



Better Business Reforms

Evaluation report

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This document

How to read

This report has several levels of reading depending on the role or perspective of the reader as explained in the reading guide pictured in Figure 1. Sections have active headings in the form of key findings to make it easier for the reader to identify areas of interest.

Figure 1: How to read guide

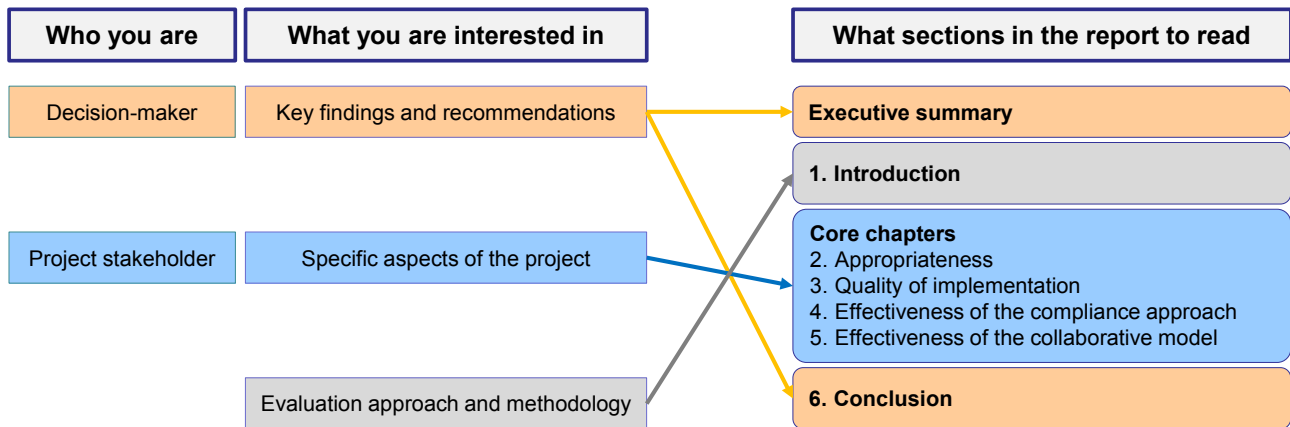


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Executive summary

The Better Business Reforms

The Better Business Reforms are a package of 24 reforms aimed to reduce regulatory burden or 'red tape' for small businesses, without compromising the protections in place for NSW consumers.¹ The design of these reforms followed what is known as an omnibus approach, whereby changes (amendments, repeals and consolidation) are made to multiple NSW legislative provisions impacting on businesses and consumers under a single coordinated effort.

The Better Business Reforms were intended to streamline and improve the consistency of the regulatory framework impacting on businesses and consumers. The package was developed following a review of a range of legislation and regulations affecting businesses and consumers, including input from key stakeholder groups regulated under these legislative provisions. The package was designed over a 6 month period in 2018, being assented in October and November 2018 under two main pieces of legislation in the *Fair Trading Legislation Amendment (Reform) Act 2018*, and the *Fair Trading Legislation Amendment (Miscellaneous) Act 2018*.

The Evaluation

Purpose and scope

The purpose of the evaluation was to assess the outcomes of the reforms, specifically the benefits to businesses and consumers, and to the regulator. To do this whilst maintaining a manageable scope, four of the 24 reforms proposed under the Better Business Reform package were selected for evaluation:

1. Extending and standardising NSW Fair Trading licence durations,
2. Harmonising restoration periods for NSW Fair Trading licences,
3. New requirements for businesses to disclose key terms in consumer contracts, and
4. Streamlining uncollected goods regulations.

These reforms were selected in consultation with the Business Unit sponsors for this evaluation because there was expected to be sufficient data available to determine what impact, if any, they have had for their target beneficiaries.

The evaluation also considered what benefits a packaged or omnibus approach to regulatory reform provides, compared to what would have been achieved if these legislative and regulatory amendments were made using a more piecemeal approach.

The evaluation adopted a mixed methods design approach, utilising both qualitative and quantitative data to inform its findings. Key evaluation methods included:

¹ NSW Fair Trading. (2018). Better Business Reforms. Retrieved from: <https://www.fairtrading.nsw.gov.au/consultation-tool/better-business-reforms>

- **Semi-structured interviews (n=20):** Representatives from industry associations (n=10), consumer protection associations (n=1) and NSW Government staff (n=9) were consulted to understand the impact of all reforms selected for the evaluation.
- **Online licensee survey (n=895):** This survey specifically looked at the benefits of the *standardised licence duration reform*. An online survey was distributed via SurveyMonkey to a random sample of licensees who had renewed their licence since the reform commenced.
- **Analysis of OneGov Licensing data:** Licensing data was extracted from OneGov to understand the changes in duration options chosen by licensees between 2017-2021 and estimate licensing fees paid in the 2020-21 period. This analysis specifically looked at the impact of the *standardised licence duration reform*.
- **Analysis of Complaints Administration System (CAS) data:** Complaints lodged with NSW Fair Trading between 2017-2021 were analysed to understand the impact of the *disclosure of key terms in consumer contracts* reform.
- **Interjurisdictional review:** Desktop interjurisdictional reviews were conducted to understand the key similarities and differences in the design of all reforms selected for the evaluation compared to other jurisdictions.

Confidence in findings and limitations

The evaluation is comprehensive in its use of available qualitative and quantitative data. The key findings outlined in the report have been verified using primary and secondary data sources and, as a result, the findings and recommendations in this report are presented with a high degree of confidence.

However, specific limitations apply to analysis of each reform. These are outlined in detail in Section 1.3. To mitigate these limitations, the evaluation clearly notes where data and evidence gaps exist in the analysis and has taken care to not over-attribute the impacts of the reforms in the circumstances.

Key findings and recommendations

Extending and standardising licence durations for NSW Fair Trading licences have reduced time, administrative and financial burden for businesses and the regulator.

Standardising the licence durations available for all NSW Fair Trading licences to 1, 3 and 5 years was intended to reduce administrative burden and costs for businesses and the regulator. The evaluation has found that these outcomes are being achieved.

Compared to pre-reform conditions, almost all respondents to the online survey agreed the new licensing settings allow for greater flexibility for licensees to select a licence duration that suits their business' circumstances and budget, along with reducing the frequency and costs associated with renewing their licence. Consultation with BRD Licensing staff indicated that the longer licence

durations (and licensees' decisions to choose them) are expected to result in reduced volumes of licences requiring processing each year.

Our analysis of licence duration data supports these results, finding that 27 percent (n=30,206) of licensees who renewed their licence in 2020-21 chose a duration not previously available to them, with almost 20 percent (n=22,374) opting for five year duration. We estimate that licensees who opted for a longer duration saved, on average, \$190 from discounted licence fees in 2020-21. The analysis also shows that the licensee choices for longer durations were not limited to those licence classes that received a licence fee waiver as part of the NSW Government COVID-19 support package for NSW businesses.

Whilst the evaluation did not attempt to quantify time savings as a result of the reform, these results indicate the reform is likely to be delivering this benefit for both licensees who are no longer required to renew their licence as frequently; and the regulator which anticipates it will be required to process fewer licences annually into the future.

The effect of restoring licences from the date they expired has resulted in increased scrutiny from regulators and some risk to consumers.

Harmonising licence restoration periods was intended to provide increased consistency for how regulators manage licence restorations and improved flexibility for businesses who forget to renew their licence on time. These outcomes do not appear to have been achieved, rather, there is evidence to suggest the reform has increased administrative burden for regulators and risk to consumers.

Almost all BRD Licensing staff interviewed noted that the new criteria brought in by the reform to be able to approve applications for restoration is considered to be a 'low bar' for a licensee to demonstrate. They also noted that the effect of a decision to restore a licence is risky because, for most licence types, it means that any work undertaken by the licensee over the expired period is validated. In extreme cases, this offers an opportunity for traders who have been operating without a valid licence to have their licence restored and avoid penalty.

One option to address this issue would be to amend the design of the reform so that all NSW Fair Trading licences are restored from the day their restoration application is received, not from when the licence last expired. This would ensure risks to regulators and consumers in restoring expired licences are managed appropriately. The periods that a licensee has had an expired licence would be shown on the public record and licensees would still be able to keep their original licence details in line with the objectives of the reform. This model of restoration had been a feature of some licence types prior to the reform, including the Home Building and Tow Truck licence types.

Finally, the evaluation found that the Home Building licence regime contains unique restoration provisions that deem a Home Building licence to be current upon application, until it is determined. This differs from restoration provisions across other impacted licence types and is thus inconsistent with the intent of the reform's intended objectives, which sought to improve the consistency of the NSW licensing framework.

Recommendation 1: BRD Policy & Strategy and BRD Licensing & Funds to review the design of the licence restoration provisions implemented under Section 18 of the *Fair Trading Legislation*

Amendment (Reform) Act 2018 to minimise risk to regulators and consumers. One option could be to require that restorations of expired licences take effect from the day the application is received, not from when the licence last expired.

As part of this review, particular attention should be paid to aligning the restoration provisions outlined in the *Home Building Act 1989* and Home Building Regulation 2014 with other Fair Trading licences so that applications to restore licences must be determined to be made valid.

The evaluation was unable to determine what impact, if any, the disclosure of key terms in consumer contracts reform has had on reducing consumer detriment.

The *disclosure of key terms in consumer contracts* reform was intended to reduce consumer detriment by improving consumer access to key information about products and services that might substantially prejudice their decision to make a purchase. As the reform impacts all business and consumer transactions, consumer detriment could neither be quantified precisely or generalised across the full range of settings in which purchases are made. The evaluation attempted to overcome this challenge by analysing complaints data relating to key terms and conditions as a proxy for consumer detriment. However, this data appears to be heavily influenced by the impact of the COVID-19 pandemic and was unable to reliably inform our assessment about whether the reform has had an impact on consumer detriment.

Businesses are finding it difficult to identify what key terms they need to disclose to consumers.

Whilst data about its impact on consumers is limited, consulted industry peak body representatives considered the *disclosure of key terms in consumer contracts* reform to be too broad and open to interpretation. They report that their members have found it difficult to identify what key terms they need to disclose to consumers - particularly for smaller businesses with limited capacity to seek clarification and update/upgrade their internal sales systems and processes.

Whilst BRD Policy & Strategy developed industry guidance at commencement of the reform, there is an opportunity to update this material based on the experience of businesses 12 months post implementation.

Recommendation 2: BRD Policy & Strategy to conduct a review of existing guidance material available to businesses about substantially prejudicial terms in consumer contracts. This review should include:

- targeted consultation with key industry representatives most likely to be impacted by the reform, including refund and cancellation policies in the Travel/Tourism, Motor Dealers, Gyms and subscription services, and
- analysis of any determinations about substantially prejudicial terms made by the local court or NCAT since the reform commenced.

The review should result in updated and more practical guidance for businesses about common key terms that are considered to be substantially prejudicial across specific industries. The review should also consider appropriate options to raise awareness about the reform amongst the NSW

business community, particularly Small-Medium Enterprises (SMEs) who may not have capability or access to appropriate expertise to interpret and comply with these new requirements.

NSW uncollected goods regulation has been streamlined, but the current settings do not benefit the residential tenancies sector as much as other industries.

By consolidating all legislative provisions related to uncollected goods into one legislation, the *streamlining of uncollected goods* reform intended to make the NSW uncollected goods regime more consistent and easier for businesses to navigate. This evaluation has found that the reform has achieved this objective for most industries consulted.

However, peak bodies in the residential tenancy sector note that the reform has increased burden on their members. From a real estate agent / landlord perspective this is due to the creation of additional processes now needed to manage and dispose of uncollected goods that weren't previously required under the old regime outlined in the *Residential Tenancies Act 2010*. From a tenant perspective, the increased value thresholds under the new regime are not considered to appropriately reflect the low economic but highly personal value typically associated with goods left behind by tenants.

Representatives from the residential tenancy industry thus suggested that goods left behind at residential tenancies should be considered a separate class of uncollected goods, handled differently to other types of uncollected goods and should potentially be dealt with under separate legislation.

Recommendation 3: BRD Policy & Strategy to clearly identify and communicate appropriate methods for obtaining an uncollected good's value so that receivers and owners have a common understanding.

Recommendation 4: BRD Policy & Strategy to consider whether uncollected goods in residential tenancy settings, which have generally low economic but highly intrinsic value, are more appropriately managed under the *Residential Tenancies Act 2010*. This consideration should form part of the next review of either the *Uncollected Goods Act 2005* or the *Residential Tenancies Act 2010*.

Omnibus bills can make the regulatory reform process more efficient. However, sufficient time and stakeholder buy-in are key factors to its success.

Finally, this evaluation found that the packaged approach taken by the Better Business Reforms has resulted in a reform process that was faster, more efficient and was able to create regulatory change on a scale unable to be achieved if the amendments were made one at a time. Many of the reforms included in the package were small but necessary changes to optimise existing regulatory settings, which can often be considered a lower priority and may not have occurred otherwise.

Further, this evaluation has found that an omnibus approach also enables a consistent approach to be applied to the regulatory design of multiple regimes/regulatory schemes at the same time. Omnibus bills also allow regulators to apply a more strategic lens to regulatory reform by looking at an entire sector or adopting a consistent regulatory approach across multiple Acts, rather than a specific Act or regime. The two licence reforms and the uncollected goods reforms analysed as part of this evaluation are examples of this.

However, it is important to note that the pace at which the Better Business Reforms were developed also resulted in some negative impacts. Internal and external stakeholders both indicated that they had little opportunity to provide input into the final design of some reform, resulting in some reforms not being fit for purpose or practical to implement.

Recommendation 5: Ensure that future reform packages prioritise consultation with, and final acceptance from, operational staff and impacted stakeholder groups to ensure they are well designed and practically implementable.

Based on this consultation, the evaluation concludes that an omnibus approach works best in circumstances where there is a strong unifying theme justifying the need for the reform package, along with sufficient time to refine and iterate their design with key impacted stakeholders.

Recommendation 6: Consider an omnibus approach to regulatory reform in circumstances where there is a clear overarching theme that unifies the reform package, and where there is sufficient time to refine and iterate the design of reforms to ensure they are fit for purpose and supported by implementing and beneficiary stakeholder groups.

1. Introduction

1.1 The Better Business Reforms

1.1.1 Background

The Better Business Reforms are a package of 24 reforms for the benefit of businesses (16 reforms) and consumers (8 reforms). Reforms benefitting businesses seek to remove obligations that impose unnecessary administrative or regulatory burdens on businesses and do not improve consumer outcomes or worker safety. Reforms benefitting consumers seek to address information asymmetry in the market to help consumers make informed choices about the products and services they purchase.²

1.1.2 Reform objectives

The Better Business Reform seek to:

- create opportunities for small businesses by reducing costs and complexity without reducing consumer protections, and
- increase transparency and protections in consumer transactions, without overly burdening businesses.

When fully implemented, the Better Business Reforms were initially estimated to save businesses \$495 million over 10 years by providing more freedom and reducing red tape. They were also estimated to save consumers \$150 million over 10 years by giving them the information to make better and more meaningful decisions.³

1.1.3 Reform design

The Better Business Reforms design is what is known as an omnibus reform, whereby changes (amendments, consolidation and repeals) are made to multiple NSW legislative provisions impacting on businesses and consumers under a single coordinated effort. Omnibus bills like the Better Business Reforms are a departure from conventional and piecemeal approaches to legislative reform that target one or a small number of legislative provisions at a time.

