

NSW Productivity Commission

# Lessons from COVID-19 Regulatory Relaxations



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## Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices, and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.

Artwork:  
*Regeneration* by Josie Rose



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# NSW Productivity Commissioner's message



One of the silver linings of the COVID-19 pandemic has been the realisation that we can do things differently. While many of us worked remotely for the first time, governments temporarily eased regulations to help businesses and consumers adapt to the challenges posed by COVID-19.

In my 2020 Productivity Green Paper *Continuing the Productivity Conversation*, I recommended we treat these COVID-19 regulatory relaxations as experiments, assess their results and keep the ones that work. The recommendation was supported by many community groups and businesses who wanted to continue to work and operate in new ways.

So, I was pleased when the NSW Government took up our recommendation to make some of the measures permanent, following a thorough feedback and evaluation process.

Easing these regulations permanently will generate large economic benefits for the NSW economy. The COVID-19 regulatory relaxations have also provided valuable lessons in economic reform that we can take into the post-pandemic world.

To begin with, governments should continue to embrace regulatory experiments. This allows real-world evidence to be gathered before deciding whether to permanently adopt rule changes.

We have also learned that there are large gains from updating regulations to allow greater flexibility for businesses and consumers. This includes flexibility to use digital technologies to meet regulatory requirements.

Evaluating the COVID-19 regulations and retaining the ones that worked is an important economic reform. And we shouldn't stop there. As we transition to living with COVID-19, governments should experiment with regulatory changes that promote new ways of working and living. This will help grow the economy and improve standards of living for the people of NSW.

A handwritten signature in blue ink that reads "Peter Achterstraat AM". The signature is fluid and cursive.

**Peter Achterstraat AM**  
NSW Productivity Commissioner

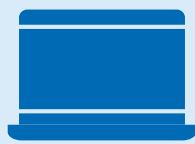


# Executive Summary

The onset of the COVID-19 pandemic caused immediate social and economic disruption. This disruption was highlighted by the panic buying of toilet paper and other essential items in response to COVID-19. At the peak of this panic buying, empty shelves led to supermarkets closing early to restock. The NSW Government responded with a series of temporary regulatory changes designed to support

businesses and communities to function more smoothly. In the case of supermarkets, this involved allowing around-the-clock truck deliveries and store opening hours, in order for shelves to be quickly restocked and for the community to have access to essential items. This effectively launched a series of regulatory 'experiments' in flexibility and modernisation, grouped under three broad categories:

## Digital processes



Removing regulatory barriers to adoption of digital technology. For example, allowing digital execution and certification of conveyancing documents.

## Business flexibility



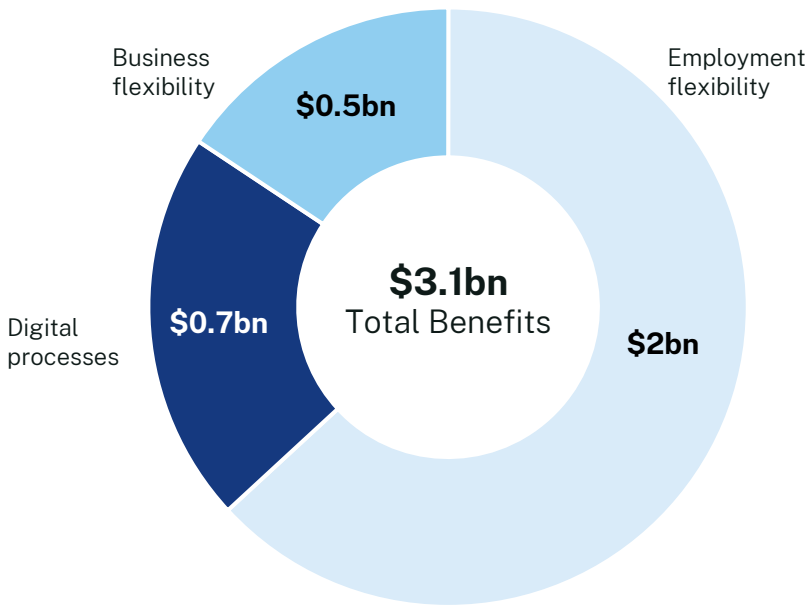
Enabling businesses to develop new business models. For example, allowing restaurants and other commercial kitchens to operate as 'dark kitchens' that prepare food for delivery.

## Employment flexibility



More flexible ways for employees to access benefits. For example, greater flexibility for how employees can access long service leave.

**Figure 1 – Breakdown of net benefits by category**



**Note:** the sum of the individual components does not sum to the whole when rounded to one decimal place.  
**Source:** NSW Treasury based on research by the Centre for International Economics (2021)

A coordinated whole-of-government process to evaluate the emergency regulatory changes has led to the NSW Government permanently retaining many of the reforms. The reforms are set to deliver over \$3.1 billion in net economic benefits to the NSW economy over the next 10 years (Achterstraat, 2021). Improved employment flexibility accounts for almost two-thirds of the net benefits (\$2 billion), while the remaining third (\$1.1 billion) is split between digital process and business flexibility changes (see Figure 1).

The process has provided a unique opportunity to reflect on and identify lessons for regulatory reform for the post-pandemic environment. Three themes emerge:

### Experiments are valuable

By rapidly adjusting rules in response to the pandemic, governments embraced a culture of regulatory experimentation. This has given policymakers the opportunity to obtain evidence on what worked to permanently improve the rules for businesses and communities. Continuing this culture of experimentation supports the future design of effective and efficient regulations.

### Flexibility is key

In response to the pandemic, governments updated regulations to allow the use of digital processes and different business models. Giving businesses and consumers the flexibility to choose how they meet the underlying objectives of regulations can unlock substantial economic benefits through time savings and greater convenience. It can also allow innovation to flourish as new technologies and processes continue to emerge.

### Evaluation is crucial

The evaluation process has allowed policymakers to gather and weigh evidence in order to understand the impacts of temporary regulatory changes. In many cases, the value gained from uncovering new evidence or community views outweighs the time and resource costs of collecting this evidence or data.

