

Submission to the Productivity Commission on Regulation of Agriculture

Why do governments (at all levels) impose regulations on citizens? When people or groups of people lose their social licence to continue to operate in the way in which they currently do, political pressure from the community forces governments to regulate, e.g. unacceptable killing methods for Australian produced cattle in Indonesian slaughterhouses led to the development of the ESCAS process. Because regulation is achieved through legislation, it is ultimately a political process. Mike Hulmes' book, 'Why we disagree about climate change', explores the many different ways in which culture influences perception of a problem. Thus, politicians from different parties and social backgrounds have different perceptions of what is an acceptable practice. Conservatives who espouse small government and the power of the market to regulate society may see regulation as onerous and costly whereas progressives may see regulation as the only answer to the unfettered excesses of a free market where a range of social and environmental benefits are discounted because there is no price mechanism to adequately value them. Regulation has its genesis in moral, ethical and political considerations of individual and group activities, not necessarily economics.

Here lies the crux of the problem. While farmers may perceive themselves as highly efficient and ethical in their operations, the reality is different. This difference is encapsulated clearly in farmer acceptance of regulation that they think gives them a competitive advantage while being highly critical of regulation that curtails their ability to manage their land in whatever way they see fit. I wish to make most of my comments around native vegetation and other environmental regulation because they provide a great example of how the perception and reality of an issue diverge.

Firstly, some interesting statistics about the role of productivity gain in agriculture and what it has meant for farmers. Since 1960, agricultural production in Australia has increased by about 250% while the real gross value of that production has declined by 10% since its peak in the mid-1970s and real profitability has decline by almost 80% since its peak in the mid-1960s (ABARES, Australian Commodity Statistics, various issues). It is perhaps interesting to note, that while the real gross value has fallen consistently since the mid-70s, the real net value has increased since the introduction of native vegetation clearing restrictions in 1995. From this information, two conclusions can be drawn – most of the productivity gain in Australian agriculture may be due to land clearing and this productivity gain has not led to an increase in real farm profitability. Restrictions on land clearing over the past 20 years may well have slowed productivity (production) growth but it has also meant that more farm product is being consumed in the more profitable domestic market, leading to an increase in the real profitability of agriculture. This is a great example of the law of unintended consequences. Regulation that has been widely criticised as an onerous and costly impost on farmers has actually benefited farmers.

This data has interesting implications for agriculture as a whole. Those who are most vocal about vegetation clearing regulations are those who have vegetation to clear and who see clearing as a way to increase the income producing capacity of their land. However, any additional income that flows to one producer from land

clearing conditions in Australian agriculture, simply transfers income between farmers without generating additional income for agriculture. The size of the real gross value of agricultural production bucket is declining, not increasing. So long as demand for agricultural products is price inelastic, productivity gain that is used to increase production will reduce real income and, to a much greater extent, real profitability. While this may be seen as a good thing from a macro-perspective (lower prices to consumers), declining profitability makes it more difficult for farmers to successfully manage biodiversity.

What has native vegetation clearing regulation achieved? It has allowed Australia to meet its carbon obligations under the Kyoto protocol by sequestering 73 m tonnes of carbon. At zero cash cost and acceptable political cost, these regulations were probably the most effective and efficient way to achieve this outcome. At the same time they led to an improvement in farm profitability by reducing the rate of increase in farm production to less than the increase in population for the first time in 50 years, again at no public cost and a manageable amount of political flak. Again, the law of unintended consequences. Regulation introduced to achieve a biodiversity outcome achieved two other unrelated outcomes. Can we say that the native vegetation clearing regulations were an ineffective and inefficient instrument because they failed to make any real difference to biodiversity values? Maybe, but they were a highly efficient and effective way to reduce carbon pollution and increase farm profitability.

The same result could have been achieved by using market mechanisms. While market based instruments are seen as the most efficient way to achieve the outcomes of the native vegetation act in NSW, this still requires some regulation to set carbon prices and biodiversity values between different ecosystems to ensure an efficient trading environment. Globally, carbon trading schemes have cost billions of dollars without achieving any measureable sequestration of carbon. The Australian ERF is a great example. Land managers are being paid to not clear land. Not clearing land fails the additionality criteria of the Kyoto protocol. The Government is paying for carbon that may never have been released anyway, but it dug the government of the day out of a hole. Regulation is always political and politics is rarely rational, given that it is driven by ideology and the perceptions of the people in power.

