



Regulating for NSW's Future

NSW Treasury
July 2020



About NSW Treasury

NSW Treasury^a leads the economic, jobs and investment conversation across New South Wales (NSW). From its position at the centre of government, Treasury drives the economic development strategy to guide the State's growth for the benefit of the people who live, work and study in NSW. Its work includes boosting trade, investment and tourism, developing industry, supporting jobs growth, improving service delivery to the community and increasing living standards, now and into the future.

Regulation plays a critical role in the economy, influencing how resources are allocated and keeping citizens safe. Given the economic impact, Treasury is focused on ensuring that regulation can achieve those goals and remain relevant and effective in the face of constantly changing technologies, business practices and consumer preferences. Treasury promotes regulatory and productivity reform and administers the NSW Guide to Better Regulation to ensure regulations are developed based on strong evidence and in consultation with all affected stakeholders to deliver the greatest net benefit to the NSW community as a whole.

RegExplorer™

About the RegExplorer tool

This publication has drawn on data and insights from Deloitte's RegExplorer^b, an augmented intelligence tool. It provides an analytic view on public information sourced from www.legislation.nsw.gov.au. It is designed to work with subject matter experts to assist them with fast access to analysis such as searching, clustering and connecting so they can focus on high value activities such as interpretation, judgement and decision making. References to RegExplorer data throughout this report were extracted from the tool in May 2020.

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^a For more information about NSW Treasury, please visit www.treasury.nsw.gov.au.

^b For more information about the RegExplorer tool, please visit www.regulatoryexplorer.com.

For more information about Deloitte, please visit www2.deloitte.com/au.

Secretary's Foreword

I am pleased to release this report as part of Treasury's series of Research and Discussion Papers. The NSW Productivity Commission will also soon release a Green Paper with recommendations on reforms that can improve productivity in the economy, including a number of regulatory reforms.

This report kickstarts a conversation about ways to improve NSW regulation, drawing on data and insights using artificial intelligence to identify potential areas of reform.

The COVID-19 pandemic has demonstrated how rapidly circumstances can change. It has presented significant and unprecedented challenges to people, organisations and markets globally. Governments had to quickly respond with more flexible regulation to address the health, social and economic impacts of the pandemic.

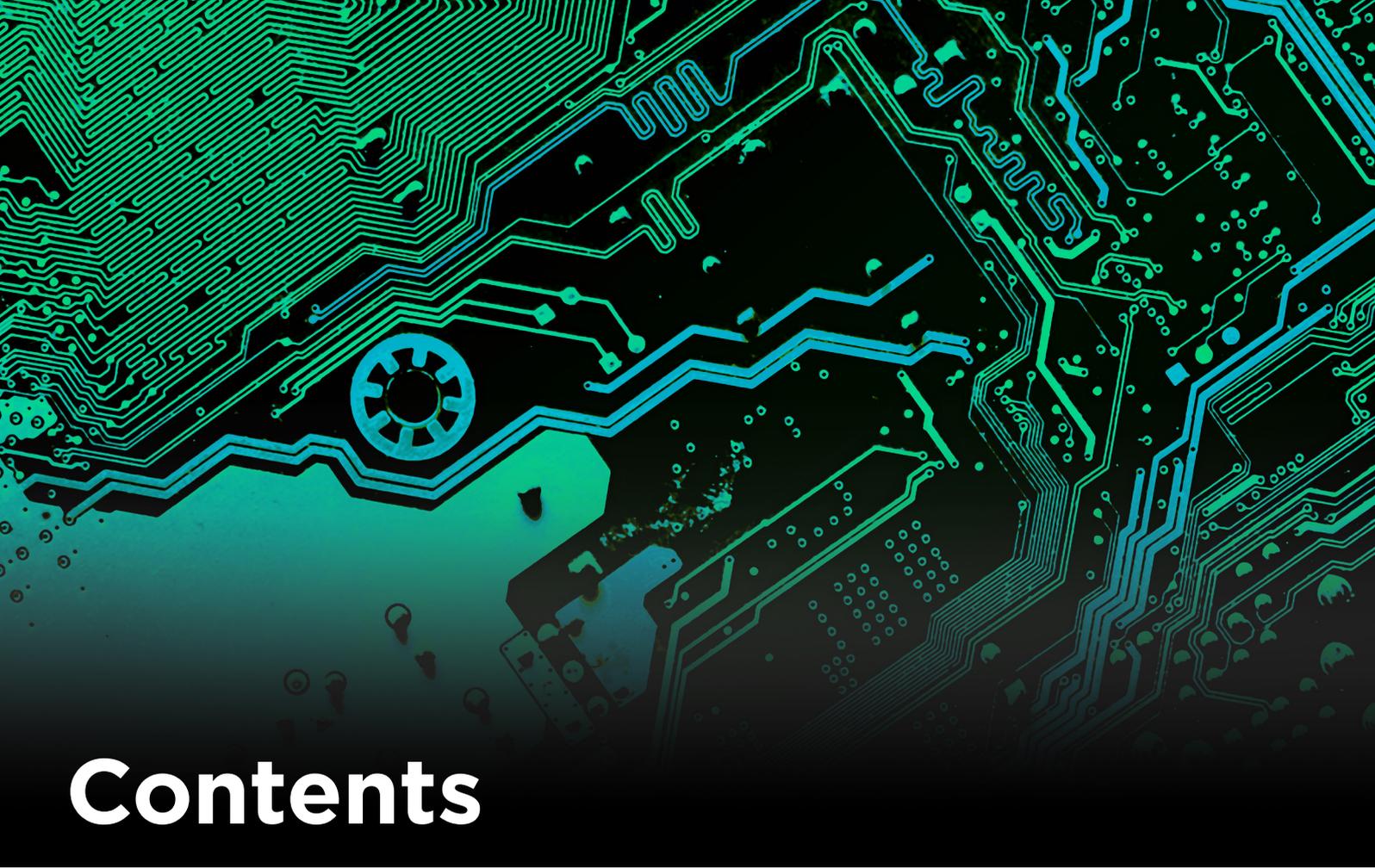
The NSW Government responded with a raft of temporary regulatory changes to protect citizens, while allowing businesses to flexibly deliver their products and services and enabling ongoing legal and administration requirements to be met through digital solutions.

COVID-19 could act as a catalyst for broader regulatory reform that will support businesses to adapt to changed business patterns and consumer preferences and facilitate economic recovery. Treasury's Strategy and Delivery Unit is currently leading the way to ensure the state is well equipped in its response, recovery and reform efforts.

Beyond the COVID-19 pandemic, we must also consider the future of regulation in this age of continually changing social, technological and economic circumstances. This report identifies opportunities for New South Wales to future-proof our regulation and keep it flexible, fit-for-purpose and responsive in times of change.



Michael Pratt AM
Secretary
NSW Treasury



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Executive Summary

- Compliance costs New South Wales between \$11 and \$87 billion every year.
- Improving our regulatory frameworks could yield significant economic benefits for the Government, businesses and the community more broadly.
- Technologies such as artificial intelligence and text-analysis software can help regulators target opportunities for reform.

