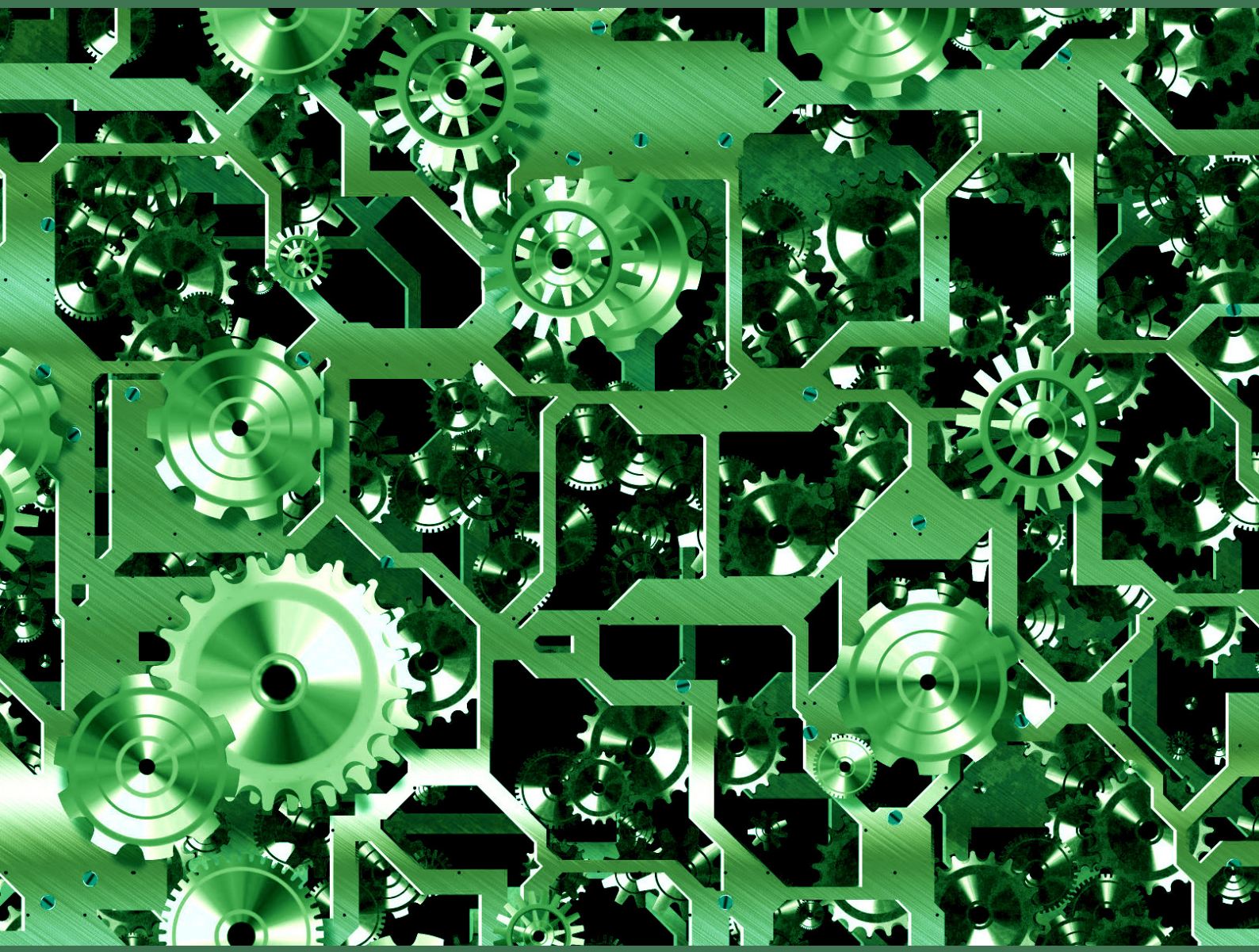
THE CENTRE FOR INDEPENDENT STUDIES

Analysis Paper 14
September 2020

CIS Pandemic to Prosperity



RATIONALISING REGULATION: Helping the economy recover from the corona crisis

Gene Tunny and Ben Scott

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Adept Economics

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1. Introduction

Australia's anachronistic, inconsistent, and excessive regulatory landscape is an area of immense potential for growth-enhancing economic reforms. The regulatory constraints outlined in this paper are impeding business growth and their removal or adjustment would yield large economic benefits. The relaxation of a range of restrictions to respond to the pandemic—e.g. around supermarket delivery times and the availability of liquor for takeaway—suggests governments can move quickly to eliminate or improve regulations.

Calls for regulatory reform are often mischaracterised as ideologically-driven efforts to completely remove regulation. This paper does not oppose regulation on principle. Some regulation is necessary to protect public health and safety and to address market failures. But it needs to be well-designed and achieve its objectives with the lowest costs of compliance to the community.

This paper considers regulations across a wide range of sectors, including the construction, agricultural, pharmaceutical, retail trade, mining, hospitality and tourism, and childcare sectors. Regulation pertaining to industrial relations and taxation fall outside the scope of this paper. The paper is divided into three sections: section 2 will outline Australia's current regulatory landscape with an emphasis on its ranking relative to other comparable economies; section 3 will investigate regulatory barriers shared by distinct sub-sectors of the Australian economy; and section 4 will then delve more deeply into industry-specific regulatory issues.

