THE GROWTH OF REGULATION IN AUSTRALIA

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Introduction

Red tape is the single most significant barrier to economic prosperity and opportunity in Australia. Research by the Institute of Public Affairs in 2016 estimated that red tape costs the Australian economy $176 billion each year in terms of forgone economic output, which is approximately the equivalent of 10 per cent of Gross Domestic Product (GDP). This estimate is more than just a financial estimate. It captures all of the businesses never started, the jobs never created, and the ambitions which are never fulfilled due to unnecessary bureaucratic interference.

There are many ways to measure red tape, from the “paperwork burden” of regulatory compliance, to estimates of the opportunity costs of red tape, to pages of legislation. All of these methods have strengths and weaknesses. The paperwork burden approach is simple to calculate, but captures only a narrow range of costs. Opportunity costs get closer to the real cost incurred by business from red tape, but are difficult and time consuming to estimate. For example, the IPA’s estimate of the $176 billion red tape cost uses the world-leading opportunity cost methodology, but it cannot be delineated by industry and is difficult to incorporate into the policymaking process due to its complexity. And legislation page counts have the benefit of simplicity, but lack nuance.

In addition, all of these approaches are unable to capture the key problem of red tape: it imposes binding constraints on businesses, individuals, families, and non-government organisations. Red tape restricts these groups and individuals from pursuing their goals and objectives, and as a result, imposes an array of economic and social costs. “RegData” is a new red tape measurement approach that captures the restrictive nature of red tape. RegData uses machine learning-based textual analysis of the register of legislation to measure the actual restrictive content of legislation and regulations through the following words: “shall”, “must”, “may not”, “prohibited”, and “required”. The output of RegData is thus a count of the regulatory restrictiveness clauses.

This measure of restrictiveness clauses can then be used for a variety of purposes. For example, it can be used as a proxy for changes to red tape overtime. It provides the foundation for advanced economic analysis, with the degree of regulatory restrictiveness cross-correlated with measures such as economic growth, wages, exports, and so on. Together these provide a solid foundation for evidence-based public policy advocacy. Importantly, comparisons can be made across industries, sectors, and jurisdictions. It can be used to track the progress of claimed red tape reduction initiatives undertaken by governments.

Academics from the Mercatus Center at the US-based George Mason University first developed RegData to quantify federal regulation in the United States. Since then, it

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has been expanded to twelve states in the United States and Canada. Together with researchers from RMIT University and the Institute of Public Affairs, RegData has now been expanded to Australia.

This paper provides an initial overview of the size and growth of regulation in Australia at both the federal and state level using the RegData methodology. At the federal level, this paper provides three key findings. Firstly, the total volume of regulation has increased substantially since the data series began in 1977. Specifically, there has been a 421 per cent growth in the number of regulatory restrictions between 1977 and 2019, from 23,558 to 122,798. This is equivalent to approximately ten per cent year annum, compared to Australia’s annual population growth rate of around 1.6 per cent or annual economic growth rate of around 2.5 per cent.

Secondly, Parliament has been delegating an increasing proportion of its policymaking functions to unelected regulators. Since 2005 the total number of restrictions issued via Acts of Parliament has remained constant, while the number of restrictions issued via regulators has increased by 198 per cent since 2005, or around 13 per cent per year on average.

Thirdly, the deregulation agenda implemented by the Coalition government from 2013-2015 appears to have reduced the total number of regulatory restrictions. In particular, the number of restrictions in primary legislation declined by 6.5 per cent, from 125,334 in 2013 to 117,242 in 2015. However, the cessation of the deregulation agenda at the end of 2015 coincided with a re-commencement in the growth of regulatory restrictions. Restrictions contained in primary legislation grew by 4.7 per cent between 2015 and 2019, from 117,242 to 122,798.