The Better Business Reforms were contained in the *NSW Fair Trading Legislation Amendment (Reform) Act 2018* and the *NSW Fair Trading Legislation Amendment (Miscellaneous) Act 2018* which were passed by the NSW Parliament in late 2018.

² NSW Fair Trading. (2018). Easy and Transparent Trading - Empowering Consumers and Small Business. Retrieved from: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/388138/Easy_and_transparent_trading_Consultation_Paper.pdf

³ NSW Department of Customer Service. (2020). Post Implementation Review: Better Business Reforms Project. Retrieved from: <https://nswgov.sharepoint.com/sites/dcs-Lessons-Learnt-Repository/Project%20Reports/BBR%20Post%20Implementation%20Review.pdf>

1.1.4 Key reform stakeholders and partners

The Better Business Reforms were developed by BRD Policy & Strategy. Once passed as legislation, the reforms were implemented by the relevant operational teams from across BRD, including:

- BRD Licensing and Funds (*Standardising NSW Fair Trading licence durations; Harmonising restoration periods for NSW Fair Trading licences*),
- BRD Work Health and Safety & Consumer Protection (*Disclosure of key terms in consumer contracts*), and
- BRD Regulatory & National Reform (*Streamlining uncollected goods regulation*)

1.2 The Evaluation

1.2.1 Purpose

The purpose of the evaluation is to assess the impact of four of the 24 reforms under the Better Business Reforms package. These reforms were selected as it was expected there would be sufficient data available to determine what impact, if any, they have had for their target beneficiaries. The evaluation explores the benefits that these reforms are providing to businesses and consumers on the one hand and to the regulator on the other. The quality of the implementation of the Better Business Reforms (process evaluation) has been covered by a separate Post-Implementation review.⁴

One of the key objectives for the Better Business Reforms was to streamline and improve the consistency of regulatory framework across the Better Regulation portfolio. This objective is particularly evident in the four reforms selected for analysis, in particular the streamlining of uncollected goods regulation; and, standardising/harmonising of licence duration and restoration provisions across the various licensing regimes administered by NSW Fair Trading.

1.2.2 Objectives

The objectives of the evaluation are to:

- assess the impact of selected reforms for businesses, consumers and the regulator.
- assess the benefits and limitations to the packaged policy approach used for the Better Business Reforms as compared to separate reforms.

1.2.3 Scope

Table 1 shows the list of reforms selected for the evaluation, including their intended objectives:

⁴ NSW Department of Customer Service. (2020). Post Implementation Review: Better Business Reforms Project. Retrieved from: <https://nswgov.sharepoint.com/sites/dcs-Lessons-Learnt-Repository/Project%20Reports/BBR%20Post%20Implementation%20Review.pdf>

Table 1: Reforms selected for evaluation

Reform	Description of the reform	Stated objective ⁵
<p>1. Standardising licence durations</p> <p>2. Harmonising restoration periods</p>	<p>Under this reform, all licences have standard terms of duration of 1, 3 or 5 years, and are granted the maximum duration available unless there are compelling reasons not to do so.</p> <p>This reform also provides a standard 3-month period to enable licensees to restore their licence including a discretionary power to restore licences beyond the 3-month restoration period.</p>	<ul style="list-style-type: none"> • Reduce administrative and financial burden for businesses and the regulator • Make it easier for licensees to continue to trade through increased choice and flexibility.
3. Disclosure of key terms in consumer contracts	The reform requires all suppliers of goods or services in NSW to take reasonable steps to ensure that a consumer is aware of the substance and effect of any term or condition that may substantially prejudice the interests of the consumer. This disclosure obligation needs to be complied with upfront, before the goods or services are supplied to a consumer.	<ul style="list-style-type: none"> • Enable consumers to be fully aware of the nature of the contract they have or are considering entering into.
4. Streamlining uncollected goods regulation	This reform streamlines and harmonises the various uncollected goods provisions into one set of laws. The reforms allow for the use of more contemporary means of communication and provide for contemporary thresholds.	<ul style="list-style-type: none"> • Simplify the requirements for businesses to dispose of uncollected goods at reduced cost.

As part of the Better Business Reform design phase, ACIL Allen Consulting (ACIL Allen) was engaged to identify and estimate the expected costs and benefits from each reform (and the entire reform package) and conducted an *ex ante* impact evaluation of these reforms over variable periods (1-10years).⁶ To the extent possible, the present evaluation attempted to test the actual benefits of the reforms against the estimated benefits as modelled in the ACIL Allen evaluation.

The changes in licence durations and licence restoration periods were the most resource intensive reforms in terms of implementation. As a result, this evaluation provides greater focus on measuring the impact of these reforms compared to the other two.

1.2.4 Key evaluation questions

In line with the stated objectives of the evaluation, this evaluation answers the following key evaluation questions:

⁵ Department of Finance, Services and Innovation. (2018). Better Business Reforms Explained. Retrieved from https://www.fairtrading.nsw.gov.au/data/assets/pdf_file/0017/417122/Better-Business-Reform-Explained.pdf

⁶ ACIL Allen Consulting. (2018). Better Business Reforms: Impact evaluation of the better business reform package. (Internal)

Table 2: Key evaluation questions

Selected Reform	Key evaluation questions	Section in the report where to find the answer
1. Standardising licence durations 2. Harmonising restoration periods	1. To what extent has the reform reduced administrative time and costs for businesses?	2.3, 0, 2.5
	2. To what extent has the reform improved consistency and streamlined licensing processes and systems for regulators?	2.5, 2.7
	3. To what extent has harmonising licence durations increased risks to consumers?	2.7
	4. To what extent has the reform made it easier for licensees to continue to trade?	2.7
	5. To what extent has the reform reduced internal processing time and costs for regulators?	2.5
	6. What other changes have businesses, regulator and customers experienced as a result of the reforms?	2.7
3. Disclosure of key terms in consumer contracts	7. To what extent has the reform impacted on business operational costs and sales?	□
	8. To what extent has the reform increased awareness amongst consumers about the nature of the contracts they are entering into?	3.6
	9. What other changes have consumers and businesses experienced as a result of the disclosing key terms in contracts reform?	3.5
4. Streamlining uncollected goods regulation	10. To what extent has the reform simplified the requirements for businesses to dispose of uncollected goods at reduced cost?	4.3, 4.5
	11. What other changes have businesses and consumers experienced as a result of the streamlining uncollected goods reform?	4.4
5. Benefits of a packaged approach to reform	12. What benefits did the packaged reform approach taken by the Better Business Reforms provide compared to implementing the reforms separately?	5.1

1.2.5 Evaluation methods

The evaluation adopted a mixed methods design which utilised both qualitative and quantitative data to inform its findings, including:

- **Review of program documentation:** A review of key program material was conducted to understand the purpose and rationale of the Better Business Reforms package.
- **Interjurisdictional review:** Interjurisdictional reviews were conducted to determine in what ways the reforms were similar and different to other jurisdictions.
- **Focus groups / semi-structured interviews:** Interviews were conducted with key stakeholder groups impacted by the reforms, including:
 - BRD Licensing and Funds Staff (n=6)
 - BRD Policy Staff (n=3)
 - Industry peak body associations (n=10)
 - Consumer protection peak body associations (n=1)
- **Licensee survey:** An online survey (n=895) targeting licensees impacted by the standardised licence duration reform was deployed to determine whether their intended outcomes were being achieved (the survey instrument is located at Appendix 1).
- **OneGov Licensing Data:** Licensing data was extracted from OneGov to understand what impact the standardised licence duration reform had on duration options chosen by licensees between 2017-2021.
- **Complaints Administration System (CAS):** Complaint data recorded in the CAS system between 2017-2021 was extracted to determine whether the frequency and nature of complaints relevant to the disclosure of key terms reforms have changed since implementation.

Appendix 2 provides more detail about how each method was implemented and the specific limitations of these methods.

1.3 Confidence in the findings and limitations

This evaluation is comprehensive in its use of available qualitative and quantitative data. This means the evaluation has been able to verify its key findings to a high degree of confidence through the use of primary and secondary data. Despite this, some key limitations remain and are outlined below, according to each section they relate to:

Standardising licence durations

Because no pre-reform baseline data was available, the 'pre-reform' conditions reported in this evaluation were constructed based on respondent answers to the online survey. This means the

'pre-reform' baseline is based on respondent recall of licensing settings prior to when the reform commenced.

Further, from April 2020-April 2021, as part of their support package to help businesses during the COVID-19 pandemic, the NSW Government waived the application and renewal fees for a number of licences administered by Liquor and Gaming NSW, Fair Trading NSW and SafeWork NSW.⁷ These fee waivers applied to three of the eight licence categories (Motor Vehicle, Home Building and Tattoo Licence) in scope for this evaluation. These licence types account for approximately 75 percent of all licences granted in 2020/21 (that are in the scope of this evaluation).

To control for the impact of the fee waivers on licensee duration choices, separate licence duration analyses were conducted for licence types that received a fee waiver and those that did not. Further, estimates in licensee savings reported in this evaluation as a result of this reform excluded licence types that received the fee waiver.

Disclosure of key terms in consumer contracts

In their *ex ante* impact evaluation, ACIL Allen note that the far-reaching impact of the reform means its impact on consumer detriment can neither be quantified precisely, nor can it be generalised across the full range of settings in which purchases are made⁸. To overcome this limitation, the evaluation considered consumer complaint data held by NSW Fair Trading to be a useful proxy to understand whether there has been any change to consumer detriment over time. Analysis of this data indicated it had been distorted by the flow-on impacts of the COVID-19 pandemic, masking any potential impacts on consumer detriment created by the reform.

Analysis of this reform also has limited input from consumers. Consumer protection associations (n=3) were invited to participate in interviews to provide insight about whether the reform had increased consumers awareness about key terms; and, contributed toward a reduction in detriment as a result of consumer contracts. All declined on the basis that they had observed no notable effect amongst their membership group as a result of the reform. As a result of these limitations, the evaluation was unable to determine what impact, if any, the reform was having on consumer detriment.

Streamlining uncollected goods

The evaluation was also not able to quantitatively determine the extent and value of benefit that the streamlining uncollected goods regulation has generated for receivers. This is because the uncollected goods regime is not specific to one sector and may affect the individual processes of each business differently. Instead, this evaluation presents a qualitative account of the impact of this reform, highlighting the most significant changes observed by key stakeholder groups since the reform commenced.

⁷ NSW Government. (2020). Fee and licence relief. Retrieved from: <https://www.nsw.gov.au/covid-19/businesses-and-employment/financial-assistance/fee-and-licence-relief>

⁸ ACIL Allen Consulting. (2018). Better Business Reforms: Impact evaluation of the better business reform package. (Internal)

2. Extending and harmonising licence duration and restoration periods

2.1 Background

a) Licence Durations

NSW Fair Trading issues many accreditations, certificates and licences. The purpose of licensing schemes in the Fair Trading portfolio is to reduce consumer detriment by ensuring that only fit and proper persons are trading in the industry⁹. By requiring licences to be renewed from time to time, the regulator has the opportunity to monitor the fitness and propriety of the licensee, collect revenues so that taxpayers do not disproportionately fund the regulation of an industry and ensure that licensee details are up to date.¹⁰

Prior to the reform, the duration options available to licensees across the NSW Fair Trading licences portfolio varied. Some had a one-year duration. Others had a three-year duration. Others had a five-year duration. Table 3 shows the duration options available for licences in scope for this evaluation, prior to the reform:

Table 3: NSW Fair Trading Licences with limited duration options, pre reform

Licence Category	Sub-Licence Category	Pre-Reform Duration
Conveyancers		1 year
Certifiers		1 year
Pawnbrokers & Secondhand dealers		1 year
Real Estate Agents	<ul style="list-style-type: none"> Property - Certificate Property – Individual Property - Corporation 	1 year
Home Building	<ul style="list-style-type: none"> Contractor Licence Qualified Supervisor Certificate Tradesperson Certificate 	1 or 3 years 3 years 3 years
Motor Vehicles	<ul style="list-style-type: none"> Motor Dealers Motor Vehicle Repairers Motor Vehicle Tradespersons Certificate 	1 or 3 years 1 or 3 years 3 years

⁹ NSW Fair Trading. (2018). *Easy and Transparent Trading – Empowering Consumers and Small Business*. Retrieved from: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/388138/Easy_and_transparent_trading_Consultation_Paper.pdf

¹⁰ ACIL Allen Consulting. (2018). *Better Business Reforms: Impact evaluation of the better business reform package*. (Internal)

Licence Category	Sub-Licence Category	Pre-Reform Duration
Tattoo	<ul style="list-style-type: none"> Parlour Operators Tattooists 	3 years
Tow Trucks	<ul style="list-style-type: none"> Driver's Certificate Operator's Licence 	1 year (or 3 years when specific conditions met)

b) Licence Restorations

Several weeks before a licence is due to expire, a licensee receives a renewal form from NSW Fair Trading or SafeWork, providing the individual with the option to renew online or in person at a Service NSW branch. If an individual does not renew on time or their licence expires, they may have to pay a 'restoration fee'. Generally, but not always, an individual will have three months to restore their licence once it expires. If an individual does not restore their licence in the three-month period, they will have to go through a new application process and pay a new application fee. This may be a lengthy process and the individual will be unable to trade until a new licence is issued.

If a licence is not restored within its restoration period, it expires completely and cannot be reinstated. Prior to this reform, there was no flexibility to extend the restoration period. If a licensee misses it even by one day, regardless of the circumstances, they will have to apply for a new licence. In some cases, this can cause licensees some distress, for example, if a licence number has been held for a long time and contains some form of sentimental value, or if additional costs are required to reprint business material with the correct information.

The purpose of licence restorations is to ensure that licensees who do not pose a risk to consumers but miss the deadline for their licence renewal are not disproportionately prejudiced for their lapse.

2.2 Reform design and objectives

Extending and standardising the licence durations available for all NSW Fair Trading licences to 1, 3 and 5 years is anticipated to reduce administrative burden and costs for businesses and the regulator. Licensees and regulators can save time and money by applying for and processing renewals less frequently.¹¹ It also enables licensees increased flexibility to opt for a licence duration that aligns with their operating model and budget.

Harmonising the restoration periods for all NSW Fair Trading licences aimed to make the process of restoring an expired licence more flexible. The reform provided the Secretary with the ability to extend the standard 90 day restoration period if the licensee failed to renew their licence due to inadvertence or where it is just and equitable to do so.

¹¹ Council of Australian Governments' National Licensing Steering Committee, Consultation Regulation Impact Statement, Proposal for national licensing for property occupations, 2012, pp 52-53

The standardised licence duration and harmonised licence restoration reforms complement ongoing government-wide improvements to the NSW licensing framework through the Licence.NSW program. Licence.NSW seeks to digitise and automate licensing systems and processes across the NSW Government in order to minimise administrative burden for licensees and the regulator.

It should be noted here that, amongst other things, the Licence.NSW program is working to automate licence renewal processes for a broader suite of NSW licence types, further reducing administrative burden for licensees and the regulator. It is also seeking to introduce lifetime licence numbers for NSW issued licences which may considerably reduce licensee demand for licence restorations in the future. Regardless, it is anticipated that the findings outlined in this section will help to inform further initiatives under the Licence.NSW program of work.