# COVID-19: A natural regulatory experiment

Science lab,  
Kolling Institute



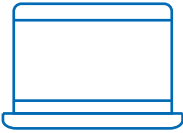


Innovation tends to thrive in times of crises. The COVID-19 pandemic has shown how a sense of necessity and urgency can spur rapid innovation in the form of new technologies and business models. It can increase the uptake of innovative ways of working and living. We are not just talking about greater use of videoconferencing and remote working, but also the creation of new products and services as firms sought to overcome constraints and respond to opportunities. To name but a few examples, mRNA vaccines were developed at record speed, new models of healthcare delivery emerged, such as telehealth and hospital at home, and consumers embraced the online delivery of goods and services, from groceries to fitness.

Regulations also saw rapid change during the pandemic. Across the globe, temporary changes provided the flexibility that businesses and the community needed to keep safe and develop new ways of doing things. In many cases, the need for these changes was identified because of the structured, robust and frequent exchange of ideas between governments, business groups and other bodies, such as unions, that occurred during this period (McKinsey & Company, 2020).

In NSW, COVID-19 regulatory innovation took a range of forms. In some instances, regulators adjusted their compliance approach to provide greater flexibility for businesses given the unprecedented circumstances of the pandemic. In others, legislative change was implemented, with a mixture of specific legislative changes and emergency powers that enabled ministers to issue broad-ranging regulatory instruments. Common to all the changes was their temporary nature and focus on additional flexibility, to enable the use of digital technology and flexibility for businesses to operate in a pandemic environment. See Figure 2 for an overview and further details in the Appendix.



Figure 2 - Overview of NSW's temporary COVID-19 regulatory reforms

Theme	Examples of key regulatory changes
 <p data-bbox="445 371 722 499">Digital processes: Removing regulatory barriers to adoption of digital technology</p>	<ul data-bbox="826 300 1433 568" style="list-style-type: none"> <li>• Witnessing of signatures via audio-visual link.</li> <li>• Enabling meeting and voting for strata and community land associations to take place electronically.</li> <li>• Digital execution of conveyancing documents.</li> <li>• Use of digital technology for regulatory interviews and questioning.</li> </ul>
 <p data-bbox="445 683 700 810">Business flexibility: Enabling businesses to develop new business models</p>	<ul data-bbox="826 604 1449 887" style="list-style-type: none"> <li>• 24-hour retail supply chain deliveries.</li> <li>• Extended retail operating hours.</li> <li>• Flexibility for operation of food trucks and dark kitchens.</li> <li>• Greater flexibility for home business operation.</li> <li>• Sale of takeaway and home delivery alcohol by licensed venues.</li> </ul>
 <p data-bbox="445 992 730 1120">Employment flexibility: more flexible ways for employees to access benefits</p>	<ul data-bbox="826 969 1382 1142" style="list-style-type: none"> <li>• Greater flexibility for how employees can access long service leave.</li> <li>• Changes to evidence required for workers compensation and motor accident injury insurance schemes.</li> </ul>

Due to the speed with which the pandemic evolved, the usual cornerstones of policy development (such as stakeholder consultation and impact analysis of options) were bypassed in the midst of the crisis.

The NSW Productivity Commission recommended that NSW's COVID-19 regulatory reforms be evaluated and, where shown to deliver a net public benefit, retained permanently (NSW Productivity Commission, 2021a). Accepting this recommendation, the NSW Government announced in the 2020-21 Budget that the Treasurer would lead a coordinated, whole-of-government evaluation of the changes. This was followed by the *COVID-19 Recovery Act 2021*, which extended a range of changes for an additional 12 months due to the continuation of the pandemic, and to provide sufficient time to evaluate the changes.

A coordinated process was completed across the NSW Government to evaluate the changes. The evaluation found that permanently retaining many of the temporary COVID-19 regulatory changes, in whole or with modification, would create \$3.1 billion in net economic benefits for the NSW economy over the next 10 years (the Appendix summarises the changes and outcomes of the evaluations).

The NSW Government has already acted on the outcomes of the evaluation and made regulatory changes to permanently adopt many of the reforms in early 2022, including through the *COVID-19 and Other Legislation Amendment (Regulatory Reforms) Act 2022* (NSW).

Some of the changes were found to have significant benefits and low costs. For policymakers, rapidly implemented regulatory changes, with proven benefits, low costs, and high levels of stakeholder support, are a rare outcome. The process of regulatory experimentation seen during the pandemic provided a unique opportunity. Given this, it is worth taking stock of what lessons we can take from regulatory innovation and evaluation in NSW during the pandemic.

Evaluation of the reforms identifies three key lessons:

1. Regulatory experimentation has value and should be prioritised in policy development
2. Don't underestimate the benefits of greater flexibility; and
3. Make the effort to gather data to test competing views.

# Regulatory experimentation has value and should be a priority

## Lesson

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Regulatory experimentation is about trialling and testing new approaches to generate evidence to inform regulatory design. The NSW Productivity Commission's recent *Regulating Emerging Technologies* report highlighted experimentation as a key principle to address the challenge of regulating areas of rapid technological development, such as personal mobility devices and drones (NSW Productivity Commission, 2021b). The principle is equally applicable to any area of regulation where there is a lack of data or competing views about how to best balance the benefits and risks of regulation.

The idea that a process of experimentation and gathering evidence is worthwhile is intuitive and broadly supported by policymakers. But it is one that is more often talked about than put into practice. Examples of where it has been done well are rare.

The COVID-19 regulatory experiments in NSW confirmed the value of regulatory experimentation. The process of using real data and evidence to test and refine approaches resulted in better long term policy outcomes than trying to predict what would happen or waiting to see what other jurisdictions would do. The changes were not perfect. Rather, they showed that imperfect changes implemented rapidly and subsequently refined can be better than waiting for perfect permanent solutions. The example of the sale of takeaway and home delivery alcohol by licensed venues (see Box 1) illustrates this point.

## Box 1 - Refining the regulatory approach to better balance benefits and risks

Like many jurisdictions, NSW temporarily allowed licensed venues, such as licensed restaurants, to sell takeaway and home delivery alcohol to accommodate new business models for food and hospitality businesses during the pandemic. Previously, these venues could only sell alcohol for on-premises consumption. This measure brought to the forefront a familiar debate in liquor licensing policy of how to appropriately manage the risk of alcohol-related harm against opportunities for businesses and consumer demands. Some stakeholders were also concerned about licensed venues becoming back-door bottle shops.

