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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**TENTH ASSEMBLY**

**Better Regulation Report  
May 2022**

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# Better Regulation



A report on how we are improving  
business regulation in the ACT

**Better Regulation Taskforce**

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Chief Minister, Treasury and Economic Development Directorate

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**ACT**  
Government



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# Introduction

## Our changing landscape

The ACT is one of the smallest, yet strongest, economies in Australia. However, just like every economy around the world, the COVID-19 pandemic has affected the ACT economy ([see Appendix A](#)).

In response to the pandemic, new regulations have been introduced. The pandemic has also exacerbated the burden of some existing and outdated regulatory frameworks. The continually evolving landscape of COVID-19 has highlighted the need for more flexible government responses, fit-for-purpose regulation, and more productive relationships between government and business.

## Making business easier

The Better Regulation Taskforce (the Taskforce) was established as part of the ACT Government's response to the COVID-19 pandemic. The Taskforce's focus is to make it easier to do business in the ACT. We want to support businesses to start, run and grow by putting in place better regulatory settings, and simplifying interactions between business and government.

The Taskforce is doing this whole of government work over two-and-a-half years. It includes:

- a discovery phase
- an analysis and recommendations phase
- an implementation phase.

These phases are happening concurrently where possible.

## About this report

This report provides an update on the activities of the Taskforce since it began in 2021.

It includes the discovery phase and the beginning of the analysis phase. These phases have produced the forward work program described in the **Better Regulation Agenda**.

**The Taskforce's focus is to make it easier to do business in the ACT.**



# Our activities in 2021

We want business to have better experiences when interacting with the ACT Government. The Taskforce took a multifaceted approach to understanding what changes could be made to achieve this through best practice regulation.

We developed an approach and methodology for a discovery phase ([see Appendix B](#)). Then we:

- spoke with business
- commissioned a formal review of legislation
- looked at other regulatory approaches.

## Input from business

During 2021, the Taskforce collaborated directly with business. We sought ideas and solutions that business thought would best support its success. The ideas built on the already embedded ‘How can we help?’ approach of ACT government agencies and regulators, with the view to improve the experience for everyone.

A summary of what we heard from business is at [Appendix C](#).

## Review of legislation

The Taskforce commissioned a wide-ranging review of legislation to identify potential projects for reform. The potential projects developed through the review have been considered alongside the other inputs into the discovery phase to inform the Better Regulation Agenda.

A summary of the findings of the Legislative Review is at [Appendix D](#).

## Review of regulatory best practice

The Taskforce considered regulatory reform approaches elsewhere in Australia and overseas. You’ll find:

- key understandings from a jurisdictional analysis to inform a regulatory quality framework at [Appendix E](#)
- regulatory quality framework fundamentals at [Appendix F](#).

# Understanding regulation

For decades, governments have tried to strike a balance between achieving the legitimate aims of regulation while minimising any unnecessary burden. Many governments pursue deregulation agendas and strategies to respond to calls to rationalise the growing volume of regulation.

Making regulation better is a complex task. It starts with an understanding and acknowledgement that regulation is needed and that not all regulation is a burden. It requires deep thinking about how to determine when regulation is no longer fit for purpose, and the quantitative and qualitative measures we can use to assess when this point is reached. It involves the development of a framework for regulatory quality so that efforts to improve regulation are coordinated, enduring and sustainable.

## What is regulation?

Regulation is something we all engage in when we interact in society.

The state is not the only holder of regulatory power. National organisations, non-government organisations, business associations, industry peak bodies, advocacy groups and unions – just to mention a few – all play a role in the formulation of different kinds of regulations. And all of these layers play a role in how business understands its regulatory context and the regulatory requirements it must negotiate.

Regulation encompasses instruments made by governments that place legally enforceable obligations on business and community. This is the ‘black letter law’, including legislative acts, regulations and instruments. The term can also include supporting documents, such as codes of practice, guidelines, advice, and notices.

## Is it a burden?

**‘[business] can find it difficult to distinguish the jurisdictional source of regulatory problems ... [and] often it is the accumulation of regulation that is the main problem.’<sup>1</sup>**

Business does not necessarily differentiate between statute, rules or guidance and the totality of all dealings they have with government to carry on business. ‘Regulation’ in this sense goes further and includes the ways that government communicates with business as well as regulator culture and practice.

Time and money spent by business on regulatory compliance is known as the ‘burden of regulation’. If the burden is too great, it may divert business away from productive activities, ‘stifling their capacity to innovate, be entrepreneurial and respond creatively and quickly to market opportunities or threats’.<sup>2</sup>

However, the burden of regulation cannot be properly understood or addressed without recognising that regulation is an asset not only to government but also to citizens and business:

... demands for regulation come from citizens affected by unfair trading, monopolies, externalities and market failures ... and from businesses who gain from regulation in the form of market protection, subsidies, and title protection—those who want regulation to create the certainty they need to go about their business decisions.<sup>3</sup>

1 Productivity Commission, *Identifying and Evaluating Regulation Reforms* [PDF], Australian Government, Canberra, 2011, p xxvii.

2 NSW Government Treasury, *NSW Government Guide to Better Regulation*, NSW Government, Sydney, 2019, p 5.

3 A Freiberg, M Pfeffer and J van der Heijden, ‘Regulation and the war on red tape: A review of the international academic literature’, *State of the Art in Regulatory Governance Research Paper – 2021.10*, Victoria University of Wellington/ Government Regulatory Practice Initiative, Wellington, 2021, p 3.



## Making regulation better

When the value of regulation is understood, it becomes clear that regulatory reform is not reducing regulation per se, it is about finding solutions to make regulation better.

The ACT Government has long been committed to better regulation and has implemented a range of measures to improve regulatory quality (see Box 3 at Appendix F). Access Canberra was established to provide a one-stop shop for ACT Government customer and regulatory services. It was designed to make the community's access to government services easier, simpler and faster. Access Canberra has always advocated for principle-based regulation and a risk-based approach so its compliance responses and actions are appropriate to the level of risk and harm. Access Canberra has continually reviewed processes to ensure best practice.

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The Event and Business Coordination (EBC) team was established in Access Canberra to provide dedicated support to business and event organisers. Its aim is to streamline applications, risk assessments and approval processes for different aspects of events, including road closures, use of public land, sale of liquor, gaming, noise management, security and food service. Prior to establishing the EBC, there could be up to 17 different entities issuing nearly 30 approvals for an event in the ACT. Applicants were required to provide similar information about their event to multiple agencies, completing separate applications across the gamut of approval processes.

The creation of the EBC team has delivered significant savings for the event and business sectors with an estimated 20,000 cumulative hours of process burden on applicants saved through streamlined processes. This application of a 'tell us once' principle and the EBC team's one-on-one support has delivered savings in both time and resources that otherwise would have been devoted to meeting application requirements.

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Building on this strong history of regulatory reform and the findings and analysis of the discovery phase, our Better Regulation Agenda sets out **clearly identified deliverables to achieve the right balance of regulatory outcome and burden**. It removes unnecessary and unwarranted burdens, reducing time spent on compliance activity where possible, while supporting regulator practice and performance for the benefit of not just business, but also the ACT community.

The ACT Government has long been committed to better regulation.

# Better regulation in 2022–23

## What business wants

We have listened to business in the ACT. When it comes to dealing with government, business wants:

- government to better understand the needs and experiences of business
- information to be clearer and targeted to business
- to only tell government once
- to know where they can go to get help and for there to be someone they can talk to who understands business
- government to ‘think small first’
- government to say ‘yes’ whenever it practicably can
- government to be more transparent, coordinated and consistent
- streamlined, faster processes and approvals.

## A Better Regulation Agenda

After analysing the findings from the discovery phase, the Taskforce developed a Better Regulation Agenda for the ACT which will be implemented progressively during 2022 and 2023.

Through its Better Regulation Agenda, **the ACT Government is putting in place the best settings for business recovery, longer-term growth and regulation in the ACT.** The ACT Government is making interactions with business better, faster and simpler by improving the rules, regulations, government processes, information and supports for business.

The Better Regulation Agenda will make Canberra a place where it is easy to start up, run and grow a business. It will:

- support regulators to create certainty for business
- ensure consistency of information
- facilitate clear and open communication between business and government on regulatory issues.

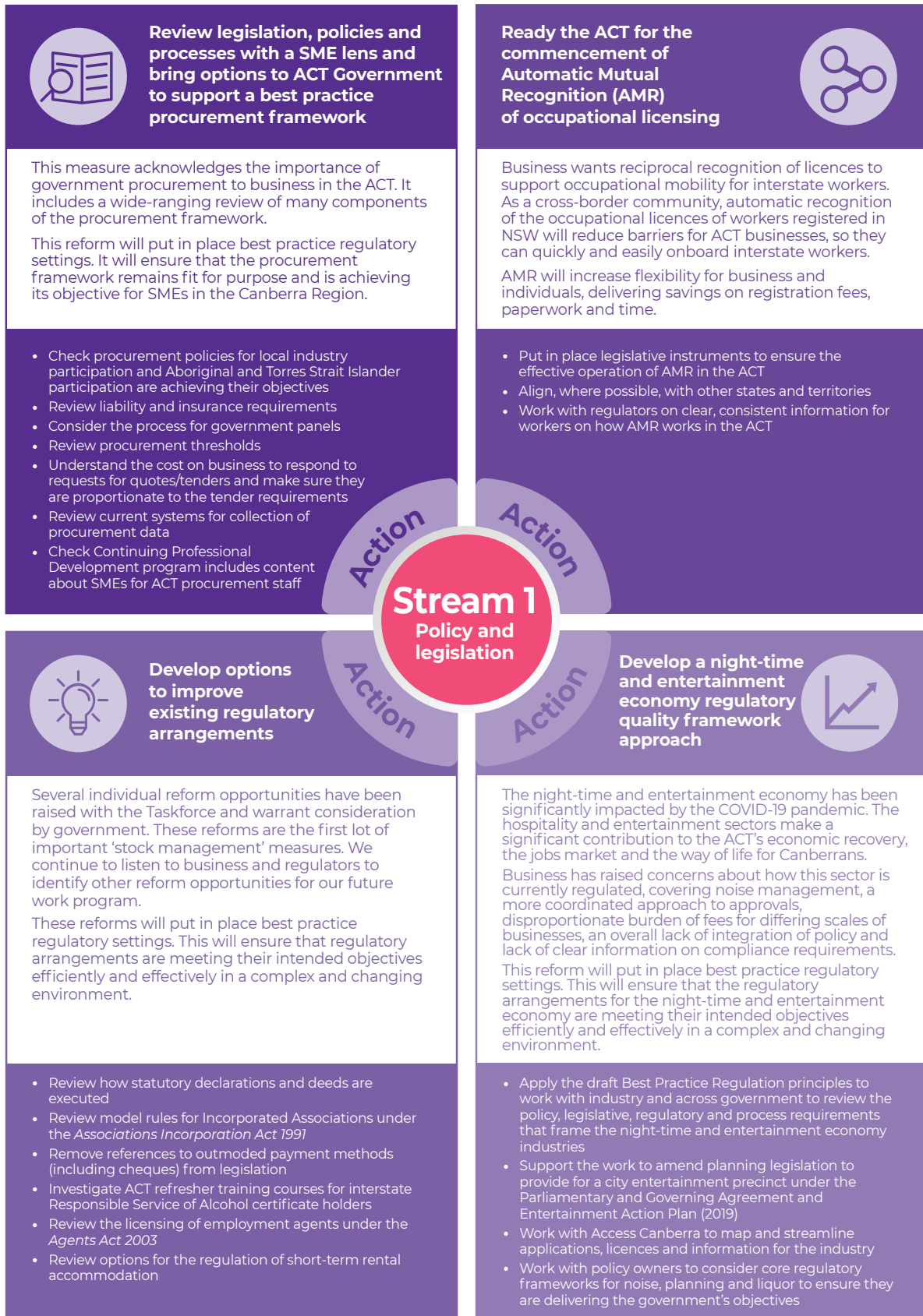
The Better Regulation Agenda has two key streams of government reform action:

- **Policy and legislation** – making continual improvements to the rules, regulations, and processes.
- **Business experience and regulator practice** – making government and business interactions better, faster and simpler.

These streams will be progressed in parallel so that improvements for business are delivered as quickly as possible.

**The Better Regulation Agenda will make Canberra a place where it is easy to start up, run and grow a business.**

# Better Regulation Agenda – 2-year work program



# Better Regulation Agenda – 2-year work program



# Discovery phase findings and analysis

Issues covered during the discovery phase included:

- Existing policy and legislative frameworks (stream 1):
  - small and medium enterprise procurement
  - night-time and entertainment economy
  - occupational mobility
  - cross-border alignment
  - supporting digital technology
  - business licences and renewals
  - emerging business models and disruptive technology.
- The business experience when interacting with government, including regulator capability and support (stream 2):
  - simplification of government and business interactions
  - small business information and communications
  - regulator practice (understanding business)
  - reduce regulatory overlap.

This section provides the findings for each of these streams, as well as the preliminary analysis of the issues raised with the Taskforce through the discovery phase. We have incorporated relevant commentary from the Legislative Review and the Jurisdictional Analysis.

