



Australian Government

Department of the Prime Minister and Cabinet

Regulator Performance Guide

July 2021



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Regulator Performance Guide

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Foreword



Regulator performance matters. Effectively administered regulation supports a safe and healthy community and provides a strong setting for business, 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 Australian Government is focused on lifting regulator performance, capability and culture. Improving our regulatory settings will help unleash the potential of Australian business, drive economic and jobs growth and continue to meet the expectations of the Australian community.

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, the Regulator Performance Guide sets out the Government’s expectations for regulator performance. It also provides guidance for reporting against these expectations and the use of Ministerial Statements of Expectations and Regulator Statements of Intent.

The Guide has been developed following extensive consultation with business, regulators and other stakeholders, encompassing lessons learned during COVID-19 and the experiences of regulatory frameworks in other jurisdictions and internationally.

Thank you to those who provided feedback on the Guide, to ensure it provides a strong foundation for meaningful performance reporting that supports improved accountability, transparency and continuous improvement.

This Guide encourages regulators to deliver a more outcomes-focused, principles-based service – one that emphasises a proportional approach to risk, genuine engagement with regulated entities and the broader community, and the importance of maintaining trust and confidence in our regulatory settings.

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

June 2021

Introduction

Regulator practice and performance

As part of its Deregulation Agenda, the Government is shining a spotlight on regulator performance, capability and culture. We recognise that how regulators deliver on their legislated objectives, functions and role can often be as important as the content of the regulations.

In October 2020, the Government established a regulator performance function in the Department of the Prime Minister and Cabinet to work across Commonwealth agencies to increase accountability, promote best practice, build the professionalism of regulators and support cultural change.

The Regulator Performance Guide (the Guide) is a foundational element of the regulator performance program of work, setting out the Government's expectations for regulator performance and reporting via three principles of best practice.

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 manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.
3. **Collaboration and engagement:** regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.

The Guide also outlines the Government's approach to setting performance objectives through Ministerial Statements of Expectations; and the development of Regulator Statements of Intent that set out how regulators will deliver against these objectives.

The Guide provides detail on changes to reporting on regulator performance from 1 July 2021 as a means of streamlining reporting and encouraging greater accountability and transparency. Regulators will no longer be required to produce a standalone performance report – instead, they will report publicly under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) via Corporate Plans and Annual Reports.

The framework established by this Guide is set out in the **Performance Expectations Framework diagram** on page 6.

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

This Guide applies to Commonwealth entities that perform regulatory functions, including both standalone regulators and those located within policy departments, which may not be publicly identifiable as a regulator.²

The performance expectations and reporting arrangements outlined in the Guide apply from 1 July 2021. There is 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.

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

² The application of this Guide is broader than that of the *2014 Regulator Performance Framework*, and supports alignment with the Government's program of work to lift performance, capability and culture across all Commonwealth regulatory functions.

This Guide is supplemented by information on the [Deregulation Agenda](#) website. The website includes frequently asked questions, case studies and user stories of regulator best practice, guidance and examples of performance measures, and guidance on Ministerial Statements of Expectations and Regulator Statements of Intent.

Application of the Guide

This Guide applies to Commonwealth entities that perform a regulatory function. Regulatory functions may include administering (e.g. providing approvals, making operational rules about, handling complaints on), monitoring, 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. They may be located within Commonwealth entities not publicly identifiable in their own right as a regulator, and may also hold responsibility for other, non-regulatory functions. This Guide will use the term ‘regulator’ to refer to identifiable regulators and to entities with regulatory functions.

This Guide does not apply where:

- an entity is only responsible for the setting of policy, standards, the approval of grants or is a tribunal.
- 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.

The Department of the Prime Minister and Cabinet can provide support to Commonwealth entities in considering whether they are undertaking regulatory functions.

How to use the principles

Regulators should demonstrate in their performance reporting how they are meeting the Government’s expectations as set out in this Guide.

Regulation is not a one-size-fits-all activity, and regulatory functions, resourcing and capabilities vary across Commonwealth entities. Regulators should draw on the principles to develop tailored performance monitoring and reporting processes and performance measures in consultation with their stakeholders that are appropriately scaled to their role, regulatory posture, specific legislative objectives, functions, role and environment.

