



Australian Government
Department of Home Affairs

Regulator Performance Framework: External Review Panel Report

June 2018

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Executive Summary

This paper discusses the findings made by the external review panel (the panel) commissioned to examine the implementation and ongoing administration of the Australian Government's Regulator Performance Framework (RPF) within the former Department of Immigration and Border Protection (the Department)¹ since the commencement of the RPF on 1 July 2015.

The report has been authored by the panel, with the Department providing secretariat services and coordinating responses to the recommendations.

The panel was asked to review and assess the Department's adherence to the requirements of the RPF across the following five domains:

1. Implementation of the RPF
2. Selection and use of external stakeholder groups
3. Development and publication of evidence metrics
4. Development and publication of self-assessment reports
5. Ongoing administration of the RPF across the Department

Overall, the panel found that the Department was generally compliant with the Government's requirements across all areas reviewed. The panel also identified a number of areas for improvement, including:

- revising the coverage of the RPF within the Department, particularly given the establishment of the Home Affairs portfolio
- strengthening the link between evidence metrics and the self-assessment reports
- enhancing engagement with internal and external stakeholders
- developing internal best-practice capabilities.

The panel provided several recommendations to the Department based on their findings. These recommendations seek to further enhance the role of the RPF within the Department by improving internal stakeholder knowledge and engagement, increasing external stakeholder involvement and ensuring overall transparency. Implementing these recommendations will increase internal and external stakeholder confidence in the Department's capability to self-assess their regulatory performance under the RPF in the future. The panel agreed to including the Department's responses to these recommendations in this report.

Recommendations

Recommendation 1 – The panel recommends that the Department clarify the definition of 'regulatory activity' for the purposes of the RPF, and stemming from this, undertake a review of the coverage of the RPF within the Department to ensure appropriate capture of regulatory functions. The panel recommends that the Department support this review with internal guidance material that clearly articulates the intent of the RPF.

Recommendation 2 – The panel recommends that, following on from Recommendation 1, the Department scope broader engagement opportunities with external stakeholders to ensure adequate representation of the regulated community through the RPF.

Recommendation 3 – The panel recommends that the Department review the evidence metrics, in consultation with industry, to ensure that they provide a clear measure of performance and reflect the expectations of the regulated community.

Recommendation 4 – The panel recommends that the Department develop clear business processes for developing the self-assessment content, including clear rules to support their self-assessment rating scale.

¹ The Department of Home Affairs was formally stood up on 20 December 2017, effectively replacing the Department of Immigration and Border Protection. For ease of reading, this report uses the phrase "the Department" interchangeably when referring to the former Department of Immigration and Border Protection and current Department of Home Affairs.

The panel further recommends that external stakeholder bodies be invited to use this rating scale during the RPF validation process for the purposes of comparison.

Recommendation 5 – The panel recommends that the Department enhance its administration of the RPF—internally, by identifying and promoting training opportunities and related forums to develop best-practice regulatory capabilities—and externally, by utilising existing major industry forums, such as the Department’s annual Industry Summit to raise external awareness of the RPF.

Background

The Australian Government established the RPF as part of the Deregulation Agenda, led by the Department of Jobs and Small Business. The RPF applies to all Commonwealth entities and functions that have a statutory responsibility to administer, monitor or enforce regulation. The RPF is a means for Commonwealth regulators to evaluate, in partnership with key external stakeholder groups, their overall regulatory performance in the form of a published annual self-assessment report.

In accordance with the RPF, and in consultation with industry stakeholders, Government regulators are required to develop evidence metrics to measure their performance against six mandatory Key Performance Indicators (KPIs). Regulators are required to publish an annual self-assessment against these KPIs within six months of the end of each financial year.

Regulators are also required to undertake an external review of the processes used to develop a regulator’s annual self-assessment. The external review provides the opportunity for an independent critical evaluation of the regulator’s capacity to identify and measure its performance as a regulator. The external review is conducted by a panel of representatives comprising a comparable regulator, a member of the regulated community and a portfolio representative.

The Department convened a panel on 27 November 2017 to undertake this external review. The panel consisted of the following members:

- Andrew Johnson, Portfolio Coordination, Department of Infrastructure, Regional Development and Cities (representing a ‘like regulator’)
- Ben Somerville, National Committee on Trade Facilitation and Regulatory Reform Working Group member (representing the regulated community)
- Chloe Bird, Immigration and Citizenship Policy, Department of Home Affairs (representing the portfolio).

Methodology

The panel reviewed activities undertaken by the Department from the implementation of the RPF on 1 July 2015 to the commencement of the review.

The panel was given access to information that demonstrated the types of activities the Department had conducted to comply with the RPF requirements and the outcomes achieved across the following five domains:

1. Implementation of the RPF
2. Selection and use of external stakeholder groups
3. Development and publication of evidence metrics
4. Development and publication of self-assessment reports
5. Ongoing administration of the RPF across the Department

Materials provided to the panel included official briefings, records of ministerial engagement, emails and advice to internal stakeholders, evidence of engagement with external stakeholders, fact sheets, templates, self-assessments undertaken by business areas, and intranet and internet content published in relation to the RPF.