## Stream 1: Policy and legislative frameworks

### Small and medium enterprise procurement


Businesses, particularly small to medium enterprises (SMEs), expressed a strong desire for assistance in understanding government procurement requirements, as well as support when tendering or quoting for government procurement opportunities.

We heard that the ACT Government procurement framework can be confusing for business. Government procurement has its own language, processes and requirements. This can make it difficult for business to recognise the opportunities available, and even when they do, to understand how to take up those opportunities. Confusion and a lack of clarity extends to the operation of panels (business is unsure about how and when they are refreshed), as well as the processes around the ability to make unsolicited bids.

**SMEs would like tailored information and guidance to support them to bid for ACT Government contracts.** Government could provide clearer pathways to follow to make it easier for a business to check their eligibility to bid for ACT Government contracts.

Business suggested a central place where SMEs can access public procurement information and supports. This could include:

- toolkits and guidelines (in plain language)
- ‘how to’ videos
- tables which summarise all existing panels and their refresh dates
- an SME supplier list (pre-vetted against the procurement values).



Businesses owned and led by women and Aboriginal and Torres Strait Islander peoples both identified that more could be done to increase their participation in ACT Government procurement processes, including by challenging perceived bias.

While acknowledging the importance of the government procurement values and social procurement, business noted that it can be difficult to understand how the time it takes to respond to these criteria in procurement documentation is aligned with the weighting assigned to it in assessing procurement responses. There could be greater clarity given about Territory objectives for small business, and how business can reach those objectives. A common piece of feedback was that if government is seeking to achieve targets or quotas, then these should be shared with industry. For example, stakeholders suggested using quotas for female representation through procurement processes and contracting, as this is more likely to achieve intended outcomes (for instance, an increase in female representation in certain industries).

Stakeholders identified **liability and insurance provisions in ACT Government contracts as a potential barrier** for SMEs. They suggested that the contract liability and insurance provisions be reviewed and reformed, including those clauses relating to uncapped liability, consequential loss and proportionate liability.

Business also conveyed that the existing procurement framework should be reviewed on a regular basis. For example, business considers that existing procurement thresholds lacked currency and a review of these thresholds could align the ACT with other jurisdictions. A best practice framework should also communicate the importance of government procurement directions and/or policy objectives to industry and appropriately weight them and provide greater certainty to industry through forecasting of procurement opportunities. This is particularly the case in relation to the ACT's future infrastructure spends.

The ACT Government has in place the *Canberra Region Local Industry Procurement Policy (LIPP)*. This policy requires agencies to consider **local capability and capacity and economic benefits** for the Canberra region when determining the best available procurement outcome. Business told us that the implementation of this policy was not always clear so there may be an opportunity to consider if this framework is achieving government objectives.

**Enhancing the ACT Government procurement framework so that it is fit for use by SMEs is inextricably linked with an increase in ACT Government knowledge and capability in procurement.** Business noted that an increased level of capability and skills across government will help SMEs as potential suppliers because it will result in:

- improved level and quality of feedback provided by government procurement officers to SMEs, which business needs if they are to learn from mistakes (where feedback is provided, it rarely helps business improve future bids)
- consistency in the approach to procurement across government agencies
- a greater level of comfort for the people running procurement to confidently communicate and answer respondent/tenderer questions, while also complying with probity requirements
- a better understanding of risk and how to appropriately manage it depending on the circumstances of the procurement.

<p><b><i>What the Legislative Review highlighted</i></b></p>	<p>The Legislative Review suggested a project to standardise procurement processes across ACT Government (see Project 2 at <a href="#">Appendix D</a>).</p> <p>While this project would not remove regulatory requirements imposed on business, the measures proposed are likely to have a <b>direct positive impact on smaller businesses</b> in the ACT.</p> <p>The Legislative Review examined the potential for a legislative framework to apply standard procurement processes, including:</p> <ul style="list-style-type: none"> <li>• appropriate risk assessment and management practices and standards (including insurance requirements for contractors)</li> <li>• obligations to provide information/feedback about tenders</li> <li>• a review of policy about local content in procurement decisions (noting the ability to impose local preference policies might be found to be limited under law or by various intergovernmental agreements or other policy arrangements to which the ACT is a party).</li> </ul>
<p><b><i>What other jurisdictions are doing</i></b></p>	<p>Many jurisdictions have publicly committed to a set of best practice principles for regulation.<sup>4</sup> These principles traditionally include a principle relating to managing the stock of regulation. These principles highlight the importance of a periodic review of existing regulation to ensure it remains efficient and effective.</p> <p>The Australian Government has procurement policies that provide best practice approaches, such as the Digital Sourcing Panels Policy which creates a panel certification scheme. To be certified, the panel must:</p> <ul style="list-style-type: none"> <li>• avoid duplicating existing panels or categories within panels</li> <li>• be for commonly used, clearly defined products and services</li> <li>• be easy to find by being registered on the website</li> <li>• aim to have consistent and user-centred design for requests for quotes, templates, terms and conditions, and reporting</li> <li>• be regularly monitored and assessed to ensure it is operating as intended</li> <li>• be open at least annually for sellers to apply to join</li> <li>• allow for regular updates of pricing and categories.</li> </ul>

<sup>4</sup> See for example the COAG agreed Principles of Best Practice Regulation and the NSW Better Regulation Principles at Appendix E.

## Night-time and entertainment economy

As demonstrated by economic indicators (see Appendix A), business in the ACT's night-time and entertainment economy were particularly adversely affected throughout the COVID-19 pandemic. They still had to manage public health restrictions in 2021 while most of Canberra had returned to low or zero restrictions.

Business raised the need for continuous review and improvement to address regulatory issues faced by the night-time economy and entertainment sectors, with particular focus on **noise, outdoor dining and liquor licensing**. Issues raised by business at the Taskforce's 'night-time economy' workshop included:

- a need for a more coordinated approach to approvals and regulations in this sector
- the effect of existing fee structures on business operating at different scales
- noise management, especially the decibel thresholds and framework for environmental noise limits, 'order of occupancy' considerations and the cost to business in developing compliant noise management plans
- an integrated policy setting out the vision for a vibrant night-time and entertainment economy
- regulatory cooperation, including clear information compliance requirements and inspections, and a more flexible regulatory approach to consider the reduced risk posed by highly compliant and 'safe' businesses.

A focus on the night-time and entertainment economy aligns with the government's core strategic priorities. The *Canberra: Australia's Arts Capital A Statement of Ambition for the Arts 2021–2026* aims to develop arts, cultural and creative industries, practices and facilities. The *CBR Switched On ACT's Economic Development Priorities 2022–2025* aims to support Canberra as a city that draws people in, supported by a strong economic foundation, to develop our city as a global destination.

<p><b>What the Legislative Review highlighted</b></p>	<p>The Legislative Review suggested a project to review the full legislative and regulatory arrangements for the entertainment economy, which extends across the industry sectors of Accommodation and Food Services, and Arts and Recreation Services (<a href="#">Project 1 – Appendix D</a>).</p> <p>This project was identified through consultation which raised numerous and ongoing barriers faced by these sectors, particularly throughout the COVID-19 pandemic.</p> <p>Small businesses in the ACT seeking to operate in these sectors have expressed concerns about <b>the lack of a coordinated approach to approvals and regulations around operating their business</b>. The hospitality and entertainment sectors make a significant contribution to the ACT economy, the jobs market, and the Canberra way of life.</p> <p>A review of the regulatory arrangements affecting the entertainment economy could result in a fundamental re-organisation of legislation and regulatory practice in areas including land use, food and beverage regulation, and noise control. It would also consider appropriate alternatives to arrangements currently requiring prior approval.</p>
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### ***What other jurisdictions are doing***

Many jurisdictions have publicly committed to a set of best practice principles for regulation. These principles typically outline that the objectives of government action when regulating are clear. They also advise that the impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.<sup>5</sup> These principles highlight the importance of a holistic approach to regulatory reform.

The ACT is not alone in grappling with how regulatory settings can balance support for a vibrant night-time and entertainment economy with other regulatory considerations and impacts on other land users. Brisbane City Council has played a leading role in Australia through the creation of its Special Entertainment Precincts framework, starting with Fortitude Valley in 2014, to provide a clear planning framework to support amplified music in core areas. Sydney has the largest night-time economy in Australia and the City of Sydney has supported the growth of the after-hours economy through a range of initiatives, including reform of planning controls, establishment of 24-hour trading in key areas and development of a new 24-hour cultural precinct in Alexandria. Victoria has embedded the ‘agent of change’ (AOC) principle in state planning controls. The City of Port Phillip is at the preliminary stages of working to set up an Entertainment Precinct in St Kilda, as it recognised that AOC is not sufficient to protect the character of an area as venues come and go. The City of Perth is similarly considering the establishment of the Northbridge Special Entertainment Precinct which will set noise levels in Perth’s premier entertainment area, as well as noise attenuation requirements for sensitive developments and new venues.

A significant point of difference in the ACT is that the ACT Government performs both local and state-type government functions. While there is much to learn from experiences in other jurisdictions, a key consideration for the ACT, as we look holistically at the regulatory framework that sits over our night-time and entertainment economies, is to develop approaches unique to the systems – and industry – here in the ACT.

## **Occupational mobility**

Having access to skilled staff was a common issue raised by business, particularly in the context of COVID-19.

We heard that business wants to ensure that there is reciprocal recognition of licences to support occupational mobility from interstate. This includes a broad program of Automatic Mutual Recognition being undertaken and includes the removal of barriers to the recognition of interstate responsible service of alcohol certificates.

We also heard that existing regulatory frameworks around training for responsible service of alcohol may be producing unintended barriers to interstate recognition of these qualifications.

Additional messages from business about accessing skilled staff are provided at [Appendix C](#).

<sup>5</sup> See for example the COAG agreed Principles of Best Practice Regulation and the NSW Better Regulation Principles at [Appendix E](#).

<p><b>What other jurisdictions are doing</b></p>	<p>The Automatic Mutual Recognition of Occupational Registrations (AMR) scheme removes the need for people to apply and pay for an additional registration or licence when working in another state or territory, saving them time and money.</p> <p>AMR came into effect on 1 July 2021. It applied automatically in the ACT from that date. As a transitional arrangement, most of our occupational licences are temporarily exempt from AMR until 1 July 2022. The Taskforce is working with ACT Government directorates and agencies to introduce AMR across a range of ACT occupational licences and registrations.</p>
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## Cross-border alignment

We heard that business believes our regulatory approach could be improved if the ACT strived to have **identical or similar laws to those in NSW**, unless there is good reason not to do so.

Business also suggested the ACT compare and contrast its performance to that of nearby regional NSW. The ACT should at least match, or better, the operating environment for business in NSW.

<p><b>What the Legislative Review highlighted</b></p>	<p>The Legislative Review suggested a general review of ACT and NSW business regulation legislation to maximise cross-border alignment with NSW, with a focus on legislation having significant impact on small business (see Project 4 – Appendix D).</p> <p>This project is relevant for the ACT as a small jurisdiction surrounded by regional NSW. Many businesses, including many SMEs, operate both within the ACT and surrounding areas of NSW. <b>Compliance costs, due to a lack of regulatory alignment, disproportionately impact small business.</b> A review of regulation and analysing opportunities for regulatory alignment with NSW would make it easier to do business across the ACT and NSW.</p> <p>The Legislative Review recommended that this review focus on legislation with particular impacts for small business, including subordinate legislation and other instruments made under Acts.</p> <p>A full review of the alignment of ACT legislation with that of NSW would require detailed examination of legislation and regulatory practice across both jurisdictions. This would require consideration of a wide range of policy questions where divergences are identified.</p>
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## Supporting digital technology

Business is supportive of regulatory frameworks that do not act as a barrier to the integration of digital technology to simplify business and government interactions.

The COVID-19 pandemic has fast-tracked the digitisation of many aspects of our economy. More than ever, individuals and business are relying on digital platforms to do business. Regulation that is outcomes-focused and technology neutral can allow businesses to freely adopt whatever technology is most appropriate to achieve the outcomes. Some examples where legislation is not technology neutral include:

- references to cheques as a method of payment
- existing methods of executing formal documents
- model rules for incorporated associations.

Business suggested machine-readable law/rules be adopted. Where regulation is machine-readable, industry and government can embed digital rules directly into their IT systems to streamline compliance and automate any changes in the future. Underpinning a ‘rules as code’ approach is a move away from regulation that contains decisions made by regulators based on subjective, rather than objective, criteria. Business stated that this provides certainty and clarity.

