

CUT RED TAPE TO

UNLEASH  PROSPERITY

April 2018



FIVE PRINCIPLES OF RED TAPE REDUCTION

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Executive Summary

Red tape is one of the biggest constraints on economic opportunity, business investment, and job creation in Australia. Recent IPA analysis found red tape reduces economic output by \$176 billion each year. This cost captures forgone human potential – all of the businesses which are never started, the jobs that are never created, and the dreams which are never fulfilled.

Governments of both persuasions at the state and Commonwealth level have attempted to reduce red tape for years. However, these attempts have fallen short because they were too narrow in scope and lacked ambition. Only a complete overhaul of Australia's regulatory system will deliver the reduction to red tape that is needed to re-invigorate Australia's economic prospects.

This overhaul must involve unchaining businesses – large and small – as well as community organisations and everyday Australians from the imposing web of regulations they face at every stage of project development. Projects from large iron ore mines, to setting up a café, to doing home renovations, are met with unnecessary and often petty bureaucracy that slows or discourages the undertaking of such projects.

This paper provides five principles policy makers should follow when implementing new proposals to minimise the amount of associated red tape. Those principles are:

- 1. Eliminate the need for approvals, and replace with an inspection and reporting regime.**
- 2. Embrace market-based solutions.**
- 3. Harness the benefits of economic competition.**
- 4. Follow subsidiarity by decentralising regulatory authority.**
- 5. Minimise interaction with government.**

The first of these principles is the most dramatic. It calls for policymakers to remove the need for project proponents to seek permission from government officials to undertake a project. This means anyone, anywhere, could implement a new project – such as setting up a new mine or establishing a restaurant – without needing the permission of government.

Project proponents would still need to follow whatever general rules exist (health and safety, for example). However, instead of needing permission before commencing a project, governments would enforce these rules through periodic, risk-based inspections.

Such bold change must be embraced if Australia is to come out of its economic malaise and again become an attractive destination in which to do business.

Introduction

Australia's red tape burden is one of the most substantial impediments to economic opportunity, upward mobility, business investment, and job creation. Drawing on the work of leading regulatory economists from the United States, the Institute of Public Affairs recently calculated that red tape is costing Australian workers, businesses, and community organisations \$176 billion each year, or 11 per cent of GDP.¹ This means the cost of red tape is greater than the value of major taxes, such as income tax and the GST. It also means the cost of red tape is greater than major government spending items, such as social security, health care, and education.

However, the cost of red tape is not abstract. The \$176 billion figure measures forgone human potential. It captures all of the businesses which are never started, the jobs which are never created, the pay rises which never happen, the higher prices for goods and services, the loss of technological innovation, and all the projects which are delayed. Red tape is best understood as a profound cultural and moral cost, not just an economic cost. It prevents, or makes it much more difficult, for people to pursue their goals, dreams, and aspirations.

Red tape is often a poorly defined term used in different contexts to mean different things. What for one person might be considered red tape could, to another, be an indispensable piece of regulation which delivers an important public policy goal. To provide direction to public policy, however, it is important that there is a clear definition of red tape that can be applied across a range of policy areas.

Red tape is best defined as regulation beyond 'minimal effective regulation'. Minimal effective regulation refers to a regulatory regime where the fewest rules, requirements, or procedures are in place to achieve a stated regulatory objective. Otherwise stated, a regulatory regime is defined as minimally effective by its absence of red tape. By contrast, only regulatory regimes that feature more than the minimal necessary number of rules, requirements, or procedures could be said to impose red tape.

A key focus of the Institute of Public Affairs' *Cut Red Tape to Unleash Prosperity Program* is to provide guidance to policy makers on how to achieve minimally effective regulation. In doing so, the IPA has provided research on how to reduce both the existing red tape burden (the stock), and how to reduce the addition of new red tape (the flow). This paper is concerned with the latter – how to reduce the addition of new red tape. In doing so, this paper does not challenge the veracity of underlying regulatory objectives – it takes these objectives as given. Rather, this paper is focussed on the narrower question of how to reduce the costs associated with the attainment of a given regulatory objective.