2. Current challenges and how we got here

Since the early years of the last decade, Australia has consistently under-performed relative to other OECD economies in terms of real annual GDP growth per capita (Figure 1). This is related to a decline in productivity growth, evidenced by historically low economy-wide capital input growth of 1.9%, stalling innovative activity, and slowing labour productivity growth.[1] If we are to strengthen Australia's economic outlook, we must look to productivity-enhancing reforms.

The slowdown in the pace of economic reform that commenced in the 1980s has been observed since at least the mid-2000s. Economic agencies such as the Treasury and Productivity Commission have emphasised the potential for a new reform agenda, following on from the microeconomic reform and National Competition Policy of the 1980s and 1990s. The Treasury has highlighted that Australia's product and labour market regulation settings contribute to the productivity gap with the United States, and further reforms are required. [2]

Figure 1: Annual real GDP growth per capita, Australia and OECD average

Source: Organisation for Economic Co-operation and Development (2020) *Growth in GDP per capita, productivity and ULC.*

Table 1. Australian business landscape competitiveness ranking according to major international indexes

Index	Ranking in 2010	Ranking in 2019	Change
World Economic Forum Global Competitiveness	15	16	-1
Heritage Foundation Index of Economic Freedom	3	4	-1
Fraser Institute Economic Freedom of the World Index	5	9	-4
World Bank Ease of Doing Business Index	9	14	-5
IMD Competitiveness Ranking	5	18	-13

Sources: World Economic Forum (2010, 2019) *Global Competitiveness Report*, Geneva; World Bank (2010, 2019) *Ease of Doing Business Index,* Washington. Heritage Foundation (2010, 2019) *Index of Economic Freedom,* Washington, DC; IMD (2010, 2019) *Competitiveness Ranking,* Lausanne; Fraser Institute (2010, 2019) *Economic Freedom of the World Index,* Vancouver.

Australia's relatively weak GDP per capita performance since 2010 has been accompanied by a noticeable drop in several business competitiveness measures. These indexes consider a wide range of factors such as government size, regulatory efficiency and market openness. The Fraser Institute and World Bank have reported notable downgrades of 4 and 5 ranks, respectively, and the IMD downgraded Australia 13 ranks. Key drivers of Australia's drop in the IMD rating include inefficient large organisations (46), export partner concentration (56), and entrepreneurship (57), and lack lustre workforce productivity (30) and overall productivity growth (35). Although Australia's ranking remains relatively high, recent drops in some indicators suggest that there is room for improvement.

Excessive regulation, often referred to as red tape, is costly to the economy. In 2016, Dr Mikayla Novak estimated that red tape costs the Australian economy $176 billion annually in forgone output by utilising a positive relationship between the value of the World Bank's *regulatory quality index* and real GDP per capita.[3] Much of this regulation may have costs that exceed the benefits—e.g. safety or consumer and environmental protection—of the regulation. As the Australian Automotive Aftermarket Association (AAAA) put it:

> *The fundamental principle of industry regulation is that it should only be introduced where the imposed burden on the economy does not outweigh the perceived benefit.*[4]

Before the Senate Standing Committee on Economics, Reserve Bank of Australia Governor Philip Lowe recently observed that:

> *We stop the downside through regulation, but the culture that's coming together with that regulation is limiting the upside and the dynamism in the economy. I think this is one thing we've seen progressively over time, that the economy is becoming less dynamic in both culture and regulation.*[5]

Ultimately, removing or improving regulations imposed by various Australian governments may yield significant advantages.

3. Common themes associated with excessive regulation

Research and stakeholder consultation pointed toward three common themes in regulatory burdens across the sectors that were investigated: planning and zoning creep, environmental regulation, and regulatory inconsistency. These themes point toward broad areas of regulatory reform.

3.1 Planning and zoning

Governments are broadly responsible for balancing objectives to ensure that land is allocated in ways that align with the public interest. However, various assessments suggest that competition and productivity are suffering from current planning and zoning practices.

Inefficient planning and zoning practices are not a new development. In 2011, the Productivity Commission found competition restrictions throughout all States and Territories.[6] In the same year, the Productivity Commission described planning and zoning regulations as "complex, excessively prescriptive and often anti-competitive".[7] Then, in a 2014 report, the Productivity Commission argued that "the Australian economy would benefit from further simplification of state and territory planning and zoning schemes".[8]

Research and industry consultations indicate that construction, resources, agricultural, retail and tourism sectors were most affected by poor planning and zoning practices. However, the complexity of existing regulation is such that all businesses, regardless of sector, would benefit from reform.

Planning and zoning restrictions are costly and restrictions need to be weighed against their perceived benefits. In an RBA research discussion paper, Keaton Jenner and Peter Tulip (2020) estimate that:

> *home buyers will pay an average of $873,000 for a new apartment in Sydney though it only costs $519,000 to supply, a gap of $355,000 (68 per cent of costs). There are smaller gaps of $97,000 (20 per cent of costs) in Melbourne and $10,000 (2 per cent of costs) in Brisbane. The large gaps are sustained by planning restrictions.*[9]

Jenner and Tulip note their finding, that "planning restrictions cause large increases in apartment prices", is consistent with many earlier studies that have reached similar conclusions around the effects of planning restrictions on apartment pricing.[10]

Construction permits are largely dependent on satisfying planning and zoning regulations. Government planning requirements are becoming increasingly difficult to navigate, inconsistent (especially between individual local council areas) between different jurisdictions, and eroding confidence amongst developers, according to the Housing Industry Association.[11]

A further aspect of construction regulation is heritage restrictions. Various city councils restrict the development options of so-called "character houses" built before the end of World War II.[12] Old Queenslanders in Brisbane's inner city and established suburbs in other Queensland cities are a good example of protected houses that are difficult to redevelop.[13]

Planning and zoning restrictions impose major costs on retail and tourism operators.