2.3 Licensees are more satisfied with the new licensing settings.

Extending and standardising licence durations was intended to reduce administrative and financial burden for licensees. Burden would be reduced for licensees by having access to a greater range of duration options that suited their business model and budget. The duration options also provide an opportunity for financial savings as discounts are applied to longer licence durations, so for most licensees the 'cost per year' is less. The reform was also intended to benefit regulators by reducing the administrative workload of licensing staff. The greater proportion of licensees that choose multi-year licences, the less licence renewals are required to be processed each year.

To understand whether these outcomes have been achieved, a survey was distributed to a random sample of 12,317 licensees across the impacted licence types who renewed their licence since the date the reform took effect (n=73,557). The random sampling technique considered the actual proportions of licensees from each licensing type in this population to ensure that the survey sample reflected the proportion of licensees from each licence class as closely as possible. The survey achieved a response of n=895 and the distribution of respondents across impacted licence types (see Figure 2) closely reflects the total population impacted by the reforms.

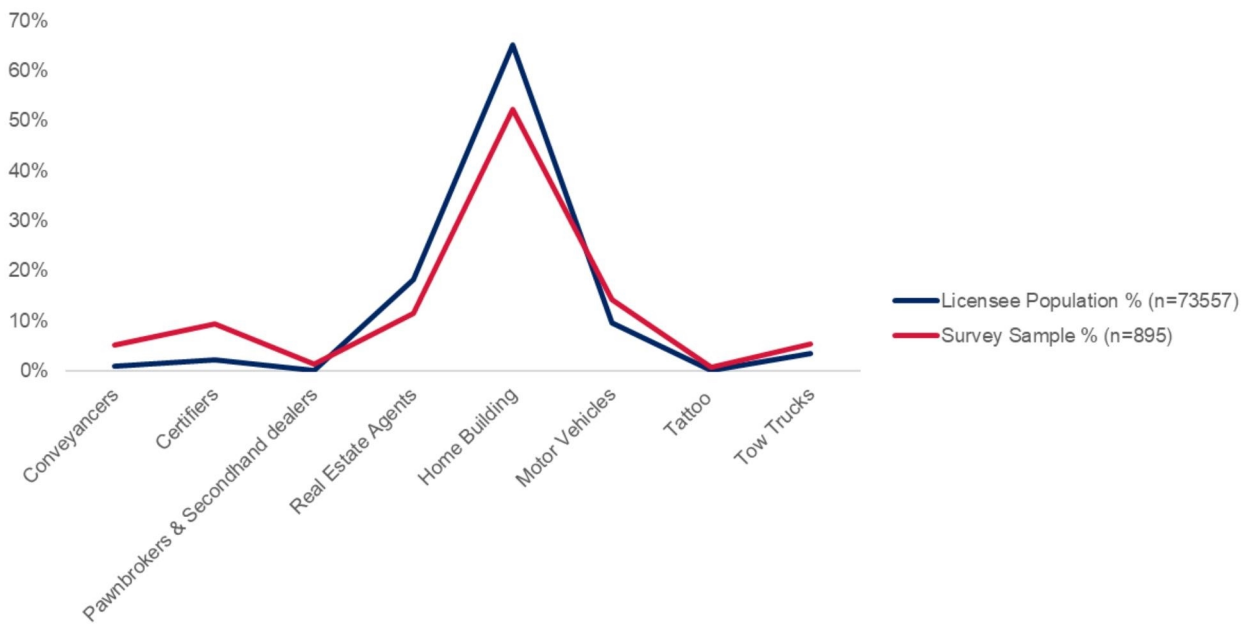
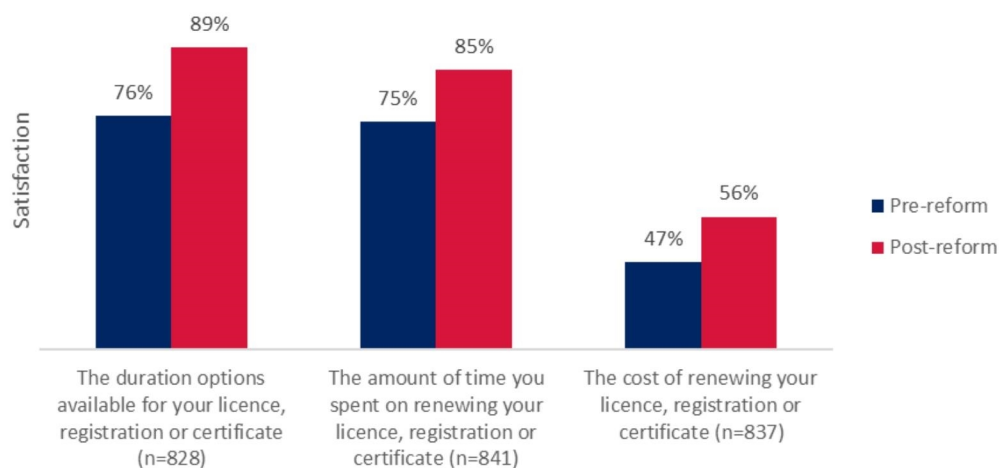


Figure 2: Distribution of impacted licensee population and licensee survey responses

Interviews were also conducted with key staff responsible for administering all 10 types of licences impacted by the standardised licence duration reform (n=6).

Figure 3 shows that, since the reform commenced, licensee satisfaction with licence durations available to them grew by 13 percentage points. Respondents' satisfaction with the time they spent renewing their licence also increased by 10 percentage points. The same can be said about licensee satisfaction with the cost of renewing their licence, which grew by 9 percentage points.

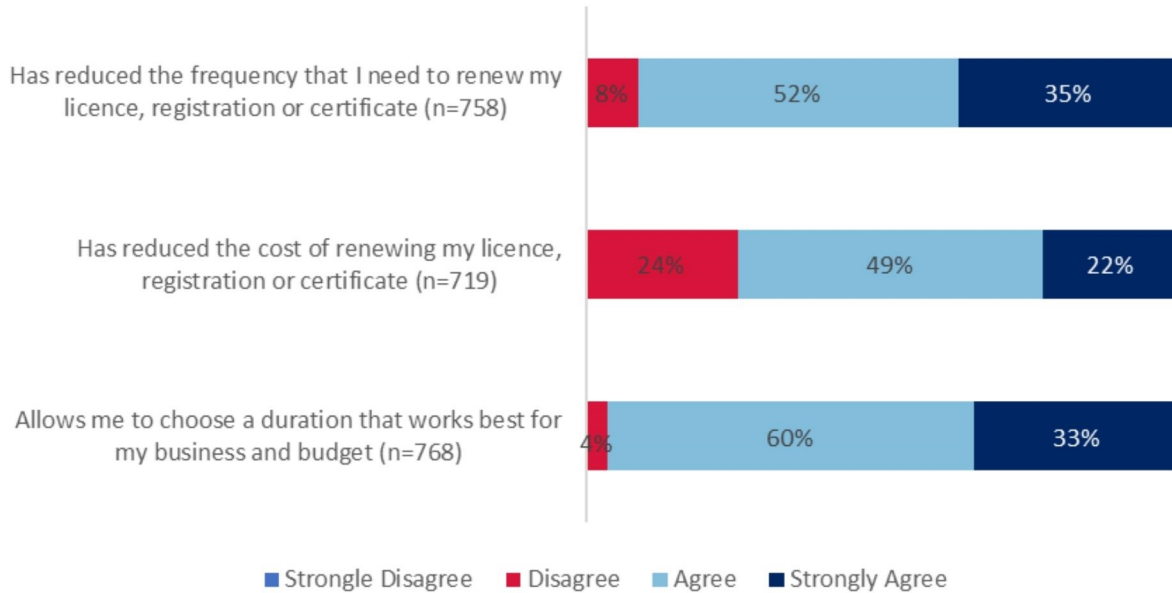
Figure 3: Licensee satisfaction with duration options, time required, and costs associated with administering NSW Fair Trading licences.



Because no pre-reform baseline data was available, survey responses to 'pre-reform' conditions were asked as part of the same survey and are based on respondent recall of these conditions before the reform commenced.

Consistent with the results in Figure 3, Figure 4 shows the extent to which respondents agree that the reform has delivered their intended outcomes.

Figure 4: Licensee agreement that the reform is achieving its intended outcomes.



Almost all (93%, n=768) agreed the new licensing settings allow for greater flexibility to select a licence duration that suits their business’ circumstances and budget. Nearly 90 percent (n=758) agreed the reform has reduced the frequency with which they will need to renew their licence. Finally, over 70 percent (n=719) agreed that the reform has reduced the cost of administering their licence.

2.4 Licensees’ are choosing longer durations, but this choice is primarily determined by cost.

Figure 5 shows the distribution of licence durations in 2020-21 (post-reform) compared to what durations were available to licensees prior to the reform. It shows that 51 percent of licensees that previously only had access to a one year duration opted for something different. About 34 percent of licensees that previously only had access to a three year duration opted for something different. A lesser proportion, 18 percent, of licensees that previously had access to one or three year licences chose something different. In total, 27 percent (n=30,206) of licensees chose a licence duration not previously available to them.

Figure 6 distinguishes between the choices of duration made between licensees that received fee waivers as part of the NSW Government’s support package for businesses in response to the COVID-19 pandemic compared to those that did not. The analysis shows that, whilst licensees who did not receive a fee waiver still chose longer durations, this was to a lesser extent than licensees that did receive free or heavily discounted licensing fees. This indicates cost as a key factor for licensees when they choose their licence duration. This analysis is supported by the results of the licensee survey, where about half of the respondents that opted for a different licence compared to their last renewal (n=149) indicated the duration choice they made was primarily



related to the cost of the licence (either that the durations provided cost savings, or that the longer durations were cost prohibitive).

Figure 5: Distribution of licence durations, 2017-21¹².

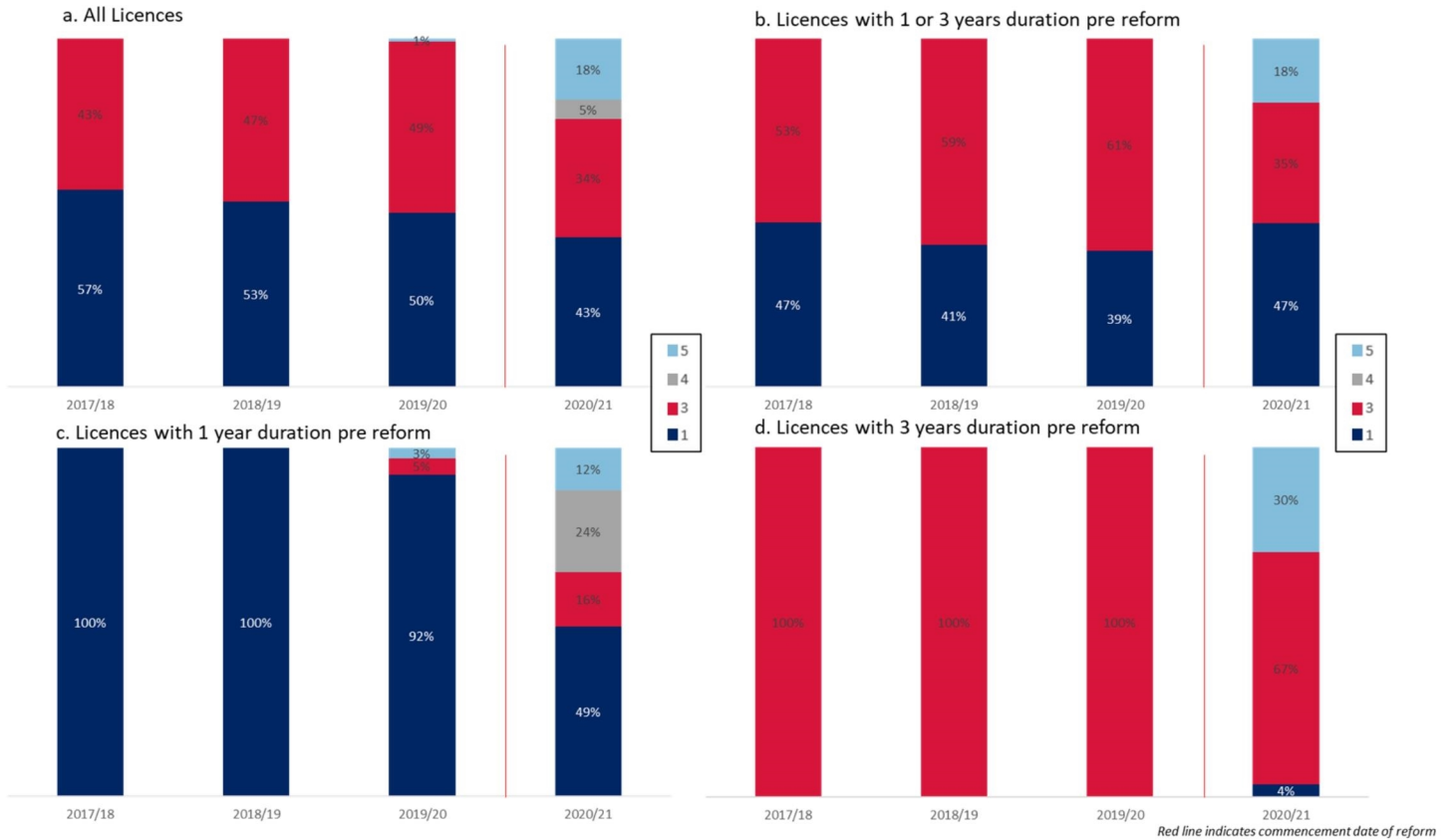
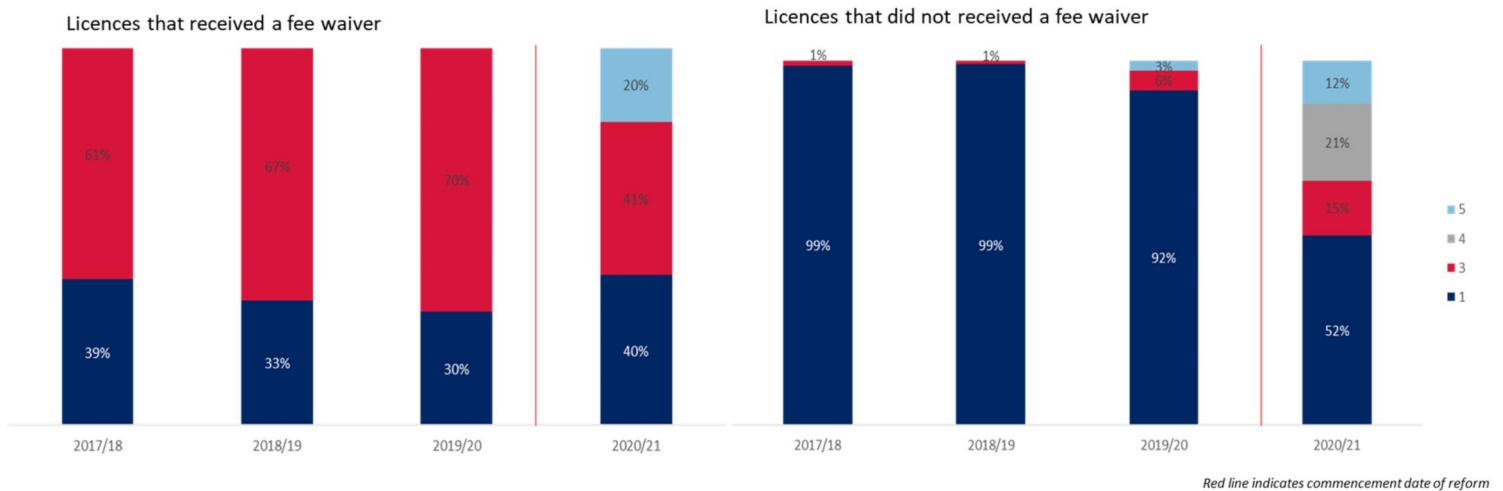


Figure 6: Distribution of licence durations, pre and post reform, by licence types that received a fee waiver.