¹ Novak, Mikayla, "The \$176 Billion Tax on our Prosperity", Institute of Public Affairs, Melbourne, Australia (2016)

In this context, this paper outlines five principles policymakers should follow when developing policy to minimise the red tape burden on regulated individuals, businesses, and community organisations:

- 1. Eliminate the need for approvals, and replace with an inspection and reporting regime.**
- 2. Embrace market-based solutions.**
- 3. Harness the benefits of economic competition.**
- 4. Follow subsidiarity by decentralising regulatory authority.**
- 5. Minimise interaction with government.**

These principles are designed to be applied across all policy areas, and at the local, state, and Commonwealth level of governance. The application of these principles to new policy proposals would move new regulatory proposals closer to being minimally effective. In that sense this paper serves as a guide to policy makers of how to implement minimally effective regulation and reduce the future red tape burden of new regulatory proposals.

1 Eliminate the need for approvals, and replace with an inspection and reporting regime



This section outlines the current regulatory requirements that apply to project proponents, and how those requirements could be altered in order to reduce red tape. The types of projects which this section takes into consideration are both economic and private. This includes projects ranging from multi-billion-dollar resource projects, such as iron ore and coal mines, through to opening a new café, undertaking renovations on a residential property, or launching a new financial technology start-up.

The Current Regulatory Apparatus

There are four layers to Australia's regulatory regime. The first layer of Australia's regulatory apparatus is the purported public policy problem that government intervention is attempting to resolve, along with the objectives of that intervention. These objectives do not place direct obligations on regulated entities, but are supported by a set of rules, procedures, and requirements which are discussed further below. This layer is typically general in nature. Examples of relevant objectives include: improving health and safety, reducing workplace fatalities, and protecting endangered or threatened species.

Layer two is comprised of the various rules, approvals, and licenses that must be followed or obtained by regulated actors prior to, and throughout, undertaking a regulated action. This layer contains obligations which specify how a regulated actor is to meet the objectives outlined in layer one. This layer usually includes the requirement that regulated actors obtain licenses and approvals from regulators prior to undertaking a regulated action. This includes, for example, the requirement that project proponents obtain approval under state-based native vegetation laws to prior to the clearing of vegetation. In this example, an objective with regards to native vegetation could be to improve the conservation of native vegetation when land development takes place. But instead of allowing the landowner to determine the most efficient way of meeting this objective, they are required to obtain a series of approvals and licenses which specify the way in which the regulatory objective is to be met.

The third layer contains requirements imposed on project proponents by regulators which project proponents must satisfy throughout the project's life. Often, projects are approved by regulators or Ministers conditional on project proponents meeting specified requirements. Notionally, regulators may impose conditions to avoid or mitigate any perceived negative effects that projects may have that were not, or could not, be addressed in the project proposal and development stage. However, these conditions can be numerous and unwieldy. According to the Queensland Resources Council, project proponents routinely have upwards of 1,200 conditions imposed on them.² Similarly, in its 2013 report into the major project approvals process in Australia, the Productivity Commission gave the example of a project which was required to meet 1,500

² Queensland Resources Council, "Submission to the Productivity Commission Inquiry: Major Project Approvals", Queensland, Australia, (2013)

government imposed primary conditions and 8,000 sub-conditions.³

The final layer is the enforcement regime where regulators impose a range of obligations on regulated actors to enforce rules, and ensure the conditions of project approval are being satisfied. This fourth layer typically involves extensive reporting obligations placed on regulated actors to demonstrate they are meeting relevant rules and following relevant conditions.

While there is substantial scope to reducing rules and regulations, and for questioning underlying regulatory objectives, which the Institute of Public Affairs has outlined in a variety of other reports⁴, this paper takes it as given that certain rules and regulations exist that regulated actors must follow. That is, this paper takes the first layer of regulation as given and does not challenge those underlying regulatory requirements or objectives.

Rather, this paper is motivated by the important public policy question of how to minimise the cost imposed on regulated actors associated with compliance with, and enforcement of, a given set of rules and obligations. That is, this paper is concerned with how to reduce and, ideally eliminate, the red tape burden associated with regulatory compliance. Put simply, our question is how to achieve a given regulatory or policy objective in the most efficient way. Red tape can be defined as minimal effective regulation – the fewest number of rules, requirements, or procedures in place to achieve a given stated regulatory objective.⁵ It is layers two, three, and four—and the multitude of ways in which these layers are enforced—that give rise to, and thereby with reform have the potential to cut, red tape.

The components of the Regulatory Regime which are Red Tape

The second, third, and fourth layers of the regulatory regime described above are the domain of rules in which red tape can exist. The second layer—the need for licenses and approvals—is unlikely to exist in a perfectly efficient regulatory regime. This layer requires regulated actors to obtain permission from regulators and government officials before they can commence a project. Notionally, approvals and licenses are a way for regulators to satisfy themselves that regulated actors have the capacity to meet their regulatory obligations. Such an approach, however, is often highly inefficient and costly in attempting to achieve a given regulatory objective.

