



Australian Government

Department of the Prime Minister and Cabinet

Regulator Performance Guide

For consultation

April 2021



Message from the Assistant Minister



Regulator performance matters. Effectively administered regulation provides a strong setting for businesses, markets and the economy. Even well-designed regulation can be undone by poor implementation or culture. Regulator responsiveness during COVID-19 showcased what can be achieved when regulators are flexible and pragmatic in delivering solutions while maintaining essential safeguards.

It is now more important than ever to ensure our regulatory settings are the best they can be. Through a renewed Deregulation Agenda, the Government is focused on lifting regulator performance, capability and culture. Improving our regulatory settings will help unleash the potential of Australian businesses and drive economic and jobs growth.

The Government is committed to a stewardship approach to ongoing regulatory reform, where Ministers, Secretaries and Agency Heads are responsible for ensuring their regulatory settings are not 'set and forget'. Instead, regulations and how they are administered should be fit-for-purpose and implemented in a way that maintains critical safeguards while reducing the regulatory burden.

To support Commonwealth regulators in demonstrating best practice, this Guide sets out the Government's expectations for regulator performance. It also provides guidance for the reporting of regulatory functions and use of Ministerial Statements of Expectations and Regulator Statements of Intent. The Guide has been developed following initial consultation with businesses, regulators and other stakeholders, encompassing lessons learned during COVID-19 and the experiences of regulatory frameworks in other jurisdictions.

This Guide encourages regulators to deliver a more outcomes-focused, principles-based service – one that emphasises a proportional approach to risk and genuine engagement with regulated entities and the broader community.

Your views are sought on the Guide to ensure it provides a strong foundation for meaningful performance reporting that supports improved accountability, transparency and continuous improvement. I encourage you to provide feedback on the Guide and help shape the final document.

The Honourable Ben Morton MP

Assistant Minister to the Prime Minister and Cabinet

Assistant Minister to the Minister for the Public Service

Assistant Minister for Electoral Matters

April 2021

Introduction

Purpose of the Guide

This Guide outlines the principles of best practice that underpin the Government's expectations of regulators and their performance. It provides guidance to assist Commonwealth regulators to report on their performance against these expectations.¹ The Department of the Prime Minister and Cabinet is seeking feedback on this Guide, with submissions open until **5pm AEST Friday 21 May 2021**.

The principles in this Guide are one element of the Government's refreshed framework for lifting regulator performance (see **Performance Expectation Framework diagram** over page). This framework also includes the setting of performance objectives through Ministerial Statements of Expectations that outline the Government's priorities for a regulator; and in turn, a Regulator Statement of Intent that sets out how a regulator will deliver against these priorities. It also comprises reporting on regulator performance through the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) reporting requirements, as a means of streamlining reporting and encouraging greater accountability and transparency.

This Guide will be supplemented by material on the [Deregulation Agenda](#) website. This includes responses to Frequently Asked Questions (FAQs), best practice case studies and user stories, examples of outcomes-focused performance measures and further information on the role of Ministerial Statements of Expectations and Regulator Statements of Intent.

The performance expectations and reporting arrangements outlined in this Guide will apply from 1 July 2021. There will be a transition period of one year, with guidance provided by the Department of the Prime Minister and Cabinet and the Department of Finance to support regulators in implementing the arrangements.

Principles of regulator best practice

- 1: Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.
- 2: Risk-based and data-driven:** regulators maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.
- 3: Collaboration and engagement:** regulators are transparent and responsive, implementing regulations in a modern and collaborative way.

Does this Guide apply to me?

This Guide applies to Commonwealth entities that perform a regulatory function. Regulatory functions may include administering (e.g. granting approvals under, making operational rules about, handling complaints on), monitoring and promoting compliance with, and enforcing regulation.

The Australian Government Guide to Regulatory Impact Analysis defines regulation as "Any rule endorsed by government where there is an expectation of compliance." Rules can take many forms, not all of them the 'black-letter' kind.

Regulatory functions are exercised across a range of governance arrangements and structures, including within areas in the Commonwealth that may not be publicly identifiable in their own right as a regulator.