<p><b><i>What the Legislative Review highlighted</i></b></p>	<p>The Legislative Review suggested a project to review legislation to remove any obligations requiring use of a particular technology, including paper-based documents (<a href="#">see Project 3 – Appendix D</a>).</p> <p>Although reforms of this kind have been undertaken in the ACT over recent years, there are benefits from a further review of legislation, statutory instruments and administrative practice in this area. The objective is to enable full use of modern digital technology appropriate to the circumstances. Similar reviews are currently underway in other jurisdictions.</p> <p>The removal of requirements to provide information in a specific manner will minimise costs to business. Scrutiny of such legislation and other regulatory practices also provides an opportunity to identify and remove requirements that are unnecessary or overly prescriptive. This project would review legislation and regulatory practices which require, or presume, communications by means of a particular technology, such as a paper-based notice or a meeting requiring personal attendance. This includes arrangements currently suspended because of the COVID-19 pandemic.</p>
<p><b><i>What other jurisdictions are doing</i></b></p>	<p>The New Zealand Government has implemented initiatives aimed at avoiding burdens for small business. The ‘Better Rules Better Outcomes’ initiative is aimed at simplifying existing regulation and employs a methodology to assist people and businesses to understand, benefit from and comply with legislation in an automated way. The Better Rules approach allows for legislation to be developed in software code, as well as written language, from the start. It avoids the need for later translation of legislation into software language, avoiding the risk of incorrect interpretation. The Better Rules methodology will be particularly helpful for activities like calculating eligibility criteria for a benefit, and financial reporting obligations. It is the human-centred design approach which is embedded in a ‘rules as code’ approach which is capable of delivering significant benefits to business.</p>

## Business licences and renewals

During our consultation, business conveyed that licence renewal is a task that can take up significant time and managerial effort. Business would like greater flexibility by being given multi-year options, as well as annual renewals.

We also heard that some licensing frameworks may no longer be fit for purpose. There is benefit in reviewing specific frameworks to ensure that the regulation remains fit for purpose, such as the existing framework for employment agents' licensing.

Business raised other focus areas which require further analysis, including consideration of a potential licensing framework for individuals such as motor vehicle repairers.

<b><i>What the Legislative Review highlighted</i></b>	The Legislative Review did not identify a specific project on licensing and renewals. However, as part of the general recommendations of the Legislative Review, it would be appropriate to consider whether an activity which currently requires prior approval from a regulatory authority could be managed in a different way.
<b><i>What other jurisdictions are doing</i></b>	In NSW, a similar arrangement is often referred to as 'negative licensing', particularly where the sanctions include a power to prohibit a person from providing the service at all. In 2021, the NSW Productivity Commission released the <i>Productivity Commission White Paper</i> <sup>6</sup> which recommended whole-of-system reforms, including adopting a negative licensing approach for low-risk licences and activities.

## Emerging business models and disruptive technology

Increasingly, the environments in which government seeks to regulate are changing rapidly with technological advances and increased connectivity. **'Traditional' regulatory frameworks struggle to keep pace with new and disruptive ways of doing business.**

The rapid growth of the sharing economy, and new business models based on digital platforms, is one such area where the regulatory frameworks may no longer be fit for purpose.

Digital platforms for booking short-term rental accommodations (STRA) are a significant example of a disruptive technology. The challenge for government is to respond effectively to manage potential costs and benefits to the community posed by business models such as Airbnb.

The ACT Government has previously reviewed Airbnb in the ACT in terms of its impacts on neighbourhood amenity, the health and safety of guests, housing affordability and the impacts on the hospitality sector.

The Taskforce has heard that a further review of the regulatory framework for STRA may now be warranted in light of the impact of the COVID-19 pandemic on the ACT's economy and tourism sector, and in light of the ACT's tight residential market.

6 NSW Government, Productivity Commission White Paper – Rebooting the Economy, Sydney, 2021.

**What other jurisdictions are doing**

The issue of how best to regulate STRA varies across jurisdictions.

**New South Wales**

NSW Government conducted an inquiry into home-sharing services, including Airbnb, and implemented a new regulatory framework for STRA, including:

- a state-wide planning framework that applies consistent regulation of the use of premises for STRA across the whole of NSW
- a mandatory Code of Conduct – in effect since 18 December 2020, including an exclusion register which will see guests excluded where they have ‘two strikes’ recorded against them in a two-year period
- changes to strata legislation – in effect since 10 April 2020 with amendments to the *Fair-Trading Act 1987*, *Strata Schemes Management Act 2015* and the *Residential Tenancies Act 2010* allowing owners’ corporations to pass by-laws that prohibit STRA within strata schemes but only in lots that are not a host’s principal place of residence
- introduction of a premises register – in effect since 1 June 2021, both premises and hosts will be required to be registered, which was later changed in October only requiring the premises to be registered.

NSW Fair Trading published an updated Statement of Regulatory Intent to reflect that it will not be enforcing some requirements under the Code relating to the Exclusion Register until the public exclusion register becomes available. The register is expected to be available in May 2022.

The *Code of Conduct – penalties for breaches* creates disciplinary actions that NSW Fair Trading can take, including listing non-compliant participants on an Exclusion Register. The Code sets out a fair process that must be followed before a penalty is imposed. The Code and Regulation provide for appeals against decisions to impose a penalty for breach of the Code.

**Tasmania**

Tasmania’s *Short Stay Accommodation Act 2019* requires booking platforms to collect and display certain information about the properties they have listed. This information must also be reported to the Director of Building Control. This provides addresses and permit-related information to councils so they can determine compliance with short stay accommodation regulations in their area.

**Western Australia**

The Department of Local Government, Sport and Cultural Industries is investigating the implementation of a new state-wide registration system. Under the proposed registration system, providers of STRA within WA would be required to register their property to operate and advertise, including on online booking platforms.

**International**

Internationally, some jurisdictions have placed limits on the number of days properties can be leased through short-term stay accommodation each year. In London, there is a 90-day limit on the leasing of properties for short-term rental. It is the responsibility of each council to issue fines for any contravention to this limit. Similarly, in San Francisco, rentals are allowed only if hosts are full-time residents, rentals are capped at 90 days a year and all hosts must register with the city (leasing of single rooms is exempt from this rule). Collection of hotel taxes is also required. Sites that continue to list properties in violation of these regulations may face a daily \$1,000 fine for each listing in violation.



## Stream 2: Business experience and regulator practice

### Simplification of government and business interactions

Business was asked to share experiences of interactions with government and the ease of doing business in the ACT. Improvements were suggested for some processes and approvals associated with running a business or holding a major event in the ACT. Ideas were also suggested for potential innovation and simplification for business and government interactions.

We heard that some approval processes can be difficult and drawn out. **Business is looking for government to provide updates on the progress after the lodgement of an application.** Processes and approvals could be supported by:

- improving processing times and communications on the progress of applications
- applying a 'yes-first' regulatory culture
- explaining how stakeholders can achieve an outcome.

Mutual improvements could be made through collaboration and feedback between those working on the ground, directorates and agencies with the policy responsibility, and regulated businesses.

Government could simplify government to business interactions by using the 'tell us once' principle. This is explored further in **Reducing regulatory overlap.**

Similarly, the requirements for licence renewals and the duration of business licences were also seen by business as an imposition. This is explored further in **Business licences and renewals.**

<p><b>What other jurisdictions are doing</b></p>	<p>The Productivity Commission <sup>7</sup> has recommended that Ministers be empowered to suspend certain regulations where an emerging business model is not compatible with an existing regulatory framework. Under the banner of ‘Say Yes’, regulators can take a more proactive approach and work with innovative businesses to test and closely monitor new models in a live environment where regulatory requirements might be lowered. Importantly, <b>a regulatory sandbox concept might encompass innovative regulatory practices, rather than suspending or exempting requirements under law.</b></p> <p>The Commonwealth recently released a Regulator Performance Guide which includes a principle of regulator best practice on regulator engagement and collaboration. The guide notes that in practical terms, demonstrating collaboration and engagement means regulators ‘implement innovative approaches in considering regulatory or policy issues such as ‘regulatory sandboxes’.</p>
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## Small business information and communications

Small business operators are diverse, requiring varied communication and engagement. We heard that business has limited time and resources to seek out relevant government information. Providing **information that is targeted, accessible and easy to read is a simple but effective measure to assist business.** Business has suggested that government could:

- ensure legislation, policy, procedures and fact sheets are written in plain language
- improve fact sheets and checklists to support business understanding and compliance, as well as preparedness for inspections
- provide simple, accessible training to support compliance
- clarify the ACT’s regulators and Ministerial portfolio responsibilities and ‘who does what’ so business knows who to speak to about specific issues.

Most prefer business-specific communication channels over general channels, and there is a strong **preference for digital information** over hard copy materials.

Business has different information needs depending on what stage of the business lifecycle they are in. There is a need for information and advice at key growth stages, particularly as businesses develop and take on new responsibilities such as hiring staff or using more sophisticated management approaches.

Website information is valued by business where that information is clear, easy to read and use, and regularly updated for currency (including accurate links). From a Regulatory Technology (RegTech) perspective, business would like to be able to access information across a range of digital devices, including mobile phones and other personal digital devices.

While valuing the flexibility of being able to access targeted and current online information, another common sentiment across business was the need to be able to talk to an individual within government. Essentially, business is looking for reliable and accessible points of contact within government to troubleshoot queries and difficulties with subject matter experts.

Business suggested various methods (physical and virtual) to access targeted information and advice to support them in starting, running and growing a business in the ACT. These included:

- an easy to access business hub to better connect business with government, including getting information on available business support, such as rebates and grants with industry-specific support
- a business concierge service which provides a dedicated agent who can answer questions about what services and supports are available to business, and how to access them.

7

Productivity Commission, Business Set-up, Transfer and Closure, report no.75, Australian Government, Canberra, 2015, p 205.

Business would also like **advance warning about regulatory changes** likely to impact on business costs, trading hours or employment practices to provide sufficient time to allow for the necessary changes to be made to operations. The communications and engagement approach should include small business advisors (for example, accountants, legal advisors) and peak bodies given they play an active role in filtering information for their small business clients.

<p><b><i>What other jurisdictions are doing</i></b></p>	<p>Governments commonly establish online resources for business to support them at all stages of their development. The scope of online services vary but include:</p> <ul style="list-style-type: none"> <li>• advice for business on how to start, run and grow a business</li> <li>• links to other programs of support for business</li> <li>• access to specialist business advice</li> <li>• educational material and templates for use by business</li> <li>• concierge/one-on-one business engagement.</li> </ul> <p>The Western Australian Small Business Development Corporation is a state government agency that provides advice and low-cost services to small business owners in WA. Among a wide range of services and business advice, the hub also includes a business licence finder. The finder produces a list of core and related licences and approvals, including Commonwealth requirements and relevant codes of practice that might apply. Users can conduct a search based on business type or can search for information on specific licences.</p>
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## Regulator practice (understanding business)

Engagement with business has shown where some government approaches to regulation can be improved to enhance clarity, capability and culture, with a continuous improvement approach.

There is a perception that government could **do more to better understand business** – to consider the impact of regulation on business by:

- regularly measuring the burden of regulation on business, both actual and perceived, through annual or bi-annual surveys
- ensuring that the regulation is justified through a cost-benefit analysis.

We heard that business prefers to speak with people who have lived experience with running a business; who understand the intricacies and challenges. A number of suggestions were put forward by business to improve business literacy in the government, including:

- encouraging government to actively recruit public service candidates with a former business or business-enabling background
- educating regulators to understand the experience of the business community and help support productive dialogues, possibly through professional placements within industry associations.

Aligned with the idea of ‘better understanding business’, we heard that business strongly supports using **co-design processes to bring business stakeholders into earlier parts of the regulatory design stage.**



In designing regulation, business called for the ACT to lead the way by applying a ‘think small first approach’ to regulation, where laws are written first and foremost for small business, considering their ability to comply. If a greater standard of compliance is expected of larger firms, then this should be an explicit addition to the law. When action is taken by government to enforce regulation, business would like regulators to take the time to understand the perspective of those businesses being regulated.

There is also the perception that government could do more to help business understand what government requires, and to consider how compliance can be made more straightforward. This is particularly the case where business must engage with multiple regulatory agencies, government and regulators. Government can alleviate the burden of compliance on business through:

- appropriate cooperation and coordination (for example, coordinating inspections and where possible, holding them at off-peak times)
- investing in, and using, digital technology (RegTech) to ease interactions with government agencies.

There is little doubt a digital option for business to complete all their interactions with government in one place would be beneficial. A digital account for business is strongly aligned with the ‘tell us once’ principle. This is a complex proposition. It requires the end-to-end mapping of the various types of business experience and needs to consider service and regulation journeys and their differing stages of growth. It is not an immediate solution.

The concept of a digital account strongly aligns with the *CBR Switched On: ACT’s Economic Development Priorities 2022–2025*, which advocates for Canberra to be a city that gives you back time. A transformative project which supports this ambition is the [ACT Digital program](#), which will make it easier for every citizen and business to transact with government.

An online portal could make regulatory compliance more straightforward for business, allowing them to:

- quickly understand which regulations apply to them
- clarify what is required of them
- access educational material on how they can fulfil their requirements
- seek advice and guidance at various stages of the business lifecycle
- access linkages to other forms of business support across ACT Government, including grants and procurement.

Making compliance more straightforward for business is integrally linked with **Small business information and communications.**

<p><b><i>What the Legislative Review highlighted</i></b></p>	<p>The Legislative Review proposed a project to introduce legislation to improve regulator performance and provide benchmarks for business (see Project 6 – Appendix D).</p> <p>This could include obligations on regulators to actively manage regulatory frameworks and advise on where these continue to be fit for purpose. This is known as stewardship.</p> <p>This would also include the phased introduction of a standard suite of regulatory powers to enable regulators to engage in more flexible and proportionate regulation through a well-understood suite of tiered enforcement options.</p> <p>Ensuring continuing improvement and standards for regulator best practice and performance will benefit business. This could be achieved through changes to legislation to support better regulatory settings and practices. The Productivity Commission has noted studies showing that up to 50% of unnecessary costs for business are due to how regulators implement regulations.</p>
<p><b><i>What other jurisdictions are doing</i></b></p>	<p>The concept of stewardship has been promoted in several jurisdictions. The objective is to impose obligations on regulators to assess effectiveness and appropriateness of legislation and regulatory practice on a regular basis. Monitoring the stock of regulation throughout its ‘lifecycle’ through a stewardship approach aims to leave regulation in a better condition over time.</p>

## Reduce regulatory overlap

We heard that it is inefficient for business to provide the same information to different entities. Regulatory overlaps result from either legislative requirements, or regulatory practice (routine requests for information, standard forms, etc.).

