

Guiding principles for responding to and enabling innovation

Introduction

The COAG Industry and Skills Council (CISC) is committed to proactive reform that supports, promotes and fosters a favourable innovation environment in Australia. As part of this work, CISC is committed to:

- Reducing business costs, while managing social, economic and environmental risks.
- A regulatory landscape that supports business innovation.
- Greater levels of business confidence and investment in innovative activities.

While regulatory practices in Australia are robust and well regarded globally, CISC recognises the importance of regulatory frameworks that effectively foster business innovation and leverage opportunities to improve Australia's global competitiveness.

CISC has developed these principles to help guide Australian governments, in particular regulators, respond to new technologies and business models that challenge existing systems of regulation. The principles are informed by the regulatory approaches by state governments and the Commonwealth to adapt to recent innovations. As such, the principles outline the considerations of all Australian governments when adapting regulatory systems to new innovations.

These principles should also be read in conjunction with the existing Principles of Best Practice Regulation agreed by COAG¹.

Defining innovation is helpful in identifying when these principles are most applicable and can provide the greatest benefits to policy makers. At its most basic innovation is *doing something differently or creating something new*, however the OECD provides the following more comprehensive definition in the Oslo Manual:

“the implementation of a new or significantly improved product (good or service) or process, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations”.

¹ The COAG Best Practice Regulation Guide is available at:

http://www.coag.gov.au/sites/default/files/coag_documents/COAG_best_practice_guide_2007.pdf

Goals

The CISC guiding principles for responding to and enabling innovation aim to ensure that:

- Government action is targeted at achieving clear and relevant outcomes.
- Regulatory frameworks encourage innovation and are sufficiently flexible to adapt to innovation.
- Regulatory responses are coordinated across agencies and jurisdictions.
- Jurisdictions have a consistent approach to assessing the impact and consequences of innovation on: new entrants, existing businesses or industries, and consumers.

Achieving these objectives will result in:

- Reduced business costs and risk.
- A regulatory landscape that is more consistent across jurisdictions and supports business innovation.
- Increased levels of business confidence and investment in innovative activities.
- Greater business innovation.

Management of the principles

The Guiding Principles for responding to and enabling innovation was endorsed by the CISC Regulation and Innovation Working Group in February 2017 and the CISC in August 2017.

Principles

1. Innovative – Examine a broad range of potential responses and new tools to achieve desired regulatory outcomes.

In achieving a desired outcome (e.g. public safety, health or environmental preservation), new approaches and/or technology should be considered (e.g. self-regulation or other technological solutions) to understand how these could help achieve outcomes in the most efficient and effective way. Technology may reduce the need to regulate, for example, by helping to reduce market failure, such as the cost and ability of regulators to access information on regulated parties, or by making existing regulation more efficient and effective.

2. Adaptive and flexible – Regulatory approaches adapt to changing business models and technologies.

Regulatory approaches should be sufficiently flexible to accommodate evolving and emerging businesses models, markets and technologies by targeting desired outcomes and not a particular technology. The response should not rely on current industry characteristics (structure, size, location) or technology to be effective, and should be easily adaptable. The guiding principles should be as simple and uniform as possible, such that new services, products or technologies are not regulated differently to existing ones, unless necessary. Regulation should not restrict competition unless the benefits of the restriction to the community as a whole outweigh the costs and the objective of the regulation can be achieved only by restricting competition.

3. Pro-competitive – Consider both new and existing businesses.

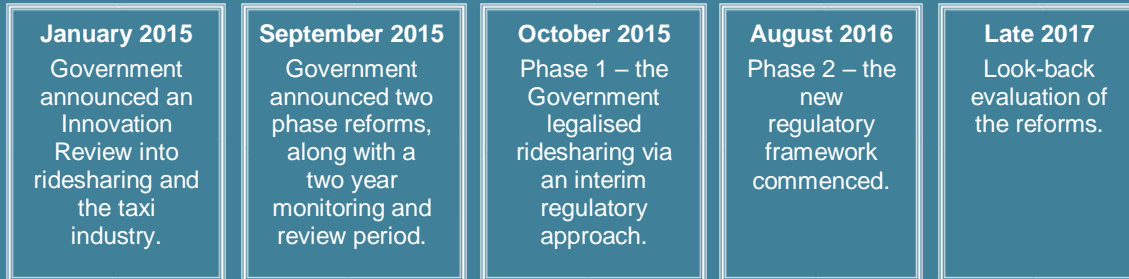
When responding to innovation, regulations should be reviewed to ensure both established and new businesses can benefit from opportunities presented by new technologies or business models. Any review should focus on the net benefits to society as a whole (including not only incumbent and new businesses, but also consumers and individuals). Governments should also consider whether there are any market failures or substantial equity concerns arising from existing businesses having to adapt to new regulatory arrangements, and whether this warrants government action to facilitate their adjustment.