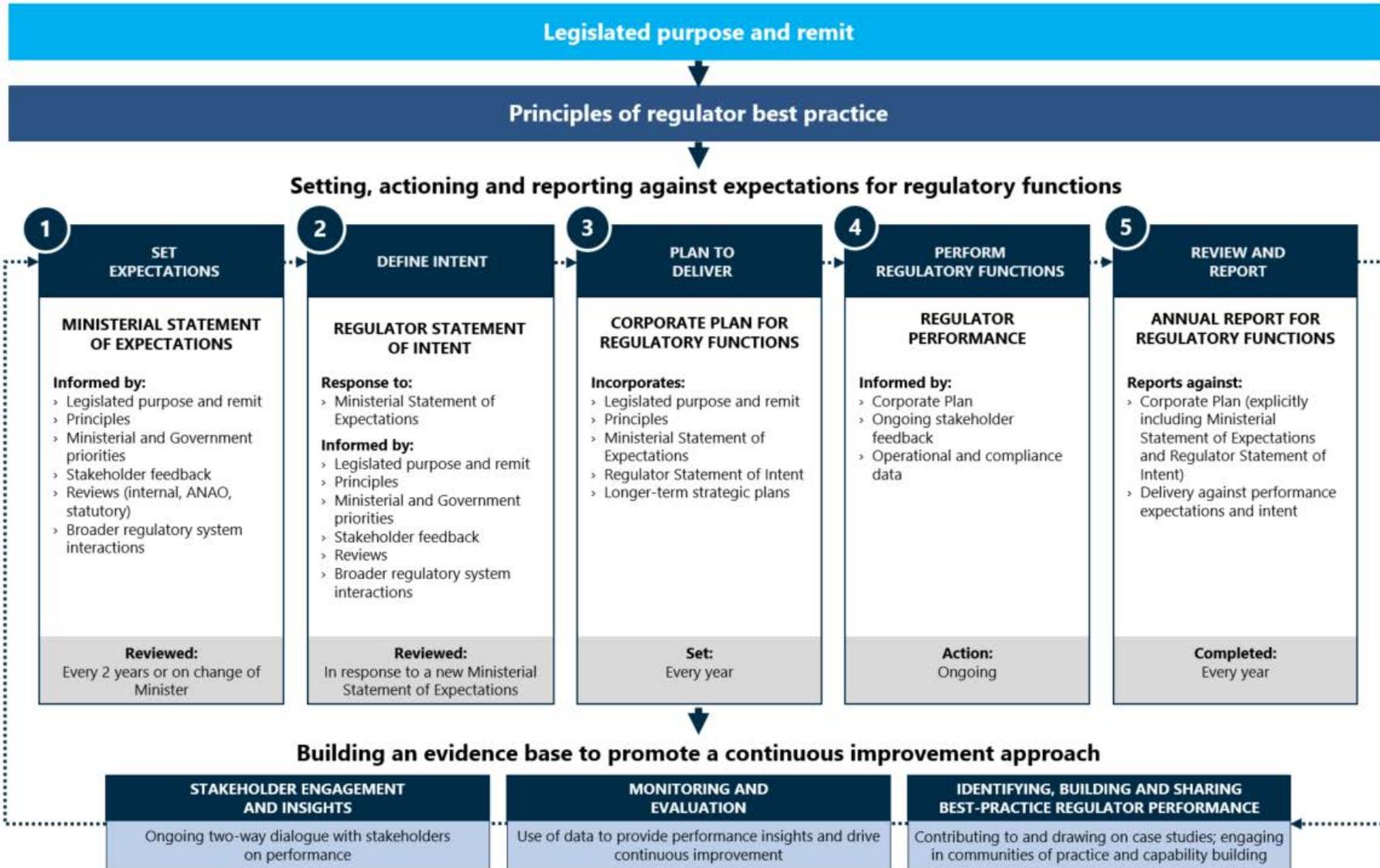
Regulators are encouraged to develop their own performance measures to allow them to report against each principle, but with the flexibility to determine the extent to which the examples of best practice under each principle are relevant to their own performance.