Business is seeking a government approach where it adopts a ‘tell us once’ principle so that business must only submit similar information to ACT regulators once, where appropriate. Examples provided by business included providing information about changes or updates to board/committee members, and providing the same information to different ACT entities during the pre-qualification and procurement processes for construction.

This principle could also be adopted for other information requirements relating to licensing (for example, the fit and proper person test).

<p><b><i>What the Legislative Review highlighted</i></b></p>	<p>The Legislative Review suggested a project to review regulator/ regulation overlap and duplication to reduce touchpoints, with a focus on legislation having significant impact on small business (<a href="#">see Project 5 – Appendix D</a>).</p> <p>Business, both in the ACT and across Australia, expressed concern about regulatory overlap and duplication that has significant financial and time cost impacts. Often this experience can involve the need to deal with different regulations and different regulators for the same, or similar, activity. Stakeholders seek simplified business-to-government interactions and a ‘tell us once’ approach.</p> <p>A review would identify areas of overlap or duplication which could be streamlined to make processes simpler and more transparent.</p> <p>This review would involve further consultation with business to identify any other areas where regulatory overlap may exist and where its removal would have practical benefits for business.</p> <p>This review should initially target legislation that affects small business, and any licensing duplication reviews currently in progress or under consideration by ACT agencies.</p>
<p><b><i>What other jurisdictions are doing</i></b></p>	<p>This issue aligns with the work being undertaken across jurisdictions to reduce unnecessary compliance costs to business when meeting ‘overlapping’ regulatory obligations between different agencies or governments.</p> <p>This issue also aligns with a stewardship approach to streamline processes and eliminate duplication.</p> <p>RegTech is often touted as a solution to ‘tell us once’ problems. New Zealand has invested in a comprehensive RegTech solution which assists in alleviating and remediating regulatory overlap. <a href="#">Business Connect</a> is a digital service platform which enables businesses to:</p> <ul style="list-style-type: none"> <li>• access and manage their business information from one place</li> <li>• use the data government already holds about them – such as their New Zealand Business Number (NZBN) – to pre-populate the information they’re most often asked to share</li> <li>• re-use the information they’ve previously provided to government</li> <li>• connect digitally across both local and central government</li> <li>• more easily meet their compliance obligations.</li> </ul>



# Where to from here?

## Delivering the Agenda

The Better Regulation Agenda will be delivered by the Taskforce during the remaining two years for which it is funded.

Measures in the two streams will, where possible, be delivered concurrently. An implementation schedule with delivery milestones, which consider dependencies, will be prepared by the Taskforce in consultation with stakeholders.

The Better Regulation Agenda includes **measures that span several directorates and agencies**. Some reforms will be delivered by the Taskforce, while others will be led by subject matter experts in ACT directorates and agencies.

The Taskforce will oversee and coordinate all actions and will report on progress.

The Taskforce will apply a design approach to planning and executing change to achieve better outcomes and experiences for people in business and the broader community, as well as more efficient administrative processes within government. This will support:

- our ability to understand the overall service investment landscape
- the outcomes those investments support
- the people/process/technology/data capabilities needed to support those outcomes
- the strategies they deliver against.

## Measuring progress

As work on each reform measure begins, an evaluation strategy for each measure will be established. This will include an outcomes framework developed in consultation with stakeholders. We will also know we are making a difference through:

- The business sentiment survey, which will help us monitor how business feels about its interactions with government over time. This will inform options for continuous improvement of the ACT's regulatory framework.
- The development of a measure of regulatory burden, which will give us a baseline measure of the current burden of regulation on business in the ACT.

The next key reporting milestone will occur in early 2023 to report on progress against the Agenda.

## Towards a regulatory quality framework

Regulation that is done well can boost the economy and deliver the best outcomes for ACT business, consumers and the community at large.

Our analysis of regulatory reform approaches across Australia and abroad has shown that there is no single 'right way' to improve regulatory quality. Each jurisdiction has its own approach, processes and arrangements to suit the specific regulatory landscape. **What is common is a recognition that achieving best practice and better regulation is usually underpinned by a framework that focuses on regulatory quality** (see Appendix F).

Many elements of a regulatory quality framework are already in place in the ACT (see Box 3 – Appendix F). Over the next two years, the Taskforce will draw together these existing elements, test new ideas and co-design a coordinated and coherent regulatory quality architecture for consideration by ACT Government.

Drawing on best practice examples from Australia and beyond, as well as our engagement with business, we have developed a set of **draft principles** to guide the next phase of work. The principles are draft because they need to be tested for coherency, effectiveness and applicability in the ACT context.

As we implement the Better Regulation Agenda, we will apply a regulatory quality framework approach, beginning with the application and testing of a set of draft principles for Best Practice Regulation (shown below). The Better Regulation Agenda provides a crucial learning and engagement opportunity to test and progress these big ideas while delivering immediate improvements for business.



## Towards better regulation – draft principles for the ACT

### Principle 1: Articulate the ‘why’

- Regulation should only be introduced and retained where there is a clear need for government intervention: a clear problem to be addressed or a clear outcome the government is trying to achieve.

### Principle 2: Assess the impact

- As a fundamental part of the policy development for legislation and regulation, an assessment of the impact of regulation (including its impact on wellbeing), within the context of existing regulatory burden, should be undertaken.
- This impact should be considered as a part of the government decision making process, including a consideration of a range of feasible policy options, including non-regulatory approaches.
- The assessment should assess risk, with a consideration of risk appetite and tolerance.

### Principle 3: Be accountable

- When the government makes decisions about regulation and regulatory approaches, the basis for those decisions and supporting evidence should be publicly available by default.
- Regulator discretion should be supported by transparency and accountability measures.

### Principle 4: Make room for leading practices

- Regulation should allow regulators and regulated entities to innovate.
- Regulators should have access to a range of compliance and enforcement tools (including administrative/civil/criminal enforcement regimes).

### Principle 5: Put people at the centre

- Use human-centred design principles to ensure regulatory systems are effective and efficient.
- At all stages of the policy development and regulatory cycle, regular and effective consultation with stakeholders, especially regulated entities, should occur.

### Principle 6: Easy to comply

- Regulation and guidance should be in plain language, where appropriate.
- Government systems should support seamless interactions between government and regulated entities.

### Principle 7: Remain effective

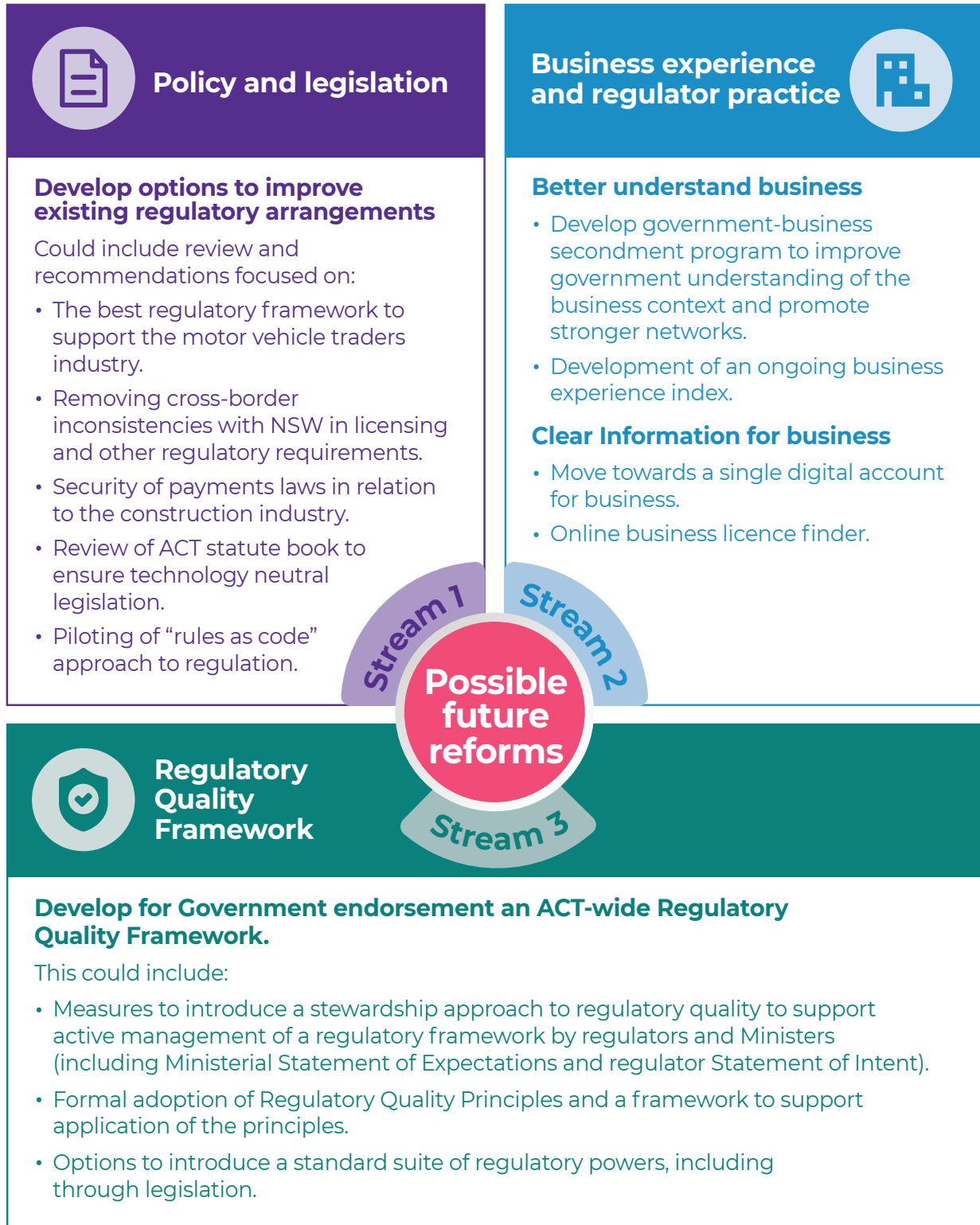
- Regulation should be monitored and evaluated periodically to simplify, reform, modernise or consolidate.
- Regulators should regularly assess their delivery approaches and impact on regulated entities.

## Possible future program

We have heard a range of views on potential options for a future work program. In late 2023, the Taskforce will report to government on potential reform options for 2024 onwards.

Based on what we heard during the discovery phase, some potential reform options are described below. However, in light of the continually evolving regulatory landscape, these will need to be re-validated before being put forward on any future agenda for regulatory reform.

# Better Regulation Agenda – Potential options for future work program

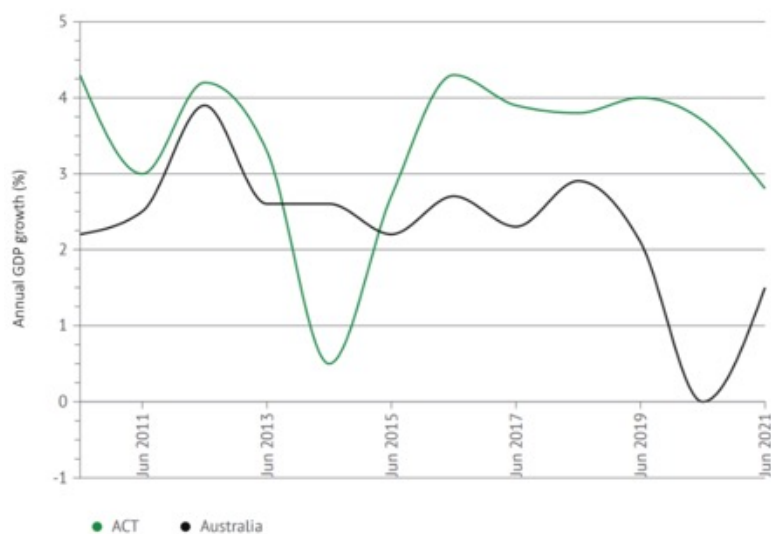


# Appendix A: economic and business landscape

## Economic growth

The ACT is both one of the smallest and strongest economies in the country. As of November 2021, it contains a population of 432,300<sup>8</sup> with over 31,000 businesses<sup>9</sup> and has a gross state product (GSP) of over \$43.3 billion.<sup>10</sup> The ACT's economy has grown strongly and steadily since 2015.