4. Evidence-based – Robust data used to develop, monitor and evaluate regulations.

To further enable an outcome-focused regulatory approach that fosters innovation, improvements to data collection should be considered, on both the observed and potential effects of new technologies and business models. Better information to evaluate the effectiveness of government responses is particularly important where more flexible, less prescriptive regulatory approaches are taken. Governments should obtain evidence to assess risks, including by drawing on relevant expertise (e.g. Australian and international scientific agencies, and other subject matter experts). Responsibility for collecting data should be assigned to the parties that can do so most efficiently, whether that be a government or industry organisation. Monitoring and evaluation should be considered when designing and developing regulatory responses to help improve the quality and efficiency of the analysis.

Case study 1 – ACT ridesharing reform

The ACT was the first jurisdiction in Australia to legalise and regulate ridesharing services and Canberra was the first capital city in the world to regulate ridesharing before the service had begun. Leading up to the reform, Uber had signalled its intention to enter the ACT market. In response, the Government determined it would take a systematic and evidence-based approach to reform.



Applying the principles:

1. Innovative

The ridesharing business model addresses inherent risks differently from the traditional taxi industry. For example, the additional information available to drivers and passengers through the booking service reduces the risk involved with anonymous transactions, such as rank and hail work by taxis. The reputation rating system provides an incentive for drivers and customers to behave respectfully, and the integration of booking system and payments also takes care of payment risks (cash handling and non-payment). The ACT took into account the approach to risk from different business models as part of designing a new regulatory framework that would be adaptable to new technologies.

The technologies of rideshare were also considered for their ability to provide additional on-demand travel choices to consumers, in terms of booking, evaluating drivers and payment processing, for example.

2. Adaptive and flexible

As with the emergence of business models such as ridesharing and car sharing (e.g. GoGet), we can expect innovation to continue. For example, we may eventually see fleets of automated vehicles providing on-demand transport.

The ACT has designed the new regulatory framework to respond to defined behaviours around safety, consumer protection and payment, rather than regulate individual business models. This promotes a fair treatment of different business models, and makes the new framework more flexible and “future proof”. However, it is also important to consider existing business models, and not just look to the future.

3. Pro-competitive

The ACT reviewed existing regulations for traditional taxi and hire car operators when designing the new regulatory framework. As a result, the ACT chose to reduce barriers to entry and burdensome regulation – for example, lowering taxi license fees and removing requirements related to driver and vehicle presentation. These changes should allow existing industry participants to be better able to compete with emerging services.

4. Evidence-based

The ACT committed to formally monitoring the outcomes of the new regulatory framework for the two years from October 2015. The ACT is collecting qualitative and quantitative data on industry changes, including consumer outcomes and impacts on various stakeholders. The ACT will use this data to analyse changes in supply and demand and in the quality of services delivered to consumers. This evaluation will be used to see if the industry is changing in line with modelled forecasts and determine if further actions are required.

5. Appropriately resourced – Regulators have the appropriate skills and capabilities.

Regulators should have the capacity to assess risks posed by new technologies, business models and markets, and have the capability to be agile in responding appropriately and quickly to these risks. This may include being able to advise government on emerging risks and recommend action. Regulators should have the necessary structures, skills, culture, and resources to rapidly change their regulatory approach or posture, if necessary, while considering their own mandates and functions.

6. Coordinated – Facilitate and promote collaboration and coordination to share best practice regulatory approaches to innovation

Coordination by agencies at all levels of government will ensure streamlined implementation and enforcement processes, particularly when regulating businesses or technologies operating across jurisdictions. Opportunities to share best practice regulatory approaches and jointly respond to emerging technologies and business models could help better identify the risks involved, and how to design the most effective and efficient policy response. Governments should also work with local and international industry, innovators and customers to obtain information on emerging technologies and business models, and their potential future impact.

7. Responsive – Interim measures, trials, sandboxes and pilots used while longer term responses are developed.

In cases where new businesses or technologies do not pose an immediate regulatory risk, the adoption of interim measures ensures new businesses or technologies are not unnecessarily impeded while the existing regulatory approach is reviewed. Interim measures could also allow governments to obtain information that enable them to better

develop a long term regulatory response. Such measures could include allowing pilot or demonstration projects to be completed, or providing a regulatory exemption for a fixed period of time. The criteria and process for providing these interim measures should be transparent and clearly communicated to the public. Scenario or ‘plausible future’ analysis could be undertaken, and different regulatory enforcement hierarchies ready if needed. Consider the use of ‘trajectories’ to help provide a degree of certainty and direction.