Review findings

1. Implementation of the Regulator Performance Framework

The panel considered whether departmental functions captured under the scope of the RPF were adequately defined and communicated to internal stakeholders.

Scope

The panel notes that the Department undertook a scoping exercise to determine which departmental functions should be captured by the RPF. The panel notes that this scoping exercise did not include a clear definition of what constituted a 'regulatory activity' for the purposes of the RPF. As a result, it is unclear if all areas now captured by the RPF are in line with the Government's expectations on what should be reported through this process.

The panel suggests that creating a clear definition of 'regulatory activity' for the purposes of the RPF would enable the Department to better identify and articulate what is within scope. The Department could then use this definition to underpin a review of the coverage of the RPF within the Department to ensure that regulatory activities identified as covered under the RPF are aligned with the Government's policy intent.

The panel also notes that the stand-up of the Department of Home Affairs has introduced new regulatory activities into the Home Affairs Portfolio. Accordingly, the panel suggests that the above re-scoping exercise include consideration of the Department's new responsibilities to ensure appropriate regulatory activities are captured in any revised evidence metrics and future self-assessments. The panel suggests that the Department engage with the Department of Jobs and Small Business on this matter to ensure that any re-scoping of the RPF by the Department remain true to the intent of the RPF.

The panel suggests that the Department support these activities through an internal communications campaign to ensure business areas have a clear understanding of the value of the RPF to the Department and external stakeholders, the coverage of the RPF within the Department and the role of business areas in the development of evidence metrics and self-assessments.

Recommendation 1

The panel recommends that the Department clarify the definition of 'regulatory activity' for the purposes of the RPF, and stemming from this, undertake a review of the coverage of the RPF within the Department to ensure appropriate capture of regulatory functions. The panel recommends that the Department support this review with internal guidance material that clearly articulates the intent and coverage of the RPF.

The Department's Response

The Department agrees with the panel's recommendations.

The Department is currently working with business areas that have recently moved into the new Home Affairs Portfolio to gain an understanding of their regulatory functions. The Department will use this information as part of a larger review into the scope and application of the RPF, and will consult with the Department of Jobs and Small Businesses as part of this process.

2. External stakeholder groups

The panel considered whether the Department's selection of external stakeholder groups was appropriate and whether the Department used those stakeholder groups effectively in the development of the evidence metrics and validating the self-assessment reports.

The panel notes that engagement with stakeholder groups is a vital tool in measuring regulatory performance as it provides an external perspective from the view of the regulated entities and ensures transparency in the self-assessment process.

The panel also acknowledges the significant challenges and opportunities for external stakeholder participation and engagement in the RPF as a result of the establishment of the Department of Home Affairs. In particular, developing clear lines of communication and relationships with regulated entities is vital in times of change.

The panel considers that the Department's engagement with external stakeholders has been relatively effective to date. The panel notes that the Department consults with two external industry stakeholder groups for the purposes of validating the RPF: the National Committee on Trade Facilitation (NCTF) and the Ministerial Advisory Council on Skilled Migration (MACSM).

The panel views the selection of the NCTF as appropriate for consulting with industry on trade and customs matters covered by the RPF, given their broad remit for representing trade and customs regulated entities and peak bodies.

The panel views the selection of MACSM as appropriate for consulting with Australian businesses on matters relating to skilled-migration activities. However, the panel finds that MACSM may not sufficiently represent the broader immigration and citizenship functions currently in scope of the RPF to enable verification of the Department's regulatory performance in these areas (for example, education providers with reporting responsibilities affecting Student visa holders).

Following review of the coverage of the RPF (see Recommendation 1), the panel suggests that the Department review the selection of stakeholder groups for the RPF to ensure that the selected bodies provide adequate coverage of the Department's identified regulatory functions. The panel also suggests that the Department could benefit from a more pro-active approach to working with industry representatives on the RPF (discussed in sections 3, 4 and 5).

Recommendation 2

The panel recommends that following on from Recommendation 1, the Department scope broader engagement opportunities with external stakeholders to ensure adequate representation of the regulated community through the RPF.

The Department's Response

The Department agrees with the panel's recommendation.

The Department will review the selection of, and engagement with, regulated stakeholders as part of the larger review into the scope and application of the RPF.

3. Evidence metrics

The panel considered the suitability of the approach used by the Department to develop evidence metrics under the RPF and whether the resulting evidence metrics were effective in measuring performance against the KPIs.

Approach and effectiveness

The panel notes that the Department had appropriate processes in place to develop evidence metrics.

On review of the evidence metrics, the panel notes that the relevance of some of the current measures is unclear as they do not provide a strong linkage between evidence and performance against the KPIs.

