

The folly of trying to eliminate all risk through regulation and legislation

(Article by Saul Eslake, Director of the Productivity Growth Program at the Grattan Institute, published in the business pages of the Melbourne Age newspaper, and in the online edition of the Sydney Morning Herald, on Wednesday 27th April 2011)

On two occasions this month, large numbers of passengers passing through Australia's busiest airports have had their travel plans substantially disrupted as a result of what have been euphemistically described as 'security incidents'. On each occasion, a relatively small number of people – just one in Melbourne on 7th April, and 16 in Sydney on Tuesday last week – were inadvertently admitted to the 'sterile area' beyond the security checkpoints.

On each occasion, this was due to the ineptitude of security staff – allowing one person to enter the 'sterile area' through the exit door to the baggage collection area in Melbourne, and in Sydney, someone apparently tripped over the power cord to one of the scanners, pulling it out, allowing 16 people to pass through 'unscanned'. (What was the person operating that scanner doing? And where were the OH&S personnel who are meant to make sure this sort of thing doesn't happen?)

And on each occasion, the security authorities claimed that they had 'no alternative' but to order the complete evacuation of the airport, and the re-screening of all those who had previously been inside the 'sterile area'. So, on both occasions, thousands of people around the country (not just at Melbourne and Sydney) experienced substantial delays (including some 2,000 who were stranded in Sydney overnight last week), and airlines incurred what some of them have described as significant costs. (I wasn't one of them: my frustration at these events is purely vicarious).

As is usually the case when it comes to 'security', these assertions as to the lack of any alternatives have gone almost entirely questioned. For all we Australians' supposed irreverence for authority, the vast majority of us seem to regard any questioning of the necessity or cost of 'security' measures as somewhere between irresponsible and treasonable.

Yet in these two cases, as in many others, the authorities concerned *did* have an alternative. They could have made the judgement that, having regard to the probability that either of these was part of a planned terrorist attack, and having considered the likely cost to airport users (passengers and airlines), it was neither sensible nor reasonable to order the evacuation and re-screening of all those who were in the airport.

In fact, these kind of judgements are made every day.

Every day, hundreds (if not thousands) of people travel on scheduled commercial flights without passing through any kind of security whatsoever – from airports such as Mildura, Devonport, Burnie and King Island to Melbourne, Port Lincoln and Mount Gambier to Adelaide, or Tamworth and Port Macquarie to Sydney (all routes that I've travelled on in the last five years). Yes, passengers on these flights go through security screening when they arrive at Melbourne, Adelaide or Sydney – after they've had the opportunity, were they so minded, to carry out some act of terrorism whilst in the air.

Assuming that it isn't because the 'security' authorities don't care about the possibility of people travelling on routes such as these being killed in a terrorist incident, this is presumably because the authorities have made the judgement that the probability of a passenger on any of these flights carrying out a terrorist atrocity is not high enough to justify the expense entailed in installing and staffing security screening in regional airports.

So if those responsible for airport 'security' can make this kind of judgement every day, why couldn't they have made the same sort of judgement in Sydney eight days ago, and in Melbourne three weeks ago?

Perhaps those on duty at the time were under strict instructions not to exercise any discretion or judgement; or perhaps they're simply not capable of doing so, as it would seem (by the way they go about their allotted tasks) are those who staff the security screening points.

Qantas subsidiary Jetstar is reported to be considering seeking compensation from the operators of Sydney Airport for the costs they incurred as a result of this lack of commonsense and judgement shown by those responsible for 'security' on this occasion. I hope they do, and that they succeed (with what they charge for the services they provide, the operators of Sydney Airport could surely afford it). I hope this is the start of what Tony Abbott might call a "people's revolution" against some of the inane, wasteful and pointless security rituals that go on at our airports – and desirably before the scheduled introduction of the so-called 'full body scanners' (perhaps more appropriately called 'porno-scanners') later this year.

This obsession with 'security', and the deluge of laws and regulations ostensibly designed to 'enhance' it over the past decade, are part of a broader trend towards seeking to prevent, through a combination of legislation and regulation, the repetition of anything Bad that happens, here or anywhere else – no matter what the probability of it happening here or again is, or what the cost of preventing it from happening is relative to the benefits of preventing it, and without there ever being any subsequent review of costs versus benefits.

So, one person strikes a match against his heel on the other side of the world – and almost instantly, airline passengers here must have their boots scanned. One person tries (unsuccessfully) to make a bomb out of a few liquids, and we confiscate incoming passengers' duty-free booze, and employ a small army of people to confiscate small bottles of shaving cream or deodorants. And so on.

As with 'aviation security', so it has been with corporate governance.

A decade ago, here and in the United States, there was a spate of corporate scandals, in which executives of large companies sought in various ways to enrich themselves at the expense of investors in, or clients and employees of, their companies. In every case, those executives were caught, prosecuted under existing laws which they were proved beyond reasonable doubt to have broken, and either subjected to substantial fines, sentenced to long jail terms, or both.

Yet, rather than celebrate the fact that even the rich and powerful are not beyond the law, both Australia and the United States embarked upon an orgy of new rule-making, without regard to the effectiveness of existing laws and law-enforcement mechanisms, or to the costs imposed by the new laws and regulations – laws and regulations which, in the US at least, did nothing to prevent the financial crisis.

The same instinct to regulate without regard to probability or consequence can be seen in many other areas, including the hoops through which a parent is now required to jump before being allowed to coach his son's football team, or read to her daughter's class, or in the ludicrously low speed limits now enforced on some of the freeways which have been upgraded at great expense in our major cities.

This urge to regulate or legislate away all of the risks associated with being alive in the early part of the 21st Century, without regard to probabilities or consequences, is one of the reasons for the increased hesitation on the part of our governments and our businesses to take the kind of risks – the risks of experimenting and failing – that are part of the process by which we make progress, in every sense of that word.

Correction: In this column two weeks ago, I wrote that there were more than 4 million trusts in existence in Australia. This was an error, the result of my mis-reading a table in the ATO's *Taxation Statistics*. The correct number is a little over 600,000. I also acknowledge that trusts are often established for reasons other than to reduce the amount of tax otherwise payable. My thanks to a number of readers for alerting me to these errors. That said, as it needed to be, I don't resile from the proposition that no tax advantage should accrue to those (including me) who operate their business activities through trusts.

(Saul Eslake is a program director with the Grattan Institute. However the views expressed here are his own).