

PARLIAMENTARY RESEARCH BRIEF

A Research note from the Institute of Public Affairs distributed to Australian parliamentarians



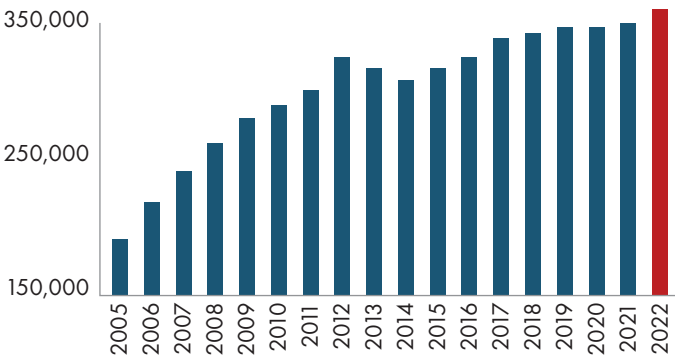
RED TAPE IN AUSTRALIAN LAWS IS HIGHEST ON RECORD

The total number of regulatory restrictions in laws enforced by the federal government is now at a record high of 371,514.

This analysis is based on RegData, a red tape measure developed by George Mason University’s world-leading regulatory economics faculty, the Mercatus Center.

- In 2005, just under 200,000 regulatory restrictions in federal laws were imposed on Australian businesses and individuals.
- Since 2005, federal red tape has increased by 88%, a net increase of 173,856 regulatory restrictions.¹
- Red tape has grown at a rate two-thirds greater than overall national economic growth since 2005.
- Every state has increased the amount of red tape contained in state laws between 2019 and 2022.

Chart 1: Total number of regulatory restrictiveness clauses in federal laws, 2005-2022



Source: RegData (2022)

Red tape is harming Australia’s economic competitiveness

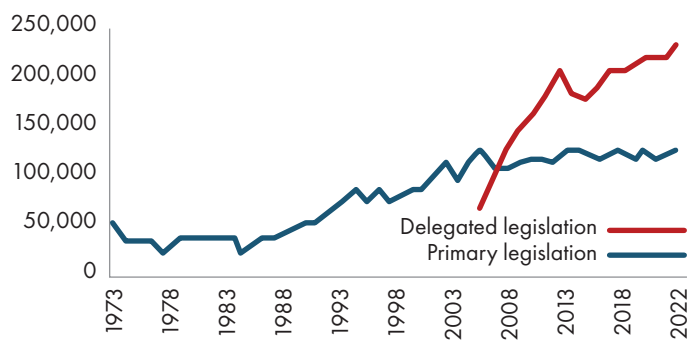
In global economic competitiveness rankings, Australia has declined from 4th in the world in 2004 to 19th in 2023, due in part from falling behind in key red tape metrics:²

- In 2004, Australia ranked 3rd for legal and regulatory framework encouraging the competitiveness of enterprises. Today it ranks 19th.
- In 2004, Australia ranked 6th for bureaucracy not hindering economic activity. Today it ranks 20th.
- In 2004, Australia ranked 7th for legislation supporting the creation of new firms. Today it ranks 26th.

Red tape increasingly lacks transparency

Regulatory restrictions are restrictive phrases and clauses contained in two types of laws: **Primary legislation** (Acts of Parliament) and **Delegated legislation** (the rules and regulations created by ministers and regulators).

Chart 2: Comparison of regulatory restrictiveness clauses in primary legislation and delegated legislation

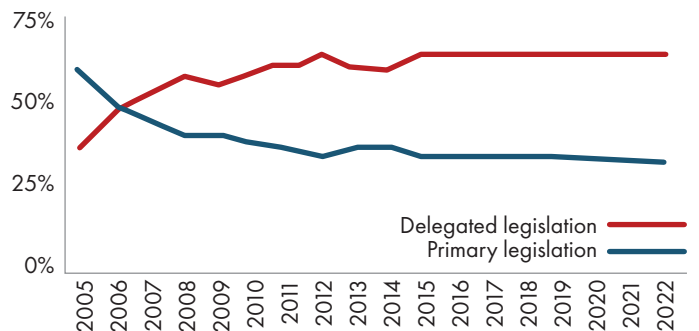


Source: RegData (2022)

Since 2005, 97% of all new regulatory restrictions were created in regulations created by ministers and regulators, rather than laws passed by parliament.

