

NRCoP & ANZSOG present:

WE'RE ALL REGULATORS: WHY AND HOW TO THINK BROADLY ABOUT REGULATION

Speaker

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WE WILL ATTEMPT TO
ANSWER AS MANY
QUESTIONS AS POSSIBLE
AT THE END OF THE
PRESENTATION

RUTH THE REGIMENTED

The clock radio alarm goes off and wakes her.	Summer Time Act <i>Radio Licence Fees Act</i> <i>Broadcasting Services Act</i>
Good morning world, she thinks as she takes a deep breath	Environment Protection Act <i>Ozone Protection and Synthetic Greenhouse Gas Management Act</i>
and she switches on the light.	Electricity Industry Act Electricity Safety Act Energy Safe Victoria Act Essential Services Act National Electricity (Vic) Act
It's good to be single again after her failed relationship with Martin	Marriage Act Births, Deaths and Marriages Registration Act <i>Marriage Act</i> <i>Family Law Act</i>

RUTH THE REGIMENTED

Now contemplating her new relationship with Amanda	Relationships Act
How happy she is in her new, architect designed house and happy to be out of her terrible rooming house	Architects Act Building Act Conveyancers Act Fences Act Heritage Act Housing Act Housing Contracts Guarantee Act Land Act Land Tax Act Local Government Act Owners Corporations Act Planning and Environment Act Property Law Act Sale of Land Act Surveying Act Subdivision Act Urban Land Corporation Act Rooming House Act Valuation of Land Act <i>Building Industry Act</i>

RUTH THE REGIMENTED

She was worried, however, about who had moved in next door to her and who was taking care of her children	Serious Sex Offender Monitoring Act Working with Children Act
After a long, hot shower	Gas Industry Act Catchment and Land Protection Act Water Act Safe Drinking Water Act Water Industry Act Water Efficiency Labelling and Standards Act <i>Water Act</i>
She decides to go for a walk downtown. What a mess on the streets, she thinks,	Graffiti Prevention Act

RUTH THE REGIMENTED

I'll walk for a kilometre or so, or about half an hour. She tires.	<i>National Measurement Act</i>
Perhaps I should have taken my car	Motor Car Traders Act Petroleum Act Road Safety Act <i>Motor Vehicle Standards Act</i>
Or caught public transport or called an Uber vehicle	Bus Safety Act Rail Safety Act Transport (Compliance and Miscellaneous) Act Commercial Passenger Vehicle Industry Act

RUTH THE REGIMENTED

She decides to have some breakfast starting with some toast and eggs	Food Industry Act
She brushes her teeth.	Health (Fluoridation) Act
I'll take Fido, the dog for a walk	Domestic Animals Act Prevention of Cruelty to Animals Act Veterinary Practice Act

RUTH THE REGIMENTED

For lunch, she has a delicious chicken sandwich	Broiler Chicken Industry Act
bought from the old one-legged Vietnamese woman at the	Equal Opportunity Act Racial and Religious Tolerance Act <i>Racial Discrimination Act</i> <i>Human Rights (Sexual Conduct) Act</i> <i>Sex Discrimination Act</i> <i>Racial Discrimination Act</i> <i>Age Discrimination Act</i>

RUTH THE REGIMENTED

local Red Chook Takeaway	Business Names (Commonwealth Powers) Act Fair Trading Act Occupational Health and Safety Act Partnership Act Payroll Tax Act Retail Leases Act Shop Trading Reform Act <i>Corporations Act</i> <i>Designs Act</i> <i>Trade Marks Act</i> <i>Income Tax Assessment Act</i>
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RUTH THE REGIMENTED

with her credit card, before deciding to take care of some personal business at the bank	Credit Act <i>Banking Act</i> <i>Cheques Act</i> <i>Currency Act</i> <i>Reserve Bank Act</i>
She has pain in her back, her eyes, and her teeth	Health Professions Registrations Act
And wants to sue them all or take action against them	Legal Profession Act Health Complaints Act
Her false leg was hurting something awful	Therapeutic Goods (Vic) Act <i>Therapeutic Goods Act</i>
so she decides to light up a joint to relieve the pain	Access to Medicinal Cannabis Act