¹² Notes: Five year durations commenced for Real Estate licences in March 2020, accounting for the small proportions of five year durations in the 2019-20 year. Four year licence durations also replaced the previously one year duration available for the Property – Certificate class of Real Estate licence as part of the *Property and Stock Agent Act 2002*. It should be noted that four years is now the only option available for this licence type.

2.5 Licensees saved, on average, \$190 in discounted licence fees in 2020/21

Extending licence durations provides an opportunity for financial savings as discounts are being applied to longer licence durations, meaning the annual cost of licences is reduced. The extent to which this outcome has been achieved was tested by estimating the licence fees paid by impacted licensees that were granted or renewed a licence in 2020/21, compared to what they would have paid in the same year under pre reform settings.

To improve its accuracy, the scope for this analysis was limited to Real Estate, Pawnbroker & Second-hand Dealer and Conveyancer licences because they:

- did not receive fee exemptions as part of the COVID-19 economic stimulus, meaning licensee choices are not biased by free or discounted licence fees, and
- only allowed a one year duration option pre reform, meaning licensee choices for longer durations post-reform were the first time they had access to them.

Table 4 below shows fee schedule and discount rates for longer licence durations for 2020-21. On average, a fee discount rate of 25 percent was applied to 3 year durations and 30 percent for 5 year durations. Fee discounts were generally higher for new licences compared to licence renewals.

Table 4: Fee schedule and discount rates applied to a selection of impacted licence types, 2020-21.

Licence Type	Application Type	2020-21 Fee Schedule			Discount rate	
		1 Year	3 Year	5 Year	3 Year	5 Year
Pawnbroker & Second Hand Dealer	New Licence	\$555	\$1,262	\$1,968	24%	29%
	Renewal	\$401	\$1,108	\$1,814	8%	10%
Conveyancer	New Licence	\$546	\$1,190	\$1,833	27%	33%
	Renewal	\$392	\$1,038	\$1,681	12%	14%
Property - Corporation	New Licence	\$1,039	\$1,701	\$2,401	45%	54%
	Renewal	\$604	\$1,266	\$1,966	30%	35%
Property - Individual (Class 1)	New Licence	\$748	\$1,374	\$2,000	39%	47%
	Renewal	\$458	\$1,084	\$1,710	21%	25%
Property - Individual (Class 2)	New Licence	\$494	\$1,046	\$1,599	29%	35%
	Renewal	\$349	\$901	\$1,454	14%	17%

Based on this information, Table 5 provides an estimate of savings made by licensees as a result of choosing longer licence durations.

Table 5: Total fees saved by licensees in 2020-21 as a result of fee discounts for longer durations

	Licence Durations		
	3 Year	5 Year	Average
Total Savings	\$1,935,486	\$2,924,683	\$2,430,085
Total savings per licensee	\$513	\$1,034	\$774
Savings per licensee per year	\$171.13	\$206.76	\$189

Table 5 shows that in 2020-21, licensees saved on average \$189 on licence fees if they chose a duration longer than a year. The greatest savings were made by licensees who chose a 5 year

duration – estimated to have saved, on average, \$206 in 2020-21 as a result of the fee discount rates applied. In addition to these financial savings, it is important to note licensees are also likely to have received a time savings benefit from no longer being required to renew their licence as frequently.

Whilst these results indicate the reform's overall success, it is worth noting licensing staff have received some customer feedback about whether the discount rates applied to 5 year licences demonstrate value for money. Staff note that, particularly within the Home Building and Motor Dealer and Repairer licence classes, opting for a 3 year licence can be cheaper for the licensee than opting for a 5 year licence based on the discount rates applied. Assessing the licence fee setting approach and methodology is out of scope for this evaluation, however, this aspect should be investigated further to ensure the licence fee structures complement the objectives of this reform and are encouraging licensees to opt for longer licence durations.

2.6 Over the longer term, the standardised licence durations are likely to reduce the administrative workload for BRD Licensing staff.

In discussing the impact of the licence duration reform with BRD licensing staff (n=6), all generally agreed that the reforms had resulted in improved consistency across the NSW Fair Trading licensing regime and was beneficial from an administrative perspective. Whilst most noted that they have not observed an immediate reduction in workload as a result of the reform, they were confident that it would eventually reduce the number of licences that needed processing each year and thus, administrative workload on staff.

In addition, it was noted by some licensing staff that the standardised licence durations provide an additional regulatory option to reduce the risk of consumer and worker harm. For example, where the duration was not available previously, licences could be issued to high risk licensees for a 1 year duration to assess performance and compliance.

2.7 The effect of restoring licences back to the date they expired is increasing administrative burden for regulators and risk for consumers.

Harmonising licence restoration provisions across the NSW Fair Trading licensing regime was intended to reduce burden on licensees by providing additional flexibility if they inadvertently fail to renew their licence on time. A single uniform set of restoration provisions was also intended to reduce administrative burden for the regulator by improving the consistency and clarity about licence restoration rules across the NSW Fair Trading licensing regime. This evaluation finds the reforms have had the opposite effect, with the new provisions increasing administrative burden on the regulator. This is largely because the reform now requires discretionary decision-making when assessing licence restoration applications, reducing consistency and clarity about how to interpret licence restoration rules.

To understand the extent to which the reform has reduced administrative burden, interviews were conducted with key staff responsible for administering all 10 types of licences impacted by the

Better Business Reforms (n = 6). Whilst staff understood the rationale and benefit of the reform for licensees:

“...if you forget to renew your licence after 3 months, there was no support in the legislation to restore it. This meant you would lose your licence number – something that is often of sentimental value and an added expense to reprint signage and business materials.”

most staff reported that the changes to licence restorations made by the reform had increased the level of administrative burden put on their teams. This burden comes from the implications of Section 18 of the *Fair Trading Legislation Amendment (Reform) Act 2018*, highlighted in Figure 7 below:

(2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence may be made if the Secretary is satisfied that—

- (a) in a case where the applicant failed to apply for renewal before the licence expired—the failure to apply for renewal of the licence before it expired was due to inadvertence, or
- (b) it is just and equitable to restore the licence

(5) A licence restored at any time is taken to have been restored from the day on which the licence expired.

Figure 7: Licence Restoration provisions of concern for Licensing Staff

The inclusion of Clause 2(a) and (b) was considered problematic because the criteria to approve a licence restoration (*inadvertence* or because it is *just and equitable*) is, from a discretionary decision making perspective, considered to be a ‘low bar’ for a licensee to demonstrate. Further, staff noted that these criteria have led to a suspicion that some licensees were using this clause to ‘game’ the NSW Fair Trading licensing regime. For example, staff responsible for administering real estate licences indicated licensees are using the restoration clause to avoid complying with some new requirements from recent changes to the *Property and Stock Agent Act 2002* which sought to strengthen licensing settings.

This is evidenced further in Table 6 below, which provides a summary of recent requests received by BRD licensing staff to restore expired licences, including the determination made. Table 6 shows the diversity of reasons provided by licensees to have their licence restored, and the highly subjective nature of how inadvertence and justice/equality can be interpreted.

Staff also expressed a high degree of concern about the implications of Clause 5, that stipulates the effect of a decision to restore a licence after it has expired means that any work undertaken in the period the licence was expired is validated. Most staff interviewed expressed concern about this element of the reform because, in extreme cases, it can offer an opportunity for traders who have been operating without a valid licence to avoid penalty. This was seen to be creating unnecessary risks for the regulator and consumer. Figure 8 provides a detailed account of the effect of Clause 5 for both the regulator and consumer when an expired licence is restored.



Table 6: Case Study – Requests for licence restoration outside of the 3 month expiry period

Licence Type	Period of Expiry	Reason for restoration request	Determination	Reason for determination
Class 2 Real Estate	7 Months	<p>Was overseas for an unplanned, unexpected and extended period from February 2020 to November 2020 to care for sick relative and did not think about licence renewal.</p> <p>Did not receive the SMS renewal message because licensee was using an overseas phone.</p> <p>Was unable to return to Australia as intended because flight frequency between was reduced due to COVID-19 border closure.</p> <p>Licensee overwhelmed and mentally drained by family circumstances and COVID-19 pandemic.</p>	Refuse	<p>Request not due to inadvertence as licensee would have been reasonably aware licence was up for renewal. Further there is no requirement for the applicant to lodge a licence renewal or restoration application in person. Applications can be submitted online and, in this regard, the applicant did not need to be physically present in NSW to lodge a renewal or restoration application.</p> <p>Request not considered just and equitable as there are other licence holders dealing with the same or similar issues and have been able to meet the requirements of the NSW Fair Trading licensing framework.</p>
Class 1 Real Estate	12 Months	<p>Worked as a real estate agent until moving overseas in November 2019 to care for a sick relative.</p> <p>Returned to Australia in February 2020 and did not renew licence because he was unable to gain real estate agent work due to COVID-19.</p> <p>Now wants to trade as a real estate agent. NSW Fair Trading verbally advised the licensee may be eligible to restore the licence under the Better Business Reforms.</p>	Refuse	<p>Request not due to inadvertence as the licensee chose not to restore the licence within the three months restoration period because they were unable to obtain real estate employment.</p> <p>Request not considered just and equitable to restore and backdate the licence as the applicant ceased working as a real estate agent almost two years ago.</p>

Motor Vehicle Tradesperson's Certificate	6 Months	<p>Renewal notification was sent to previous employment email.</p> <p>Has had a serious medical diagnosis from which he has only recently recovered.</p> <p>Has held the licence since 1981 and would like to hold onto the original number until retirement.</p>	Accept	<p>There are legitimate extenuating circumstances surrounding the licence not being renewed within the restoration period. Licensee had a genuine serious medical condition at the time the renewal fell due and renewing the licence would not have been foremost in the mind of the licensee at that time.</p>
Class 1 Real Estate	12 Months	<p>The licence was not renewed on or before the due date of 13 March 2020 as the licensee had ceased trading due to COVID-19.</p> <p>Now ready to start new venture and would like to renew licence under the Better Business Reforms.</p>	Refuse	<p>Request was not due to inadvertence as licensee had decided to cease trading as an agent and therefore had no need for the licence at the time of the renewal.</p> <p>Request not considered just and equitable to restore and backdate the licence to be active in circumstances when the person had ceased trading as an agent during that period.</p>
Class 1 Real Estate	3 years	<p>Licence expired in 2017 as the licensee no longer required it as part of their employment.</p> <p>Request for restoration made in 2020 under the Better Business Reforms as the licensee resumed trading as a real estate agent.</p>	Refuse	<p>Request was not due to inadvertence as licensee had decided not to renew as not required due to position held therefore had no need for the licence at the time of the renewal.</p> <p>Request not considered just and equitable to restore and backdate the licence to be active in circumstances when the person had ceased trading as an agent during that period.</p>

In August 2020, a consumer lodged a complaint with Fair Trading about his dealings with a mechanic. The complainant alleged the mechanic had charged the complainant for repairs they did not complete. Fair Trading was unable to reach a mutually agreed resolution and the complainant decided to pursue the case further through NSW Civil and Administrative Tribunal (NCAT).

However, as part of their investigation, Fair Trading identified that the mechanic's licence had expired in March 2018. This meant the mechanic had been trading unlicensed for a period of almost two years, including when they worked on the complainant's car. When Fair Trading brought this to the mechanic's attention, they advised that they had forgotten to renew their licence but wanted it restored so they could retain their original licence number – which had been in use by their family since 1966. Fair Trading directed the mechanic to cease trading and apply for a licence restoration, which the trader submitted in September 2020.

Fair Trading assessed the application in line with the new restoration provisions introduced as part of the Better Business Reforms and decided to restore the licence, determining that the mechanic had not renewed the licence due to an inadvertence; and, that it was just and equitable to restore the licence due to the following factors:

- the mechanic had been operating since 1966 and, as it is a third-generation business, the licence number held sentimental value;
- Fair Trading had not received any complaints about the trader prior to this;
- the trader had previously renewed its licence for three years on 2015 and, had the trader renewed its licence on time (March 2018) for three years, the licence would still have been current; and
- there would be additional costs to the mechanic to change signage, stationery, letterhead, etc. if they had to get a new licence number.

The effect of restoring the mechanic's licence also meant the work they had completed across the period they were unlicensed became valid and any breaches for working with an expired licence during that period would no longer apply. This included the work completed on the complainant's car in August 2020, for which had formed a part of the complainant's case still being heard at NCAT.

It was argued by the complainant that the act of restoring the mechanic's licence had interfered with these proceedings, impacting on the recourse options available to them.

Figure 8: Case Study - Restoration of a Motor Vehicle Repairer's Licence

Most staff noted that the combination of the discretionary decision making criteria to restore expired licences; along with the implications of restoring a licence, mean that their teams now need to apply additional scrutiny of restoration applications.

To minimise burden on staff, different licensing teams have put in place various management strategies. For example, the default position from the Real Estate licensing team is that all applications to restore expired licences are automatically refused, particularly for applications of expired licences outside the 3 month period. More likely, they will direct them to apply for a new licence.

The Home Building licensing team require licensees to submit an expression of interest (EoI) to the licensing team if they are seeking to restore an expired licence. This EoI is assessed and the licensing team provide the licensee with an indication of whether the application would satisfy the inadvertence or just/equitable criterion required for it to be approved.

The Home Building Licensing team explained that this process was put in place because of a unique restoration provision in the Home Building Regulations that deem a Home Building licence to be current upon application, until it is determined. This is inconsistent with restoration provisions across other licence types which require an application to be determined to be made valid. This means the risks associated with restoring licences outlined in this section are somewhat amplified in the Home Building space.

Efforts made across licensing teams to manage the new discretionary-decision making requirement for licence restorations have been developed to suit each team's needs. However, by doing this there is an unintended risk emerging that restoration applications are being handled inconsistently across licence types, which is contrary to the original objectives of the harmonising licence restoration reform. It is understood this issue is already being rectified by Licensing & Funds, who are now considering each application on its merits in accordance with the legislation.

Interestingly, some licensing managers noted that the restoration settings in place prior to the reform were better designed. For example, the Home Building and Tow Truck licences could be restored after expiry, but the period in which the licence was expired remained on public record (meaning the act of restoring did not automatically validate back to the time of initial expiry). This meant that the regulator (and consumer) could easily verify when a licensee has been appropriately licensed. This model was considered to provide less risk to the regulator and consumers whilst also providing the licensee with a degree of freedom intended by the harmonising licence restoration reform.

Recommendation 1: BRD Policy & Strategy and BRD Licensing & Funds to review the design of the licence restoration provisions implemented under Section 18 of the *Fair Trading Legislation Amendment (Reform) Act 2018* to minimise risk to regulators and consumers. One option could be to require that restorations of expired licences take effect from the day the application is received, not from when the licence last expired.

As part of this review, particular attention should be paid to aligning the restoration provisions outlined in the *Home Building Act 1989* and Home Building Regulation 2014 with other Fair Trading licences so that applications to restore licences must be determined to be made valid.