This paper also applies the RegData methodology to analyse the corpus of regulation at the state level. This paper finds that Queensland is the most heavily regulated state, with some 118,765 regulatory restrictions. This is followed by Victoria (113,737), Western Australia (107,812), New South Wales (107,726), South Australia (75,222), and Tasmania (39,514).

Given population size is likely to affect the volume of regulation in a given state, this paper also measures the number of regulatory restrictions per 1,000 residents. This reveals that there is an inverse relationship between the size of a state’s population and the volume of regulation: the smaller the state the higher the restrictions per 1,000 residents. Specifically, Tasmania has the most restrictions per capita, with 74 restrictions per 1,000 of the population, followed by South Australia (43), Western Australia (41), Queensland (23), Victoria (17), and NSW (13).


Analysis of Federal Regulatory Restriction Count

There are two mechanisms through which rules can be introduced: primary legislation and regulation. Primary legislation is legislation passed by Acts of Parliament, while regulations include rules, ordinances, and orders issued by regulatory bodies such as the Australian Investments and Securities Commission (ASIC), the Australian Prudential Regulation Authority (APRA), and the Australia Tax Office (ATO). Regulations can be issued by regulators under Acts of Parliament which delegate to those regulators the ability to issue rules within certain parameters.

Examples of Acts of Parliament include the Corporations Act 2001 which governs the behaviour of companies, such as the formation and operation of companies, the duties of owners, takeovers, and fundraising; the Environment Protection and Biodiversity Conservation Act (2001) which regulates matters of national environmental significance including in relation to what types of economic development are to be permitted; and the Geneva Conventions Act (1957) which gives effect to the Geneva Conventions that establish the standards of international law for humanitarian treatment in war.

Examples of regulations include the Civil Aviation Safety Regulations (1998) which specifies regulations concerning certification and airworthiness of aircraft and parts, aircraft registration and maintenance, flight operations, flight crew licencing, air traffic management systems, and air traffic controller licensing; Therapeutic Goods (Permissible Ingredients) Determination (No. 2) 2019 which Specifies ingredients that may be contained in a medicine listed in the Australian Register of Therapeutic Goods, and requirements in relation to the inclusion of those ingredients in such medicines; and the Vehicle Standard (Australian Design Rule 80/03 – Emission Control for Heavy Vehicles) which prescribes the exhaust emissions requirements for engines used in heavy vehicles in order to reduce air pollution.

The RegData methodology is applied to both the corpus of legislation and regulation. The result is three counts of regulatory restrictions: those contained in federal legislation, regulation, and a combined count.

Chart 1 provides the number of regulatory restrictions contained in Acts of Parliament issued by the federal parliament between 1977 (earliest available data) and 2019. There has been a 421 per cent growth in the number of regulatory restrictions over this period, from 23,558 in 1977 to 122,798 in 2019. This is equivalent to approximately ten per cent per year, compared to Australia’s annual population growth rate of around 1.6 per cent or annual economic growth rate of around 2.5 per cent.
Chart 1: Regulatory Restrictions in Primary Legislation

Source: Mercatus Center

Chart two provides the growth in the number of regulatory restrictions contained in delegated legislation (or regulations). The number of regulatory restrictions has increased 198 per cent between 2005 (earliest available data) and 2019, or around 13 per cent per year on average. The number of restrictions have grown from 78,092 in 2005 to 233,400 in 2019.

Chart 2: Regulatory Restrictions in Delegated Legislation

Source: Mercatus Center
Chart 3 combines the data from the previous two charts, showing the total number of federal regulatory restrictions between 2005 and 2019. Over this period, total regulatory restrictions across legislation and delegated legislation have grown 80 per cent, from 197,658 in 2005 to 356,198 in 2019, which is approximately 5.5 per cent per year on average.