The evaluation examined evidence and found support for both sides of this debate. While consumers and businesses valued the increased flexibility, there was also evidence that increased availability of alcohol could increase consumption and levels of alcohol-related harm. Not all takeaway alcohol purchases were, however, expected to lead to alcohol-related harm: consumer survey data suggested that 30 per cent of the take-up was expected to be additional alcohol consumption, while 70 per cent were purchases that would have been made anyway from another alcohol seller.

Four options were examined to test these concerns, compared to a base case of returning to pre-COVID arrangements:

1. Allowing sale with no constraints (complete continuation of COVID-19 measure)
2. Allowing sale with no constraints, but requiring a community impact process to obtain a licence
3. Allowing sale up to a limit of one bottle of wine, a six-pack of beer or equivalent and only with a meal and a light-touch licensing approach
4. Allowing sale up to a limit of one bottle of wine, a six-pack of beer or equivalent and only with licensing requiring a community impact statement process.

Estimates of the costs and benefits of each option are set out in Table 1.

**Table 1 - Estimates of costs and benefits under takeaway alcohol options, central case**

Theme	Option 1 PV (\$m)	Option 2 PV (\$m)	Option 3 PV (\$m)	Option 4 PV (\$m)
Consumer surplus	418	104	304	76
Alcohol-related harms	-255	-36	-104	-26
Licensing costs	-4	-8	-4	-8
<b>Net benefit</b>	<b>159</b>	<b>61</b>	<b>197</b>	<b>42</b>

Note: Costs and benefits are calculated over 10 years with a seven per cent discount rate and are relative to the base case. Justice and driving harms were not included in options 2 to 4 due to the constraints imposed on access to takeaway alcohol.

Source: The Centre for International Economics, 2021.




The evaluation found that Option 3, a modified version of the COVID-19 measure, would best balance the benefits and risks of the proposal with net public benefit of \$197 million over 10 years in today's dollars.

- This option would moderate the alcohol-related harm associated with additional alcohol purchased under the COVID-19 measure (Option 1) by \$151 million. This figure was derived from studies on the average health and productivity harms from alcohol use.

- Consumer surplus – which measures the additional benefit that consumers receive because they were paying less for the takeaway alcoholic drinks than what they were willing to pay. Based upon a survey of consumers' willingness to pay, consumer surplus was enhanced by \$304 million compared to the pre-COVID base case.
- Licensing costs of \$4 million would be associated with a light-touch licensing regime.

# The challenge: creating a culture of regulatory experimentation

Regulatory experimentation (RegEx) can provide valuable real-world evidence to help design effective and efficient regulations. Done well, RegEx involves making use of the following tools and approaches:

Theme	Key insights
 <p data-bbox="443 600 654 663">A <b>culture</b> that promotes RegEx</p>	<ul data-bbox="826 472 1460 786" style="list-style-type: none"> <li>• Unpacking the barriers to RegEx using behavioural insights.</li> <li>• Seeing experiments as evidence generation and risk mitigation.</li> <li>• Legitimising experimentation.</li> <li>• Strong leadership to oversee the system.</li> <li>• Having the right incentives (both tangible and intangible) to promote innovation.</li> </ul>
 <p data-bbox="443 920 646 983"><b>Tools</b> for effective RegEx</p>	<ul data-bbox="826 815 1436 1081" style="list-style-type: none"> <li>• Providing guidelines on how to experiment effectively to staff.</li> <li>• Pre-planning the evaluation when designing regulatory experiments.</li> <li>• Regulatory pilots and sandboxes.</li> <li>• Listening and learning from a diverse range of service users and frontline staff.</li> </ul>
 <p data-bbox="443 1189 651 1252"><b>Institutions</b> that enable RegEx</p>	<ul data-bbox="826 1111 1420 1330" style="list-style-type: none"> <li>• Making the most of our federal system when experimenting.</li> <li>• Creating ‘skunkworks’ institutions which are close to, but independent of, government.</li> <li>• Use of strategic innovation funds to foster experimentation.</li> </ul>

## A culture that promotes RegEx

Regulatory experiments should be seen as a means to generate evidence and deal with uncertainty. Experiments generate real-world evidence on what works and what doesn't, allowing better risk management. This can be especially helpful when regulating new technologies or business models, or when trying a novel approach to regulating existing products and services.

“A pilot that reveals a policy to be flawed or ineffective should be viewed as a success rather than a failure, having potentially helped to avert a potentially larger political and/or financial embarrassment.”

**Professor Sir Roger Jowell (UK Cabinet Office, 2003)**

Regulators need the right culture for experimentation and risk-taking (OECD, 2017a). This requires governments to legitimise experimentation. The confidence to innovate comes from permission to fail. The Canadian Government has sought to legitimise and de-risk experimentation since 2016 with an experimentation directive that provides resources and guidance to project teams undertaking experiments (see Box 2).

RegEx also benefits from strong leadership to oversee the system and encourage the sharing of innovation between agencies (OECD, 2017a). The approach taken in Finland demonstrates the value of centralised leadership in promoting both strategic and grassroots experimentation (see Box 3).

## Box 2 - Encouraging experimentation in Canada

In 2016, the Government of Canada issued an experimentation direction (the Direction) for senior leaders in Departments (Government of Canada, 2016). As part of legitimising experimentation, the Direction specifies that public servants will not be reprimanded for well-managed risks that fail to produce improvements, so long as lessons are captured and reflected in subsequent plans.

The Canadian Government also committed to devoting a percentage of program funds to experimenting with new approaches and measuring impact to instil a culture of measurement, evaluation, and innovation in program and policy design and delivery.

The Direction encouraged departments to use experimentation methods, including:

- deliberate, thoughtful, and ethical experimental design
- comparisons between interventions and base cases to capture evidence (e.g. randomised controlled trials, A/B testing, counterfactual experiments, baseline performance data, pre- and post-tests)
- rigorous impact measurement and causality assessment
- transparent publication of positive, negative, and neutral results; and
- creating a work environment conducive to experimentation to ensure that public servants try new approaches.

Business meeting



This prompted the Treasury Board of Canada Secretariat to launch the Experimentation Works Initiative (the Initiative) in 2018, an expert advisory program to help project teams work through the stages of running an experiment. The Initiative continues to provide resources and guidance to project teams undertaking experiments.