3. Disclosure of key terms in consumer contracts

3.1 Background

Contract terms and conditions are critical pieces of information consumers need to be made aware of before deciding to purchase a good or service. Often these terms and conditions can be lengthy, difficult to find and/or are not easy to understand.¹³ In some cases, this can result in consumers deciding not to purchase goods and services because they cannot readily access and understand their obligations. More frequently however, consumers may agree to terms and conditions without reading them. In both cases, consumer detriment occurs because consumers are not being given access to the right information to help them decide to purchase a good or service.

Among the terms and conditions of contracts, there are often more important terms that a consumer's attention should be drawn to. These are known as key terms. This reform intended to reduce instances of consumer detriment by requiring businesses to take reasonable steps to make customers aware of the substance and effect of key terms before they purchase goods or services.

3.2 Reform design and objectives

Schedule 1 of the *Fair Trading Legislation Amendment (Reform) Act 2018* set out a new requirement for businesses to take reasonable steps to ensure the consumer is aware of key terms that may substantially prejudice the interests of the consumer. This includes, but is not limited to, key terms that:

- limit the liability of the supplier,
- provide that the customer is liable for damage to delivered goods,
- permit the supplier to provide data about the customer, or data provided by the customer, to a third party in a form that may enable the consumer to be identifiable by the third party, or
- require the consumer to pay an exit fee, a balloon payment, or other similar payment.¹⁴

Under the reform, there is a fine of \$22,000 for individuals and \$110,000 for corporations who breach the disclosure obligations. Penalty notices may also be issued for suspected contraventions, of \$550 for individuals and \$1,100 for corporations.

By increasing visibility of the key terms and conditions of purchases they make, the reform is aimed at benefitting consumers by preventing them from making purchases they would not have made if they had access to the relevant information; or, making purchases they would have made with better information.

¹³ NSW Fair Trading. (2018). *Easy and Transparent Trading – Empowering Consumers and Small Business*. Retrieved from: https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/388138/Easy_and_transparent_trading_Consultation_Paper.pdf

¹⁴ NSW Fair Trading. (2020). *New Disclosure Obligations for NSW Businesses*. Retrieved from: <https://www.fairtrading.nsw.gov.au/resource-library/publications/new-disclosure-obligations-for-nsw-businesses>

3.3 Businesses have found interpreting the reform to be challenging

The reform requires businesses to make changes to their internal sales systems and processes to ensure consumers are provided with explicit and upfront notice of key terms and conditions. This includes updating standard form contracts and warranty material or including upfront notice of key terms on the transaction pages of websites. In recognition of this, the changes included a 6 month grandfathering period, from 1 July 2020 to 31 December 2020, to give businesses time to adapt their operational requirements to the reform.

As part of this evaluation, interviews were conducted with industry peak body representatives (n=4) from the travel/tourism and automotive industries to understand the impact of the reform on their members, including the activities their members have been undertaking to comply with the reforms.

All participants noted they have been actively working with their members to identify what operational changes were needed to ensure compliance with the reforms. Key activities of these peak bodies generally included:

- engaging legal advice to interpret the reform in the context of their industry,
- developing specific guidelines and templates,
- hosting webinars and responding to specific queries from their membership base.

However, all representatives interviewed have found it difficult to interpret the provisions of the reform. This, in turn, has made it difficult for them to provide clear advice to their members about operational changes needed to be made to ensure compliance. One representative from a motor dealer peak body noted that the “...reform is good for consumers, but is a headache for businesses...”

This is because the reform is seen to be too broad and open to interpretation, particularly around:

- what constitutes a *key term* that would *substantially prejudice* a consumer, and
- what constitutes a *reasonable effort* for a business to try and make consumers aware about a key term.

A representative from a motor dealer peak body explained:

“The problem is that there are no two consumers that are the same, a key term for one consumer could be the financial terms, for another it could be the product terms. We can also never guarantee that a consumer is going to read and understand them. This can be a big play when it comes to disputes going to NCAT. How can you guarantee that they have read and understood the T&Cs?”

A travel industry peak body representative noted that this uncertainty has resulted in them ‘holding off’ on providing any further guidance or advice to their members until they learn “...the outcome of a few court and tribunal challenges going on at the moment, which will provide us a precedent.”

Whilst all representatives were aware of the guidance material developed by Fair Trading to support commencement of the reform, they noted there wasn’t enough consultation done to understand how the reform would impact each industry individually and provide sufficient guidance to help them and their members. This view was explored with BRD Policy & Strategy staff involved in the design and implementation of the reform, who acknowledged that the reform is purposely broad due to the different types of businesses and transactions the reform applies to. Thus, they noted, the onus is really on the business to make an assessment about what terms are likely to

substantially prejudice the consumers and make appropriate changes to their contract terms and conditions.

Recommendation 2: BRD Policy & Strategy to conduct a review of existing guidance material available to businesses about substantially prejudicial terms in consumer contracts. This review should include:

- targeted consultation with key industry representatives most likely to be impacted by the reform, including refund and cancellation policies in the Travel/Tourism, Motor Dealers, Gyms and subscription services, and
- analysis of any determinations about substantially prejudicial terms made by the local court or NCAT since the reform commenced.

The review should result in updated and more practical guidance for businesses about common key terms that are considered to be substantially prejudicial across specific industries. The review should also consider appropriate options to raise awareness about the reform amongst the NSW business community, particularly Small-Medium Enterprises (SMEs) who may not have capability or access to appropriate expertise to interpret and comply with these new requirements.

3.4 Industry compliance is likely to be variable, depending on the size of the businesses

In their *ex ante* impact evaluation, ACIL Allen noted that the reform had the potential to impose some compliance costs to businesses, including:

- costs associated with compliance of the reform, and
- reduced profits from lost sales as a result of notifying consumers of key terms.¹⁵

This impact was explored with industry peak body representatives, all of whom noted they had not received any substantial feedback about the costs of complying with the reform. However, most noted that the extent (and likely costs) of compliance across their members were contingent on business size and capacity.

A representative from a travel industry peak body noted that compliance across their membership base was high, driven by higher consumer scrutiny about terms and conditions following the travel restrictions due to the COVID-19 pandemic:

“The COVID pandemic has resulted in over 10 billion dollars lost in cancellations/ refunds across the industry and it was pretty clear that consumers weren’t familiar with the key terms and conditions in the contracts they entered into. Now, terms and conditions has become a hot topic for our members and consumers.”

As a result, the representative noted that most members have updated their terms and conditions in line with the reform. However, they noted that this was most likely more a response to the COVID-19 pandemic rather than the reform itself. In relation to the cost of complying with the reform amount their members, the representative noted:

¹⁵ ACIL Allen Consulting. (2018). Better Business Reforms: Impact evaluation of the better business reform package. (Internal)

“...some networks have templates of key terms and conditions done at head office and it’s applied, which is cost effective...smaller businesses are more anxious and have asked us for support to develop templates and guidance.”

Peak body representatives for the motor dealer industry (anecdotally) observed that around 50 percent of the industry would be compliant with reforms, with some (smaller businesses) more likely to be resistant and “...run the gauntlet...” until they get caught, this is despite the introduction of hefty penalties if businesses do not comply with these new laws.

Consultation with the BRD Compliance and Enforcement unit indicate that there has not been any compliance related activity related to this reform.

They noted that non-compliance would likely be higher for non-affiliated businesses who would find it hard to “...access and understand the new requirements.” Similar to the views held by the travel peak body representative, costs of compliance in the motor dealer industry are really dependent on the business size and operating model. For some businesses the costs/ changes may be marginal, for others more substantial – depending on their size and operational processes.

3.5 The reform has created an addition layer of protection for consumers, which is unique to NSW

It is important to note that the reform is not the only source of protection against consumer detriment in NSW. Section 250 of Australian Consumer Law already provides certain protections for consumers against *unfair contract terms* in standard form contracts. These provisions are embedded in all Australian state and territory Fair Trading Acts and are the predominant mechanism for preventing consumer detriment. However, the new protections for consumers against *substantially prejudicial terms* introduced as part of this reform is unique to NSW. Table 7 compares the key elements of the two regimes.

Table 7: Unfair Contract Terms regime compared with Substantially Prejudicial Terms regime

Element	Unfair Contract Terms (ACL)	Substantially Prejudicial Terms (NSW Fair Trading Act 1987)
Definition	<p>A term of a consumer contract or small business contract is ‘unfair’ if it:</p> <ul style="list-style-type: none"> would cause a significant imbalance in the parties’ rights and obligations; and is not reasonably necessary to protect the legitimate interests of the party advantaged by the term; and would cause detriment to a party if it were relied on. 	<p>A ‘substantially prejudicial’ term is not defined, but the legislation includes examples of terms which:</p> <ul style="list-style-type: none"> limit the liability of the supplier provide that the customer is liable for damage to delivered goods permit the supplier to provide data about the customer to a third party require the consumer to pay an exit fee, a balloon payment, or other similar payment.

Applicable contract value	<ul style="list-style-type: none"> • Consumer contract (Purchase of up to \$100,000) • Small business contract (Purchase of less than \$300,000 or, if the contract is longer than 12 months, it does not exceed \$1 million.) 	<ul style="list-style-type: none"> • Consumer contract (Purchase of up to \$100,000)
Consequence of Breach	Breach determined by courts. If deemed a breach, the term is declared void.	Breach determined by regulator. There is a fine of \$22,000 for individuals and \$110,000 for corporations who breach the disclosure obligations. Penalty notices may also be issued for suspected contraventions, of \$550 for individuals and \$1,100 for corporations.
Application	Australia-wide	Only to NSW businesses and businesses based outside NSW which supply goods or services to consumers within NSW.

Whilst there are differences between the two regimes, peak body representatives noted that the introduction of consumer protection from *substantially prejudicial terms* can result in increased burden for businesses, particularly those that operate nationally. For example, a representative from a motor dealer peak body noted that they have a national provider for their business solution software that provides key documents including contracts, warranties, etc. Since the reform, this system is no longer compliant in NSW, but remains compliant elsewhere.

3.6 The evaluation was unable to determine what, if any, impact the reform has had on consumer detriment.

In line with the findings of ACIL Allen’s *ex ante* impact evaluation of the Better Business Reforms, the wide-reaching effect of this reform means that efforts to understand its true impact on consumer detriment would be difficult. This exercise is made more complex by the nuanced differences between this reform and the consumer protections provided under Australian Consumer Law.

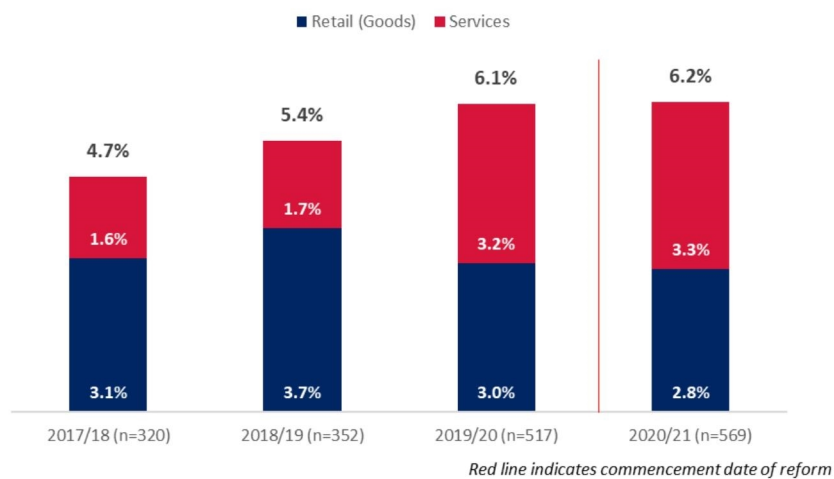
In an effort to provide some assessment about the impact of this reform on consumers, this evaluation considered consumer complaint data held by NSW Fair Trading to be a useful proxy to understand whether there has been any change to consumer detriment over time. In particular, whether the number of complaints received by NSW Fair Trading about terms and conditions of goods and services have reduced since the reform commenced.¹⁶ Analysis of this data indicate that it has almost certainly been distorted by the flow-on impacts of the COVID-19 pandemic, masking any potential impacts on consumer detriment created by the reform.

¹⁶ The scope of analysis was limited to consumer detriment as a result of online transactions were selected to align with the initial focus and rationale proposed for the reform during its initial design stages, along with the scope of analysis selected by ACIL Allen in their *ex ante* impact evaluation.

Nevertheless, the analysis of complaints data has been included in the remainder of this section because we believe it provides some useful insight for regulators (and by extension, businesses) to identify the types of terms and conditions which may need to be more explicit at the time of transaction; and, may be an approach worth replicating in the future support further policy development and industry guidance in this area. For example, refunds and cancellation terms in the travel/tourism, motor dealers, gyms/health clubs and subscription services industries appear to be a common source of detriment.

Between 2017 and 2021, NSW Fair Trading received around 8,000 complaints each year that were related to goods and services that were purchased online. Over this time, complaints related to the terms and conditions of the goods or services have increased as a proportion of total complaints received, increasing from 4.7 percent in 2017-2018 to 6.2 percent in 2020-2021 (Figure 9).¹⁷

Figure 9: Complaints related to key terms and conditions for online purchases of goods and services as a proportion of total complaints received, 2017-2021.

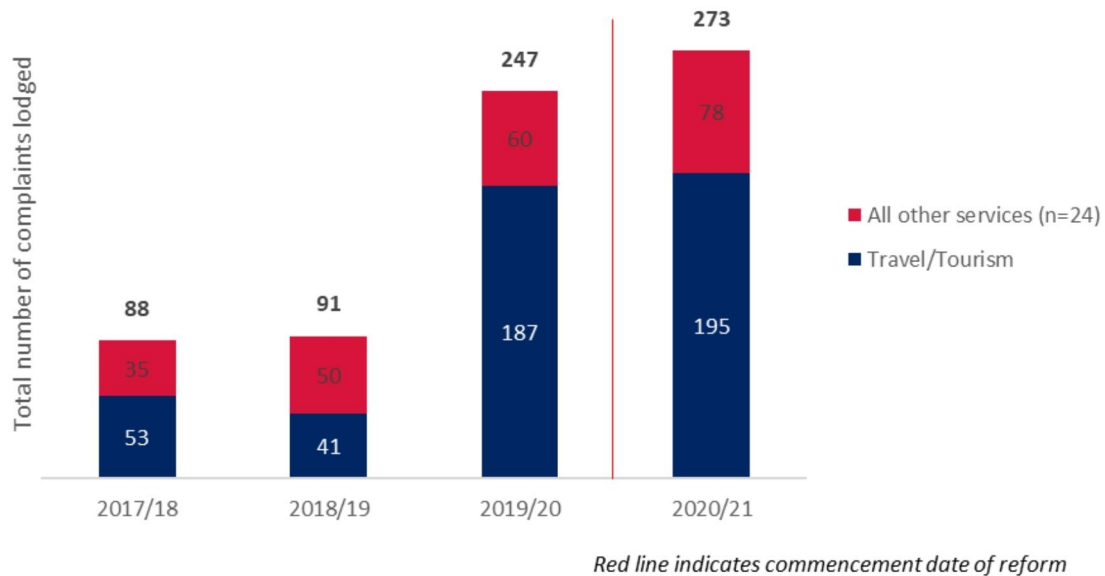


This increase is primarily being driven by complaints about the terms and conditions of services, which grew by 176 percent between 2017-18 to 2020-21, compared with a 22 percent growth in complaints about goods over the same period.

