide the information to
- Variation in definitions and operational report requirements across areas of regulation

The Taskforce also presented priorities for systemic reform, noting that "periodic culling of excessive or poor-quality regulation can clearly be beneficial, [but] unless the underlying causes of such regulatory problems are addressed, it is likely that they will simply re-emerge" (Regulation Taskforce 2006, 145). It noted the importance of a whole-of-government approach to consultation, which incorporates consultation throughout the policy cycle. It recommended strengthening the Regulation Impact Statement process, by raising the standard of analysis needed for an RIS to be approved, and "making it harder a regulatory proposal to proceed to a decision if the government's requirements for good process have not been adequately discharged" (Regulation Taskforce 2006, vi). The Taskforce presented six principles of good regulatory process in support of systemic change of regulation in Australia (Regulation Taskforce 2006, v):

- Governments should first establish a clear case for action, including why existing measures are insufficient to remedy the issue, before initiating regulation
- A range of policy options, including self- and co-regulation, should be assessed using a cost-benefit framework that includes compliance costs and risk
- Only the policy option that generates the greatest net benefit, taking into account all impacts, should be implemented

- Governments should provide effective guidance to regulators and regulated parties to ensure the policy intent of regulation and requirements for compliance are clear
- Legislation includes mechanisms such as sunset clauses or periodic reviews, ensuring regulation remains relevant and effective over time
- Effective consultation with regulated parties at key stages of regulation-making and administration

In its response to the Taskforce, the Australian Government endorsed the six principles of good regulatory process, and revised its Guide to Regulation (Australian Government 2006, OECD 2010). The government implemented the recommendation of strengthening RIS analysis and adequacy (Australian Government 2006, OECD 2010). Furthermore, the Office of Regulation Reform was renamed the Office of Best Practice Regulation and a specialized cost-benefit analysis unit was created with the Office to support agencies preparing Regulatory Impact Statements, including formal training of policy officers (OECD 2010). Agencies were required to use a standardized process for assessing businesses' compliance costs to policy and regulation in Regulatory Impact Statements (OECD 2010).

With respect to inter-jurisdictional overlap, the Council of Australian Governments (COAG)[6] agreed to identify further reforms to "enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and in principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden" (Australian Government 2006, 75). In 2007, COAG produced a guide to best-practice regulation that includes agreed-upon principles of best practice regulatory processes and practical features of good regulation (Council of Australian Governments 2007).

An interesting feature of Australia's policy structure is the Australian Productivity Commission. The Productivity Commission is an advisory body located within the Treasury portfolio that conducts "public inquiries at the request of the Australian Government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing" (Australian Government n.d.-c). The Productivity Commission has a role in reporting on regulation and provides performance monitoring and benchmarking to Australian government bodies (Australian Government n.d.-c).

Deregulation Agenda
The Australian Government initiated a Regulatory Reform Agenda (subsequently renamed the Deregulation Agenda) in 2013 (Australian Government 2018a). The Department of the Prime Minister and Cabinet led a stock-take of Australian regulations — legislative or administrative — that imposed compliance costs on businesses and individuals, assisted by Deregulation Units within each government portfolio (Australian Government 2015b).[7] The Deregulation Units were part of a whole-of-government approach meant to enable flexibility while maintaining consistency. The first stage of the stock-take counted regulations, using the definition of "any rule endorsed by government where there is an expectation of compliance", and classified regulations as primary legislation, subordinate instruments and quasi-regulation (Australian Government 2015b, 26).

The second stage of the stock-take quantified the burden imposed by each regulation. The Australian Government used (and continues to use) a Regulatory Burden Measurement Framework to measure the cost of compliance, including administrative, substantive and delay costs. Departments categorized the stock of regulations into smaller subgroups with broadly similar compliance requirements as a proxy for regulatory burden, and then sampled within each category to estimate costs (Australian Government 2015b). Regulations were categorized using six criteria: the type of requirements the regulation imposes; the complexity of the regulation; the breadth or reach of the regulation; the frequency of interactions with

the regulation; the currency of review; and the scope for reform (Australian Government 2015b, 29). The Deregulation Units within each department were encouraged to engage with stakeholders to test their regulatory burden estimates (Australian Government 2015b). As a result of the stock-take, the Australian Government estimated the cost of compliance at \$65 billion in 2013, or 4.2 per cent of GDP (Australian Government 2015b).

As part of the Deregulation Agenda, RIS' became mandatory for all policy decisions, standardizing the evaluation of policy across departments (Australian Government 2014b). In addition to the stock-take, the Deregulation Agenda included a number of actions to "reduce the regulatory burden and change the culture towards regulation in government and the community" (Australian Government 2015b, 6). These actions were: establishing deregulation as a standing item for the Council of Australian Governments; requiring all submissions to Cabinet include an RIS; and introducing a Regulator Performance Framework to assess and audit regulators' performance, clarifying government expectations (Australian Government 2015b). Two parliamentary days per year were also set aside for repealing "counterproductive, unnecessary or redundant legislation"; the repeal days were replaced in 2016 with annual reports (Australian Government 2015b, 2018b).

