

TITLE: Self-serving regulation

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The economics of deregulation is supposed to be straightforward: business groups support it, community groups oppose it, and governments “get the balance right”. The recent push to streamline state and federal environmental and planning laws has followed exactly that script.

The push to remove so-called “green tape” has the appearance of a philosophical position based on the libertarian position that less regulation is socially and economically preferable to more. But the reality is that most industries in Australia love regulation and fight hard both to retain existing regulation and accumulate even more profitable amendments.

While property developers may bemoan the delay and expense of obtaining planning approval for their new shopping centres, the owners of existing shopping centres not only profit behind the existing laws, they sometimes also fund phoney community organisations to campaign against their potential rivals. Such a strategy may be profitable for the incumbent, but it is hardly deregulationist.

Pharmacists and newsagents are often held up as the small businesses that profit the most from regulations that, quite literally, keep their competitors at bay. In the case of pharmacists, a competitor cannot set up within one kilometre of a rival. But in reality the list of protected industries is as long as it is self-serving.

In many countries coffee is safely served to peak-hour customers from coffee carts that spring up in the morning when people want lots of coffee, and vanish by lunchtime when they don't.

In Australia, cafes work hard to ensure that planning and safety laws are used to protect customers from the risk of boiling water while protecting their own profits from a lower-cost competitor. Pubs and clubs in Australia walk both sides of the regulation street with more confidence than most.

On the one hand they typically oppose “wowsers” laws that seek to limit the sale of alcohol late at night. But at the same time, they work hard to limit the number of licensed premises. Too many pubs, it seems, might create an unhealthy culture of alcohol consumption.

But of course it isn’t just small business that thrives behind the profitable walls of regulation.

For decades, Australians were told that three was the right number of free-to-air television stations. Four channels, we were told by the incumbents, would be financially unviable and result in the end of Australian content.

Since the arrival of digital TV, however, this argument has morphed seamlessly into the assertion that three is no longer the optimal number of channels, but it is the optimal number of commercial licensees.

Governments are also coming under increasing pressure to introduce new profit-enhancing regulations to redefine intellectual property, extend the length of time that patent holders can enjoy a monopoly and impose new obligations on internet service providers to disclose information about their customers.

Indeed, it was recently argued that Samsung had infringed Apple’s intellectual property by producing a tablet computer that, among other things, resembled the dimensions of the iPad. Imagine if keyboard manufacturers in the 1980s and 1990s had all been required to develop innovative keyboard layouts and sizes.

There is no doubt that there are great benefits to be had from the removal of a wide range of regulations that serve primarily to protect incumbent industries from competition.

The national electricity market, for example, is beset with regulatory failures that have already cost billions of dollars.

And there is also no doubt that there is likely to be a lot more regulation in the coming years to ensure that gene technology, nano technology and human cloning are consistent with social and environmental expectations.

One of the biggest barriers to ensuring that regulation in Australia is efficiently designed and implemented is, ironically, a public debate that is based on the false choice that regulation is either “good” or “bad”. What is required is a public debate that allows proponents and opponents of specific regulations to make their case and challenge the evidence put forward by those with opposing views.

That said, those who have the most to lose from an honest debate about regulation are those who profit so much from the dishonesty of their current arguments.

Regulatory barriers to entry are at the heart of some of the most profitable industries in Australia, and what better way to defend those barriers than to pretend they aren’t even there.

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