This Guide **does not apply** where:

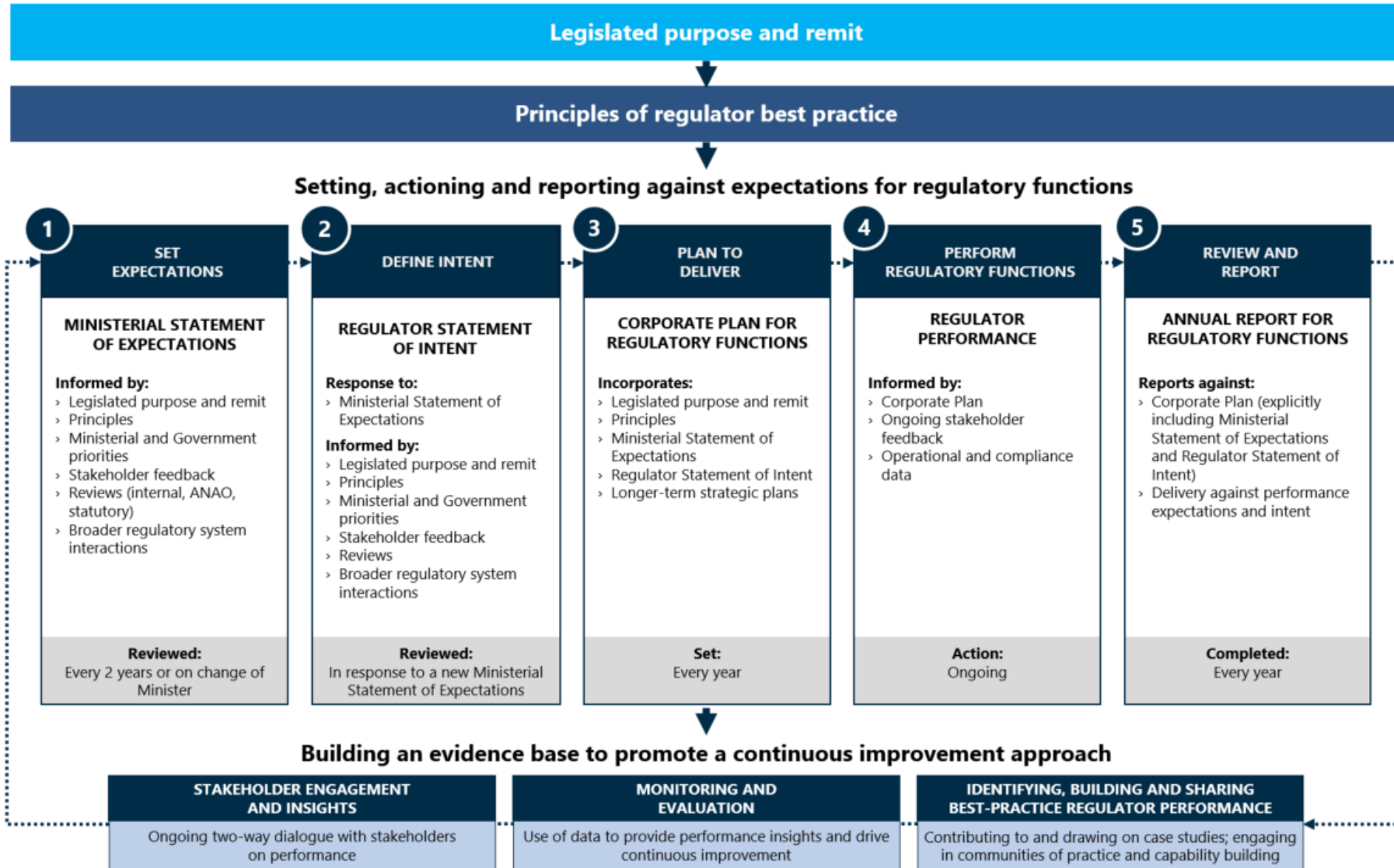
- an entity is only responsible for the setting of regulatory policy, or the approval of grants
- the regulatory function is only to regulate Commonwealth agencies or employees.

Accountable Authorities under the PGPA Act should consider this information and determine the applicability of the principles as a component of their performance reporting under the PGPA Act requirements.