There are two key reasons why the licenses and approvals contained in layer two are inefficient and could be considered in excess of minimally effective. First, it pre-supposes all regulated actors are of equal likelihood of transgressing rules, and that such a transgression would have an equal cost to society. Second, it follows a ‘one-size-fits-all’ approach where all regulated actors must follow the same process, irrespective of the particularities of their project or business model. This is unnecessarily costly for both regulated actors and taxpayers. It also violates the widely accepted notion of ‘risk-based regulation’ which posits that scarce regulatory resources should be directed toward those individuals and businesses who are the greatest risk of non-compliance, and toward those activities that would result in the greatest cost of third parties in the event of non-compliance.⁶

Removing the need for approvals would, by implication, remove the need for project proponents to follow conditions (layer 3). If there are conditions currently in place that are considered

3 Productivity Commission, “Major Project Assessment Process”, Canberra, Australia, (2013)

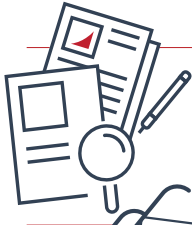



4 See, for example, Roskam, John; Paterson, James; Berg, Chris, “Be like Gough: 75 radical ideas to transform Australia”, Institute of Public Affairs Review, Melbourne, Australia, Vol. 64, Issue 2, 2012

5 Wild, Daniel, “Barriers to Prosperity: Red Tape and the Regulatory State in Australia”, Institute of Public Affairs, Melbourne, Australia, (2017)

6 Productivity Commission, “Regulator Engagement with Small Business”, Productivity Commission Research Report, (September 2013)

important from a public policy perspective, then policy-makers should turn these conditions into a legislative requirement (this is discussed in more detail below).

Similarly, the fourth layer, which consists of ongoing reporting obligations, would not exist in a perfectly efficient regulatory regime. Currently, regulated actors must provide regular reports to government officials which demonstrate they are satisfying their underlying regulatory obligations. However, this again ignores the principle of risk-based regulation, and imposes the same requirements on all regulated actors irrespective of their business model or project. Moreover, the reporting requirements are an example of cost-shifting from regulators to regulated actors. Cost-shifting is a problem because it removes an important constraint on regulators. Where regulators incur the cost of regulatory enforcement, they are more likely to ensure their limited enforcement resources are used efficiently and effectively. However, when regulators can shift the costs of enforcement onto regulated actors, there is little to prevent regulators from imposing unnecessarily costly regulatory requirements.

	PREVIOUS REQUIREMENTS	REPLACED WITH
 <p>STAGE 1</p>	Defining the Policy Problem	Defining the Policy Problem
 <p>STAGE 2</p>	Government Imposed Rules, Licenses, and Approvals	Positive Obligation on Project Proponents
 <p>STAGE 3</p>	Discretionary Imposition of Ministerial Conditions	Conditions to be Made into Law Where Required
 <p>STAGE 4</p>	Ongoing Reporting Requirements	Periodic, Risk-based Inspections

An Alternative Regime

As discussed above, layers 2, 3, and 4 would not exist in their current format in an efficient regulatory regime. Outlined below is an alternative approach to re-designing Australia's regulatory regime that would see the same government objectives attained, but a lower cost to regulated actors and taxpayers.

In a perfectly efficient regulatory regime, layers 2, 3, and 4 could be replaced with three following layers:

1. Positive obligation on regulated actors to report breaches of regulatory requirements.
2. Periodic, risk-based inspections by regulators of regulated actors.
3. Project approval conditions to be made into legal requirements, rather than implemented through Ministerial discretion.

The first change is to impose positive obligations on regulated actors to report breaches of regulatory requirements. This means that when a regulatory requirement is breached, the regulated actor must report it to the regulator. Failure to report such a breach would be met with penalties.

The second component is the use of periodic, risk-based inspections by regulators to monitor the compliance of regulated actors with their underlying regulatory requirements. Under this approach, regulators would no longer provide approvals to regulated actors prior to a project or activity commencing. Rather, regulators would be responsible for implementing their own compliance and enforcement regime. This would involve periodically inspecting regulated actors with regard to their meeting of regulatory requirements, and doing so in a risk-based manner. That is, it would involve targeting compliance resources to the projects which are the highest risk of non-compliance, and where the materialisation of that risk would result in substantial costs to others in society.

