Red tape: not as straightforward as Abbott’s pledge to repeal

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Tony Abbott and his Parliamentary Secretary, Josh Frydenberg, have pledged to repeal legislation that causes unnecessary red tape for businesses. AAP/Julian Smith

The idea that red tape is one of the most pervasive and damaging problems afflicting businesses has reached mythical stature over the years. And no doubt the Abbott Government sees it that way too, with newly announced plans to hold “repeal days” to roll back legislation.

The fact that red tape is on the agenda reflects largely on the style and orientation of the current government. And it confirms synergies between the current government and business.

The Coalition’s election campaign produced the “Boosting Productivity and Reducing Regulation” pamphlet, committing the Abbott Government to reducing the red and green tape cost burden imposed on the Australian economy by A$1 billion per year by repealing or amending what it called “costly and excessive regulations” and by implementing “sensible whole-of-government initiatives”.

These principles will come to fruition in March when the “Repeal Day” brings to Parliament the Omnibus Red Tape Repeal Bill, amongst other ancillary bills. Shortly thereafter, the Statute Law Revision Bill and the Amending Acts 1901-1969 Bill will complete the package, which will attempt to cut 8000 redundant pieces of legislation.

This is quite an aim. Other jurisdictions – Western Australia, New Zealand, and Victoria, which has a Red Tape Commissioner – have had similar but more contained initiatives.
Directors say “action”

Two particular influences have pushed the Federal Government to move toward a “repeal day”.

First, the Productivity Commission has for several years produced reports targeting regulatory clutter. Last September, the Commission completed its review of the compliance burden of government regulation, which it found disproportionately affected small business.

The research report “Regulator Engagement with Small Business” called for governments to apply “regulatory impact analysis principles”. Legislation should be only that required to “regulate effectively” with no duplication within government.

The second influence is at the core of a business-focused government – corporate management.

Government consultation taking place prior to the announcement of the deregulation agenda centred on industry lobby groups and large corporations. Their input was predictable and in line with the annual survey of directors by the Australian Institute of Company Directors: the Directors Sentiment Index.

The survey for the second half of 2013 showed company directors firmly saw the current Federal Government as a positive impact on decision making.

As in previous surveys, the report identified red tape as one of the biggest economic challenges for Australia. Too much regulation and red tape was seen by participants as the top economic challenge facing Australian business.

This is a significant result considering other lower-rated categories included low consumer confidence, industrial relations, wages growth and wage demands. Of the directors surveyed, 80% identified administrative costs and time associated with compliance as having the greatest impact on their business.

Over 65% believed the level of red tape and the time spent by the board on regulatory compliance had increased during 2013, and that it was the biggest impediment to productivity growth.

More than 70% identified workplace health and safety and preparing and paying taxes as the aspects of their business most affected by red tape. The survey notes that, on average, directors rate red tape compliance as accounting for about one-quarter of their total board commitment.

Annoying, but necessary

Although the Directors Sentiment Index is a useful tool in understanding how one influential sector of the market perceives the level and relevance of regulation, it is important to remember that legislation is drafted for a number of purposes, including the protection of shareholders and creditors and to ensure transparency and equity in the market.
In this regard, director frustration with well-considered compliance requirements does not make these factors red tape any more than the frustration of a speeding driver renders compliance with a red traffic light irrelevant.

Unfortunately, red tape is now a label attached to everything that doesn’t seem to fit into a view of how things should pan out – it adds cost, increases risk, confuses people, and causes stress, anger and frustration.

The essence of directors’ concerns, as expressed in the responses to the Directors Sentiment Index survey, is that there’s too many steps, rules, and checks. The amount and complexity of legislation, it can be concluded from the survey, invades decisions, meetings, and planning, making it more difficult to engage in the business of business.

But red tape does not start out to clutter and frustrate – it is usually there to order, organise, substantiate, categorise, inform, and protect. It can deliver accountability, predictability and equitable decision making.

Red tape can assist in managing the exercise of discretion precisely because of its checks and balances. There is probably a lot of red tape that goes unnoticed, simply because it doesn’t seem like red tape. What turns rules that set out to increase efficiency into red tape is excessive rule orientation. In governments particularly that may mean bureaucratic pathology – resulting in strict adherence to rules in the face of a more effective application.

Broadly, once rules serve no significant organisational or social purpose they can be seen as red tape. In this context is a government promising to reduce red tape simply promising to run itself efficiently?

Clearing red tape may have its downsides. Apart from the chance that protections may disappear, getting rid of administrative clutter may mean a loss of jobs. Statutory compliance obligations account for various cohorts of employees in many fields, including the university sector.

Interpretation of legislation is a complex matter and it may be that another factor to consider where a large cross-section of legislation is repealed or amended – as is envisaged by the government – is the interconnectedness and interdependence of statutes and regulations.

The government is obviously going in the right direction by addressing unnecessary regulation. Yet it must be remembered that red tape can be villain or hero.

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