



Australian Government

Department of the Prime Minister and Cabinet

Lessons learned from COVID-19 on regulatory responsiveness

Introduction

The Prime Minister noted in his speech to the Committee for Economic Development of Australia (CEDA) in June 2020 that regulators and government acted with ‘urgency and pragmatism’ during COVID-19, making common sense and practical changes in the interests of the community without compromising safeguards.

While in some cases regulatory settings and instruments were themselves adapted in response to changed circumstances, the Prime Minister cited changes to the ‘behaviour and attitudes’ of regulators as being equally important to the regulations themselves.

The COVID-19 pandemic, as with any emergency scenario, changed the balance between risk and expediency required of our regulatory systems in order to satisfy critical short-term requirements. It is likely that many settings and practices changed in response to the pandemic, such as changes to the capital framework for bank lending requirements, will not be desirable to maintain in the long term.

However, many of the regulatory changes made during COVID-19 were reforms that stakeholders had long been calling for and may be maintained outside of the COVID-19 context. It is important to reflect on how and why regulators changed and what we can learn from this period to bring into a BAU or ‘COVID-normal’ environment.

PM&C developed this report following consultation with partners across Commonwealth and with stakeholders in the business community. Portfolio agencies were asked to prepare reports on regulatory changes arising from COVID-19. PM&C also carried out interviews with business peaks involved in consulting on key regulatory changes made throughout the crisis, as well as individuals in regulatory agencies in both policy administration and business liaison roles.

Key takeaways

The research generated a wide range of views and findings, with a few consistent themes standing out.

- Regulatory frameworks were flexible and operated as intended in most cases. There is scope for key decision-makers to exercise common sense discretion where necessary, and only in a small number of cases were critical legislative changes required during the peak of the crisis. However, discretionary powers still depend on the risk appetite of decision makers.
- Government agencies and regulatory functions introduced and further embedded collaboration and customer-centrism into their operating culture and practice in response to COVID-19. A number of agencies have now committed to permanently maintaining many of their new business engagement functions.
- While business stakeholders have tended to agree that regulator culture and engagement changed positively in the early stages of the pandemic, the changes have not been uniformly positive. Fresh challenges have emerged as a result of the resurgence of COVID-19 in Victoria, and high-level public health restrictions remain in place in many jurisdictions. The ongoing nature of the crisis may have corroded the sense of shared purpose evident in the earlier stages.

Changes in regulator behaviour and culture

Strategic clarity and balancing risk

- **Clear and agreed objectives:** the COVID-19 pandemic consolidated regulatory activities around a smaller number of public health and community goals, as many business-as-usual and future-focused activities were postponed or put on hold.
 - Business peaks said that shared objectives have helped to foster a culture of collaboration, in contrast with the culture of mutual suspicion that had emerged between regulators and business in some sectors prior to COVID-19.
 - Ai Group said that clearer objectives stimulate problem-solving behaviours and an increased willingness to eschew processes and procedural minutiae in favour of outcomes-based approaches.

Fair Work Ombudsman – coronavirus guidance

The Fair Work Ombudsman issued a new mission statement ('Our Priorities and Approach') with a revised enforcement posture statement, and updated their Compliance and Enforcement Policy to note that the FWO is guided by these strategic priorities in pursuing enforcement activities.

The enforcement posture statement sets out:

- An explicit commitment to flexibility and sensitivity to nuances of each sector
- Announcement of priority sectors, including hospitality, horticulture and the harvest trail, and franchisors.
- Focus primarily on education, advice and proactive measures.
- Proportionality as a key enforcement principle

The FWO additionally announced that it would prioritise allegations of serious non-compliance with workplace laws, including in relation to the JobKeeper scheme, and take businesses' financial position into account when deciding whether to commence litigation action.

Additionally, FWO developed a dedicated website coronavirus.fairwork.gov.au, to clarify workplace rights and responsibilities for employers and employees during COVID-19 in one place. The website catalogues temporary information and changes relevant to adjacent regulators such as the Fair Work Commission and workplace health and safety regulators.

