

Promoting regulatory experimentation

NSW Productivity Commission

Tue 24 Oct 2023 | 9:30am-11:30am



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.

Artwork:
Regeneration by Josie Rose



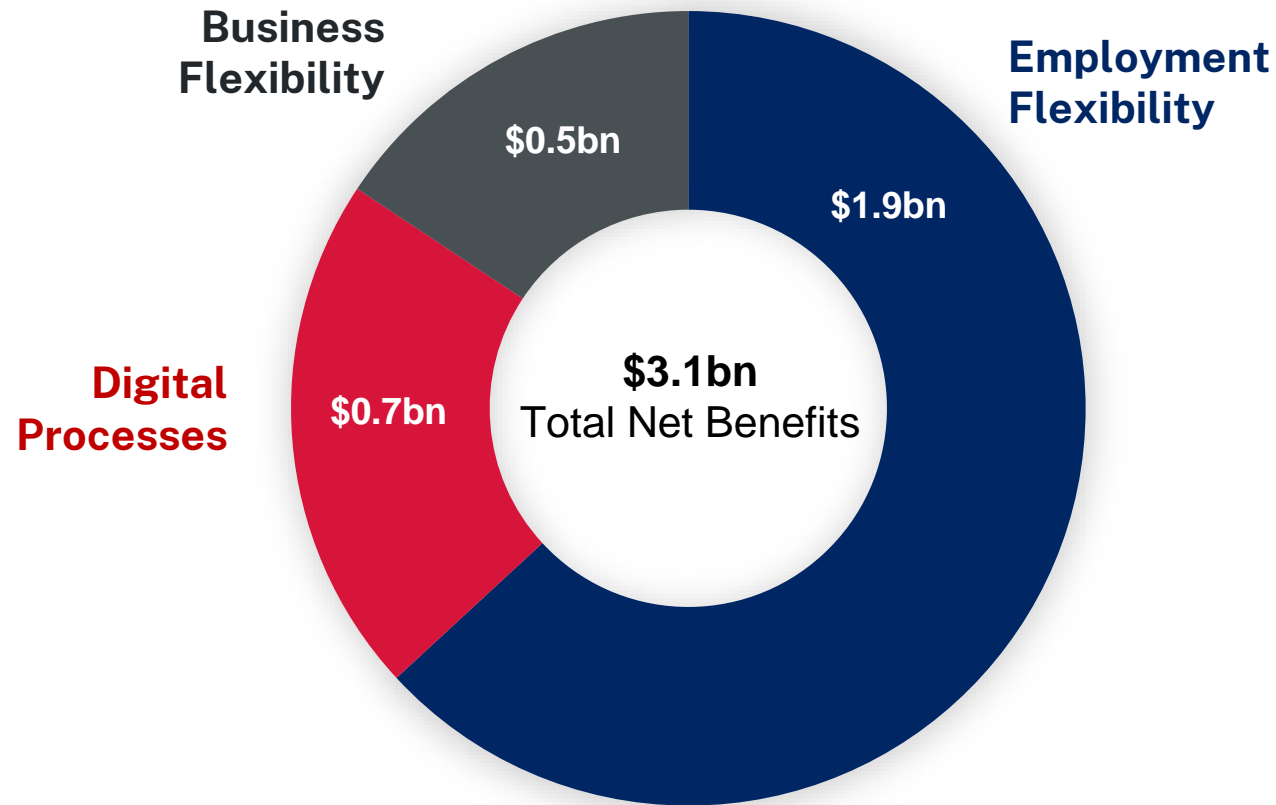
Workshop agenda

- 1** Introduction and background
- 2** Barriers and enablers of regulatory experimentation
- 3** Q&A
- 4** Discussion: which barriers are most prevalent?
- 5** Discussion: facilitating regulatory experimentation
- 6** Wrap up

Introduction and background

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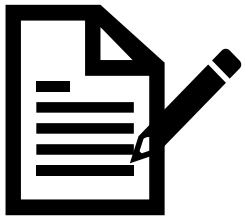
COVID spurred a series of regulatory experiments



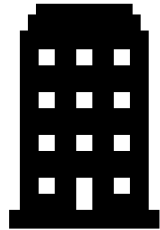
What is regulatory experimentation?

