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REDUCING RED TAPE IN AUSTRALIA: 'ONE IN, TWO OUT' RULE

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About the authors

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1. Summary

- Red tape costs the Australian economy $176 billion, 11 per cent of GDP, each year in foregone economic output. Similarly, in the US red tape is estimated to cost $2 trillion annually, or 12 per cent of GDP.[1]
- On 30 January 2017, the Trump Administration released the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs. The Order announced a "one-in-two-out" approach to regulation, which it described as "for every one new regulation issued, at least two prior regulations be identified for elimination".[2]
- This report outlines the effect of implementing a similar one-in-two-out rule on Australian regulation.
- This report finds that if the Federal Coalition Government had implemented a one-in-two-out rule from September 2013 there would be 107,885 fewer pages of regulation and 6,990 fewer rules today.
- As with a failure to reform our tax policy to reflect changes in other countries, failure to re-invigorate the red-tape reduction program will result in Australia being less competitive.

1 Crain, Mark and Crain, Nicole "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business", Report for National Association of Manufacturers, United States (2014)

2 The White House "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs" Office of the Press Secretary. Accessed 8 February 2017 https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling

2. The state of red tape in Australia

Red tape is one of the primary factors holding back growth and prosperity in Australia. Recent research by the Institute of Public Affairs found red tape was costing the Australian economy $176 billion each year, or 11 per cent of Gross Domestic Product (GDP), in forgone economic output.[3] The burden of red tape is incurred across all industries and results in a range of economic costs. These include fewer business entries owing to elevated barriers to market entry, less innovation, higher prices, lower employment and lower economic growth.[4] In turn, this reduces Australia's international competitiveness and makes it more difficult for Australia to attract international investment.[5]

In recent years the scale and scope of regulation has continued to expand. The Abbott Government came to power in September 2013 with a deregulation agenda which sought to reduce the costs of red tape $1 billion in net terms per year. But this agenda, while laudable in its aims, had limited effect on the business operating environment. In addition, red tape reduction has been noticeably absent from government policy in the lead up to, and following, the 2016 Federal Election.

In Australia there are 497 Federal entities involved in policy design or enforcement of the regulatory system, which supports the implementation of primary and secondary legislation.[6] Secondary (also called delegated or subordinate) regulation refers to regulation implemented by government bodies, such as the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Civil Aviation Safety Authority. These regulations do not require an Act of Parliament to be passed. Primary legislation refers to laws passed by Parliament.

This report illustrates the extent of red tape on firms, individuals and other organisations in society through total pages of regulation, and seperately, the number of rules. Figure 1 and Table 1 show the number of pages of primary and secondary regulation introduced since September 2013. In total, 107,885 pages of regulation have been introduced since September 2013 at an annual average rate of 32,366.[7]

3 Novak, Mikayla Dr "The $176 billion tax on our prosperity", Institute of Public Affairs, Melbourne, Australia (2016) http://www.ipa.org.au/portal/uploads/The-176-Billion-Tax-On-Our-Prosperity.pdf

4 Allen, Darcy; Wild, Daniel; and Hogan, Brett "On Regulation, Productivity and Growth: Reforms to Make Australia More Prosperous", Institute of Public Affairs, Melbourne, Australia (2016) http://ipa.org.au/publications/2602/on-regulation-productivity-and-growth

5 Novak, Mikayla Dr "Have Australia's Red Tape Reduction Programs Worked? International Competitiveness and Over-Regulation", Institute of Public Affairs, Melbourne, Australia (2016) http://www.ipacutredtape.org.au/reports/research-report-international-competitiveness-and-over-regulation/

6 Novak, Mikayla "The red tape state", Institute of Public Affairs, Melbourne, Australia (2016) http://www.ipa.org.au/portal/uploads/160526-MN-FinalReport.pdf

7 All data in figures and tables has been taken since the Liberal government was elected and Tony Abbott was sworn in on 18 September 2013. Resources 2013 refer to September to December 2013.
Total pages of primary and secondary regulation passed equals 107,885. Forty months have passed since September 2013 with the average pages passed per month equalling 2,697 which is 32,366 on an average annual basis.

The majority of this increase, 92,421 pages, have come through subordinate regulation. This is six times that which came via primary legislation which accounted for 15,464 pages. Dr Chris Berg, Senior Research Fellow with the Institute of Public Affairs, has argued that the growth of subordinate regulation is evidence of the increasing influence of an unelected administrative state which is gradually eroding the rule of law and imposing substantial economic costs.[8]

