



Consultation package for regulators and external stakeholders – November 2020

Regulator best practice principles and new arrangements for performance reporting

Context

As part of the Government's renewed deregulation agenda, PM&C is working with stakeholders to revisit how the Government sets out expectations of regulators, how regulators report, and how performance is benchmarked and evaluated against expectations. A driver for this work is the examples of regulator responsiveness and pragmatism shown during COVID-19, which saw many regulators working with business and the community to rapidly adapt to changing circumstances while still ensuring essential safeguards. Another driver is the shift under the Government's deregulation agenda from a focus on the design of regulation, to also include implementation, recognising that even well designed regulation can be undone by poor implementation.

Noting your frontline experience, we are seeking your insights and feedback, as we review the current regulator performance framework with the aim of ensuring it is fit-for-purpose and supports best practice implementation.

Attachment A: Principles of regulator best practice

- Under the current **Regulator Performance Framework**, introduced in 2014, regulators report against 6 KPIs (these are replicated in Attachment A). Noting regulation isn't a 'set-and-forget' exercise, we seek to test these KPIs with you, to ask stakeholders whether they remain fit-for-purpose and drive the best regulatory outcomes.
- We have set out some consultation questions to guide your feedback, seeking your reflections and experience as regulators, regulated entities and the community. We are also keen to hear from you about observations of COVID-19 driven changes in regulator behaviour, culture, and approach, and how these experiences could or should be reflected in a revised performance framework.

Attachment B: Performance reporting for regulators, guidance note

- Effective from 1 July 2021, the Government is introducing new performance reporting arrangements for regulators under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), replacing the 2014 Regulator Performance Framework. We have set out draft advice in Attachment B, developed with the Department of Finance, to support the transition to these new arrangements.

Attachment C: COVID Lessons Learned Report

- In the context of COVID-19, the Prime Minister has noted (in a June 2020 [speech](#)) that regulators and governments acted with 'urgency and pragmatism', making common sense and practical changes in the interests of the community. Examples of innovative and flexible regulatory approaches were seen in the spaces of employment, taxation, workplace safety and competition policy.

- Drivers of this responsiveness have been attributed to a prioritisation by regulators towards collaboration, consultation and customer facing activities, a focus on problem solving, ensuring clear and consistent messaging, and rapid engagement and flexibility in resourcing by regulators (and are captured in a short paper at Attachment C).
- We welcome hearing your experiences of the regulatory environment during COVID-19, and what lessons from this period you would expect to see included into the expectations of regulators as we shift into a more 'COVID-normal' environment.

Getting involved in person or virtually

- You are invited to attend an information session to find out more about this work, ask us questions and to share your initial feedback on our consultation package and observations of regulator performance and best practice. We have scheduled sessions for **Tuesday 1 December from 12.30pm-1.30pm** and **Thursday 3 December from 1.30pm-2.30pm**.
- You are also invited to participate in a **hands-on design workshop** to unpack and update the 2014 Regulator Performance KPIs, share your experiences reporting against these KPIs or the effectiveness of these KPIs, and test ideas about what principles should underpin the regulator performance framework. We have scheduled two sessions on **Wednesday 9 December from 09.00am-11.00am** and **2.00pm-4.00pm**.

Please RSVP with your preferred meeting times to deregulation@pmc.gov.au and we will provide meeting details. If you would like to bring together a group to discuss, please contact us to schedule another session.

Written feedback

We also welcome your written feedback **by Friday 18 December 2020** to inform and shape our final product to Government in early 2021.

Please contact me on 02 6271 6085 with any questions and comments, or email deregulation@pmc.gov.au.

Sandra Roussel
Assistant Secretary, Regulatory Policy Branch
Department of the Prime Minister and Cabinet
25 November 2020

Attachment A: Principles of regulator best practice

Consultation questions

- Do the existing KPIs (replicated below) still meet the expectations of Government and the community?
- Do they address issues around balancing the interests of regulated entities and maintaining important safeguards?
- Do they address lessons learned from regulators' responsiveness during COVID-19?
- Do you have examples of regulator best practice that you would like to see shared and reflected in the expectations of regulators?