- **Proactive culture of compliance and enforcement** – business groups reported a significant shift in attitudes in some regulators towards working with industry to educate and improve compliance instead of reflexive enforcement in complying with government obligations.
 - Business stakeholders cited WHS regulators as exhibiting empathetic and responsive attitudes in relation to compliance and enforcement, with a focus on education campaigns and positive reinforced behaviours instead of 'employer failure'.
- **Focus on problem solving** – in normal circumstances, regulators are often only subjected to high levels of public scrutiny only in the event of high-profile regulatory failures. The pandemic created a strong drive to resolve problems and deliver quickly, with clear public health implications of underperformance.
 - Both agencies and businesses reported that COVID-19 improved the incentives to problem-solve as, in many instances, inaction would generate visibly worse outcomes.
 - Changes in health care delivery – such as relaxation of telehealth delivery requirements and changes to prescription renewals to allow fewer pharmacy trips – reflect instances where practical changes were made in response to a substantial changes in risk factors.

- **Consistent and clear messaging** – many regulators issued a **statement of intent** outlining the key principles (i.e. risk-proportionate approach) being adopted, signalling activities that would be deprioritised, cancelled, or less actively enforced, and setting out timeline conditions such as the expiry of public health orders

Safe Work Australia – national statement of intent

Safe Work Australia issued a statement of intent on 1 April to apply to all Work Health and Safety (WHS) regulators in jurisdictions with WHS model laws. The statement sets out the enforcement approach for regulators with a focus on activities and principles (rather than procedures) in enforcing WHS legislation through the duration of public health orders being in place. The statement sets out:

- Proportionality as regulators' key enforcement principle, focusing only on areas of serious health risks.
- Listing of enforcement activities being de-prioritised, including face-to-face training, provision of hygiene products, working from home arrangements.
- Activities being postponed due to resourcing changes, including most campaigns and proactive assessments, and the majority of face-to-face interactions.
- Statement of obligations for employers, health and safety representatives and workers.

Flexibility and speed

- **Rapid engagement** – business groups generally agreed that in the majority of cases, agencies responded quickly and demonstrated responsiveness to issues raised by industry, taking the initiative to proactively engage and anticipate future problems.

The **Therapeutic Goods Administration (TGA)** was effective in the early stages of the crisis in adapting its approval and assessment processes to ensure more hand surface disinfectants were able to get on to the market.

Business stakeholders noted that the TGA proactively engaged industry, and brought in or redistributed staff which allowed them to expedite their approval and applications processes.

The TGA issued an *Exclusion Determination* in April, and published new guidance on their website to assist suppliers and manufacturers. Specified formulations were able to be supplied quickly as they were based on existing advice by the World Health Organization and similar decisions by the US Food and Drug Administration.

Australian Pesticides and Veterinary Medicines Authority

The APVMA also responded well to industry issues around supply chain, the need to change formulations due to shortages of certain ingredients or changes to packaging and labeling. These were all managed well by a responsive agency which took the initiative to liaise with industry directly. This high-level performance should be business as usual. (Australian Chamber of Commerce and Industry submission)

- **Flexibility** – best practice regulators recognised that risk profiles for regulated activities changed due to the COVID-19 pandemic and reacted accordingly. In many cases, regulators had discretion under their respective legislative frameworks to exercise common-sense and adjust to changed circumstances without the need for new legislation.
 - Many regulators redirected staff from elsewhere or absorbed external or temporary staff at short notice, in order to address urgent issues arising from COVID and spikes in workflow. Details of how the Australian Taxation Office scaled their staffing requirement during COVID-19 are at [Appendix A](#).