Regulators are encouraged to adopt outcomes focussed 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 if relevant to performance; however, these should be used in combination with outcome indicators to provide a cohesive picture of performance. Where reasonably practicable, a mix of qualitative and quantitative performance measures should be used.

Further guidance on the application of outcomes-focused performance reporting for regulators including examples is available on the [Deregulation Agenda](#) website. In developing performance information, regulators should also refer to the Department of Finance’s Resource Management Guide 131 on [Developing good performance information](#).

PERFORMANCE EXPECTATION FRAMEWORK

Embedding a continuous improvement approach



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 identify and develop organisational values and a positive culture that supports best practice.

Regulators should seek to improve how they exercise their powers and deliver their legislated functions, while remaining flexible and responsive to changing circumstances. Regulators should take into account and respond to community expectations of good regulatory practice to build trust and public confidence in their operations and in Australia's regulatory system.

Regulators should have in place methodologies to understand the costs, impact and outcomes of regulation and collect evidence of this at a system-wide level, using insights to support and drive improved outcomes.

Best practice requires that regulators consider, and aim to improve on, the combined regulatory burden of governments on business and the community. Regulators should take a whole-of-system perspective, building and maintaining collaborative relationships with other regulators to develop a shared understanding of respective roles and responsibilities, and identify gaps and areas of overlap.

In practical terms, a commitment to continuous improvement and building trust means regulators:

- have well-defined, communicated and embedded organisational values and culture that articulate the type of regulator and regulatory posture they seek to adopt—such as through the development of cultural or values statements
- actively build staff capability, including ensuring staff have relevant knowledge of the regulatory craft and the industry they regulate, and have the capacity and are empowered to identify and implement improved practices
- have in place transparent external accountability processes encouraging procedural fairness, accessibility and responsiveness that builds public trust and confidence in the performance of their regulatory functions—such as easy to access and transparent complaints and feedback handling procedures, and, where appropriate, publishing processing times
- hold themselves to account through internal accountability processes that foster a culture of continuous improvement and reflection—such as holding rigorous ex-post reviews of regulatory actions to identify learnings and explore opportunities for improvement, and regular reviews of operating procedures
- 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
- provide clear information about the rationale for compliance costs and actively engage with stakeholders to identify solutions to avoid or reduce unnecessary costs
- seek guidance from the Department of Finance on the application of user charging (cost recovery) arrangements, ensuring these align with the Australian Government Charging Framework (see Resource Management Guide 302 – Australian Government Charging Framework)
- take a broad perspective of the regulatory environment, including conducting environmental scans and considering best practice examples from other jurisdictions and regulatory systems
- identify and minimise duplication, and harmonise activities with other regulators to achieve better regulatory outcomes, including establishing clear operational scopes, sharing intelligence and producing common guidance where appropriate, providing clarity, and reducing the overlapping compliance burden on business and individuals
- actively share learnings and insights by participating in communities of practice, engaging with other regulators and stakeholders to reflect on best practice and lessons learned, including failures.

Case studies and example performance measures highlighting best practice performance in continuous improvement and building trust are published on the [Deregulation Agenda](#) website.

Principle 2: Risk based and data driven

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

The Government expects regulators to weigh the efficiency and cost-effectiveness of their regulatory actions, seeking to impose the least burden on those that are regulated while maintaining essential safeguards.

Best practice regulators take a risk based approach to operational policy development, administration and enforcement activities, and are 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.

Strategic management of risk can also improve efficiency by prioritising resources to the areas of highest risk, and increase compliance by focusing limited resources on the areas of the greatest risk of non-compliance. It can also reduce the overall compliance and cost burden by minimising Government intervention where the risks are relatively low.

Data and digital technology can be leveraged to help regulators better understand and manage risks. This requires building capability and having the right infrastructure to support effective data use and digital literacy. Regulators should also consider opportunities to collaborate with other regulators and across Government agencies to use existing data and digital solutions to minimise regulatory burden and cost.

Regulators should consider where compliance could be streamlined and, where appropriate, consider the business practices of regulated entities, allowing them to adopt innovative approaches to meet their obligations.

Regulators should also continually monitor the environment they operate to ensure regulatory approaches keep pace with changes in technology, industry practices and community expectations, and effect change accordingly.