The third component is to remove the discretionary imposition of conditions by Ministers or relevant delegates, and instead make such conditions legal requirements where necessary. Under current arrangements, those who have the power to approve or disapprove projects, such as Ministers, regulators, or local councilors, can approve projects subject to certain conditions met. Often, those conditions can be imposed with large degrees of discretion. The key issue with discretion is that it creates uncertainty for project proponents. It also provides an avenue to cronyism; Ministers are able to use the approvals process to compel project proponents to undertake actions which are politically beneficial to the relevant Minister or government official.⁷

Ministerial and regulatory discretion is also an affront to the rule of law. The rule of law is the principle that laws should govern a nation, rather than discretionary decision making by those who hold power. The rule of law is a key constraint on regulatory over-reach and ensures everyone is subject to the same set of rules. Ministerial discretion, alternatively, allows with power to treat regulated actors in disparate ways.

⁷ For a discussion of why rules are preferable to discretion, see: Kydland, Finn, and Prescott, Edward, "Rules Rather than Discretion: The Inconsistency of Optimal Paths", *The Journal of Political Economy*, Volume 85, Issue 3, (June 1977)

Benefits of Alternative Regulatory Regime

The main consequence of following the alternative regulatory regime outlined above would be that project proponents would no longer need to obtain permission from government officials before commencing a given project. This could be considered quite a radical change. However, project proponents would still need to meet whatever general rules or requirements apply to their activity, including fulfilling relevant conditions and demonstrating compliance with those conditions and rules as required. That is, such a new regime would not rely on changing or challenging underlying regulatory objectives.

There are a number of benefits to this alternative approach. Firstly, it would shift most of the regulatory burden from the pre-construction phase to post-construction phase of a project. This is important because one of the main impediments to business development is the upfront costs of regulation. Businesses must often meet a range of regulatory obligations, such as obtaining licenses and approvals, before they can commence their project. This means they incur substantial upfront costs before they are earning revenue. The Roy Hill iron ore mine, located in Pilbara in Western Australia, for example, required some 4,967 licenses, approvals, and conditions for the pre-construction phase alone.⁸ Similarly, setting up a restaurant in New South Wales can require filling out 48 forms and obtaining 72 approvals.⁹

Moving regulatory obligations to the post-construction phase – whether of a mine or café - means regulated actors would be incurring regulatory costs at a time when they are earning revenue, making it easier for them to meet their regulatory obligations. Such a move would also reduce the opportunity costs of project development. Opportunity costs occur when the implementation of a project takes longer than it otherwise would due to red tape and regulation. Removing the key source of these opportunity costs – the need for project pre-approval – would make Australia a more attractive destination to invest in.

Secondly, this alternative approach would allow regulated actors to find the most cost effective way of meeting their regulatory obligations. Under current arrangements, regulators specify *what* rules must be satisfied, but also *how* they are to be satisfied. As discussed, governments usually rely on a prescriptive set of rules to attain their preferred regulatory outcome. That is, policymakers outline both the policy objective that is to be attained (such as improving trust in financial service providers) as well as the specific means through which this is to be achieved. However, top-down prescriptive rules force all businesses to comply in the same way, irrespective of considerations for their business model, or the appropriateness of certain regulations for certain businesses.

⁸ Roy Hill, "Roy Hill Wins PMI Australia's Project of the Year Award – Australia's Premier Project Award", Media Release, (30 May, 2016)

⁹ Khadem, Nassim, "Federal budget to tackle illegal cash economy costing up to \$15b in lost revenue", The Age, (5 April, 2017)

This not only increases the amount of regulation that businesses must abide by; it also suffers from the 'knowledge problem'. For economist F.A Hayek the knowledge problem refers to the fact that knowledge and information is decentralised and scattered across individuals and communities in society.¹⁰ This structure of knowledge means that relevant information and knowledge is not available to centralised policy makers. Hence, policy makers are not best placed to determine the most efficient or effective way of attaining underlying regulatory objectives. Rather, the information needed for this is held at the micro level by individuals and the businesses they operate.

It is difficult, if not impossible, for policy makers to understand the true costs of regulations prior to their implementation, or to anticipate all the potential unintended consequences of regulatory intervention. This inability to anticipate costs, and the way in which regulated actors may respond to regulatory interventions, means that the attainment of regulatory objectives is highly uncertain and, mostly likely, will lead to the continual addition of more rules and red tape as policymakers attempt to keep up with the unanticipated behavioural responses amongst regulated actors that regulation induces.

