

## **Joint Committee of Public Accounts and Audit**

Inquiry into the administration of Commonwealth regulations

### **Department of Finance**

### **Response to Question on Notice**

**Hearing of 22 November 2024**

**Question on Notice 1** (Proof Hansard pages: 42 (Part 1), 43 (Part 2), 44 (Part 3))

1. Senator Reynolds: Thank you very much, that was very helpful to learn about the maturity model and the practice and policy framework. On notice, could you provide us detail of that and what that road map looks like that you're trialling?
2. Senator Reynolds: With the maturity model and the road map – I think you've got a road map to best practice – that you're trialling between now and March, there were four key, consistent flaws found in the audits the ANAO did. They were: a failure to undertake a risk based assessment of compliance risk; inappropriate compliance plans not underpinned by robust risk assessments; a failure to undertake appropriate monitoring of the regulated industry and to use its regulatory powers effectively to address instances of noncompliance; and, the fourth major consistent finding, an absence of robust performance measures or evaluation frameworks. They're pretty significant failures and consistent ones. Will this new road map address all of those four issues?

Ms Antone: I'll take that away. I think the ANAO's work, in this space, is part of our safeguards and what feeds back into that feedback loop. What you've outlined, probably, to my mind, fall into two categories: monitoring and compliance, and performance measures. They're two areas we'll take away. Thank you.

Senator Reynolds: If you could take those two areas away but also those four specific aspects and just highlight, in the maturity model road map, how each of those will be addressed by the agency.

3. Senator Reynolds: Thank you for that. In relation to the maturity model and what you provide back to the committee, could you also pick up some of the points that the Deputy Auditor-General has mentioned. As you described it – and I think it sounds like a very good process – it's so organisations can work out where they're up to. But I suspect, from what we've seen and the evidence that we've had from these reports, that there will be gaps. So they might self-assess, 'We're here,' but they don't have a ministerial statement.

So, in terms of actually identifying where they are, it would be backcasting to make sure not only that they've got the right documents but that they're actually implementing them properly and then looking forward. Could you have a look at some of those other issues. You rightly point out that there are performance measures out there, but it's clear from these audits that they're not necessarily being used and no-one's picked up before this that they're not actually using them.

## **Response**

Regulators are subject to a range of legislative and other obligations aimed at driving robust regulatory systems. The Department of Finance (Finance), as the Australian Government lead on regulatory policy, practice and performance, provides a holistic and coordinated approach to regulatory oversight and regulatory reform.

### ***Regulatory Policy, Practice and Performance Framework and Regulator Maturity Model***

Finance published its Regulatory Policy, Practice and Performance Framework (Framework) in August 2024. The Framework provides 6 principles that set the standard for designing, implementing, managing and evaluating regulation and regulatory systems to ensure they are fit-for-purpose. The principles are:

1. Targeted and risk-based
2. Integrated in existing systems
3. User-centred
4. Evidence-based and data-driven
5. Reflective of the digital era
6. Continuously improved and outcomes-focused.

Taken together, these 6 principles support regulators to assess risk effectively, implement mitigation strategies and design regulatory solutions which respond proportionately to the risks, including in relation to compliance and enforcement. They also support continuous feedback loops, evaluation practices and transparent regulatory approaches which ensure that compliance activities and other regulatory performance remains fit-for-purpose. (Further detail is provided below on how these principles and other Finance activities support improvement in the four key areas identified.)

Following publication of the Framework in August 2024, Finance is progressing a suite of supporting tools to aid regulatory policy entities and regulators to operationalise the 6 principles.

One of the key tools being progressed under the Framework is the Regulator Maturity Model. The model provides a road map for Commonwealth regulators to take steps towards best practice by supporting them to evaluate and improve their capability at the entity level, with reference to all 6 principles, and measure changes to their capability over time. It will also inform a whole-of-government understanding of Commonwealth regulator capability and provide an evidence base to identify opportunities to support regulator uplift. The Regulator Maturity Model prototype is currently being user-tested and is expected to be released in March 2025.

In addition, Finance actively supports the sharing of lessons and best practices between regulators and gathers insights on the effectiveness of Finance's frameworks and support through regular outreach and engagement. A key element of this is the Regulator Leadership Cohort, a collective of regulatory agency heads and board chairs.

### ***Findings from ANAO audits***

Finance provides a range of policy, guidance, support and engagement initiatives which support regulators to address the four key areas for improvement identified by the ANAO in the audits forming part of this inquiry.

### ***Risk-based assessment of compliance risk and compliance plans***

Section 16 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires accountable authorities to 'establish and maintain an appropriate system of risk oversight, management and internal control for the entity'. The Commonwealth Risk Management Policy (Risk Policy) was introduced in 2014 to support this requirement. The Risk Policy is mandatory for all non-corporate Commonwealth entities and recommended as good practice for corporate Commonwealth entities. Almost all regulatory agencies are non-corporate Commonwealth entities.