The Australian economy would benefit from further simplifications to state and territory planning and zoning schemes that expand the supply of retail space by simplifying business zones and removing unnecessary restrictions on the allowable use of land within each zone.[14]

The Australian Competition and Consumer Commission (2008) reported that new, and particularly independent, supermarkets were disadvantaged by planning and zoning laws and often encounter considerable difficulties obtaining access to sites.[15] Even ALDI, an internationally established supermarket chain has complained that:

> *More so than any other country in which it does business, ALDI has found the challenge of securing appropriate property holdings in Australia the single most significant brake on its expansion.*[16]

The Productivity Commission has identified that there is a risk that incumbent supermarkets have also been accused of "gaming" planning and zoning systems in an anti-competitive fashion.[17]

Legal action against new retail developments can stall developments for years and result in large legal bills. To illustrate, the co-owners of Westfield North Lakes shopping centre attempted to block the development of a megastore Costco at North Lakes by appealing to the Queensland Planning and Environment Court in 2012. Although the development was ultimately "called in" by the Newman Government and approved in mid-2013, the capacity for incumbent firms to wage such motions against potential competitors while applying additional cost pressure demonstrates the need for planning and zoning law reform.[18]

Regarding tourism, overly prescriptive and rigid planning and zoning systems have excluded tourism service providers from entering areas, such as national parks and other protected areas, where they would otherwise be well suited to conduct business. This has impeded the tourism sector's ability to adapt to changing demands and innovate.[19] Pleasingly, governments across Australia have recognised regulatory constraints could be impeding tourism sector growth and have explored ways to allow more tourism, typically so-called eco-tourism, in national parks and other protected areas. For instance, the Queensland Government has introduced the Queensland Eco and Sustainable Tourism (QuEST) policy framework, which purportedly offers "business certainty" and "streamlined administration". It remains to be seen how successful policy frameworks such as these will be in fostering tourism development over the long-term.

3.2 Environmental

Consultations and research across various industries indicate that there is broad support of environmental conservation from business. However, environmental standards and regulations are often costly to comply with, unduly broad in scope, and cause businesses to incur significant project delays. There appears to be considerable room for environmental regulation to yield better outcomes for both the environment and business.

Agriculture

Agricultural businesses are subject to a wide range of regulation. For example, a study conducted in 2016 by AgForce found that, at the state level (i.e. excluding federal and local legislation), Queensland agriculture was affected by over 75 Acts and Regulations covering more than 17,590 pages.[20]

The Productivity Commission found that native vegetation and biodiversity conservation regulations impose considerable costs on agricultural businesses, involve complex processes that are overly bureaucratic and afford little flexibility, and contribute to a feeling of distrust toward government.[21]

Similarly, AgForce criticised the Queensland *Vegetation Management Act (VMA)* (1999), and vegetation management legislation more broadly, for confusing landholders. AgForce considered the VMA works "to the marked detriment of good long-term land management, biodiversity stability, trust and proactive relationships between landholders and the State, political cohesion, and ultimately, primary production."[22] AgForce has been critical of the extent to which the VMA has stymied the development of new agricultural areas in Queensland. With fewer than 20% of development applications in the High Value Agriculture and Irrigated High Value Agriculture categories approved between 2015-17, the balance between environmental management and production may require additional consideration. [23]

Retail

The National Retail Association has issued various statements in support of regulations that improve environmental outcomes across the retail industry. However, this support is contingent on the prospective regulation being nationally consistent and commercially viable.[24] These two considerations have been ignored by states' single-plastics policies, including plastic bag bans, which exhibit varying timelines and requirements.[25]

Another example of poorly formulated environmental policy can be seen in state and territory-based container deposit schemes (CDSs). In a submission to the Productivity Commission, which was cited by the Commission, Coles noted that "COAG analysis shows a CDS is 28 times more expensive than industry alternatives capable of delivering the same environmental outcome."[26] A CDS was estimated to impose an added cost of "at least $300 to an average shopping basket per annum".[27] Since the COAG report was released in 2011, NSW, the Australian Capital Territory, Queensland and Western Australia have adopted CDSs.