Underpinning the way we live today is a complex regulatory framework. From doing business to how we are educated, from where we live to how we play: modern society is a reflection of the rules that govern our behaviour.

Laws sit at the centre of our regulatory framework. Legislation¹ is just one form of regulation, reflecting direct government intervention. There's also:

- self-regulation, such as industry participants entering into voluntary codes of conduct
- quasi-regulation, where governments incentivise businesses to comply
- co-regulation, where industry develops its own arrangements, which are subsequently underpinned by government legislation.

Striking a balance between the costs and benefits of regulation isn't easy. While compliance can be burdensome, it is also critical to protecting public interest. On the other hand, overly complex or onerous regulation can impede innovation and slow productivity. **Estimates of the annual cost of compliance in New South Wales range between \$11 and \$87 billion per annum.**² At the top end, this reflects almost 14 per cent of State Gross Product: a massive cost borne by NSW residents.³

The challenges faced by regulators today are exacerbated by the rapid pace of technological change. New innovations can disrupt markets overnight, putting regulators on the back foot. Regulators are constantly amending and adapting our regulations; in New South Wales a piece of regulation is amended on average 104 times.⁴

This report explores the regulatory framework in New South Wales, the challenges regulators face in ensuring regulation is fit-for-purpose, and identifies opportunities for the development of a roadmap for regulatory reform to enhance the productivity of our State. It also shows how leveraging advanced analytics and artificial intelligence (AI) technology can help regulators target the greatest opportunities for reform.

Even small improvements to our regulatory framework have the potential to drive significant economic benefits. A saving of just 5 per cent of compliance costs in New South Wales could result in a net benefit between \$0.6 billion and \$4 billion.⁵ More broadly, a favourable regulatory environment has been shown to lead to greater foreign direct investment,⁶ boost productivity⁷ and increase our innovation capabilities.⁸

Improving the New South Wales regulatory framework will require addressing a range of features across our regulatory system. Yet, there's an opportunity to speed up the process. In the same way that AI and advanced analytics are revolutionising sectors like agriculture by helping to optimise yields, they can also be used to help fast-track the process of regulatory reform. Being able to identify where regulation is restrictive or especially burdensome helps regulators target laws that are not fit-for-purpose. This, in turn, accelerates regulatory improvements, driving long-term benefits for the NSW Government, businesses and residents more broadly.

1 NSW Regulatory Framework

- Reducing the compliance burden could bring significant benefits for New South Wales. A 5 per cent reduction could cover a quarter of NSW Government spending on education in 2018-19.
- The volume of regulation in NSW is increasing. Between 2010-19, two times as many sections of regulation were created than in the preceding decade.
- AI can identify opportunities to reduce regulatory burden by removing unnecessary compliance functions and ensuring regulation reflects contemporary ways of working.

Governments around the world have recognised a broadly consistent set of best practice principles for regulatory policy. These principles help guide regulatory decisions, ensuring regulation is fit-for-purpose.

The increase in volume of legislation in our State (as illustrated in the Figure overleaf) is not unique to New South Wales, this is consistent with trends seen in Canada and the EU.⁹ While increased volume of regulation can sometimes be associated with more compliance this isn't always the case. Regulation is often needed to promote public safety and enable new markets. Changing consumer expectations has also contributed to this global increase in regulation. Since the 1980s we have seen new markets, products and services emerge. Regulation has helped provide a framework to enable these markets to grow, to implement minimum standards and to create a level playing field for participants by avoiding market power, corruption and insider trading.

Regulators have also legislated to provide society with additional protections by enforcing rights such as privacy, legislating to protect the environment, protecting employees from discrimination and customers from new threats such as cyber security.

Governments across the world have also introduced regulations to respond to rapid technological advancement. For example, the use of drones has moved beyond traditional military applications and expanded into a broad range of commercial settings in recent years, such as, agriculture, mining and construction.¹⁰ This resulted in the introduction of new regulations to address risks arising from the civil and commercial use of drones, and thereby increasing the overall volume of regulations.

Australia is committed to best practice regulation. Australia is a signatory to the OECD's *Best Practice Principles* and has committed to implement best practice through the Council of Australian Governments (COAG) *Regulatory Reform Plan*. This forms the basis for regulatory policy frameworks for all jurisdictions across Australia.

New South Wales is no exception. The NSW *Guide to Better Regulation*, refreshed in 2019, builds on its COAG commitment and underpins all new and amending regulatory proposals in New South Wales. Proposals need to establish the need for government action, ensuring such action reflects NSW's *Better Regulation Principles*, including the requirements for evidence-based regulatory development based on community engagement and assessment of the costs and benefits of different policy options.

Yet, despite best practice principles becoming increasingly central to our regulatory ecosystem, opportunities still exist to improve the regulatory landscape. Ensuring an efficient and effective regulatory system is key to unleashing a range of benefits for businesses and residents. **The benefits of a 5 per cent reduction in compliance costs could cover a quarter of NSW's spending on education in 2018-19.**¹¹

But it's not just up to Government. Part of the cost of compliance comes from rules self-imposed by businesses to manage uncertainty and risk. In fact, middle and senior managers spend on average almost nine hours a week complying with self-imposed rules, while other staff spend an average of more than six hours.¹²

Harnessing data to drive regulatory reform

Many of us already engage with artificial intelligence and machine learning technologies every day. From facial recognition software, to optimising travel to work, these technologies are no longer futuristic.

Yet, to date, their application in the context of regulatory reform has been limited. This is despite the significant efficiencies they could facilitate, by helping to target opportunities for meaningful reform.

RegExplorer is a new tool for interacting with regulatory data. It uses AI and text-analysis software to help regulators better target where legislation is not fit-for-purpose. The tool can help us to understand the current regulatory climate by sifting through vast quantities of legislation and identifying where opportunities for regulatory reform lie. It can for example identify the age and number of edits of each section of regulation. While age or number of edits is not a proxy for irrelevance, identifying these sections can present an opportunity for review. For example, 7 per cent or 6,139 sections have not been edited since they were created, 4 per cent or 3,893 sections have only been edited once and 5 per cent or 4,179 sections have not been edited for ten years. Regulators could examine whether these sections are still having the intended effect.

