

Regulations, Hammers & Nails: Not Just Reform or Reduction, but Reframing the Reasons

by

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Paraphrasing the old adage 'to a person with just a hammer, all problems look like nails' - to legislators and their public servants most problems need laws!

This cultural view, so deeply internalised the protagonists are often oblivious to its existence, must form the crux of any consideration of the regulatory environment. Attempts at red tape reduction tend to be either the 'cost cutting' model or the 'process' model when what is needed, to is not a 'roots & branch review', to quote a well-known proclaimer of reform, but a 'dig it out and replant anew' model - a model that establishes a more balanced line between business (especially small businesses) whose mantra prefers no government involvement 'just get out of my way and let me create wealth', and the lawmakers and enforcers for whom rules and process to meet clearly defined (by them) 'outputs' and 'outcomes' are the touchstones of good governance.

At the end of September 2008, Global Access Partners (GAP) will host another of its valuable gatherings of top minds - this time a Congress on Regulatory Affairs - "Opportunities for Business". The Congress overview (www.globalaccesspartners.org/eventreg.htm) lists a number of discussion points and the laudable goal of active participation and engagement by business with governments to improve the regulatory environment. The participants and panel leaders contributions will stimulate discussion around those points, but I wish to raise some issues that seem to me more fundamental - assessing the need for government regulation at all and offer some suggestions about how we might implement a 'dig it out and replant anew' model.

Some salient figures underscore why the regulatory load is heaviest on those who have the fewest resources to deal with it: there are around 755,000 employers in Australia who employ fewer than 20 employees, but comprise 90% of all employers and about 1.2 million non-employing businesses (or 58% of all businesses). These are the silent majority in the business regulatory world who have no seat at the tables around which decisions are made that directly affect their livelihood. There are bi-partisan claims of 'understanding small business', but little direct input from this

constituency at the political or bureaucratic level - albeit largely due to the diversity of those businesses and the difficulty of establishing an advocacy focus that could bring together such heterogeneous views.

This incapacity to organise and lobby in a cohesive way (with a few industry-based exceptions such as pharmacists, newsagents and the motor trades) makes it an imperative that the government establishes better ways to identify the broad concerns of that significant business majority. More importantly it provides a further argument that alternatives to statutory rules and processes should be the first step when a regulatory need arises.

Curiously much of the supporting rhetoric, and often the actual law, that is aimed at reducing red tape and ensuring that any regulatory framework is assessed on the basis of least cost and least intrusiveness to businesses, while achieving the public interest goals, is already in place. So to paraphrase Sir Humphrey Appleby 'Although we agree with the principle, we disagree with the practice' - ie: there is widespread professed support for the ideological position, but the implementation is wanting.

Regulatory Impact Statements (RIS) laws are extant Federally and in the States, but by any measure - just look at the ever increasing numbers of acts & regulations - are failing to meet their stated purpose. The gap between the principle and the practice is cultural, but also structural, and develops from a misunderstanding of the policy development process. The RIS regimes tend to be seen by lawmaking public servants as just another component on which they must tick-the-box on the path to Cabinet approval. Like those organisations that establish discrete and autonomous 'strategic planning' groups when planning is intrinsic to every management role and area and cannot be abrogated to others, RIS processes tend to be managed as an afterthought and often by agencies other than those directly responsible for the laws.

Other aspects of the regulatory environment as it affects business will be canvassed at the Congress, but my plea is that business owners and operators (and those aware and supportive of the need) take every opportunity they can to demand lawmakers enforce the practices that are in place, not just keep restating the principles. There has been review and report and legislation galore - all well-intentioned, but generally ineffectual. The leadership has to come from the top and from those directly affected, and has to drive elected officials and their public services to bring forward the regulatory principles so that they are incorporated in the earliest formation of any proposal to regulate.