Regulator performance matters. Regulators are expected to fulfil their regulatory functions set by the Parliament, and meet the expectations of the Government around best practice administration of their regulations and consultation with stakeholders – all within the budgets provided. It can be hard to get the balance right between protecting the community and minimising regulatory burdens.

To support agencies and regulators as they seek to reflect on and improve performance, PM&C will work with Ministers, Departments, Regulatory agencies and the community on all aspects on regulator performance – from the setting of expectations, measuring and evaluating performance, reporting and benchmarking.

Focusing first on setting the expectations, we are consulting on the existing KPIs from the [2014 Regulator Performance Framework](#) as a starting point, to test whether these still meet expectations of Government and the community (replicated in pages below). We note equivalent principles have been developed in other jurisdictions – e.g. [New Zealand](#), the [UK](#) and [Canada](#) – and by some Commonwealth agencies (e.g. Health, Agriculture).

We have already had issues raised from colleagues on:

- Regulators have different risk appetites and implications if safeguards are not maintained
- Concern with how to balance ensuring regulation is implemented with a 'light touch' against expectations of more regulation or scrutiny in some sectors, including examples emerging during COVID-19
- We may not yet have seen some of the risks emerge from the flexibility shown during COVID-19
- A question of what is a risk-based approach trying to achieve – a focus on preventing non-compliance? On productivity? On customer service?

We are now seeking your expertise and insights to help ensure these KPIs, or principles, of regulator best practice resonate with expectations of Ministers, Departments, regulators, the regulated and the broader community.

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

Better Practice

The way regulation is implemented and enforced can have as significant an impact on productivity and economic growth, and cause as much overhead for individuals, as the content of the regulation itself.

Effective regulatory administration allows, and through regulatory actions encourages, efficient operations of regulated entities. Better practice regulators aim to achieve the intended outcomes of their regulations without unnecessarily restricting or imposing unnecessary burden on regulated entities. Enforcement activities only occur when there is a clear case for doing so.

These regulators also, where appropriate, recognise that they may need to adapt approaches to particular stakeholders. For example, regulators may need to consider different approaches for small business to demonstrate compliance with regulatory standards, particularly where approaches applied to larger business could create disproportionate burdens for small business.

Within the context of its statutory obligations and priorities as defined by the Government, the activities of a better practice regulator do not unnecessarily impede the efficient operations of regulated entities. When designing and reviewing policies and operational procedures and practices, these regulators consider how they might avoid imposing unnecessary costs while fulfilling their statutory role. They seek to achieve a balance between the responsibility to deliver protection to the community and the burden imposed by external intervention.

Regulators have regard to their legislative and authorising environment at all times and take steps to minimise duplication and optimise harmonisation with other relevant regulators.

Measures of good regulatory performance

1. Regulators demonstrate an understanding of the operating environment of the industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector.
2. Regulators take actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains.
3. Regulators implement continuous improvement strategies to reduce the costs of compliance for those they regulate.

Examples of output / activity-based evidence

- Regular, ongoing consultations or engagement with stakeholders on policies and procedures, including independent experts and industry associations.
- Documented responsiveness to feedback from regulated entities, including feedback from existing complaint mechanisms and surveys of regulated entities.
- Environment scanning is undertaken regularly and at a minimum, on an annual basis.
- Demonstrated engagement with relevant international organisations to learn from peer experiences and share better practices.

KPI 2 – Communication with regulated entities is clear, targeted and effective

Better Practice

Effective communication is vital for the efficient delivery of regulatory services and the achievement of positive regulatory outcomes. Clear advice and guidance can reduce the compliance burden on regulated entities and reduce non-compliant activity.

Better practice regulators communicate in such a way that regulated entities clearly understand what they need to do in order to comply with regulation. Regulated entities are able to find out quickly which regulations apply to them, what the requirements are, and how they can comply and/or improve compliance over time. Once regulated entities understand both what they need to do to comply and how this contributes to regulatory objectives, regulated entities are more likely and more willing to comply.