Adopting a risk based and data driven approach means regulators:

- consider the risks, cost effectiveness and impact of regulatory action, both before and after the regulatory action has commenced
- build staff and organisational data capability and digital literacy, drawing on expertise to support effective use, including regulatory technology (RegTech) solutions
- use intelligence and data, including data points such as enterprise size, to inform a risk based approach to compliance and enforcement
- maintain a compliance and enforcement strategy that articulates the regulator's approach to risk and how this informs decision-making, publishing where appropriate
- actively monitor and plan for risks of market changes and new business models that may have flow-on effects for operations, including those on the edge of, or just outside, a regulator's legal objectives, functions and role
- modify their regulatory approach to encourage voluntary compliance where appropriate and focus compliance and enforcement activity where risks and impact of harm are greatest
- commit to publish the data they hold and share data across regulators where permitted and appropriate
- take into account the cumulative burden of regulations, including the impact on smaller businesses and sole traders, when establishing and implementing processes
- seek to achieve their objectives while ensuring that economic outcomes, such as impacts on competition, innovation and growth, are explicitly considered in implementation
- are receptive to diverse views about implementation of regulation, while ensuring the integrity of the regulatory system.

Case studies and example performance measures highlighting best practice performance in risk based and data driven behaviours are published on the [Deregulation Agenda](#) website.

Principle 3: Collaboration and engagement

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

Best practice regulators are transparent, open and responsive to feedback on how they operate, engaging in genuine two-way dialogue with stakeholders and the broader community on their performance.

Transparency in process supports community trust by demonstrating a regulator's priorities and integrity. Regulators should clearly communicate regulatory processes and be transparent about the decision-making criteria.

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. Best practice regulators have established processes to provide the public with opportunities to provide feedback on operational regulatory design, including co-design of solutions where appropriate.

This Guide does not impose a requirement for regulators to validate performance reporting with stakeholders, as was included under the previous 2014 Regulator Performance Framework. However, the expectation is that this annual requirement is superseded by more regular, meaningful dialogue with relevant stakeholders on the development and reporting of performance measures.

In practical terms, demonstrating collaboration and engagement means regulators:

- engage genuinely and regularly with stakeholders, including regulated entities, other regulators and the community, including on the development of and reporting against meaningful performance measures
- seek out real time stakeholder feedback to inform regulatory decisions, and loop back in a timely way on outcomes
- offer a range of consultation mechanisms to ensure small businesses, sole traders and the wider community are able to easily engage and provide feedback
- establish processes that enable meaningful and timely stakeholder engagement by providing early notification of operational changes
- provide guidance and information that is relevant, clear, concise and easily accessible to help regulated entities understand their obligations and responsibilities to encourage voluntary compliance
- are transparent in their decision-making and, where possible, provide reasons for regulatory decisions or share anonymised compliance or enforcement 'case summaries'
- implement innovative approaches in considering regulatory or policy issues such as 'regulatory sandboxes'.

Case studies and example performance measures highlighting best practice performance in collaboration and engagement are published on the [Deregulation Agenda](#) website.

Other elements of the performance framework

Performance reporting as part of PGPA Act requirements

The PGPA Act and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) set 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 as required under the previous 2014 Regulator Performance Framework. Instead regulator performance reporting should be incorporated into an entity's reporting processes (with a focus on the corporate plan³ and annual report – including annual performance statement⁴), as required under the PGPA Act and PGPA Rule.

This change will support greater transparency and accountability of regulator performance by requiring the inclusion of this information in a consistent location for all regulators, and in reports subject to the scrutiny of the Parliament and the Auditor General. It also reduces duplication in regulator performance reporting. 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 a transitional year. During this time, entities may wish to fully adopt the reporting requirements outlined in this Guide or continue existing processes, for example, to prepare a Regulator Performance Framework report as a supplement to content in corporate plans and annual reports. 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 transitional period prior to the requirements coming into effect.

Transition to reporting approach

Entities may use the transitional year commencing 1 July 2021 to decide how to most appropriately embed the Guide in undertaking and reporting on performance for their organisation. Post the transition year, it is expected that:

- for corporate plans prepared for the 2022-23 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 2022-23 reporting period, 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, including through Senate Estimates and ANAO scrutiny.