¹ This Guide replaces guidance provided in the *2014 Regulator Performance Framework*, which ceases operation on 1 July 2021.

PERFORMANCE EXPECTATION FRAMEWORK

Embedding a continuous improvement approach



How to use the principles

This Guide sets out the principles of best practice that underpin the Government's expectations for the performance of Commonwealth regulators. The Guide also includes examples of practical actions and best practice behaviours that regulators may take to implement these principles, and illustrative case studies.

Regulators should demonstrate in their performance reporting how they are meeting the Government's expectations as set out in these principles.

Regulation is not a one-size-fits all activity, and regulatory functions, resourcing and capabilities vary across different Commonwealth regulatory entities. As such, regulators should draw on the principles to develop tailored performance monitoring and reporting processes and performance measures that are appropriate to their role, regulatory posture, specific remit and legislative environment, in consultation with their stakeholders. Regulators are encouraged to develop their own performance measures to allow them to report against each principle, but with the flexibility to determine the extent to which the examples of best practice under each principle are relevant to their own performance.

Regulators are encouraged to adopt outcomes-focused performance measures to report on their performance, supplemented with case studies and user stories where appropriate. This does not preclude a regulator from including input or activity-based indicators where meaningful for performance, however, these should be used in combination with outcome indicators to provide a cohesive picture. Where reasonably practicable, a mix of qualitative and quantitative performance measures should be used.

Examples of outcomes-focused performances are included under each principle in this document as a guide for reference only. In developing performance information, regulators should also refer to the Department of Finance's Resource Management Guide 131 on [*Developing good performance information*](#).

Principle 1: Continuous improvement and building trust

Regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.

The Government expects all regulators to commit to continuous improvement in their processes, governance and capabilities and take a broad view of the regulatory systems for which they are responsible. Best practice requires that regulators consider, and aim to improve on, the combined regulatory burden of Governments on businesses and the community.

Regulators should have in place methodologies to understand the impact and outcomes of regulation and evidence of continuous improvement at a system-wide level, with these regulatory insights used to support and drive improved outcomes.

Regulators should look to improve their performance, capability and culture while remaining flexible and responsive to changing circumstances. Regulators should also take into account and respond to community expectations of good regulatory practice to build trust and public confidence in the role they play.

Regulators should build and maintain collaborative relationships with other entities in the regulatory system to learn and develop a shared understanding of respective roles and responsibilities, including to identify areas of regulatory duplication and overlap. In practical terms, a commitment to continuous improvement and building trust means regulators:

- hold themselves to account through *internal accountability processes* that can help foster a culture of continuous improvement and reflection
- have in place transparent *external accountability processes* that encourage procedural fairness, accessibility and responsiveness to encourage public trust and confidence
- undertake *regular and independent performance reviews* and take ownership of and respond to recommendations of external reviews of their performance, such as those conducted by the Australian National Audit Office
- have well-defined and communicated *organisational values and culture* that articulate the type of regulator and regulatory posture they seek to adopt

- take a *broad perspective of the regulatory environment* and conduct environmental scans and consider best practice examples from other jurisdictions and other regulatory systems that can be implemented
- *identify and minimise duplication and harmonise their activities* with other regulators, including sharing intelligence, to reduce the overlapping compliance burden on business and individuals and achieve better regulatory outcomes
- *actively share learnings and insights* by participating in regulator communities of practice and engaging with other regulators and stakeholders to share and reflect on best practice examples and lessons learned
- *actively build staff capability* and support a culture of regulator best practice including ensuring staff understand and have the capability to implement improved practices.

Principles case study 1: Australian Skills Quality Authority (ASQA)

In late 2019 the Government commissioned a review of ASQA’s regulatory practices, governance and culture. The review found that changes were needed to improve ASQA’s engagement with the sector, ensure a risk-based and proportionate regulatory approach and that there was a shared understanding of ASQA’s role. Following the release of the April 2020 review report, ASQA committed to implement all recommendations within its remit. In close consultation with stakeholders it has begun implementing changes to align with best-practice regulation.