Effective regulators explain how specific requirements and processes fit into the overarching regulatory frameworks. The reasons for regulatory decisions are clearly communicated.

Communication with regulated entities is consistent to assist regulated entities to quickly understand the compliance requirements. This also increases confidence in the regulation.

Measures of good regulatory performance

1. Regulators provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.
2. Regulators consider the impact on regulated entities and engage with industry groups and representatives of the affected stakeholders before changing policies, practices or service standards.
3. Regulators' decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.
4. Regulators' advice is consistent and supports predictable outcomes.

Examples of output / activity-based evidence

- Percentage of guidance materials that complies with government accessibility guidelines.
- Maximum, minimum and average time for decision.
- Published timeframes for decision making.
- Percentage of decisions accompanied by statement of reasons and advice about relevant review or appeal mechanisms, where appropriate.
- Number of policy/standards changes which are preceded by comprehensive engagement with stakeholders.
- Approved procedures for communications (including issue-specific scripts if relevant) are available for staff use when interacting with regulated entities.
- Advice provided to regulated entities is consistent with communication policies.
- Demonstrated feedback is sought from stakeholders on guidance and advice provided by the regulator via a wide range of mechanisms, including stakeholder surveys.
- Demonstrated mechanisms for responding to stakeholder engagement/complaint.

KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed

Better Practice

Comprehensive risk assessment processes are essential to ensuring that resources are targeted to the areas requiring the most attention. A risk-based approach promotes the most efficient use of resources and improves the effectiveness of the regulatory framework through minimising burden on those who are voluntarily compliant and ensuring that enforcement action is proportionate and undertaken only when necessary.

Efficient regulatory risk assessment takes account of the regulated activity, the nature of the regulated cohort, including its compliance history, and other external factors affecting risk. Risk assessments are balanced and implemented uniformly and impartially, while also being dynamic and open to scrutiny. They are based on the recognition that not all risk can be eliminated and not all risk can be effectively mitigated by government.

Where the risk of non-compliance is high or the consequence of non-compliance significant, there is a higher degree of monitoring. Where the risk of non-compliance is low or the consequences of non-compliance minor, regulators take lighter touch approaches. For example, regulators consider light touch responses for stakeholders that may be disproportionately affected by regulatory burden, such as small business, individuals and community organisations that may have more difficulty in finding the resources or skills to respond to compliance requirements.

A full suite of regulatory tools is appropriately utilised to ensure compliance. Where possible, regulators consider the use of positive incentives, cooperation from industry groups, and other means to encourage compliance. Any enforcement action undertaken is within the constraints of the authorising legislation and penalties are proportionate to both the seriousness of the breach and the risk being managed.

Measures of good regulatory performance

1. Regulators apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions.
2. Regulators' preferred approach to regulatory risk is regularly reassessed. Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact.
3. Regulators recognise the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered.

Examples of output / activity-based evidence

- Risk management policies and procedures are available to regulator staff and the public.
- Compliance and enforcement strategies, consistent with agreed risk management policies are published.
- Documented approaches in place to review risk approaches regularly.
- Statements of expectations and intent are published.
- Agreed quality assurance processes are in place for staff use.
- Relevant staff trained in risk management policies, processes and procedures.
- Documented enforcement strategy which allows for the compliance records of regulated entities to be considered in determining regulatory actions.
- Documented enforcement strategy includes options for graduated compliance actions consistent with regulators' powers.
- Demonstrated engagement with regulated entities to inform them of the regulators' expectations.
- Demonstrated avenues for stakeholders to provide feedback and processes or policies to incorporate/consider this when tailoring approaches to risk.

KPI 4 – Compliance and monitoring approaches are streamlined and coordinated

Better Practice

Compliance and monitoring are an essential part of regulatory frameworks. These processes allow regulators to determine the level of compliance with regulation.