Mining

Regulatory demands have increased over recent decades, which has led to increases in costs for mining projects while arguably returning few environmental benefits. As the Minerals Council of Australia (MCA) puts it:

> *Project approval conditions on minerals projects have become increasingly numerous and prescriptive. The number of prescriptive conditions imposed upon a project has been increasingly and wrongly used as a benchmark for sound regulatory process. This is of particular concern where such conditions are not risk-based, resulting in significant compliance effort for little environmental gain.*[28]

Excessive and wide-reaching environmental impact assessments force proponents to comply with requirements that are sometimes irrelevant to the project at hand and place unnecessary administrative loads on regulators, which further delays the project timeline process. These environmental requirements, the Productivity Commission acknowledges, have even discouraged companies from "adopting new technologies because the regulatory costs of seeking to change conditions are considered too high".[29] Furthermore, environmental approvals can take years to be processed, meaning the cost of delays can outweigh regulatory costs.[30]

Industry consultation conducted by the Productivity Commission underlines a few core reasons behind regulatory compliance creep in the resources sector:

- the Business Council of Australia (BCA) referred to a trend toward a "one-size-fits-all" approach as opposed to specific impact-based assessments;
- the Queensland Resources Council (QRC) points out an inability of government to prioritise assessments according to their potential threat; and
- the MCA acknowledge a lack of concern for project-specific "materiality/level of risk".[31]

Ultimately, wide-ranging environmental laws and regulations—such as the federal *Environment Protection and Biodiversity Conservation Act (EPBC) 1999* and state and territory environmental acts—demand more effort from both applicants and regulators, which is complicating the environmental assessment process and slowing project proposals.

The Australian National Audit Office (ANAO) delivered a major review to Prime Minister Scott Morrison in June 2020, underlining the Department of Agriculture, Water and the Environment's (DAWE) ineffective administration of the EPBC Act. One of the ANAO's disturbing conclusions read:

> *Governance arrangements to support the administration of referrals, assessments and approvals of controlled actions are not sound. The department has not established a risk-based approach to its regulation, implemented effective oversight arrangements, or established appropriate performance measures.*[32]

The review found that, in addition to 79% of approvals containing "conditions non-compliant with procedure guidance" or "clerical or administrative errors", statutory approval timeframes are delayed by an average of 116 days.[33] Consequently, the Government

has flagged plans to "streamline" environmental approvals, which has received broad support in Parliament and from major industry bodies.

In a media statement released 25 June 2020, the DAWE acknowledged the "complex and cumbersome" nature of the EPBC and agreed to implement all eight recommendations proposed by the ANAO.[34] Of particular interest to this paper, the recommendations included mention of:

- "Internal and external measures on the effectiveness and efficiency of its regulation of referrals, assessments and approvals;
- Efficiency indicators to assist in meeting legislative timeframes for referrals, assessments and approvals;
- A quality assurance framework to assure [DAWE] that its procedural guidance is implemented consistently and that the quality of decision-making is appropriate;
- Improve [DAWE's] quality controls to ensure conditions of approval are enforceable, appropriate for monitoring, compliant with internal procedures and aligned with risk to the environment".[35]

In the interim report of an independent review of the EPBC Act, former Australian Competition and Consumer Commission (ACCC) chairman Graeme Samuel has arrived at similar conclusions to those mentioned above. Most pointedly, Samuel remarked that:

> *The EPBC Act is ineffective. It does not enable the Commonwealth to effectively protect environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.*[36]

Beyond the EPBC Act's incapacity to protect and restore the environment, Samuel mentions that "slow and cumbersome regulation results in significant additional costs for business, with little appreciable benefit for the environment".[37] Further identified inadequacies related to:

- Indigenous culture and heritage;
- Legislative complexity and inefficiencies caused by duplications, inconsistencies, gaps and conflicts;
- Lack of national regulatory harmonisation;
- Poorly established data and information systems; and
- Low community and industry trust levels.[38]

Samuel's report ultimately calls for "fundamental reform of national environmental law".[39] At the core of these recommendations is the handing back of environmental responsibilities to respective states and territories. To harmonise the overarching policy agenda, Samuel recommends that an overarching agency, tasked with developing national environmental standards, is established.[40]

There is a clear consensus among industry participants and independent adjudicating bodies that the EPBC Act is unsuitable for the Australian environment's needs and challenges. In addition to resources projects, the influence of the EPBC Act to other industries such as agriculture and construction should be considered in reform processes.

3.3 Consistency

Inconsistent regulation places undue pressure on businesses operating in multiple jurisdictions. In many cases, the regulation itself is not necessarily problematic, but a lack of coordination between jurisdictions gives rise to uncertainty and undue compliance costs, particularly for businesses operating in multiple states and territories.

Retail

The National Retail Association has drawn attention to the lack of uniformity on retail trading hours between states and territories, as has the Productivity Commission.[41] The Productivity Commission has also reported considerable variability in other regulations enforced by states and territories in the retail sector. In particular, signage, display and licensing of tobacco and liquor products were identified as areas of significant legislative inconsistency.[42] Despite states and territories wanting to broadly achieve similar objectives, the independence of states results in differences in how they go about achieving given objectives. This exemplifies the importance of engagement and coordination in policy development and implementation among states and territories.