### Economic growth in ACT – 2010–2021<sup>11</sup>



Source: ABS, 2021

## ACT business landscape

The ACT has a unique business landscape that sets it apart from other Australian jurisdictions. Data from the Australian Bureau of Statistics showed a 5.8% increase in the number of businesses in the ACT during the 2020–21 financial year.<sup>12</sup> This was the largest percentage growth in any state or territory with an increase of 1,732 businesses, bringing the total active ACT businesses to 31,499.<sup>13</sup> Of this amount in this period, the ACT had 11,437 small businesses (1–19 employees) and 18,517 non-employing businesses operating.<sup>14</sup> These types of businesses combined make up over 95% of total businesses in the ACT. In 2020–21, the survival rate of small and non-employing businesses varied across industries, with an average survival rate of 55.1% for non-employing businesses and 70.5% for small businesses (1–19 employees).<sup>15</sup>

8 Australian Bureau of Statistics, *National, state and territory population, June 2021*, Australian Government, 2022, accessed 21 February 2022.

9 Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, July 2017 - June 2021*, Australian Government, 2022, accessed 21 February 2022.,

10 Australian Bureau of Statistics, 5220.0 Australian National Accounts: State Accounts, Table 1. Gross State Product, Chain volume measures and current prices, Australian Government, 2021.

11 SGS Economics and Planning Pty Ltd, *Australia's Economic Wellbeing, 2021*, p 53, accessed 21 February 2022..

12 Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, July 2017 - June 2021*, Australian Government, 2022, accessed 21 February 2022.

13 Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, July 2017 - June 2021*.

14 Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2017 to June 2021, released 16 December 2021, Businesses by Main State by Industry Class by Annualised Employment, Australian Government, 2021.

15 Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2017 to June 2021, released 16 December 2021, Survival of Businesses by Main State by Subdivision by Employment Size Ranges, Australian Government, 2021.

## COVID-19 impacts

Prior to the COVID-19 pandemic, the ACT had strong economic growth and business performance. The COVID-19 pandemic has had, and continues to have, an impact on the ACT in a myriad of ways. The impact of the pandemic in Australia and the ACT in 2020 was extensive, particularly on micro, small and medium-sized enterprises. The industries significantly impacted included:

- Construction
- Retail Trade
- Accommodation and Food Services
- Arts and Recreation Services.

### Emerging from the pandemic in 2020

- The ACT performed comparatively well in 2019–20, avoiding a COVID-19 recession. Emerging from the initial shock of the pandemic at the end of 2020, the ACT had strong economic recovery and business participation. In particular, it saw recovery in Accommodation and Food Services, with growth subdued due to ongoing tourism constraints.<sup>16</sup> Nationally, some sectors were particularly hard hit by the emergence of COVID-19.<sup>17</sup> As of April 2020, the following sectors had experienced the most severe reductions in monthly turnover:
  - Retail Trade (down 23%)
  - Accommodation and Food Services (down 38.6 %)
  - Arts and Recreation Services (down 45.9%).

### Rise of Delta variant and lockdowns throughout 2021

The first half of 2021 was encouraging with the ACT's economy growing by 2.8% in 2020–21.<sup>18</sup> However, the sudden increase of cases across Australia led to further lockdowns in most jurisdictions, which severely impacted economic recovery and business viability. Data for the September 2021 quarter shows that the ACT, along with NSW and Victoria, saw economic decline as a result of COVID-19 outbreaks and associated lockdowns between July and September.<sup>19</sup> While the ACT entered lockdown under Public Health Orders after NSW, it had already been economically impacted by their lockdown.

The ACT had a low drop in labour force participation during the first wave of COVID-19 lockdowns, however, the second wave of lockdowns in the ACT from August 2021 was far more severe. In the context of the discontinuation of the Australian Government JobKeeper payment, labour participation in 2021 fell to 79% and unemployment rose to 6.2% (the highest unemployment rate in the ACT since 1999).<sup>20</sup> Of the ACT's approximately 30,000 businesses, almost a third applied for COVID-19 Business Support Grants.<sup>21</sup>

During the lockdown period, ACT regulatory agencies played a key role informing and regulating business compliance with public health directions. Different states and territories took varying approaches to how they communicated the changing public health directions to business. Some relied extensively on online channels and strict enforcement, whereas the ACT Government used a broader range of methods, such as site visits, as part of its engage, educate and enforce method. While recognising that the public health restrictions limited business activity, they appear to have been implemented and regulated in a way that prioritised supporting businesses to comply.

16 SGS Economics and Planning Pty Ltd, *Australia's Economic Wellbeing, 2021*, p 5, accessed 21 February 2022.

17 Australian Bureau of Statistics, *monthly business turnover indicator* [website], 2022, accessed 21 February 2022.

18 SGS Economics and Planning Pty Ltd, *National economic growth hides the differing experiences across Australia's cities and regions, new report* reveals, 7 December 2021, accessed 21 February 2022.

19 SGS Economics and Planning Pty Ltd, *National economic growth hides the differing experiences across Australia's cities and regions, new report* reveals.

20 SGS Economics and Planning Pty Ltd, *Australia's Economic Wellbeing, 2021*, p 6, accessed 21 February 2022.

21 ACT Government, *Budget 2021-2022, Budget Outlook*, Canberra, October 2021, p 17.



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The Outdoor Activation Taskforce provides an example of how ACT regulatory agencies took a lead role during the period of restrictions to ‘find solutions’ to support businesses. Given the public health restriction limits on indoor dining capacity, the taskforce assisted 51 businesses to temporarily activate outdoor dining spaces on available public land, including use of public space that may not have been previously authorised.

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## Pathway towards COVID normal

The continually evolving landscape of COVID-19 and the impact of the Omicron variant requires adaptive government responses and fit-for-purpose regulation. The ‘new normal’ of living with COVID-19 and evolution of variants in 2022 and beyond will bring new challenges for ACT business, as well as fundamentally change the ways in which economic growth and business participation takes place in the ACT.

The pandemic has changed consumer behaviours and the ways that business trade, operate and communicate. It has also demonstrated the remarkable resilience of business to transform operations within short periods of time.

# Appendix B: Methodology

During its discovery phase, the Better Regulation Taskforce (the Taskforce) undertook:

- engagement with business and stakeholders
- a wide-ranging Legislative Review
- a jurisdictional analysis.

The Taskforce also progressed the Commonwealth's deregulation reform agenda which was introduced by the Morrison Coalition Government.

## Engagement

The Taskforce wanted to identify issues that place regulatory burdens on business and identify the most effective ways to address these. Informed by human-centred design (HCD) principles, the Taskforce sought to engage with a wide variety of business types to better understand the issues they face, and the possible solutions required.

Using the HCD approach to consultation, the Taskforce aimed to:

- capture what is working well
- locate the key pain points for different stakeholder groups
- gain an understanding of where regulatory reforms could deliver the most value.

## Principles

The Taskforce employed key engagement principles throughout its engagement. These were to:

- engage with stakeholders in ways that suit them – by acknowledging that business owners and representatives are very busy
- keep stakeholders informed – by understanding engagement as a two-way process
- engage respectfully – by acknowledging the valuable time and insight of stakeholders.

## Activities

The Taskforce undertook a broad program of consultation and engagement across Canberra. This included focus groups, workshops, roundtables and one-on-one conversations. The Taskforce engaged with business, precinct groups, peak bodies, industry forums and government regulators to hear about issues that businesses are experiencing.

## Fact sheet

A fact sheet was published in March 2021 on the ACT Government website to introduce the Taskforce, its role, and its immediate focus of improving regulation.

The fact sheet and associated web content encouraged business to have their say through an open call for business to share their experiences, known barriers and ideas for improvement. A series of questions were posed to help start this conversation:

- What is the biggest issue facing your business right now?
- How has ACT regulation supported or strained your business during the COVID-19 pandemic?
- What are your interactions with the ACT Government like?
- What do we do well?
- What could we improve upon?
- Is the information and support you need to run your business in the ACT easily accessible?
- What other information would make it easier to run your business? Where would be the best place for you to access this?

- Are there government requirements on your business that are onerous, take too long or are confusing?
- How could we enhance our reputation as being the best place to do business?
- What processes, rules or regulations present barriers or hurdles to you doing business in the ACT?
- Have you experienced any duplication between Commonwealth and ACT processes?
- How could this be improved to be more aligned?
- Are there any government forms or processes that could be digitised and moved online?

The Taskforce's email and a contact number were provided so that business could reach out to the Taskforce directly.

## Workshops

The Taskforce held in-person workshops to get a high-level understanding of key regulatory issues in the ACT. These workshops were focused on capturing the breadth of issues that represent unnecessary regulatory burden and make it hard for businesses to interact with government.

The Taskforce targeted its workshop engagement activities on sectors that have been hardest hit by the COVID-19 pandemic, such as the entertainment/night-time economy, and sectors with the greatest potential for growth and jobs creation in the future, focusing on innovation and entrepreneurship.

The workshops conducted throughout 2021 were:

- ACT Government Stakeholders – 29 March 2021
- Night-time economy and entertainment sector – 30 April 2021
- Innovation sector – 23 June 2021
- ACT Procurement – 28 July 2021.

These workshops were targeted at small businesses, large businesses, peak bodies/industry associations and government stakeholders. The workshops explored issues that currently impede efficient business practice or create below par regulatory experiences, and how they might be addressed. The Taskforce developed interactive agendas for these workshops to address topics of interest. Workshops were run by an expert facilitator and insights were captured around the key themes to emerge through the workshop.

### ACT Government Stakeholders – 29 March 2021

This internal workshop introduced the Taskforce to key business areas across ACT Government. The workshop helped provide focus to the Taskforce's program of work, informed stakeholder mapping, and provided the regulator's perspective on optimising regulator efficiency and effectiveness.

### Night-time economy and entertainment sector – 30 April 2021

As demonstrated by the economic indicators, the ACT night-time economy and entertainment sectors were particularly hard hit throughout COVID-19 and continued to manage public health restrictions in 2021, while most of Canberra had returned to low or zero restrictions. Attendees included representatives of business peak bodies, as well as business owners and managers from the relevant sectors.

### Innovation sector – 23 June 2021

This workshop focused on the regulatory barriers facing the innovation sector, defined as encompassing start-ups, green economy businesses, tech and cyber security businesses, and higher education institutions. The workshop was developed and delivered in partnership with the Canberra Innovation Network.

## **ACT Procurement – 28 July 2021**

The Taskforce, with the support of Procurement ACT, held a workshop focused on government procurement. Members of the Canberra Business Chamber, Canberra Women in Business, and Canberra Innovation Network has suggested that procurement was an area the Taskforce should focus on. This workshop aimed to provide information for attendees on the current ACT Government procurement framework and help the Taskforce better understand the challenges and opportunities related to ACT Government procurement and what it should focus on addressing.

In addition to this workshop, a survey was released in December 2021 by Procurement ACT to review its procurement systems, processes and engagement with industry, as well as seek feedback from users on their experiences in tendering for opportunities with the ACT Government. The survey results will serve to identify future opportunities for improvement and inform future requirements for whole of government procurement systems.

### **Attending existing forums**

Taskforce representatives attended existing business forums, recognising the valuable time of business by ensuring their experiences were listened to in their working environment. These included the Canberra Region Tourism Leaders Forum, and member roundtables held by the Canberra Business Chamber.

### **One-on-one conversations**

The Taskforce conducted extensive one-on-one conversations with a wide variety of ACT businesses and peak bodies/industry associations at times and in locations that suited industry.

## **Legislative review**

The Taskforce commissioned a scoping study of opportunities to help remove the legislative regulatory burden on industry and business in the ACT. The wide-ranging Legislative Review prioritised the need to:

- reduce the requirement for businesses to contact multiple government agencies
- ensure legislation across the ACT supports new business models to grow the digital economy.

The review also allowed for the identification of opportunities to reform legislation to ensure regulatory settings remain fit for purpose and consistent with best practice principles. Potential review projects were identified via:

- a scan of the entire ACT primary legislation database
- a jurisdictional review of recent regulatory developments in the Commonwealth, the states and New Zealand
- a review of the outcomes of stakeholder consultations conducted by the Taskforce.

## **Jurisdictional analysis**

An extensive jurisdictional analysis was undertaken to identify previous and current reform programs and statements of best practice principles across the country and internationally. The Taskforce reviewed trends and regulatory policy to determine a criterion by which existing regulation could be considered, as well as a framework against which new regulation could be assessed.



The Taskforce, while progressing its work program, has also been facilitating the ACT's contribution to nation-wide regulatory reforms, principally through the Council on Federal Financial Relations, through to National Cabinet.

These projects include:

- Modernising Business Communications – Modernising Document Execution (MDE)
- Improving Occupational Mobility – Automatic Mutual Recognition (AMR)
- Overlapping Regulation.



# Appendix C: Business engagements

During the discovery phase, the Better Regulation Taskforce (the Taskforce) collaborated directly with businesses to provide the opportunity to contribute ideas and solutions that would best support their success. These ideas build on the already embedded ‘How can we help?’ approach of government agencies and regulators, with the view of improving the experience for everyone. Across our engagements with business, some key themes emerged. These included:

- small business information and communications
- simplification of government to business interactions
- regulator practice (clarity, capability, culture, and continuous improvement)
- programs and support for small to medium enterprises (SMEs)
- skilled workforce
- continuous improvement – reviewing legislation and regulations.

Feedback from business may fit into more than one of these themes.

## Small business information and communications

Small business operators are diverse, requiring varied communication and engagement.