To build organisational capability and a positive risk culture, ASQA improved its internal and external governance arrangements including through new legislated arrangements to clarify the agency’s role, and internal mechanisms to drive, monitor and improve its accountability and risk management. ASQA defined its regulatory values to support a learning culture committed to consistency, collaboration and continuous improvement. Roles and structures were also established to better understand the impact and effectiveness of ASQA’s activities and regulatory design.

ASQA reviewed its regulatory operating model, including to ensure it was underpinned by data, information and intelligence. ASQA implemented changes to strengthen the role of education and engagement with VET providers as key regulatory tools. It adapted its audit methodology to provide a better understanding of the performance of providers (including a focus on self-assurance and promoting consistency of audit outcomes), implemented a compliance management function to ensure appropriate and proportionate regulatory action when non-compliance is identified and promote provider focus on systemic and sustained improvement in addressing non-compliance, and applied new regulatory approaches during COVID-19 to tailor and coordinate its response to risk.

Implementation of the review recommendations is ongoing and ASQA acknowledges there is further work to be done. Implementation is being supported through a Stakeholder Liaison Group to engage with training providers, formalising engagement with peak provider associations through a Provider Roundtable, greater engagement with other regulators and state and territory governments, and by consulting on changes to ASQA’s compliance framework. ASQA is looking forward to working closely with the Advisory Council when established by Government later this year.

Example performance measures

Outcomes-focused performance indicator:

- The quality assurance and regulatory framework continues to be improved in line with best practice and in consultation with stakeholders.
- Regulator’s compliance and monitoring approaches are streamlined and co-ordinated.

Measured by:

- Target of a specified per cent or more of stakeholders who assess the regulator’s consultation on improvements to the regulatory framework as ‘good’ or ‘excellent’.
- Cross-border regulatory activity is undertaken through engagement with international regulatory agencies.

Principle 2: Risk-based and data-driven

Regulators maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.

Regulators have an important and increasingly complex role in administering and enforcing regulation that is typically designed to achieve a public policy objective, such as protecting the public interest or reducing harm or injury, while remaining flexible and responsive to new market behaviour and changes in technology. Regulators should seek to achieve their objectives in a way that imposes the least cost on those that are regulated, providing a regulatory environment that supports regulated businesses to comply, to innovate and to grow.

Best practice regulators take a risk-based approach to operational policy development, administration and enforcement activities, informed by data, evidence and intelligence. A risk-based approach allows a regulator to properly assess the risks of non-compliance and respond in a proportionate way to the harm being managed. Tolerances may be deliberately tight where there are, for example, risks to human life.

A strategic management of risk can improve efficiency by prioritising resources to the areas of highest or unacceptable risk and increase compliance by focusing scarce resources on the areas of the greatest risk of non-compliance. It can also reduce the overall compliance burden by minimising Government intervention where the risks are relatively low.

Given technological advances and disruptors to the market, the use of data and digital technology can be leveraged to ensure that regulators better understand and manage risks. This means building the capability and having the right enabling infrastructure in relation to data and digital literacy.

Adopting a risk-based and data-driven approach can mean regulators:

- *use intelligence and data* to inform a risk-based approach to compliance and enforcement
- establish and maintain their *risk tolerance* for categories of risk or particular risks to inform their internal decision-making, monitoring and assurance activities
- publish and maintain a *compliance and enforcement strategy* that articulates the regulator's *approach to risk* and how this informs decision-making
- *modify their regulatory approach to encourage voluntary compliance* where possible and focus compliance and enforcement activity where the risks and the impact of harm is greatest
- build capability to *maximise the use of data and digital technology* including to improve internal processes to identify and prioritise risk
- seek to achieve their objectives while ensuring that economic outcomes, such as *impacts on competition, innovation and growth*, are explicitly considered in implementation.

Principles case study 2: Australian Building and Construction Commission (ABCC)

A core aspect of the ABCC's role and one of its Key Performance Indicators is the conduct of site visits, underpinning its strategic objective to advise and assist building industry participants.

During COVID-19, Government restrictions required the suspension of face-to-face site visits. To demonstrate that the ABCC remained 'open for business', the ABCC moved temporarily to virtual site visits using digital technologies. This approach managed health and safety risks to both ABCC staff and its regulated community, while allowing the ABCC to continue to provide advice and assistance to the building industry in line with its objectives during the pandemic.