Institutional Features

Australia's current system is consistent with the OCED's 2012 recommendations on regulatory policy and governance (Australian Government n.d.-a). There are several institutional features of the Australian regulatory system, emerging from past assessments of Australia's system, which are relevant for jurisdictions considering or undertaking regulatory reviews, such as Canada. These features are relevant for both implementing a horizontal review of regulations and as potential metrics for evaluating regulatory systems. The first institutional feature of interest is the Office of Best Practice Regulation (OBPR). The OBPR is placed within the Department of Prime Minister and Cabinet, and has several roles in administering regulatory impact analysis requirements of the government (Australian Government n.d.-a, 2014b). The OBPR is responsible for assisting agencies in preparing RIS' and fulfilling their regulatory review obligations; assessing RIS' and post-implementation reviews; preparing compliance reports; publishing RIS' and post-implementation reviews online; and conducting regulatory impact analysis training (Australian Government n.d.-a). The available training includes face-to-face training as well as a massive online open course covering the basics of Australian regulation (Australian Government n.d.-e). The OBPR has an important coordinating role in ensuring consistent analysis across government departments, providing a "one-stop shop" for businesses and government agencies to find information and resources, providing oversight of overall regulatory burden, and closing the policy circle for ongoing review of how regulations are developed, implemented and administered.

The second feature of relevance is the inter-jurisdictional approach to regulatory review through the Council of Australian Governments (COAG). Through COAG and bi-lateral discussions, the Australian Government works to reduce regulatory overlap and inter-jurisdictional inconsistencies (Australian Government 2016a). As noted above, COAG has agreed-upon principles for best-practice regulation (Council of Australian Governments 2007). This commitment to consistency in regulation is a helpful tool in assessing regulations and regulators across jurisdictions, and identifying regulatory overlap.

Third, Australia uses a Regulatory Burden Measurement framework to quantify the cost of regulation, including new regulation and changes to existing regulation, and to quantify regulatory savings (Australian Government 2016b). The framework is supported by the Regulatory Burden Measure, a web-based cost calculation tool maintained by the OBPR. The framework and costing tool provide required evidence for Regulation Impact Statements. The costs included in the framework are compliance costs (administrative

12

and substantive compliance costs) and delay costs (Australian Government 2016b). Finally, Australia uses materiality thresholds for requirements in costing of regulations and the level of assessment by the OBPR (Australian Government 2016b).

The fourth feature of note is the use of a Regulator Performance Framework to evaluate the performance of government regulators using six outcome-based indicators (Australian Government 2014a). The purpose of the Framework is to "encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change within regulators" (Australian Government 2014a, 4). The Key Performance Indicators used to evaluate regulators are: regulators do not unnecessarily impede the efficient operation of regulated entities; communication with regulated entities is clear, targeted and effective; actions undertaken by regulators are proportionate to the regulatory risk being managed; compliance and monitoring approaches are streamlined and coordinated; regulators are open and transparent in their dealings with regulated entities; and regulators actively contribute to the continuous improvement of regulatory frameworks (Australian Government 2015c, 1). The intent of the Framework is to allow regulators to "report objectively on the outcomes of their efforts to administer regulation fairly, effectively and efficiently" (Australian Government 2014a, 4). The Framework provides clarity to regulators and regulated entities on performance expectations and gives stakeholders the opportunity to provide input to regulators on the regulators' performance (Australian Government n.d.-b). It also enables consistency in evaluation across regulators. The Framework is a tool for regulators to identify opportunities for improvement and where improvement of the regulatory system can reduce compliance costs (Australian Government 2014a).

Fifth, Australia mandates ongoing review of regulations. This is imposed by automatic sun-setting of legislative instruments after approximately 10 years (Australian Government 2016c). Under the Australian Government's regulatory impact analysis rules, an RIS is required for continuation or modification of a regulation when it is deemed to have regulatory impact (Australian Government 2016c). While an RIS is not required for sun-setting regulations, a regulatory costing consistent with the Regulatory Burden Measurement framework is required. As an RIS requires an evaluation of other policy options in addition to regulating, this ensures fulsome review of regulations on an approximately 10-year cycle.

European Union

The European Union has a consistent history of regulatory review, examining the quality and quantity of regulation (Garben and Govaere 2018). The most recent example is the European Commission's Better Regulation Agenda, focusing on ensuring transparency in the regulatory process, evidence-informed policy design and stakeholder involvement (European Commission n.d.-a). The Better Regulation Agenda builds upon the Regulatory Fitness and Performance (REFIT) Programme, established in 2012 with the purpose of reducing regulatory burden and overlap (European Commission 2013b). Prior to REFIT, the European Commission consolidated its impact assessment system (European Commission 2012). The Commission has a self-declared robust reporting system that continually evaluates the state of regulatory evaluation processes and areas for improvement, via internal analysis and reports to EC committees.

Smart Regulation

The concept of 'smart regulation' runs though the various reform and review initiatives of the European Commission. Smart regulation, as defined by the Commission, is "about the whole policy cycle — from the design of a piece of legislation, to implementation, enforcement, evaluation and revision" (European Commission 2010, 3). The goal of smart regulation is to "design and deliver regulation that respects the

principles of subsidiarity and proportionality and is of the highest quality possible" (European Commission 2010, 4). Subsidiarity means that no EU action is taken when an issue can be "dealt with effectively by EU countries" and proportionality means that "EU action must not exceed what is necessary to achieve the objectives" (European Commission n.d.-a). The general principles and actions taken as part of the smart regulation movement include simplifying legislation and removing administrative burden; evaluating the benefits and costs (effectiveness and efficiency) of existing legislation; evaluating proposed legislation with an impact assessment system; improving the implementation of legislation through ex post reviews; and making legislation clearer and more accessible (European Commission 2010). A feature of the impact assessment system is an independent Regulatory Scrutiny Board (previously the Impact Assessment Board) which provides quality-control evaluation of the Commission's impact assessments and ex post evaluations via publicly-available reviews (European Commission n.d.-c).