Understanding the NSW regulatory framework

88,704

The number of sections in NSW regulation

22 years

The average age of a piece of regulation in NSW

104

The average number of times a piece of regulation is edited in NSW

7%

or **6,139** sections have not been edited since they were created

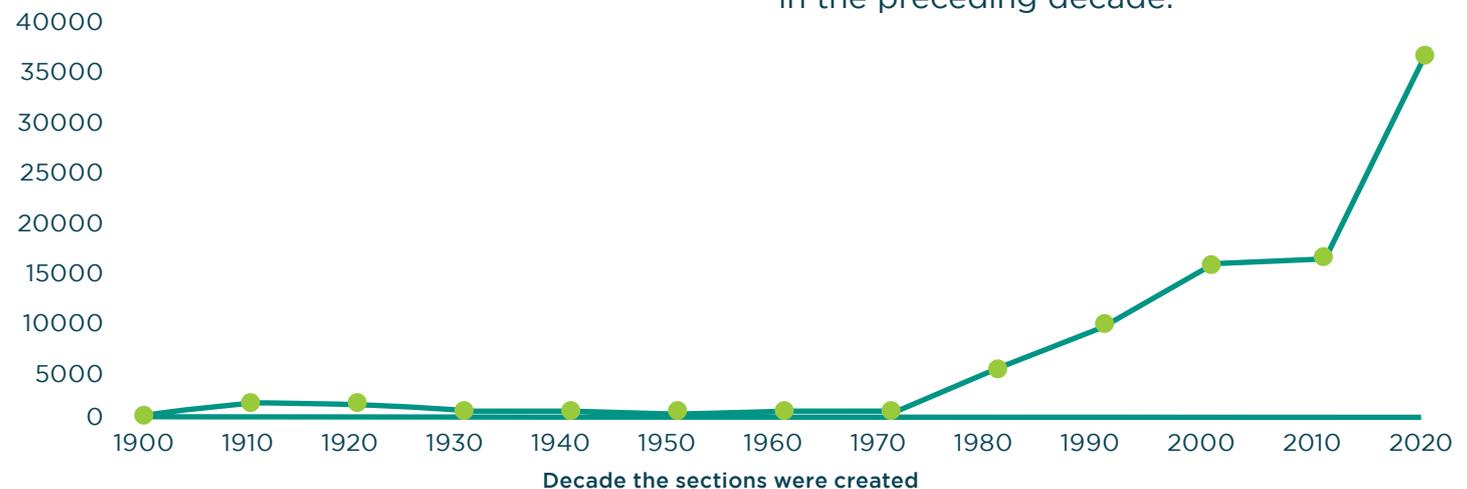
4%

or **3,893** sections have only been edited once

5%

or **4,179** sections have not been edited for ten years

The number of sections in NSW regulation



Source: RegExplorer (May 2020)

AI can also be used to help identify sections of regulation that contain language that could be considered outdated or onerous. It can highlight sections that contain prescriptive language, require burdensome activities for compliance or reference technologies that we no longer use. Regulators can then review these sections and assess if they should be modernised, more principles-based or less onerous. They can also look for opportunities to streamline processes and move away from paper-based compliance by leveraging digital technologies.

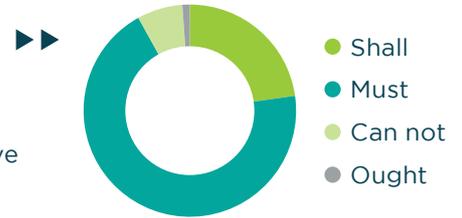
Where do the opportunities to reduce regulatory burden lie?

Remove unnecessary compliance functions

Reducing the level of requirements makes it easier for businesses to comply, thus increasing productivity. Outcomes-focused legislation gives businesses the flexibility to comply on their own terms. A step towards outcome-focused regulation is to review sections of regulations that may be overly prescriptive.

37%

of all sections in NSW regulation contain prescriptive language.

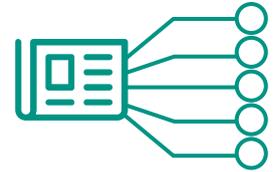


Contemporary ways of working

Ensuring regulation reflects the way we live and work today helps keep regulation relevant and fit-for-purpose. Outdated legislation can slow businesses down by imposing unnecessary or out-of-date requirements. For example, there are 350 references to facsimile and 27 to telegram in sections in NSW regulation, despite these technologies generally being considered obsolete.

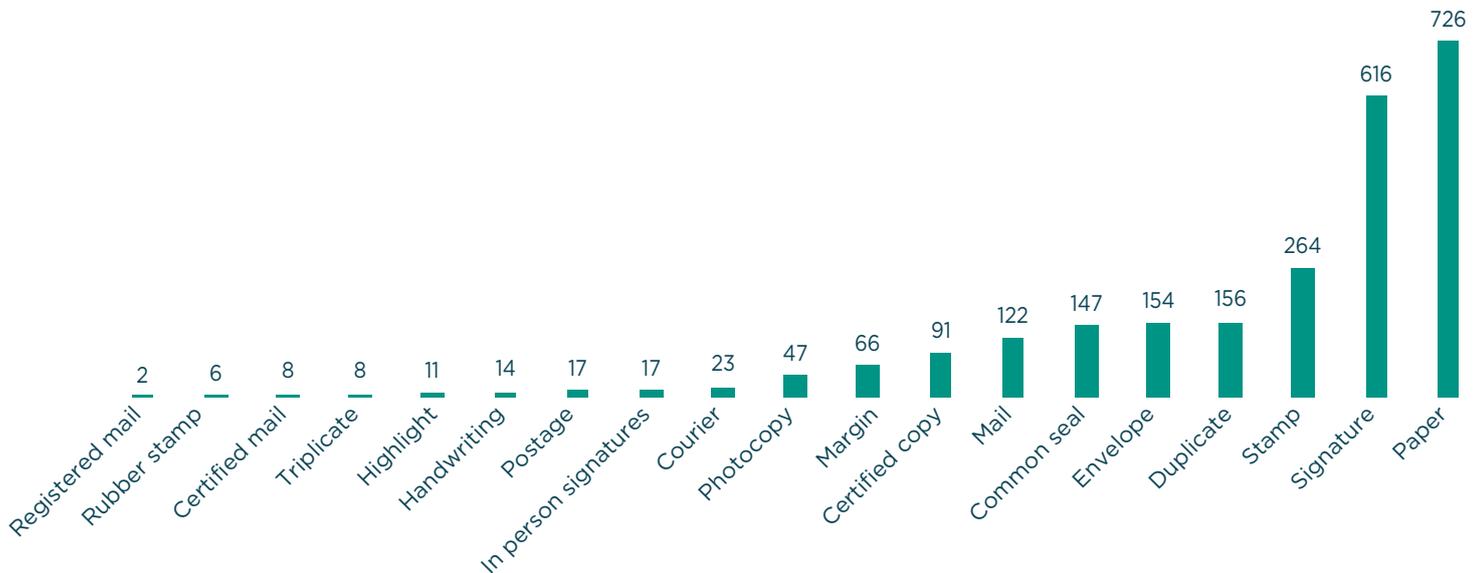
81

sections in NSW regulation that require a notice to be published in a newspaper.



Rethinking where compliance could be made easier could help to reduce the regulatory load on businesses and consumers, as well as lightening the administrative burden for regulators. This can involve moving away from paper-based activities such as certifying or posting physical documents.