The collection of information and/or data, while necessary to determine compliance with regulations, imposes costs on regulated entities. These costs are considered by better practice regulators in the design and implementation of a compliance regime. These regulators seek to minimise the compliance costs imposed on entities by inspection and monitoring approaches. Compliance costs can be minimised in a number of ways, including through implementing risk-based approaches and streamlining inspection and monitoring processes as far as possible.

Effective regulators do not seek information from regulated entities unless the information is required to achieve the regulatory outcome sought. Regulators minimise duplicative information requests, including between regulators where possible, and consider whether the information sought is available from alternative means.

Inspections focus on identifying and addressing persistent breaches of regulation and aim to improve compliance. They are justified and targeted on the basis of an assessment of the compliance risk. The possibility of joint or coordinated inspections is considered to assist in reducing the burden on business.

Measures of good regulatory performance

1. Regulators' information requests are tailored and only made when necessary to secure regulatory objectives, and only then in a way that minimises impact.
2. Regulators' frequency of information collection is minimised and coordinated with similar processes including those of other regulators so that, as far as possible, information is only requested once.
3. Regulators utilise existing information to limit the reliance on requests from regulated entities and share the information among other regulators, where possible.
4. Regulators base monitoring and inspection approaches on risk and, where possible, take into account the circumstance and operational needs of the regulated entity.

Examples of output / activity-based evidence

- Number of repeat information requests made to regulated entities annually.
- Percentage of inspection visits co-ordinated with similar regulators.
- Percentage of information shared and received among regulators.
- Proportion of information obtained from other sources, with input not required from regulated entities.
- Evidence of collected information being acted upon, stored and re-used.
- Demonstrated transparency of inspection and monitoring arrangements.
- Feedback mechanisms to seek stakeholder views on inspection and monitoring regime.
- Monitoring and enforcement strategies that allow for a range of regulatory responses.
- Regular review and assessment of agreed monitoring and compliance strategies, including use of earned autonomy approaches.

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

Better Practice

It is important that regulators are open and transparent in the way they regulate to ensure the confidence of those being regulated and the wider community. If regulated entities understand how and why they are being regulated, compliance may increase and regulatory outcomes are more likely to be achieved. Transparency also contributes to a greater understanding of the regulators role by both the regulated cohort and the broader community.

Open and transparent dealings with regulated entities increases the accountability of both regulators and government. Increased accountability, to both regulated entities and the wider community, improves the overall performance of regulators. Ensuring regulators are accountable for their decisions also improves community confidence in the regulator. Increased transparency and accountability provides regulated entities with a greater understanding of how the regulator seeks regulatory outcomes and addresses misguided perceptions of regulator performance.

Where possible, better practice regulators clearly communicate the evidence base and approach used in the regulatory decision making process to regulated entities. Regulatory objectives and risk-based frameworks are made publicly available wherever possible. While the risk of gaming from regulated entities is considered, risk-based frameworks are made public unless it can be clearly demonstrated this would lead to a failure of the regulatory system. Publishing risk-based frameworks helps to ensure the regulated entity understands what is required and provides a clear statement of what the regulator is trying to achieve.

Results from performance measurement against this framework are also made public in a timely way to ensure an open and transparent relationship with regulated entities.

Measures of good regulatory performance

1. Regulators' risk-based frameworks are publicly available in a format which is clear, understandable and accessible.
2. Regulators are open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators.
3. Regulators' performance measurement results are published in a timely manner to ensure accountability to the public.

Examples of output / activity-based evidence

- Enforcement strategy and risk approach are published.
- Performance measurement results are published.
- Percentage of regulated entities that receive requests for information with the reasons for these requests communicated clearly and consistently.
- Percentage of performance information publicly available.
- Number of responses to requests from regulated entities provided within specified timeframes.
- Advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement.

KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks

Better Practice

Better practice regulators actively contribute to the continuous improvement of regulatory frameworks. No service remains the same over time, and continuous improvement ensures a regulatory framework has the flexibility to adjust to changing circumstances.