Smart regulation is used to assess whether EU actions are delivering expected results and improve conditions for citizens and businesses (European Commission 2013b). It involves retrospective and prospective evaluations, though the primary focus is retrospective, as well as identification of unnecessary costs and areas of performance improvement (European Commission 2013b). The Commission uses the 'evaluate first' principle: all significant proposals for revision require a systematic evaluation of the performance of existing EU policies. Evaluation of policies and regulations is based on five principles: effectiveness, efficiency, coherence, relevance and EU-added-value (European Commission 2013b). Effectiveness refers to whether the policy objectives have been met, while efficiency evaluates whether the costs are justified given the realized changes. Coherence assesses whether action complements or detracts from other policy actions. Relevance evaluates whether EU action is necessary, while EU-added-value assesses whether EU action is necessary. Fitness checks assess if a regulatory framework for a policy area is fit for purpose, were launched as a pilot in 2010, and have since been expanded to multiple policy areas (European Commission 2010, 2012, 2013b).

Regulatory Fitness and Performance Programme

The Regulatory Fitness and Performance Programme (REFIT) was created to "identify burdens, inconsistencies, gaps, and ineffective measures" in regulation (European Commission 2012, 4). REFIT was introduced to "identify, assess, adopt, and monitor implementation of initiatives", building upon the fitness checks piloted earlier (European Commission 2012, 3). The REFIT process began by mapping regulation and legislation to identify priorities for simplification and regulatory cost reduction (European Commission 2012). The Commission mapped the entire EU legislative stock, and identified "burdens, gaps and inefficient or ineffective measures including possibilities for simplification or repeal" (European Commission 2013b, 5). As part of the mapping, Commission staff reported on the policy and legislative framework and smart regulation tools and measures used to ensure the legislation was 'fit for purpose' (European Commission 2013b).[8]

The stock-take of regulation identified areas for legislative change, specifically consolidation, withdrawals and appeals (European Commission 2013a). It also identified areas where more in-depth analysis — including fitness checks — was required to more clearly identify opportunities for reducing regulatory burden (European Commission 2013a). As part of the results' reporting in 2013, four challenges to horizontal regulatory fitness were identified, along with potential solutions (European Commission 2013a). The first challenge was the lengthy legislative process and preference for regulatory stability, necessitating the need to explore options to reduce regulatory burden without legislative changes. The proposed solution was to more carefully examine administrative burden at the implementation stage amongst EU member states, and develop an evaluation framework for monitoring and evaluating implementation. The second

challenge was a lack of rigor in regulatory assessments, along with a tendency to prefer the status-quo in assessing regulatory fitness. The solution offered was strengthening the evaluation framework to include minimum requirements for the frequency and scope of evaluations and standardizing impact assessment reports. The third challenge was anchoring regulatory fitness in the decision-making cycle: only 42 per cent of regulations screened by REFIT were subject to evaluations. The solution was to incorporate regulator planning of evaluations in the Commission's ongoing work. The fourth challenge was the level of cooperation amongst EU institutions and member states. The proposed solution was to publish an annual REFIT scoreboard to track legislative change and monitor implementation to determine if burden-reducing initiatives were maintained by member states.

As a result of REFIT, the EU implemented a series of new horizontal regulatory actions to improve processes and reduce regulatory burden (European Commission 2014b). These include impact assessment, ex post evaluation, stakeholder consultation, measurement of regulatory costs and benefits, and reporting requirements (European Commission 2014b). First, impact assessment is initiated early in the policy cycle, when proposals are under development. The impact assessment provides an evidence base for policy development, with a standard two-page summary sheet of the results, including benefits and costs, and ensures Commission proposals comply with the requisite subsidiarity and proportionality principles. In addition, the Commission commissioned an external study (Renda et al. 2013) on methods of assessing costs and benefits, which was used to update impact assessment guidelines.

Second, ex post evaluation is used to verify whether expected results and impacts of EU regulation were achieved. Part of the ex post evaluation is via fitness checks, "comprehensive policy evaluations assessing coherence and consistency between and within regulatory areas" (European Commission 2014b, 14). Third, changes were made to stakeholder consultation: developing minimum standards for consultation that applied to both impact assessment and evaluation, as well as development of internal guidelines to advise the Commission staff on how to carry out effective consultations. Fourth, processes to reduce reporting requirements were implemented by linking reporting amongst jurisdictions and reviewing reporting obligations to identify those exceeding the minimum requirements in legislation. Finally, improvements in the measurement of regulatory costs and benefits were made. Specifically, for certain industries a Cumulative Cost Assessment (CCA) tool was used to assess key cost factors at an industry level, with plans for expansion of the number of assessments.

Better Regulation Agenda
The Better Regulation Agenda, initiated in 2014, is a program to improve the quality of Commission regulation and lawmaking. The objectives of the Agenda are to ensure decision-making is open and transparent, citizens and stakeholders are involved throughout the policy- and law-making process, EU policy changes and actions are based on evidence and understanding of impacts, and minimizing regulatory burden (European Commission n.d.-b). The Agenda continues many steps taken as a result of the REFIT reviews, including increasing the amount of analysis before policy action; consulting throughout the policy and law-making cycle; continuing to use REFIT and its scoreboard; performing ex post evaluations and fitness checks to assess if laws, policies and programs deliver expected results at minimum cost; and utilizing the Regulatory Scrutiny Board to quality-check impact assessments and ex post evaluations. The Regulatory Scrutiny Board reviews all impact assessments, and a positive evaluation is required for the policy change to be tabled for adoption by the Commission (European Commission n.d.-c). As noted by Smismans (2015), ex post evaluation is a key tool for accountability, evaluating the desirability of future actions, and avoiding regulatory burden. Moreover, by incorporating evaluation in the EU policy cycle, ex

post evaluation enables policy learning beyond the project- or program-level and can feed back into the decision-making process.