RUTH THE REGIMENTED

She decides to spend some time relaxing at the Casino	Casino Control Act Casino (Management Agreement) Act Gambling Regulation Act
She has some dinner: some meat and fish	Fisheries Act Victorian Fisheries Authority Act Seafood Safety Act Meat Industry Act <i>Pig Industry Act</i> <i>Australian Meat and Livestock Industry Act</i> <i>Fisheries Management Act</i> Meat Inspection Act
with a glass of wine	Liquor Control Reform Act

RUTH THE REGIMENTED

Needless to say, she loses most of his money, so she pawns her Ipad.	Second-Hand Dealers and Pawnbrokers Act
Sadly, that night she passes away	Cemeteries and Crematoria Act.

3 HOT ISSUES??

Turn to the person next to you, introduce yourselves and identify the three biggest regulatory issues you think are 'hot' at the moment

SOME MODERN REGULATORY CHALLENGES

AGED CARE/NURSING HOMES

INTERNATIONAL TAX AVOIDANCE/EVASION

BUILDING QUALITY AND CLADDING

VOCATIONAL EDUCATION AND TRAINING (VET)

FAMILY DAY CARE

DRONES

NDIS

CLIMATE CHANGE/ ENVIRONMENT

SHARING ECONOMY: UBER; AIRBNB

AUTONOMOUS VEHICLES

ALTERNATIVE MEDICINES

WIND FARMS

BITCOIN/BLOCKCHAIN

E-CIGARETTES

BANKS AND FINANCIAL INSTITUTIONS

SO, WHAT IS 'REGULATION'?

WHAT IS REGULATION: AN ACADEMIC'S VIEW

An intentional form of intervention by public sector actors in the economic and social activities of a target population with the aim of achieving a public policy objective or set of objectives. The intervention can be direct and/or indirect, the activities can be economic and/or non-economic, the regulator may be a public sector actor and the regulatee may be a public sector or private sector actor.

WHY REGULATE



PRESSURES FOR MORE REGULATION

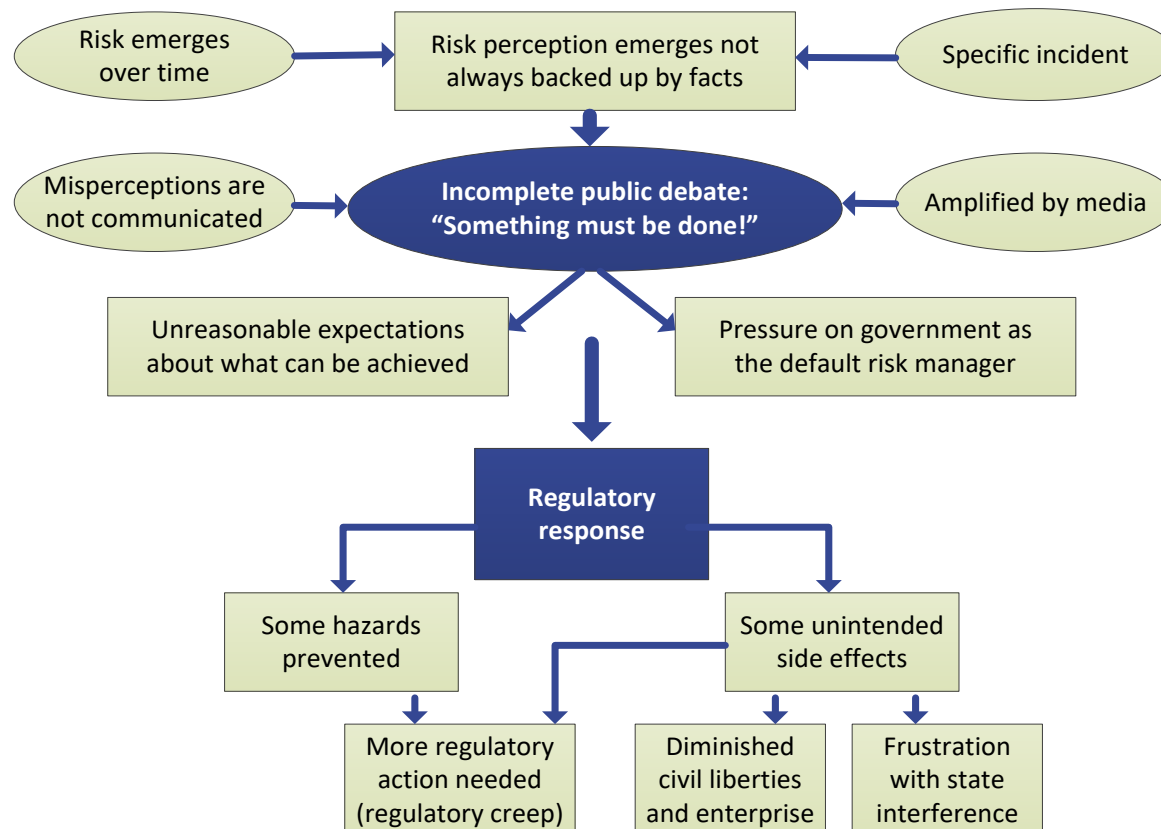
Population seeks protection from harms and has low tolerance of risk