NUMBER OF SECTIONS OF NSW LEGISLATION THAT REFERENCE PAPER-BASED COMPLIANCE ACTIVITIES:



NUMBER OF SECTIONS IN NSW LEGISLATION REFERENCING OUTDATED REQUIREMENTS:



2 Changing the landscape

- Outcomes-focused legislation can provide flexibility for regulators to accommodate emerging technologies and enable innovation.
- The COVID-19 response has increased the digitalisation of the way we work in New South Wales. Now is the time to examine whether our regulation reflects contemporary ways of living and doing business.
- Many businesses in New South Wales must comply with multiple regulations across Ministries. Reducing regulatory overlap can make it easier to do business in New South Wales.

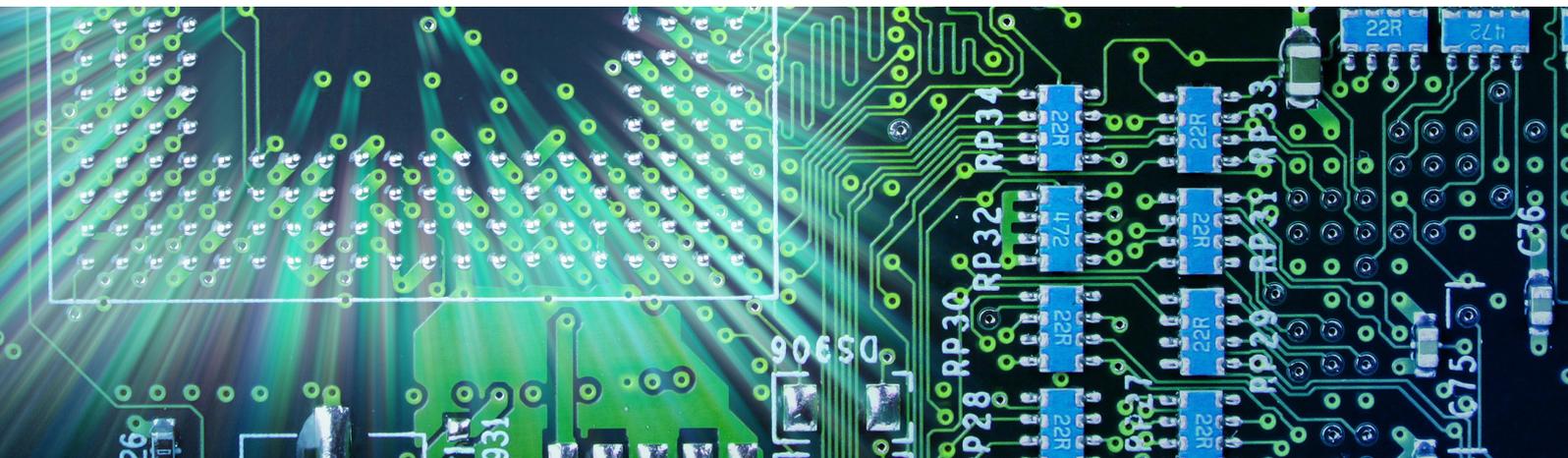
2.1 Outcomes-focused, technology-neutral regulation

In the current climate of disruption and uncertainty, new situations often arise that were not anticipated at the time regulations were drafted. Emerging technologies such as AI, blockchain and autonomous vehicles are rapidly bringing new products and services to markets and disrupting traditional business models. This leads to instances where regulators must play a game of catch-up; often called the ‘pacing problem’.

Traditional regulatory models generally take a top-down approach to designing regulation, often prescribing specific rules on how a regulated entity must act rather than looking at the outcomes they should achieve. A prescriptive, rules-based regulation is appropriate under certain circumstances to provide better clarity, certainty and protection for the public health and safety. However, this approach to regulating risk is often challenged by continually changing social, technological and economic circumstances.

In these instances, prescriptive regulation may not be able to keep up with the pace of technological advancements. To accommodate new technologies or business models, regulators may be forced to modify the rules and regulations incrementally, often impeding the speed and benefits of innovation.

Regulation that is outcomes-focused and technology neutral provides flexibility for regulators to frame regulation in terms of outcomes, not just prescriptive obligations around processes. This can allow businesses to freely adopt whatever technology is most appropriate to achieve the outcomes. Outcome-based regulation can provide the flexibility for businesses to innovate, adopt and realise the potential of emerging technologies, without having to seek permission from regulators.



Case study: Automated vehicles driving regulatory change

Connected and automated vehicles will revolutionise the way we move, with the potential to create a smarter future for passenger mobility, freight services and will change the way we design our roads and cities. The technology creates opportunities for safer travel, more transport choices, less congestion, decreased use of public space for parking and increased productivity (see Figure 1). Estimates suggest that by 2050, the driverless vehicle market in Australia could produce benefits of \$92 billion.¹³ Securing even a small portion of this would create significant economic benefits at a time when Australia needs it most.

While public safety must be protected, ensuring regulation remains relevant is critical to realising the potential of driverless technology. Regulation that seeks to eliminate all risk is inflexible, and can have unintended consequences, often unnecessarily obstructing technologies that could save lives. Inflexible regulation can impede innovation, increase business costs and weigh on productivity growth and while any new technology often introduces new risks, these should be balanced against the risks that already exist. Tough safety measures on early automobiles, for example, delayed advances in automobile technology by decades.¹⁴ Yet, getting the regulatory balance right to protect citizens in the context of rapid technological change and large-scale disruption poses significant challenges.

How can Government ensure underpinning regulatory frameworks prioritise safety, while simultaneously allowing innovation and businesses to flourish?

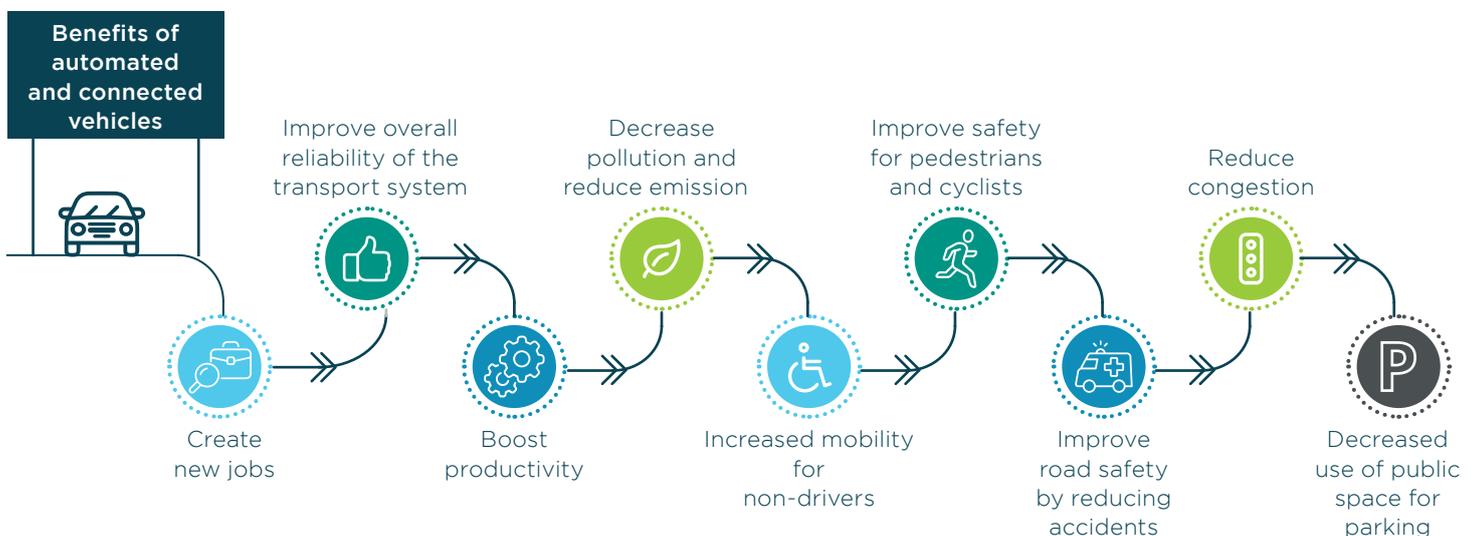
As noted above, traditional legislation can be prescriptive, setting out specific rules that must be adhered to, rather than looking at the outcomes they might achieve. In contrast, outcome-based regulation focuses on the desired outcome, without specifying the underlying inputs or process.

