

## Meta-regulation in Practice: Beyond Normative Views of Morality and Rationality

by *F.C. Simon*

Routledge

Abington, UK, and New York, NY

2017

240 p.

ISBN: 978-0-367-22870-5 (paperback)

ISBN: 978-1-138-23372-0 (hardback)

ISBN: 978-1-315-30891-3 (e-book)

**Review DOI [10.1108/TLO-04-2019-228](https://doi.org/10.1108/TLO-04-2019-228)**

Reform of the energy sector and its privatisation has been a priority for the Australian Government since the 1990s. In this book, the author, Fiona Simon, uses a framework drawn from meta-regulation theory to analyse the factors which inhibited stakeholders reaching consensus on the adoption of a national energy policy between 1999 and 2015. It also draws on her observations of the interactions between the stakeholders to evaluate the worth of meta-evaluation theory. The author argues that meta-regulation failed the energy industry not only because it was an inadequate response to the resolution of complex problems such as those posed in the energy sector but also because of the lack of resources and action by the regulator. The evidence for this conclusion was gathered during the author's study for her PhD thesis. She was formerly an employee first of the Victorian energy regulator and later in the compliance departments of two of the sector's energy retailers.

Meta-regulation refers to the use of standards and rules, rather than prescriptive laws, to manage social behaviour. The aim is to prevent, rather than to punish people for, criminal or undesirable behaviour and to promote desirable behaviours. This is achieved by such means as self-regulation of compliance with various standards. Examples include the Governance Standards of the Australian Securities Exchange, professional standards of medical practitioners, safety audits and various codes of conduct. While non-compliance with meta-regulation often has penalties attached, its regulator relies for its success on stakeholder participation and support.

Simon defines meta-regulation in her book as “as not only about regulatory flexibility and self-regulation but the need to account for third parties and the market in driving outcomes in the public interest” (p. 3). She claims that the retail energy market fulfils all the criteria for adoption of meta-regulation. The purpose of this book was to engage in a critical analysis of the value of meta-regulation in the energy sector. In this context, her book is about whether meta-regulation of business can serve the public interest.

The theoretical basis for the work draws on responsive regulatory literature (Braithwaite, 2008; Parker, 2013) and Luhmann's (2013) theory of social systems (economics, politics and law) and their communication. Simon analysed data drawn from observations of how the various stakeholder groups (but not individuals) interacted in the energy sector.



Operationalisation of meta-regulation (pp. 3, 80) of the energy sector can be summarised as having the characteristics: formal rules based on principles, not prescription; reflexive and responsive regulators; third parties (such as consumer groups) involved in the decision-making; business self-regulates and responds to threats of reputational damage; and information is communicated to all stakeholders.

Simon suggests that morality is at the heart of meta-regulation theory. Firms acquire moral guidance from third parties and consumers who define what is moral and, in turn, exercise punitive measures when firms breach the morality via their impact on a firm's reputation. She is sceptical about the effectiveness of meta-regulation claiming that it fails to achieve its promise because of "a naiveté in the normative scholarly assumptions about organisational motives and dynamics (across all organisation types) which at times extends into lofty salvationist and somewhat anti-corporate idealism" (p. 5). In any case, to be successful it needed support from the law.

The book addresses changes in the energy sector from the early 1990s until 2015. During this time, the sector, previously government-owned, was privatised and full retail competition was introduced. At the same time, the Australian and State Governments moved to "harnessing private interests for the public good" through meta-regulation techniques.

Energy is a political problem because it is so significant for the well-being of the economy, as well as the quality of life of every individual [in 2014-15 value added to the economy was over \$23bn with employment of 63,000 people (Productivity Commission Review 2017)]. Energy's significance to politicians and their voters was indicated more recently in 2018 when the politics of the National Energy Guarantee policy brought about a change in the person of Prime Minister. The extreme complexity of the sector is compounded by the range of stakeholders in the supply chain often holding competing interests and expectations. Politicians seek to be reliable, affordable and reduce costs to consumers. At the same time, the debates continue about the continued support of coal-fired power stations, support for renewable energy sources (solar, wind and water) and the best way to reduce emissions and/or set targets. The generation and transmission via poles and wires are regulated. The retailers operate in a competitive market to sell electricity to consumers.