The current proposed changes to biodiversity legislation in NSW suffer from the same problems. Farmers who want to clear vegetation in one area can offset that clearing by locking up other vegetation in perpetuity, either on their own property or somewhere else. Unless the offsets come from revegetation, every land clearing activity leads to a reduction in the total area of remnant vegetation in the state. How this can improve biodiversity outcomes has yet to be demonstrated. At the same time, it fails to address climate change, the greatest risk confronting agriculture in NSW, by allowing farmers to add to carbon pollution.

Regulation of many aspects of agriculture is inherently inefficient. In Australia, we have separation of powers between the legislature and the judiciary. Laws are

passed by politicians but interpreted by judges. Thus, regulations can be put on hold for years while their legality is determined by the court process.

Regulations are often enacted before the compliance mechanisms are put in place. Sepp 46 in NSW was a good example. There were too few compliance officers to meet the demand from people wanting to clear and training in the assessment procedure did not commence until after the regulation came into force. Much of the dissatisfaction with the regulation arose from the inability of the system to assess projects in a timely manner. The lack of compliance people also meant that enforcement of the regulations in the native veg act was patchy and the court process lengthy. By stalling in the courts, landholders could often get away with illegal clearing because of corrupted evidence particularly in native grasslands. Laws that are regulated by the police are enforced more consistently because the compliance branch is already in place.

Any one piece of legislation fits within a legislative framework. With native veg, there were 26 other pieces of legislation (e.g. bushfire act) that overrode provisions in that act. Again, while this is necessary, it is legislatively messy, legally cumbersome, subject to many different interpretations and inherently inefficient and ineffective. The catch phrase became 'to the minimum extent necessary' which became the vehicle for protracted legal argument. It is hard to determine the efficiency of regulation if its context is ignored.

There are many reasons why regulation appears inefficient and ineffective. Some of these have to do with the context of the regulation where regulation in one area conflicts with exemptions in other areas, e.g. Native Vegetation Act. Attempts to block loopholes identified by the judiciary may lead to further complication and ambiguity. It is difficult to isolate one area of regulation from the environment in which it operates.

Some have to do with the enforcement of the regulation. Regulations around things such as rabbit and noxious weed control are not uniformly enforced or, in some cases, not enforced at all. Failure to ensure that the compliance part of regulations is in place and adequate for the needs of the regulations before the regulation is put in place guarantees that they will be ineffective and inefficient. It is hard to say that a particular regulation is bad if the real problem is a failure to enforce it.

Some have to do with the reasoning behind the regulation. Most regulation arises from moral, ethical and political considerations so effectiveness from a political standpoint is more important than efficiency from an economic one. Transaction costs are less of a consideration than political gain or loss. Regulation often arises as a result of the unacceptable actions of a few producers. Administrative instruments designed to curtail the socially unacceptable behaviour of a few impose restraints on the majority who were doing or will do the right thing anyway, e.g. road user regulation.

Still others have to do with the law of unintended consequences. Regulation that fails the efficiency and/or effectiveness criteria in the area that it is designed to fix can prove highly effective and efficient at achieving other outcomes. Alternatively,

regulation that is highly efficient at achieving its stated objectives may have a disastrous impact in unexpected areas, e.g. imposing quality standards on animal welfare in overseas countries may lead to diplomatic problems in other areas of international relationships. Care must be taken not to throw the baby out with the bath water.

Finally, there is the issue of the social value of regulation. Where it is difficult or impossible to establish a market for the outcome of the regulation (many social and environmental goods do not have markets to establish community values), regulation, no matter how inefficient or ineffective it appears, may be the least cost way to achieve the outcome. Inefficient regulation may be better than business as usual.

In conclusion, I would just like to point out to the farmer who complained about the issues associated with moving his machinery on a public road that he does not pay fuel excise on his diesel nor registration on the machinery. He made no complaints about the regulations around getting these benefits.