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Stark reasons to kick the regulatory habit

HENRY ERGAS THE AUSTRALIAN MARCH 24, 2014 12:00AM

“LET us rain compassion in the shape of regulations,” urged one of the first accounts of European settlement in Australia.

Its author, T. J. Maslen (the nom de plume of Allen Francis Gardiner), had never visited the country whose future he sought to plan, and the unfortunate British naval officer starved to death in 1851 while distributing bibles to a hostile tribe in Patagonia.

Yet he could have taken comfort from the enthusiasm with which his plea for regulation was received.

Not only did telling people what to do become Australia’s state religion, but like Maslen, future regulators rarely considered ignorance an obstacle to detailed prescription.

Indeed, the precautionary principle, embedded in the 1992 COAG Intergovernmental Agreement on the Environment, specifically prohibits Australian governments from treating “lack of full scientific certainty” as “a reason for postponing (environmental) measures”.

Thanks to requirements such as these, the regulatory current has become a raging torrent.

Environmental Impact Statements chillingly highlight the trend. From 1975 to 1995, the average length of West Australian EISs doubled from about 100 pages to 200 pages.

But after that, it took only 10 years for their average length to double again; and then, in a grim twist on Moore’s law, a further doubling took just five years, bringing today’s average to 800 pages and counting.

At that rate, merely printing EISs will soon destroy the nation’s environment. But periodic drives to kick the regulatory habit have yielded scant results.

Rampant flouting of the regulations against unnecessary regulation hasn’t helped. That was a game at which Kevin Rudd and Julia Gillard excelled, dispensing prime ministerial exemptions from regulation impact requirements like dope peddlers handing out free samples.

And although exempted regulations were to be subject to a “post implementation review”, Labor’s guidelines only specified when those reviews were to be initiated, not when they had to be completed, making post-implementation reviews the Bermuda triangle of regulatory assessment.

Nor was that the only wriggle room those guidelines left. Rather, Labor’s guidelines gave ministers scope to amend the options Regulation Impact Statements examined, while abolishing the obligation to recommend the option with the greatest net benefit.

That removed any risk of the bad proving the enemy of the worst: with the predictable result of RISs whose quality brought to mind Bob Hawke’s quip that a proposed policy was “as wise as peeing into a bushfire: unlikely to solve the problem, all too likely to damage the instrument”.

But it would be wrong to say the instrument was entirely consumed in the flames. Rather, even truly lamentable RISs, such as those on timber imports and on the road safety remuneration tribunal, put

valuable information into the public domain. And now Josh Frydenberg, the Parliamentary Secretary to the Prime Minister, has finally moved to give the regulation review process real teeth.

The changes Frydenberg released last week are far-reaching: not only will all cabinet submissions require a RIS, but the loopholes Labor introduced into the requirements have largely been eliminated.

And importantly, each new regulation's cost will need to be more than matched by an offsetting reduction, to achieve a targeted \$1 billion a year fall in the regulatory burden.

That offsetting is an exceedingly blunt instrument. And the government's methodology understates both the cost of imposing new regulations and the benefit of removing old ones.

But offsetting is far better than the hand-waving that has long characterised this area, while the enhanced consultation process will ensure regulations are properly tested before being implemented.

All that is to the good, as is scrapping obsolete regulations through periodic "repeal days". However, the real test for Frydenberg will come when the process has to go beyond low-hanging fruit.

Campbell Newman's reforms in Queensland provide an example of what can be done: they have more than halved the time required for assessing major projects, without compromising those assessments' rigour.

And the Abbott government could make Newman's reforms even more effective by reinvigorating the project of streamlining environmental regulation between the commonwealth and the states.

But a renewed attack on inefficient regulation cannot be confined to environmental policy; rather, with our unemployment rate set to exceed that in the US, improving the functioning of labour markets is not simply an economic imperative but the best form of social policy.

And from reform of 457 visas to proper appeal mechanisms for decisions under the Fair Work Act, there is plenty Tony Abbott can do to advance that goal without in any way breaching his election commitments.

The gains from regulatory reform will be all the greater as the mining boom recedes.

The boom has increased the capital stock in the economy's market sector by nearly 70 per cent; and it is the efficiency with which it is used that will determine future living standards.

But as Labor ran out of cash, it increasingly distributed favours to its friends by piling restrictions on that new capital's productivity.

The coastal shipping regulations, for example, force tankers serving offshore oil and gas platforms to go into international waters before returning to an Australian port; that helps makes our offshore platforms even more absurdly expensive than they need to be.

Regulations such as these are little more than taxes that reduce incomes without raising any revenues; consigning them to a regulatory bonfire of the inanities should be high on the list.

But Australians could be forgiven for wondering whether that will actually happen.

After all, our governments have long been strong on the theory of regulatory reform.

As Yogi Berra once said, "in theory, there is no difference between theory and practice; in practice, there

is.”

Yes, listening to Abbott and Frydenberg, a new mood was in the air; the difficult part, however, starts now.

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