Otherwise stated, policymakers do not have sufficient information to achieve the optimal path to regulatory compliance. It is a conceit to assume otherwise. As such, it is far more prudent and cost-effective for governments to set out broad policy objectives and allow regulated entities to discover the most cost-effective and least intrusive way of meeting those objectives.

Potential Drawbacks of Alternative Regulatory Regime

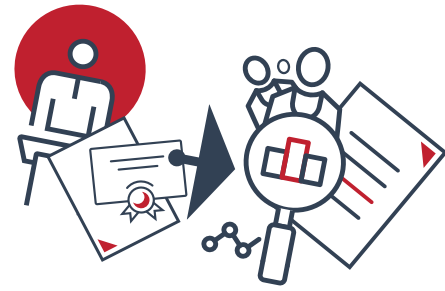
There are two potential drawbacks to the alternative regulatory regime outlined above.

Firstly, it could be argued that compliance may decrease with a decentralised regulatory system and that removing the need to receive government approval before commencing would increase project risk. However, under the alternative regime compliance can be enforced through two mechanisms: penalties for non-compliance and frequency of inspections. Regulators can use either of these tools to increase the expected cost of non-compliance.

Secondly, some regulated actors may prefer being required to seek approval from government officials prior to commencing a project as it provides added certainty that they will not be later found non-compliant. However, this potential drawback can be managed by allowing regulated actors to seek approval from regulator on a voluntary and ad-hoc basis.

¹⁰ Hayek, F.A, "The Use of Knowledge in Society", *The American Economic Review*, Vol. 35, No. 4, (September, 1945), pp. 519-530.

2 Embrace market-based solutions



Property rights: Letting people bargain

Policymakers often undervalue the ability of market participants to reach public policy objectives. Comparative institutional economics teaches that there are multiple ways to achieve a given objective.¹¹ Direct coercion through government is only one way to achieve a given public policy objective.¹² Despite this, public policy objectives in Australia are often approached primarily through government regulation and intervention, with the assumption that it is the most direct and effective institutional mechanism. This regulate-first approach stems from an underlying undervaluing of the ability of market participants and civil society to govern their exchanges and interactions.

Market-based policy instruments are regulations that seek to change private behaviour through market signals, such as prices, rather than through direct regulatory intervention. This approach generally involves securing property rights, ensuring they are freely tradable, and allowing those who value certain policy outcomes, such as environmental amenity, pay for its delivery. In this way, the adoption of market-based policy instruments enables private citizens to achieve public objectives through the transfer of property rights, thereby allocating resources to their most valued use. In a review of alternative approaches to direct government intervention, the OECD stated with regard to market-based instruments that:

When used in the right circumstances these instruments can offer significant advantages over traditional command and control regulation, including: greater flexibility and adaptability; potentially lower compliance and administrative costs; an ability to address industry-specific and consumer issues directly; and quick and low-cost complaints handling and dispute resolution mechanisms.¹³

The main policy area in which market-based solutions have been, and could further be, deployed is environmental conservation. Currently, the majority of environmental conservation policy is implemented through top-down regulations, such as through outright bans, extensive permit requirements, and limitations on activity that can take place on privately owned land. However, such approaches are needlessly costly, interventionist, and shift costs from those who benefit from environmental conservation to private landowners. Furthermore, this approach forces all Australians to pay for the attainment of environmental amenity, despite the fact individual's value that amenity in different ways.

11 See the new institutional economics including: Williamson, Oliver E. *The economic institutions of capitalism*. Simon and Schuster, 1985; North, Douglass C. "Institutions." *Journal of Economic Perspectives* 5, no. 1 (1991): 97-112. Also see the new comparative economics and political economy: Djankov, Simeon, Edward Glaeser, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer. "The new comparative economics." *Journal of Comparative Economics* 31, no. 4 (2003): 595-619; Allen, Darcy WE, and Chris Berg. «Subjective Political Economy.» *New Perspectives on Political Economy* (forthcoming).

12 Ross, John, "The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing", The Institute for Justice, (November 2017)

13 Organisation for Economic Cooperation and Development, "Alternatives to traditional regulation", OECD Report

An example of how market-based solutions can be better applied are with native vegetation retention. Currently, regulations are imposed on private landowners to conserve, enhance, or maintain the extent and quality of native vegetation on their private property. An alternative approach is for governments to first secure the property rights of landowners, therefore enabling third parties, such as green groups, to either purchase land directly off landowners and to use that land for conservation purposes, or to compensate landowners to conserve native vegetation in parts of their land in lieu of it being used for productive purposes.