Testing of ABCC software-based phone technology at remote working sites was prioritised to assess and mitigate the risk in rolling out this new capability. Iterative testing across teams enabled staff to seamlessly transition to this new skill and ensure that the links to the case management system remained in place. There were no reports of adverse on-site outcomes as a result of use of virtual site visits.

Face-to-face site visits have now resumed in line with the ABCC's core objectives. The ABCC will continue to use virtual site visits as a complementary mechanism for some of its functions where appropriate.

Example performance measures

Outcomes-focused performance indicator

- The relevant sector is regulated in a timely, transparent and risk-based manner.
- Regulator has a sound understanding of regulatory and market developments through data analysis and data capability.

Measured by:

- The average time taken to make decisions about applications is reduced by a specified amount, particularly where the risk of non-compliance is low.
- Number of industry reports published using data visualisation tools.

Principle 3: Collaboration and engagement

Regulators are transparent and responsive, implementing regulations in a modern and collaborative way.

Best practice regulators are transparent, open and responsive to feedback on how they operate, with a two-way stakeholder dialogue on their performance. They clearly set out the obligations imposed on regulated entities and are transparent about the criteria that informs decision-making. Transparency in internal processes can increase community trust by providing a signal to businesses and the wider community about a regulator's priorities and decision-making.

Genuine consultation processes are in place to ensure that stakeholders are engaged in essential decisions that involve them, with critical information shared in a timely way. To build community trust, good regulators have established processes in place to provide the public with opportunities to provide feedback on operational regulatory design, including co-design of solutions where appropriate.

Regulators need to consider where compliance could be made easier and, where appropriate, allowing regulated entities to adopt innovative approaches to meeting their obligations. Regulators should also continually monitor the environment they operate in to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations. This can mean regulators:

- *engage genuinely with stakeholders and listen to feedback*, including regulated entities, other agencies and the wider community about regulatory decisions. Best practice regulators are receptive to diverse stakeholder views about the design and implementation of regulation while ensuring the integrity of the regulatory system
- *provide guidance and information* that is up-to-date, clear and accessible to help regulated entities understand their obligations and responsibilities and to encourage voluntary compliance
- *are transparent in their decision-making* and, where possible, provide reasons for regulatory decisions
- *implement innovative approaches* in considering regulatory or policy issues such as 'regulatory sandboxes'.

Principles case study 3: Australian Financial Security Authority (AFSA)

The Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, highlighted the role of culture in influencing a broad range of conduct and behaviour, not only in an organisation, but also in an industry.

As part of its insolvency compliance program, the Australian Financial Security Authority (AFSA) worked with stakeholders to collectively agree on what good culture looks like. This was an opportunity to build a better understanding of the industry's culture, especially where it can influence behaviours that can impact the integrity of, and public confidence in, the personal insolvency system. AFSA released a survey on its online consultation website, AFSA sandpit, seeking feedback on a Statement of Principles, including principles which AFSA considered as exemplifying 'good' and 'bad' culture. Participants were asked for their opinion on what principles reflect good culture and insolvency scenarios that are indicative of good culture.

The Personal Insolvency Integrity Principles were developed in consultation with the Australian Restructuring Insolvency and Turnaround Association, the Personal Insolvency Professionals Association, the Association of Independent Insolvency Practitioners, Financial Counselling Australia and ASIC. The Principles were published in June 2020 and set a benchmark for industry best practice.

Example performance measures

Outcomes-focused performance indicator:

- Regulator's interactions with regulated entities and other stakeholders are open, transparent and consistent.

Measured by:

- Number of workshops held with stakeholders, including regulated entities and industry peak bodies on their obligations under legislation.
- Target a specified per cent or more of regulated entities who rate the regulator's approach as 'good' or 'excellent'.
- Annual priority compliance areas developed, published and implemented.

Other elements of the performance framework

Performance reporting under the PGPA Act

The PGPA Act and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) sets out the Government's governance and accountability arrangements for Commonwealth entities.

