



Reviewing Performance

A key purpose of the Regulator Performance Framework is to increase the transparency and accountability of Commonwealth regulators. The primary mechanism to achieve this is the review and reporting mechanism outlined in the Framework. A tiered review process has been adopted to tailor the assessment and monitoring of regulator performance against the Framework to the risk, size and operating environment of individual regulators.

How does self-assessment work?

The Framework does not prescribe an approach for how self-assessments should be conducted, outside of the specific requirements that they be conducted annually, externally validated through an approved stakeholder consultation mechanism and made publicly available. This ensures maximum flexibility for assessments to be tailored to the size and responsibilities of the regulator. Whilst there is flexibility in applying the self-assessment process across regulators, Deregulation Units and regulators should consider whether consistency across regulators in the same portfolio or operating in the same market is desirable or appropriate for comparative purposes. If a regulator has been subject to a recent external review process, this should be covered in the self-assessment report.

If the option to commission external reviews of a small number of major regulators annually is exercised, the regulators subject to annual external review will still be required to undertake an annual self-assessment of performance. This will provide a useful comparison between how the regulator assesses its own performance against how the regulator is assessed externally. However, in these circumstances self-assessments will not require external validation.

What does external validation involve?

Regulators must have the results of their self-assessment externally validated. The Ministerial Advisory Council in their portfolio is the default body for providing this external validation. Where a MAC is determined not to be the most appropriate body to externally validate regulators' self-assessment methodology and results, an alternative stakeholder consultation mechanism may be approved by the responsible Minister. This could be an existing stakeholder committee, or reference group, or one that is specifically established for this role.



For the purposes of the Framework, external validation provides an avenue for stakeholders to provide feedback on whether the self-assessment results accord with their views of the regulator's performance against the Key Performance Indicators (KPIs) over the assessment period.

It is not intended that external validation would involve an audit of the regulator's self-assessment approach or results. The purpose of validation by the MAC or other approved stakeholder consultation mechanism is to be a sounding board for the regulator's self-assessment results prior to them being considered by the responsible Minister. If a MAC disagrees with some or all of the regulator's self-assessment results, this does not prevent the report from being submitted to the responsible Minister. However, the view of the MAC or other stakeholder consultation mechanism must be submitted to the responsible Minister with the self-assessment.

What are external reviews?

External reviews of regulator performance against the Framework will be conducted to confirm the validity of, and provide external accountability to, regulator self-assessments. It is expected that external reviews would be undertaken concurrently with the self-assessment process. A selection of regulators will be subject to a targeted external review over a three year cycle. This will be complemented by an option for the Government to commission external reviews of a small number of major regulators on an annual basis.

Review panels

The composition of review panels is detailed in the Framework. Deregulation Units will be responsible for determining if more than one review panel is required to undertake the programme of external reviews of selected regulators within their portfolio. This will largely depend on the number of reviews to be undertaken, and the breadth of functions to be assessed. It is also a matter for Deregulation Units to determine composition and remuneration, if any, and the expected length of a review, which may vary according to the size of the regulator or the activity to be assessed.

Who selects regulators for a portfolio's programme of external reviews?

Deregulation Units, in consultation with PM&C, will develop a programme of targeted external reviews of selected regulators within their portfolio. At a minimum, the first year of this programme of targeted external reviews must be agreed between the responsible Minister and the Prime Minister by 31 December 2015. Sufficient approval time needs to be incorporated for portfolios to seek approval from their responsible Minister prior to seeking agreement with the Prime Minister.

Targeted external reviews of regulator performance need to take account of the circumstances and type of risk that a particular regulator is seeking to manage, and the extent to which that regulator has been subject to recent external review processes. If a regulator is the subject of an Australian National Audit Office (ANAO) performance audit, or other external evaluation of its performance in

the relevant reporting period, a targeted external review under the Framework may not be considered necessary if the objectives and scope of the audit/evaluation sufficiently cover the performance measures in the Framework. Considerations that could be taken into account when selecting regulators for a targeted external review are outlined in Box 1.