An example of this approach already having been taken in New South Wales is the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*. The desired outcomes of this Act were safety, value and choice. The Act is based on a risk based regulatory scheme that places duties on industry participants to ensure the safety of passengers.

Under the new point-to-point transport laws, many prescriptive rules that previously applied, such as specifying the size and minimum age of taxis, have been removed. Service providers must still meet important safety and service outcomes, but they have greater flexibility in how they undertake compliance activities to achieve these regulatory outcomes. For instance, any car may be used in booked point-to-point services, so long as it is roadworthy.

Unlike the previous rules, which only contemplated services with a traditional fleet of cars and drivers, the new laws accommodate a range of innovative business models and technologies, such as ridesharing. Data indicates the reduction in regulatory cost for industry from these reforms is over \$30 million per year, in addition to enabling greater choice and value for consumers.¹⁵

FIGURE 1: BENEFITS OF AUTOMATED AND CONNECTED VEHICLES



In the case of connected and automated vehicles, an outcome-based approach would ensure the preparedness of our legislation to accommodate change and help governments to achieve common goals such as the reduction of road crashes and better management of congestion. It would enable regulators to establish technology-agnostic legislation that accommodates safe use of driverless technology, while still acknowledging the technological uncertainties that exist today. And, it would future-proof our vehicle legislation to be robust to future innovations.

Moving to an outcome-based regulatory framework for automated vehicles is no easy task. It would require significant updates to the existing legislative framework, which is currently centred on the driver and their control of the vehicle. An existing road rule prescribes that “a passenger in or on a vehicle must not interfere with the drivers’ control of the vehicle, or obstruct the drivers’ view of the road or traffic¹⁶”. How should this be adapted for the use of automated vehicles to achieve a safety-based outcome?

While an outcome-based approach is beneficial in many circumstances, there are also risks. The less prescriptive legislation is, the more ambiguous it can be. An example of this would be regulation that required drivers to travel at safe speeds. Interpreting what is ‘safe’ may differ according to the driver, their driving experience and their judgement of the weather and road conditions. This may lead to regulators not knowing whether they’re enforcing compliance correctly, and parties may inadvertently break the law.

Yet, if done correctly, the benefits of an outcomes-based approach to regulation could be significant; helping to position Australia as a leader in connected and automated vehicles and driving future innovations and productivity improvements. Using new regulatory tools to help diagnose the problem, we can implement solutions faster than ever before.

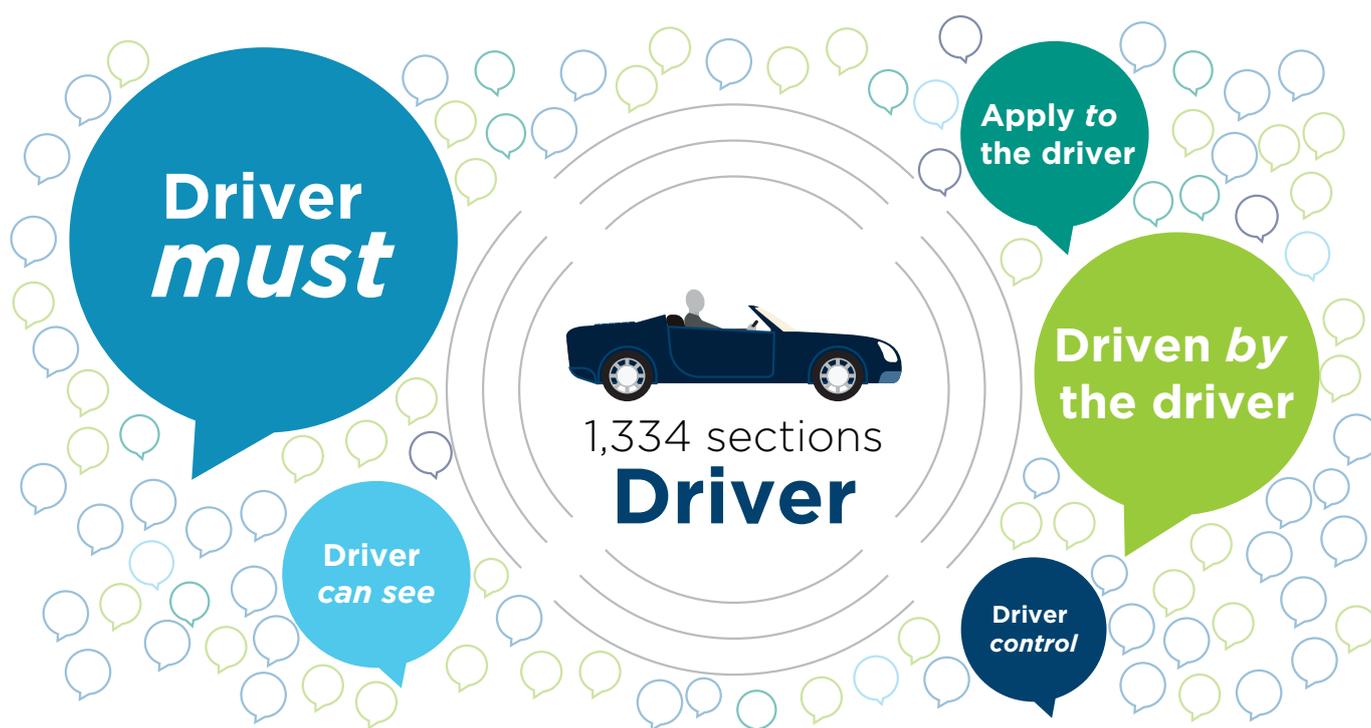
RegExplorer deep dive: Using AI to overcome regulatory challenges

Using advanced analytics and AI technology, Deloitte’s RegExplorer tool analysed how current driving regulations in New South Wales could be reviewed to accommodate driverless technology.