Trial of a new product, service, approach or process designed to generate evidence and inform regulatory design

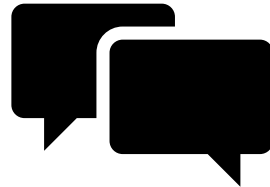
Examples:



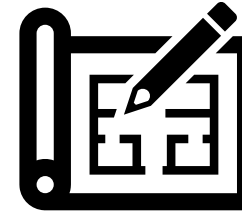
Compliance
processes



Internal
processes



Communicating
with customers



Continuous
improvement



Sandboxes

Finding what works to reach better outcomes for businesses and consumers

Maximise
public benefits

Keep pace with
technological
change

Reduce
compliance
burden

Build a toolkit
of evidence

Overcome
opposition to
regulatory
change

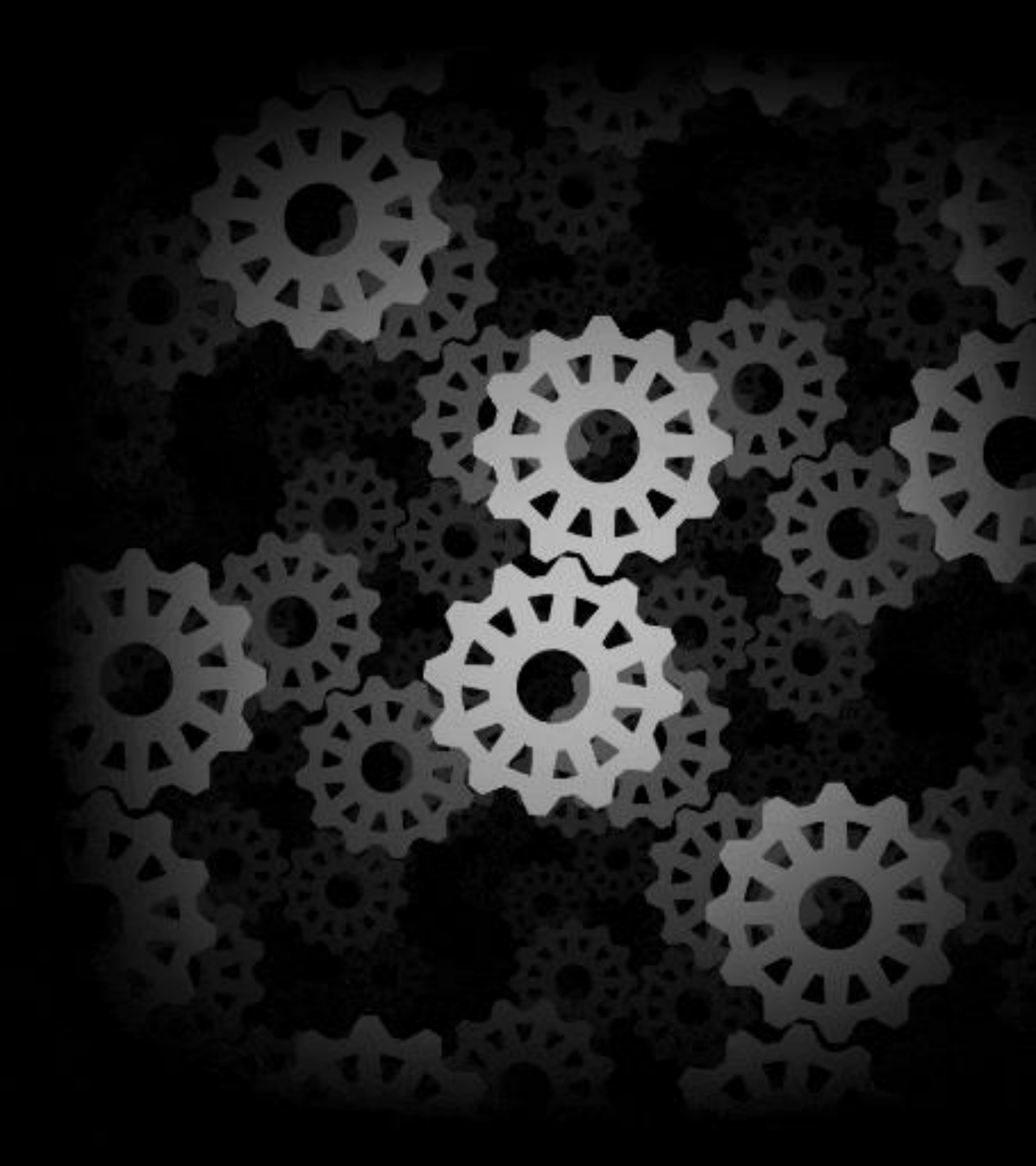
Promote
continuous
improvement

Barriers and enablers of regulatory experimentation

2

Overview

- What is Regulatory Experimentation?
- Key **barriers** to experimentation
- Key **facilitators** to experimentation
- When to do and when not to do RegEx?
- An opportunity to share ideas on how to overcome barriers





What is Regulatory Experimentation?