## Box 3 - Driving innovation from the centre in Finland

Together with a think tank, the Finnish Prime Minister's Office established a central experimental office which supported strategic experiments in the country (OECD, 2017b).

Experimentation was incorporated into the Government's strategic program. This allowed for broader strategic experiments (formalised policy trials) – for example, a basic income experiment and a free childcare experiment. It also allowed for a grassroots experiment design to build up an experimental culture to tackle public policy issues in Finland.

For instance, the Government launched a digital platform titled Kokeilun Paikka40 (Place to Experiment) to help people to transform their ideas into concrete experiments, gain feedback, open new channels of funding for experiments, and create opportunities to combine different kinds of funding, such as crowdfunding and more traditional forms of research and development funding (Motiva, 2020). Several grassroots experiments have emerged out of this initiative including a city-owned electric car-sharing platform, counselling

bots that support students moving to a new area, and the production of an alternative to disposable takeaway packaging aimed at reducing waste (Kokeilun Paikka, 2022).

The central experimental office was discontinued, however, a state-owned sustainable development company Motiva continues to promote piloting and experimenting, scaling up successful experiments and assessing their results (Motiva, 2020).

The right incentives (both tangible and intangible) can promote experimentation among policymakers (OECD, 2015). One practical way of doing this is celebrating experimentation through challenge prizes or awards. For example, the United Kingdom Competition and Markets Authority launched the Open Up Challenge. The Challenge offered a £1.5m prize to unlock the power of open banking for the benefit of British consumers. Many of the prize winners have achieved high levels of adoption with apps that have used open banking to improve budgeting, reduce cases of financial fraud, improve access to rental deposits, and use Artificial Intelligence (AI) to reduce financial stress and improve savings (Open Banking, 2019).

Some caution, however, needs to be exercised when rewarding experimentation – the focus should be on the lessons learned from the experiment, rather than which experiments had a successful outcome to encourage innovative experimental approaches.

There is an opportunity to better understand obstacles to experimentation in NSW using behavioural insights. With the benefit of such analysis, there would be greater clarity on whether reluctance to experiment comes from:

- misaligned incentives, such as performance metrics that focus on levels of compliance or safety metrics, rather than encouraging experimentation and learning
- resource constraints, where a desire to experiment and innovate is stymied by workload pressures and lack of time or funds
- fear of public or political reprisal if the experiment is unsuccessful
- lack of knowledge about how to experiment; or
- complex administrative requirements before experimentation can occur.

As noted by the McConnell Foundation, such a project could:

“Use behavioural insights to do ethnographic research into the everyday practices of current governmental innovation, to gain a better understanding of the obstacles. This project would take an exploratory approach to map the experiences and attitudes of experimenters and non-experimenters.”

McConnell Foundation, 2019

## Tools for effective RegEx

There are a range of tools and approaches to promote best-practice RegEx amongst policymakers, including:

- **Providing guidance on how to experiment effectively** to provide confidence to project teams. For example, Canada’s Centre for Regulatory Innovation has developed a ‘Regulators’ Experimentation Toolkit’ to provide practical guidance for regulators to identify, design, and carry out regulatory experiments (Government of Canada: Centre for Regulatory Innovation, 2021). The key elements are outlined in Box 4.
- **Pre-planning the evaluation when designing regulatory experiments** so that the regulations can be subjected to rigorous evaluations. For example, considering what outcomes the regulation seeks to achieve, gathering data on the ‘before regulation’ scenario, then capturing data to understand impacts following the introduction of regulation. This may require working with experts in experimental design.
- **Use of small-scale or time-limited regulatory pilots** that relate to limited number of products or parties, a particular area, or a fixed time period. For example, the NSW Government trialed a regulatory change that allowed all shops to trade on Boxing Day, on the condition that staff freely elect to work. Previously, trading was not permitted on Boxing Day unless the shops qualified for an exemption, which depended on a range of factors. The trial ran for two years, and the changes were subsequently made permanent following a comprehensive review (NSW Treasurer, 2017).
- **Listening and learning from a diverse range of service users and frontline staff.** This has dual benefits (OECD, 2015). First, people on the ground tend to understand the problem the best. Second, public sector employees are motivated intrinsically by the impact their work has on the community (Paarlberg et al. 2008) so greater engagement with the community and frontline workers can boost employee motivation.

## Box 4 – Key elements of Canada’s ‘Regulators’ Experimentation Toolkit’



Science lab

The Toolkit covers:

- **Elements of regulation that can be subject to experimentation**, such as a regulated product or service, a new approach to regulating, or a policy or regulatory process.
- Steps for **determining whether regulatory experimentation is needed**, including:
  - Is the right question being asked? It notes that experiments are best for answering questions around impact and a need for evidence.
  - Comparing the strengths and weaknesses of experimentation to other approaches such as desktop research, institutional knowledge, and consultation.
- The **three main types of experimental design** (randomised experiments, non-randomised design, and pre-post experiment) and their pros and cons.
- Steps to **design and run a successful experiment**, including structuring the experiment in a systematic way to enable learning and developing the right metrics to measure outcomes from the experiment.
- Information on **regulatory sandboxes**, including their benefits, where they are suitable for use by regulators and advice for designing and running a sandbox.

## Institutions that enable RegEx

In addition to an organisation’s culture and tools, the structure and operating environment of institutions can lend themselves to RegEx. RegEx can involve collaborating across different levels of government (federal, state, and local) since challenges and regulatory barriers faced by end-users often cut across all levels of government. In Australia, we can also make the most of our federal system by states and territories collaborating to trial policy options to address a common challenge. This would build the data for the cross-jurisdictional adoption of the solution with the best outcomes.

There is also scope to create ‘skunkworks’ institutions which are close to, but independent of, day-to-day government processes and have the expertise and resources to experiment. For example, the NSW Behavioural Insights Unit (the Unit) works with NSW Government agencies to build and test behavioural interventions and remove ‘sludge’<sup>1</sup> from government services. The Unit brings an experimental and customer-focused mindset to policy development and operates with a high degree of autonomy, outside of regular bureaucracy.