Governance in the retail industry was by the National Electricity Market which facilitates trade of electricity across State boundaries via a spot market, and an Energy Retail Code published in 2000 which included guidelines that set the basic terms and conditions with which all contracts with domestic and small business consumers had to be consistent (p. 65). The author states that the regulatory approaches were meta-regulatory, with a combination of principles, competitive markets, self-reporting, consultation and transparent information (p. 79).

The conclusion from the regulator's analysis of self-reported data from the industry showed little in the way of systemic or material breaches of the regulations. Yet, problems were found with the selling practices (particularly misleading door-to-door sales practices). The benefits of meta-regulation were to be a market structure achieving better performance. The problems were the impacts on consumers of ignoring public interest, the high costs of energy, an ineffective regulatory framework and dishonest sales techniques.

The book is divided into a preface, seven chapters, notes and index. Following the introduction in Chapter 1 and a comprehensive review of meta-regulation in Chapter 2, the next four chapters are not a chronological description of what was happening in the sector, but rather each chapter addresses the issues from different perspectives. Chapter 3 described the privatisation of the industry and attempts by the regulator to work with

---

industry to develop a code of conduct. Chapter 4 takes the criticisms of meta-evaluation further by identifying the “political horse-trading” that occurred when multiple states became involved in market decisions. The challenge to the regulator was driven by consumer groups who sought affordability and protection for customer hardship, arguing that energy was an essential service and retailers caught in the conflict between selling a commodity and the concept of energy as an essential service. Simon further argued that the moral value of protecting consumers could not be given meaning in a political system that was primarily driven by hypocritical government risk perceptions. New approaches from behavioural economics in Chapter 6 rejected the assumptions of competition policy. This led to the conclusion in the final chapter.

There was a lot of consensus in the aims of the different participants in the sector. The industry seeks lower costs, stability in government policy and policies to reduce emissions so as to provide certainty for the long-term investment required by the sector, i.e. a concern for policies to achieve reliability, affordability and stability in the sector. Consumers also want reliability and stability and especially affordability. Consumer price rises for energy drove political intervention in the sector. Over five years to June 2012, electricity prices rose 45-85 per cent in most jurisdictions (p. 82). However, conflicts that emerged from the different values made it impossible for the regulator to coordinate the desires and activities of the regulated parties.

Simon challenged several of the assumptions of meta-regulation as it applied in the energy sector: that activists/consumer groups had a monopoly on morality; companies valued reputation; other stakeholders had an automatic right to participate in corporate decision-making; information was transparent and communicated to the various stakeholders. She also questioned the role of mass media in carefully selecting data to construct their construction of reality which in turn influenced public opinion, and subsequently disturbed the political system. In response to consumer demands the government needed to be seen to be “doing something”. Overall, the governments responded to a clash of economic and political values. The market focus of Full Retail Competition did not sit easily with the political needs of government to “reduce risk to itself” and to be seen to be safeguarding consumer protection.

Simon concluded that the government’s actions were “inconsistent with meta-regulatory policies that assume the government to be only a benign enabler of policy”. Not only did meta-regulation not take account of the political system but also the actions of decision makers were over-influenced by perceptions of political risk. Simon claims there was no leadership. Certainly, the book did not identify any individual people who made the decisions that promoted their organisations’ interests. The final chapter summarises Simon’s arguments and contrasts the flaws in both prescriptive regulation and meta-regulation. She concluded that “meta-regulation was a flawed concept for the complex and contested Australian energy markets” (p. 222).

The model of meta-regulation proposed in this book employed many of the tools and practices used in implementing learning organisations such as building individual and organisational competence and capacities, teamwork, dispersed authority and responsibilities. Crucial to the success of both learning organisations and meta-regulation is the expectation that participants will collaborate in analysing and reaching solutions to their problems. Conflicting interests and different philosophical positions (for example, the views of community services vs commitment to competition policy) prevented this happening in the energy sector. It was quite clear that the future success of both learning organisations and meta-regulation demand further research into understanding and management of:

---

TLO  
26,3

power, ethics, relationship building, conflicting interests and policy objectives and the interactions between them.

This book was not an “easy” read. However, it reveals an in-depth understanding of the energy sector and the difficulties of engaging entities with different values and interests in collaboration to meet social outcomes. As such, it is essential reading for those engaged in the energy sector and for those exploring the adoption of meta-regulation.

**326**

---

**Anona Armstrong**

*Victoria University, Victoria, Australia*

**Further reading**

Australian Productivity Commission (2017), “Energy, shifting the dial: 5 year productivity review”, Supporting Paper No. 11, Commonwealth of Australia, Canberra.