Better practice regulators follow the principles identified in KPI 2, building appropriate communication channels to promote a regular feedback cycle with peers and regulated entities. Information collected as part of monitoring and compliance approaches is used by these regulators to inform improvements in the authorising legislation and achieve reductions in compliance costs. Stakeholder feedback informs the development of any proposed change to management activities, to ensure the proposed actions are appropriately targeted. These actions, taken to improve frameworks, are clearly articulated and communicated to stakeholders.

This process maintains the cycle of continuous improvement, and provides the flexibility for regulatory frameworks to adapt to changes in the external environment.

Measures of good regulatory performance

1. Regulators establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.
2. Regulators engage stakeholders in the development of options to reduce compliance costs. This could include industry self-regulation, changes to the overarching regulatory framework, or other strategies to streamline monitoring and compliance approaches.
3. Regulators regularly share feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes.

Examples of output / activity-based evidence

- Documented procedures are in place to allow active and regular engagement with stakeholders.
- Feedback mechanisms are available and made known to all stakeholders.
- Number of stakeholder events held to facilitate participation in the development and/or amendment of regulatory frameworks.
- Documented procedures are in place to facilitate the flow of information between the regulator and policy departments.
- Percentage of performance data, feedback from regulated entities, and/or advice provided by the regulator to the policy departments.

Attachment B: Performance reporting for regulators, guidance note

Consultation question

- Does this draft provide sufficient guidance on who will need to, and how to, start including performance reporting into agency corporate planning and annual reporting processes?

Interim draft at November 2020

Audience

This guide is relevant to Commonwealth entities with regulatory functions (e.g. administer, monitor and/or enforce regulation). This includes entities which are established purely for the purposes of regulation, and entities that may have a regulatory function along with other functions like policy advice and program administration.

Purpose

This guide provides information on the requirements for reporting on regulator performance in entity corporate plans and annual reports.

Key points

The Government's deregulation agenda aims to minimise the burden of complying with regulation for business and the community. At the same time, regulators are expected to fulfil the regulatory functions set by the Parliament, meet the expectations of the Government around administration of their regulations and consultation with stakeholders, all within the budgets provided.

The reporting of performance on regulatory functions is designed to provide an assurance mechanism in which regulators can demonstrate that they are:

- Meeting the objectives of their regulation and any expectations specified by Ministers, including those outlined in statements of expectations by Ministers;
- Meeting their objectives in the most efficient way possible and in a way that is reasonable and does not impose unnecessary or excessive costs (ie a light touch should be pursued);
- Interacting with their stakeholders and ensuring that where appropriate, stakeholder views and reasonable circumstances are taken into account, including balancing enforcement and risk; and
- Providing appropriate feedback to Ministers and the Government about the operation of regulations and proposing appropriate changes to frameworks and resourcing.

From the 2021-22 reporting period, entities are no longer required to report on regulator performance under the Regulator Performance Framework. Instead, reporting of regulator performance will be integrated into performance reporting obligations under the Public

Governance, Performance and Accountability Act 2013 (PGPA Act) and PGPA Rule. Transitional arrangements for the 2020-21 reporting period are outlined below.

Commonwealth entities with regulatory responsibilities are expected to include discussion and detail of their regulatory responsibilities in their corporate plans, including performance information in respect to these responsibilities. Entities are also expected to reconcile regulatory performance in their annual performance statements which are included in their annual reports.

This guide rescinds previous advice provided on the Regulator Performance Framework (RPF) and streamlines the reporting required of agencies.

Transition to new reporting approach

For corporate plans prepared for reporting periods beginning on or after 1 July 2021, entities with regulatory functions are expected to include performance information in respect to their regulatory functions in their corporate plan. For annual reports prepared for reporting periods beginning on or after 1 July 2021, entities are also expected to reconcile performance outcomes in the annual performance statements, which are included in the annual report.

Entities should still complete the Regulator Performance Framework for 2020-21.

This guide replaces previous advice provided on the Regulator Performance Framework (RPF) and streamlines the reporting required of entities.

