



Australian Government
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Prime Minister and Cabinet

INSTITUTE OF
PUBLIC ADMINISTRATION
AUSTRALIA

IPAA
ACT

2022 CONFERENCE

REGULATORY REFORM

supporting business
investment and growth

16-17 FEBRUARY 2022

HYATT HOTEL, CANBERRA AND ONLINE

TRANSCRIPT OF EVENT

2022 CONFERENCE | REGULATORY REFORM: SUPPORTING
BUSINESS INVESTMENT AND GROWTH

DAY 2 – 17 FEBRUARY:

HIGHLIGHTS, MASTERCLASSES

Enquiries should be directed to Caroline Walsh on 0413 139 427 or at Caroline.walsh@act.ipaa.org.au

Anna Cronin:

These principles are very useful and important for regulators to consider as they organise themselves to deliver their regulatory activity. But you won't be effective if you haven't got a culture that is proactive and positive and one where you are not static. It's not set and forget. You've got to be moving and talking to people that you regulate. So these principles are really good for understanding what the ingredients of a good culture might be. But they're not sufficient. You actually also then need leadership that is going to make sure that the culture... there's a positive culture and it's infectious from the top down. In my experience, I think the approval staff I've met across regulators need help. They really need to be trained, properly making decisions. You and I know, we have ministers on our back saying, "There's a backlog at regulator X, what the hell are you doing about it?"

Anna Cronin:

When I go into those regulators and talk to them about what it is, you've got VPS, fours and fives. I don't know what the federal equivalent is, but reasonably junior public servants making decisions that they're not trained to make, and I'm not being critical of them. They haven't been enabled, they haven't been trained properly. So the approvals team at Earth Resources was just completely overwhelmed by a queue of applications and only two or three people were trained to make decisions. So they all had to wait for those two or three people to make the decisions, hence the queue. So I guess if I had to sort of make an assumption across all regulators, I'd start with approvals teams and give them the skills they need to make those decisions about commissions and also try and digitise those processes wherever possible.

Eliot Palmer:

I kind of look for that director cohort. So the executive do the kind of vision casting session and put the brand on it. But the who's that cohort who are owning, not just one function, but a set of functions and actually working together around that shared regulatory purpose. I tend to see this sort of, people who've come in because there are comms expert or because they did some enforcement stuff. But I kind of always wish to see that director cohort collaborating more strongly inside the regulator, around the shared around the shared mission, not just being concerned with making their process run better, or get more resources.

Anna Cronin:

We have five year reviews, Sandra. So it's not set and forget. There's a management of the stock on the flight pretty actively. And that's because we found, particularly in the building space, I know because I'm doing this work at the moment, why did cladding happen? Why did we have buildings with combustible cladding? Because our regulations, which were very prescriptive unfortunately, had not kept up with new products coming onto the market. So it was a sort of outdated approach. So that's why we are fixing it.

Nicole Hinder:

Australia has such a strong reputation in terms of food safety, food quality, and our regulatory system that underpins both that our products are actually seen as premium and highly sought after. We interact with a huge array of people all the way through, from farmers who are growing animals and people are quite surprised that we actually regulate individual farmers. But again, that comes back to David's point that we're actually regulating for foreign markets. Some of our foreign markets require that we've got regulation at the pharma level, some of them a little less, we've got regulations at the processor level. We set up quite a intense period of engagement, right at the beginning where there was really a no hold bar approach. If you had a problem, if

you had an idea, if you had a solution to be able to work through that meant the department would continue to be from regulator that the industry would understand the decisions that the department took, that there were policies or practises or cultural change elements that we could implement that would deliver benefits to all, everything was put onto the table.

David Hazlehurst:

The tricky thing about our regulatory activity, which I just want to mention, is that we don't regulate as the Commonwealth in agriculture, except for a little couple of bits around the edges, to make Australians safe, barring large states do that. We regulate so that people can get the ticket to export to another country. And in fact, what we're regulating against is the requirements that have been negotiated with that other country around food safety, labelling that kind of stuff. Often of course, we will start with a position that says, "If it's good enough for Australians it ought to be good enough for you," but other countries have different requirements. And then we regulate such that we can give them the ticket that says, "You're good to go," and that gets then, at the other end, the authorities at the other end say, "Right, you've got the ticket fantastic."