Examples of RegEx

Regulatory experimentation can vary substantially. It can focus on:

- **Compliance processes** (e.g. trialling new methods of ensuring compliance, such as sending reminders to regulated entities).
- **Internal processes** (e.g. changing eligibility criteria for funding industry partners).
- **Industry-consumer processes** (e.g. encouraging consumers to engage with the market).
- **Continual evaluation of implementation of large policy reforms** (e.g. tweaking the roll-out of how reforms should be communicated).

Some of these are constrained by sandboxes, others are done at scale.

NSW GOVERNMENT | Office of State Revenue
State Debt Recovery

MR JOHN CITIZEN
18 SAMPLE STREET
MCMAHONS POINT NSW 2060

Unpaid Fine

Reference Number:	123456789
You owe:	\$999.00
You must pay by:	29 MAY 2012
Payment Reference Number:	123456789
To pay now, call:	1300 130 112

For more information, go to: www.sdro.nsw.gov.au

PAY NOW

Pay your fine now or lose your licence, possessions or money from your bank account.

You have not paid your fine set by the court or responded to previous notices to pay your fine. This has already cost you up to \$65 on top of your fine.

Pay now to avoid further actions, which we can now take without further notice, including:

- canceling or suspending your driver licence or your vehicle registration and you will incur additional costs of at least \$40
- authorising seizure of your goods or property
- deducting money from your bank account or wages
- charging any land or property partly owned by you.

Each of these measures will cost you at least an additional \$65.

This is your notice under Section 59 of the *Fines Act* that an enforcement order has been made for an unpaid fine.

Your payment options are below. You can view other ways to finalise this notice over the page.

Details of the fine which you have not paid:

Court of issue:	WYONG LOCAL COURT	Date of the offence:	02 November 2011
Date fine imposed:	16 April 2012	Amount of original penalty:	\$555.00
Description of the offence:	FAIL TO APPEAR	Additional fines in this order are listed on subsequent pages.	
Location:	WYONG NSW 2259		

How to pay

Online:
Visit www.sdro.nsw.gov.au to pay by Mastercard or Visa.*

Phone:
Call 1300 130 112 to pay by Mastercard or Visa.*
*A card payment fee of 0.4% applies. This fee is not subject to GST.

BPAY:
Quote Biller Code 196788 and your Payment Reference Number 1234567890 to pay by cheque or savings account. Access BPAY via your financial institution's website or phone banking service. For more information visit www.bpay.com.au

See over the page for other payment options.

31032006+12345678900+0007500+2033+88

Why do RegEx?

There are several benefits:

1. Transition from standard compliance models into new, more effective models, without compromising regulatory outcomes.
2. Prevents the rollout of ineffective policies.
3. Builds internal capability, which means that regulatory experimentation becomes more efficient over time, and individuals gain transferable skills.



Our project methodology



Overview of our work

- 25 interviews completed with:
 - NSW interviewees
 - Non-NSW interviewees, from jurisdictions including:
 - Singapore
 - Canadian State Government
 - Canadian Federal Government
 - The UK
 - Denmark
 - The Australian Government

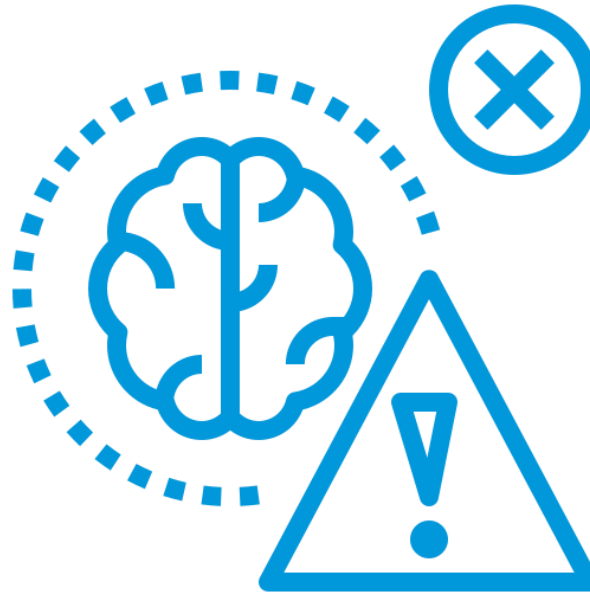


Key barriers to experimentation

Key barriers



**Resource and
logistical
constraints**



Risk aversion



Specific attitudes

Resource and logistical constraints I

Costs and resources: RegEx requires dedicated staff time and may require financial support. Funding for BAU can be a constraint, but a trigger for innovation.