A major component of the Better Regulation Agenda is the establishment of a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' (European Commission n.d.-b). The Task Force was established in late 2017 with the threefold mission of making recommendations on how to better apply the principles of subsidiarity and proportionality, identifying policy areas to be re-delegated or returned to EU countries, and finding ways to improve involvement of regional and local authorities in EU policy-making and delivery (European Commission n.d.-e). The work of the Task Force includes a stock-take of how the principles of subsidiarity and proportionality are applied in the work of the Commission, as well as a stock-take of how local and regional authorities currently interact with the EU in the preparation and implementation of policy and legislation (Task Force on Subsidiarity n.d.). The report of the Task Force is recommended a checklist approach to the issues of subsidiarity and proportionality (European Commission n.d.-d).

United States

While not a formal horizontal review, the regulatory reforms initiated by the Trump Administration do have characteristics similar to a horizontal review, making a brief discussion of the changes relevant here. Historically, presidents in the U.S. required federal agencies to conduct benefit-cost analyses to weigh the likely positive and negative consequences of new regulations prior to implementation (Dudley 2018). President Clinton's Executive Order 12866 set out the three-part review process for regulations (Dudley 2018). First, regulations should address a "compelling public need", such as market failure or health and safety concerns. Second, federal agencies were required to evaluate all costs and benefits of available regulatory and non-regulatory options, including not regulating. Third, regulations should " 'maximize net benefits' to society unless otherwise constrained by law" (Dudley 2018).

The Trump Administration, by contrast, has focused on the negative aspects of regulation and has ordered agencies to reduce regulatory costs (Trump 2017). While the Trump Administration maintained Executive Order 12866, it is reforming regulation through Executive Orders 13771 and 13777. Executive Order 13771 directs agencies to remove two regulations for every new one issued to offset the costs of new regulations, and caps the total net cost of new regulations. Executive Order 13777 directs each agency to designate an individual to serve as Regulatory Reform Officer to oversee regulatory reforms and lead a within-agency task force responsible for reviewing regulations and making recommendations on repealing, replacing or modifying said regulations.

Dudley (2018) argues that regulation under the budget constraint introduced by the Trump Administration can improve regulatory outcomes if regulators have perfect information and incentives. In that case, benefit-cost analysis is sufficient to direct resources to their best use, and "agencies would only issue regulations that make the public better off" (Dudley 2018). In practice however, perfect information is not available, and Dudley argues that regulators have an incentive to demonstrate their actions have benefits that exceed costs, creating analyses that are more like advocacy pieces for the preferred outcome instead of "a transparent accounting of possible options and outcomes." Moreover, she notes that agencies rarely perform ex post evaluations to see if the ex-ante analysis is correct, which can lead to over-regulation.

Robinson (2018) notes that Executive Order 13771 is much broader than previous executive orders pertaining to regulation, covering actions not previously defined as regulatory in nature in addition to actions with smaller impacts. Interestingly, the cost-offsetting requirements to reduce the total quantity of rules include guidance documents as well as regulations. A second issue raised by Robinson is that

Executive Order 13771 only requires the assessment of costs of regulation. When agencies differ in the categorization of regulatory impacts as costs or benefits, as is frequently the case, it creates inconsistency in implementation of policy directives (Robinson 2018).

Tools for Horizontal Assessment and Analysis

This section presents a set of tools and analytical frameworks that can be used in assessing regulatory programs, drawing from the academic literature on regulatory governance as well as the practice of regulatory governance from different jurisdictions. Analytical tools are described at a very high level, to emphasize how they can inform the review process.

Drawing heavily on Radaelli and Fritsch (2012), the OECD provides a framework for regulatory policy assessment. The framework identifies practical ways in which regulatory policy enables strategic objectives and describes stumbling blocks in processes for design and implementation of regulation on a systems basis (OECD 2014). Challenges identified by the OECD include lack of clarity on the object of evaluation (what should be measured?); the impracticality of demonstrating causality of positive outcomes from regulatory process changes; and shortage of information needed for comprehensive regulatory policy evaluation.

The OECD framework uses an "input-process-output-outcome logic" and suggests five phases in implementing reviews, with complementary performance indicators (OECD 2014, 33). In the **input** phase, information is collected on the resources dedicated to regulatory policy (ex. budget and staff numbers of the regulatory agency). The **process** phase "assesses whether formal requirements for good regulatory practices are in place" (OECD 2014, 35). Indicators can include requirements for objective-setting, consultation, evidence-based analysis, and risk assessments, among others. The **output** phase evaluates whether the good regulatory practices identified in the process phase are implemented. Example indicators measure the percentage of the time the regulator is compliant with government requirements, such as producing a regulatory impact statement matching the government's guidelines. The **intermediate outcome** phase assesses whether improved quality of regulation can be attributed to the regulatory practices used. Indicators in this phase may be subjective, such as the percentage of those involved in the regulatory process that think a regulation impact assessment improved the quality of regulations. Finally, the **strategic outcome** phase evaluates whether desired outcomes of regulatory policy has been achieved, which can be divided further into assessing regulatory quality (whether the quality of regulations are improved or strategic objectives of review are achieved) and regulatory outcomes (whether sector-specific strategic regulatory objectives were achieved).

The framework proposed by the OECD is useful because it provides a set of criteria that can be used across regulatory bodies, and identifies inconsistencies in policy implementation and performance. Of note, however, is that the framework does not include in its broad principles an assessment of regulatory overlap. In the strategic outcome phase, regulatory quality refers to whether regulations are efficient and streamlined but does not specifically include overlap. There is also no direct process in the framework for evaluating policy coherence.