A further benefits of a secure property rights regime is it allows auctions over public policy goals to take place. Auction mechanisms work by governments producing or compensating regulated actors for the provision of a certain regulatory goals, such as environmental goods.

For example, the Conservation Reserve Program has been operating in the United States since 1985. In exchange for a yearly rental payment, farmers enrolled in the program agree to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality. Contracts for land enrolled in CRP are 10-15 years in length. The long-term goal of the program is to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat.¹⁴ Importantly, participation in the program by farmers and landowners is voluntary.

A similar program has been in place in Victoria since 2001 under the BushTender scheme where landowners and farmers could bid to provide land management services to improve the quality or quantity of native vegetation on their farm. The State Government provided funds to the farmers on the basis of a Biodiversity Benefits Index, which measures the conservation value of the site and the value of services offered by the landholder per dollar of payment. Those proposals ranking the highest on the Biodiversity Benefits Index receive priority funding.¹⁵

Incentivise self-regulation and private governance

A common market-based solution to address perceived regulatory problems is industry self-regulation. Self-regulation involves a group of firms, sometimes under the umbrella of an industry body or association, developing their own rules and standards which all members who choose to be a part of the self-regulation scheme must follow. Examples of self-regulation include codes of practice; industry-based accreditation arrangements; and the voluntary adoption of standards.

Self-regulation is an important way in which industry participants can maintain or improve the quality of their products or services. Voluntary accreditation, for example, requires that industry participants obtain, maintain, and continually update their education and training levels. It can also require that businesses adhere to industry best practice standards as they relate to the quality of goods and services, as well as legal and ethical conduct toward customers and other businesses.

Importantly, voluntary certification does not prevent businesses who do not have certification from practicing, and so does not stunt competition in the same way as direct government intervention does. Rather, it allows the value of such certification to emerge from the market process. Should consumers place sufficient weight on the value of certification, then an increasing share of market

¹⁴ California Land Conservation Assistance Network, "Conservation Research Program", California, United States, <http://www.californialandcan.org/local-resources/Conservation-Reserve-Program-CRP/1648>

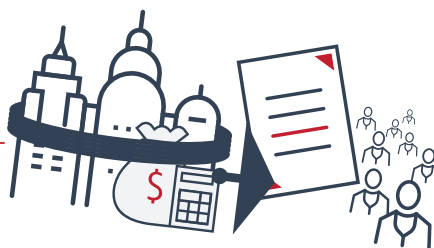
¹⁵ Victoria State Government, "Innovative Market Approaches: Bush Tender", Victoria, Australia, <https://www.environment.vic.gov.au/innovative-market-approaches/bushtender>

participants will seek certification. If, alternatively, certification provides only marginal benefits then we would expect to see only a small portion of market participants with certification. In some cases, consumers may simply be willing to forgo quality in favour of lower prices. This is a legitimate preference and should not be prevented from emerging from a normal market process.

Further, self-regulation may also involve establishing external dispute resolution procedures. According to the OECD, industry groups may, for example, appoint an independent arbitrator or ombudsman to investigate complaints against members of the industry.¹⁶ Decisions of the arbitrator can be binding on the firm involved and compliance is enforced by the industry association. Such dispute resolution mechanisms provide recourse for consumers who believe they have been improperly treated.

¹⁶ Organisation Economic Co-operation and Development, "Alternatives to Traditional Regulation", Paris, France

3 Harness the benefits of economic competition



Competitive markets are typically characterised by a large number of businesses selling a relatively homogeneous product or service to a large number of customers. It is widely recognised in the micro-economics literature that competitive markets deliver better outcomes for consumers, are more efficient than uncompetitive markets, and are an important driver of economic growth and technological development and innovation.¹⁷ What is less recognised, however, is that competitive markets can also be an important conduit to achieving public policy objectives.

Most directly, competitive markets better serve the interests and preferences of consumers than less competitive markets. A number of consumer preferences coincidentally align with regulatory objectives, such as health and safety, improving trust in, and accountability of, businesses, or ensuring the provision of quality goods and services. However, regulation, by imposing barriers to market entry, reduces competition and makes markets less responsive to the aforementioned consumer preferences which, in turn, reduces the likelihood that regulatory objectives will be met.

Moreover, rules and regulations lead to businesses spending more time and resources on government policy, and less on improving their products and servicing customers. This occurs in two ways. Firstly, rules and regulations result in businesses dedicating more time and resources to compliance, paperwork, and staying abreast of regulatory developments. Secondly, increased government intervention creates incentives for businesses to engage in lobbying efforts, either to remove regulations or, perhaps more commonly, augment or introduce new regulations to provide them with an advantage over potential competitors.