### Business needs and preferences

- Business has limited time and resources to seek out relevant government information.
- Business needs information to be clear, targeted and promoted for their awareness.
- Most prefer business specific communication channels over general channels, and there is a strong preference for digital information over hard copy materials.
- Business has different information needs depending on what stage of the business lifecycle they are in. There is a need for information and advice at key growth stages as businesses grow and take on new responsibilities such as hiring staff or embracing more sophisticated management approaches.

### Online information – accessibility

- With an increased focus on providing information online there is a need to ensure that information on websites is clear, easy to read and use, and regularly updated for currency (including links).
- Website information needs to be accessible across a range of digital devices, including mobile phones and other personal digital devices.

### Personal contact points

- Communiques and information sent from the ACT Government should provide business with an opportunity to talk to a government officer. A lot of information is routed through websites, and there is often a lack of a phone number or other way in which an affected business can talk to a contact officer.
- After accessing information online, business operators and start-up entrepreneurs often need to talk to someone in government personally. Some have ideas or questions not resolvable online; others find existing text confusing or contradictory and need clarification.
- Government should give business operators an opportunity for phone calls to help answer questions, give the personal touch and get feedback or identify problems from business.

## Communiqués about regulatory changes

- Any proposed changes which are likely to impact on business costs, trading hours or employment practices should be advertised and promoted in advance of any such changes being implemented. There needs to be sufficient time to communicate with business owners and for the necessary changes to be made to operations.
- Any information or consultation about regulatory changes which may impact small business need to include small business advisors (for example, accountants, legal advisors) and peak bodies as they play an active role in filtering information for their small business clients.

## Providing targeted information, advice and support to business

Business suggested various methods (physical and virtual) to provide targeted information and advice to support them in starting, running and growing a business in the ACT. These included:

- A business centre which provides assistance from a credible source (for instance, being able to speak to someone who has run a business and understands the realities of running a business).
- An easy to access business hub to better connect business with government, including getting information on available business support, such as rebates and grants with industry specific support.
- A business concierge service which provides a dedicated agent who can answer questions about what services and supports are available to business, and how to access them.

## Simplification of government to business interactions

Businesses were asked to share their experience of interactions with government and the ease of doing business in the ACT. Improvements were suggested for some processes and approvals associated with running a business or holding a major event in the ACT. Ideas were also offered for potential innovation and simplification for business and government interactions.

### Processes and approvals

- Approval processes can be difficult, drawn out and there can be minimal or no update on the process after lodgement of the application. Some examples include the:
  - processing times of working with vulnerable people checks
  - processing times and consultation requirements for development approvals
  - difficulties that ‘pop up’ when navigating processes and obtaining necessary approvals
  - ease of seeking events approvals, especially for repeated annual events where applicants must undergo the same processes afresh
  - duplicative processes within and between the ACT Government and the Commonwealth (for example seeking approvals from the National Capital Authority).
- Processes and approvals could be supported by:
  - improving processing times and communications on the progress of applications
  - applying a ‘yes-first’ regulatory culture and explaining how stakeholders can do or achieve an outcome
  - applying a ‘tell us once’ principle where the same information must be provided to different ACT Government agencies, or when the same event is repeated over time (for example, yearly)
  - collaboration and feedback between those working on the ground and government agencies to devise mutual improvements to processes.

### **Streamlines business reporting – tell us once principle**

- Business feel it is inefficient when they are required to provide the same information to different entities.
- A ‘tell us once’ principle could be adopted so that business must only submit similar information to ACT regulators once (for example, updating information about board members).
- This principle could also be adopted for other information requirements relating to licensing (for example (fit and proper person test).

### **Business licences and renewals**

- Many business licences are offered on an annual basis, although renewal is routine and non-controversial.
- Renewing licences is a task that takes up time and managerial effort.
- Business would like greater flexibility by being given the option for multi-year options, as well as annual renewals.

## **Regulator practice (clarity, capability, culture and continuous improvement)**

Engagement with business has shown where some regulator practices can be improved to enhance clarity, capability, culture, while employing a continuous improvement approach.

### **Understanding the needs of business and providing a personalised approach**

- Business prefers to speak with people who have lived experience with running a business and who understand the intricacies and challenges.
- Business dealings with government could be improved by:
  - encouraging government to actively recruit public service candidates with a former business or business-enabling background
  - educating regulators to understand the experience of the business community and help support productive dialogues, possibly through professional placements within industry associations
  - using co-design processes to bring business stakeholders into earlier parts of the regulatory design stage
  - creating a personalised approach to regulatory compliance activities through a case manager approach, so business can develop ongoing productive relationships with regulator staff (individual or team)
  - facilitating feedback and tailored responses, and triaging issues and continuous improvement by regulators.

### **Regulatory approach and compliance enforcement culture**

- Regulatory policy needs to recognise the needs of business, be cognisant of the impact of regulation on small business at a community level and seek to minimise the cumulative burden of regulation.
- Business stressed the importance of regularly measuring the burden of regulation on business, both actual and perceived, through annual or bi-annual surveys.
- Business called for the ACT Government to lead the way by applying a ‘think small first approach’ to regulation, wherein laws are written first and foremost for small business, considering their ability to apply the regulations. If a greater or higher standard of compliance is expected by larger firms, then this should be an explicit addition to the law.
- Business called for the ACT Government to strive to have identical or similar laws to those in NSW, unless there is good reason not to do so, to reduce the cost of different regulation for two adjacent jurisdictions.
- Business suggested the ACT Government compare and contrast its performance to that of nearby regional NSW. The ACT should at least match, or better, the operating environment for business in NSW.

## Supporting straightforward business compliance and alleviating the burden of regulation

- Straightforward business compliance could be supported by:
  - developing a streamlined online portal that allows business to quickly understand which regulations apply to them, and which provides educational material on how they can fulfil their requirement
  - making regulatory compliance straightforward by ensuring clarity around legislation
  - reducing the subjectivity in regulation and its application
  - ensuring legislation, policy, procedures and fact sheets are written in plain language
  - providing improved fact sheets and checklists to support business understanding and compliance, as well as preparedness for inspections
  - refining Access Canberra's role through improving upfront triaging of issues and adopting a case manager approach to regulation and compliance
  - providing simple, accessible training to support compliance
  - clarifying the ACT's regulators and Ministerial portfolio responsibilities and 'who does what' so business knows who to speak to about specific issues
  - ensuring that regulators take the time to understand the perspective of regulated entities ('walking in the shoes' of business).
- Where there are multiple regulatory agencies, government and regulators need to alleviate the burden on business through:
  - ensuring that the regulation is justified through cost-benefit analysis
  - ensuring appropriate cooperation and coordination (for example, coordinating inspections and where possible, holding them at off-peak times)
  - easy and swift interactions with government agencies
  - investing in, and using, digital technology (RegTech) to ease interactions with government agencies.

## Programs and support for SMEs

SMEs expressed the ongoing need for programs and support throughout COVID-19 and beyond.

Business was encouraged by some of the COVID-19 business support initiatives, including the Choose CBR program and the waiving or reduction of hire car registration costs during the peak of the COVID-19 pandemic.

Outside of COVID-19 supports, business indicated the need for general business support for those in the growth stage of the business lifecycle. Business noted that there are many existing grants for start-ups and big business, but not for those in the middle, which makes it difficult for those trying to scale up their operations to access tailored information and support.

Business, particularly SMEs, also expressed a strong desire for support in understanding government procurement requirements, and in bidding for government procurement opportunities.

## ACT Government procurement

Business identified some current barriers to undertaking procurement.

### Understanding, awareness and SME engagement

- The ACT Government procurement system can be confusing. There is an apparent lack of SME understanding of the various procurement opportunities available across different sectors. This includes a lack of understanding about SME eligibility to bid for ACT Government contracts and how to apply to get onto ACT Government panels.

- ACT Government employees undertaking procurement often don't understand the realities of running a business and what they are asking of business through procurement processes. This includes the costs associated with bidding for ACT Government contracts.

### **Businesses owned by Aboriginal and Torres Strait Islander people and women**

- Businesses owned and led by women and Aboriginal and Torres Strait Islander people both identified that more could be done to increase their participation and share of ACT Government contracts, including by challenging perceived bias.

### **Procurement framework – procurement policies and practice**

- The existing procurement thresholds are outdated and should be reviewed.
- There could be greater clarity about how to make an unsolicited bid and how it will be dealt with.
- Panels, depending on the frequency in which they are refreshed, can be a barrier for SME participation.

### **Tender documentation and contracts**

- Stakeholders identified liability and insurance provisions in ACT Government contracts as a potential barrier for SMEs. They suggested that the contract liability and insurance provisions be reviewed and reformed, including those clauses relating to uncapped liability, consequential loss and proportionate liability.
- There is a perception that there is little to no tolerance for failure in ACT Government procurement. Mitigating risk leads to the removal of risk entirely making it harder for new, unproven business to be successful.
- There is a need to continue to move away from output reporting and towards outcomes-focused procurement and contracting.
- For the not-for-profit sector, it was noted that there is a need to rationalise the cumulative burden of contractual reporting requirements and grant funding reporting requirements.

### **Comfortable communications**

- While acknowledging procurement and probity requirements, government officials can often be risk adverse in their communications with prospective respondents/tenderers. Communications can be quite bureaucratic.
- Where questions are asked, business would like a response from a government officer.

### **Linking procurement policies and practice to broader ACT Government objectives**

- While acknowledging the importance of the government procurement values and social procurement broadly, business noted the time it takes to respond to these criteria in procurement documentation does not often align with the weighting assigned to it.
- There could be greater clarity given about government objectives for small business, and how business can reach those objectives. If there are quotas, share them with industry. For example, stakeholders suggested using quotas for female representation through procurement processes and contracting as this is more likely to achieve intended outcomes (for instance, increase female representation in certain industries). While others noted that this would also need to be supported through education and training measures.

### **Greater certainty through forecasting**

- Early market engagement and improved forecasting would provide greater clarity to industry. This includes upcoming projects and budgets.
- There is a need to provide greater certainty of infrastructure spend beyond two years.

### **Debriefing**

- There is little or no feedback provided for failed bids, making it harder for business to learn and improve. Where feedback is provided, it often provides little help to business to better progress their bids in the future. Noting there are inconsistencies between directorates in their approach to debriefing respondents/tenderers.

## Identified opportunities

Stakeholders identified some opportunities to support best practice procurement and participation of SMEs in supplying to the ACT Government.

### ***Championing local business***

Provide clear pathways to follow which make it easy for a business to check their eligibility and bid for ACT Government contracts. Build engagement with, and the confidence of, local SMEs to bid for ACT Government contracts.

### ***Best practice procurement framework***

Maintain a best practice procurement framework by undertaking regular reviews for currency. Review procurement thresholds, communicate the importance of government procurement directions and/or policy objectives to industry and appropriately weight them, and provide greater certainty to industry through forecasting.

### ***Best practice tender documentation and contracts***

Review ACT Government contract liability and insurance provisions and consider incentive-based contracts.

### ***Have a 'go to' place for connection***

A central place where SMEs can go to access public procurement information and supports. This could include toolkits and guidelines (in plain language), 'how to' videos, tables which summarise all existing panels and their refresh dates, and an SME supplier list (pre-vetted against the procurement values).

### ***Feedback mechanisms for continual improvement***

Provide respondents/tenderers a debrief consistent with ACT Government debriefing guidelines.

### ***Increased ACT Government knowledge and capability***

Ensure consistency in the approach to procurement across government agencies. Increase the level of knowledge of the procurement framework and capability to undertake procurement across agencies. Ensure the people running procurement confidently communicate and answer respondent/tenderer questions, while also complying with probity requirements.

## Skilled workforce

Having skilled staff was a common issue raised by business, particularly in the context of COVID-19.

- Business cannot access the staff they need to run and grow their business.
- Skilled workforce shortages have been experienced across a variety of industries, causing business complexities including pressure on staff wages.
- Business wants to ensure that there is reciprocal recognition of licences, to support occupational mobility from interstate. This includes a broad program of Mutual Recognition being undertaken at a national level and specific supports to understand and facilitate transfers of certificates or specific jurisdictional training.
- Commonwealth and ACT Government measures should work together to support the attraction of workers to the ACT and the hiring/upskilling of staff, including (but not limited to):
  - affordable housing
  - city renewal and activation
  - incentives for business to take on apprentices
  - visa conditions, for example ordinarily international students are permitted to work 20 hours a week (40 hours a fortnight) while courses are in session, and unlimited hours when their course is out of session.



## Continuous improvement – reviewing ACT legislation and regulations

Engagement with business has identified potential focus areas for review and reform to ensure fit-for-purpose and best practice regulation. This includes effort to both manage the existing ‘stock’ of regulation as well as the ‘flow’ of new regulation. These have varying levels of complexity.

Business raised the need for continuous review and improvement to:

- address regulatory issues faced by the night-time economy and entertainment sectors, with particular focus on noise, outdoor dining and liquor licensing
- implement a best practice procurement framework for SMEs through reviewing the Government Procurement Act 2001 and regulation
- enhance labour mobility through the implementation of a uniform scheme for automatic mutual recognition of occupational licences
- update:
  - employment agent licensing requirements
  - model rules for incorporated associations
  - references to outmoded payment methods in legislation
  - training requirements for the Responsible Service of Alcohol framework.