Bull (2018) suggests sorting regulatory intervention into two major categories: permanent and temporary. Permanent interventions are those that are necessary to remedy inherent market flaws and channel economic activity in a productive direction. Temporary interventions are those needed to start a process leading to a desired outcome but becomes unnecessary or even detrimental once the intended reaction has occurred. This is likely an effective tool of categorizing and prioritizing areas of regulation for review, detailed analysis and potential reform.

Luchetta (2012) proposes a construction for the policy cycle that allows for impact assessment as a tool to 'close the cycle.' He suggests the policy cycle can be thought of as two main components: analytical and empirical. In the analytical phase, policymakers determine what the policy is expected to deliver, and identify objectives, the relationship between policy objectives and overarching goals, and outcomes or expected impacts. In the empirical phase, policymakers determine how the policy is expected to deliver on its objectives, identifying the mechanisms and information necessary to ensure and verify delivery: implementation and enforcement, and monitoring and evaluation.

Broad evaluation frameworks, however, also rely on more detailed assessment tools used in the evaluation of specific regulation. These include ex ante or prospective evaluation, ex post or retrospective evaluation, and benefit-cost analysis as a specific analytical tool.

Ex ante analysis typically takes the form of a regulation impact analysis, statement or assessment.[9] In the context of a review (and often as part of the process of regulation), assessments are used to reduce the quantity of unnecessary regulation and improve the quality of remaining regulations (Parker and Kirkpatrick 2012). Ex ante review improves the quality of regulation by analyzing the problem that the regulation is intended to solve, identifying alternative policy approaches, and assessing the likely positive and negative impacts of implementing the proposed regulation. The scope of impact assessments are typically proportional to the magnitude of the policy problem and estimated impact. An impact assessment is also an effective tool for prioritizing the review process, based on the scope of current regulation and the expected impact of potential changes from the review. One issue to be aware of is that different regulatory bodies can view these documents differently and therefore have different results (Meuwese, Scheltema, and Velden 2015). This situation might arise where there is an assessment of both economic efficiency and distributional consequences. Depending on the mandate and the norms of different regulatory agencies, the same regulation impact assessment might result in vastly different policy actions.

Dunlop et al. (2012) perform a meta-analysis of regulation impact assessments (RIAs), and categorize four main uses of RIAs (political, instrumental, communicative, and perfunctory), noting that "the appraisal process is molded and shaped by policy actors to serve a variety of different purposes" (Dunlop et al. 2012, 24). Political usage occurs in situations where political interests use the RIA to control the regulatory process, or to initiate or mitigate conflict, rather than as a support for evidence-based policy-making. Instrumental usage of RIA involves the assessment as a tool to enhance substantive understandings of the policy issue, including its causes and impacts. Communicative usage has the RIA published as part of a formal consultation process, to provide consultees with information on the effect of the policy change and formalize a regulatory conversation between the regulator, other government agencies, regulated firms or individuals, and other stakeholders. Finally, perfunctory usage is when governments adopt RIA as a process but do not implement the use of the tool, or the RIA or policy change itself is not taken seriously. This underscores the importance of reviewing how an evaluation tool is used as part of a horizontal review.

Ex post evaluation is a tool to review the net benefits of existing regulation, ensuring regulations deliver policy objectives in an efficient and effective manner (Parker and Kirkpatrick 2012). A substantial benefit of ex post evaluation is it allows affected and interested parties to provide feedback how they have been affected by regulation (OECD 2012). Common themes of ex post evaluation are relevance, effectiveness, efficiency, impact, sustainability, ongoing evaluation, and thematic evaluations (OECD 2012). Coglianese (2018) argues that any meaningful retrospective review of existing rules should consider both costs and benefits and adopt a strategic approach in the review. Further, he states retrospective reviews should be used to determine whether a regulation has caused improvement or harm. Bull (2018) emphasizes the importance of retrospective reviews in helping regulatory agencies revisit their rules to determine if they "still make sense." However, he acknowledges that there are challenges. Regulators have little incentive to

criticize their own work, especially if they are risk averse, and regulated entities may not have an incentive to change the status quo, especially when they incur large initial costs to comply with the regulation. A potential solution is to mandate or force retrospective reviews, as in the European Commission's attempt to close the policy cycle.

Smismans (2015) evaluates the EU approach to policy evaluation: its focus on closing the policy cycle by linking ex ante and ex post appraisal and applying evaluation to all types of policy intervention. He notes four key challenges to linking ex ante and ex post appraisal. First is that ex post evaluation is often too late to inspire any changes to a new program or the next round of a program under review. This issue is exacerbated when evaluation is meant to improve performance rather than compliance, especially if there is a shift from project- or program-level evaluation to a broader evaluation of the regulatory framework. Second, there can be difficulties in identifying the initial objective of a regulation or policy to inform the assessment. This is a key point, as several articles have identified the importance of clarity in roles and objectives of regulators, regulations and regulatory processes (Stern and Holder 1999, Luchetta 2012, OECD 2014, Meuwese, Scheltema, and Velden 2015). Third, expectations and opinions can differ regarding the appropriate actors to be involved in each evaluation process. Fourth, there are often gaps in the type of evidence gathered ex post compared to the type of evidence needed for an ex ante assessment. Moreover, failure to establish time frames and a cyclical process for regulatory intervention undermines the effectiveness of the EU approach. However, Smismans also notes ex post evaluation can become a key tool for ex post accountability. In addition, when policy evaluation is incorporated into the policy cycle, ex post evaluation enables policy learning beyond the project- or program-level and can feed back into the political decision-making process.

