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TITLE: Environment Protection and Biodiversity Act -The green tape slugfest that is the EPBC Act

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Nothing gets interest groups more riled up than a proposal to reduce some regulation or, as business groups like to call the federal *Environment Protection and Biodiversity Act* (EPBC act), "green tape".

In the green corner, we have the major environment groups arguing that such reductions signal further retreat by government in the face of a noisy business lobby. In the blue corner, we have big business hailing long-overdue reform of a system that costs a lot and delivers little. Ding, ding, ding. Let the fight begin.

If only policy debate was as simple as the duelling press releases make out. Consider, for example, the way the environmental impact assessment and approval (EIAA) regime currently works under the *EPBC Act*.

This EIAA process applies only to developments that could have adverse impacts on "matters of national environmental significance", including World and National Heritage values, threatened species and ecological communities, and the Commonwealth marine environment. If a development could have a significant impact on one of these national matters, the proponent is required to refer it to the federal environment minister, who then decides whether it needs formal assessment and approval. At the end of the process, the federal minister has the power to stop projects and impose conditions.

Business groups argue that this federal process is unnecessary because it duplicates similar processes that apply at the state and local government level. To save time and resources, they want to cut Commonwealth involvement in environmental regulation to the bare minimum and leave it to the states, who have traditionally dominated this field.

Environmentalists counter that the Commonwealth EIAA regime provides "back-up" for often defective state processes and that, without this oversight, there will be a rush to the bottom.

The environmental lobby's position is complicated by fact that the EIAA regime has been stunningly ineffective. It doesn't apply to forestry operations under the Regional Forestry Agreements and has barely applied to forestry activities outside the RFA areas. It has had virtually no impact on the rates of native vegetation clearing, hasn't had a material impact on unsustainable patterns of water use, hasn't affected fisheries practices in state waters and hasn't improved the condition of Australia's World and National Heritage areas. It also doesn't regulate greenhouse gas emissions.

There have been some instances where improved outcomes have been achieved (e.g. the *EPBC Act* was used to stop the Traveston Dam in Queensland, a Tasmanian government proposal to drain an important lake for irrigation at the end of the millennium drought, and the Victorian government's cattle grazing "trial" in the alps) but, beyond these, the evidence of environmental achievement is thin to non-existent.

The EIAA regime's ineffectiveness is a product of several factors. It is poorly designed, with its operation hinging on an inherently subjective "significant impact" test. Due to this, proponents find it hard to determine when it applies and the department has struggled to enforce it. The federal government, under the Coalition and ALP, has also been reluctant to resource and enforce the legislation, particularly against the sectors that have the greatest impact on the environment; agriculture, forestry and fisheries.

Further, the sectors that have been most affected by the regime -- mining, urban development, and water management (mostly major dams and pipeline projects) -- are already covered by mature state regulatory regimes, leaving less for the Commonwealth to do. The politics surrounding these types of projects are also similar at the state and federal level and, as a result, the Commonwealth is usually no more likely to push for progressive environmental outcomes than the states.

Although it has achieved very little, like any regulatory regime, the EIAA regime comes with costs. The Commonwealth spends roughly \$30 million-\$40 million a year administering the regime and the costs of compliance for business have been significant. On top of these costs are those incurred by third parties in participating in the regime, including the costs in making submissions (most of which are ignored) and running litigation (most of which has been unsuccessful).

In short, the 12-year policy experiment that is the *EPBC Act's* EIAA regime has proven to be expensive and environmentally ineffective.

Given this, it is tempting to conclude that the best thing the Commonwealth could do is vacate the field. This would leave the states with free reign over the environment, something that hasn't worked in the past. As if to emphasise this, the New South Wales and Queensland governments are already making noises about winding back their land-clearing restrictions. The wiser business groups recognise that, for the reform process to work, costs need to be cut in a way that facilitates improvements in environmental outcomes.

How can this be achieved? The most promising reform proposal is for the Commonwealth to concentrate its energies on strategic assessments and regional planning. Under this model, the Commonwealth would have a reduced role in the assessment and approval of individual projects but would set the environmental ground rules for development and state approvals. Spatial planning maps and other like instruments could be used to identify important

environmental areas and lay down when and how development could occur in these areas. Having created these instruments and determined the principles for development, project-level regulation could largely be left to the states, provided they adhere to the federal rules.

This is not a new idea -- Sir Garfield Barwick floated a similar idea the 1960s and it has been mooted ever since. The challenge is to make it work. If they can do this, the environment and business stand to benefit.

