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The government subverts the cost benefit analysis of it legislation

HENRY ERGAS THE AUSTRALIAN SEPTEMBER 10, 2012 12:00AM

BAD government is no excuse for bad governance. Yet an interim report just released by the Productivity Commission highlights the damage this government has done to a key element in the integrity of public decision-making: the process of scrutinising proposed regulations.

In fact, so dire is the situation that in what must be a first the government is on the record as refusing to answer questions put to it by the commission in the course of an inquiry. That inquiry examines how effectively the commonwealth, states and territories analyse the costs and benefits of proposed regulations.

As part of its inquiry, the commission surveyed jurisdictions about the procedures by which those analyses (known as Regulation Impact Statements) are prepared and reviewed. Alone among the jurisdictions surveyed, the commonwealth refused to answer a host of questions related to the RIS process.

That those questions would embarrass the government is hardly puzzling. For, since coming to office, Labor has done whatever it can to undermine regulation review. This is not to suggest the system Labor inherited was perfect - far from it. Yes, an appraisal of that system undertaken by the OECD on the basis of the Howard government's RIS guidelines gave it high marks. In reality, however, there was plenty of room for improvement, as the Banks review of regulation in 2006 showed.

But, rather than improvements, Labor changed the system for the worse. The Office of Best Practice Regulation, responsible for designing and enforcing the regulation review guidelines, was transferred from the Productivity Commission to the Department of Finance. That done, Labor took the guidelines the OECD had endorsed and trashed them.

In a move the PC describes as "at odds with the Regulatory Impact Assessment framework", ministers were allowed to select the alternative options considered in a RIS and to retrospectively modify a RIS after a decision had been taken. Nor was there any obligation to disclose that had been done. And, to make matters worse, the government dropped the requirement that of the options considered in a RIS the option with the highest net benefits to the community be the one recommended.

But it did not end there. Rather, an unprecedented number of important new regulations were exempted from the requirement for a RIS. And, though more than 70 exempted regulations should have been subjected to post-implementation reviews, only nine such reviews have been completed.

The unsurprising result is that the quality of Regulation Impact Statements has reached an all-time low. Exemplary of the problems is the Illegal Logging Prohibition Bill, which has just cleared the House of Representatives.

The legislation itself is nothing to be proud of. It imposes on businesses that import timber or timber products an obligation to verify that the timber has been legally logged, with up to five years' imprisonment for failing to do so. Although no more than 10 per cent of Australia's timber imports are at risk of being illegally logged, the legislation will increase prices for all timber products by 3 per cent or more. That slug on consumers is championed by the Greens, who having done their best to destroy the Australian timber industry are now determined to cripple imports. And the promise of import restrictions has won the Greens the support of beleaguered domestic producers and of the unions, resulting in an unholy coalition of victims and tormentors.

So as to help prepare the RIS for this depressing venture, the department responsible for the legislation commissioned modelling from the Centre for International Economics.

To its credit, the CIE concluded the costs of the government's policy were up to 10 times greater than the benefits. Far from preventing illegal logging, the legislation would simply divert illegal timber to other markets while harming Australian consumers. Domestic producers would be better off, but few environmental gains, if any, would be achieved.

The department, however, was not so easily discouraged. Instead, it commissioned a new round of modelling from within government, and in its modelling instructions slashed the CIE's estimates of compliance costs. Indeed, doubtless by coincidence, its adjustments to the CIE's methodology proved exactly sufficient to bring the

estimated benefits of the government's preferred option into line with the costs. To get the proposal over the line, the department pointed to additional "intangible" benefits that it had never clearly specified, much less quantified - ignoring the CIE's finding that there was "no reason to believe" inclusion of intangibles "will change the conclusion that the benefit to cost ratio is very low".

The outcome is a RIS that heartily endorses the government's position. Even the most superficial reading of that RIS suggests it is half-baked; it takes only a moment's closer examination to reveal it has never been put in the oven. But the mere fact that the ratio of benefits to costs had been increased tenfold plainly did not arouse suspicion in the Department of Finance. Rather, the RIS received the good housekeeping seal as fully compliant with RIS quality requirements.

Unfortunately, the Climate Change Department's RIS supporting the recent backflip on the floor price for the emissions trading scheme shows that is no isolated incident. This RIS must have involved considerable difficulty, as only months earlier the same department concluded that, on balance, a floor price was desirable. But displaying the agility usually reserved for eels slithering into the mud, the new RIS asserts both that future carbon prices would be "significantly higher" without the legislative amendments than with them, and that future carbon prices (and notably those in the budget) would not be changed by the legislative amendments.

One might have expected seeing assertions thus locked in mortal combat to trouble the Department of Finance; instead, yet another questionable RIS obtained its tick of approval.

Little wonder the Commission concludes that "a degree of cynicism is pervading the regulatory landscape in response to the perceived lack of integrity in regulation decision-making". And little wonder we are drowning in ill-conceived regulation, with all the harm it does to productivity.

That is not to claim the RIS process could ever suffice to prevent regulatory creep. The reality is that from time to time governments will take poor decisions.

But while poor decisions are inevitable, poor processes are not. And by undermining transparency and accountability, poor processes make poor decisions more likely and more durable.

Labor therefore knew what it was doing when it neutered the regulation review process: it was allowing truly shocking measures, such as the illegal logging bill, to get a free kick. It is now up to the Coalition to show it is serious about doing better.

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