8. Forward-looking – Continual monitoring and scanning of the horizon.

Innovation spawns new ideas, products and systems which can quickly and fundamentally change the community’s existing landscape. The speed of change narrows the window for preparing and adjusting to enable those innovations. Identifying potentially disruptive innovations as early as practicable will give Government more time to prepare for the effects of innovation. Continual scanning and monitoring for current and future innovations, combined with an ability to understand and respond to the significance of potential changes, is essential to the success of regulators addressing and enabling innovation.

Case study 2 – SA trials of automotive technologies

The automotive manufacturing sector has been central to South Australia’s identity for over 60 years. As South Australia’s economy responds to global changes, transitioning from a traditional manufacturing base towards higher value-added activities is vital for supporting future jobs and continued prosperity. Driverless vehicles and associated technologies provided an outstanding opportunity for South Australia to ‘get in on the ground floor’ of an emerging industry building on an existing base.

This new era in automotive technology has enormous potential to improve safety, reduce greenhouse gas emissions, improve freight productivity and transform personal mobility across the globe. It is predicted that the international driverless car industry will be worth \$90 billion within the coming 15 years, and South Australia is now well positioned to be involved with this global innovation.

The South Australian Government recognised the significant opportunity in unlocking and attracting industry investment in driverless and connected vehicle technology to the State, and in early 2015, the Government announced the introduction of legislation to allow on-road trials of driverless cars and automotive technologies.

Applying the principles:

6. Coordinated

A highly collaborative approach was taken in developing and introducing necessary legislation. The South Australian Government undertook extensive early engagement with a range of key industry stakeholders at the forefront of the

development of automotive technologies, including automotive manufacturers, automotive suppliers, telecommunications and connected technologies companies, and innovators such as Google, Uber and Tesla. During the development of the legislation, there was a strong recognition of the industry leadership required to drive the development of innovative technologies, and Government's role in enabling and encouraging this. Sharing draft legislation with industry in the early stages provided key feedback to further refine the proposed legislative framework.

Collaboration with world's best practice international partners also supported the development of legislation, including the US Department of Transportation, the California Department of Motor Vehicles and the United Kingdom's Transport Research Laboratory.

7. Responsive

The legislation was developed using a blank sheet approach, enabling the consideration of a wide range of technologies, business models and regulatory approaches beyond the tightly regulated current environment (principle 1). The resulting legislation is exemption-based, where entities simply submit plans for their proposed trials, and ensure they have sufficient insurances in place to protect the public, to apply for authorisation to conduct trials.

It is not limited to a particular technology, and permits exemptions from existing legislation for trials of any automotive technology that relates to advances in the design or construction of motor vehicles. The exemptions required may vary significantly depending on the technology being trialled; however this approach provides the flexibility to allow an almost limitless range of trials to take place, subject to the relevant conditions to ensure safety.

Enabling on-road trials provides entities with the opportunity to test and develop their technologies in 'real world' conditions, without requiring regulatory amendments, or while appropriate amendments are being developed.

Benefits of this Approach:

By responding proactively, South Australia was able to gain a first mover advantage and signal its openness to innovative business. Industry responded positively to this approach with South Australia's legislation being praised by Google as a benchmark for other countries to follow, due to its design and support of innovative technologies.

In addition, the approach adopted by South Australia has created opportunities for existing businesses. A number of local vehicle component businesses are now expected to expand despite the closure of automotive manufacturing in the State, including Cohda Wireless, who currently produce over 60% of the world's connected vehicle communications technology.

COAG Industry & Skills Council (CISC)

Goal

Create a regulatory environment that attracts and enables innovation while balancing social, economic and environmental interests

Actions

- remove regulatory barriers to innovation
- design regulation that is flexible and adaptive to change
- promote consistency across jurisdictions

Outcomes

- reduced business costs and risk
- greater levels of business confidence and investment in innovative activities
- increased business innovation
- increased competitiveness

Principles for pro-innovation regulation



1. Innovative

Regulatory responses should be innovative themselves, and make use of new technologies where relevant. For example, self-regulation may be a regulatory option enabled by new technology.



5. Well-resourced

Regulators should have the appropriate skills, capability and access to expert advice when developing and enforcing innovative regulation.



2. Adaptable & flexible

Regulation should be technology neutral, and adaptable and flexible to future technological changes.



6. Coordinated

Regulation should be coordinated and regulators should collaborate to gather and share data, learning from and adapting the experiences of other jurisdictions.



3. Pro-competition

Regulation should encourage competition and maximise net benefits to society by levelling the playing field for market participants without favouring either new-entrants or incumbents.



7. Responsive

To remain agile, regulators should explore interim measures, such as experimental trials, pilots, demonstration projects and regulatory sandboxes, while longer term responses are developed.



4. Evidence-based

Robust data should be used to develop, monitor and evaluate the effectiveness and efficiency of reforms and assess the impact of disruption.



8. Forward looking

Regulation should proactively consider horizon disruptions.