Mining

As suggested in the discussion of the EPBC Act earlier, proposed resources projects are reviewed by multiple regulators. The Productivity Commission reported that a lack of coordination from responsible agencies can cause costly delays and such a complex regulatory environment gives rise to significant compliance costs.[43] For instance, the need for amendments to the EPBC Act, has been highlighted by the Productivity Commission and MCA. According to the Productivity Commission, the EPBCA is riddled with inconsistencies and overlaps in project approval requirements.[44] The MCA point out similar issues and have pushed for a "One-Stop Shop for environmental approvals" to avoid situations where replicatory State and Commonwealth judicial processes are evoked.[45]

Construction

Local, state, and federal construction regulation conflict at various stages of the construction process. A Productivity Commission report (2015) on service exports recognised the duplication of regulatory oversight across jurisdictions as an issue for private infrastructure investment.[46] Similarly, the Property Council of Australia has drawn attention to the significant administrative and holding costs imposed on property developers when complying with inconsistent and poorly designed regulations. These costs are particularly prominent in the following areas:

- "planning approval applications for property developments
- building permit applications and building regulation compliance
- real estate licensing
- multiple environmental assessment processes."[47]

The HIA has suggested that regulatory reform of state laws may involve eliminating, re-crafting or consolidating existing regulation to achieve the policy objectives. However, they also recognise the risk that harmonisation comes at the cost of effective state-based regulatory reform outcomes and existing state policy objectives that may be preferred by the majority of businesses that only operate in one jurisdiction. [48]

4. Industry specific regulations

Having outlined some common themes of regulatory burden in section 3, we now discuss restrictions that are specific to individual sectors.

4.1 Construction

Complexity of building standards

According to the HIA, the National Construction Code (NCC) currently enforces 1,400 standards. Businesses in the construction sphere are obliged to comply with all these standards, with the average cost of obtaining individual standards being in excess of $100 each. The HIA has advocated for these standards to be made "readily available to the small businesses which need them". [49]

The building industry is struggling to keep up with the continuously updating standards and would significantly benefit from notifications of regulatory changes. There is currently no mechanism in place that informs firms of when one state adopts a nationally agreed regulation.[50] That said, it should be acknowledged the federal government is providing funding aimed at improving the building industry's regulatory environment, such as the national competition incentive payment to the state and territories for the achievement of harmonisation milestones.

The consequences of not adhering to regulation are often excessive. For instance, the Infrastructure Association of Queensland has flagged the "Ethical Standards Mandate", a demerit point scheme that threatens suppliers with possible suspension if they break the rules.[51]

It is recommended that federal and state and territory governments, in conjunction with industry bodies, investigate the feasibility of making standards freely available to small businesses. Governments could also work with industry bodies to investigate the development of an online service that can keep industry participants informed of regulatory changes.

4.2 Agriculture

Water regulation

The diversity and variability of Australia's environment and river systems have complicated the implementation of efficient regulation. Regulatory complexity stems from the fact that policy arrangements around water have taken the place of myriad previous arrangements and environmental considerations, all the while ensuring that the economic value of water use is maximised within constrained resource availability.

In some cases, overlapping federal and state government responsibilities in the management of water require farmers to submit "the same or similar data to different agencies".[52] An independent review of the *Water Act 2007* conducted in 2014 also raised concerns about inconsistencies in its approach to setting water charges across the Murray-Darling Basin.[53] In recognition of regulatory duplication, the Productivity Commission's *Regulation of Australian Agriculture* Report (2015) acknowledged that "more flexible governance arrangements may be needed to develop locally relevant regulations for accessing water".[54]

Water regulation is subject to an ongoing reform process. The Productivity Commission conducted a review of National Water Reform in 2017. Among other findings, it noted that further work is needed, particularly in WA and NT, to "unhook" water

entitlements from land titles that would allow for water to be more easily traded to its highest value uses. It also found a need to improve the economic regulation of urban water prices (i.e. to prevent the exploitation of market power and incentivise efficient investment and service delivery).

Progress appears slow regarding water reform, which may be a result of the need for Commonwealth and state and territory governments to work together, and to sign a new National Water Initiative (NWI). In May 2020, Australian Treasurer Josh Frydenberg directed the Productivity Commission to conduct a new inquiry into national water reform. The Productivity Commission observed in the Issues Paper:

> *Governments need to complete unfinished business from the NWI, including fully implementing entitlement and planning reforms, and respond to the challenges posed by population growth, climate change and changing community expectations.*[55]

The Inquiry is scheduled to be finalised in early 2021. It is recommended that federal and state and territory governments strongly consider adopting and prioritising the recommendations from this inquiry when they are released.

In the meantime, the ACCC has released its interim report of the Murray-Darling Basin water markets inquiry. The ACCC observed that comprehensive and immediate reform is required to resolve the serious problems affecting the efficiency and benefits of water trade. Taking a wide brush, the ACCC found that:

> *…the current markets' rules are deficient; enforcement of them is inconsistent and limited; and the overall governance of the Basin's water trade is troubled.*[56]

The interim report proposes six recommendations targeting issues identified in the conduct of market participants, trade processes and transparency, market architecture and market governance. Despite years of collaborative efforts between Commonwealth and state governments, among these recommendations is a new independent regulator.[57]

Farm animal welfare regulation

Farm animal welfare is currently governed by mandatory standards and voluntary guidelines that have slowly evolved over recent decades to reflect contemporary scientific knowledge and community expectations. The Australian Animal Welfare Standards and Guidelines (AAWSG) serve as a framework for developing and reviewing scientifically based animal welfare standards, and for consulting with the community on guideline development.[58] Animal welfare regulation, however, is ultimately the responsibility of the states.