Resources

Other relevant publications include:

- [*Public Governance, Performance and Accountability Act 2013*](#)
- [*Public Governance, Performance and Accountability Rule 2014*](#)
- [*Resource Management Guide No. 126: Commonwealth GBE governance and oversight guidelines*](#)
- [*Resource Management Guide No. 131: Developing good performance information*](#)
- [*Resource Management Guide No. 134: Annual performance statements for Commonwealth entities*](#)
- [*Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*](#)
- [*Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*](#)
- [*Resource Management Guide No. nn: Policy Making and Deregulation*](#)
- [*Guide to preparing the Portfolio Budget Statements*](#)
- [*Commonwealth Risk Management Policy*](#)
- [*Principles of good regulator performance*](#) (link to draft being developed)

1. Introduction

What is Regulator Performance Reporting?

The Government is committed to minimising the cost of regulation imposed on individuals, business and community organisations by ensuring its regulatory frameworks are fit-for-purpose. In order to contribute to this goal, regulators are expected to adopt a regulatory stewardship approach which involves entities with regulatory responsibilities playing their part in a whole-of-system, lifecycle of regulation, and taking a proactive, collaborative approach to the monitoring and care of the implementation of regulatory system(s) within which they have responsibilities.

Regulatory costs do not just come from the design of regulations. Poorly administered regulation can impose unnecessary costs. These costs inevitably flow through to business more widely and to the community even where their initial impact is on a particular business. These costs may unnecessarily impact the viability of businesses.

Efficiently administered regulation can improve the operation of businesses, markets and the economy, bring major benefits for individuals and lead to fewer resource requirements for regulators.

Measurement and reporting of regulator performance gives business, the community, individuals and the Government confidence that regulators effectively and flexibly manage the body of regulation for which they are responsible.

To achieve this, entities are expected to use their corporate plan to provide appropriate coverage of their regulatory functions and set out how their performance as a regulator will be measured and assessed.

The previous RPF approach set out KPIs. Entities are no longer required to report against prescribed KPIs, but are encouraged to develop their own performance measures based on the principles of good regulator practice published on the Department of the Prime Minister and Cabinet website. Entities may still wish to use the previous KPIs where appropriate and where they align with the characteristics of performance measures as set out in the under S16EA of the PGPA Rule (see below).

Why is performance reporting important for regulators?

1. The Government is committed to minimising the cost of regulation imposed on individuals, business and community organisations.
2. Regulatory costs do not just come from the design of regulations. Poorly administered regulation can impose unnecessary costs. These costs inevitably flow through to business more widely and to the community even where their initial impact is on a particular business. These costs may unnecessarily impact the viability of businesses.
3. The Government's deregulation agenda aims to minimise the regulatory burden for business and the community. At the same time, regulators are expected to fulfil their regulatory functions set by the Parliament, and meet the expectations of the Government around administration of their regulations and consultation with stakeholders, all within the budgets provided.
4. Measurement and reporting of regulator performance gives business, the community, individuals and the Government confidence that regulators effectively and flexibly manage the body of regulation for which they are responsible.

5. Efficiently administered regulation can improve the operation of businesses, markets and the economy, bring major benefits for individuals and lead to fewer resource requirements for regulators.

What is good regulation?

Fit-for-purpose regulation is efficient, effective, provides clarity and is resilient.

- **Efficient:** Regulation has a net benefit and takes into account economic and social outcomes. It minimises distortions and does not impede appropriate investment.
- **Effective:** Regulation achieves its stated purpose. It is specific, targeted and aligned with public policy goals.
- **Clarity:** Regulation, including guidance, is clear, simple, practical and consistent with other policies.
- **Resilient:** Resilient regulation copes with variation and pressures, such as changing markets and innovation and can respond effectively to a crisis.

2. Does my entity need to report on Regulator Performance?

Commonwealth entities¹ that administer, monitor and/or enforce regulation are required to report on their performance in undertaking regulatory functions in their corporate plans and annual performance statements which are included in their annual reports. This includes regulators internal to departments. The circumstances of regulators vary widely, with regulators ranging from those which are constituted as separate statutory entities, to those that carry out both regulatory and other functions within departments of state, including policy advice and the formulation of regulation. This guidance is aimed at assisting entities to report the performance of regulatory functions.