There are 1,334 sections of NSW regulation that reference “driver” and 1,001 sections that reference “passenger” spread across over 16 ministries, indicating current legislation focuses heavily on concepts that will be revolutionised by autonomous vehicles (see Figure below).¹⁷ Further, over 18 per cent of the sections relating to driver detail what a driver “must” do.¹⁸ This suggests current legislation is primarily prescriptive in nature.

Current legislation is not technology neutral. NSW law has multiple references to mobile phone use when driving, yet no reference to use of smartwatches. It’s unclear whether existing definitions of devices such as drivers’ aids or visual display units are flexible enough to capture all technologies to support driver safety. Further, it is unclear whether existing legal definitions will be able to accommodate future driver assist technology, which are not yet in market.

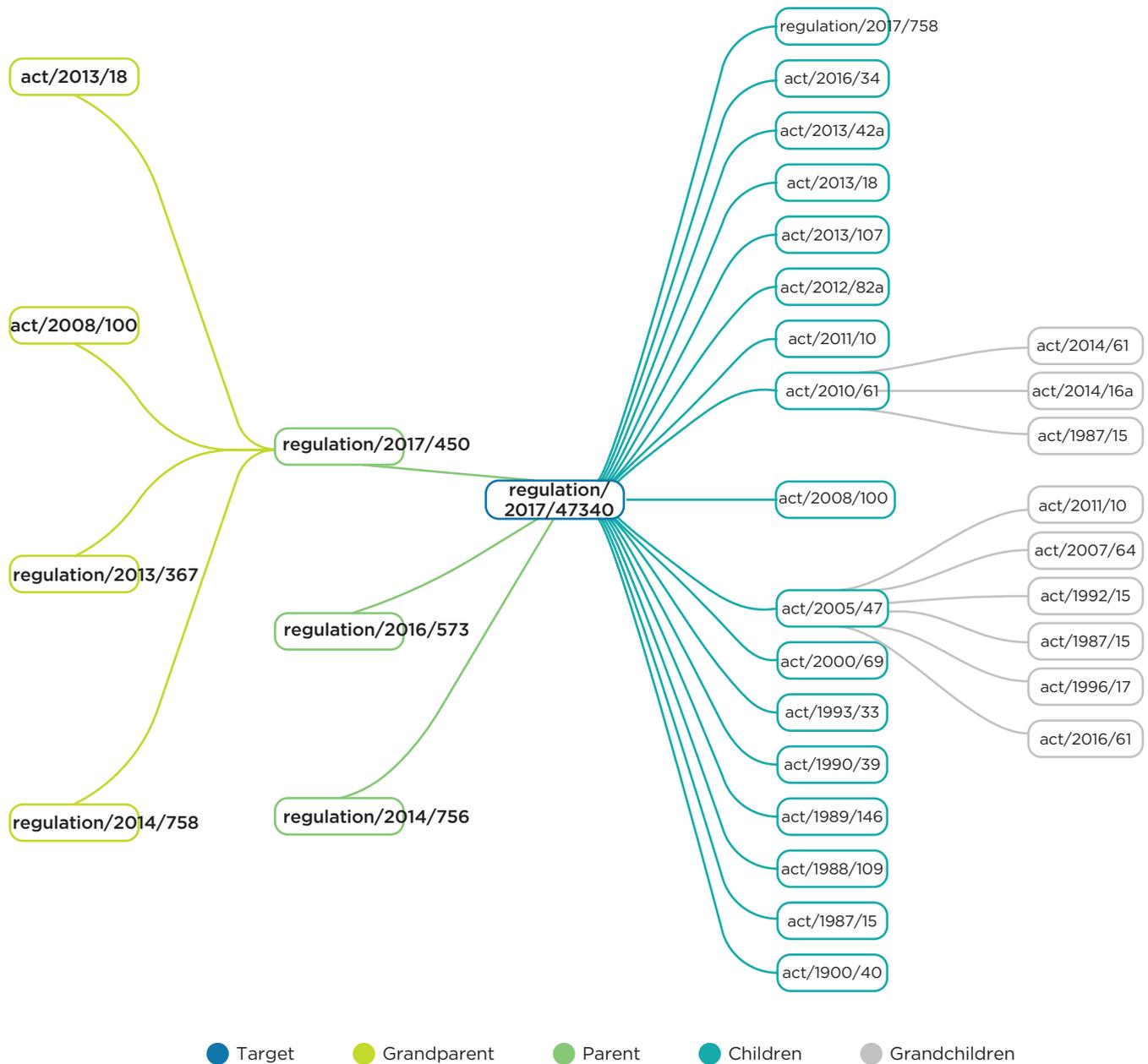
FIGURE 2: SECTIONS REFERENCING DRIVER-RELATED WORDS IN NSW REGULATION



Changing one regulation can impact other regulations across different ministries. Herein lies a challenge for any regulator – how to amend one piece of regulation ensuring that it does not conflict with other existing regulations? Searching for the upstream and downstream relationships between Acts can be a time consuming task for regulators and lawyers, distracting time and resources away from the focus of reform. AI technology can be used in these instances to assist regulators to rapidly identify and analyse the impact of any changes required to existing regulations to accommodate the move towards driverless vehicles.

The figure below shows an extract from the regulatory eco-system of the *Passenger Transport (General) Regulation 2017*. It shows that there are 489 citations within the eco-system of this Act, this includes Acts cited by and cited in the *Passenger Transport (General) Regulation 2017 Act* (the Target regulation).¹⁹ The graph illustrates the upstream regulations, the regulations that the Target cites shown as the Parent and the Grandparent regulations below. It also shows the downstream regulations, the regulations that cite the Target, the Children and Grandchildren.

FIGURE 3: AN EXTRACT OF THE REGULATORY ECO-SYSTEM OF THE PASSENGER TRANSPORT (GENERAL) REGULATION 2017



Source: RegExplorer (May 2020).

Note: For visualisation purposes not all Grandchildren are illustrated in the above.

2.2 A modern, fit-for-purpose, regulatory framework, capable of responding to the changing needs of the community

The NSW Government has been leading the way with its digital transformation and customer service improvements.

The NSW Government implemented various reforms to modernise outdated compliance regulatory requirements and provided digital solutions to improve the end-user experience of regulation. The renewal of occupational licences, for example, can now be performed online through the Service NSW website, instead of submitting paper-based forms in person. Another example is how the Digital Driver Licence Scheme has made it easier for NSW citizens to carry their licence, update licence details in real time (e.g. address) and enable digital identity verification.