Competitive markets can also deliver public policy outcomes through reputational mechanisms. Consumers who are dissatisfied with the quality of a product or service they have acquired can vote with their feet and avoid a given business in future interactions. Competitive markets, which are characterised by the large number of businesses selling similar products or services, offer the best chance for consumers to avoid low quality producers and favour high quality producers. However, government regulation imposes barriers to market entry which reduces the number of market participants and neuters the positive effects of competitive markets.

Some claim that competitive markets do not operate in the manner described above due to information asymmetries. Information asymmetries occur where one party to a transaction, typically the supplier, has more information about the contents of that transaction (such as the underlying quality of a product) than the buyer. Consequently, it is held that buyers can be exploited, or taken advantage of, by producers. Whilst it is the case that information asymmetries exist in certain situations, it is improbable that governments have superior quality information than consumers. Moreover, competitive markets are themselves one mechanism through which the issue of information asymmetry is resolved – low quality products are removed from the market and so, by definition, those in the market at any given time are likely to be the best possible given current technological constraints.

¹⁷ See, for example, Gans, Joshua; King, Stephen; Mankiw, Gregory, "Principles of Microeconomics", Cengage Learning Australia, Victoria, Australia, (2008)

Aside from this, information asymmetries have been, and continue to be, substantially reduced through technological change which has helped reinforce reputation mechanisms. Online review websites, such as Yelp and Trip Advisor provide important information to consumers about the quality of producers in a given market.¹⁸ Bad reviews and low customer ratings put pressure on businesses to improve their quality. Professors Tyler Cowan and Alex Tabarrok of George Mason University argue technological developments may have rendered information asymmetries obsolete. Cowan and Tabarrok argue:

technological developments are giving everyone who wants it access to the very best information when it comes to product quality, worker performance, matches to friends and partners, and the nature of financial transactions, among many other areas.¹⁹

Such argument are supported by recent empirical analysis. Michael Luca, Associate Professor of Business Administration at Harvard Business School, undertook a study to investigate how much of an effect Yelp ratings have on business revenue. Luca found that a one-star increase in Yelp rating leads to a 5-9 percent increase in revenue.²⁰ Moreover, Luca found that consumers respond more strongly when a rating contains more information. In summarising the results of his study, Luca argues that:

“Online consumer review websites improve the information available about product quality. The impact of this information is larger for products of relatively unknown quality. As this information flow improves, other forms of reputation such as chain affiliation should continue to become less influential.”²¹

In this way, the rise of new communications technologies coupled with an institutional environment of market competition, help to incentivise new forms of self-governance and self-regulation. That is, through time individuals and firms may become more comparatively effective than government in achieving objectives. This notion of self-governance must be recognised by policymakers in existing regulatory regimes, and particularly when those regimes come under strain due to technological evolution.

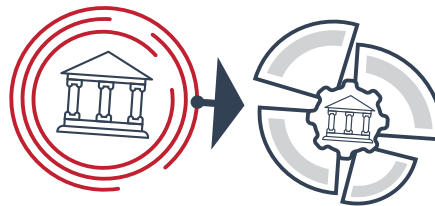
18 Allen, Darcy; Berg, Chris; Novak, Mikayla; Wild, Daniel, “A Response to the Productivity Commission Draft Report on the Regulation of Agriculture”, Institute of Public Affairs, Melbourne, Australia, (2016)

19 Tabarrok, A. and Cowen, T. (2015). The End of Asymmetric Information, Cato Unbound, 6 April 2015. Available at <http://www.cato-unbound.org/2015/04/06/alex-tabarrok-tyler-cowen/end-asymmetric-information>

20 Luca, Michael, “Reviews, Reputation, and Revenue: The Case of Yelp.com”, Harvard Business School, Working Paper 12-016

21 Ibid.

4 Follow the principle of subsidiarity



Subsidiarity is the principle that problems ought to be managed by lowest, or most decentralised, authority that has the resources to manage the problem. In practice this means there would be a de-facto assumption that all relevant authority lies first with local and voluntary associations, second with local and state governments, and third with centralised national government.

