COVID-19 a convenient excuse for deregulation free-for-all

Foreshadowed by the bank-founded Institute of Public Affairs (IPA), the Morrison government rapidly accelerated its deregulation agenda under the auspices of supporting the economy during and after COVID-19 restrictions. The Citizens Party has documented the IPA's fascist roots and its championing of radical deregulation, which led to the systemic corruption exposed by the Financial Services Royal Commission in 2018. (*AAS*, 23 June 2021.)

On 27 April 2020, the IPA crowed that a "wave of deregulation … that has almost no historical parallel" was initiated under COVID-19. Previous red-tape reduction initiatives had only removed regulation that "nobody was interested in defending. … But this time is different." The IPA demanded these "temporary" deregulations must now be made permanent.

Financial deregulation is a longstanding bank-IPA agenda, for which COVID-19 merely provided a convenient pretext. In June 2019, the IPA had published research claiming Australia's financial regulators had "piled on" 75,976 pages of restrictive "regulatory dark matter" (restricting the banks). Despite admitting the limitations of their methodology—an unknown number of pages could have simply been non-regulatory information!—the IPA used their "research" to demand the government "rein in" regulators.


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Red tape rebounds to record high after Abbott's cuts

EXCLUSIVE
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Red tape, driven by federal agencies, has grown to record levels despite Tony Abbott's 2013 pledge to slash constraints on the economy.

Assistant Minister to the PM Ben Morton backed the IPA deregulation drive in this 7 November 2019 *Australian* article.

One month later, Prime Minister Scott Morrison tasked Assistant Minister to the Prime Minister and Cabinet, Liberal MP Ben Morton, with creating a Deregulation Taskforce to "remove regulatory impediments to business investment". Morton was an ideological fit—he would later declare his "longheld view" is that the government's "starting position *should always be not to regulate*". (Emphasis added.)

On 7 November 2019, the IPA produced more research claiming restrictive regulation had increased by 80 per cent since 2005. Despite the fact that legal experts have criticised the IPA's "flawed" and ideologically driven word-counting methodology, Morton told the 7 November 2019 *Australian* he "welcomed" the IPA's research. Cheered on by the IPA, the Morrison government seized on the COVID-19 crisis to opportunistically ram through deregulation long sought by business. These so-called temporary measures are now being made permanent, spearheaded by Morton's Deregulation Taskforce.

National Cabinet

The National Cabinet, a state and federal government joint decision-making forum, was established in March 2020 to facilitate a coordinated response to COVID-19. In May 2020, it was made permanent. In his 2 October 2020 press release, Morton said the National Cabinet had "embraced Deregulation as a key priority area to support economic recovery", and declared its creation "the single biggest piece of deregulation" since the 1992 creation of its predecessor, the Council of Australian Governments (COAG). Morton praised the National Cabinet as the "antithesis" of COAG, "where progress was based on the agreement of all states to the lowest common denominator … with National Cabinet, reluctant states can't water down agreements"—they could either get on board with reforms, or sit them out altogether. The National Cabinet has come under fire for unusual secrecy around its decision-making, which is being challenged in court by Independent Senator Rex Patrick.

Restrictions on regulators

On 2 October 2020, Morton announced the government would "draw on the lessons learned during COVID", where regulators were "pragmatic" and "proactively engaged with their stakeholders". Morton reiterated Morrison's earlier announcement that deregulation would focus on the "culture of regulators", announcing a new all-of-government "regulator performance role" inside the PM's

Department. Ministers would now release a “Statement of Expectations” which set strategic directions for regulators, and assess them on how well they performed against the government’s deregulation agenda. Morton declared: “In simple terms, if you’re not for our deregulation agenda, then you’re not for jobs.”

The clamp-down on regulators was in the context of the government’s mounting frustration with the Australian Securities and Investments Commission (ASIC), which had increasingly gone off-script by contradicting Treasury’s claims that deregulation was essential for economic recovery, and by actually pursuing the banks for financial misconduct. Several weeks after Morton’s announcement, ASIC Chair James Shipton and Deputy Chair Daniel Crennan would be ousted over a contrived expenses scandal and replaced by former Deutsche bank lawyer, Joe Longo, who swiftly signalled his support for Treasury’s deregulation agenda.