Benefit-cost analysis is a tool applicable to both ex ante and ex post analysis. It is used to assess the costs and benefits of alternatives, including not regulating, by quantifying the net benefit to society from a policy change. It is a rigorous test of whether a regulation's benefits outweigh the costs. However, traditional benefit-cost analysis focuses on economic efficiency and overall maximization of welfare (Adler and Posner 2006). Adler and Posner argue that the objective of any analysis should be overall well-being, and analyses should include distributional considerations. One solution to distributional or equity concerns is the use of multiple account benefit-cost analysis (MABCA). Unlike traditional social benefit-cost analysis, which computes a net present value of social costs and benefits, MABCA presents benefits and costs in separate accounts to reflect impacts on different stakeholders (Shaffer 2010). This has two primary benefits; first, disaggregating the different costs and benefits into separate accounts offers greater transparency. Second, since public policy inevitably involves not only questions of efficiency but also equity, separating the social adjustments into stakeholder accounts offers policy makers a clear view as to the distribution of winners and losers.

Smismans and Minto (2016) examine the EU's integrated impact assessment system to determine if it contributes to making political objectives horizontally applicable across policy areas. Defined as "mainstreaming", this requires all policy actors to participate in protection and promotion of the policy objective in question (Smismans and Minto 2016). The concept of mainstreaming formalizes policy coherence across broad policy objectives. In the EU, these include gender equality; promoting a high level of employment, social protection, education, and protection of human health; non-discrimination; environmental policy; consumer protection; and respect for fundamental rights (Smismans and Minto 2016). Smismans and Minto empirically examine 35 impact assessments to determine how they are used in practice. They find that the integrated impact assessment system does not ensure a systematic screening of new policy initiatives against the overarching policy objectives.

Coglianese (2002) notes that courts can be used to review the legality of regulations, which can improve governance. He suggests that administrators and regulators who know their actions may be judicially reviewed may take greater care in the inclusiveness of their decisions. However, this may not be an effective use of the court system, and could cause substantial regulatory delay. Coglianese also suggests negotiated rulemaking as a potential process for reviewing regulations, whereby government regulations are negotiated by representatives from government, the private sector, and nongovernmental organizations. As a less inclusive process, this undermines the concept of comprehensive and effective public engagement enshrined in good regulatory governance.

Summary and Conclusions

Regulatory review and potential reform, typically to reduce regulatory burden without reducing the regulatory outcome, is a common objective of governments. This paper aims to inform that process by summarizing what is known from academic literature, grey literature and policy documents about reviewing regulations and regulatory systems. Drawing on these literatures and other jurisdictions' experiences with regulatory review and reform, we have attempted to describe best practices in comprehensive reviews of regulatory systems.

Six key themes arose from our analysis. First, while targeted reviews in specific sectors have their role, comprehensive horizontal reviews require a whole-of-government approach. This can be strengthened by inclusion of sub-national jurisdictions in the review. Second, support of the executive, as the final decision-makers, is needed to ensure a review is effective and results in positive policy change. Third, the presence of a coordinating body within government is needed for consistency of implementation and evaluation, as well as ensuring policy coherence during the process and as an outcome of any regulatory change. Fourth, reviews should consider both costs and benefits of regulation, and cast a wide net for the relevant factors to include. Fifth, policy overlap is possible both horizontally vertically, and reviews should have a mandate to look for both. Finally, reviews should have as a starting point a clear and comprehensive set of evaluative criteria, universally applied to all agencies.

In addition to these six themes, there are seven key takeaways from this review. First, regulatory systems should have in place a universal standard of transparency or accountability for all institutions to be measured against. Second, as part of the review of horizontal and vertical overlap, reviews and regulatory assessments should identify opportunities for consolidation and administrative simplification. Third, in addition to assessing whether policy instruments are effective (result in the desired outcome), cost-effectiveness (reaching the desired outcome at the minimum cost) should be assessed. Fourth, governments should examine the role of complimentary policies and other instruments in achieving desired outcomes, beyond rules with expectation of compliance. Fifth, governments should consider equity and fairness in assessing impacts of regulation. Sixth, interactions with other policies are often a second-order regulatory impact that should be included in evaluations.

References

Adelle, Camilla, Andrew Jordan, and John Turnpenney. 2012. "Proceeding in parallel or drifting apart? A systematic review of policy appraisal research and practices." *Environment and Planning C: Politics and Space* 30 (3).

Adler, Matthew D. 2005. "Against 'Individual Risk': A Sympathetic Critique of Risk Assessment." *University of Pennsylvania Law Review* 153 (4):1121-1250.

Adler, Matthew D., and Eric A. Posner. 2006. *New Foundations of Cost-Benefit Analysis*: Harvard University Press.

Australian Government. 2006. Report of the Taskforce on Reducing Regulatory Burdens on Business - Final Government Response.

Australian Government. 2014a. Regulator Performance Framework. edited by Department of Jobs and Small Business.

Australian Government. 2014b. The Australian Government Guide to Regulation. edited by Department of the Prime Minister and Cabinet.

Australian Government. 2015a. "About the Regulatory burden measure." Department of the Prime Minister and Cabinet, accessed 28 May 2018. https://rbm.obpr.gov.au/help.aspx?path=2.About+the+Compliance+Cost+Calculator.txt.

Australian Government. 2015b. Australian Government Annual Deregulation Report 2014. Department of Jobs and Small Business.

Australian Government. 2015c. Key Performance Indicators (KPIs). edited by Department of the Prime Minister and Cabinet.

Australian Government. 2016a. 2015 Annual Red Tape Reduction Report.

Australian Government. 2016b. Regulatory Burden Measurement Framework. edited by Department of the Prime Minister and Cabinet.

