



Australian Government

A large, stylized white scissors icon is positioned diagonally across the page. The blades are open, and the handles are at the bottom. A small red dot is located at the pivot point of the scissors, where the blades meet the handles. The scissors are positioned over a horizontal red band that spans the width of the page.

Regulator Performance Framework

www.cuttingredtape.gov.au

© Commonwealth of Australia 2014

ISBN 978-1-925237-07-8 (Hardcopy)

ISBN 978-1-925237-09-2 (PDF)

ISBN 978-1-925237-08-5 (RTF)

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Creative Commons licence

With the exception of the Coat of Arms, this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.



Creative Commons Attribution 3.0 Australia Licence is a standard form license agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from <http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording:

Source: Licensed from the Commonwealth of Australia under a Creative Commons Attribution 3.0 Australia Licence.

The Commonwealth of Australia does not necessarily endorse the content of this publication.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see <http://www.dpmc.gov.au/guidelines/>).

FOREWORD



This Framework is an important part of the Government's commitment to reduce unnecessary or inefficient regulation imposed on individuals, business and community organisations by at least \$1 billion a year.

Importantly, the way regulators administer regulations can have a major effect on productivity and this is why we have to also consider how regulators operate.

This Framework establishes a common set of performance measures that will allow for the comprehensive assessment of regulator performance and their engagement with stakeholders.

The Framework will encourage regulators to minimise their impact on those they regulate while still delivering the vital role they have been asked to perform.

Increased accountability and greater transparency underpins the Abbott Government's approach to ensuring regulators achieve their objectives while at the same time supporting the Australian economy.

A handwritten signature in black ink, reading 'Joshua Frydenberg'.

The Honourable Josh Frydenberg MP
Parliamentary Secretary
to the Prime Minister

October 2014

CONTENTS

Introduction	2
The Framework Implementation and Review Cycle	3
Purpose of the Framework	4
Elements of the Framework	4
Implementation of the Framework	6
Coverage of the Framework	7
Timeframe	7
Reviewing Performance	8
Requirements for self-assessment	8
External reviews	9
Targeted external review	9
Annual external review	9
Review panels	10
Data collection	11
Reporting	12
Accountability and transparency	13
Using the KPIs	15
Better Practice	15
Measures	15
Examples of Evidence	15
KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities	16
KPI 2 – Communication with regulated entities is clear, targeted and effective	18
KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed	20
KPI 4 – Compliance and monitoring approaches are streamlined and co-ordinated	22
KPI 5 – Regulators are open and transparent in their dealings with regulated entities	24
KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks	26

INTRODUCTION

The Government has committed to reducing the cost of unnecessary or inefficient regulation imposed on individuals, business and community organisations by at least \$1 billion a year. In order to achieve the Government's goal of reducing the burden of regulation, it will be essential to improve the performance of regulators, including by supporting regulators to adopt consistent, risk-based approaches to administering regulation.