Business raised other focus areas which require further analysis including:

- consideration of a potential licensing framework for individuals such as motor vehicle repairers
- support for diversification out of gaming through changes to ‘lease purpose clauses’ definitions (for example, changing the definition of ‘club’ in the territory plan to allow additional uses).

Business suggested that in reviewing and updating legislation and regulations that a regulatory approach should:

- think ‘small first’
- achieve cross-border alignment, where possible, to reduce burden on those business operating across jurisdictions (regional NSW and ACT)
- reduce overlapping regulation and streamline compliance reporting (applying a ‘tell us once’ principle).

# Appendix D: Legislative review

Throughout the discovery phase, the Better Regulation Taskforce (the Taskforce) commissioned a Legislative Review to identify the purely regulatory landscape impacts on business in the ACT. The wide-ranging legislative review identified opportunities for regulatory review and reform to reduce regulatory burden on business.

The focus of reviewing key legislation was to:

- 1) reduce the need for business to contact multiple government agencies
- 2) ensure legislation across the ACT supports new business models to grow the digital economy
- 3) identify opportunities to reform legislation to ensure regulatory settings remain fit for purpose and consistent with best practice principles.

## Research undertaken

Potential review projects were identified via:

- a scan of the entire ACT primary legislation database
- a review of recent regulatory developments in Australia, across the Commonwealth and states, and New Zealand
- a review of the outcomes of stakeholder consultations conducted by the Taskforce.

## Potential identified projects

The Legislative Review identified six potential projects for review.

### Project 1 – Regulation of the ‘entertainment economy’

Review the full legislative and regulatory arrangements for the entertainment economy, which extends across the industry sectors of Accommodation and Food Services, and Arts and Recreation Services.

This project was identified through consultation, which raised numerous and ongoing barriers faced by the sectors of Accommodation and Food Services, and Arts and Recreation Services, particularly throughout the COVID-19 pandemic.

There are many small businesses in the ACT seeking to operate in these sectors that have expressed concerns about the lack of a coordinated approach to approvals and regulations around operating their business. The hospitality and entertainment sectors make a significant contribution to the ACT economy, the jobs market and Canberra’s way of life.

This review would consider the scope for a fundamental re-organisation of regulatory arrangements affecting the entertainment economy. The review could examine legislation and regulatory practice in areas including land use, food and beverage regulation, and noise control. It may consider appropriate alternatives to arrangements currently requiring prior approval.

## **Project 2 – Standardise procurement processes across ACT Government**

Standardise procurement processes across ACT Government and consider scope to implement preferential treatment for local content.

Consultations with business identified barriers for business throughout ACT Government procurement practices.

A review would examine the scope for legislation to provide for the following specific measures:

- appropriate risk assessment and management practices and standards (including insurance requirements for contractors)
- obligations to provide information/feedback about tender submissions
- preference for local content in procurement decisions (noting the ability to impose local preference policies might be found to be limited under law or by various intergovernmental agreements or other policy arrangements to which the ACT is a party).

## **Project 3 – Technology-specific legislation**

Review legislation to remove any obligations requiring use of a particular technology, including paper-based documents.

This focuses on a broad review to remove outdated technologies from legislation.

Although reforms of this kind have been undertaken in the ACT over recent years, there appears to be benefits from a further review of legislation, statutory instruments and administrative practice in this area. The objective is to enable full use of modern digital technology appropriate to the circumstances. Similar reviews are currently underway in other jurisdictions, including the Commonwealth.

Removal of requirements to provide information in a particular manner will minimise costs to business. Scrutiny of such legislation or other regulatory practices also provides an opportunity to identify and remove requirements that are unnecessary or overly prescriptive. This project would review legislation and regulatory practices which require, or presume, communications by means of a particular technology, such as a paper-based notice or a meeting requiring personal attendance. This includes arrangements currently suspended because of the COVID-19 pandemic.

## **Project 4 – Scope for cross-border alignment**

Review of ACT and NSW business regulation legislation to maximise cross-border alignment with NSW, with a focus on legislation having significant impact on small business.

This project is relevant for the ACT as a small jurisdiction surrounded by regional NSW. A large number of businesses, including many small businesses, operate both within the ACT and surrounding areas of NSW. Compliance costs due to a lack of regulatory alignment impact disproportionately on small business. A review of regulation and an analysis of opportunities for regulatory alignment with NSW would make it easier to do business across NSW and the ACT.

A full review of the alignment of ACT legislation with that of NSW would require detailed examination of legislation and regulatory practice across both jurisdictions. This would require consideration of a wide range of policy questions where divergences are identified.



### Project 5 – Regulatory overlap

Review of regulator/regulation overlap and duplication to reduce touchpoints, with a focus on legislation having significant impact on small business.

Businesses, both in the ACT and across Australia, have expressed concern about regulatory overlap and duplication that has significant financial and time cost impacts. Often this experience can involve the need to deal with different regulations and regulators for the same, or a similar, activity. Stakeholders seek simplified business to government interactions and a ‘tell us once’ approach.

A review would identify areas of overlap or duplication which could be streamlined to make processes simpler and more transparent. This project aligns with Commonwealth objectives to streamline processes and eliminate duplication.

This review would involve further consultation with business to identify any other areas where regulatory overlap may exist and where its removal would have practical benefits for business.

### Project 6 – Regulator performance

Introducing legislation to improve regulator performance.

Continuous improvement of, and standards for, regulator best practice and performance will benefit business. This could be achieved through changes to legislation to support better regulatory settings and practices. The Productivity Commission has noted studies showing that up to 50% of unnecessary costs for business are due to how regulators implement regulations.

Stakeholders frequently request guidance for regulatory compliance to be provided in a more accessible form, such as an online portal. Guidance could also be clearer, with improved checklists and information.

The concept of ‘stewardship’ has been promoted in several jurisdictions. The objective is to impose duties on regulators to assess effectiveness and appropriateness of legislation and regulatory practice on a regular basis.

The Productivity Commission has noted that better outcomes for small businesses and the community are achieved when regulators have a range of tools to tailor their responses to breaches (or potential breaches) of regulation in a proportionate way, rather than having to rely solely on initiating legal proceedings.



## Appendix E: Jurisdictional scan

This desktop scan includes an exploration of how elements of a regulatory quality framework manifest in other jurisdictions.

### A government commitment

The Organisation for Economic Co-operation and Development (OECD) emphasises the need for government to commit to a policy for regulatory quality.

The 2012 Recommendation of the Council on Regulatory Policy and Governance called on all members to:

Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered, and the net benefits are maximised.<sup>22</sup>

In unpacking this recommendation, the OECD calls for governments to develop and maintain a strategic capacity to ensure regulatory policy remains relevant and effective. A part of this capacity should be a regulatory management system which employs an impact assessment **prior** to implementing regulation and an evaluation **after** implementation to assess performance and outcomes. Consultation on the design, development and revision of regulations underpins the management system.

At the heart of the OECD recommendation is the need for a government-endorsed framework which puts in place measures so that regulation is proportionate, effective and clear. This commitment is commonly given through a set of principles to guide best practice in creating regulation.

Examples of these principles from the Commonwealth and NSW are discussed below. In all cases, the principles include the OECD requirements for an assessment prior to implementation, an evaluation after implementation and stakeholder involvement.

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22 OECD Regulatory Policy Committee, Recommendation of the Council on Regulatory Policy and Governance, Organisation for Economic Co-operation and Development, 2012, p 4.

## Aspiration – best practice principles

The 2007 Council of Australian Governments (COAG) agreed principles for best practice regulation contain several elements that are fundamental to ensuring regulation is proportionate, effective and clear. Many Australian jurisdictions either explicitly align their own regulatory policy with the COAG principles,<sup>23</sup> or have developed their own aspirational statements of best practice to guide stock and flow management as well as regulatory performance.

### Box 1 – COAG-agreed Principles of Best Practice Regulation

- Principle 1:** Establishing a case for action before addressing a problem.
- Principle 2:** A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed.
- Principle 3:** Adopting the option that generates the greatest net benefit for the community.
- Principle 4:** In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
- the benefits of the restrictions to the community as a whole outweigh the costs
  - the objectives of the regulation can only be achieved by restricting competition.
- Principle 5:** Providing effective guidance to relevant regulators and regulated entities in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.
- Principle 6:** Ensuring that regulation remains relevant and effective over time.
- Principle 7:** Consulting effectively with affected key stakeholders at all stages of the regulatory cycle.
- Principle 8:** Government action should be effective and proportional to the issue being addressed

23 See, for example, the Queensland Government *Guide to Better Regulation*



Independent reviews of good regulation in NSW have recommended that regulation cannot be a ‘set and forget’ exercise. It requires regular and frequent engagement and iterative improvement. In 2019, NSW Treasury released the *NSW Government Guide to Better Regulation*,<sup>24</sup> building on the NSW Better Regulation Principles and policy-making requirements that have been in place since 2008.

All new and amending regulatory proposals in NSW are required to demonstrate application of the Better Regulation Principles. The 2019 guide provides a resource for policy makers to consider and demonstrate how the principles are reflected in proposals.

### Box 2 – NSW Better Regulation Principles

- Principle 1:** The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.
- Principle 2:** The objective of government action should be clear.
- Principle 3:** The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.
- Principle 4:** Government action should be effective and proportional.
- Principle 5:** Consultation with business, and the community, should inform regulatory development.
- Principle 6:** The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.
- Principle 7:** Regulation should be periodically reviewed, and if necessary, reformed to ensure its continued efficiency and effectiveness.

## Components and tools

Regulation is likely to be ‘better’ when there are processes and institutions in place to:

- manage the existing stock of regulation
- manage the flow of new regulation
- continuously improve regulator culture and capability.

The regulatory system should ensure that these components are performed in a coordinated and cost-effective way. Linking back to the OECD recommendation, government commitment to the management of each component is essential.

Jurisdictions deploy a variety of tools and approaches to address the components and some of these approaches are described below.

Not all jurisdictions have been included in this brief survey, and it is not intended to draw conclusions about the merits of different approaches. The information has been collated as an information source on what a better regulation framework can look like, not what it must look like.

### Commonwealth

Current institutions and processes to improve regulatory quality at the Federal level include:

- Management of the flow of new regulation through the Office of Best Practice Regulation (OBPR):
  - The OBPR works with departments and agencies to produce detailed, evidence-based assessments of complex policy issues.
  - According to OBPR, best practice regulation is achieved through the rigorous application of a Regulatory Impact Assessment framework. By applying this approach, the Commonwealth is looking to ensure that all policy decisions are evidence based and that ‘regulation is never adopted as the default solution, but rather introduced as a means of last resort’.
  - A Regulation Impact Statement (RIS) is required where the impacts of a proposal are more than minor. Where Cabinet is the decision maker, a RIS is always required.
- The creation of a regulator performance function to increase accountability, promote best practice, build the professionalism of regulators and support cultural change. Key features include:
  - Adoption of a ‘stewardship’ approach. Stewardship assists governments to manage the stock of existing regulation by placing responsibility on Ministers, secretaries and agency heads to ensure that regulation and regulatory approaches remain fit for purpose. Stewardship assists governments to identify proposals for regulatory reform.
  - Ministerial statements of expectation and regulator statements of intent to establish the policies and priorities for the regulator.

An additional tool to manage the stock of regulation is the Commonwealth sunseting framework. Many legislative instruments<sup>25</sup> are automatically repealed after 10 years—this process is known as sunseting and is governed by the Commonwealth’s *Legislation Act 2003*. The Productivity Commission notes that ‘the logic supporting sunseting is that much regulation inevitably has a ‘use-by date’ when it is no longer needed or will require significant modification. But without a trigger to reassess its utility, at least some of this regulation will inevitably remain in place’.<sup>26</sup>

25 The Sunseting Framework was reviewed in 2017 and it was recommended that the sunseting framework not be extended to Acts.

26 Productivity Commission, *Identifying and Evaluating Regulation Reforms*, Australian Government, Canberra, 2011, p xviii, accessed 10 March 2022.

## New Zealand

New Zealand is recognised for its comprehensive and innovative approach to regulatory quality.