The left side of politics needs to get over its obsession with vision and leadership. While it may be hard for some on the left to admit it, it is pretty clear that John Howard was a radical, transformative and long-lived prime minister. He was never lauded, even by his own party, as visionary. But he was. Indeed, a large part of his success was due to other people denying he was achieving anything.

Those on the left who yearn for fine words and clear statements of vision should reflect on that.

In the realms of health, education, industrial relations, retirement income, indigenous affairs and national identity Howard drove major changes that have lasted well after he lost office.

This is not a defence of the direction of his vision, nor of the way he went about achieving it. It is simply an admission of the obvious. Howard delivered more change than he promised, was more visionary than those who could not even see what he was doing, and was playing a much longer-term game than the internal and external opponents he saw off.

And he wasn't poll-driven. The GST, the war in Iraq and Work Choices were not popular. John Howard spent his political capital driving the changes he believed in most. He spent his popularity on his vision, he did not crave it.

I opposed most of the big reforms that Howard succeeded in implementing. So did the ALP, the Greens, the unions and large slabs of civil society. But that didn't stop him. He was good at the job of making things happen in the face of opposition. And he was good at the job of staying elected.

But Howard was not loved by his party. And while the public warmed to him after he had been in the job for a decade, his relationship with the Australian people for his first six years were decidedly frosty.

He tripped up the stairs of the White House on one of his first big overseas trips which proved, for many at least, that he was clumsy on the world stage. While images matter a great deal in modern politics, they don't bear any relationship to the ability of people to do their actual job of governing.

The longer the progressive side of politics goes on and on about the need for inspirational leadership the less likely it is that they will achieve the changes they want. US President Barack Obama was visionary, but was his health reform package? Obama was inspirational, but are his tax cuts?

We don't need words, we need deeds. It would be nice to have both, but Howard showed quite clearly that sometimes it's easier to achieve the latter if you eschew the former.

Kevin Rudd called climate change the great moral challenge and he failed to get his carbon price through both houses of Parliament. Some argue that Prime Minister Julia Gillard was a reluctant convert to the climate change challenge but she got her scheme through. Which would you prefer?

Politics is the art of the possible, and while there is no doubt that some "vision" and "leadership" can fire up the indifferent majority from time to time, the task of seeing things through requires quite a different set of skills. While some people believed Rudd was strong on the former almost nobody would suggest he was even competent at the latter.

Rudd was a breath of political fresh air in 2007, but he was never an inspirational progressive. Indeed, in pursuit of the prime ministership he tried to look as much like Howard as he possibly could. While his slogans might have been all about change, in reality his policies and his demeanour were explicitly designed to not scare the horses.

Howard kicked off the 2007 campaign with \$32 billion worth of tax cuts, Rudd countered with \$30 billion of his own. Rudd proudly described himself as a fiscal conservative and criticised Howard's big-spending ways. Rudd, we were told, would take a razor, and then a meat axe, to the public service.

Visionary? Progressive? Yeah, right.

Rudd proposed to roll back Work Choices, but not too far. He proudly kept the Building Commission. And while he loved the symbolism of signing the Kyoto Protocol he refused to set emission reduction targets for his proposed emissions trading scheme before the 2007 election.

After all of the talk about the science of climate change before the election, Rudd shifted quickly to the politics of placating polluters. Not a scientist in the country would argue that our 5 per cent emission reduction cuts were adequate and barely a few economists would argue that giving the biggest polluters 95.5 per cent of their permits for free was necessary.

Big talk quickly turned into small action.

The vision may have been there, but the determination clearly was not.

Howard's success owed much to the willingness of his opponents to underestimate him. A willingness he never seemed keen to overturn. In part he succeeded because of, not despite of, the fact that people underestimated him.

While the ALP was busy calling him "stuck in the past" and having a "white picket fence" view of the world he was busy fundamentally changing the future. He sold off assets we will never buy back, he reshaped the health and education system in ways that are difficult, if not impossible, to unwind.

And he changed the way Australians saw themselves, and others, particularly in relation to asylum seekers. Both major political parties now fight over where to process asylum seekers offshore, not whether to.

This week the ALP caucus members showed that they were not poll-driven. In overwhelmingly endorsing Gillard they showed that they are willing to make hard decisions, take risks, and stand up to the mob. I hope this approach will soon become evident in their willingness to stand up to mining magnates who have tantrums and big business people feigning fear at all of the "uncertainty" they face.

Gillard has made mistakes, all people do. Howard's first term was rocky, to say the least, with minister after minister resigning as a result of his Ministerial Code of Conduct. He dumped that. While Gillard will not thank me for saying it, she is far more like Howard than Rudd ever was. While she is clearly not highly popular, she has been effective in getting her agenda through.

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