Australian Government. 2016c. Sunsetting legislative instruments guidance note. edited by Department of the Prime Minister and Cabinet.

Australian Government. 2018a. "Australia's Approach to Deregulation." accessed 21-May-2018. https://www.jobs.gov.au/australias-approach-deregulation.

Australian Government. 2018b. "Reporting on the Deregulation Agenda." Last Modified 25-May-2018, accessed 25-May-2018. https://www.jobs.gov.au/reporting-deregulation-agenda.

Australian Government. n.d.-a. "Best Practice Regulation." accessed 25-May-2018. https://www.pmc.gov.au/regulation/best-practice-regulation.

Australian Government. n.d.-b. "Commonwealth Regulators." Department of Jobs and Small Business, Last Modified 9 March 2018 accessed 26 May 2018. https://www.jobs.gov.au/commonwealth-regulators.

Australian Government. n.d.-c. "How we contribute." Australian Productivity Commission, accessed 28 May 2018. https://www.pc.gov.au/about/contribute.

Australian Government. n.d.-d. "Regulatory Burden Measurement." Department of the Prime Minister and Cabinet, accessed 28 May 2018. https://www.pmc.gov.au/regulation/regulatory-burden-measurement.

Australian Government. n.d.-e. "Regulatory Impact Analysis Training." accessed 25-May-2018. https://www.pmc.gov.au/regulation/regulation-impact-analysis-training.

Australian Government. n.d.-f. "Taskforce on Reducing Regulatory Burdens on Business." http://www.pc.gov.au/research/supporting/regulation-taskforce.

Bull, Reeve T. 2018. "Uber and the Future of Regulation." *The Regulatory Review*.

Carroll, Peter. 2008a. "Measuring Regulatory Performance." In *Minding the Gap: Appraising the promise and performance of regulatory reform in Australia*. Australian National University Press.

Carroll, Peter. 2008b. "The Regulatory Impact System: Promise and performance." In *Minding the Gap: Appraising the promise and performance of regulatory reform in Australia*. Australian National University Press.

Carroll, Peter, Rex Deighton-Smith, Helen Silver, and Chris Walker. 2008. *Minding the Gap: Appraising the promise and performance of regulatory reform in Australia*: ANU Press.

Coglianese, Cary. 2002. "Empirical analysis and administrative law." *University of Illinois Law Review* 2002:1111-1138.

Coglianese, Cary. 2004. "E-Rulemaking: Information Technology and the Regulatory Process." *Administrative Law Review* 56.

Coglianese, Cary. 2012. "Measuring Regulatory Performance - Evaluating the Impact of Regulation and Regulatory Policy." *Organisation for Economic Co-operation and Development* August (Expert Paper No 1):1-59.

Coglianese, Cary. 2018. "It's Time to Think Strategically About Retrospective Benefit-Cost Analysis." *The Regulatory Review*.

Coglianese, Cary, and Robert A. Kagan. 2007. *Regulation and Regulatory Processes*.

Coglianese, Cary, Heather Kilmartin, and Evan Mendelson. 2008. "Transparency and Public Participation in the Rulemaking Process." 77 (4):924-972.

Council of Australian Governments. 2007. Best Practice Regulation: A guide for Ministerial Councils and National Standard Setting Bodies.

Council of Australian Governments. n.d. "About COAG." https://www.coag.gov.au/about-coag.

Deshman, Abigail C. 2011. "Horizontal Review between International Organizations: Why, How, and Who Cares about Corporate Regulatory Capture." *European Journal of International Law* 22 (4):1089-1113.

Dudley, Susan. 2018. "Regulating Within a Budget." *The Regulatory Review*.

Dunlop, Claire A., Martino Maggetti, Claudio M. Radaelli, and Duncan Russel. 2012. "The many uses of regulatory impact assessment: A meta-analysis of EU and UK cases." *Regulation and Governance* 6 (1):23-45. doi: 10.1111/j.1748-5991.2011.01123.x.

European Commission. 2010. Smart Regulation in the European Union. Brussels.

European Commission. 2012. EU Regulatory Fitness. Strasbourg.

European Commission. 2013a. Regulatory Fitness and Performance (REFIT): Results and Next Steps. Brussels.

European Commission. 2013b. Regulatory Fitness and Performance Programme (REFIT): Initial Results of the Mapping of the Acquis. Brussels.

European Commission. 2014a. 2014 Revision of the European Commission Impact Assessment Guidelines Public Consultation Document.

European Commission. 2014b. Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook. Brussels.

European Commission. n.d.-a. "Better regulation." accessed 26-May-2018. https://ec.europa.eu/commission/priorities/democratic-change/better-regulation_en.

European Commission. n.d.-b. "Better regulation: why and how." accessed 26-May-2018. https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en.