To support Finance in understanding how entities are implementing the Risk Policy, capability is measured through a biennial Risk Management Benchmarking program which considers the maturity of entities by reference to measurable indicators. The last survey was undertaken in 2023, and results showed that the vast majority of regulatory entities performed well against each of the following key areas of focus:

- risk governance
- risk culture
- risk capability
- risk management framework and processes
- organisational resilience.

Finance also supports regulatory entities to adopt a robust risk-based approach through its Framework principle 'targeted and risk-based'. Regulators should establish checks and balances to identify and assess emerging risks and their potential impacts, and ensure regulatory systems enable them to design proportionate solutions to achieve desired regulatory outcomes. The Regulator Maturity Model will enable entities to assess their systems and capabilities against this principle and address any identified potential shortcomings.

### ***Compliance monitoring and addressing non-compliance***

By applying the Framework principles of 'evidence-based and data-driven' and 'continuously improved and outcomes-focused', regulators are supported to establish appropriate monitoring activities and use their powers effectively to address non-compliance in a targeted and proportionate way.

For example, when implementing regulatory systems, the Framework notes that regulators should establish regulatory postures and fit-for-purpose education, monitoring, compliance, and enforcement strategies that are evidence-based and data-driven. This ensures the impact on business and community is well understood and helps to evaluate the regulatory need and potential challenges. Similarly, by evaluating their regulatory systems, regulators can improve future approaches and achieve fit-for-purpose outcomes.

As part of its work to support operationalisation of the Framework, Finance is preparing a tool on regulatory posture to be published in 2025. While each regulatory system is different and ultimately accountable to its own regulatory stewards, the tool will set out common considerations and best-practice advice for how regulators monitor and enforce compliance.

Finance also provides guidance to ministers, departments, and regulators through Resource Management Guide 128: Regulator Performance (RMG 128) to issue or refresh Ministerial Statements of Expectations for regulators, and corresponding Regulator Statements of Intent. A Statement of Expectations is issued by the responsible minister to a regulator to provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the minister expects the regulator to observe in conducting its operations. For example, the minister could consider setting out a Statement of Expectations to the accountable authority on the government's expectations around the entity's compliance, monitoring and enforcement functions.

#### *Performance measures or evaluation frameworks*

The Framework principle of 'continuously improved and outcomes-focused' notes the role of stewards in monitoring and evaluating regulatory systems, minimising risks of regulatory failure and ensuring they remain fit-for-purpose.

RMG 128 provides guidance to support Commonwealth entities that perform regulatory functions, both standalone regulators and those located within policy departments, to report on their performance with respect to three best practice principles:

1. Continuous improvement and building trust
2. Risk based and data driven
3. Collaboration and engagement

It is expected that Commonwealth entities who performance regulatory functions include in their corporate plans:

- recognition of the principles of regulatory best practice
- the Statement of Expectations set out by responsible Ministers
- responding Statement of Intent set out by the accountable authority of the entity.

Examples of different approaches to integrating these expectations in corporate plans are provided in [RMG 132: Corporate plans for Commonwealth entities](#).

Entities that perform regulatory functions should consider developing performance measures relating to these functions if these are considered appropriate measures of performance of the entity. Each performance measure must meet the requirements under section 16E(2) item 5 and section 16EA of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). Refer to [RMG 131: Developing performance measures](#) for information on the concepts for developing performance measures and the specific requirements.

Regulators who are Commonwealth entities are required to prepare annual performance statements which measure and assess their performance in achieving their purposes, including any performance measures which relate to their regulatory activities. Refer to [RMG 134: Annual performance statements for Commonwealth entities](#) for guidance on the requirements.

Finance will continue to work with regulators, leveraging ANAO reports to date, to support entities to meet these expectations and the PGPA Rule requirements. Finance will also continue to review and update RMGs to feature contemporary examples for entities and regulators to refer to, ensuring our guidance remains fit-for-purpose.

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##### **Question on Notice 2**

2. The Regulatory Policy, Practice & Performance Framework and Resource Management Guide 128 are principles-based guides to regulatory functions. The ANAO found a number of shortcomings in regulator performance across the five audits covered by this inquiry including, broadly: failure to undertake a risk-based assessment of compliance risk; inappropriate compliance plans not underpinned by robust risk assessments; failure to undertake appropriate monitoring of the regulated industry and to use regulatory powers effectively to address instances of non-compliance; absence of robust performance measures or evaluation frameworks.

- a) Given these shortcomings, is a principles-based approach sufficient?
- b) What mechanism might be used to address consistent shortcomings in regulatory practice?