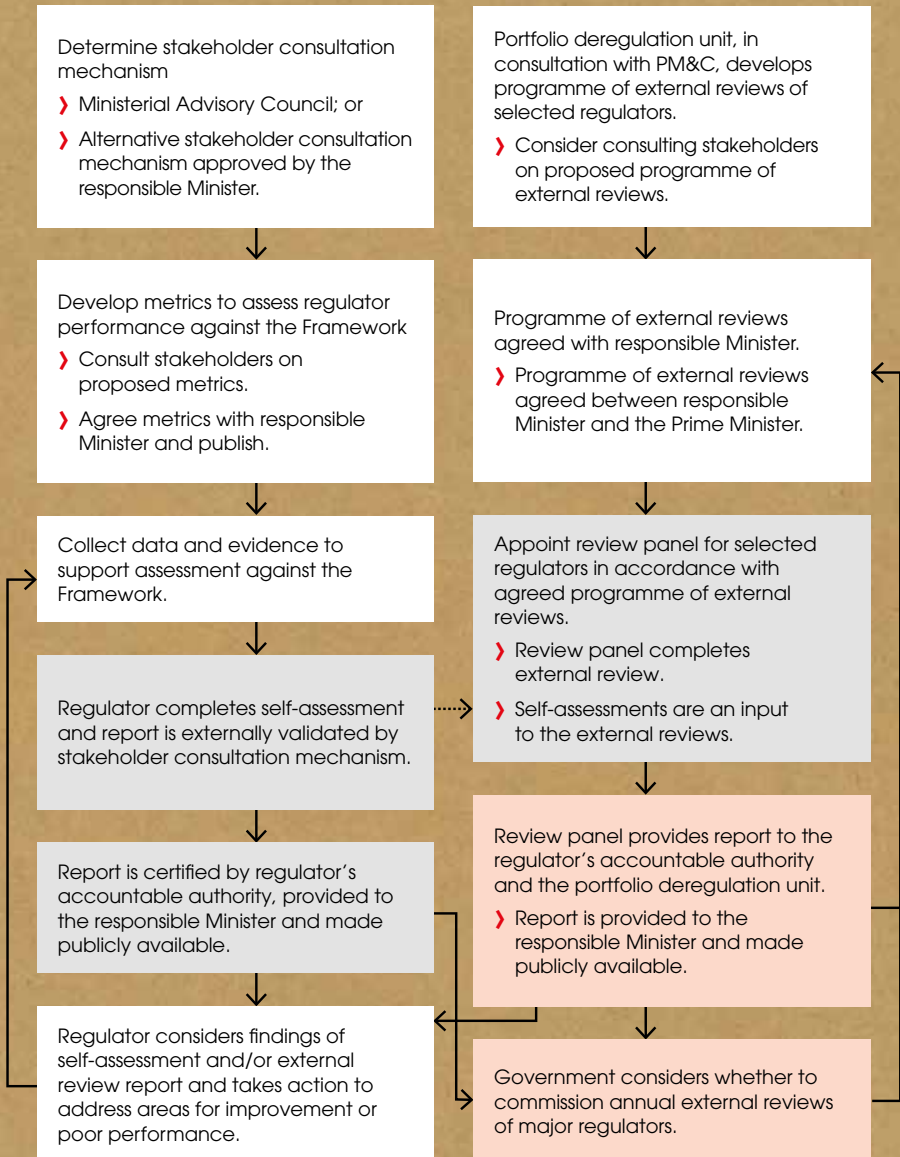
Regulatory costs do not just come from the design of the regulations. Poorly administered regulation can impose unnecessary costs that reduce productivity. These costs inevitably flow through to business more widely and to the community even where their initial impact is on a particular business. These costs may negatively impact the viability of domestic businesses, especially those exposed to overseas competition.

This is why the Government has developed a framework to measure the performance of regulators. Measuring and publicly reporting performance will give business, the community and individuals confidence that regulators effectively and flexibly manage risk. For the purposes of the Government's deregulation agenda, a regulator is a Government body that administers, monitors or enforces regulation.

On request from the Government, the Productivity Commission (PC) published a report on 19 March 2014, describing a possible framework by which the performance of regulators could be audited. The Regulator Performance Framework (the Framework) is largely based on the PC's report; however, a more streamlined approach to indicators has been used in the Framework.

The Government recognises the important role that regulators play in managing risk and protecting the interests of the community. Efficiently administered regulatory frameworks can improve the operation of businesses, markets and the economy, bring major benefits for individuals and lead to fewer resource requirements for regulators. This Framework will help regulators play their part.

THE FRAMEWORK IMPLEMENTATION AND REVIEW CYCLE



PURPOSE OF THE FRAMEWORK

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. The Framework takes into account these circumstances and is only focussed on capturing the performance of regulatory functions.

Overall, the Framework aims to encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change within regulators. This can include adapting their approach, for example, to reduce burdens on small business. In turn this will also assist regulators in meeting community expectations, which will help build stakeholder and public confidence.

The Framework will allow regulators to report objectively on the outcomes of their efforts to administer regulation fairly, effectively and efficiently. It will also be a useful tool for regulators to identify opportunities for improvement and better target their resources for greater impact. The Framework will assist in highlighting where improvement of regulatory frameworks could reduce compliance costs.

Elements of the Framework

To achieve the Government's objectives, the Framework comprises:

- › **outcomes-based key performance indicators (KPIs)** to articulate the Government's overarching expectations of regulator performance, namely:
 - › regulators do not unnecessarily impede the efficient operation of regulated entities;
 - › communication with regulated entities is clear, targeted and effective;
 - › actions undertaken by regulators are proportionate to the risk being managed;
 - › compliance and monitoring approaches are streamlined and coordinated;
 - › regulators are open and transparent in their dealings with regulated entities; and
 - › regulators actively contribute to the continuous improvement of regulatory frameworks.