European Commission. n.d.-c. "Regulatory Scrutiny Board." accessed 26-May-2018.
    https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en.
European Commission. n.d.-d. "Task force on subsidiarity, proportionality and
doing less more efficiently." accessed 26-May-2018.
https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-
subsidiarity-proportionality-and-doing-less-more-efficiently_en.
European Commission. n.d.-e. "Task force on subsidiarity, proportionality and
doing less more efficiently." accessed 26-May-2018.
    https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-
    force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.
Fowler Jr., Floyd J. 2014. *Survey Research Methods*. 5th ed: SAGE Publishing.
Ganann, Rebecca, Donna Ciliska, and Helen Thomas. 2010. "Expediting systematic reviews:
    methods and implications of rapid reviews." *Implementation Science* 5. doi:
    10.1186/1748-5908-5-56.
Garben, Sacha, and Inge Govaere. 2018. *The EU Better Regulation Agenda: A Critical
    Assessment*, *Modern Studies in European Law*: Bloomsbury Publishing.
Government of Canada. 2018. Equality and Growth: A Strong Middle Class. edited by
    Department of Finance.
Grant, Maria J., and Andrew Booth. 2009. "A typology of reviews: an analysis of 14 review
    types and associated methodologies." *Health Information and Libraries Journal* 26
    (2):91-108. doi: 10.1111/j.1471-1842.2009.00848.x.
Hojlund, Steven. 2015. "Evaluation in the European Commission: For Accountability or
    Learning?" *European Journal of Risk Regulation* 6 (1):35-46.
Kang, Jun Seok, Polina Kuznetsova, Michael Luca, and Yejin Choi. 2013. "Where *Not* to Eat?
    Improving Public Policy by Predicting Hygiene Inspections Using Online Reviews."
    Proceedings of the 2013 Conference on Empirical Methods in Natural Language
    Processing.
Leeuw, Frans L., and Jan-Eric Furubo. 2008. "Evaluation Systems : What Are They
and Why Study Them." *Evaluation* 14 (2):157-169. doi: 10.1177/1356389007087537.
Luchetta, Giacomo. 2012. "Impact assessment and the policy cycle in the EU." *European
    Journal of Risk Regulation* 3 (4):561-575. doi: 10.1017/S1867299X00002476.
Meuwese, Anne, Michiel Scheltema, and Lynn Van Der Velden. 2015. "The OECD Framework
    for Regulatory Policy Evaluation: An Initial Assessment." *European Journal of Risk
    Regulation* 6:101-110.
Niblett, Anthony. 2018. Regulatory Reform in Ontario: Machine Learning and Regulation. In
    Commentary.
OECD. 2010. *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless
    National Economy*, *OECD Reviews of Regulatory Reform*: OECD Publishing.
OECD. 2012. Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies.
    OECD Publishing.
OECD. 2014. OECD Framework for Regulatory Policy Evaluation. OECD Publishing.
Parker, David, and Colin Kirkpatrick. 2012. Measuring Regulatory Performance.
Radaelli, Claudio, and Oliver Fritsch. 2012. Measuring Regulatory Performance: Evaluation
    Regulatory Management Tools and Programmes.
Regulation Taskforce. 2006. Rethinking Regulation: Report of the Taskforce on Reducing
    Regulatory Burdens on Business. Canberra.

Renda, Andrea, Lorna Schrefler, Giacomo Luchetta, and Roberto Zavatta. 2013. Assessing the Costs and Benefits of Regulation.

Robinson, Lisa A. 2018. "Regulatory Analysis Under the Trump Administration." *The Regulatory Review*.

Schrefler, Lorna, Giacomo Luchetta, and Felice Simonelli. 2015. "A New Tool in the Box?: The Cumulated Cost Assessment." *European Journal of Risk Regulation* 6 (1):68-78. doi: 10.1017/S1867299X00004293.

Shaffer, Marvin. 2010. *Multiple account benefit-cost analysis: A practical guide for the systematic evaluation of project and policy alternatives*: University of Toronto Press.

Smismans, Stijn. 2015. "Policy evaluation in the EU: The challenges of linking ex ante and ex post appraisal." *European Journal of Risk Regulation* 6 (1):6-26. doi: 10.1017/S1867299X00004244S1867299X00004244.

Smismans, Stijn, and Rachel Minto. 2016. "Are integrated impact assessments the way forward for mainstreaming in the European Union?" *Regulation & Governance* 11:231-251. doi: https://doi.org/10.1111/rego.12119.

Stern, Jon, and Stuart Holder. 1999. "Regulatory governance: Criteria for assessing the performance of regulatory systems. An application to infrastructure industries in the developing countries of Asia." *Utilities Policy* 8 (1):33-50. doi: 10.1016/S0957-1787(99)00008-9.

Swinburn, Boyd, Tim Gill, and Shiriki Kumanyika. 2005. "Obesity Prevention: A proposed framework for translating evidence into action." *Obesity reviews* 6 (1):23-33. doi: https://doi.org/10.1111/j.1467-789X.2005.00184.x.

Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently". n.d. Working methods.

Treasury Board of Canada Secretariat. 2018. Regulatory Reviews.

Trump, Donald J. 2017. Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs. The White House.

---

[1] The example presented by Robinson is seat belts in cars. If behaviours and practices previously imposed by regulation become ingrained as habit, or even just generally accepted, they will continue even without a legal requirement. Removing the requirement will not change behaviour or save the government any money.

[2] Other papers that were influential in the development of the Framework are Coglianese (2012) and Parker and Kirkpatrick (2012).

[3] The fourth through sixth elements are also relevant for assessing regulatory bodies.

[4] Coglianese, Kilmartin, and Mendelson (2008) acknowledge that 'too much' transparency in regulatory processes can lead to regulators not speaking their mind and being open if all meetings are recorded and documented.

[5] An RIS is an Australian policy document that summarises the expected outcomes of government regulation and other viable policy alternatives in addressing a policy problem (Australian Government 2014b).

[6] The Council of Australian Governments is the Australian intergovernmental forum. Membership includes the Prime Minister, state and territory First Ministers and the President of the Australian Local Government Association. The role of COAG is to "manage matters of national significance or matters that need co-ordinated action by all Australian governments" (Council of Australian Governments n.d.).

[7] The stock-take excluded government-to-government regulations.

[8] The initial mapping results for 23 policy areas and suggested actions are presented in European Commission (2013b).

[9] The specific term is dependent on the jurisdiction. For example, Australia uses Regulation Impact Statement whereas the EU uses Regulation Impact Assessment.