“[Skunkworks institutions] can ‘unfreeze’ organisational embedded practices, operating as neutral spaces dedicated to problem-solving in a highly experimental environment, bringing people together with a diversity of skillsets”

**Casebourne and Puttick  
(Alliance for Useful Evidence, 2015)**

Strategic innovation funds –including money sourced from private and charitable funds –can also foster experimentation. For instance, the French public policy laboratory, Fonds d’Expérimentation pour la Jeunesse, funds experimental youth programmes and evaluations using both government and private money (Alliance for Useful Evidence, 2015). Fonds d’Expérimentation pour la Jeunesse has been able to test innovations in education, among other areas, through the use of experiments, such as the “Class in the morning, sport in the afternoon” reorganisation of schooling hours (FEJ, 2012) which aims to improve learning outcomes for students.

1 ‘Sludge’ is excessive or unjustified frictions that make it harder for customers to achieve their goals, such as complicated forms and websites that are hard to navigate.

# Don't underestimate the benefits of greater flexibility



## Lesson

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Policymakers are constantly faced with the challenge of ensuring regulations keep up with changing circumstances, new business models, and new technologies that change the way people work and live. When regulations don't keep up with changing business and consumer preferences, they risk becoming inefficient or redundant and impose unnecessary barriers to compliance. This can stifle innovation and lead to a loss of productivity.

One of the major challenges faced by businesses and communities during COVID-19 was reacting and adjusting to the health restrictions as quickly as possible to allow the continued function of essential services and processes. Strata scheme committees which had previously met in-person only were no longer able to do so and were faced with regulatory barriers to voting electronically on issues affecting residents. Governments responded by swiftly introducing a range of measures to override existing regulatory barriers, particularly those that limited the use of digital technologies. In the case of

strata schemes, the NSW Government temporarily allowed committees to use electronic means of voting, regardless of whether they had passed a resolution on it at an in-person meeting. The rush to introduce these changes partly reflected the extraordinary nature of the pandemic. But it also served to demonstrate that many of our regulations have not kept pace with modern technology, which can have significant efficiency costs.

The evaluation of the COVID-19 regulatory changes demonstrated that updating regulations to enable greater flexibility to meet their intended objective –or designing regulations to be outcomes-based or technology-neutral –can unlock huge payoffs through time savings and greater convenience. A key example is increased flexibility for long service leave arrangements for both employers and employees (see Box 5).



**Box 5 - Updating long service leave (LSL) arrangements for the modern workforce**

During COVID-19, private sector workers were allowed to use their LSL entitlements more flexibly. Changes to the *Long Services Leave Act 1955* (the Act) enabled employees to take leave in shorter blocks, such as one day a week, and without the traditional one-month notice period, by agreement with their employer. The intention of the changes was to provide flexibility to assist businesses and their employees during the pandemic, rather than employees being stood down or made redundant in response to the rapid downturn in economic activity due to COVID restrictions.

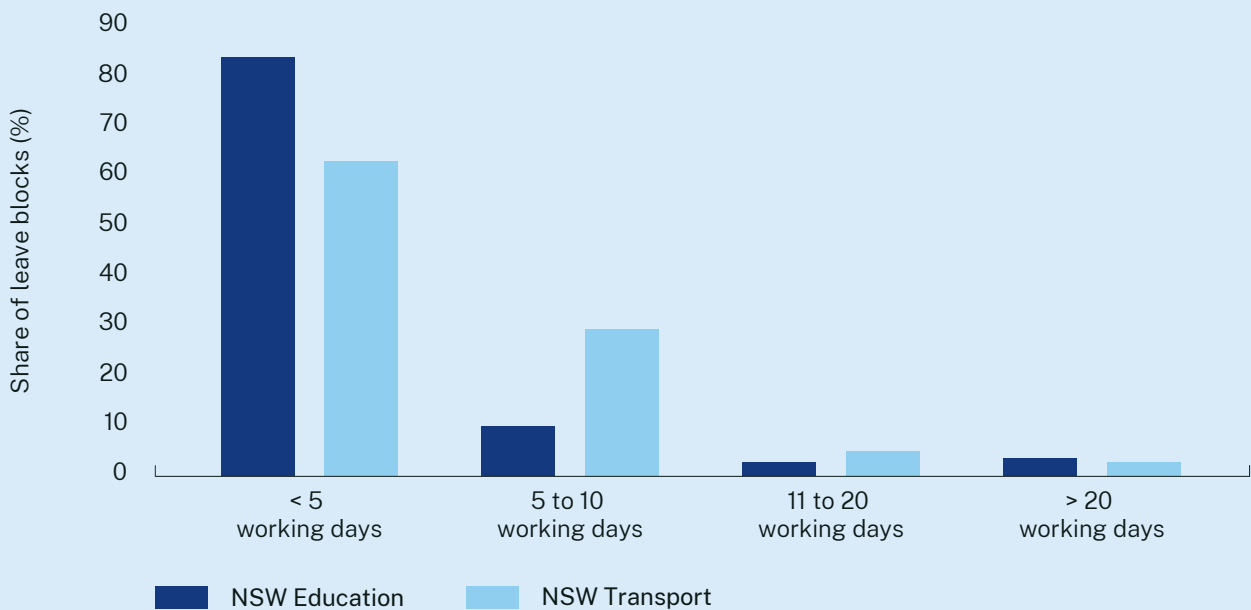
LSL has existed in Australia since the 1860s, when it was intended to allow people to return to their home country once a decade. Mandating how employees use LSL entitlements stemmed from this historical purpose, with limited relevance to modern workforces. As such, more flexible LSL arrangements have ongoing advantages for employees and businesses.

The evaluation found very large benefits of \$1.9 billion over 10 years from keeping the reform. The benefits are large as most private sector employees in NSW are covered by the Act. The benefits were estimated based on the

higher value that employees gain from working more flexibly (which some studies estimate may be up to 40 per cent of their wage). For example, employees may use 1-2 days of long service leave per week to phase in retirement, or smaller blocks to meet family commitments.

Evidence from several NSW Government agencies (where employees already had such flexibility) shows that employees take smaller leave blocks (see Figure 3). Most LSL blocks taken are for less than one week and very little LSL was taken in blocks of over four weeks.

**Figure 3 - Long service leave from NSW Government agencies, 2020**



Note: 2020 calendar year for Education, and May 2020 to April 2021 for Transport. Data source: NSW Transport and NSW Education.