What if my entity does not produce a corporate plan or annual report?

There are a few circumstances where Commonwealth entities and Government bodies with regulatory functions are not required to prepare a corporate plan and/or annual performance statements under the PGPA Act. As the circumstances vary it is recommended that these entities and bodies contact Finance at PGPA@finance.gov.au to discuss.

3. What are the corporate plan reporting requirements for regulators?

Entities are required to prepare corporate plans at least once each reporting period.²

Section 16E of the PGPA Rule sets out the information required to be included in corporate plans. Section 16EA of the PGPA Rule sets out the requirements for the performance measures that must be included in the corporate plan. Corporate plan requirements

Regulators should provide an appropriate level of coverage of their regulatory activities in their corporate plan in the context of the entity's purposes, key activities, operating context and performance measures.

¹ Defined under section 10 of the PGPA Act

² Subsection 35(1) of the PGPA Act

The level of detail should be appropriate in the context of the nature of the entity. That is, if an entity's regulatory functions are its primary functions, it is expected that the entity would include greater detail and coverage of the functions in its corporate plan.

These requirements are discussed further in Resource Management Guide No. 132: Corporate plans for Commonwealth entities.

Performance measures

Corporate plans must set out how entities will measure and assess their performance. Commonwealth entities must include performance measures that comply with the requirements of section 16EA of the PGPA Rule.

These requirements are discussed further in *Resource Management Guide No. 131: Developing good performance information*.

Regulators must include measures of regulator performance (i.e. measures of output, efficiency, and effectiveness if these are appropriate to the entity).

The following are a number of examples of output, efficiency and effectiveness measures reported on by entities in their corporate plans. These examples are provided to inform entity thinking in the context of their particular circumstances and are not intended to be prescriptive.

- Regulated entities report that our regulatory approach improves work health and safety outcomes (Comcare, 2019-20 Corporate Plan, p 13)
- Costs per \$1000 of assets supervised by Australian Prudential Regulation Authority (Australian Prudential Regulation Authority, 2019-20 Corporate Plan, p 26)
- Levy collection processes cost no more than 1.2% of levies disbursed (Department of Agriculture, 2019-20 Corporate Plan, p 18)
- Number of site visits undertaken nationally (Australian Building and Construction Commission, 2019-20 Corporate Plan, p 9)
- Applications decided within published service level timeframes (CASA, 2019-20, p 25)
- Proportion of the total number of complaints about CASA not acting proportionately that are upheld (CASA, 2019-20, p 25)
- Percentage of unfavourable decisions accompanied by a statement of reasons (CASA, 2019-20, p 26)
- Surveyed stakeholders who are satisfied or highly satisfied with the quality and timeliness of advice and assistance provided (Australian Building and Construction Commission, 2019-20 Corporate Plan, p 9)

The previous reporting approach under the Regulatory Performance Framework required entities to report against six key performance indicators (KPIs). Regulators are no longer required to self-assess and report against the prescribed KPIs, but are encouraged to adopt their own measures of good regulatory performance, based on the principles of regulator best practice published on the Department of the Prime Minister and Cabinet website [under development].

Attachment C: Lessons learned from COVID-19

Consultation questions

- What was your experience of the regulatory environment during COVID-19? Have we picked up the right lessons from this period?
- What are lessons from this period that you would expect to see shared and explicitly included into the expectations of regulators as we shift into a more 'COVID-normal' environment in some sectors and jurisdictions?

Introduction

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

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

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

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

PM&C developed this report following consultation with partners across Commonwealth and with stakeholders in the business community. PM&C also carried out interviews with business peaks involved in consulting on key regulatory changes made throughout the crisis, as well as individuals in regulatory agencies in both policy administration and business liaison roles.