Dr. Paul Hubbard:

The law of deeds. Well, there is no law of deeds. There's the common law that's existed for 500 years and 500 years ago, probably the best thing you had for verifying that an act was actually happening, a deed in fact, was happening was that you were there in person and you had three lawyers and a Bishop there to watch the handing over of the soil from one party to another. So if we're talking about RegTech as we were this morning, the RegTech that we had 500 years ago is the common law developed, is much different from the RegTech we have today. Now the RegTech that we use for our banking say already for so many things, but nobody was responsible for updating the common law. The Corporations Act has been updated so corporations can now execute electronically. But what about mutuals? What about cooperatives? What about foreign corporations? What about individuals? When you are signing a stat dec, you can't avail yourself of the corporations' law to make that electronic.

Kate Pounder:

If you sit back and think about it, often a stat dec or a deed and even contracts and other forms of agreements, they're just one step in a transactional service process. So if you can digitise that step, you actually enable the whole service to be rethought and to be done differently. And one that stands out from when we did the work was, I remember New South Wales' government telling us that at the moment, if you get accredited in an occupation, if you complete a TAFE course, and then you want to go and get a licence, you have to write to TAFE, they have to print out a copy of your accreditation, the recognition that you can complete the training, you have to then physically go and give that to service in New South Wales with your stat dec to say, they have to give a stat dec to say that it's accurate and then you hand it in. It's only after that you get your licence.

Kate Pounder:

And of course, until you have your licence, you cannot go and work and you cannot sort of do the thing you've trained for. So I think about just a simple process like that and about how digitising document execution in that context isn't just about that one transformation. It's actually about transforming the way a person receives and gets recognised for their education, is able to get that occupational licence and then is able to go out and work.

John Keeves:

I regard the document execution rules in relation to the commercial transactions, and I guess commerce generally, it's really, the formalities are just gritting the gears. They serve no great particular purpose in this context. And all they do is get in the way and add cost and confusion. I was actually teaching at a law school yesterday and it was... they don't teach document execution rules at law school. And the... Some of these rules, these rules around when deeds can be used, are pretty obscure and I've, on different occasions, I've referred to them as a patchwork quilt. We've made analogies to the way the rails used to work with different gauges. And that lack of uniformity... The mere fact that the formalities exist is kind of bad enough, but the fact that they're not uniform across the country and people have to figure out where something's being executed and/or what the governing law is.

John Keeves:

These are... Although I am a lawyer, I find needless technicalities that get people into trouble when they need not as being, not only pointless, but very frustrating. And I think the legal profession is ready. I had some hesitation to start with about whether the legal profession as a body would be up for reform of document execution laws. And I was presently surprised. I think there's a recognition out there, possibly driven by COVID, but also perhaps just driven by the fact that we are in the third decade of the 21st century, that archaic and ancient rules about paper parts and vellum really have no place in modern Australia. And the fact that it comes as a surprise to many people, including many lawyers to say, "Oh, you mean I can't execute deed electronically? Why is that?" And so I didn't... I think we'll be pushing against an open door if we can come up with some reforms, particularly uniform or least harmonised reforms that take away a lot of these problems

Veronica Taylor:

In a lot of cases, the stat dec in a government process is attached to a process that already sits under another piece of legislation. So it's relatively simple to say, as we do, when we're filing our tax returns, I declare that all the details that I've given above are true. And I understand that if they're not a penalty will apply under the taxation legislation. I don't need to go and fill out a stat dec in order to file my tax. And so by analogy for other government interactions, I shouldn't have to either.

Jason Lange:

When looking at it from the perspective of individuals, business, and community groups, and we want to ask how they'll be impacted by that change in policy or programme or piece of legislation, we want to know how their day to day functions and lives will change, regardless if the impacts are positive or negative. So our broad definition of regulation ensures that where any policy decision is being made by government that has major impacts on society, our involvement ensures that there's an appropriate or more than what's otherwise going to occur, amount of research, analysis, and evidence building. It takes place to support that decision maker.