

How do laws in Australia accommodate changes in technology?

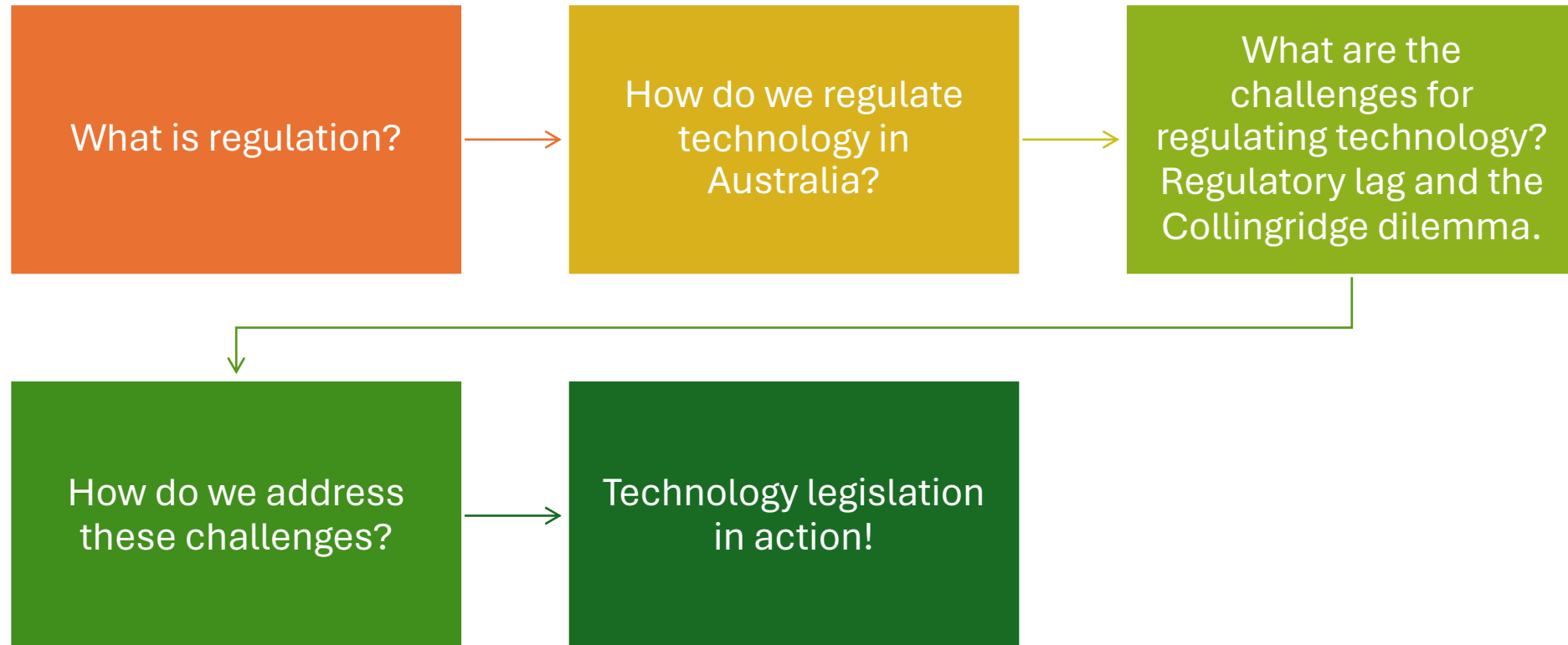
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Tonight's Seminar



Why study regulation?



- Born in Leeton, NSW – major irrigation region in south-west.
- Environmental Policy at ANU in Canberra – understanding the work of the IPCC and the implications in Australia.
- Renewable energy – promoting technological solutions to climate change, and how the law can help.
- Research regulation to find the best way to promote these technological solutions.



Arie Freiberg

Regulation in Australia

THE FEDERATION PRESS

How does Australia regulate technology?

- Understanding how to regulate in a federalist structure.
- Most technology regulation occurs at the state level, with federal level support where necessary.
- Aims to promote safe and efficient deployment of technology, whilst building regulatory trust with relevant stakeholders.

Starting point for technology regulation



NEW REGULATION OR
REGULATORY REFORM?