Modernising compliance, administrative and legal activities can provide significant cost savings for individuals and businesses. On the other hand, outdated regulations that do not take into account recent changes in technology and business practices can impose unnecessary burden, detract from business productivity and discourage growth. Some examples of outdated and burdensome obligations include those involving hard copy documents and other in-person or physical presence requirements for regulatory compliance, reporting and legal formalities. For example, there are 156 sections in NSW legislation that reference 'duplicate' and 76 sections that include the word 'fax'.²⁰

There is a case for removing or modernising outdated regulatory requirements under NSW legislation and regulations. This will ensure that the NSW regulatory framework remains fit-for-purpose, flexible and responsive to the changing needs of the community. The following case study shows how the NSW Government has responded to the extraordinary and rapidly changing circumstances during the COVID-19 pandemic.

Case study: COVID-19, a catalyst for regulatory reform

In times of crisis, regulators need to be able to make decisions and implement change quickly. Rapidly implementing public health regulations around social distancing, for example, has played a critical role in slowing the spread of COVID-19 in Australia. In fact, in 2020 alone, there have been 40 changes to NSW legislation in response to the pandemic.²¹

Yet a responsive regulatory framework isn't only important during times of crisis. Regularly updating our legislative frameworks is good for business and the economy. Outdated or prescriptive legislation can make compliance difficult, increasing the burden. In contrast, a strong regulatory environment can enable business efficiencies and boost productivity. It has even been shown to play a role in organisations' foreign investment decisions.²²

AI and advanced analytics can be leveraged to help identify overly burdensome or outdated regulations.

Using the RegExplorer tool, we identified that there are 394 sections referencing newspaper with 81 sections requiring individuals to publish notices in newspapers in order to comply with regulations.²³ This is despite research showing 'newspaper' readership has declined dramatically in recent years, with only 31 per cent of Australians nominating traditional print newspapers as a main source of news, compared to 66 per cent for TV.²⁴ Improving regulations such as these could offer significant economic benefits for Government and businesses more broadly.

The opportunity now is to consider other improvements that could be made. Replacing or amending outdated, prescriptive or inflexible legislation could help make compliance easier and increase the relevance and value of regulation. For example, temporarily moving from physical to online receipt of planning documents, as well as helping to limit the spread of COVID-19, could become a permanent benefit moving forwards.

In fact, COVID-19 has fast-tracked the digitisation of many aspects of our economy. More than ever before, individuals and businesses are relying on digital platforms to do business, connect with family and friends, and access essential services. Widespread adoption, coupled with increased familiarity interacting with digital platforms, creates the potential to further adopt digital mediums into our regulatory framework.

The *Electronic Transactions Regulation 2017* has been temporarily amended to allow the use of audio-visual link to perform various legal formalities remotely. If the signature of a document is required under an Act to be witnessed, the signature may be witnessed by audio visual link. A question for regulators is to assess how this process has performed and if this can be adopted as a long-term alternative. With 49 sections of law requiring documents to be “Witnessed in person”, 434 references to “Oath” and 147 references to “Common Seal”,²⁵ there is now an opportunity to look how we can make formalising certain documents easier.²⁶

Sections in NSW law referencing the following:



49

Witness in person



434

Oath



147

Common seal

COVID-19 could therefore act as the catalyst for broader regulatory reform: helping to keep our communities safe, while also making compliance easier and more contemporary. Considering a saving of just 5 per cent of compliance costs in New South Wales could result in a net benefit of up to \$4 billion, it's well worth the investment.²⁷



2.3 Reducing regulatory overlap and duplication

With a goal to make it easier to do business in New South Wales, we explore another of the unintended burdens businesses are facing; regulatory overlap.

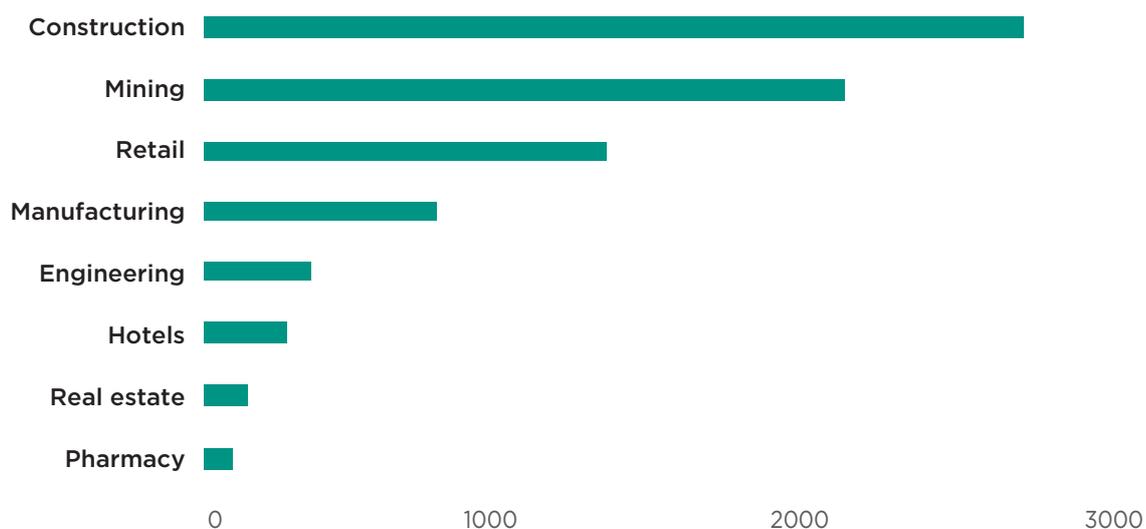
Regulatory overlap exists for many reasons. One of these is that businesses in New South Wales need to interact with more than one regulator and comply with multiple regulations. For example, there are 74 sections across 14 Ministries referencing a restaurant and 29 sections across 10 Ministries referencing a café.²⁸ The administration time invested in duplicated compliance obligations detracts from business productivity and discourages growth without necessarily improving protection for businesses, employees and consumers.

While regulatory overlap is problematic, it is also often the case that it is necessary for businesses to comply with multiple regulations. This is particularly beneficial, where each regulation supports distinguishable and important social and economic outcomes, such as consumer protection, public safety, equity and protecting vulnerable individuals. Ultimately, good regulation must balance multiple public interest imperatives; those of safety and consumer protection, as well as productivity and innovation.