From 1 July 2021, entities with regulatory functions will no longer be required to produce a standalone performance report under the 2014 Regulator Performance Framework. Instead regulator performance reporting should be incorporated into an entity's reporting processes (with a focus on the corporate plan² and annual report³), as required under the PGPA Act and PGPA Rule.

This change will reduce duplication in regulator performance reporting. It will also support greater transparency and accountability of regulator performance by including this information in a consistent location and in reports subject to the scrutiny of the Parliament and the Auditor General. Further information is available on the [Deregulation Agenda](#) website.

To support entities in reporting on regulator performance, the first year of reporting under these arrangements will be considered a transitional year. Entities may wish to continue existing processes to prepare a Regulator Performance Framework report as a supplement to content in corporate plans and annual reports, for example. It is open to the Accountable Authority for each entity to consider how it could most appropriately account for and report against its performance for this period.

Transition to reporting approach

Entities may use the transitional year commencing 1 July 2021 to settle how to most appropriately embed the Guide in undertaking and reporting on performance for their organisation. Following this:

- For corporate plans prepared for the 2021-22 reporting period, entities with regulatory functions should include performance information in respect to their regulatory functions, with reference to the best practice principles.
- For annual reports prepared for 2021-22 reporting periods, entities should reconcile performance outcomes in their annual performance statements, with reference to the best practice principles.

Ministerial Statements of Expectations and Regulator Statements of Intent

While regulators are often operationally independent of government, this does not mean independent of expectations or guidance about how they fulfil their statutory roles. Commonwealth regulators are typically accountable to the Parliament, Senate Estimates and through ANAO scrutiny. The Executive Government also sets out its guidance through Ministerial Statements of Expectations on the Government's priorities for a regulator, including its performance. These Statements are issued by the responsible Minister to a regulator to provide greater clarity about government policies and objectives relevant

² RMG No. 132: Corporate plans for Commonwealth entities

³ RMG No. 136: Annual reports for non-corporate Commonwealth entities; and RMG 135: Annual Reports for corporate Commonwealth entities

to the regulator in line with its statutory objectives, and the priorities the Minister expects it to observe in conducting its operations.

A regulator responds to a Ministerial Statement of Expectations with a Regulator Statement of Intent that in turn, identifies how the regulator will deliver on the Government's expectations which can be embedded into performance and planning processes. This includes outlining a regulatory approach based on the principles in this Guide.

To maintain their relevancy and effectiveness, Ministerial Statements of Expectations should be updated with every change in Minister, change in regulator leadership, change in Commonwealth policy or every two years.

Both the Ministerial Statement of Expectations and corresponding Regulator Statement of Intent should be available publicly (on the regulator's website and [transparency.gov.au](https://www.transparency.gov.au)) for greater transparency and accountability.

The Department of the Prime Minister and Cabinet will work with Ministers and their portfolio agencies to refresh these statements. Further information is available on the [Deregulation Agenda](#) website.

Ministerial Statements of Expectations and Regulator Statements of Intent

A number of regulators already publish their Ministerial Statement of Expectations (SOE) and corresponding Regulator Statement of Intent (SOI). Recent examples are listed below.

- The Australian Industrial Chemicals Introduction Scheme's [SOE](#) (8 July 2020) and [SOI](#) (22 September 2020).
- The Australian Radiation Protection and Nuclear Safety Agency's [SOE](#) (21 July 2020) and [SOI](#) (22 October 2020).
- The National Offshore Petroleum Safety and Environmental Management Authority's [SOE](#) (October 2019) and [SOI](#) (November 2019).
- The National Offshore Petroleum Titles Administrator's [SOE](#) (October 2019) and [SOI](#) (December 2019).

Review

To ensure that this Guide remains fit for purpose and provides a contemporary reflection of the Government's expectations for regulator performance, this Guide will be reviewed two years from its commencement, and every five years following the initial review.

Resources

Other relevant resources include:

- *Public Governance, Performance and Accountability Act 2013*
- *Public Governance, Performance and Accountability Rule 2014*
- Resource Management Guide No. 131: Developing good performance information
- Resource Management Guide No. 132: Corporate plans for Commonwealth entities
- Resource Management Guide No. 134: Annual performance statements for Commonwealth entities
- Guide to preparing Portfolio Budget Statements