Number of risks grow as technology develops

Regulatory failures are common

Pressures from industries and professions to protect them from competition

WHY REGULATE? PRESSURES TO RESPOND TO RISK BASED ON BETTER REGULATION COMMISSION (UK) (2006)



ARE YOU FACING PRESSURE FOR MORE REGULATION IN YOUR FIELD?

LESS REGULATION?



PRESSURES FOR LESS REGULATION

‘De-regulation’: desire to increase competition

Unnecessary ‘red tape’ stifles business and increases costs

Regulation regarded as patronizing: the ‘nanny state’: need to empower individuals and place burden of risk on them

Stifles innovation: new technologies

Dislike of precautionary principle

ARE YOU FACING PRESSURE FOR LESS REGULATION IN YOUR FIELD?

WHO REGULATES?

Commonwealth

- NB Constitutional limits
- 60 government departments; 40 national standard setting bodies and ministerial agencies

States

- Very wide powers under their constitutions
- Victoria: Over 100 regulatory bodies or bodies with regulatory powers

WHO REGULATES?

Local governments

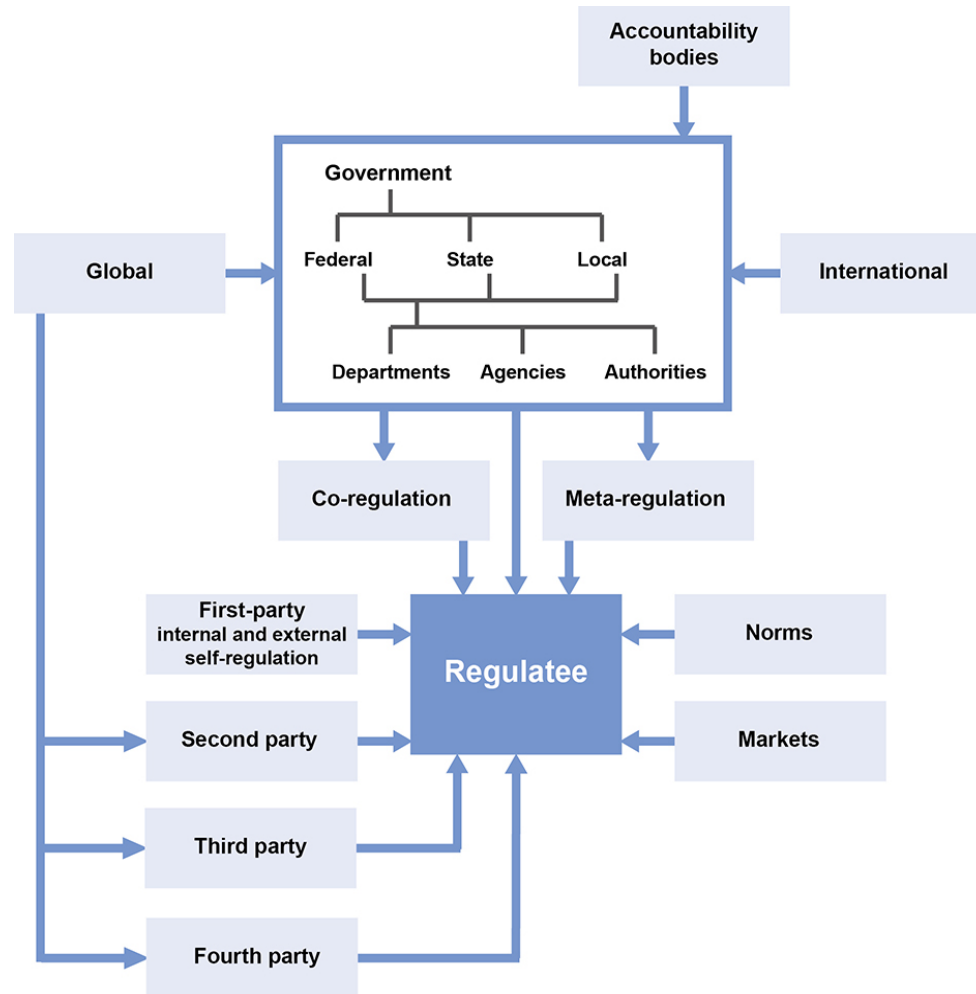
- 563 across Australia
- Planning, building and construction
- Public health
- Domestic pets
- Parking

THE GOVERNANCE OF REGULATION: REGULATING THE REGULATORS

Oversight bodies

- Parliaments
- Ombudsman
- Auditor-General
- Scrutiny of Legislation committees
- Productivity Commission
- Judiciary

WHO REGULATES?



WHERE DO YOU FIT?

Aged Care Regulatory Framework



AGED CARE

Legislation

- Aged Care Act (Cth)
- Aged Care Principles
- Charitable Fundraising Act and Regulations
- Food Act and Regulations
- Guardianship Act and Regulations
- Health Records and Information Privacy Act
- Nurses and Midwives Act and Regulations
- Occupational Health and Safety Act and Regulations