Customer-focused engagement

- **Reprioritisation towards customer-facing activities** – regulators maintain a wide range of functions and capabilities, not all of which are centred on customer outcomes. COVID-19 led to reprioritisation of investment and reform decisions towards meeting the short-term needs of regulated entities.
 - In some cases, changes were made that stakeholders had been seeking before the onset of COVID-19, and many are likely to be maintained. A number of these changes had been planned or considered but not delivered due to internal prioritisation and resourcing considerations. DAWE reported digital import certificates as an example of rapid re-prioritisation.
 - Services Australia reported bringing forward planned improvements to customer-facing activities in response to COVID-19 (see [Appendix B](#)).
- **Changes in consultation processes and convening** – COVID-19 led to quicker and more fluid engagement between regulators and regulated entities, circumventing slower, more traditional consultation methods and governance formalities.
 - Traditional consultation processes, such as those modelled on the OECD’s Best Practice Principles on the Governance of Regulations, are usually effective in producing high quality regulation, but reflect practices that pre-date modern technology and therefore tend to proceed slowly. COVID-19 forced a change in operating practices, facilitating quicker decision making and shorter policy cycles.
 - Agency stakeholders pointed to increased numbers of informal, online-only meetings driven primarily by urgency and need, a departure from the normal system of formal in-person meetings at regular time intervals.
- **Collaboration and consultation** – many agencies set up business engagement functions and co-designed regulatory changes in consultation with industry, which business groups have said created a less adversarial relationship between regulators and business. Regulators and businesses reported a change in culture, at least initially, to focus on solving problems and finding ways to ‘get things done’, rather than providing reasons for inaction.

The **Department of Agriculture, Water and the Environment** (DAWE) set up a new Industry Engagement unit, tasked with hosting regular roundtables with industry, initially to troubleshoot regulatory issues arising as a result of public health restrictions.

The industry engagement unit has now been set up as a business-as-usual function and is installing enterprise software to manage client interactions at scale in a more systematic manner. DAWE introduced a number of practical changes in response to COVID-19 engagement:

- Waiver of in-person audit requirements for some licensed exporters
- Acceptance of electronic certification for produce and plant-based goods, imported animal and animal based goods.

The Government set up the **Coronavirus Business Liaison Unit** (CBLU) in the Commonwealth Treasury to engage with peak business groups on systemic issues to ensure these are being addressed by Government. CBLU is now a permanent function in the Treasury, providing continuous consultation on a wider range of policy areas beyond COVID-19.

Next steps

1. **Circulate the paper with Commonwealth agencies** for comments and additional case studies. This will provide agencies an opportunity to validate or revise the themes, enrich the existing case studies, and to draw out instances of where things did (and didn't) work well.
2. **Further discussions with business peaks** to validate findings and reflect on changes that have occurred since the early days of the COVID-19 pandemic. This could provide an opportunity to assess the 'new business as usual' or more COVID-normal arrangements that followed.
3. **Discussion with the states and territories** as many of the most common sense changes occurred at state and territory and local government level, such as changes to retail opening hours and heavy vehicle curfew times. Engaging with jurisdictions could provide an opportunity to consider areas where the Commonwealth and states worked together (such as work health and safety model laws implementation).
4. **Inclusion in principles for regulator best practice** to consider whether the existing principles (the KPIs from the 2014 Regulator Performance Framework) continue to meet Government's expectations and whether we need to revise these to reflect the lessons from COVID-19.

Appendix A: ATO adjusts agency resources to respond to COVID-19

ATO worked with Treasury to design and implement rapidly law changes needed to introduce the Government's COVID-19 economic stimulus measures. This included advising Treasury on policy and law design, revenue implications, and implementation matters, - impacts on systems, administration and compliance. The 2019–20 COVID-19 stimulus measures included:

- JobKeeper Payment scheme – \$20.6 billion in payments were made to around 960,000 organisations, with 97% of businesses receiving the payments within four business days of lodging their claim; these payments covered 3.5 million individuals
- Boosting Cash Flow for Employers – \$14.5 billion in payments were made to approximately 750,000 employers across Australia
- Early Release of Super – \$20 billion of superannuation was approved for early release to almost 2.5 million applicants, or 96% of all applicants
- changes to existing measures, such as increasing the instant asset write-off threshold, and accelerated depreciation.

The support provided by the ATO extended beyond the design and administration of these vital measures. The ATO helped individuals and businesses through deferrals of some payments, quicker access to GST refunds, and options to enter low-interest payment plans for existing or future tax debts. Taxpayers being audited were given the choice of continuing or pausing the audits. Most of those who chose to pause their audits were individuals and small businesses.