The Australian Animal Welfare Standards for livestock are intended to be adopted by all states and territories, but interjurisdictional variations persist. The consequent regulatory duplication and inconsistencies regarding farm animal welfare is weighing on producers and confusing consumers.[59] Furthermore, there now appears to be a risk that regulators will place restrictions on farmers "based on emotive reactions rather than evidence-based policy".[60]

The Productivity Commission recommended Government to investigate the feasibility of establishing an Australian Commission for Animal Welfare, which would be responsible for developing nationally applicable and scientifically based animal welfare standards. This recommendation was rejected by the Government in its 2019 response to Productivity Commission's Inquiry into the regulation of Australian agriculture.[61] Similarly, through consultation, the NFF contended that:

> *National regulatory harmonisation does not require a new layer of administration/ establishment of a new entity. A new Australian Commission for Animal Welfare would be more likely to increase than reduce regulatory burden for farmers, and would duplicate state responsibilities.*

That said, the Commonwealth does need to provide a leadership role to promote consistent and scientifically-informed standards. Consistent national adoption of science-based standards, as outlined by the AAWSG, is a priority for the farm sector. Farm animal welfare regulation needs an effective national forum to drive consistent implementation of agreed standards. The Commonwealth may have a role in driving national consistency in farm animal welfare regulation by the states, and in regulating the live export industry.

Heavy vehicle and transport regulation

Historically, heavy vehicle and transport regulations were overly-prescriptive and not fit for purpose or risk-based, and varied substantially across jurisdictions. Over the last decade, a new National Heavy Vehicle Law (NHVL) was brought in and a National Heavy Vehicle Regulator (NHVR), but substantial issues remain.

The Productivity Commission's 2020 *National Transport Regulatory Reform* Draft Report indicates that productivity gains have been achieved in most issue areas identified in its 2016 *Regulation of Australian Agriculture* report. However, the Productivity Commission in 2020 observed that, "Implementing national transport regulation and establishing national regulators has been slower than anticipated."[62] This slowness has largely stemmed from difficulty in the harmonisation process between

state and local governments, which, for instance, have permitted over 70 derogations from the Heavy Vehicle National Law (HVNL).[63]

The *National Class 1 Agricultural Vehicle Mass and Dimension Exemption Notice* was a significant improvement when introduced in 2019, providing ease of access for large agricultural vehicles. However, the heavy vehicle permit burden is persisting and the Productivity Commission has pointed out that the complexity of vehicle classifications may be playing a role in the slow rate of progress.[64] The National Farmers' Federation has been in close contact with the National Heavy Vehicle Regulator and Productivity Commission during industry consultation processes and has recommended that the permit burden be reduced for agricultural vehicles by "increasing the number of gazetted networks".[65]

The release of the NHVR*'s Heavy Vehicle Productivity Plan 2020-25* is promising for reform changes to the HVNL. The NHVR is expected to conduct annual reviews of stakeholder feedback and track its progress with regard to three main objectives: to provide regulatory certainty and consistency, to harmonise regulations between local governments, and to promote the use of safe, community-aware, and environmentally friendly vehicles.[66]

It is recommended that the process of harmonising HVNL regulations between different state and territory jurisdictions is continued and sped up if possible.

4.3 Retail trade

Plastic bag bans

The highly visible and long-lasting nature of plastic bag litter leads many people to support government intervention against single-use plastics. Currently, all States and Territories bar NSW have implemented regulations aimed at phasing out lightweight plastic bags in Australia, and the NSW Government has announced it intends to ban single-use plastic bags.

Despite widespread public support for banning single-use plastics, there is little compelling evidence supporting a ban. Referencing various cost-benefit and impact analysis studies of plastic bags, the Productivity Commission commented in its 2006 *Waste Management* report that "the benefits of a phase out or a per-unit charge would be significantly outweighed by the costs."[67] The report goes on to explain that:

> *This is because the policies would penalise most uses of plastic retail carry bags, whereas the potential benefit would only come from the small proportion of bags that are littered. A more cost-effective approach would be to target littering directly.*[68]

Indeed, studies suggest that a small proportion (0.8%) of plastic bags become litter and the information available to the Productivity Commission at the time suggested that fishing-related debris, as opposed to land-based, was the main source of environmentally harmful litter.[69]

Furthermore, reviews of plastic bag bans in SA, ACT and the NT suggest that consumers simply replaced free lightweight plastic bags with bin liners, thus having an ambiguous effect on the overall consumption of plastic bags and production of plastic bag litter.[70]

It is recommended that Australian state and territory governments reconsider various restrictions on the use of plastics and ensure that rigorous regulatory impact studies are conducted.

Trading hours restrictions

The widespread take-up of extended shopping hours and 24-hour online shopping in recent decades testify to the demand for unrestricted trading hours. Further deregulating retail trading hours would allow businesses to open according to commercial interests and thus fulfill consumer demands.