Time scales: Policy outcomes may be needed quickly, but RegEx can be built into 5 year review cycles.

Lack of specialised knowledge & data: Staff and infrastructure may not be available.



“The volume of things we have to deal with is so significant that it can overwhelm people’s ability to try new things or think of different approaches.” - NSW regulator 10

“It’s not the lack of data, it’s the lack of organised, curated data, and a need to grow in maturity before we can move forward.” - NSW regulator 10

Resource and logistical constraints II

Complexity of regulatory processes: Even with institutional support, ethical approval or very prescriptive legislation can be a barrier.

Finding partners: Experiments may require collaboration with industry partners, which can prove challenging.

Stakeholder scale and diversity: Some regulatory domains have a large number of stakeholders with diverse views.



“Large providers are resourced to navigate the complex regulatory frameworks but small providers aren't” - Non-NSW regulator 12

“We deal a lot with peak groups, community organisations, and councils that expect to be able to have a formal say on reform. Doing things outside of normal processes won't always be well received by these groups.” - NSW regulator 5

Risk Aversion

Both NSW and non-NSW regulators cited risk aversion as a key barrier. This manifested in a few ways, including:

- Risk aversion **within** the organisation, particularly if something went wrong.
- Risk aversion from potential trial partners.

One interviewee highlighted that risk calculations may be inaccurate - risks are often compared to a “zero risk” situation, rather than the situation on the ground.



“ Risk perception - that's the biggest barrier ... people see a risk in changing supposedly working systems to something that is unknown.” - NSW regulator 8

“ [There is] an aversion to risk. ‘This is how we’ve always done it, don’t have funding to do this differently, why would we change it?’ ” - NSW regulator 11

Specific attitudes

Community perceptions of regulators' roles and risks:

The community may expect certain levels or types of activity and perceptions of risk may not allow for experimentation.

Fear of failure: A common concern raised was the fear of failure, and how bad results would be received.

Lack of experimental culture: Some regulators don't really consider RegEx when formulating policy.

Internal resistance: In other cases, there is active resistance to experiments. If ideology is a driver, then no amount of evidence will overcome it.



“You need to think very carefully about how you handle failures/non-results.” - Non-NSW regulator 7

“People will often talk a big game of wanting innovation, but when the time comes, individuals get nervous about being the first ones.” - NSW regulator 3

“Sometimes the barrier to change is: 'this is the way we do things' ” - NSW regulator 5

Key enablers and drivers of experimentation


THE
BEHAVIOURAL
INSIGHTS
TEAM


NSW
GOVERNMENT

Key enablers



Institutional support



Building internal capacity



Framing



Collaboration



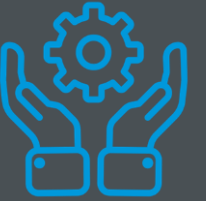
Clear rationales

Institutional support

One of the strongest factors cited by successful experimenters was strong institutional support.

Support came from senior leadership, which helped create a change in culture, advocate for resourcing and overcome risk aversion.

It can also come through explicit commitments to experimentation in strategic plans or in public statements by ministers. This gives a mandate for experimentation.



“The ministers endorsement ensures we have engagement and commitment ... In general it’s given us greater confidence to implement this.” - NSW regulator 5

“Having [experimentation] publicly stated in our strategic plan helps senior leaders overcome risk” - Non-NSW regulator 8

Building internal capacity

Developing an internal team: Some experimenters have dedicated teams behavioural insights teams, or evaluation and experimentation teams.

Bringing in outside expertise: Others started by leaning on externals, partly to build expertise or gain credibility.

Starting small: Small, contained experiments can build momentum and acceptance.

Using online trials where needed: These represent a lower cost and more rapid option than field trials. NSW regulators could consider online experimentation as a low-risk way of starting the process of experimentation.



“The first experiment and the hundredth experiment will be very different. The first will be more expensive, longer, and worse. But it takes time to build up this capacity...” - Non-NSW regulator 7

“We do have some research ability within the department, but we don’t quite have the manpower... To have credibility with both industry and [stakeholders], it needs to be an established academic institution..” - NSW regulator 3

“Online trials are more agile and faster, but they have their limitations.” - Non-NSW regulator 6

Communication and framing

Focus on building awareness: Having a clear internal and external communication strategy was critical.