- › **measures of good regulatory performance** to be used by all regulators to assess their achievement of the KPIs, although these may be complemented with relevant output or activity-based evidence specific to the regulators' circumstances;
- › **a process for annual externally validated self-assessment** for all regulators against the Framework including, if applicable, certification from the regulator's Accountable Authority (typically the Chief Executive Officer or Board) under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- › **a process for targeted external review every three years** for a selected set of regulators, with responsible Ministers agreeing to the proposed evidence to assess performance, and the evidence metrics published as part of the review; and
- › **the option for the Government to commission annual external reviews** of a small number of major regulators, with the results published.

The Framework will be supported by implementation guidance issued by the Department of the Prime Minister and Cabinet (PM&C). The guidance will provide practical advice to assist those implementing and/or impacted by the Framework. This Guidance will include:

- › **advice for determining which regulators** and regulatory functions are subject to the Framework;
- › **examples of input, output, and/or activity-based evidence** supporting the assessment of the mandatory measures of good regulatory performance specified in the Framework;
- › **a selection of case studies of better regulatory practice** across a range of activities, implemented within regulatory agencies as a first step towards sharing good practice among regulators;
- › **suggestions for involving Ministerial Advisory Councils (MACs) and other relevant stakeholders** to validate quantitative data and supporting qualitative evidence of performance; and
- › **advice on implementation timeframes** including for the completion of self-assessments, coordination of external reviews, publication of reports, and arrangements for any required follow-up actions.

Implementation of the Framework

Implementation of the Framework must result in improved regulator performance. It should:

- › facilitate performance assessment;
- › ensure accountability;
- › be transparent;
- › be flexible;
- › be cost-effective; and
- › complement, rather than duplicate, other processes.

The measurement and attribution of outcomes-based KPIs can be difficult and it may not be immediately possible to accurately and meaningfully assess and attribute outcomes. It takes time to establish a pattern from which improvements in performance can be identified. For some regulators this may mean a period of time between the introduction of the Framework and a clearly assessed achievement of the stated objectives. Over time, reporting by regulators will demonstrate measurement and communication of outcomes, rather than simply reporting against outputs.

It is important that the outcomes are clearly identified early, with data allowing an assessment against agreed output/activity-based evidence collected over time. This will allow efficient tracking of the performance of individual regulators and provide ongoing benchmarking of comparable regulators.

The Framework is not intended to increase the administrative burden on regulators. Most regulators already have an internal reporting system to monitor their performance against legislative requirements and/or KPIs. Assessment and reporting against the Framework can replace any existing individual regulator frameworks to the extent possible. Where this is not possible, the assessment and reporting requirements of the Framework should complement the existing monitoring processes.

The Framework is sufficiently flexible to reflect differences in regulators' environments. To ensure the Framework remains effective, is consistently applied, and delivers improved regulator performance, it is proposed that a review of the Framework will be undertaken three years after implementation.

Coverage of the Framework

Commonwealth regulators that administer, monitor or enforce regulation are required to implement the Framework. Regulators internal to departments that are publicly identifiable in their own right, such as the Therapeutic Goods Administration, will be required to apply the Framework. It is not intended that the Framework will apply to regulatory bodies jointly owned with other governments. The definition of regulator for the purposes of the Framework will be further described in guidance.

Reducing regulatory burden associated with quasi-regulation, including procurement and grants, is a key element of the red tape reduction programme. Similarly, the setting of regulatory policy or standards is subject to Regulatory Impact Analysis and the requirements under the *Australian Government Guide to Regulation*. This Framework is not intended to apply to bodies or functions undertaking these types of activities.

Timeframe

PM&C will issue guidance on implementation, including on engagement with stakeholder groups, by 1 January 2015. There will be a six month transition period for regulators to align internal policy and practice to the Framework prior to the commencement of the first assessment period on 1 July 2015.

REVIEWING PERFORMANCE

Regulator performance will be assessed through annual externally validated self-assessments against the Framework. This will be complemented by a programme of external reviews of a selected set of regulators every three years. There will be the option for Government to commission annual external reviews of a small number of major regulators. The results of any assessment or review will be published. The responsible Minister will agree the proposed evidence to assess performance for self-assessments or reviews prior to their commencement. The evidence metrics will be published.

Requirements for self-assessment

Self-assessment must be comprehensive, timely, externally validated and publicly available.