**Chart 3: Total Count of Regulatory Restrictions**

![Chart 3: Total Count of Regulatory Restrictions](image)

The growth of regulatory restrictions outlined in charts one, two, and three, allow for some general observations. Firstly, and most apparently, the overall trend is of an ever increasing regulatory burden. There are periods of relative stability in the number of restrictions, such as from 1979 to 1983, periods of rapid growth, such as from 1985 to 1994, periods of decline, such as from 1995 to 1998, and periods of fluctuation, such as between 2005 and 2013. However, the overall trend is of an increase in the number of regulatory restrictiveness clauses. The observation of an increasing regulatory burden is supported by other measures, such as the growth to the number of pages of legislation\(^4\), and growth in the word count of legislation.\(^5\)

Secondly, delegated legislation has become the primary conduit for implementing new regulation, rather than via Acts of Parliament. As chart one shows, total restrictions in primary legislation grew rapidly from 1977 until around 2005, other than for a brief period where the total count decline between 1993 to 1997. Since 2005, restrictions introduced via Acts of Parliament have increased by just 2.7 per cent, or around 0.2 per cent per year on average. This is compared with a 400 per cent increase from 1977 to 2005, or around 27 per cent per year on average.

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5 Patrick McLaughlin, Jason Potts, Oliver Sherouse, “RegData: Australia”, Mercatus Center, George Mason University, United States, (2019)
However, the slowing to the growth of restrictions contained in primary legislation has occurred at the same time as restrictions contained in delegated legislation have grown rapidly. Data for delegated legislation is unfortunately not available prior to 2005, so a longer term assessment is not possible. Nonetheless, from the data that is available, it is apparent that growth to restrictions introduced via delegated regulation has far outweighed the growth to restrictions introduced via primary legislation. The result is that the total number of restrictions, as outlined in Chart 3 – have grown by 80 per cent from 2005 to 2019. This suggests that Parliament is delegating the primary responsibility for regulation to regulatory bodies such as ASIC, APRA, and the ATO.

Thirdly, the deregulation agenda implemented by the Coalition government from 2013-2015 appears to have reduced the total number of regulatory restrictions. In particular, the number of restrictions in primary legislation declined by 6.5 per cent, from 125,334 in 2013 to 117,242 in 2015. However, the cessation of the deregulation agenda at the end of 2015 coincided with a re-commencement in the growth of regulatory restrictions. Restrictions contained in primary legislation grew by 4.7 per cent between 2015 and 2019, from 117,242 to 122,798.
Analysis of State Regulatory Restriction Count

This paper also applies the RegData methodology to the Australian states. At this stage a time series is unavailable due to data limitations, and so the analysis is restricted to a comparison of the restriction count based on data from 2019. The analysis includes both legislation (Acts of state Parliaments), and regulations implemented by state regulators and government agencies.

Chart 4 outlines the results of the RegData methodology when applied to Australian states. In order of the most restrictions:

- Queensland is the state with the most regulatory restrictions with some 118,765 restrictions.
- Victoria: 113,737 restrictions.
- Western Australia: 107,812 restrictions.
- New South Wales: 107,726 restrictions.
- South Australia: 75,222 restrictions.
- Tasmania: 39,514 restrictions.

The restriction analysis includes both legislation (Acts of state Parliaments), and regulations implemented by government agencies.

Chart 4: Regulatory Restrictions by State

Comparing states according to the aggregate number of restrictions may not necessarily be a like-for-like comparison. Different states have different domestic economic and social characteristics – and different systems of government (Queensland has a Unicameral system, for example) – that could affect the regulatory regime. RegData cannot control for such differences. However, one difference that can be controlled for is population size.
One regulatory theory explains that because regulations are a fixed cost, the extent of regulation will be determined by the size of the market. As Casey Mulligan and Andrei Shleifer, economics professors from the University of Chicago and Harvard University respectively, explained, ‘The theory predicts that, other things being equal, more populous communities should regulate more activities, and do so more intensively. This yields a prediction that population is a determinant of the quantity of regulations.’