Key takeaways

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

- Regulatory frameworks were flexible and operated as intended in most cases. There is scope for key decision-makers to exercise common sense discretion where necessary, and only in a small number of cases were critical legislative changes required during the peak of the crisis. However, discretionary powers still depend on the risk appetite of decision makers.
- Government agencies and regulatory functions introduced and further embedded collaboration and customer-centrism into their operating culture and practice in response to COVID-19. A number of agencies have now committed to permanently maintaining many of their new business engagement functions.

- While business stakeholders have tended to agree that regulator culture and engagement changed positively in the early stages of the pandemic, the changes have not been uniformly positive. Fresh challenges have emerged as a result of the resurgence of COVID-19 in Victoria, and high-level public health restrictions remain in place in many jurisdictions. The ongoing nature of the crisis may have corroded the sense of shared purpose evident in the earlier stages.

Changes in regulator behaviour and culture

Strategic clarity and balancing risk

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

Fair Work Ombudsman – coronavirus guidance

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

The enforcement posture statement sets out:

An explicit commitment to flexibility and sensitivity to nuances of each sector

Announcement of priority sectors, including hospitality, horticulture and the harvest trail, and franchisors.

Focus primarily on education, advice and proactive measures.

Proportionality as a key enforcement principle

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

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

- **Proactive culture of compliance and enforcement** – business groups reported a significant shift in attitudes in some regulators towards working with industry to educate and improve compliance instead of reflexive enforcement in complying with government obligations.
 - Business stakeholders cited WHS regulators as exhibiting empathetic and responsive attitudes in relation to compliance and enforcement, with a focus on education campaigns and positive reinforced behaviours instead of 'employer failure'.
- **Focus on problem solving** – in normal circumstances, regulators are often only subjected to high levels of public scrutiny only in the event of high-profile regulatory failures. The pandemic

created a strong drive to resolve problems and deliver quickly, with clear public health implications of underperformance.

- Both agencies and businesses reported that COVID-19 improved the incentives to problem-solve as, in many instances, inaction would generate visibly worse outcomes.
 - Changes in health care delivery – such as relaxation of telehealth delivery requirements and changes to prescription renewals to allow fewer pharmacy trips – reflect instances where practical changes were made in response to a substantial changes in risk factors.
- **Consistent and clear messaging** – many regulators issued a **statement of intent** outlining the key principles (i.e. risk-proportionate approach) being adopted, signalling activities that would be deprioritised, cancelled, or less actively enforced, and setting out timeline conditions such as the expiry of public health orders

Safe Work Australia – national statement of intent

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

Proportionality as regulators' key enforcement principle, focusing only on areas of serious health risks.

Listing of enforcement activities being de-prioritised, including face-to-face training, provision of hygiene products, working from home arrangements.

Activities being postponed due to resourcing changes, including most campaigns and proactive assessments, and the majority of face-to-face interactions.

Statement of obligations for employers, health and safety representatives and workers.

Flexibility and speed

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

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

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

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

Australian Pesticides and Veterinary Medicines Authority

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

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

Customer-focused engagement

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

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

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

Waiving in-person audit requirements for some licensed exporters; and

Accepting electronic certification for produce and plant-based goods, imported animal and animal based goods.

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

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

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

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

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

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

For businesses, ATO had delivered myGovID and Relationship Authorisation Manager (RAM). These tools provide businesses and tax practitioners with more secure and streamlined access to government online services as they mobilised to a home-based workforce.

ATO transitioned all tax and BAS agents to the new online services for agents' platform, a substantially more reliable and tailored service they could use working remotely. ATO's single client

accounting system, which went live in December 2019, assisted in tailoring the approach to each individual's unique circumstances as ATO could see their data in one place. Improvements to systems meant the ATO was well placed to manage the large volumes of transactions arising from the stimulus measures.

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

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

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

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

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

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

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

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

The COVID-19 pandemic has provided a unique opportunity for the Agency to bring forward the implementation of improvement and efficiency initiatives, in order to process large numbers of

welfare payments in a short timeframe. Examples of digital transformation initiatives that have been undertaken by the Agency in direct response to COVID-19 include:

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

Channel Optimisation: to manage demand and keep customers within the digital channel.

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

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