In addition, there may be smaller disruption costs for businesses from temporary staffing changes, for example, avoided costs to find and train up new employees. Indirect benefits, such as more productive workers and increased staff retention, were not calculated, but are also expected to be positive. There were no material costs identified from enabling the more flexible LSL arrangements. The changes were supported by peak employer groups and unions.

By keeping the reform, the greater flexibility will help maximise the value of leave entitlements, through enabling employees and employers to better use LSL entitlements in a way that meets their own economic and personal circumstances, by agreement.

## Reform isn't all about big bangs – small changes can have large impacts too

The evaluation process also uncovered that it's not always the big-ticket reforms that can have the most significant impact. Just as many small regulations can lead to large cumulative burdens on businesses and communities, seemingly minor regulatory reforms can cumulatively bring large benefits. As the cricketer great Don Bradman showed, hitting lots of ones and twos are just as good as a few sixes.

During the pandemic, the NSW Government temporarily enabled the use of technology to conduct a range of activities remotely or digitally. This included allowing strata and community associations to meet and vote remotely and allowing conveyancing documents to be signed electronically and witnessed remotely. The changes were intended to support businesses and communities to function effectively during COVID-19 restrictions and reflected a general trend from manual to digital business processes.

The evaluation process and enthusiastic support from stakeholders for keeping the changes demonstrated the benefits of these seemingly minor increases in flexibility. Across all the digital process changes evaluated, reforms were found to deliver \$655 million in total net benefits over 10 years.

### Box 6 - Big benefits from greater flexibility in strata schemes



Flexible working conditions

Prior to COVID-19, strata scheme and community land association regulations limited the uptake of increasingly common technologies, such as teleconferencing, to conduct business. Rather than automatically enabling the use of new technologies and means of working, the regulations required strata schemes to explicitly vote and pass a resolution to allow their use. This additional barrier to uptake can impose unnecessary time and travel costs associated with attending meetings and engaging with strata schemes in person.

In response to COVID-19, the NSW Government temporarily allowed all strata schemes, regardless of whether they had passed a resolution on it, to use electronic means for voting, receiving meeting notifications and signing and witnessing documents remotely.

For each person, the changes led to modest savings from reduced delays and greater convenience. But when considered across the large number of individuals affected – such as the hundreds of thousands of people who live in or own property in strata – and the frequency of meetings for each strata scheme, the cumulative impact was large. The evaluation found the removal of these barriers are expected to deliver \$214 million in net benefits over 10 years.



Stakeholders were highly supportive of retaining the option of electronic or digital processes. They noted the changes made processes more convenient, efficient, and smooth at the height of the pandemic and in the following period of loosened restrictions.

These types of reforms sometimes aren't given high enough priority, despite the obvious benefits. Without concerted effort, this leads to businesses and communities bearing the burden of living with unnecessarily costly regulations over time – and these burdens become significant in a cumulative sense. As highlighted in NSW Treasury's *Regulating for NSW's Future* report, the annual cost of the compliance burden in NSW ranges between \$11 billion and \$87 billion per year (NSW Treasury, 2020).

The COVID-19 crisis is a reminder that flexibility matters. Based on the success of the regulatory measures arising out of the pandemic, the NSW Government has committed to building on the benefits of the reforms and is taking further steps towards updating all regulations to be technology-neutral and outcomes-focused. The NSW Department of Customer Service will lead a program of digital-focused regulatory reform, starting with a whole-of-government review of regulations to be updated and modernised, which will kick off in 2022. Benefits from these reforms will flow through to cost and time savings for everyday businesses and communities.

### Key insights



- Design regulations to be outcomes-based and technology-neutral where possible.
- Modernise existing regulations to enable digital processes and more flexible ways of working and living.

# Evaluation and evidence-gathering is crucial

# 3

## Lesson

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Policymaking necessarily involves trade-offs between costs and benefits and the balancing of competing interests. A robust policymaking process – the process through which policy is designed, implemented, administered, and reviewed – is critical to ensuring these trade-offs are considered and the right balance is struck.

Perverse outcomes can arise where human bias works against good regulatory design, such as a tendency to repeat a precedent because it has worked before, even though circumstances have changed. Taking the time to gather the evidence and weigh the impacts based on evidence is the best strategy to guard against poor regulation.

In NSW, the *Guide to Better Regulation* (the Guide) provides a formal framework for good regulatory development processes and underpins all new and amending regulatory proposals (NSW Treasury, 2019). A core element of the Guide is an assessment of the costs and benefits of the proposed approach and alternatives using available data as part of the regulatory impact analysis process.

The principle of assessing the costs and benefits of a regulatory policy based on the best available evidence is valid for both before a regulation is introduced (an ‘ex-ante’ evaluation) and after a policy change has occurred (an ‘ex-post’ evaluation). The extraordinary circumstances of the pandemic understandably required the rapid introduction of regulatory relaxations outside of the normal policy development process. In the case of the temporary takeaway and delivery of alcohol measure, the ex-post evaluation process involved gathering new information to build the evidence base which enabled a deeper understanding of the potential trade-offs for a better policy outcome (see Box 7).

## Box 7 - Filling in data gaps to complete the picture

A key challenge during the evaluation of the takeaway and delivery of alcohol measure was overcoming evidence gaps to robustly assess the impact of the temporary change. Introducing the regulatory relaxation so quickly meant existing evidence was mainly anecdotal, as data had not been collected on how people used the takeaway or delivery options. Given the complexity of liquor licencing policy, it was essential to have a range of perspectives and high quality data to inform the evaluation.

To address this, additional evidence was sourced from consumers and businesses. A consumer survey was conducted of 1,004 NSW adults to gather information on how people used the measure and to better understand broader community views of the change. A survey of on premises licensees was also conducted through the Restaurant and Catering Association to understand how businesses were using the ability to provide takeaway and home delivery.

The additional data enabled the benefits to consumers to be weighed against the potential for increased harms. Results showed around one in two businesses used the measure, while one in three consumers took up the takeaway or delivery options. Many consumers valued the increase in flexibility, with the majority using the option to purchase alcohol they would have otherwise bought in-person. This information enabled an assessment of a range of scenarios to determine what approach to takeaway liquor licencing would best balance the trade-offs between costs from any increase in alcohol-related harms against increased convenience and time savings for consumers.