This theory suggests in part that larger jurisdictions are likely to have more regulation than smaller jurisdictions (a prediction consistent with common sense) and that smaller jurisdictions are likely to have a higher amount of regulation per capita due to the fixed costs of regulation. This prediction is consistent with the data for Australia.

Chart 5 provides the restriction count per state per 1,000 of the population. It shows that there is an inverse relationship between state population size and restriction count: the smaller the state the higher the restrictions are per capita. Specifically:

- Tasmania has the most restrictions per capita, with 74 restrictions per 1,000 of the population.
- South Australia: 43 restrictions per 1,000 of the population.
- Western Australia: 41 Restrictions per 1,000 of the population.
- Queensland: 23 restrictions per 1,000 of the population.
- Victoria: 17 restrictions per 1,000 of the population.
- New South Wales: 13 restrictions per 1,000 of the population.

**Chart 5: Regulatory Restrictions by State (Controlled for Population)**

Source: Mercatus Center

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RegData also measures the total number of words contained in state legislation and regulation, and allows for an estimate of how time consuming it can be for regulated actors to avail themselves of the extent of regulation which applies to them. Specifically,

- NSW legislation and regulations contain 20.5 million words which would take 28 weeks to read.
- Victorian legislation and regulations contain 19.7 million words which would take 27 weeks to read.
- Queensland legislation and regulations contain 17.2 million words which would take 24 weeks to read.
- Western Australian legislation and regulations contain 16.1 million words which would take 22 weeks to read.
- South Australian legislation and regulations contain 12.5 million words which would take 17 weeks to read.
- Tasmanian legislation and regulations contain 7 million words which would take 10 weeks to read.\(^7\)

\(^7\) Assuming a person reads 300 words per minute for 40 hours a week.
Conclusion

Red tape and overregulation are large and growing problems in Australia. This paper applies the RegData methodology to estimate the number of regulatory restrictiveness clauses contained in primary legislation and regulation at the Commonwealth and state level in Australia. Regulatory restrictiveness clauses, which includes words such as “shall not”, “will not”, and “must not”, is used as a proxy for regulation. At the Commonwealth level, this paper finds provides three key findings. Firstly, the total volume of regulation has increased substantially since the data series began in 1977. Specifically, there has been a 421 per cent growth in the number of regulatory restrictions between 1977 and 2019, from 23,558 to 122,798. This is equivalent to approximately ten per cent year annum, compared to Australia’s annual population growth rate of around 1.6 per cent or annual economic growth rate of around 2.5 per cent.

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This paper is the first in a series that will apply the RegData methodology to measuring the extent of, growth to, and changes to regulation in Australia. Future research will use RegData to compare the extent of regulation between industries, within states overtime, and to form the basis of statistical research to model the effects of regulation on economic aggregates, such as economic growth, industries such as mining, and sectors such as small businesses.
The IPA’s “Cut Red Tape to Unleash Prosperity Program”

Cut Red Tape to Unleash Prosperity is the Institute of Public Affairs’ (IPA) marquee economics research program. Under this program, the IPA provides research relating to the costs of red tape to Australian businesses, families, individuals, and community groups. This includes analysis of the broad economic costs of red tape, sector and industry specific analysis, and specific red tape items that are particularly burdensome.

A key focus of the research program is to provide methods and recommendations for how policy makers can reduce red tape. This includes both specific examples of red tape that ought to be repealed, as well as broader, institutional approaches that can be implemented to achieve sustainable reductions to red tape over time.

There are many different definitions of red tape. In the context of this research program, the IPA defines red tape as rules or regulations which are considered to go beyond “minimally effective regulation”. Minimally effective regulation is a regulatory regime with no red tape – but not no regulation. The key aim of the IPA’s red tape reduction research is to highlight ways in which existing government objectives can be achieved at least cost. In other words, this research program does not challenge the underlying veracity of government intervention, but seeks more cost-effective and less economically harmful ways of intervening.
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About the author

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