- Public Health Act
- Poisons and Therapeutic Goods Act and Regulations
- Privacy Act
- Retirement Villages Act and Regulations
- Workplace Relations Act

AGED CARE

Government

- *Department of Health**
- **Aged Care Quality and Safety Commission 2019**
- *Aged Care Complaints Commissioner**
- Office of the Public Guardian/Public Trustees
- State Ministries of Health

NGOs, industry associations etc

- Aged Care Financing Authority
- Aged Care Sector Committee
- National Aged Care Alliance
- Council on the Ageing
- Australian Nursing Homes and Extended Care Association
- Aged Care Industry Association
- Aged and Community Care Association
- National LGBTI Health Alliance
- Association of Age Service Professionals
- Australian Medical Association
- Anglicare
- Dieticians Association
- United Voice

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PRIVATE REGULATION: SELF-REGULATION

First party regulation: internal self-regulation

- Voluntary adherence to standards or systems
- Actors as duty holders
- Compliance systems
- Corporate social responsibility

PRIVATE REGULATION: SELF-REGULATION

External self-regulation

- an institutional arrangement whereby an organisation regulates the standards of behaviour of its members
- Varies along a number of dimensions:
 - character and level of state involvement
 - Degree of formality of arrangements rules and their enforcement
 - Degree of monopoly control over activity

PRIVATE REGULATION

Second party regulation:

- Relationship between two parties designed to influence the behaviour of the other
 - Contracts; supply chains
 - Insurance companies requiring behaviour eg installation of burglar alarms or adopting healthier diet

Third party regulation:

- Activities of external auditors, accreditors, certifiers, information providers, standards associations, ratings agencies
- Government may sometimes require third party verification
- Second party regulation may require third party involvement

PRIVATE REGULATION

Compelled third party regulation:

- PAYG deductions by employers
- Mandatory reporting financial transactions reporting requirements, conformity to immigration laws, community visitor schemes
- Accessorial liability

Fourth party regulation

- Influence of civil society, consumers, NGOs, interest groups
 - Purchasing behaviour, boycotts, monitoring, petitions, adverse publicity
 - Third party standing to sue in public interest cases
 - Role of unions

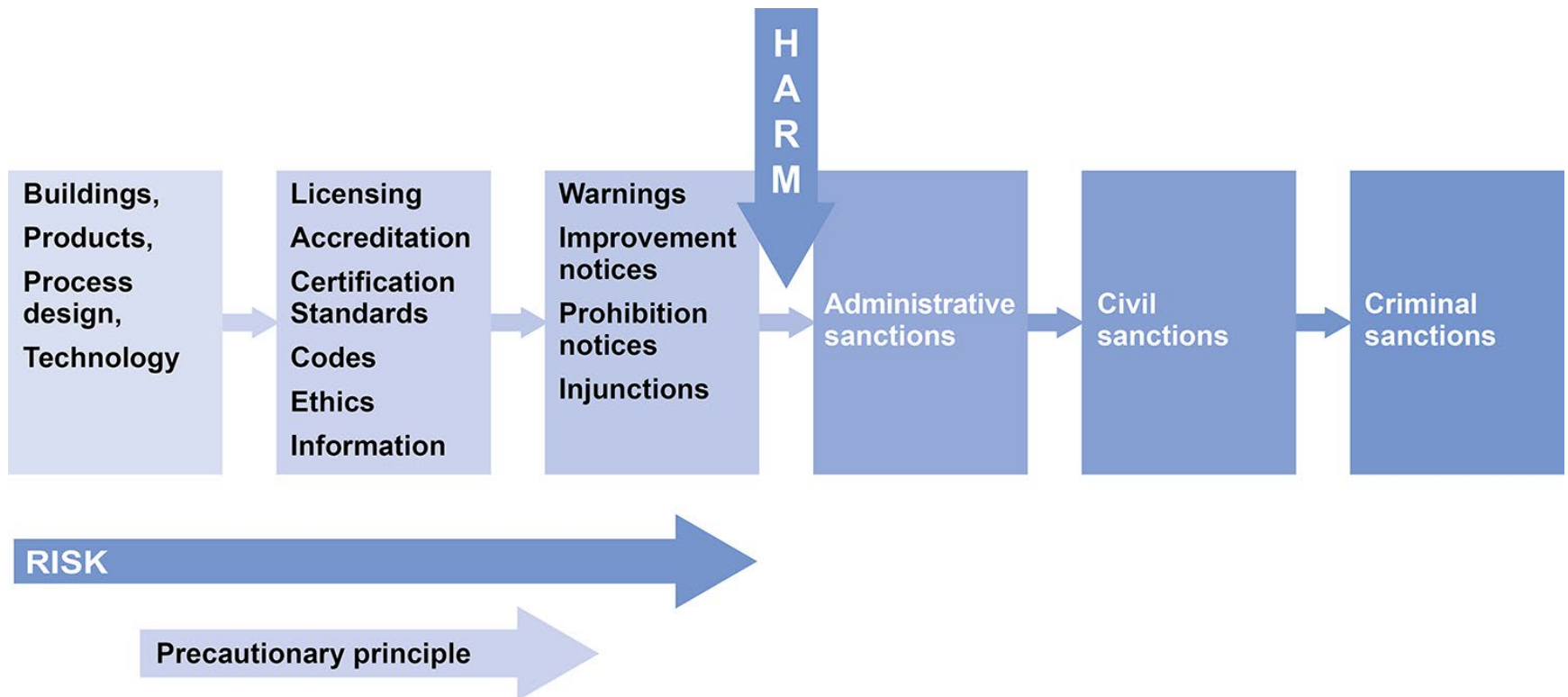
HYBRID REGULATION

Co-regulation

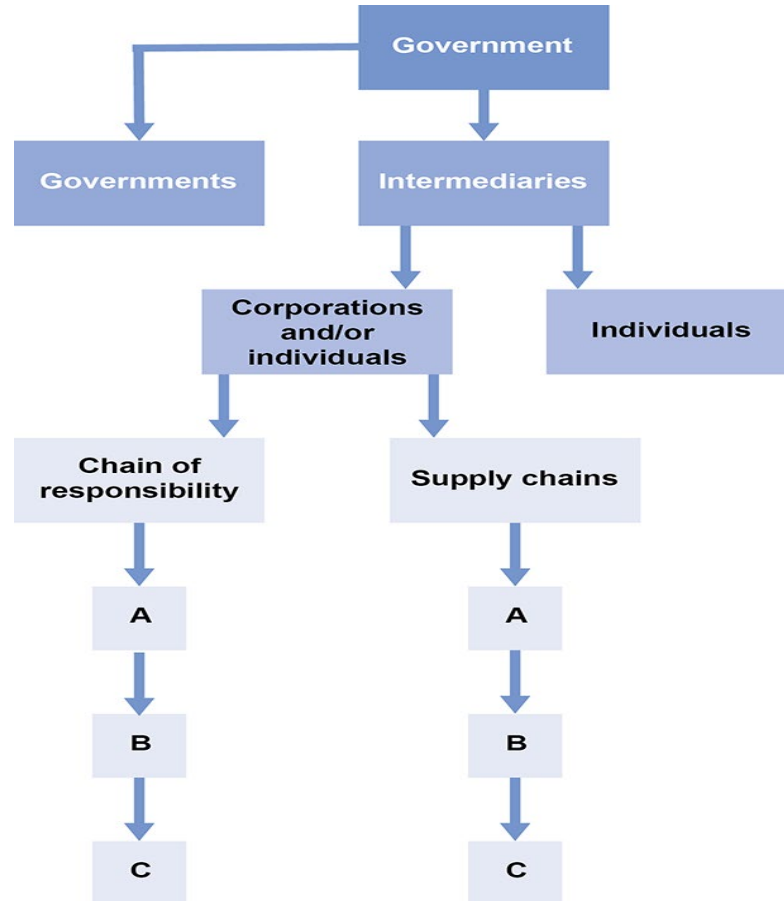
- Where the regulatory role is shared between government and industry
- Industry body may develop regulatory arrangement eg code of practice, but government may provide legislative backing, including enforcement of sanctions
- Eg professional bodies
- Eg utility regulation > privatization of industries