- Regulatory restrictions in delegated legislation increased by 168,037 between 2005 and 2022, compared to an increase of 5,819 in primary legislation.
- For every one regulatory restriction introduced in primary legislation, 28 regulatory restrictions were created in delegated legislation.
- In 2005, 39.5% of all restrictive clauses were in delegated legislation. In 2022 it reached 66.3%.³

Chart 3: Source of total regulatory restrictiveness clauses in force, by year



Source: RegData (2022)

For more information contact Lachlan Clark, Research Fellow at lclark@ipa.org.au

Five successful ideas to cut red tape from Australia and elsewhere

A key reason the red tape problem has been getting worse is because governments have lacked the tools to address it. However, these ideas have been successfully implemented in Australia and abroad:

Reviving parliamentary repeal days, where parliament allocates sitting days exclusively to repeal legislation. The federal government last held repeal days in 2014. Between 2012 and 2014, repeal days helped reduce regulatory costs by \$4.8 billion over two years,⁴ and saw the removal of nearly 18,000 restrictive clauses in federal legislation and regulations.

Implementing the one-in-two-out rule, requiring ministers and regulators to remove at least two existing regulations for every new regulation created. The implementation of this rule in the United States in 2017 contributed to reducing regulatory costs by \$31 billion by the end of 2018.⁵ The implementation of the rule in British Columbia in 2001 resulted in regulatory restrictive clauses falling by 37% by 2004.⁶

Establishing red tape e-hubs, where individuals, business and the respective regulatory body can directly engage with one another to remove excessive regulation. This method was successfully implemented in the Canadian provinces of British Columbia (2016) and Alberta (2019), which contributed to a combined 400 policy recommendations being implemented.⁷

Expanding the use of regulatory sandboxes, so that businesses can innovate under relaxed regulatory conditions. The introduction of a regulatory sandbox in Australia's financial services sector in 2020 was followed by the number of firms increasing by approximately 15,000 by 2022.⁸

Regulatory sandboxes should be expanded to other sectors with high cost barriers to entry.

Sunset government agencies to ensure the number of regulators are kept to an efficiently minimal level. This method has been successfully implemented in Texas, where 42 government agencies have been abolished and a further 52 agencies have been transferred or consolidated since 1977.⁹

Five more ideas to cut red tape

Requiring parliamentary approval of delegated legislation, whereby all new rules created by ministers and regulators require parliamentary approval prior to commencement. This rule would be appropriate in Australia given ministers and regulators have accounted for 97% of net new regulatory restrictions since 2005.

Expanding the use of sunset clauses in all new legislation to require laws to be re-approved by parliament to remain in force. While legislative instruments (regulations) are automatically repealed after their tenth anniversary,¹⁰ this is long by international standards, and should be reduced to a standard adopted in the United States of five years.

Imposing caps on the increase of regulation by using policy impact analysis, where a proposed regulation imposing an economic cost over a set amount would require additional debate and approval by parliament.

Deter the creation of red tape by penalising regulators for excessive rule making. This was a measure that was implemented in the Philippines in 2018.¹¹

Incentivising deregulation through remuneration and agency funding, so that regulators are rewarded for cutting red tape. This measure was briefly proposed by the federal government in 2013 but never adopted.¹²

End Notes

1. Patrick McLaughlin, Jonathan Nelson, and Stephen Strosko, 'RegData Australia 2.3 (dataset)' (Quantgov; Mercatus Center, 2022): <https://www.reghub.ai>.
2. Kevin You, *Australia's Economic Competitiveness in Continuing Decline* (Institute of Public Affairs Parliamentary Research Brief, November 2023).
3. Lachlan Clark and Saxon Davidson, *The Growth of Red Tape: Causes and Solutions* (Institute of Public Affairs Research Report, November 2023).
4. Australian National Audit Office, *Implementing the Deregulation Agenda: Cutting Red Tape* (2016) 19.
5. Daniel Wild and Cian Hussey, *The Trump Administration's Red Tape Reduction Agenda* (Institute of Public Affairs Research Report, 2019).
6. Laura Jones, *Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?* (Mercatus Center, November 2015) 20.
7. Government of Alberta 'Cutting Red Tape', <https://www.alberta.ca/cut-red-tape>; Government of British Columbia, 'Factsheet: Red Tape Reduction' (8 March 2017): <https://news.gov.bc.ca/factsheets/red-tape-reduction>.
8. Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits* (July 2019-June 2023) Table 1.
9. Texas Sunset Advisory Commission, 'Impact of Sunset Reviews': <https://www.sunset.texas.gov/how-sunset-works/impact-sunset-reviews>.
10. *Legislation Act 2003* (Cth) s 4.
11. Ruth Abbey Gita-Carlos, 'Duterte orders agencies to eliminate "overregulation"', *Philippine News Agency* (27 February 2020): pna.gov.ph/articles/1094969.
12. AAP, 'Coalition offers public servants pay rises for cutting business red tape', *The Australian* (8 July 2013): <https://www.theaustralian.com.au/national-affairs/election-2013/coalition-offers-public-servants-pay-rises-for-cutting-business-red-tape/news-story/a4253c6e998061d9f75390693b9a52c8>.

For more information contact Lachlan Clark, Research Fellow at lclark@ipa.org.au