Consider how risks are framed: Some organisations thought that the terms “experimentation” carried connotations of high cost / risk. Highlighting that RegEx can explicitly test potential risks is useful, as is embracing the notion of innovation. Consider ‘what are the costs of not doing this?’



“At the start we did a lot of advocacy... now we have teams coming to us.” - Non-NSW regulator 5

“Everybody is interested and passionate... it’s about which changes will make a difference - attaching to that passion, that’s how you can convince others.” - NSW regulator 11

“Research is already valued within the organisation.” - Non-NSW regulator 8

Collaboration

Working with others breaks down barriers: Partnership with other agencies can overcome the barrier of wading through complexities of regulatory change necessary for experimentation across multiple agencies' domains.

Co-designing boundaries for experimentation with industry and stakeholders builds influence and buy-in.

Transparency aids diffusion: Partnership from the start allows lessons to be diffused much faster and more effectively. Even if the experiments fail.



“Teams see each other doing regulatory experimentation and say 'Oh I didn't know you could do that!'” - NSW regulator 13

“We took the best things out of the regulatory framework in other jurisdictions.” - NSW regulator 13

Clear rationale for experimentation

A clear objective is critical: It helps stakeholders see the value of the project and justify an experiment based on its need. Understanding how an experiment will aid the organisation's objective is also critical.

Regulatory sandboxing can provide clarity: Establishing a regulatory sandbox can help to clearly define the scope of what experimentation will cover. It allows regulators to set boundaries around any experimentation.



“Having clear scope of what is allowed in the sandbox is an enabler for experimentation.” - NSW regulator 2

“My advice to other organisations is to have a clear objective” - Non-NSW regulator 8

When to experiment - and when not to

Areas **more** suitable for experimentation

The following features as important for experimentation:

- Where there is uncertainty about outcomes.
- Where outcomes can be measured fairly quickly.
- One-off behaviours or isolated behaviours.
- Where there is a low risk of **tragic** outcomes in the event that the experiment fails.

“When there is more uncertainty, is when it's more valuable... Experimentation is not needed when you already know what you are likely to find” - Non-NSW regulator 8

“Areas where there is not too long of a runway to gather evidence - they are easier to sell to governments.” - NSW regulator 9

Areas **less** suitable for experimentation

These factors were identified can make regulatory experimentation less suitable:

- Where outcomes are hard to define and measure.
- Where there is a risk of tragic outcomes (e.g., in areas concerned with safety).
- Where behaviours are complex, multi-factor, or take a long time to influence and manifest.
- Where the idea has already been decided, and all that is being decided is implementation.

“We made it explicit that we would never waive any rules that negatively impact consumers - e.g. we would never take away hardship protections” - Non-NSW regulator 12

“Certain areas are definitely more suitable for experiments. It's very hard to experiment with property rights, because you can't take something away from somebody.” - NSW regulator 5

Q&A

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Discussion: which barriers
are most prevalent?

4

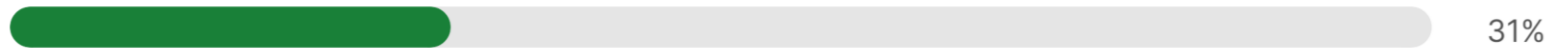
Which best reflects your experience of regulatory experimentation (RegEx)?

Multiple Choice Poll  16 votes  16 participants

Currently doing RegEx - 5 votes



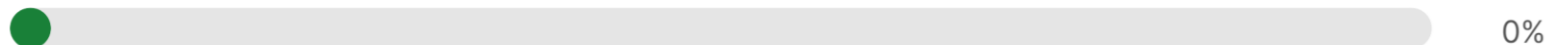
Want to do RegEx - 5 votes



Interested and want to know more - 6 votes



Not interested - 0 votes



Discussion: facilitating regulatory experimentation

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How have other organisations overcome barriers?



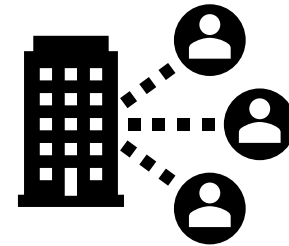
Institutional
support



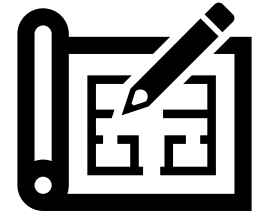
Build internal
capacity



Positive framing
and attitudes



Collaboration



Clear rationale for
experimentation

Wrap up

6

Thank you for
joining us

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