Figure 10 shows that complaints related to Travel/Tourism services account for about half of all complaints about terms and conditions for services received in 2017-2018 and 2018-2019. Since 2019-2020, there has been a significant increase in the number of complaints being lodged about services, with Travel/Tourism services now accounting for up to 75 percent of them.

¹⁷ A word search of the CAS database was conducted using the following: *terms and conditions, terms, conditions, contract.*

Figure 10: Total complaints received about key terms and conditions for services purchased online, 2017-2021.

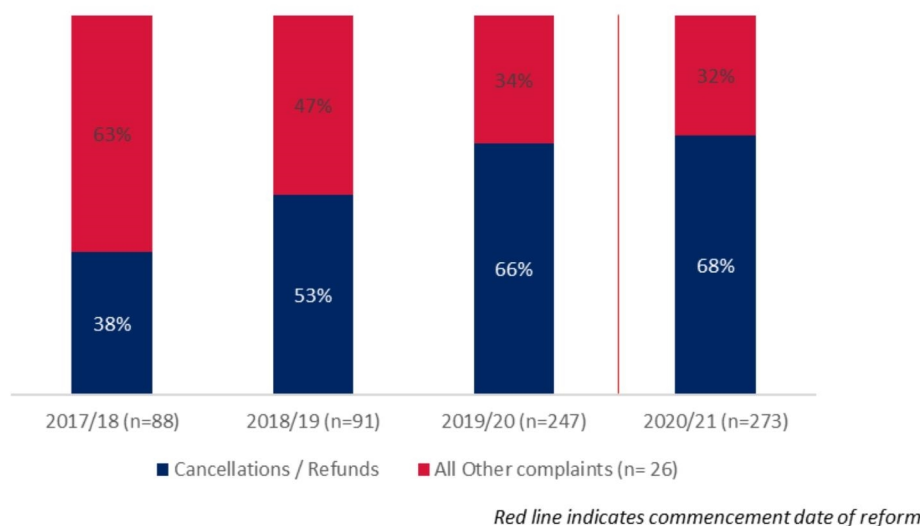


In line with the analysis in Section 3.3, it is almost certain this increase is due to the flow-on impact of the COVID-19 pandemic and associated travel restrictions.

The next highest services receiving complaints were Health Clubs/Gyms, accounting for 7 percent of all complaints received over the period, followed by Motor Vehicle and Equipment Hire, Removalists, Personal Services and Introduction Agencies (3 percent each). Another 18 industries attracted 2 percent or less of all complaints received over the period and have remained relatively steady over time.

By far the most problematic terms and conditions for services were about cancellations and refunds. Figure 11 shows that complaints related to cancellations and refunds as a proportion of all complaints increased from 38 percent in 2017-18, to almost 70 percent in 2020-21.

Figure 11: Complaints about cancellation and refunds as a proportion of all complaints received about services purchased online between 2017-2021.



Complaints about terms and conditions for goods purchased online have also increased, though at a much steadier rate compared to services – increasing by 22 percent between 2017-2018 and 2020-2021.

Figure 12 shows that there were 6 common types of goods that consistently attracted 50 percent or more of annual complaints over the period, with Clothing/Accessories/Jewellery, Entertainment and Electrical, Whitegoods and Gas Appliances consistently generating the largest proportion of complaints.

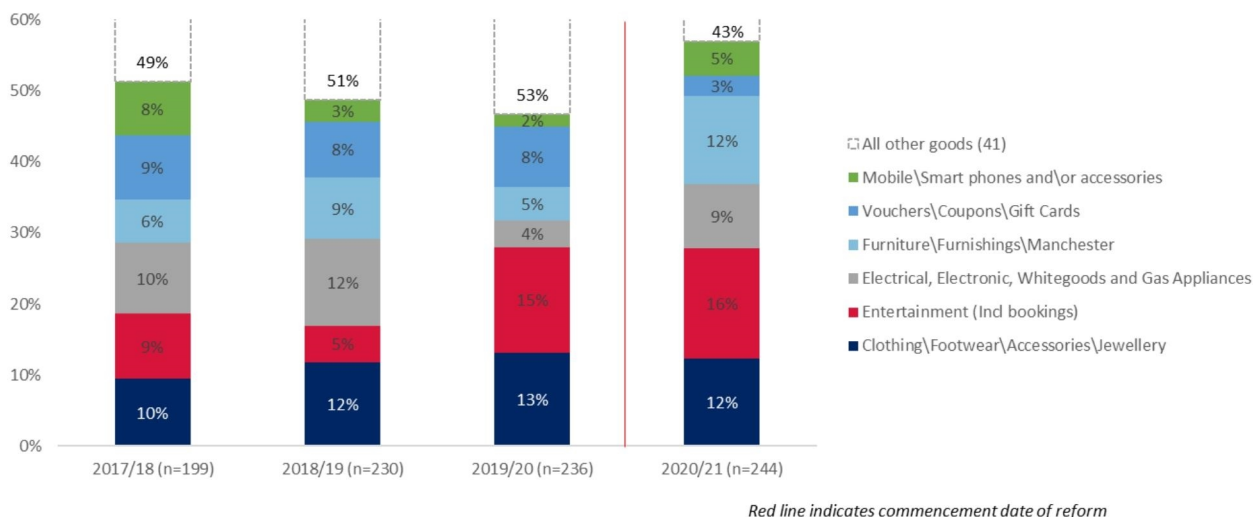


Figure 12: Proportion of complaints about the terms and conditions of goods, by main product types.

Almost all of these common categories of goods attracted an increase in complaints after commencement of the reform. The reasons for lodging a complaint were also quite varied. In 2020-21, five of the 40 complaint categories made up more than 50 percent of all complaints lodged, including:

- Delays in receiving the goods – 22 percent,
- Defective Goods – 10 percent,
- Unsatisfactory Goods – 10 percent
- Cancellation/Cooling off – 10 percent, and
- Refunds – 6 percent.

These complaint categories have remained the top five and relatively steady in proportion since 2017-18.

4. Streamlining Uncollected Goods Regulation

4.1 Background

Uncollected goods are goods that are left with someone who isn't the owner (both intentionally or accidentally). Common examples of uncollected goods include in circumstances where:

- tenant's furniture and clothing left behind in a rented dwelling,
- motor vehicles are left at a mechanics,
- clothing or other goods left at dry cleaners or hotels.

The *Uncollected Goods Act 1995* is the general mechanism that provides protections for the owners of these goods. These protections ensure owners are able to recover them or claim compensation if the goods are sold or destroyed by the receivers of uncollected goods (receivers are usually businesses or landlords of premises where the goods are left behind).

The *Uncollected Goods Act 1995* also sets out obligations imposed on receivers for how long uncollected goods must be kept; what efforts must be made to return these goods to their owner; and the process for selling or otherwise disposing of these goods.

Table 8 sets out the key obligations imposed on receivers of uncollected goods in the *Uncollected Goods Act 1995* prior to the reform depending on the value of the goods.

Table 8: Pre-reform settings for managing uncollected goods (*Uncollected Goods Act 1995*)

Goods \$ value	Notice type	Min. Hold time	Disposal method	Jurisdiction for disputes
<\$100	Oral or written	28 days	As appropriate	Local Court
\$100-\$500	Written	3 months	Public Auction or Private Sale	Local Court
\$500-\$5,000	Written and Newspaper	6 months	Public Auction	Local Court
>\$5,000	Written and Newspaper	6 months	In accordance with Local Court Order	Local Court

If the goods are sold, the receiver is entitled to retain any charges that the owner agreed to pay for the repair or treatment of the goods as well as the amount of the costs that the receiver incurs for removal, storage, maintenance, insurance and disposal. Additional proceeds from the sale becomes unpaid money and is regulated under the *Unclaimed Monies Act 1995*.

Whilst the *Uncollected Goods Act 1995* is the general mechanism that sets out the processes for managing uncollected goods, prior to the reform, other legislation contains specific uncollected goods provisions, including:

- *Residential Tenancies Act 2010*
- *Retirement Villages Act 1999*
- *Residential (Land Lease) Communities Act 2013*

- *Holiday Parks (Long-term Casual Occupation) Act 2002*
- *Strata Schemes Management Act 2015*.

This had resulted in a degree of duplication, inconsistency and discrepancy between the provisions of the *Uncollected Goods Act 1995* (Table 8) and more specific and prescriptive settings outlined in the other legislation listed above.

4.2 Reform design and objectives

Schedule 3 of the *Fair Trading Legislation Amendment (Miscellaneous) Act 2018* set out a suite of amendments across multiple legislation to simplify the process of managing uncollected goods so that receivers have a clear understanding of their rights and responsibilities when it comes to managing uncollected goods. These amendments broadly sought to achieve two objectives:

1. Consolidating all legislative provisions related to uncollected goods into one set of laws (the *Uncollected Goods Act 1995*) to ensure consistency in how uncollected goods are managed across a range of settings, and
2. Enhancing and modernising the *Uncollected Goods Act 1995* by:
 - a. Increasing the value and reducing the holding time thresholds for uncollected goods to reflect contemporary standards.
 - b. Easing prescriptive requirements such as the means of communication (e.g. newspapers) that do not provide for contemporary lower cost digital options.
 - c. Changing the jurisdiction from the Local Courts to NCAT for obtaining orders for disposal for high value uncollected goods and for resolving disputes about uncollected goods.
 - d. Including specific provisions related to how personal documents are dealt with under the *Uncollected Goods Act 1995*.

Table 9 summarises the most important changes to how uncollected goods are managed under the new regulations:

Table 9: Post reform settings for managing uncollected goods under the *Uncollected Goods Act 1995*

Goods value	Notice type	Min. Hold time	Disposal method	Jurisdiction for disputes
Low value (<\$1,000)	Oral or written	14 days	As appropriate	NCAT
Medium value (\$1,000-\$20,000)	Written	28 days	Public Auction or Private Sale	NCAT
High value (>\$20,000)	Written	6 months	In accordance with NCAT Order	NCAT
Personal Documents	Written	28 days	Return or secure destruction.	NCAT

The reform intended to benefit receivers by streamlining requirements for and reducing the imposition (and costs) for receivers of uncollected goods to hold, manage and dispose of uncollected goods.

4.3 The reform has simplified the requirements for some industry groups to dispose of uncollected goods.

Interviews with industry peak body and consumer protection representatives (n=6) revealed mixed views about whether the reform has made it easier for receivers to dispose of uncollected goods. For example, representatives from the motor vehicle repairer industry and caravan and camping industry strongly agreed that the changes have achieved this outcome, whilst representatives from the residential tenancy sector thought the reform made it harder for their members to manage uncollected goods.

The differing experiences between industry representatives appears to be related to how big an issue uncollected goods were prior to the reform, along with the regulatory settings they were operating under. For example, prior to the reforms, a representative from the motor vehicle repairer industry (n=1) noted they were regularly impacted by uncollected goods, receiving enquiries from their members about uncollected goods “...between 12-20 times a week.” Across the industry, it was estimated around 50 cars per month would be considered uncollected.

Further, prior to the reform uncollected motor vehicles were regulated under the *Uncollected Goods Act 1995*. The peak body representative noted that previous uncollected goods regulation was not easy or practical to navigate. Under the pre-reform regime, a mechanic would have to wait a minimum of 3 months before a car could be disposed of (depending on the value). Over this time, they were responsible for correctly notifying the owner and storing the vehicle securely. This was resulting in considerable burden and costs, particularly for small traders who had limited room in their workshop and yard. Once eligible, the process for disposing the car were also considered to be overly burdensome:

“...anything between \$500-\$5000 was required to go to auction which was unrealistic for traders...a car worth over \$5000 was required to gain a court order which was not easy to obtain.”

Since commencement of the reform, the peak body representative has observed that their members are finding it easier to manage and dispose of cars under the new regulatory regime. From the perspective of the peak body representative, the most impactful changes to this regime include:

- the establishment of medium value thresholds of goods (\$1000-\$20,000) requiring public auction or private sale without authority from NCAT, reducing the administrative steps businesses needed to take to dispose of cars, and
- shortened timeframes (28 days) to dispose of the car. This has resulted in “...cost efficiencies from freeing up space in workshop for revenue generating business.”

Finally, the peak body representative noted that the regulation has been an opportunity for them to review and provide clearer guidelines and standardised templates to their members – providing businesses with more ‘teeth’ to manage uncollected goods matters:

“...traders can send a letter 48 hours after not being able to contact with a letter saying storage will be charged at \$25 a day. 28 days later, the vehicle can be sold.”

Similarly, representatives from the caravan and camping peak body representative (n=2) noted the reforms were a welcome improvement:

“I can emphatically say they have been a success giving members realistic access to a quick and effective resolution of the issues. This has cleared up misunderstandings and frustration with a previous system that was unnecessarily complicated and ineffective.”

Prior to the reform, the peak body representative noted its members were uniquely impacted by uncollected goods provisions across multiple legislation, including:

- *Residential Tenancies Act 2010*
- *Holiday Parks (Long-term Casual Occupation) Act 2002*

The peak body representative noted that, over time, these Acts had been amended and updated separately from each other. The result of this was that the uncollected goods regime their members operated within was “...all out of kilter...” and made it difficult to provide accurate and consistent advice to their members about how to manage uncollected goods issues. Before the reform, the representative noted it wasn’t uncommon that caravan park owners would just take the risk of disposing of uncollected goods without appropriate authority because “...the rules were too cumbersome.”

For this industry representative, the most impactful element of the reform was its holistic approach, ensuring that all legislation contained the same provisions for managing uncollected goods, regardless of the context. This has resulted in a “...consistent set of rules and processes across all types of goods... it’s a more sensible process and makes it more manageable.”

One limitation in the new regulations noted by all stakeholders consulted, but primarily those from the residential tenancy sector, was that it did not provide clear guidance how to determine fair value of goods in relation to value thresholds:

“Take a caravan that’s depreciated over 30 years and now considered to have a market value of less than \$1000. Landlords or park owners can dispose of this asset easily despite being someone’s dwelling. The value of uncollected goods is approached very differently depending on whether you’re a tenant or landlord.”

Whilst the peak body representative for residential tenants welcomed greater accountability for agents and landlords to manage uncollected goods, they noted the limited guidance on how to appropriately value goods typically left behind in residential tenancies meant the new regime “...is really designed for commercial goods, not necessarily well designed for low economic value, high personal value goods”.

It is interesting to note that limited guidance around how goods are to be valued appears to be a common characteristic of uncollected goods regulation across Australian jurisdictions, with the exception of the ACT (see Table 11). The ACT define the value of goods to mean “...the price goods that would attract in the market where no special or extraordinary effort would be expended in selling them, irrespective of a particular contract.” As a result, this may be a further opportunity BRD could pursue to enhance the clarity and consistency of its uncollected goods regime.

Recommendation 3: BRD Policy & Strategy to clearly identify and communicate appropriate methods for obtaining an uncollected good's value so that receivers and owners have a common understanding.

4.4 The reform has negatively impacted the residential tenancy sector.

Peak body representatives for real estate professionals (n=3) noted that there was already an established and well-functioning process to manage uncollected goods in this sector through the *Residential Tenancies Act 2010*. As a result, the reform is seen to have actually increased burden by creating extra steps for agents and landlords, including needing valuers to estimate the value of goods to determine an appropriate course of action, as well increasing the amount of time required to notify and hold goods before disposing them. This is further evidenced in Table 10 below, which summarises the key differences between how uncollected goods in residential tenancies are managed before and after the reform commenced.