Before the emergence of COVID-19, ATO had already made significant changes to systems, which made it easier for clients to continue effectively engaging with us during the pandemic:

- For businesses, ATO had delivered myGovID and Relationship Authorisation Manager (RAM). These tools provide businesses and tax practitioners with more secure and streamlined access to government online services as they mobilised to a home-based workforce.
- ATO transitioned all tax and BAS agents to the new online services for agents' platform, a substantially more reliable and tailored service they could use working remotely.
- ATO's single client accounting system, which went live in December 2019, assisted in tailoring the approach to each individual's unique circumstances as ATO could see their data in one place.
- Improvements to systems meant the ATO was well placed to manage the large volumes of transactions arising from the stimulus measures.

The significant tasks of delivering the stimulus measures and supporting people who were suddenly unable to meet their tax and superannuation obligations were met with efficiency, with no additional funding from the Government during 2019-20. ATO re-prioritised its resources and activities to meet emerging needs as the Government's response developed.

To meet the dramatic increase in demand for ATO's services, ATO extended contact centre hours and mobilised staff – with around 2,000 staff diverted to support our front-line services (such as contact centres) and around a further 3,800 redirected to priority work on the delivery of stimulus measures.

ATO shifted rapidly to facilitate working from home for those staff who could do so, eventually having over 14,500 staff – or more than half of the ATO's workforce – working from home either full- or part-time. For the first time, ATO was able to have its contact centre staff working remotely, with over 1,000 staff migrated to remote working from home. Along with providing the IT infrastructure and equipment necessary to work from home, ATO fast-tracked the implementation of new digital communication tools.

Appendix B: Services Australia – COVID-19 and customer centrisim

Services Australia (the Agency) has been implementing improvement and efficiency initiatives to improve customer outcomes, including the Agency's Welfare Payment Infrastructure Transformation (WPIT) Programme.

WPIT has delivered a range of features and capabilities to ensure that customers are directed to the right payment. This includes dynamic questioning, using data already held for the customer to stream them to the right payment and automating the transition between payment types. The Agency is now undertaking Tranche Four of WPIT, which will introduce a focus on family payments and will provide a foundation for further digitisation of the Agency and its services.

Increasing digitisation will accelerate the uptake of digital channels by improving the service offer to customers and simplifying access to the Agency's services. This, in turn, will bring about efficiencies through eliminating manual effort to transpose customer data into our systems. Improved digitisation will also give the Agency the capability to better communicate with our customers, reducing the need for them to contact us through telephony and face to face channels. In the short term, we will shift more paper letters to myGov, and keep customers in digital channels by ceasing the use of paper letters to confirm their registration for digital self-service.

Key to further digitisation is the enhancement of myGov to better integrate digital experiences and transactions for the Agency's customers. The Agency is collaborating with the Digital Transformation Agency to deliver the solution, which aims to improve the experience for customers when dealing with government. The work that WPIT has delivered over the first three Tranches will be leveraged by the Enhanced myGov initiative. The key to this impact is focusing on the customer experience that digital platforms enable the Agency to develop. Putting the customer at the centre of the design of our digital ecosystem will see the Agency deliver consistent, integrated experiences that span services and holistically address customer needs.

The COVID-19 pandemic has provided a unique opportunity for the Agency to bring forward the implementation of improvement and efficiency initiatives, in order to process large numbers of welfare payments in a short timeframe. Examples of digital transformation initiatives that have been undertaken by the Agency in direct response to COVID-19 include:

- Process simplification: including updated processes to prioritise claims from customers, updated new claim processes to reduce digital drop through, improved in-app messaging for students to increase digital retention, and implementing changes to 10 business processes to remove unnecessary hand offs to enable first-contact resolution.
- Channel Optimisation: to manage demand and keep customers within the digital channel.

To help Australians access financial support in light of COVID-19, a number of changes have recently been made to the Jobseeker Payment originally delivered by WPIT in March 2020. The changes include an improved JobSeeker Payment claim for people who have simple circumstances and need financial support. The above initiatives have resulted in the average time taken for a person to complete the usual JobSeeker claim form being reduced from around 55 minutes to around 20 minutes.

The Agency is also commencing the second Phase of the Health Delivery Modernisation Programme. This will support service continuity for health payments and services for all Australians, while preparing the health systems to support primary care reform, and an improved digital service offer for Medicare customers removing the need for face to face interactions.