##### **Response**

The principles-based framework, Resource Management Guide and other support provided by the Department of Finance (Finance) are part of a broader framework of legislative and non-legislative obligations set out under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and supporting *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). These obligations cover issues including planning, performance, managing risk, compliance, assurance and reporting.

Specifically, under sections 15-19 of the PGPA Act, each accountable authority is responsible for leading, governing and setting the strategic direction of their entity – specifically tailored to that entity, noting the diversity of the Commonwealth. The accountable authority is responsible for ensuring that their entity, including those that are regulators, comply with legislative requirements and policies of the Government and report on these in their Corporate Plans and Annual Reports, as required under the PGPA Act and Rule.

Finance is leading several initiatives to drive the Government's regulatory reform agenda and ensure regulation is fit-for-purpose in a digital era, protects against regulatory failures, and improves productivity. This includes initiatives to develop regulator capability, identify regulatory trends, and re-energise the whole-of-government regulatory ecosystem.

The 6 principles outlined in Finance's Regulatory Policy, Practice and Framework (Framework) set the standard on designing, implementing, monitoring and evaluating regulation. Finance provides ongoing advice to entities to support them in applying the principles.

Following the release of the Framework in August 2024, Finance is progressing a suite of supporting tools to aid regulatory policy entities and regulators to translate the 6 principles into better practice. These practical tools will operationalise the Framework's principles and uplift regulatory capability.

Resource Management Guide 128: Regulator Performance is an existing tool that supports entities in the application of the requirements of the Framework, with the Framework underpinning its best practice approach and principles for regulator performance. Where appropriate, Finance engages with entities to support them to report on their performance against the best practice principles.

Additional tools on regulator maturity, international standards, regulatory governance and regulatory posture are currently under development.

Finance is continuing to work with its stakeholders, including through its Regulator Leadership Cohort and Regulatory Reform Inter-departmental Committee, to ensure tools meet regulatory needs and identify future tools for development. Reports published by the Australian National Audit Office, as well as other reviews of regulatory systems, will also inform this process.

Following the implementation phase of the Framework, Finance will evaluate the effectiveness of the Framework and supporting tools on regulatory systems. This will enable us to continually review and update the Framework and tools to ensure they remain relevant and are fit-for-purpose in driving effective regulation.

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##### **Question on Notice 3**

3. The ANAO found instances where regulators defaulted to an educative-based approach, failed to follow up, or when they did follow up, found significant continuing non-compliance but remained reticent to use regulatory powers.

What guidance does Finance provide on the actual use of statutory regulatory powers?

##### **Response**

A regulator's powers are set out in its enabling legislation, with expectations regarding the use of those powers provided by the responsible minister. Finance does not have a direct role in monitoring or assisting regulators use of their statutory powers.

The *Regulatory Powers (Standard Provisions) Act 2014*, administered by the Attorney-General's Department, provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as enforcement provisions through the use of civil penalties, infringement notices, enforceable undertakings and injunctions. Where appropriate, the Department of Finance (Finance) encourages agencies to adopt the standard provisions in that Act to ensure greater consistency between different regulatory regimes and reduce the administrative burden on agencies or regulators exercising different regulatory powers.

Finance also supports ministers, departments and regulators to issue or refresh Ministerial Statements of Expectations for regulators, and corresponding Regulator Statements of Intent. A Statement of Expectations is issued by the responsible minister to a regulator to provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the minister expects the regulator to observe in conducting its operations. For example, the minister could consider setting out a Statement of Expectations to the accountable authority on the government's expectations around the entity's compliance, monitoring and enforcement functions.

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##### **Question on Notice 4**

4. What assurance activities does Finance undertake to satisfy itself its regulatory framework is effective and fit for purpose?

##### **Response**

The Department of Finance (Finance) gathers lessons from Australian National Audit Office (ANAO) reports and regularly engages with stakeholders to gain insights into emerging regulatory trends and issues and evaluate whether existing frameworks remain fit-for-purpose. This includes engaging with the Regulator Leadership Cohort, the Regulatory Reform Inter-departmental Committee, other regulators and policymakers, and regulated industries. In addition, Finance is currently finalising an evaluation framework to support regular, structured evaluation of our regulatory reform initiatives.

Following the implementation phase of the Regulatory Policy, Practice and Performance Framework (Framework), Finance will evaluate the impact of the Framework and supporting tools on regulatory systems. This will enable us to continually review and update the Framework and tools to ensure they remain relevant and are fit-for-purpose in driving effective regulation. Planned evaluation measures include seeking feedback from Commonwealth officials on the Framework, measures of use through website data, and assessing the impact to regulation and regulatory systems through various data sources, such as ANAO performance audits.

Finance has been asked by Government to undertake a review of progress of the regulatory reform agenda by the end of 2025. As part of this review, Finance will consider whether its frameworks are meeting intended outcomes, and their impact on regulatory systems.