## A targeted and appropriate evidence base to maximise public value

Taking the effort to build the evidence base is crucial to better regulatory outcomes. Collecting the necessary data, however, is often cited as one of the most difficult parts of the regulatory reform process. Scarcity of expertise or resources can limit the ability of policymakers to collate new information or data when assessing regulations, but the process does not need to be lengthy or technically complex to enable a more meaningful evaluation.

In fact, the evaluation process of the COVID-19 regulations shows that, when compared to the value of the information gained, the effort and time taken to collect additional data may be relatively minor. For the takeaway and home delivery of alcohol measure, a targeted survey approach enabled valuable information to be collected on consumer and business uptake. Consultation with expert groups also allowed for qualitative information to be gained on direct and indirect harm impacts. When compared to the total

net benefits found – up to \$197 million over 10 years – the few weeks of time and resources invested to obtain the necessary information was worthwhile.

There is no ‘one-size-fits-all’ approach to evaluating regulations. As with the COVID-19 regulatory evaluations, any regulatory impact assessment should be targeted and proportionate to the significance of the proposed change. Where the impact of a regulatory proposal is expected to be significant or complex, it may be necessary to collect new information or data as part of the cost-benefit analysis. In some cases, gathering more qualitative evidence through stakeholder engagement can help better understand individual impacts from regulations.

Done well, regulatory impact analysis can broaden the public value of regulations by balancing decisions that trade off problems against wider economic goals. And just as the good regulatory policy decisions should be based on a demonstration of net public benefit, the regulatory policy development process itself should balance the benefits of more intensive analysis against the time and resource costs to undertake the analysis.

### Key insights



- Build up the evidence base for regulations.
- Assess costs and benefits of regulations, with detail proportionate to the significance of the proposal.
- Share lessons learned across regulators.

# Building on our success




At the start of the pandemic when nearly every aspect of life was disrupted, the NSW Government introduced numerous temporary regulatory changes to help businesses and communities to function and meet the challenges set by the pandemic. These series of regulatory ‘experiments’ were effectively launched in a matter of weeks. Many of the changes were only suited to the extraordinary circumstances of the pandemic, while others had potential to deliver benefits outside of the COVID-19 context.

A coordinated whole-of-government process to extend and evaluate the emergency regulatory changes led to the NSW Government permanently retaining many of the reforms with positive public net benefits. By locking in the flexibility gained during the pandemic, the reforms are set to deliver over \$3.1 billion in net economic benefits to the NSW economy over the next 10 years.

As we look to boost living standards and productivity in the post-pandemic environment, the COVID-19 regulatory experiments and evaluation process offered a unique opportunity to reflect on the regulatory reform process and lessons. Three consistent themes stood out:

1. **Experiments are valuable:** The pandemic encouraged governments to embrace a culture of regulatory experimentation (RegEx). By essentially trialling new regulations in a real-world setting, the COVID-19 regulatory experiments helped obtain evidence on what worked, reduced uncertainty, and improved the rules for businesses and communities. Continuing this culture of experimentation can support the design of effective and efficient regulations.

There are a range of further steps that can be taken by governments and government departments to promote RegEx:

Theme	Key insights
 <p>A <b>culture</b> that promotes RegEx</p>	<ul style="list-style-type: none"> <li>• Unpacking the barriers to RegEx using behavioural insights.</li> <li>• Seeing experiments as evidence generation and risk mitigation.</li> <li>• Legitimising experimentation.</li> <li>• Strong leadership to oversee the system.</li> <li>• Having the right incentives (both tangible and intangible) to promote innovation.</li> </ul>
 <p><b>Tools</b> for effective RegEx</p>	<ul style="list-style-type: none"> <li>• Providing guidance on how to experiment effectively to staff.</li> <li>• Pre-planning the evaluation when designing regulatory experiments.</li> <li>• Regulatory pilots and sandboxes.</li> <li>• Listening and learning from a diverse range of service users and frontline staff.</li> </ul>
 <p><b>Institutions</b> that enable RegEx</p>	<ul style="list-style-type: none"> <li>• Making the most of our federal system when experimenting.</li> <li>• Creating ‘skunkworks’ institutions which are close to, but independent of, government.</li> <li>• Use of strategic innovation funds to foster experimentation.</li> </ul>



2. **Flexibility is key:** Regulation that gives greater leeway to meet underlying objectives can unlock huge economic benefits through time savings and greater convenience. There remains scope to

modernise regulations to enable digital processes. In many cases, small adjustments can add up to significant savings for individuals and businesses.

### Key insights



- Design regulations to be outcomes-based and technology-neutral where possible.
- Modernise existing regulations to enable digital processes and more flexible ways of working and living.

3. **Gathering evidence is worthwhile:** Taking the time to gather the evidence and weigh the impacts based on evidence is the best strategy to guard against poor regulation. And often, the value gained from uncovering new evidence or

community views outweigh the time and resources costs to collecting new evidence or data, which can be targeted to the significance of the regulatory proposal.

### Key insights



- Build up the evidence base for regulations.
- Assess costs and benefits of regulations, with detail proportionate to the significance of the proposal.
- Share lessons learned across regulators.