UNDERSTANDING THE MODERN
REGULATORY STATE

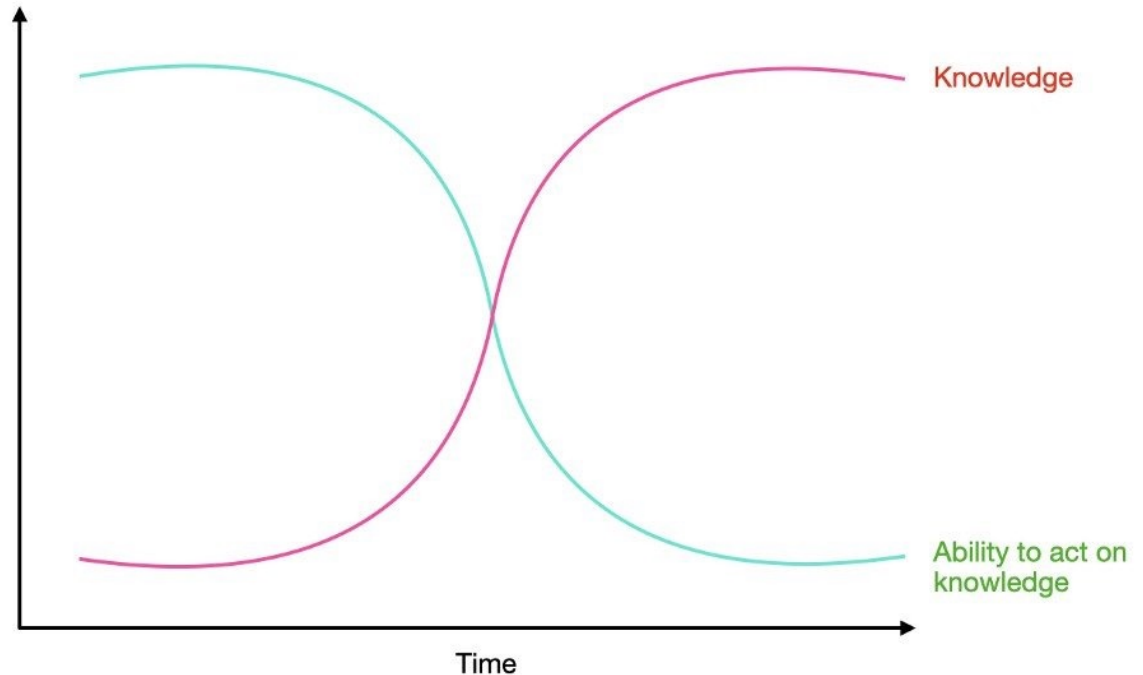


AUSTRALIAN LEGISLATURES

Is regulatory lag a problem?

- The experience of regulatory lag in Australia.
- Coal Seam Gas case study.
- What is the Collingridge Dilemma?

The Collingridge Dilemma (Illustrative)



Potential solutions to regulatory challenges



COMMON LAW
PROTECTIONS



PRECAUTIONARY
PRINCIPLE



REGULATORY
STEWARDSHIP

Deploying energy technology at a State level in the ACT and NSW

Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT)

2011

2020

Electricity Infrastructure Investment Act 2020 (NSW)

Section 5 of the EF Act (extract):

- a) promote the establishment of large-scale facilities for the generation of electricity from a range of renewable energy sources in the Australian capital region and other places; and
- b) promote the development of the renewable energy generation industry in the ACT and Australia consistent with the development of a national electricity market; and
- c) reduce the ACT's contribution to greenhouse gas emissions and help achieve targets to reduce the ACT's greenhouse gas emissions; and
- d) address the need for urgent action to be taken to reduce reliance on non-renewable energy sources while minimising the cost to electricity consumers.¹³⁸

11 FiT entitlement—grant

- (1) The Minister may grant a person a FiT entitlement under a FiT capacity release in relation to a large renewable energy generator located—
- (a) in the Australian capital region; or
 - (b) outside the Australian capital region if the Minister is satisfied that the person's proposal—
 - (i) offers exceptional economic development benefits to ACT renewable energy industries; and
 - (ii) minimises costs to electricity consumers.

Has this best practice been adopted
elsewhere in Australia?

Electricity Infrastructure Investment Act 2020 (NSW)

Section 3 (Objects of Act)

(1) The objects of this Act are—

- (a) to improve the affordability, reliability, security and sustainability of electricity supply, and
- (b) to co-ordinate investment in new generation, storage, network and related infrastructure, and
- (c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and
- (d) to foster local community support for investment in new generation, storage, network and related infrastructure, and

- (e) to support economic development and manufacturing, and
- (f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and
- (g) to invest in education and training, and
- (h) to promote local industry, manufacturing and jobs, and
- (i) to promote export opportunities for generation, storage and network technology.

49 Making of LTES agreements

- (1) An LTES agreement may not be made, unless the consumer trustee recommends the making of the LTES agreement.
- (2) The regulations may prescribe further circumstances in which an LTES agreement may not be made.
- (3) An LTES agreement remains in force for the term of the agreement unless the agreement is sooner suspended or terminated.



Federal Level Legislation for Technology

Offshore Electricity Infrastructure Act 2021 (Cth)

2021

2022

Mitochondrial Donation Law Reform (Maeve's Law) Act 2022 (Cth)

Cooperative Federalism for Offshore Wind Technology?



Offshore Electricity Infrastructure Act 2021

No. 120, 2021

Compilation No. 2

Compilation date: 1 December 2022
Includes amendments up to: Act No. 71, 2022
Registered: 13 December 2022



248 Application of State and Territory laws in offshore areas

- (1) The laws in force in a State or Territory (other than laws of the Commonwealth) apply, as provided by this section, as laws of the Commonwealth in the included offshore area of that State or Territory as if that area were:
- (a) part of that State or Territory; and
 - (b) part of the Commonwealth.

251 Inconsistent law not applied

Section 248 does not apply to a law in so far as the law would be inconsistent with a law of the Commonwealth (including this Act).



Overcoming the Collingridge Dilemma?

**Mitochondrial Donation Law Reform
(Maeve's Law) Act 2022**

No. 26, 2022

**An Act to amend the law relating to human cloning
and research involving human embryos, and for
related purposes**

- Consultation, consultation, consultation.



Recommendations for a Technology Regulation Toolkit

1. Continued cooperative federalism, but with the States to lead on substantive regulation.

2. Regulators need to engage and overcome the Collingridge dilemma for emerging technologies.

3. When considering new regulation, as opposed to regulatory reform, legislatures are recommended to consider new forms of frameworks for addressing critical challenges such as regulatory stewardship and resilience.

Thank you for your time.