Class actions

One of the government’s first acts of deregulation actually involved adding *more* regulation—on opponents of the banks! On 13 May 2020, the government established a parliamentary inquiry into litigation funding and regulation of the class action industry, with a COVID-19 clause included in the terms of reference. On 22 May, before the Parliamentary Joint Committee on Corporations and Financial Services had received any submissions or held any public hearings, Treasurer Josh Frydenberg pre-empted the inquiry’s outcome by announcing that litigation funders would now be required to hold an Australian Financial Services Licence (AFSL) and that funded class actions would have to comply with managed investment scheme legislation. The December 2020 final report authored by pro-bank Liberal members of the Committee, including MP Jason Falinski and Senators Andrew Bragg and ex-IPA James Paterson, backed up Frydenberg’s changes.

Labor members of the committee refused to endorse the majority report, observing that in a 2018 inquiry into the same issues, both ASIC and Treasury had considered and rejected Frydenberg’s current initiatives. Labor’s dissenting report revealed that “funded class actions have been subject to a regulatory scheme that not even the regulator understands … the Treasurer has introduced a regulatory scheme that is literally impossible for many litigation funding schemes to comply with”. Because of the high costs of complying with the AFSL, Frydenberg “has made it more difficult (if not impossible) for not-for-profit organisations … to bring class actions in the future. Whether deliberate or not, this represents a direct attack on public interest litigation and access to justice in Australia.”

Continuous disclosure

Three days after his surprise litigation funding announcement, Frydenberg used emergency powers enacted under COVID-19 to temporarily ease Australia’s continuous disclosure requirements on banks and other corporations to keep their shareholders and the market fully informed of all developments. Frydenberg’s changes were purportedly to protect companies from opportunistic class actions, fulfilling the request of a 1 April 2020 letter he received from the Australian Institute of Company Directors, which had sought protections on the pretext of uncertainty around COVID-19, but for which big business had in fact been lobbying for a long time.

Even though Australia’s continuous disclosure regime was not in the parliamentary inquiry’s terms of reference, the Liberal members’ final report inexplicably endorsed Frydenberg’s changes. Labor members exposed that documents obtained under FOI revealed Frydenberg’s changes were made in “an extraordinary rush” and “against the advice of ASIC”, which had said the existing laws were a “fundamental tenet” of Australia’s markets and had warned Frydenberg’s changes “could undermine Australia’s reputation as a safe place to invest”.

Liberal Committee members admitted the litigation funding and continuous disclosure regime regulations were not fit for purpose, but recommended them anyway in a report which Labor members criticised for “factually wrong” or “unsubstantiated” assertions, and slammed for “endorsing incompetent and irrational decision-making by members of the executive branch”.

Virtual AGMs

Bank victims’ groups have used bank AGMs to put bank directors on the spot in public; virtual

AGMs remove that type of accountability. Pictured is former APRA Principal Researcher Dr Wilson Sy (left), Bank Warriors' Michael Sanderson (centre), and Bank Reform Now's Dr Peter Brandson (right) at the 2019 Westpac AGM. Photo: BRN

In response to COVID-19 restrictions, Frydenberg permitted virtual Annual General Meetings (AGMs), held online instead of in large public events. AGMs are an important forum for shareholder participation and to ensure company directors' accountability; bank victims' groups, such as the erstwhile Bank Warriors and Bank Reform Now, have used them to great effect to publicly put CEOs on the spot for their banking practices. Only months after introducing these "temporary" measures, Frydenberg attempted to make them permanent, but his push was derailed by investor pushback. The measures permitting virtual AGMs have been extended to 15 September 2021, and Frydenberg has signalled further reforms, announcing the government's 12-month pilot for companies to hold "hybrid" AGMs combining online and in-person participation.

Electronic documents

First initiated under COVID-19, Treasury has flagged permanent reforms to allow electronic document execution. Dr Peter Brandson of Bank Reform Now believes this is a "minefield" for theft and fraud, citing previous cases of corrupt banks falsifying documents to ruin everyday Australians.

The government's deregulation free-for-all extends beyond financial reforms to numerous other sectors: for example, adopting overseas product safety standards. COVID-19 was a convenient excuse to initiate "temporary" changes detrimental to consumer protection, but long demanded by big business and deregulation radicals such as the bankerfounded IPA.

By Melissa Harisson, Australian Alert Service, 7 July 2021
