

# Life in the Farce Lane:

## The steady creep of regulatory burdens

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Lord Acton said that rowing was the perfect preparation for public life. You face in one direction while moving in the other. Gravely intoning their plans to cut red tape, each year our politicians pile it higher.

Although economic reformers have enjoyed great victories in Australia and elsewhere, the same cannot be said for their efforts thus far to relieve the burden of regulation. It's easy to say that politicians should use regulation far less. They should. And perhaps when sufficient noise is made about the costs of regulation, they will regulate less. But only a little less. Why is this?

Take mortgage broking as an example. Most people know little and care even less for the details of the regulation of mortgage broking. Despite its esoteric nature, its an issue worth exploring. For the politics of regulation are the politics of detail. And that's the problem. Politicians fear large scandals, not minute inconveniences. Yet regulation is built up from minutiae.

If politicians have publicly committed themselves to a policy of 'minimum effective regulation', as both major parties have, and yet constantly flout that in practice, that's because each tiny infraction against the general policy costs

them less than following the policy would cost them.

Until we develop the institutions through which to hold governments to account for each infraction of their policy—however much it partakes of mundane minutiae—we will continue as we have so far, with grand announcements about cutting through red tape. And more red tape.

### Mortgage broking regulation

National regulation is currently being entertained for mortgage broking. To ensure that consumers get the right advice, should we require fridge salespeople to produce printed 'fridge advisory statements'? That's what we'll be doing for finance. Correction: We've already done it for so-called 'financial advisors', and a 2005 discussion draft published by the NSW Office of Fair Trading on national finance broking calls for us to do the same with mortgage brokers. It won't just hurt consumers with higher costs. Much worse, it further entrenches an impossible and misleading expectation—that salespeople can or will act as independent advisors.

Like its cousin, 'financial planning', mortgage broking exists in a netherworld. It is really a sales indus-

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try like selling fridges in a department store. Salespeople are usually honest and good sources of advice because of their extensive product knowledge. Customers understand, however, that they should 'shop around' and stay in charge because salespeople are there to make a sale.

But there's good money to be made if, despite their remuneration as sales agents, practitioners can get their customers to think of them as fiduciaries—that is, people who act on behalf of their customers the way that a good doctor or accountant would.

The tensions thus created, together with a gallery of rogues on the fringe, have created a climate in which regulation is inevitable.

That's a good thing. After all, a \$300,000 loan is not a fridge. Good regulation would:

- ensure product information was simple and accessible;
- subject all brokers to an ombudsman to detect and remove bad practice; and
- require consumers to be advised that brokers were effectively sales agents who do not cover the whole market. Accordingly, consumers would be advised to shop around.

Going beyond these simple measures to put customers in the driver's seat will make things much worse. Of course regulation adds costs. But the main problem is that the proposed regula-

tion deepens the ambiguity between the duties of a salesperson and a fiduciary advisor. Sales agents are to become 'licensed brokers'.

If it looks, waddles and quacks like a duck, we'll make a mess trying to turn it into a swan. (I'm with Michael Leunig on this. There's a lot to like about the humble duck.) Look at the ducks that once were insurance salespeople now morphed into the swans of financial planning. They've been progressively engulfed in an endless web of requirements to improve their advice.

The slabs of text comprising their constant customer assessments are generically drafted by sales executives, vetted by lawyers and spewed forth from software that 'wows' the customers in their living rooms but is promoted as 'sales technology' within the industry.

Do customers read these reviews? Do they find them helpful? Who knows? Not the regulator who, having regulated, moves on. Meanwhile, an average retiree will be around \$65,000 poorer for the fees they pay to financial planners to help them choose a super fund rather than invest in 'industry super'. And that's before you count industry funds' extravagant investment outperformance over many commercial funds.

NSW regulation already requires 'Finance Broking Contracts' (FBCs) in which the broker outlines the service he'll provide—bizarrely enough before

he provides it! Now let's say you prefer no fees—who doesn't? If we write that into your FBC, then we can't suggest you consider a product with fees, because it violates the contract. If we write this possibility of fees into the FBC, you will wonder if we're fitting you up with fees you don't want.

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For all its inconvenience to good brokers, the shonky brokers are licking their chops. This Kafkaesque charade is the perfect beginning to a nightmare of documents. The broker explains one by one until that sweet moment when, [after?] a long sigh, the customer offers up his wearied and complete capitulation. Just sign here. And here. And here.

I could go on. The comparison interest rates we must quote, that bamboozle and mislead consumers so much more than the industry methodology they replaced. And on.... Our disclaimer has now grown so long (1,000 words), almost no-one reads it. And on.... Covering comparison rates, limitation of liability, commissions, soft dollar commissions, spam, privacy. And on.... Providing customers with required gems of wisdom such as this: 'Variable rates vary over time'.

Let's stop playing 'turn the duck into a swan'. Let's clean up the abuses, send very clear signals about what brokers can and can't offer, and let brokers and customers get on with their jobs.

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