The panel notes that the Department could enhance the processes used to develop the metrics by increasing engagement with internal business areas to better align metrics with the intended outcomes of programs and policies. This approach would improve the effectiveness of the evidence metrics as tools for reporting on the performance of the Department against the KPIs and RPF outcomes.

In addition, the panel suggests that the metrics should:

- be clear, and easy to understand
- be clearly linked to the corresponding KPI
- be supported by pre-existing data sources (where available).

Emphasising these elements will help ensure that both internal and external stakeholders are able to clearly understand the relationship between what the RPF is measuring and why.

External stakeholder engagement

The panel notes that while industry engagement has been effective to date, more comprehensive involvement by industry in the development of the evidence metrics and validation of the self-assessments will strengthen the value of the RPF to both industry and Government.

The panel suggests that a more collaborative approach—such as through workshops—would bring together policy, program and industry representatives to develop meaningful and appropriate evidence metrics. This process would encourage the development of metrics that best reflect the Department's performance against the RPF from an industry perspective and promote greater industry 'buy-in' into the RPF process. This process may also improve the efficiency of the RPF by ensuring clear, shared understanding of what is being reported on and why, benefiting both departmental business areas and industry stakeholders.

Recommendation 3

The panel recommends that the Department review the evidence metrics, in consultation with industry, to ensure that they provide a clear measure of performance and reflect the expectations of the regulated community.

The Department's Response

The Department agrees with the panel's recommendation.

The Department will review the current evidence metrics as part of the larger review into the scope and application of the RPF. This will include consultation with internal business areas and industry stakeholders to ensure metrics are developed collaboratively and are able to support a comprehensive assessment of regulatory performance.

4. Self-assessments

The panel considered whether the Department established the right tools and processes to gather data for the self-assessments and whether the resulting self-assessments contained appropriate information.

Information gathering and ratings

The panel notes that while the Department provided comprehensive self-assessment reports, there is a disconnect between the Department's evidence metrics, the information that was provided by business areas during the self-assessment process and the contents of the final report. This suggests a failure at some point in the self-assessment reporting process that could have resulted in additional work for the team developing the report.

The panel notes that the Department used two separate rating scales for the 2016–17 reporting process: a traffic-light system used for internal reporting (supported by the panel) and a Leichardt scale² used in the final self-assessment report. The link between these systems was unclear, as was the link between the rating systems and the narrative provided in the final report. The panel suggests that the Department clarify the business rules used to link evidence to outcome and rating and communicate this information to stakeholders to ensure transparency in the self-assessment reporting process.

Role of external stakeholder mechanisms

The panel suggests that the Department invite the external stakeholder groups to apply their own rating of regulator performance against each area assessed under the RPF. This would enable a comparison between the Department's views on its own performance and the views held by industry on how the Department performed as a regulator.

Recommendation 4

The panel recommends that the Department develop clear business processes for developing the self-assessment content, including clear rules to support their self-assessment rating scale. The panel further recommends that external stakeholder bodies be invited to use this rating scale during the RPF validation process for the purposes of comparison.

The Department's Response

The Department agrees with the panel's recommendations.

The Department acknowledges that a consistent approach to rating the Department's performance will provide value by ensuring a consistent standard of assessment. The Department will utilise the findings of the review into the scope and application of the RPF to develop an appropriate rating system to achieve this outcome.

² The Leichardt scale used by the Department for the 2016-17 self-assessment report contained five ratings: Very Effective, Effective, Work in Progress, Ineffective, and Absent. Business areas could also choose 'Not Applicable' where appropriate.

5. Ongoing administration

The panel considered the effectiveness of the ongoing administration of the RPF within the Department, including internal reviews and improvements and ongoing engagement with internal stakeholders.

The panel is satisfied that the Department administered the RPF appropriately.

In line with earlier findings, the panel suggests that the Department revise and improve the support material provided to business areas (including templates and guidance notes) to ensure a clear understanding of the scope of the RPF, the role of evidence metrics and the importance of robust data to underpin the self-assessment ratings. These activities will improve internal engagement, leading to more accurate data and reporting against the RPF.

The panel also suggests that the Department identify training opportunities and other forums for internal stakeholders subject to the RPF to further develop capacity and expertise in best practice regulation.

For external stakeholders in the regulated communities, the Department should consider the opportunities presented by existing major industry forums, such as the Department's Industry Summit, as a way to engage further on the RPF and ensure it becomes entrenched as an important and robust tool in the eyes of industry partners.

Recommendation 5

The panel recommends that the Department enhance its administration of the RPF—internally, by identifying and promoting training opportunities and related forums to develop best-practice regulatory capabilities—and externally, by utilising existing major industry forums, such as the Department's annual Industry Summit to raise external awareness of the RPF.

The Department's Response

The Department agrees with the panel's recommendations.

The Department will examine opportunities for awareness raising and capability development for staff with regulatory responsibilities. The Department will also examine the value and appropriateness of utilising existing major industry forums to improve the visibility and positive messaging of the RPF process.