# Appendix

## List of measures and evaluation outcomes

Measure	Evaluation outcome
<p><b>Electronic meeting and voting: Strata schemes and community land associations</b></p> <p>Changes to management of strata schemes and community land associations so that:</p> <ul style="list-style-type: none"><li>• meetings can be notified via email</li><li>• all strata and community schemes allowed to vote via:<ul style="list-style-type: none"><li>– electronic means during a meeting, or</li><li>– pre-meeting electronic voting</li></ul></li><li>• affixing the seal of the owners corporation can be witnessed via audio-visual link.</li></ul>	<p><u>Net benefits: \$213.6 million over 10 years</u></p> <p>The following elements of the temporary reforms were found to have benefits if retained permanently:</p> <ul style="list-style-type: none"><li>• electronic voting during meetings to allow meetings to occur via electronic means</li><li>• meeting notifications via email</li><li>• signing and witnessing documents as an alternative to affixing the seal of the owners corporation.</li></ul> <p>Pre-meeting electronic voting was not recommended unless there was a conscious decision of owners, to appropriately balance accountability and transparency of decision-making.</p>
<p><b>Electronic meeting and voting: Incorporated associations</b></p> <p>Allowing incorporated associations to conduct meetings electronically and conduct voting by postal or electronic ballot.</p>	<p><u>Net benefits: \$236 million over 10 years</u></p> <p>The evaluation found substantial benefits from retaining the ability for incorporated associations to meet and vote electronically.</p>
<p><b>Digital execution and certification of conveyancing documents</b></p> <p>Allowing paper land dealings and certain conveyancing documents to be electronically witnessed and signed.</p>	<p><u>Net benefits: \$195 million over 10 years</u></p>
<p><b>Sale of takeaway and home delivery alcohol by licensed venues</b></p> <p>Allows licensed venues with a current liquor licence to sell takeaway liquor and home deliver liquor. Trading hour restrictions remain (i.e. midnight or 11pm on Sundays).</p>	<p><u>Net benefits: \$197 million over 10 years</u></p> <p>The evaluation demonstrated that allowing sale of takeaway and home delivery alcohol by lower risk licensed venues like restaurants and cafés, with restrictions, would deliver the highest net economic benefits of \$197 million over 10 years.</p> <p>The reform balances benefits to consumers with potential for increased harm from increased access to alcohol.</p>



Measure	Evaluation outcome
<p><b>Workers compensation – Evidence as to work capacity for second or subsequent certificates</b></p> <p>Requires second or subsequent certificate of capacity provided by an injured worker to the insurer to be in a form approved by the State Insurance Regulatory Authority (SIRA); and given by a medical practitioner, or an appropriately qualified physiotherapist or psychologist treating the worker for the injury. Previously only a General Practitioner could issue the certificate.</p>	<p><u>Net benefits: \$51.4 million over 10 years</u></p> <p>The evaluation supported retaining the measure, with a recommendation to further evaluate within five years following further uptake.</p>
<p><b>Expedited access to cleaners’ Long Service Leave Scheme funds</b></p> <p>The amendment enables workers who have left industry to access payments without having to wait the usual 20 weeks period.</p>	<p><u>Net benefits: \$0.05 million over 10 years</u></p> <p>The evaluation supported shortening the waiting period from 20 weeks to 10 weeks. This would help balance the benefits of faster access to entitlements with risk of undermining the objectives of the scheme.</p>
<p><b>Enabling digital solutions for voting in retirement villages</b></p> <p>A temporary COVID-19 change enabled the Minister to issue an order to provide exemptions to certain provisions of the Act. The Retirement Villages (COVID-19 Consent of Residents) Order 2021 exercises this power to enable an operator of a retirement village to obtain the consent of residents in a different way to in person or physical meetings.</p>	<p>Net benefits: N/A</p> <p>A full evaluation was not possible due to constraints associated with visiting retirement villages, however in line with similar measures for strata schemes and community associations it is anticipated that benefits are significant and costs minimal.</p>
<p><b>Digital interviews and questioning</b></p> <p>Allowing audio link or audio-visual link to be used to conduct interviews remotely under the:</p> <ul style="list-style-type: none"> <li>• <i>Fisheries Management Act 1994</i></li> <li>• <i>Mining Act 1992</i></li> <li>• <i>Protection of the Environment Operations Act 1997</i></li> <li>• <i>Biodiversity Conservation Act 2016</i></li> <li>• <i>Crown Land Management Act 2016</i></li> <li>• <i>Water Management Act 2000</i></li> <li>• <i>Environmental Planning and Assessment Act 1979.</i></li> </ul>	<p><u>Net benefits: \$6.5 million over 10 years.</u></p> <p>Note: provisions in the <i>Environmental Planning and Assessment Act 1979</i> are not proposed to be retained as it has not been used and is not supported by stakeholders.</p>

Measure	Evaluation outcome
<p><b>Audio-Visual Link (AVL) mental health assessments</b></p> <p>Enables an examination or observation of a person detained in a mental health facility to be carried out by a medical practitioner or accredited person via AVL, for the purposes of determining whether the person is a mentally ill person or mentally disordered person, and requires further detention.</p> <p>Assessments may be done by AVL only if the medical practitioner or accredited person is satisfied that it is necessary because of the COVID-19 pandemic and if the assessment can be carried out with sufficient skill or care by AVL.</p>	<p><u>Net benefits: between \$2.2 million and \$4 million over 10 years.</u></p>
<p><b>Long service leave flexibility</b></p> <p>Allowing an employer and a worker to agree to take long service leave in smaller blocks of no less than one day. Also allows an employer to give less than one month's notice to a worker to take their long service leave by agreement.</p>	<p><u>Net benefits: \$1.9 billion over 10 years</u></p> <p>Evaluation identified large benefits for businesses and workers from improved long service leave flexibility.</p>
<p><b>A suite of planning measures including:</b></p> <ul style="list-style-type: none"> <li>• 24-hour retail supply chain deliveries</li> <li>• 24/7 operation of supermarkets, pharmacies, waste disposal and retailers that are part of hotels and motels</li> <li>• allowing food trucks to operate on any land at any time, with landowner's consent</li> <li>• allowing restaurants and other commercial kitchens to operate as 'dark kitchens' that prepare food for delivery</li> <li>• allowing home businesses to run 24 hours per day and to employ two to five staff</li> <li>• allowing digital display of planning documents</li> <li>• allowing compulsory interviews and questioning to be conducted by telephone or video</li> <li>• conferencing</li> <li>• allowing planning bodies to hold meetings online.</li> </ul>	<p><u>Net benefits:</u> A suite of planning measures, including extended use of retail premises, food and drink premises and dark kitchens is estimated to create benefits of over \$250 million over 10 years.</p>
<p><b>Extended hours for construction work</b></p> <p>Allows weekday construction site operating hours to be extended to weekends and public holidays; this applies to both commercial developments, public infrastructure (including State Significant Development) and approved State Significant Infrastructure.</p>	<p>This measure will not be continued. The setting of construction hours on Saturday afternoons, Sundays and public holidays will be decided by councils.</p>

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52 Martin Place  
Sydney NSW 2000

W: [productivity.nsw.gov.au](https://productivity.nsw.gov.au)

GPO Box 5469  
Sydney NSW 2001