Table 10: Key changes to uncollected goods regime in residential tenancy settings, pre and post reform.

Element	<i>Residential Tenancies Act 2010</i> (pre-reform)	<i>Uncollected Goods Act 1995</i> (post-reform)
Goods value threshold	No	Yes
Notice type required	Writing / Verbally	Writing
Min. Hold time	14 days	Up to 6 months (depending on goods value)
Min. Hold time (personal documents)	90 days	28 days
Disposal method	By selling them or in any other lawful manner.	Low value – In an appropriate manner Medium Value - Private Sale / Public Auction High value – In accordance with NCAT
Jurisdiction for dispute	NCAT	NCAT

Table 10 shows that, prior to the reform, the uncollected goods regime in residential tenancy settings:

- Did not have specific value thresholds on uncollected goods,

- Were only required to hold goods (excluding personal documents) for a minimum of 14 days,
- Were able to dispose of goods in any lawful manner, which may have included but was not necessarily by public or private sale, and
- Already applied to disposal of goods and resolution of disputes through NCAT.

As a result, the industry contested whether uncollected goods provisions in the *Residential Tenancies Act 2010* warranted consolidation as part of the reform. This sentiment was also shared by a representative from a peak body for residential tenants (n=1), who noted:

“...the Residential Tenancy Act already had a well-structured uncollected goods regime prior to Better Business Reforms ... The provisions to do with uncollected goods in the Residential Tenancy Act were tailored for tenants and landlords, information about requirements and processes easy to find.”

Instead, these stakeholders thought a more appropriate framework would be similar to the Victorian uncollected goods regime, which *excludes* goods left behind at residential tenancies. These types of uncollected goods are dealt with separately under the *Residential Tenancies Act 1997 (Vic)*. The regime set out by Victoria for these types of uncollected goods are similar to those repealed in NSW *Residential Tenancies Act 2010* as part of reform.

Recommendation 4: BRD Policy & Strategy to consider whether uncollected goods in residential tenancy settings, which have generally low economic but highly intrinsic value, are more appropriately managed under the *Residential Tenancies Act 2010*. This consideration should form part of the next review of either the *Uncollected Goods Act 2005* or the *Residential Tenancies Act 2010*.

4.5 NSW uncollected goods regime contain higher value thresholds and generally shorter holding periods compared to most other jurisdictions.

Table 11 compares the new uncollected goods regime in NSW to all other Australian jurisdictions. The key differences between NSW and other state and territory regimes include:

- higher value thresholds, particularly for what constitutes medium and higher value goods,
- generally shorter timeframes for receivers to store goods after providing notice to owners relative to value of goods being left behind,
- generally fewer required media to service a notice of uncollected goods, and
- the use of NCAT as the jurisdiction to apply for disposal of goods or resolve disputes about uncollected goods.

The most comparable jurisdiction to the new NSW uncollected goods regime is the Victorian Government’s regime, who implemented a uniform system of uncollected goods regulation in 2012 as part of their *Fair Trading Act (1999)*. As part of this evaluation, the Victorian Government were consulted about the benefits and challenges they have observed from this regime. They noted the



uncollected goods regime has not been amended since commencement in 2012 and there had been minimal feedback about any perverse or negative unintended consequences of the regime.

Table 11: Interjurisdictional review of uncollected goods settings in Australia

Jurisdiction	NSW	VIC	QLD	WA	SA	ACT	TAS	NT
Legislation	<i>Uncollected Goods Act 1995</i>	<i>ACL and Fair Trading Act 2012</i>	<i>Disposal of Uncollected Goods Act 1967</i>	<i>Disposal of Uncollected Goods Act 1970</i>	<i>Unclaimed Goods Act 1987</i>	<i>Uncollected Goods Act 1996</i>	<i>Disposal of Uncollected Goods Act 1968</i>	<i>Uncollected Goods Act 2004</i>
Monetary limits								
Motor vehicles	N/A	Low value <\$10k High value \$10k+	N/A	N/A	N/A	N/A	N/A	N/A
All other goods:								
Low value	< \$1k	<\$200	N/A	\$3.5k	< \$500	net value < \$20	N/A	<\$200
Medium value	\$1k to < \$20k	\$200 to <\$5k			>\$500 to < \$2k	net value > \$20 to < \$500		>\$200 to < \$1k
High value	\$20k +	\$5k+			\$2k +	net value of \$500 +		> \$1k to < \$7k
Period of notices								
Low value	14 days	2 months*	6 months	3 months	3 months	7 days	6 months	28 days
Medium value	28 days	3 months*		6 months (over \$3.5k)	3 months	1 month		2 months
High value	6 months	6 months*		3 months	3 months	3 months		3 months
Service of notices								
Personally	Yes	Yes	Yes	No	No	No	Yes	Yes
Letter	Yes Last known address	Yes Last known address	Yes Last known address Employee of business over 16	No	Yes Address not specified	Yes Last known address	Yes Last known address	Yes Last known address
Email	Yes Address for notices	No	No	No	No	No	No	No

Jurisdiction	NSW	VIC	QLD	WA	SA	ACT	TAS	NT
Newspaper	No	No	No	Yes Published in Perth and circulated WA	Yes Circulating throughout SA	Yes	No	Yes For high value goods – circulating in NT
Government gazette	No	No	No	Yes	No	No	Yes Motor vehicles only	No
Leaving with another person at business/home	No	No	Yes If reasonable	No	No	No	Yes If reasonable	No
Government website	No	No	No	No	No	Yes	No	No
Disputes and tribunals								
Court/tribunal	NCAT	Any court of competent jurisdiction including VCAT	Magistrates Court	Magistrates Court	\$100k and less – Magistrate Court Over \$100k- District or Supreme Court	Magistrates Court	Magistrates Court	Court
Other provisions								
Valuation of goods	Not defined	N/A	N/A	N/A	N/A	Defined	N/A	N/A

* This is the period of notice if the receiver is unable to locate or communicate with the owner. Should the owner of the goods be located/provided notice by the receiver, Victoria's Uncollected Goods regime allows disposal of goods in all value thresholds after 28 days.

Source: BRD Policy and Strategy

Table 11 shows the increased value thresholds in NSW as part of the reform are now significantly larger than other states and territories. These changes mean that NSW low and medium value thresholds now cover all value thresholds defined in other jurisdictions. Further, the periods of notice and service of notices imposed on NSW receivers is generally shorter and less cumbersome than other jurisdictions. Finally, the reform also enabled goods within this value threshold to be sold privately or via public auction without the need for authorisation from the local court or NCAT (subject to other requirements being met, see Table 9).

From a regulatory and operational perspective, the uncollected goods settings in NSW do appear to be easier to manage compared to other states and territories.

5. Better Business Reforms: benefits of a packaged approach to regulatory reform

The Better Business Reforms package is an example of what is known as an omnibus bill. Omnibus bills propose amendments to a number of different pieces of legislation, on a range of topics rather than focussing on a single issue.¹⁸ The suite of amendments and repeals proposed by the bill are typically organised around an overarching, unifying theme. Omnibus bills have the potential to be faster, more efficient and result in regulatory reform at a scale unable to be achieved if legislative and regulatory amendments were made one at a time.

The Better Business Reforms also took a holistic review of legislation and regulations in the Better Regulation portfolio, including input from key stakeholder groups regulated under these legislations, including:

- 100 x letters send from the Minister for Better Regulation and Innovation to key stakeholder groups inviting their ideas for reforms.
- 6 x Roundtables based on reform themes (59 Key Stakeholder groups represented).
- 172 x written submissions received in response to the consultation paper.

This approach intended to deliver on an increasing expectation on NSW Government agencies to adopt a stewardship approach to legislation that they administer. Regulatory stewardship requires regulators to monitor the ongoing 'health' of regulations by reviewing the regulatory settings of greatest concern to businesses and community, and on the reforms with the greatest potential to deliver benefits.¹⁹

To verify the extent to which these objectives have been achieved, BRD Policy & Strategy staff (n=3) were interviewed to understand the benefits of this packaged reform approach, along with key lessons learned to inform future omnibus bills being developed within the Better Regulation portfolio.

5.1 The Better Business Reform package was an efficient way to optimise regulatory settings and reduce red tape

The suite of reforms proposed under Better Business Reforms package aimed to reduce regulatory burden or 'red tape' for small businesses, without compromising the protections in place for NSW consumers.²⁰ Reduction in red tape can be achieved by repealing (removing) legislation and regulations all together, or by standardising rules and definitions so that multiple legislation

¹⁸ ACT Standing Committee on Administration and Procedure. (2017). Omnibus Bills. Retrieved from: https://www.parliament.act.gov.au/__data/assets/pdf_file/0005/1062059/Report-2-Omnibus-Bills-FINAL.pdf

¹⁹ NSW Productivity Commission. (2021). Productivity Commission White Paper 2021: Rebooting the Economy. Retrieved from: <https://www.productivity.nsw.gov.au/white-paper>

²⁰ NSW Fair Trading. (2018). Better Business Reforms. Retrieved from: <https://www.fairtrading.nsw.gov.au/consultation-tool/better-business-reforms>

contains the same provisions. This makes it easier for the regulators to administer the NSW regulatory framework, and businesses and consumers to operate within it.²¹

The Better Business Reforms proposed 24 reforms to standardise, simplify and streamline how different stakeholders are regulated. In doing so, the package sought to repeal six pieces of legislation and three regulations, outlined in Table 12:

Table 12: Legislation and regulation repealed as a result of the Better Business Reform.

Repealed Legislative Acts	Repealed Regulations
<ul style="list-style-type: none"> • <i>Regulatory and Other Legislation (Amendments and Repeals) Act 2016</i> • <i>Workers Compensation Legislation Amendment Act 2000</i> • <i>Innkeepers Act 1968</i> • <i>Prices Regulation Act 1948</i> • <i>Landlord and Tenant (Amendment) Act 1948.</i> • <i>Rural Workers Accommodation Act 1969</i> 	<ul style="list-style-type: none"> • Uncollected Goods Regulation 2017 • Holiday Parks (Long-term Casual Occupation) Regulation 2017 • Landlord and Tenant Regulation 2015

By undertaking this process, BRD Policy & Strategy staff consider the Better Business Reforms package to demonstrate improving regulatory stewardship across the Better Regulation Portfolio, where many different legislations have been reviewed together and amended to ensure consistency and maximise benefits for businesses and consumers.

In addition to being able to make widespread changes to the business and consumer regulatory framework, BRD Policy & Strategy note that the omnibus approach reduces the time required for the reforms to pass through parliament and take effect:

“Parliament do have the option to deal with [the reforms] separately, but that would have taken up a lot of the resources of parliament. It’s not a very efficient way of dealing with things.”

BRD Policy & Strategy point out that often the reforms proposed as part of omnibus bills can be small changes or tweaks to existing legislation/regulation. Given the limited number of parliamentary sittings, these types of reforms are considered low priority and can be harder to enact. Combining them under a unified theme justifies the need for parliamentary consideration and action.

Further, it was noted that ministerial portfolios include responsibility for a substantial number of legislations for which a number may require some form of amendment and refinement. For example, since the Better Regulation and Innovation portfolio was established in 2015, it has typically been responsible for 60 separate, but broadly complementary, pieces of legislation. Thus,

²¹ Greiner, N., McCluskey, S., Stewart-Weeks, M. (2017). NSW Regulatory Policy Framework. Retrieved from: <https://www.treasury.nsw.gov.au/sites/default/files/2018-02/Independent%20Review%20of%20the%20NSW%20Regulatory%20Policy%20Framework%20final%20report.pdf>

it may be more efficient for Ministers to combine the minor changes required across entire portfolios together for consideration, as opposed to making amendments one at a time.

BRD Policy & Strategy also noted that, should the reforms have been dealt with separately, there is also a risk that regulations move in different directions:

“There is a benefit in being able to develop a single instrument that repeats the same provision in multiple acts with the same interpretation. If we had to do them individually, this gets done over a number of years and creates misalignment between legislation. For example, if each is done individually the drafting could be different or there might be certain anomalies that are added or removed whilst being discussed in parliament. Better to do it all at once for consistency.”

This is consistent with the observations expressed by the caravan and camping peak body representative consulted about the uncollected goods reform who noted that, as a result of various legislative reforms and amendments, the multiple legislation relevant to their members had gotten “...all out of kilter.”

Finally, BRD Policy & Strategy note that the packaged approach enabled an efficient stakeholder consultation process. This is because key stakeholder groups were given the opportunity to comment on the range of reforms that may have an impact on them at once – as opposed to being engaged on each reform separately.

Because the development of the Better Business Reform package was not project funded, it is difficult to determine how much it cost. However, BRD Policy & Strategy indicate that it took a team of 6 FTE approximately 6 months from the initial design of the reform to the package being introduced to parliament. BRD Policy & Strategy staff considered to be an extremely fast timeframe in its own right, as legislation comparable to the size and complexity of the Better Business Reforms would normally take around 18 months to complete. The reason for this contracted timeline was that the Better Business Reforms were a high priority by the Minister for Better Regulation and Innovation, which helped to fast track its development.

Notwithstanding this context, BRD Policy & Strategy note that the omnibus design of the reform substantially reduced the time it would take to design each reform individually:

“I couldn’t even imagine how much more multiplied it would have been if we did each reform individually. It wouldn’t be possible.”

5.2 The pace at which the package was developed meant that some of the reforms were not fit for purpose.

Whilst there is little doubt the process of developing the reforms was made more efficient through the package approach taken, feedback from both implementing staff and also industry and consumer peak bodies indicated the process resulted in practical limitations for some reforms.

All BRD Licensing staff (n=6) indicated that consultation with them during the design phases of the licence duration and restoration reforms was minimal, noting that the final design of the restoration reform (and the risks it has created) is a clear symptom of their limited input.

In response to these views, BRD Policy & Strategy staff acknowledged that because of the speed with which the package was developed, there was not total agreement on the design of all reforms before they were finalised. BRD Policy & Strategy staff noted they actively worked to mitigate this by making sure the reforms included a very long lead time to assist operational areas prepare for their commencement. For example, whilst the three reforms analysed in this report were passed through parliament in 2018, they did not commence until July 2020.

Despite this mitigation strategy, there are three reforms passed under Better Business Reforms that are no longer progressing and will be repealed:

- The introduction of a 'lifetime licence' category for 13 'special trades' in the building industry
- A new specialist work category for those doing gas and electricity work in a caravan or recreational vehicle
- Changes to the duration and restoration periods for registered surveyors and architects.

This was due to limited support for these reforms by impacted stakeholder groups, or their inability to be practically implemented by operational staff.

During consultation, external stakeholders also expressed a view that in some cases the changes made under the Better Business Reforms increased regulatory burden. An example of this is how the changes made to the uncollected goods regulation have impacted on the residential tenancy industry. During consultation, these stakeholders noted that there appeared to be little consideration for how the changes would impact industries on a practical level. (Section 4 discusses this in more detail). Similarly, a motor vehicle industry peak body representative also noted that, whilst the intent of the disclosure of key terms reform was well intended "*...there was not enough groundwork done to understand how it impacts on and can be applied by businesses across all settings.*"

Recommendation 5: Ensure that future reform packages prioritise consultation with, and final acceptance from, operational staff and impacted stakeholder groups to ensure they are well designed and practically implementable.