The Executive Government will also set out its guidance through Ministerial Statements of Expectations. These Statements are issued by the responsible Minister to a regulator or an entity with regulatory functions, to provide greater clarity about government policies and objectives relevant to the regulator's statutory objectives and how it conducts its operations.

The regulator responds to a Ministerial Statement of Expectations with a Regulator Statement of Intent that, in turn, identifies how it will deliver on the Government's expectations.

Ministerial Statements of Expectations should be issued or refreshed every two years for all Commonwealth entities with regulatory functions, or earlier if there is a change in Minister, change in regulator leadership, or significant change in Commonwealth policy.

³ RMG No. 132: Corporate plans for Commonwealth entities

⁴ RMG No. 136: Annual reports for non-corporate Commonwealth entities; and RMG 135: Annual reports for corporate Commonwealth entities

These Statements should include:

- consideration of the economic and social environment in which the regulator operates, and the Government's policy objectives and priorities, including the Deregulation Agenda
- strategic direction (to the extent allowed by legislation) on the conduct of the regulator, its role, and how the regulator should engage with business, the community, other regulators and policy agencies including the states and territories
- the expectation that regulators act in accordance with best practice, embedding the Government's principles of regulator best practice currently being developed, and striving for continuous improvement against these principles
- how the responsible Minister proposes to engage with the regulator, including undertakings on how the Minister will help provide an enabling environment for the regulator to consistently implement best practice
- a request that the regulator responds via a Regulator Statement of Intent, outlining how it will deliver on the Minister's expectations.

As best practice, Ministers should work closely with their Secretaries and heads of Regulators in developing these Statements as part of an ongoing productive and close partnership.

Regulators should integrate these Statements into performance reporting as required under the PGPA Act and as part of a corporate plan and/or annual report. These Statements should be made publicly available on regulator websites and on transparency.gov.au as part of a corporate plan and/or annual report.

The Department of the Prime Minister and Cabinet will monitor the publication of these statements, and link to statements on the [Deregulation Agenda](https://www.deregulation.gov.au) website.

The Department of the Prime Minister and Cabinet is working with agencies and Ministers to support the issuing or refreshing of these Statements. Further information is available on the [Deregulation Agenda](https://www.deregulation.gov.au) website.

Accountability and supplementary initiatives

The Guide is supplemented by other initiatives under the regulator performance program of work that support regulators to embed best practice and demonstrate performance that meets the Government's expectations.

- **Benchmarking:** Accountability and transparency are core elements supporting regulator best practice. Benchmarking regulator performance through an independent survey of business and the community – to be piloted in late 2021 – will offer a stakeholder perspective on how regulators are performing against the best practice principles, using a set of common questions. The pilot's success will inform development of an annual survey. PM&C will work closely with stakeholders in designing and developing a robust survey that will support regulator performance.
- **Leadership and culture:** Commonwealth Secretaries are already asked to report every six months to the Secretaries Board on their actions to improve implementation of regulatory settings. In addition, the new [Regulator Leadership Cohort](#) provides Commonwealth Secretaries with a regulators' perspective on the program of work to lift regulator performance, capability and culture. The Cohort comprises heads of regulators and senior department leaders responsible for significant regulatory functions. Cohort members bring expertise and ideas to help address roadblocks, and drive recommended actions and the cultural change required to support best practice performance.
- **Capability:** Working with the Australian Public Service Commission and the Department of Agriculture, Water and the Environment to deliver the Regulator Training Pilot. The Pilot, announced in the 2020-21 Budget, is designed to lift the capability and performance of agricultural export regulators, and will also lay a foundation for upskilling and professionalisation of other APS regulators and help drive cultural change.
- **Showcasing and sharing existing best practice:** Developing a library of practical case studies and reference material on the [Deregulation Agenda](#) website to share best practice against the Regulator Performance Guide; and supporting agencies to establish regulator communities of practice to share lessons learned and collectively solve problems.

Further detail and updates on the regulator performance work program can be found on the [Deregulation Agenda](#) website.

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
- Resource Management Guide No. 302: Australian Government Charging Framework
- Guide to preparing Portfolio Budget Statements