The Productivity Commission reported in 2014 that Victoria, Tasmania, the NT, and the ACT have effectively deregulated trading hours and NSW has largely removed trading hour restrictions. Queensland, South Australia and Western Australia are the most restrictive states.[71] This creates widespread inconsistencies between states, which are further complicated by restrictions that vary by "hour of the day, day of the week, whether it is a public holiday, the geographic location of the shop, its physical size, the number of owners and/or employees and product lines sold".[72] Having said that, the National Retail Association has acknowledged progress made in WA, QLD and NSW over the past two years.[73]

The loosening of restrictions around supermarket restocking hours in Queensland to all hours in response to COVID-19 suggests that governments can effectively and rapidly enact legislative change in this area.[74] While the necessity of altering trading hours may not be on the same level as amending restocking hours during the pandemic's peak, the benefits of doing so deserve serious consideration. For instance, Professor Henry Ergas and Joe Branigan estimated that the total annual net benefits to the Queensland community from fully deregulating retail trading hours would be in the order of $440 million in 2014 alone.[75]

It is recommended that state governments, particularly those in Queensland and WA, further relax trading hour restrictions so that consumers are provided with greater choice and, possibly, lower prices.

4.4 Mining

Excessive regulation

Resources projects are subject to four different regulatory stages that are characterised by differing requirements. These stages, and their respective regulatory requirements, are as follows.

1. Tenement and land access: exploration, mining or petroleum license, and negotiation.
2. Assessments and approvals: Environmental, social, cultural, heritage and economic assessments, approval and post-approvals.
3. Operations stage: record-keeping, compliance monitoring, rehabilitation.
4. End of project life: rehabilitation and site-closure.

There is a widely held view within the resources industry that there is huge room for improvement in the regulatory landscape, and we have already discussed the need to reform environmental approval processes. Sector participants are calling for a more streamlined approval process, involving:

- the removal of duplicated assessments;
- consistent policy interpretations and efficiencies;
- interdepartmental integration and information sharing; and
- improved post-approval processes.[76]

The proliferation of "overly complex" and "prescriptive" regulation in recent decades has had material impacts on the sector.[77] For instance, the Tasmanian, Minerals, Manufacturing and Energy Council (TMEC) have criticised "undefined and protracted delays [which] mean that critical market windows that come and go with fluctuating ore prices are lost".[78] The cost of delays "often run into millions of dollars", according to the Productivity Commission.[79]

Delays can be substantial, and the case of the Adani Carmichael mine in Queensland's Galilee Basin is notorious, as the project was first announced in 2010, but construction did not commence until 2019. Some quantitative evidence regarding delays was provided by the Productivity Commission in its 2020 *Resources Sector Regulation* Draft Report. The Commission reported that, over 2014-15 to 2018-19, the average EPBC approval time for resources projects was over 1,000 days. This had increased from an average of 750-800 days from the commencement of the Act to 2013-14.[80]

It is recommended that governments make a priority of streamlining regulatory processes pertaining to resources projects and reconsider unnecessary and poorly defined regulations that contribute to project delays.

4.5 Hospitality and tourism

Complex liquor licensing

Liquor licensing differs across jurisdictions but is particularly onerous in Queensland. Starting with applications, Queensland legislation requires applicants interested in off-licence liquor retailing to own a hotel. Consequently, the Australian United Retailers Limited (FoodWorks) noted that "Coles and Woolworths have spent considerable amounts in buying up hotels in Queensland to gain access to freestanding liquor licenses".[81]

Then, there is a lack of clarity around compliance requirements. Furthermore, the adoption of a 'one-size-fits-all' approach blindly subjects low- and high-risk businesses to similar regulatory burdens.[82] There is also considerable inconsistency between alcohol certifications, which are not fully transferable across states and territories.[83] Further inconsistencies exist within signage and display regulation.[84]

In response to the pandemic, the Queensland Government demonstrated its capacity to quickly implement legislative changes around liquor licensing. Pre-coronavirus, restaurants and cafes holding a valid liquor license required an additional license to supply alcohol alongside takeaway food services. The boundaries between the two licenses have since been relaxed with restaurants and cafes now being able to serve certain alcohols as takeaway.[85]

It is recommended that state and territory governments, particularly the Queensland Government, amend poorly designed liquor licensing legislation, given current legislation disadvantages consumers and makes no apparent contribution to the safe and responsible distribution of alcohol.

Overly procedural food safety regulation

The 2015 ACCI National Red Tape Survey found that food safety was considered one of the most complex areas of regulation, with State-based food safety regulators among the most difficult regulatory agencies to work with. The sheer quantity of documentation, exacerbated by a high degree of ambiguity, gives rise to significant compliance costs when handling Food Standards Code.[86] Specific issues regarding food safety regulation include:

- onerous compliance obligations, including the monitoring, accounting and reporting of workplace procedures;
- standardisation of compliance obligations resulting in an excessive regulatory burden being imposed on low risk businesses;
- inconsistent application of food safety regulations; and

- duplication between mandatory staff training modules.[87]

State and territory governments should harmonise and streamline food safety regulation across the nation while removing inconsistencies and overlapping requirements. This will likely require the input and cooperation of local governments that are responsible for many food safety requirements.

4.6 Childcare

Childcare fees in Australia have been growing much faster than inflation over the past decade while there has been little change in overall use of childcare services. Government subsidies have not offset rising costs for households. The erosion of childcare affordability can be largely attributed to staffing ratio and qualification requirements outlined in the National Quality Framework (NQF). While quality assurance has been at the forefront of the NQF policy, the policy may not deliver net benefits to the community.