In discussing lessons learned for future omnibus bills within BRD, BRD Policy & Strategy staff emphasised that the approach works best in circumstances where:

- there is a clear overarching theme that helps to identify and justify what reforms do and do not belong in the package, and
- there is sufficient time to refine and iterate the design of reforms to ensure they are fit for purpose and practical to implement.

Recommendation 6: BRD Policy & Strategy to consider an omnibus approach to regulatory reform in circumstances where there is a clear overarching theme that unifies the reform package; and, there is sufficient time to refine and iterate the design of reforms to ensure they are fit for purpose and supported by implementing and beneficiary stakeholder groups.

6. Conclusion

This evaluation assessed the impact of four of the 24 reforms under the Better Business Reforms package. The evaluation focussed on the benefits that these reforms are providing to businesses and consumers, and to the regulator. The evaluation also considered what benefits the packaged design of the Better Business Reforms provided, compared to what would have been achieved if these legislative and regulatory amendments were made one at a time.

6.1 Overview of key findings

Standardising licence durations

The evaluation has found that standardising licence durations has reduced time, administrative and financial burden for businesses. Compared to pre-reform conditions, almost all respondents agreed the new licensing settings allow for greater flexibility to select a licence duration that suits their business' circumstances and budget, along with reducing the frequency and costs associated with renewing their licence. Interviews with BRD Licensing staff indicate that, over time, the reform will contribute to a reduction in administrative workload because there will be fewer licences to process each year.

Analysis of licence duration choices made by licensees before and after the reform commenced indicate that licensees are generally choosing longer durations. We estimate that licensees who opted for a longer duration saved, on average, \$190 from discounted licence fees in 2020-21 (based on a limited sample).

Harmonising restoration periods

Whilst also intending to ease the regulatory burden for businesses and regulators, the harmonisation of licence restoration periods appears to have had the opposite effect. BRD Licensing staff note that the effect of this reform has meant that the administration of licence restorations has become more time consuming. This is due to the need for increased scrutiny of these applications to ensure the risks to the regulator and consumers are managed should the expired licence be restored. The evaluation has suggested that one option to address this would be to require all NSW Fair Trading licenses to be restored from the day the restoration application is received, not from when the licence last expired. This would ensure risks to regulators and consumers in restoring expired licences are managed, whilst achieving the original objective of making it easier for businesses to continue to trade.

Disclosure of key terms in consumer contracts

The wide-reaching effect of this reform meant that this evaluation was unable to determine what impact, if any, this reform was having on consumer detriment.

Despite this, consultation with industry peak body representatives indicates that their members have found it difficult to interpret the provisions of the reform in order to put it into practice. The reform is considered to be too broad and open to interpretation, which has the potential to result in low industry compliance. To address this, the evaluation suggests that BRD Policy & Strategy

update available material and guidance to be more specific about common key terms and conditions causing consumer detriment, in industry sectors most impacted by the reform. As a starting point, the evaluation has identified that further guidance and advice may be warranted to help travel/tourism, motor dealer, gym/health and subscription services better inform their customers about refund and cancellation terms and conditions.

Streamlining uncollected goods regulation

Consolidating all legislative provisions related to uncollected goods into single legislation (the *Uncollected Goods Act 1995*) has improved the consistency in how uncollected goods are managed across a range of settings. However, consultation with industry peak bodies and consumer protection representatives revealed mixed views about whether the reform has made it easier for businesses to dispose of uncollected goods. The reform appears to be particularly beneficial for industries where uncollected goods were a frequent issue to be managed (motor vehicle repairers), or industries that operated under multiple uncollected goods regimes (camping and caravan park owners). For residential tenancy stakeholders, the reform appears to have an increased burden compared to the pre-reform regime. It was thus suggested that goods left behind at residential tenancies should be considered and treated as a separate class of uncollected goods. This is in line with the Victorian Government's uncollected goods regime, which *excludes* goods left behind at residential tenancies. Instead, disposal of these types of goods is managed under the *Residential Tenancy Act 2010*.

Benefits of a packaged approach to regulatory reform

The Better Business Reforms package is an example of what is known as an omnibus bill, which is a package of proposed amendments and repeals organised around an overarching, unifying theme. Omnibus bills have the potential to be faster, more efficient and result in regulatory reform at a scale unable to be achieved if legislative and regulatory amendments were made one at a time. An omnibus approach also enables a consistent approach to be applied to the regulatory design of multiple regimes/regulatory schemes at the same time.

In the space of 6 months, 24 reforms intended to standardise, simplify and streamline the regulatory framework were designed and passed into legislation. Many of these were small changes to optimise existing settings, often considered a lower priority for NSW parliament which may not have occurred otherwise. Consultation with BRD Policy & Strategy indicated that the packaged approach resulted in efficiencies across the reform development process, particularly during the stakeholder consultation, design, and approval processes. Further, this evaluation has found that omnibus bills allow regulators to apply a more strategic lens to reform by looking at an entire sector, or by adopting a consistent regulatory approach across multiple Acts, rather than a specific Act or regime.

However, there are limitations with this approach. Internal and external stakeholders both indicated that, given the pace of the design process, they had limited opportunity to provide input over the final design of some reforms. This meant that some reforms were impractical to implement or comply with, including the harmonisation of restoration periods reform.

BRD Policy & Strategy staff emphasised that for future omnibus bills to be successful, they need a clear overarching theme that helps to identify and justify what reforms belong in the package, along

with sufficient time to refine and iterate the design of reforms to ensure they are fit for purpose and practical to implement. In assessing the Better Business Reforms against these criteria, it is clear that whilst the rationale and ‘unifying’ theme was strong, additional time to consult and refine the reform package would have been beneficial to its overall success.

6.2 Recommendations

A total of 6 recommendations were identified across the five areas in scope for the evaluation.

Table 13: Recommendations

Area	Recommendation
<p>Extending and harmonising licence duration and restoration periods</p>	<p>Recommendation 1: BRD Policy & Strategy and BRD Licensing & Funds to review the design of the licence restoration provisions implemented under Section 18 of the <i>Fair Trading Legislation Amendment (Reform) Act 2018</i> to minimise risk to regulators and consumers. One option could be to require that restorations of expired licences take effect from the day the application is received, not from when the licence last expired.</p> <p>As part of this review, particular attention should be paid to aligning the restoration provisions outlined in the <i>Home Building Act 1989</i> and Home Building Regulation 2014 with other Fair Trading licences so that applications to restore licences must be determined to be made valid.</p>
<p>Disclosure of key terms in consumer contracts</p>	<p>Recommendation 2: BRD Policy & Strategy to conduct a review of existing guidance material available to businesses about substantially prejudicial terms in consumer contracts. This review should include:</p> <ul style="list-style-type: none"> • targeted consultation with key industry representatives most likely to be impacted by the reform, including refund and cancellation policies in the Travel/Tourism, Motor Dealers, Gyms and subscription services, and • analysis of any determinations about substantially prejudicial terms made by the local court or NCAT since the reform commenced. <p>The review should result in updated and more practical guidance for businesses about common key terms that are considered to be substantially prejudicial across specific industries. The review should also consider appropriate options to raise awareness about the reform amongst the NSW business community, particularly Small-Medium Enterprises (SMEs) who may not have the capability or access to appropriate expertise to interpret and comply with these new requirements.</p>

Area	Recommendation
Streamlining uncollected goods regulation	<p>Recommendation 3: BRD Policy & Strategy to clearly identify and communicate appropriate methods for obtaining an uncollected good's value so that receivers and owners have a common understanding.</p> <p>Recommendation 4: BRD Policy & Strategy to consider whether uncollected goods in residential tenancy settings, which have generally low economic but highly intrinsic value, are more appropriately managed under the <i>Residential Tenancies Act 2010</i>. This consideration should form part of the next review of either the <i>Uncollected Goods Act 2005</i> or the <i>Residential Tenancies Act 2010</i>.</p>
Designing a packaged approach to regulatory reform	<p>Recommendation 5: Ensure that future reform packages prioritise consultation with, and final acceptance from, operational staff and impacted stakeholder groups to ensure they are well designed and practically implementable.</p> <p>Recommendation 6: Consider an omnibus approach to regulatory reform in circumstances where there is a clear overarching theme that unifies the reform package, and where there is sufficient time to refine and iterate the design of reforms to ensure they are fit for purpose and supported by implementing and beneficiary stakeholder groups.</p>

Appendix 1. Online survey

Section 1: Demographics

1. What best describes your business:
 - a. a micro-business employs between 0-4 persons
 - b. a small business, between 5-19 persons
 - c. a medium business, between 20 and 199 persons
 - d. a large business employing 200 or more persons

2. How many years have your business been operating?
 - a. Less than one year
 - b. 1-3 years
 - c. 4-6 years
 - d. 7-9 years
 - e. 10 years or more

3. What NSW Fair Trading licence do you hold? (List of options)
 - a. Real Estate Agent
 - b. Conveyancing
 - c. Home Building
 - d. Pawnbroker/secondhand dealer
 - e. Motor Dealers
 - f. Motor Vehicle Repairers
 - g. Motor Vehicle Tradesperson
 - h. Tattoo Parlour Operator
 - i. Tow Truck Operator
 - j. Certifier

4. Before this survey, were you aware of the changes made to the NSW Fair Trading licence durations in July 2020 as part of the Better Business Reforms?
 - a. Yes
 - b. No

Section 2: Pretest - Extending and harmonising licence durations

What did you think about the licence duration options available to you before the changes were made between March and July 2020?

To answer these questions, please think back to your experience in renewing your licence before you were able to choose between a 1, 3 or 5 year durations.

5. Prior to the standardised 1, 3 and 5 year licence durations being introduced, how satisfied were you with the following:

- a. The licence duration options available for your licence:
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied
 - v. Not Applicable

- b. The amount of time you spent on renewing your licence:
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied
 - v. Not Applicable

- c. The cost of renewing your licence
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied
 - v. Not Applicable

Section 3: Posttest - Extending and harmonising licence durations

What do you think about the licence durations available to you now?

To answer these questions, please think about your most recent experience in renewing your licence.

6. Since the standardised 1, 3 and 5 year license durations were introduced, how satisfied are you with the following:
 - a. The licence duration options available for your licence:
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied
 - v. Not Applicable

 - b. The amount of time you spent on renewing your licence:
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied
 - v. Not Applicable

 - c. The cost of renewing your licence
 - i. Very dissatisfied
 - ii. Dissatisfied
 - iii. Satisfied
 - iv. Very satisfied

- v. Not Applicable
7. What licence duration did you opt for at your last renewal?
- i. 1 year
 - ii. 3 year
 - iii. 5 year
8. Did you opt for a different licence duration this year compared to your last renewal?
- i. Yes
 - ii. No
 - iii. Don't know / Can't remember
- a. *Why/Why not*
- iv. *Free Text*
9. To what extent do you agree or disagree that the changes made to NSW Fair Trading licence durations:
- a. Allows me to choose a licence duration that works best for my business and budget?
 - i. Strongly disagree
 - ii. Agree
 - iii. Disagree
 - iv. Strongly disagree
 - v. Not Applicable

 - b. Has reduced the cost of renewing my licence?
 - i. Strongly disagree
 - ii. Agree
 - iii. Disagree
 - iv. Strongly disagree
 - v. Not Applicable

 - c. Has reduced the frequency that I need to renew my licence
 - i. Strongly disagree
 - ii. Agree
 - iii. Disagree
 - iv. Strongly disagree
 - v. Not Applicable
10. Has your business experienced any other benefits or challenges since these changes were made? If so, what?
- a. *Free text*

Appendix 2. Summary of methods and their limitations

Method	n	Implementation	Specific Limitations
Interviews: Industry associations	n=13	<p>Interviews with peak body industries were conducted to inform analysis of the following evaluation foci:</p> <ul style="list-style-type: none"> • <i>Disclosure of key terms in consumer contracts</i> (n=4) • <i>Streamlining uncollected goods</i> (n=6) <p>Interviews were held virtually over Microsoft Teams following a semi-structured format.</p>	<p>The views represented by these participants cannot be considered to be representative of these industries they work within. Rather, they are limited to the views/observations the peak body organisation they represent.</p>
Interviews: Consumer associations	n=1	<p>Interviews with consumer protection peak body were conducted to inform analysis of the <i>streamlining uncollected goods</i> reform.</p> <p>Interviews were held virtually over Microsoft Teams following a semi-structured format.</p>	<p>Additional consumer protections peak bodies were invited to participate in interviews to provide insight about the impact of the:</p> <ul style="list-style-type: none"> • <i>Disclosure of key terms in consumer contracts</i> (n=4) • <i>Streamlining uncollected goods</i> (n=4) <p>All declined on the basis that they had observed no notable effect amongst their membership group as a result of these reforms. Despite this, low participation numbers of consumer protection peak body limit the extent consumers views are represented in the findings.</p>
Interviews: BRD Licensing staff	n=6	<p>Interviews with BRD Licensing staff were conducted to inform analysis of the <i>extending and harmonising licence durations and restorations periods</i> reform.</p>	

Method	n	Implementation	Specific Limitations
Online Survey: Licensees	n=895	<p>The survey was distributed via SurveyMonkey to a random sample of licensees across the 10 impacted licence types who have renewed their licence since the reform took effect (March 2020 for Real Estate Licences and July 2020 for the remainder).</p> <p>The random sampling technique considered the actual proportions of licensees from each licensing type in this population, to ensure that the survey sample reflected the proportion licensees from each licence class as closely as possible. In this way, the online survey design reflects a stratified sampling approach with proportional allocation.</p>	<p>The survey included a pre and post element to measure the impact of the reforms. As no baseline data was available, survey responses to ‘pre-reform’ conditions are based on respondent recall up to 12 months prior.</p>
OneGov Licensing Data	N/A	<p>Licensing data was extracted from OneGov to understand the changes in duration options chosen by licensees between 2017-2021. Information about how much revenue licences impacted by the reforms generated over this period was also extracted.</p>	<p>Over the 2020-21 analysis period, three of the eight licence categories were subject to fee waivers as part of the NSW Government’s support package to businesses through the COVID-19 pandemic. The fee waiver impacted licensees in the Motor Vehicle, Home Building and Tattoo Licence categories, who were able to be granted a licence at no or significantly discounted costs.²² These licences account for approximately 75 percent of all licences granted in 2020/21 (that are in the scope of this evaluation). To overcome this limitation, the duration analysis conducted split licence types between those that received fee waivers and those that didn’t to detect any major differences. Licence types that received a fee waiver were also excluded from estimated licensee savings reported in the evaluation.</p>

²² NSW Government. (2021). *Fee and Licence Relief*. Retrieved from: <https://www.nsw.gov.au/covid-19/businesses-and-employment/fee-and-licence-relief>

Method	n	Implementation	Specific Limitations
Complaints Administration System (CAS)	N/A	Complaints data recorded in the CAS data between 2017-2021 was extracted to determine whether the frequency and nature of complaints relevant to the licensing and disclosure of key terms reforms have changed since implementation.	Measuring consumer detriment is challenging. The evaluation considered consumer complaint data held by NSW Fair Trading to be a useful proxy to understand whether there has been any change to consumer detriment over time. Analysis of this data indicate the flow-on impacts of the COVID-19 pandemic on the consumption of goods and services (i.e. travel restrictions, online shopping) has almost certainly distorted this data, masking any potentially observable impacts created by the reform. As a result, the evaluation was unable to determine what impact the reform has had on consumer detriment.

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