

Proliferation of tax laws rings alarm

Report James Eyers

If the proliferation of legislation continues at current rates, Australia's tax laws will have reached 830 billion pages by the end of this century and would take 3 million years to read, a conference on the rule of law heard on Friday.

It was also revealed that in the 2008 calendar year, 9042 pages of new legislation was passed by the federal government – four times as many as in the 10 years after 1929, when Australia was also facing serious economic issues in the form of the Depression and security challenges leading up to World War II. Robin Speed, the president of the Rule of Law Association, a new law reform advocacy group that convened the conference, said the

legislation required an unsustainable level of compliance and resulted in regulators applying laws according to their own views.

Critical to the rule of law was the fair, predictable and impartial administration of law, but the Australian Competition and Consumer Commission and Australian Taxation Office had too much discretion to apply the law, which had created a perceived, and sometimes actual, lack of impartiality, he said, placing the rule of law under serious threat. "We have now reached the position where Australia is drowning in a sea of rules," he said.

Federal Court judge Margaret Stone told the conference that "one of the reasons why the volume of law and material has exploded beyond all management is the

increasing lack of trust that parliament has for the judiciary".

"What you find is increasingly statutes try to prescribe in minute and frightening detail what courts can do in particular circumstances. The detail that is now in statutes about what courts can do seems to me to indicate that parliament, and the executive government, is frightened of trusting that judges will do the sensible thing."

David Weisbrot, the president of the Australian Law Reform Commission, said the volume of regulatory law had "exploded" and affected companies and economic development in "profound ways".

The use of civil penalties had become quasi-criminal law, he said, and while the criminal law had developed over a century to protect rights, "our civil and

administrative system has really lagged behind. There has been a massive explosion in scope, but not a countervailing concern yet about how we regulate it fairly".

NSW Chief Justice Jim Spigelman, who chaired the conference, said the explosion in regulatory discretion to enforce the law had always been true of police powers, "and is now true in virtually every other area of government regulation", adding this was not a new problem.

Australian Institute of Company Directors chief executive John Colvin said directors should be concerned about regulators with vested interests deciding what the law was. "The movement of interpreting laws from courts to regulators themselves is a very real concern to business," he said.