Figure 1: Number of Pages of Regulation Passed Since September 2013

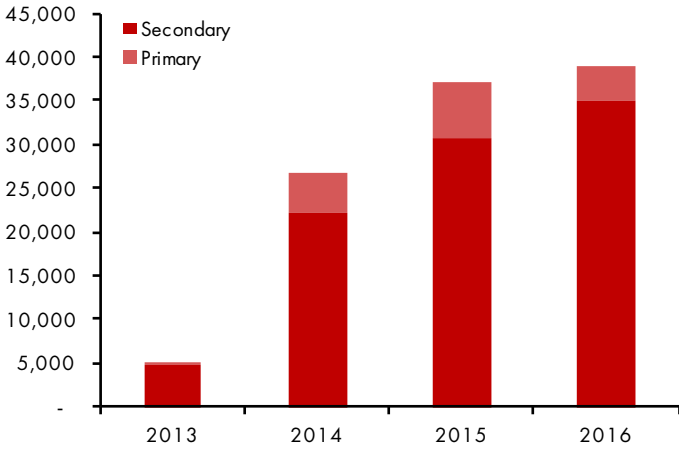

Table 1: Number of Pages of Regulation Passed Since September 2013

Year	Primary	Secondary
2013	310	4,855
2014	4,607	22,014
2015	6,453	30,656
2016	4,094	34,896
Total	15,464	92,421
Combined total	107,885	

Table 2 provides a similar breakdown but for rules rather than pages of regulation. Since September 2013 the government has added 6,990 rules, with almost all coming from subordinate regulation (6,562 subordinate versus 428 primary).

8 Berg, Chris, *The Growth of Australia's Regulatory State: Ideology, accountability, and the mega-regulators*, The Institute of Public Affairs, Victoria, Australia, (2008); and Berg, Chris 'Unelected Officials are Stifling our Democratic Freedoms', *The Age,* (21 June 2015)

Table 2: Primary and Secondary Rules Passed Since September 2013

Year	Primary	Secondary
2013	14	498
2014	135	2,850
2015	177	2,133
2016	102	2,081
Total	428	6,562
Combined total	6,990	

2.1. Reducing the burden

Although the burden of red tape may be directed at a specific cause, the adverse effects are much broader. As discussed in the Introduction, red tape discourages new enterprises, reduces economic growth and damages the international competitiveness of Australia's economy.

Structural changes are required to deliver significant and sustained reductions to red tape. There are a number of such approaches, including the British Columbia method, which reduces the number restrictive clauses in legislation (i.e. 'shalt not', 'cannot') by a certain multiplier, such as one-in-five-out.[9] Another method, first developed in the Netherlands and subsequently applied elsewhere across Europe, is the Standard Cost Model (SCM). The SCM calculates the cost of the stock of red tape, through estimating the 'paper burden' of compliance.[10] A target is then set to reduce the stock by a certain amount over a specified period (i.e. 25 per cent over three years).

The Federal Government in Australia adopted a similar approach to the SCM under the Abbott Government from September 2013. The target was to reduce the red tape burden by $1 billion net each year. In practice this meant that regulatory 'offsets' were required for the introduction of new regulation, meaning the red tape costs of each new law were to be fully offset by reductions to red tape in other laws. In addition, individual departments and agencies were given reduction targets beyond the offset requirement in order to achieve a net reduction.[11]

In the United States in January 2017, President Trump issued an Executive Order implementing a 'one-in-two-out' rule. This requires 'that for every one new regulation issued, at least two prior regulations be identified for elimination.'[12] Moreover, the policy places a marginal cost cap of zero on new legislation introduced. In other words, the two repealed regulations must at least cancel out the economic costs of the new addition.

If the current Coalition government had instituted such a rule when it came to office in September 2013, Australia would today have 107,885 fewer pages of legislation and 6,990 fewer rules.

9 For an explanation of the British Columbia method see Jones, Laura "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Mercatus Centre, George Mason University, Virginia, United States, (November 2015)

10 The paper burden refers to the time, resource and financial costs of complying with government requirements.

11 See The Australian Government "The Australian Government Guide to Cutting Red Tape", (2014). Available at https://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation

12 The White House "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs" Office of the Press Secretary. Accessed 8 February 2017 https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling

A note on method

Primary and secondary legislation data was collected from the Federal Register of Legislation.[13] Primary legislation was determined by the Acts of Parliament passed each year.[14] Secondary regulation was defined as legislative instruments passed.[15] Both primary and secondary legislation were attributed to the year they were made (as opposed to the year of implementation).

The number of rules is approximated by the number of documents of regulation implemented. This is to ensure consistency with the measurement of regulation provided by the United States Government through the United States' Federal Register.[16]

The total count was estimated by adding the total number of pieces of primary and secondary legislation to get the total number of rules. And adding the pages of all of the primary and secondary legislation to derive the total number of pages passed.

The length of each regulation repealed is assumed to equal the length of the regulation introduced, such that the total length of removed regulation is twice that of the regulation introduced. While any given regulations removed could be longer or shorter than a given regulation introduced, on average this is likely to balance out over the long term.

13 Australian Government, https://www.legislation.gov.au/

14 Australian Government, https://www.legislation.gov.au/Browse/ByYearNumber/Acts/Asmade/0/0/All/

15 Australian Government, https://www.legislation.gov.au/Browse/ByRegDate/LegislativeInstruments/Asmade/0/0/All/

16 The United States Government, https://www.federalregister.gov/

3. Conclusion

When comparing the wave of reform in competing economies, the need for change in Australia is clear. Despite efforts at regulatory reform since the 2013 Federal Election, red tape has continued to grow at a rapid rate.

If a one-in-two-out rule had of been implemented from September 2013, Australian businesses and individuals would be faced with 107,885 fewer pages of regulation.