Box 1 – Considerations for Selecting Regulators for Programme of External Review

- > industry risk;
- > current government priorities;
- > nomination by MACs or the responsible Minister;
- > history of complaints about how the regulator operates;
- > the regulator was recently subject to an external review outside of this Framework that sufficiently assessed the performance measures in the Framework; or
- > the regulator's previous performance against the Framework and/or other performance requirements.

The regulators selected for targeted external review over a three year cycle can be adjusted by the responsible Minister at any time. However, any substantive change to the programme would also require the agreement of the Prime Minister. In amending the list of regulators to be selected for external review, the criteria outlined above should also be considered. Planning associated with determining the selection of regulators to be subject to a targeted external review can be done on an annual or full cycle basis.

How and when are annual external reviews decided?

PM&C, in consultation with Deregulation Units, will be responsible for coordinating the selection of regulators to be subject to an annual external review where the Government exercises this option. When selecting regulators, factors such as the cost of regulatory burden, size of the regulated community and industry, value to the economy, and annual budget/revenue may be considered. The decision to commission an annual external review may be informed by the results of annual self-assessments and external reviews of regulators, particularly where issues identified for resolution have not been addressed during subsequent review periods. The Parliamentary Secretary to the Prime Minister will consult with the responsible Ministers prior to a final recommendation to commission an annual external review of a regulator being made to the Prime Minister.

It is anticipated that, if exercised, the use of the annual external review process would select a small number of major regulators. However, the commissioning of an annual external review for smaller regulators that consistently under-perform, or where there are genuine concerns about the performance of any regulator is not precluded. This may be relevant where a smaller regulator impacts a wide range of stakeholders, or those whose regulatory impact is high on a particular sector such as small business.

Annual review decisions will generally be made by March each year to inform planning for the next assessment period.

How are the results of performance reported?

The Framework is not prescriptive about how or where to publicly report the results of self-assessment and external review of regulator performance. This flexibility has been adopted to allow regulators and portfolios to determine appropriate reporting mechanisms in the context of their larger performance and other statutory reporting requirements. The use of existing reporting mechanisms and timelines, and integration with broader performance reporting is encouraged to provide a comprehensive assessment of the regulator's performance. For example, regulators that are non-corporate Commonwealth entities under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) may choose to report their performance against the Framework as part of their annual performance statement or report.

If an integrated report is preferred, information about the regulator's performance against the Framework needs to be clearly identifiable and easily accessible for stakeholders.

Reports of regulator performance against the Framework must be certified by the regulator's Accountable Authority under the PGPA Act (or equivalent) and provided to the responsible Minister. These reports should be made publicly available as soon as possible following the end of the relevant assessment period, and preferably no later than each December. This timeline should accommodate the individual circumstances of regulators and integrated performance reporting, where appropriate or preferred.

How do external reviews affect regulators working with national security or other operational sensitivities?

A small number of regulators may have concerns about making information about their performance against the Framework publicly available due to risks to national security or the achievement of their regulatory objectives. In these circumstances, the regulator and portfolio department should seek the agreement of the responsible Minister as to how and where to publish reports about the regulator's performance against the Framework. If there is a risk to achievement of regulatory objectives, or national security, the relevant Minister could agree to a limited or no consultation in certain circumstances. This should be consistent with any decisions made about broader performance reporting for the regulator.

What are the timelines for external review?

Table 1 summarises the implementation timeline.

Table 1 – Implementation Timeline		
Date	Responsibility	Action
By 1 July 2015	Regulators	Develop performance metrics to assess performance
	Minister	Agree (if required) alternative stakeholder mechanism to validate the results of self-assessments
	Minister	Agree performance metrics developed by regulators
1 July 2015	Regulators	Annual self-assessment period commences
By 31 December 2015	Deregulation Units	Select regulators for programme of external reviews, in consultation with PM&C
	Minister	Agree a programme of external reviews of selected regulators over a three year period with the Prime Minister
From 1 January 2016	Deregulation Units	Appoint review panels, as required
30 June 2016	Regulators	Annual self-assessment period concludes
By 31 December 2016	MACs or alternative stakeholder mechanism	Report on results and findings of self-assessment externally validated
	Accountable Authority	Externally validated report is certified and provided to responsible Minister
	Regulators	Publish self-assessment report, including evidence metrics
	Prime Minister	If required, agree annual review of major regulators