All regulators subject to the Framework must self-assess their performance once every 12 months. Self-assessment provides flexibility for assessments to be tailored to the size and responsibilities of the regulator. Regulators can determine how to conduct their self-assessment, including using external assessors, peer reviewers or industry bodies. Regulators may incorporate these self-assessments into existing internal or external review programmes. The regulator's Accountable Authority under the PGPA Act, if applicable, must certify the self-assessment report and provide it to the MAC or other stakeholder consultation mechanism approved by the responsible Minister.

Self-assessments and how they are conducted will be reviewed by the relevant MAC(s), or other relevant stakeholder consultation mechanism agreed with the responsible Minister. These groups will test the applicability of output/activity-based evidence to regulators within a particular portfolio, in order to provide appropriate quality assurance.

The MAC(s), or relevant stakeholder group will then consider the self-assessment methodology and the results of the assessment, in order to provide appropriate external validation.

External reviews

It is essential that regulators are accountable through the Framework to the Government and the community. External reviews will be conducted by review panels against the performance measures within the Framework and will assist in confirming the validity of self-assessments.

Targeted external review

A selected set of regulators will be subject to an external review every three years. The responsible Minister will agree to the proposed evidence to assess performance, and the evidence metrics will be published as part of the external review. Regulators will be selected on the basis of criteria such as:

- › identified or emerging industry risks;
- › current government priorities;
- › nomination by MACs or the responsible Minister;
- › history of complaints about the regulator; and
- › extent to which the performance of a regulator has been recently assessed externally, for example through an Australian National Audit Office (ANAO) audit or a parliamentary inquiry.

Based on advice from PM&C, portfolio Deregulation Units will coordinate the programme of targeted external reviews of regulators against the Framework. The external review programme may result in regulators being reviewed externally at least once every three years.

Annual external review

The Government will have the option to commission an annual external review of a small number of major regulators across all portfolios. If the option to commission an annual external review is exercised, these regulators will still undertake an annual self-assessment of performance. This will provide baseline input to the external review and a useful comparison between how the regulator assesses its own performance against how the regulator is assessed externally. Self-assessments of regulators selected for external review will not need external validation.

If this option is exercised, any such reviews of major regulators may choose to focus on a discrete regulatory stream in each annual review period over the three year review cycle in order to allow enough time for changes to be implemented between review periods. This would promote a targeted approach to the review process to address those regulatory functions in most need of assessment, rather than a review of all of the regulatory functions of the organisation.

These major regulators could be selected for annual external review based on a number of factors, including:

- › value of regulatory burden;
- › economic value;
- › size of regulated community or industry size;
- › identified or emerging industry risks and/or current Government priorities;
- › the results of self-assessments and external reviews under the Framework; and
- › size of regulator based on total employees, or annual budget and revenue.

Review panels

External reviews will be conducted by review panels of government and industry representatives, including: a comparable regulator, a representative of the relevant regulated community (unless precluded by statutory requirements or international obligations), and a representative from the portfolio. Additional members may include representatives from other government agencies, and the ANAO, and others as appropriate. Different review panels will maximise expertise and availability of members for the external review of a specific regulator. Portfolios, in consultation with the responsible Minister(s), will determine appropriate appointment processes for review panels.

The inclusion of a comparable regulator is an important feature of the make-up of the review panel. Peer review is expected to assist the exchange of ideas and practices across regulators from the same sector. It may also facilitate the introduction of a more coordinated approach to monitoring and compliance within a sector.

Review panels may engage the services of expert assistance to assist them to conduct external reviews of regulators. The costs of this assistance will need to be met within existing resources.

Data collection

For self-assessments and external reviews, the benefits of transparency need to be balanced against the costs associated with collecting the evidence necessary to make an assessment of performance. Where possible, existing processes for data collection and analysis should be utilised, such as data derived from business perception surveys, to minimise any additional burden associated with the implementation of the Framework.

Regulators and review panels are encouraged to complement the reporting of quantitative data with qualitative information describing actions taken to improve the regulators' performance. Assessments based on a single source of evidence are not sufficient. Judgements on performance should be made by drawing on a range of evidence from different sources and reviewers should seek to triangulate evidence. In some cases the measurement of output or activity-based evidence will be the only practical option. A combination of evidence sources will allow a comprehensive assessment of performance.