In addition to regulatory variability between state and territories giving rise to confusion and compliance costs among childcare providers, the CIS's Eugenie Joseph has argued that such policies appear to be working at cross-purposes because there is:

> *Little conclusive evidence, based on both Australian and international research, that the NQF rules would significantly improve the cognitive, social or behavioural outcomes of children.*[88]

The Productivity Commission found that industry participants were strongly opposed to minimum qualification requirements outlined in the NQF and that they are contributing to a staffing shortage crisis.[89] Furthermore, the Commission references studies that question the necessity of tertiary qualified educators from birth.[90] In line with this research, various stakeholders and industry participants have called out the seemingly baseless staffing and qualification requirements, particularly those for family day-cares.

For example, Western Australian Government has observed:

> *The requirement that early childhood teachers must have practicum experience working with children from birth to age 2 is unnecessary for early childhood staff working in schools with children aged from 3 to 8 and limits the pool of people available to be employed in the sector*.[91]

The NSW Family Day Care Association has commented:

> There is no research that states what the optimal ratios of children to educators are in our settings. In the absence of this research … [research findings for centre based care settings] have been extrapolated and imposed on Family Day Care services, without the evidence of whether these are required or are optimal.[92]

Greater consideration should be given to staffing ratio requirements and whether the tangible benefits incurred by children justify the considerable costs of such regulation. The variation between state jurisdictions, particularly in the 36 months to preschool age group, is another aspect of staffing ratios that should be reconsidered.

It is recommended that Australian governments reconsider staffing ratio and qualification requirements in childcare to improve service affordability and reduce the need for associated government subsidies.

4.7 Pharmacies

Pharmacies in Australia are subject to location regulations that determine how many pharmacies may exist within a given area. The pharmacy location rules impact the establishment and relocation of pharmacies based on factors such as location, population density and the intended destination of a pharmacy (e.g. restrictions are less stringent for "large medical centres").[93] The aim of such legislation is purportedly to ensure pharmacies are distributed fairly between areas and well-stocked with high quality products.

The location-based regulations have been investigated in numerous reports over the past two decades, including the Wilkinson National Competition Policy Review of Pharmacy and the Productivity Commission Review of National Competition Policy Reforms in 2005, the 2010 Department of Health Postimplementation Review of Pharmacy Location Rules, the 2014 National Commission of Audit, the Competition Policy (Harper) Review in 2015, and the Review of Pharmacy Remuneration and Regulation in 2016.

These reviews reach a range of different conclusions, reflecting a poor understanding of how the pharmacy market, particularly in rural areas, will respond to a more competitive environment. In a policy review of pharmacy remuneration and regulation submitted by the Pharmacy Guild of Australia, Professor Henry Ergas found that pharmacies were more accessible than supermarkets, banks and medical centres – a fact Ergas attributed to the effectiveness of existing pharmacy location and ownership rules.[94] Furthermore, a study examining the effect of location rule deregulation from nine European countries found that "access to pharmacies usually increases after a deregulation but this is likely to favour urban populations with already good accessibility".[95] However, Professor Ian Harper has argued that the pharmacy location rules "do not appear to serve the objectives of the National Medicines Policy, including the quality of advice provided to consumers".[96]

The arguments for amendments, simplification, and the removal of location-based pharmacy regulation are strong. For example, despite considerable population growth, there are "fewer community pharmacies in Australia than there were in 1988".[97] Further investigation into the effects of deregulation may be worthwhile considering the potential benefits to consumers and innovation. Similarly, policies that more directly address the issues of safe drug provision without restricting supply should be examined.

It is recommended that state and territory governments relax or remove existing pharmacy location rules to harness the benefits of increased competition, such as lower prices and higher quality services.

Conclusion

This paper has focused on government regulations across vast swathes of the economy, including in the construction, agricultural, pharmaceutical, retail trade, mining, hospitality and tourism, and childcare sectors. Improvements in planning and zoning requirements, environmental policy, and the consistency of regulations across jurisdictions have the potential to yield large economic gains given their prevalence across different industries and degree of impact on business decisions. Additionally, the costs of many industry-specific regulations are likely to outweigh benefits to community.

Ultimately, the removal or improvement of the burdensome regulation outlined in this paper would make a substantial contribution to boosting Australia's productivity and living standards. This paper has demonstrated that red tape impacts many stages of project development, including the pre-feasibility and pre-approval stages. Regulations impose substantial costs on project proponents and slow down the development process and can erode project feasibility in some cases. Especially given that Australia is now in its first recession in almost three decades, measures to reduce business costs and encourage new capital investment should be prioritised by governments.

The rapid response of governments across Australia to ease a range of restrictions to help businesses cope with the pandemic supports the notion there is immense potential to reform business and productivity inhibiting regulations permanently.

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Acknowledgements

The authors would like to acknowledge comments and suggestions from Simon Cowan, the Housing Industry Association, the National Farmers Federation, the National Retail Association, and the Queensland Resources Council.

Related Works

Judith Sloan, *Industrial Relations in a Post-COVID World* (CIS Analysis Paper 12)

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THE CENTRE FOR INDEPENDENT STUDIES

Analysis Paper 14 (AP14) • ISSN: 2209-3753 (Online) 2209-3745 (Print) • ISBN: 978-1-925744-63-7

Published September 2020 by the Centre for Independent Studies Limited. Views expressed are those of the authors and do not necessarily reflect the views of the Centre's staff, advisors, directors or officers.

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