To further improve end-users' experience of regulation, regulators could reduce regulatory overlap and duplication by:

Understanding where the volume of regulation is highest: This can help us strike that balance. It allows regulators to consider the extent to which regulation is protecting public interest, while simultaneously allowing businesses to flourish. For example, there are 2,596 sections in NSW regulation relating to the construction industry (see Figure 4).²⁹ In addition, in the NSW Business Chamber's Red Tape Survey, construction workers reported their industry as being the third most regulated industry, behind utilities and financial services.³⁰

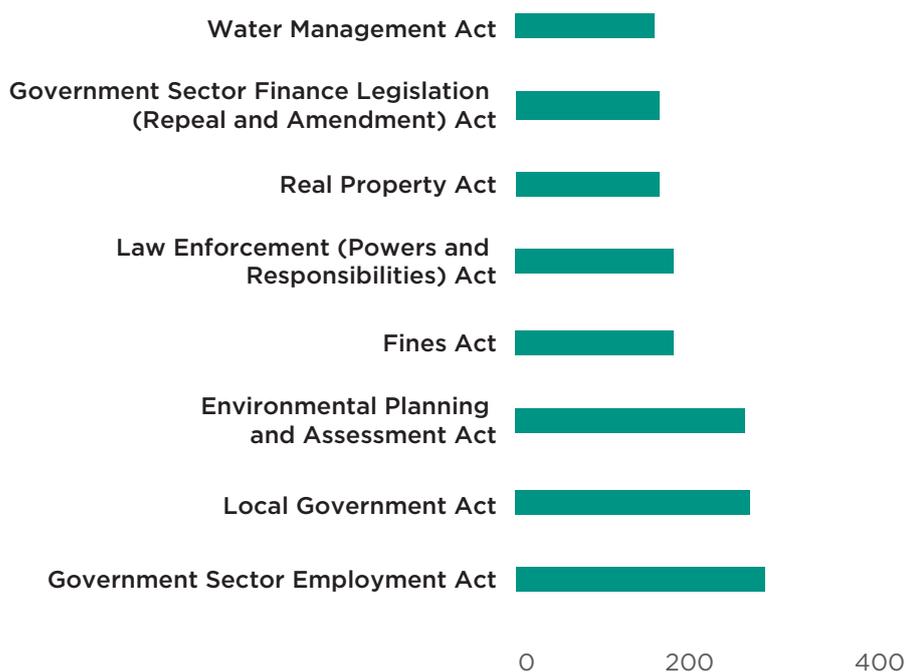
FIGURE 4: NUMBER OF SECTIONS IN NSW REGULATION FOR A SELECTION OF INDUSTRIES/PROFESSIONS.



Source: RegExplorer (May 2020)

Awareness of regulatory overlap when reviewing existing regulations. Regulatory overlap will always exist, and it is evident in the number of references or citations of Acts across New South Wales regulation, as shown in Figure 5. Some overlap and interdependencies are necessary, as references to specific Acts or Regulations clarify the structure and interpretation of various legal obligations. For example, the *Interpretation Act 1987* (NSW) is cited by many Acts and regulations to enable the interpretation of certain rules and obligations. In this case, references to the *Interpretation Act* do not create any additional compliance burden. Instead, they provide better clarity and consistency in undertaking compliance activities. Similarly, many licensing laws make references to the *Licensing and Registration (Uniform Procedures) Act 2002* to provide an overarching framework that promotes consistency across various licensing rules under NSW regulations. However, an unintended consequence of these inter-dependencies is regulatory duplication, making it more difficult for business to comply with all the applicable regulations. While each regulator has its own objectives, remits and processes, review of regulations needs to take into account this overlap and the wider impact any change in one regulation may have on end-users.

FIGURE 5: THE MOST CITED ACTS IN NSW REGULATION, BY NUMBER OF SECTIONS CITED.



Source: RegExplorer (May 2020)

Note: *Subordinate Legislation Act 1989* and the *Interpretation Act 1987* are not included.

Simplifying regulatory touchpoints and processes: Identifying opportunities for streamlining the number of interactions with government (i.e. ‘touchpoints’) for each compliance activity. Digital technologies can reduce the number of times end-users need to deal with regulators.

Streamlining different compliance requirements applying to the end-users: Identifying how many regulations apply, or how many agencies regulate the same activity or sector. For example, 21 Ministries impact the construction industry. This involves considering end-users’ experience of complying with regulations across different regulatory systems and processes, and whether the same or better outcomes can be met with more harmonised regulatory requirements.

Improving collaboration between regulators: Developing a consistent compliance approach between regulatory partners within a sector. This may involve regulators consolidating their compliance processes and improving sharing of information. When different Ministries oversee the same industries overlap can occur. Take the example of pharmacies and chemists, where these terms are often used interchangeably. There are 82 sections across 7 Ministries for pharmacies while there are only 15 sections for chemist across 6 Ministries.³¹ A chemist is an “exempt shop” in retail trading laws with no mention of a pharmacy. A review into potential overlap between regulators, consolidation of their compliance processes and improved sharing of information between regulators can help end-users avoid duplicate reporting requirements or investing time and resources on multiple audits or compliance operations.

3 Leading the way

- Regulatory reform could facilitate economic recovery post COVID-19.
- AI can assist regulators to identify opportunities for burden reduction, thereby accelerating reform.
- Making regulation more user-centric will increase productivity, making it easier to live and do business in New South Wales.

Regulation is a policy instrument through which governments manage markets and protect public interest. Done correctly, regulation has the potential to promote competition and innovation thus supporting economic growth. The role of Government in this context is to ensure the rules are set in a way that best fosters an innovation spirit, enabling businesses to meet consumer preferences.³²

Now there is an opportunity to think bigger. **Accelerating regulatory reform by targeting burdensome regulation could bring substantial benefits – up to \$4 billion for the NSW economy, from a 5 per cent reduction in compliance.**³³

This is the time to act. With COVID-19 shutting down businesses and putting workers out of jobs, any improvement to the business environment could mean the difference between a quick recovery and an extended recession. Where regulatory reform has previously made it easier to do business, it could today have the added benefit of helping to facilitate recovery.

It is often cultural, legal and institutional barriers that stand in the way of innovation, rather than the lack of technology. For example, we have had videoconferencing software on our phones and computers for years now, yet we have resisted its use as people would prefer to have a “voice only” telephone conversation or meet in person. The COVID-19 lockdowns have now swept this all away, along with many outdated rules that required physical presence. The uptake of existing digital technologies has accelerated, increasing the reliance of businesses and consumers on technology at an unprecedented pace.

To keep communities safe and protect the economy, Government had to act fast and update our regulatory frameworks to reflect the new normal. There is an opportunity to build on this momentum and adapt regulation to reflect the way we live and do business in New South Wales today: adopting a future-focused and fit-for-purpose approach.

In fact, regulatory conditions were cited as playing a key role in protecting Australia during the global financial crisis.³⁴ This means reform won't require a complete overhaul of the existing framework. Instead, regulators can focus on reducing the volume of legislation and targeting legislation that is outdated or burdensome. Engaging with business and community stakeholders impacted by regulatory reform drives change from the bottom-up. This ensures the end product is user centric, making it easier to live and do business in New South Wales.

Additionally, allowing our regulation to focus more on the underlying objectives and less on explicit rules and regulations helps make compliance easier. It also gives businesses the freedom to innovate by reducing regulatory uncertainty. Flexible, outcome-focused legislation is good for regulators too – reducing the need to regularly update prescriptive legislation and future-proofing our regulatory eco-system.

With new tools providing a roadmap for reform, the way forward for New South Wales is clear. But the opportunity to evoke meaningful change doesn't stop here. Technology and AI can continue to play a role in assisting regulators to target opportunities for burden reduction and streamline reform moving forward.

References

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