# Why do we need regulation?

Australia is often described in the media as a "nanny state" in which regulation is overprotective, interferes with personal freedoms and chokes business in red tape. Considering that there are over 900 individual Acts of the NSW Parliament currently in force (without mentioning the applicable Commonwealth legislation), at first glance, it may be hard to disagree with this view.

However, not all of these Acts place regulatory requirements on every citizen or every business. The ones that do typically have been made to address important moral, economic, societal and environmental issues. For example, *The Crimes Act 1900* makes it pretty clear that assault, kidnapping and murder (among others) is unacceptable.

**Is regulation needed?**

Unfortunately, human nature dictates that it is. The Ancient Egyptians, Romans and Greeks realised this several thousands of years ago. They all independently instituted their own standard weight measures for trade to prevent unscrupulous traders from swindling customers.

While most people normally do not choose to act immorally or contrary to social norms, some people may impulsively do so when the opportunity presents itself. A smaller number again will almost always act in their own self-interests, even if it is to the detriment of others.

This is where good regulation can serve broader society: protecting those that abide by the rules, deterring impulsive rule breaking and providing the mechanisms to identify and sanction those that compulsively break the rules.

In some cases, even laws labelled as "nanny state" laws are intended to serve a greater public good. For example, the law requiring bicycle riders to wear a helmet has been widely criticised. However, scientific studies have demonstrated that wearing a helmet while riding a bicycle can reduce the risk of serious head injury by 70%. The short and long term costs associated with serious head injuries (health care, insurance, disability services, etc) are mostly borne by the broader community, increasing their taxes, healthcare costs and insurance costs through no fault of their own.

**Is there good and bad regulation?**

In a word – yes.

Fortunately, bad regulation is generally easy to identify. It is the regulation that not only fails to achieve its goal, but is openly and broadly criticised by the regulated community and society generally, using phrases like "overly bureaucratic", "revenue raising", "significantly adds cost to business", "stifles innovation" and "out of touch". While the need for the regulation of a particular issue may have been real and the intentions may have been good, the implemented regulation can sometimes do more harm than good. This is typically due to one or more of a range of reasons, including:

- **Not using the best available scientific and technical knowledge** – this can occur during a knee jerk reaction to an issue or when political interests become involved.
- **Unclear responsibility for implementation** – when two or more agencies have responsibility for implementing regulation, a lack of clarity of responsibilities can result in unnecessary duplication and regulatory gaps.
- **Wrong regulatory approach** – for example, using a reactive "zero tolerance" approach when a proactive educative approach could achieve the same (or better) outcome.
- **Lost relevance** – developing and implementing regulation is not a fast process. Sometimes issues can develop and change so that the proposed regulatory program will no longer be effective.

**Who can I talk to for a health check of my regulatory systems and programs?**

Get in touch with JS Regulatory Services. We love making regulation work best, for everyone.

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