<p><b>Better for Business (B4B)</b></p>	<p>The centrepiece of its framework is the B4B program under the Minister for Business, Innovation and Employment. B4B is a comprehensive institutional response from government that reaches across managing the stock and flow of stock of regulation as well as regulator capacity and capability.</p> <p>B4B describes itself as the ‘voice of Kiwi business’. Insights into the experiences of business dealing with government are gleaned through in-depth research and analysis. B4B then works with government agencies by sharing and highlighting these insights with policy and operational teams within the agencies. The outcome is the reduction of the cumulative impact of compliance on small businesses.</p> <p>The various government initiatives are mapped across a spectrum from ‘avoiding burdens for small business’ (top of the cliff) through to ‘remediating burdens’ (bottom of the cliff).</p>
<p><b>Top of the cliff</b></p>	<p>Top of the cliff initiatives include a regulatory impact assessment process aimed at achieving ‘better new regulation’. The focus of this initiative is to apply a small business lens to policy.</p> <p>Another measure at this end of the spectrum is ‘Better Rules Better Outcomes’, which is aimed at simplifying existing regulation. This is a human-centred design process for legislation and regulation. The Better Rules methodology aims to assist people and businesses to understand, benefit from and comply with legislation in an automated way. The Better Rules approach allows for legislation to be developed in software code as well as written language from the start. It avoids the need for later translation of legislation into software language, avoiding the risk of incorrect interpretation. The Better Rules methodology will be particularly helpful for activities like calculating eligibility criteria for a benefit, and financial reporting obligations.</p> <p>It is the human-centred design approach which is embedded in a rules as code approach which is valuable and capable of delivering significant benefits to business</p>
<p><b>Bottom of the cliff</b></p>	<p>Initiatives to remediate burdens include the ‘Better comms and support’ responses such as New Zealand’s Business website,<sup>27</sup> which provides a central point for all business programs, information and support including ‘How to Start a Business’.</p>
<p><b>Regulatory Technology (RegTech)</b></p>	<p>New Zealand has invested in a comprehensive RegTech solution to assist in alleviating and remediating regulatory burden. Business Connect<sup>28</sup> is a digital service platform for businesses to:</p> <ul style="list-style-type: none"> <li>• access and manage their business information from one place</li> <li>• use the data government already holds about them – such as their New Zealand Business Number (NZBN) – which will pre-populate the information they’re most often asked to share</li> <li>• re-use the information they’ve previously provided to government</li> <li>• connect digitally across both local and central government</li> <li>• more easily meet their compliance obligations.</li> </ul>

<sup>27</sup> New Zealand Government, *Helping businesses succeed - Tools and expert advice from government and industry, designed to help Kiwi businesses save time and succeed* [website], 2022, accessed 10 March 2022.

<sup>28</sup> New Zealand Government, *Making it easier to do business with government*, [website], 2022, accessed 10 March 2022.

## New South Wales

The NSW Government states that it is committed to continuous improvement of its regulatory policy framework to support and enhance opportunities for improved productivity.

Following an Independent Review of the NSW Regulatory Policy Framework in 2017, the NSW Government assigned responsibility for regulatory policy to the Treasurer and appointed a Commissioner for Productivity.<sup>29</sup>

In the context of economic recovery from COVID-19, the NSW Productivity Commission released the *Productivity Commission White Paper*<sup>30</sup> in 2021, identifying 60 opportunities to ‘reboot’ productivity growth. The white paper identifies four foundations upon which productivity growth should be built:

- talent
- innovation
- housing
- infrastructure.

The scope of the reform agenda in the White Paper is broad, with recommendations that range from education and schools to energy, taxes, housing and infrastructure.

Of central interest to the Better Regulation Taskforce (the Taskforce) is the White Paper’s consideration of the costs and opportunities of regulation in a context of recovery and productivity growth. The White Paper argues that better regulation will:

- reduce unjustified restrictions on conduct
- remove outdated, inconsistent or unnecessary rules
- reduce barriers to entry or price controls in network industries or occupations
- reduce compliance costs.

Recommendations for forward-looking regulation that supports competition and innovation include specific areas like drones, personal mobility devices and Automatic Mutual Recognition (AMR), but also whole-of-system reforms such as amending legislation to translate rules to code (where appropriate) and adopting a negative licensing approach for low-risk licences and activities.

Building on the White Paper, the NSW Productivity Commission released a discussion paper on regulating emerging industries. This articulates clear principles to underpin regulation in areas of technological change, to achieve safety, promote innovation and support industry. These principles propose that regulation should:

- be outcomes-focused – neutral to technology and focused on underlying objectives
- promote a culture of regulatory experimentation – supporting trials, pilots and innovation
- be regularly monitored and reviewed – to assist in identifying barriers in the existing stock of legislation and the adoption of emerging technologies, while ensuring regulation remains fit for purpose.

As previously noted, NSW manages the flow of regulation through the application of best-practice principles for better regulation to new and amending policy proposals.

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29 T Greiner, S McCluskey and M Stewart-Weeks, *NSW Regulatory Policy Framework – Independent Review* [PDF] Sydney, 2017, accessed 10 March 2022.

30 NSW Government, *Productivity Commission White Paper – Rebooting the Economy*, Sydney, 2021.

## Victoria

Better Regulation Victoria (BRV) works with the Victorian Government and community to support the analysis, design and implementation of best-practice regulation. It supports departments and agencies, and works closely with Victorian regulators, to deliver continuous regulatory improvements.

Working with the Commissioner for Better Regulation and the Red Tape Commissioner, BRV:

- assesses the adequacy of regulatory impact assessments (for instance, by engaging with other departments and agencies undertaking impact assessments)
- assists with the design, application and administration of regulation (by providing training on preparing impact assessments for public sector staff, and running workshops on impact assessments of complex issues)
- convenes the Regulators' Forum (which brings together staff from regulators and relevant departments, so best practices can be shared)
- advises on and investigates complaints about competitive neutrality (upholding competitive neutrality between government and private enterprises providing the same service)
- undertakes research into other regulatory issues as directed by the Treasurer or the Secretary of the Department of Treasury and Finance.

BRV also communicates with Victorian businesses and not-for-profits to identify improvements or ways to reduce unnecessary regulation, such as:

- opportunities to cut red tape, with a 25% red tape reduction target (timeframe unspecified)
- improvements to regulators' dealings with business, including the design and implementation of regulation
- areas of regulatory overlap
- 'hotspots' where regulatory reforms can unlock economic activity
- improvements to regulation administration, such as removing unnecessary burdens.
- Queensland

The Queensland Government established a Better Regulation Taskforce<sup>31</sup> under its small business advisory council to provide periodic reports to government on opportunities for regulatory reform, with a focus on specific sectors and engagement directly with business groups. Recommendations vary across the reports, but some key themes emerge as they call for:

- consistent and risk-based approaches to rules and regulations
- clear, specific guidance material for regulated entities.

Like most other jurisdictions in Australia,<sup>32</sup> Queensland has a sunseting regime and has also established the Office of Best Practice Regulation, which administers the Queensland Government's regulatory review requirements, and aims to ensure regulation is necessary, well-designed and fit-for-purpose.

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31 Department of Employment, Small Business and Training, *Better Regulation Taskforce* [website], Queensland Government, 2022, accessed 21 February 2022.

32 Essentially, the Commonwealth, Queensland, Victoria, South Australia, and Tasmania's regulations/subordinate legislation automatically expire (or sunsets) 10 years after coming into force. The precise date of this differs between jurisdictions. New South Wales is similar, but regulations/subordinate legislation automatically expire after five years.

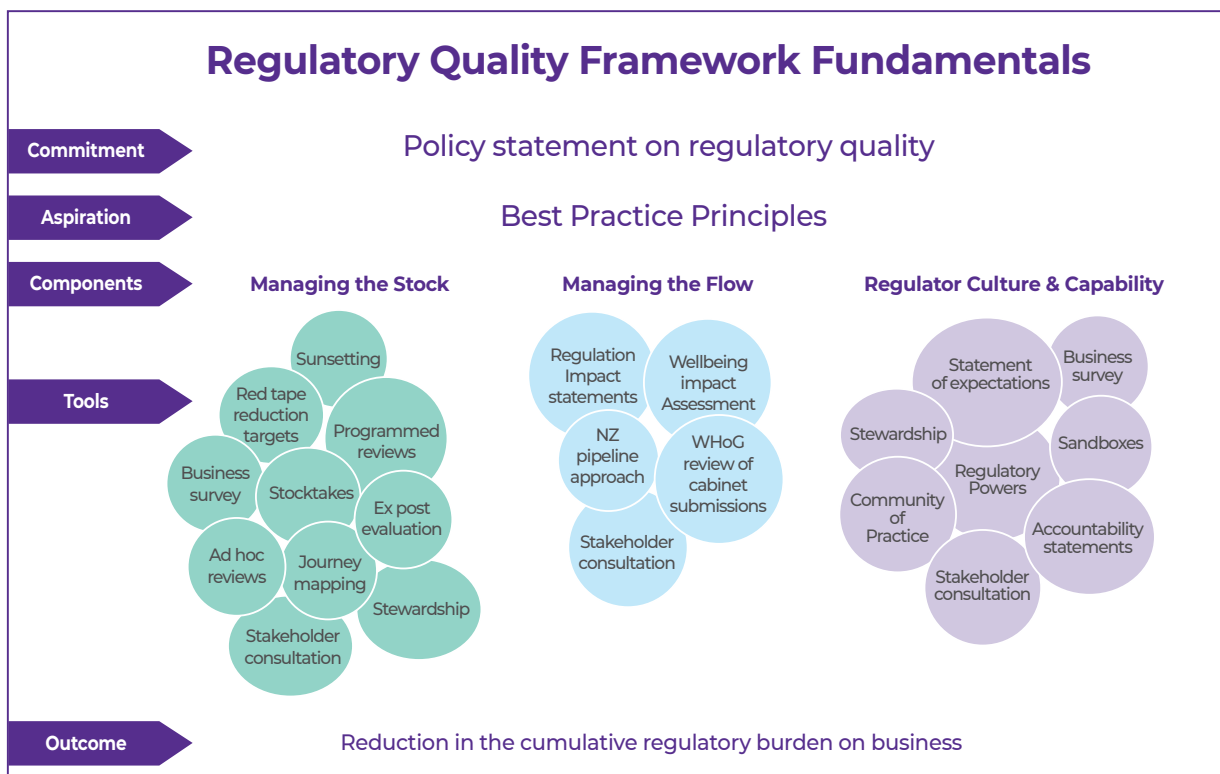
# Appendix F: Regulatory quality framework

Our analysis of regulatory reform approaches across Australia and abroad has shown that there is no single ‘right way’ to improve regulatory quality (see Appendix E).

Each jurisdiction has its own approach, processes and arrangements to suit the specific regulatory landscape. What is common is a recognition that achieving best practice and better regulation is usually underpinned by a framework that focuses on regulatory quality.

The analysis suggests that there are a set of fundamental elements that underlie regulatory reform and support a robust regulatory quality framework. These include:

- 1) A government commitment to regulatory quality.
- 2) An aspirational statement of principles to ensure that regulation is proportionate, effective and clear.
- 3) An understanding that a regulatory quality framework has three components, each of which must be addressed in a coherent and coordinated way to ensure regulator quality:
  - o managing the stock of regulation to ensure it remains fit for purpose and reflective of best practice
  - o managing the flow of new regulation to ensure regulation-making is guided by robust processes that consider evidence, impact, risks and benefits
  - o regulator culture and capability which enables continuous improvement, achieves good regulatory outcomes, effectively engages with harms and supports regulated entities to achieve compliance.
- 4) The deployment of regulatory management tools to address each of these three components. These tools must be fit for purpose and relevant to the context of the jurisdiction.





The ACT has in place some key elements of the fundamentals identified in our analysis. These appear across regulatory schemes, administrative units, the statute book, and policies and procedures. They reflect the ACT Government's commitment to regulatory practice, which balances harm minimisation with the other objectives and interests of the community.

There is always opportunity for improvement as the Better Regulation program progresses in the ACT. It is important to consider what the elements of an ACT Regulatory Quality Framework should be. Some current, foundational elements and regulatory management tools are summarised in Box 3.

### Box 3 – ACT foundational elements for Better Regulation

- The ACT has a dedicated ministerial portfolio for Better Regulation and has funded a Better Regulation Taskforce to make it easier to start, run and grow a business. This initiative works in concert with the Economic Development portfolio and the significant program of business support delivered throughout the COVID-19 pandemic.
- Access Canberra was established to provide a one-stop shop for ACT Government customer and regulatory services, and to make access to government services easier, simpler and faster.
- Access Canberra actively engages with businesses, community groups and individuals to identify areas to reduce red tape and improve government services. Access Canberra is often the first point of contact for individuals, organisations and businesses dealing with the ACT Government.
- The structure of Access Canberra as the primary regulatory agency of the ACT Government supports the provision of effective guidance to regulated entities. It simplifies business and community interactions with government, as well as providing opportunities to reduce duplication, streamline processes and join up functions.
- Access Canberra commits to several approaches which align with the principles of better regulation, including an approach to regulatory compliance and enforcement that is risk-based. It applies a risk-based compliance approach to ensure that resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening its capacity to take action where the community and the environment are most at risk.
- Access Canberra encourages compliance through education and awareness.
- Access Canberra deploys a range of tools to address non-compliance with the laws that it enforces.
- The *Legislation Act 2001* requires the preparation of Regulatory Impact Statements to accompany certain types of proposed subordinate laws or disallowable instruments. Section 35 outlines the required content of these statements, which includes:
  - an assessment of costs and benefits
  - a statement of the objectives being met through the law
  - the options that were considered to achieve these objectives.
- Some regulatory frameworks, such as the regulation of construction licensing under the Construction Occupations (Licensing) Act 2004, include a Ministerial statement of expectations whereby the responsible Minister can, in consultation with the registrar, make clear government expectations in relation to functions of the regulator – within appropriate limitations to preserve the independence of the regulatory function. This is a tool to support better practice in regulatory performance and capability.
- The ACT Government uses the Wellbeing Framework to inform government priorities, policies and investment decisions – including through Budget and Cabinet processes.



## Acknowledgement of Country

The ACT Government acknowledges the Ngunnawal people as traditional custodians of the Canberra Region and acknowledges that the region remains a significant meeting place.

The ACT Government and community partners are committed to self-determination as the guiding principle in the delivery of programs and services and are working in partnership with Aboriginal and Torres Strait Islander communities to address matters that are important to them.