However, the structure of Australia's federation is characterised by significant overlap and duplication of responsibilities between the Commonwealth government, state governments, and local councils. This has occurred over the years due to continued Commonwealth government encroachment into areas which have traditionally been solely the domain of state governments. One of the key causes of the continued Commonwealth expansion of power has been liberal interpretations by the High Court of constitutional constraints on Commonwealth power. The *Tasmanian Dams Case* of 1983 exemplifies this centralising tendency.

In that case, the Tasmanian Hydro-Electric Commission, with the support of the state Liberal government, planned to construct a hydro-electric dam on the Franklin River. In 1982, UNESCO declared the Franklin area a World Heritage site. Following the 1983 federal election, the Hawke-Labor government passed the World Heritage Properties Conservation Act 1983 to effectively prohibit the construction of the hydro-electric dam. The High Court of Australia rejected the Tasmanian state government's argument that the federal government had no power to make domestic regulations of this sort.

As Josephine Kelly noted in 2012: In the Tasmanian Dam Case in 1983, the then Chief Justice, Sir Harry Gibbs, said in his dissenting decision that:

"the division of powers between the Commonwealth and the States which the Constitution effects be rendered quite meaningless if the Federal Government could, by entering into treaties with foreign governments on matters of domestic concern, enlarge the legislative power of the Parliament so that they fully embraced all fields of activity."²²

Yet in the intervening years, this is precisely what has occurred. The Commonwealth government's reach over the domestic economy has expanded, which is not only hampering the proper function of the federation. But it also results in far more regulation, red tape, and duplication than what otherwise would have been the case.

There are two key issues with regulatory overlap. The first is that it results in more regulation, red tape, and duplication than what would otherwise be the case. This has resulted in a rapid growth to the number of licenses, approvals, and conditions that project proponents must satisfy. The Roy Hill iron ore mine, located in Pilbara in Western Australia, was required to meet 4,967 licenses, approvals, and conditions for the preconstruction phase, while the Tad's corner coal project, located in the Galilee Basin in central Queensland, was required to meet 5,000 licenses, permits, and conditions. These requirements stemmed from local, state, and federal government interventions.

²² Kelly, Josephine, "The Constitutionality of the Environment Protection and Biodiversity Conservation Act", in Chapter seven, "Upholding the Australian Constitution Volume 24", the Samuel Griffith Society, (August 2012) pg. 70

Secondly, the centralisation of bureaucratic control means those who are responsible for implementing new rules and regulations are often far removed from the local circumstances in which projects are being undertaken. This means adopting the principle of subsidiarity, which holds that problems should be dealt with or managed by the most local authority which has the capacity to address the problem. In practice this would see a substantial portion of the Commonwealth's functions delegated to the state level.

5 Minimise number of interactions with government agencies



Anyone wanting to undertake a new project, ranging from establishing an iron ore mine, to putting an extension on their house, is likely to need to interact with a government agency at some point. Governments should seek to minimise the number of such interactions so as to reduce, as far as possible, the compliance burden of unavoidable interactions with government.

There are two key ways to do this. The first, and simplest, is to provide an option to regulated entities to report to government on low frequency basis, such as through annual rather than quarterly reporting frequency.

The second approach is for state and federal governments to implement a single point of entry major project approvals model, whereby project proponents are only required to deal with one agency throughout the approvals process. This would obviate the need for project proponents to liaise with several agencies, which can lead to delays and the provision of inconsistent information. This could occur by implementing a new agency, called the “Office of Major Projects” which would be the single point of call for project proponents. The OMP would be ‘case manage’ a given project and be responsible for liaising with all relevant government agencies and obtain approvals on behalf of the relevant project proponent.

The single point of entry model was implemented by the Parramatta Council in New South Wales in 2016. The trial reduced the average time taken to start a business from 18 months to three months. Moreover, the program replaced 30 government forms with one online application.²³

²³ See <http://www.smallbusiness.nsw.gov.au/news/smallbiz-connect/dubbo-business-owners-welcome-easy-to-do-business-pilot>

Conclusion

Australia's regulatory system is in need of a major overhaul. Each year, red tape reduces economic output by \$176 billion, which is the equivalent to 11 per cent of GDP. This estimate captures forgone human potential: all of the businesses which are never started, the jobs never created, and the aspirations never fulfilled. The impact of red tape is reflected in a near record low level of business investment as a percentage of GDP and Australia's rapidly declining economic competitiveness.

Governments of both political persuasions have committed to various red tape reduction initiatives. Unfortunately, these efforts have usually provided only marginal and temporary changes at best. More substantial, principles-based reform is required to achieve an enduring reduction to red tape which will help drive economic growth and opportunity in Australia for decades to come.