Examples of output or activity-based evidence are provided in the Framework. These examples are not an exhaustive list and are provided as a guide only, as individual circumstances of regulators and their regulated entities must be considered. Regulators and review panels should test the suitability of the selected evidence with relevant department(s) and MACs, or other approved stakeholder consultation mechanism to ensure they will provide an acceptable assessment of performance in the stated areas.

Possible sources of evidence include:

- › endorsed, documented guidance, policies and procedures;
- › business and staff surveys;
- › published statement(s) of intent and/or expectations;
- › interviews and focus groups with stakeholders and staff;
- › feedback obtained from internal complaint mechanisms;
- › regulator annual reports;
- › findings of ANAO audit reports; and
- › existing internal performance reporting processes.

Reporting

Regulators will be required to publish a report on the outcomes of each annual self-assessment and any external reviews of their performance. These reports will identify the extent to which the regulator is achieving the performance indicators in the Framework and highlight areas for improvement for the regulator.

Where appropriate, this advice could include: more effective communication practices and collection of compliance information; more targeted compliance monitoring and enforcement approaches; and strategies for continuous improvement in engagement.

In addition to the overall assessment of performance against the measures, the report should detail the evidence considered by the regulator and/or review panel in forming their opinion.

It is noted that for a small number of regulators, issues concerning national security and operational details to achieve regulatory objectives may require published reports to be less detailed. Flexibility is provided to regulators and portfolio departments to determine how and where to publish these reports.

ACCOUNTABILITY AND TRANSPARENCY

Regulators, as public entities, are subject to various reporting and accountability arrangements. It is intended that as far as possible, the Framework be built into the existing performance architecture. This includes the accountability and transparency provided by the ANAO performance audits and the performance assessment and reporting requirements under the PGPA Act.

The PGPA Act includes a number of requirements with respect to non-financial performance assessment and reporting. These requirements include assessment and measurement of performance, preparation of annual performance statements, and the ability to request an independent examination of an agency's annual performance statement by the Auditor-General.¹

The integration between this Framework and the PGPA performance assessment requirements will minimise burden on regulatory agencies. Further, it will deliver a single consistent report on regulator performance. Integration of reporting arrangements will also allow for comprehensive, comparable and easily contrasted performance information, efficient analysis of the results, and articulate a clear message on the expected performance of a regulator to regulated entities and the wider community.

To support the objectives of the Framework and ensure a consistent approach to regulatory enforcement and risk management, Commonwealth regulators should ensure the risk management framework used to guide their operations is based on the nine elements of the *Commonwealth Risk Management Policy*² and the better practice principles of the ANAO *Better Practice Guide: Administering Regulation*³.

Adopting an appropriate risk-based approach can assist a regulator in minimising compliance costs for regulated entities, streamlining interaction between them and regulated entities, and enhancing the benefits derived for the community. Establishing or building further on a risk management framework in line with recent guidance will help ensure that regulators are compliant with the principles of the PGPA Act framework and that a consistent approach to risk oversight and management is applied across all Commonwealth regulators.

1 Revised guidance for the new performance arrangements is currently being developed by the Department of Finance and will be presented to Government for consideration in the second half of 2014. The new performance assessment framework is not intended to take effect until the 2015-16 financial year.

2 <http://www.finance.gov.au/comcover/risk-management/>

3 <http://www.anao.gov.au/html/Files/BPG%20HTML/2013%202014/AdministeringRegulationBPG/index.html>

USING THE KPIs

BETTER PRACTICE

The descriptions accompanying each KPI are intended to demonstrate ways that a regulator may be successfully achieving the KPI, to assist reviewers in formulating an appropriate benchmark for regulator performance. The description of the better practice principles will also help regulators as a guide to future better practice.

MEASURES

The measures of good regulatory performance used in the Framework outline the principles that all regulators should be using to guide the collection of evidence and for review to assess achievement of the KPIs. Whilst not necessarily an exhaustive list, the suggested measures are considered sufficient to enable assessment against the KPIs. It is expected that tailored measures of good regulatory performance, based on these high-level measures, would be adopted to enable comprehensive review of individual regulators and their specific tasks and role.

EXAMPLES OF EVIDENCE

The suggested examples of output/activity-based evidence are a starting point for reviewers to determine the evidence that will be used in assessing performance of a regulator. Reviewers should ensure that: all areas considered relevant by the stakeholders are included in the review (to prevent regulators adapting practices to meet indicators whilst neglecting areas that are more difficult to observe) and multiple sources of evidence are used to assess each measure on performance and areas for improvement.

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.