WHEN, WHO AND HOW TO REGULATE

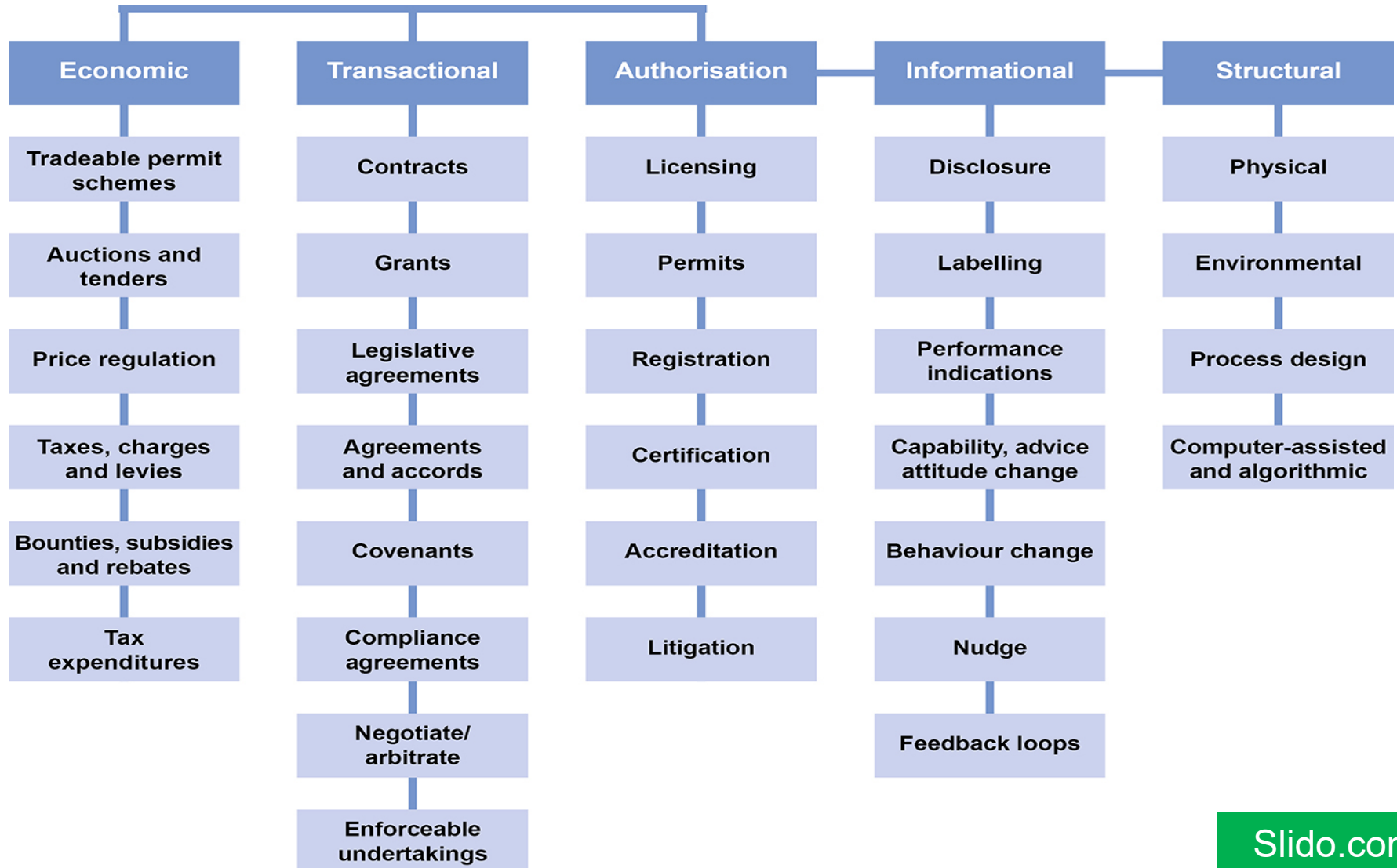
WHEN TO REGULATE

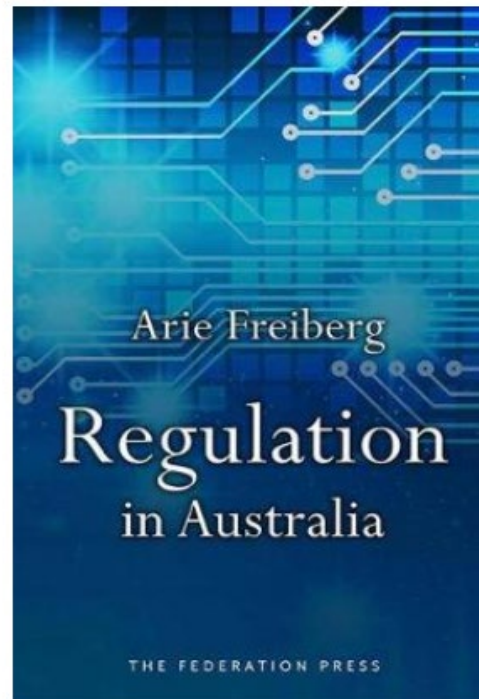


WHO TO REGULATE?



THE TOOLS OF REGULATION







Q & A

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THANK YOU

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