



Australian Government

Department of the Environment and Energy

# **Regulator performance: self-assessment report, 2018–19**

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# Introduction

## Regulatory roles administered by the Department

The Department of Environment and Energy and our portfolio agencies administer, on behalf of the Ministers, 65 pieces of legislation that provide the legal framework to manage environment and heritage protection, biodiversity conservation, Antarctica, climate change, renewable energy, and energy markets. These Acts may be administered by a single division, across two or more divisions, and in some instances across several agencies or portfolios depending on complexity and scope. Further information on this [legislation](#) is on the Department's website.

Self-assessments of the regulatory performance of the Clean Energy Regulator, Great Barrier Reef Marine Park Authority and the Sydney Harbour Federation Trust are reported separately and are published by respective agencies on their websites.

## Progressing best-practice policy and regulation

The Department has developed the [Regulator Evaluation Framework](#) which provides additional and complementary key performance indicators to those set out in the Australian Government's Regulator Performance Framework to support a more comprehensive assessment of the Department's regulatory performance. Internally, the Outcomes and Indicators provide an evaluation framework which can be applied across all levels of business reporting, providing an enterprise view of areas of good practice and areas for ongoing focus. Externally, they will provide a new level of accountability to industry and the community through a consistent measurement of the Department's performance.

The Department's first independent survey of regulated entities and staff on our regulatory practices was finalised in early 2019. The study highlights that overall the Department is performing well as a regulator and has provided useful feedback to identify areas to focus on improving across all six Outcomes of the Regulator Evaluation Framework. Focus areas are included in this current report to present the baseline established by the 2019 study. Each Outcome includes a net performance rating calculated by subtracting the total negative responses from the total positive responses to all questions posed for each Outcome. This provides an indexed average to derive a value between 0 and 100.

The 2019 study is published in detail in the Department's previous [Performance Regulator Self-assessment for the 2017–18 reporting period](#).

This report highlights the breadth of initiatives the Department employs at all levels of our work to ensure our performance as a regulator meets contemporary needs and expectations while maintaining a sustainable environment to support a prosperous economy.

While regulatory efficiencies broadly point to examples that reduce regulatory burden and increase productivity for business, efficiencies can also be gained by indirect support through improvements to internal systems, processes and capabilities. This includes maximising inter-agency collaboration as well as improvements in data collection and use that reduces costs or administration for stakeholders.

# Initiatives to improve regulatory performance aligned with the Regulator Evaluation Framework

## **Outcome 1. Regulated entities have the support they need to understand and comply with their regulatory obligations**

- Information and guidance materials produced by the Department about regulatory obligations are clearly written, accurate, readily available and timely to assist regulated entities to meet their regulatory obligations.
- Decisions are clearly communicated to regulated entities.
- We work with industry bodies, NGOs, consultants, professional bodies and policy bodies to support regulated entities to understand and comply with their regulatory obligations.

2019 Survey Outcome score = 68

The primary focus for this Outcome is providing stakeholders with the support needed to understand and comply with obligations, particularly explaining the reason for decisions, along with timeliness of information and guidance materials.

The Department is exploring and testing new ways to improve timeliness and accessibility of information to assist regulated entities to understand and comply with their regulatory obligations. We are also looking at ways to better engage including through the use of social media and 'how to' videos on Youtube.

### **GEMS information and guidance**

Greenhouse and Energy Minimum Standards (GEMS) set up a dedicated YouTube channel and regularly uploads new videos to explain registration requirements, regulation changes and updates in a way that is simple and clear. The channel complements the other communications tools used and has garnered positive feedback from stakeholders.

The Department also surveys GEMS stakeholders to gauge the overall level of satisfaction with the GEMS product registration and compliance process. During 2018–19, 83 per cent of respondents were satisfied with the registration service. In addition, 92 per cent agreed registrations were processed in a timely manner and 90 per cent indicated that enquiries were handled in a professional manner. The results show continued high levels of satisfaction over the four years the survey has been undertaken.

### **Office of Compliance**

The Department established the Office of Compliance to centralise the right mix of tools to deliver priority compliance outcomes and proactively respond to emerging compliance risks. The Office works within the Department's Regulatory Framework to deliver risk-based

intelligence-led compliance activities and ensure that our regulatory decisions are consistent and transparent.

The Office publishes a suite of documents to assist regulated entities to understand and comply with regulatory obligations. Our Compliance Framework sets out the core elements of the Department's approach to improving compliance with national environmental law. Our Compliance Policy supports the Department's Regulatory Framework and outlines how we respond to potential contraventions of our laws. It sits within the context of broader Australian Government law enforcement policies.

Our Annual Compliance Plan 2018–19 sets out the priority compliance outcomes for the Department to be delivered through the Office of Compliance in 2018–19 to inform stakeholders about our compliance priorities.

The Office of Compliance Outcomes Report for 2018–19 informs stakeholders of the high-level results of our activities to deliver compliance priorities and the effectiveness of our regulatory responses.

These documents are available on the Department's [Compliance](#) web page.

### **Supporting landowners engaging with national environmental law**

Following changes to New South Wales native vegetation laws in 2017, the Office of Compliance has been working with the New South Wales Local Land Services to ensure landholders are aware of Commonwealth requirements. Our approach to support compliance is focused on helping landowners know and understand their obligations. We held workshops at four NSW regions during 2018–19 (North, West, North Coast and Hunter).

As a result, in 2018–19 the Office of Compliance received 37 enquiries from the agricultural sector in NSW regarding agricultural development and the EPBC Act obligations. From those, four resulted in valid referrals for assessment of actions associated with agriculture, forestry and/or irrigation.

This program of engagement has provided more clarity for landowners about how the EPBC Act applies to new agricultural development.

## Outcome 2. Stakeholders view us as a trusted and respected regulator

- Stakeholders have a clear understanding of our approach to regulation.
- Stakeholders are satisfied that we act consistently.
- Regulated entities feel they are treated fairly and are respected.
- Stakeholders value the opportunities for consultation.

2019 Survey Outcome score = 81

Priority areas for focus are providing consistent information and advice, treating stakeholders fairly, and valuing stakeholder consultation.

The Department maintains ongoing consultation arrangements with the community, business and peak bodies, in relation to all regulation it administers to ensure all voices are encouraged and supported to contribute on matters that may affect them.

### Ensuring legislation is fit for purpose

The Climate Change Authority completed its inaugural review of the *National Greenhouse and Energy Reporting Act 2007* and its subordinate legislation in 2018–19. Public consultation for the review concluded that the legislation is operating well, is meeting its objectives and is generally fit for purpose. The Authority noted the reporting scheme has wide support from industry, governments and others who use the information reported. It also noted the Safeguard Mechanism is working as intended as all facilities covered by it have kept their net emissions at or below their emissions limits.

### EPBC Review

The Independent Reviewer, Professor Graeme Samuel AC, has released a discussion paper to initiate extensive industry and community consultation opportunities for the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) review. The discussion paper explores potential areas of focus and options for reform by identifying some of the long-term pressures on Australia's environment and heritage, along with known concerns with the operation of the legislation, especially with its regulatory processes.

### Supporting compliance with the EPBC Act

The Department offers pre-referral meetings between proponents and departmental assessment officers prior to submission of a referral under the EPBC Act. Pre-referral meetings support entities to comply with the EPBC Act by improving engagement with and understanding of the Act.

### Opportunities for consultation

Additional opportunities for stakeholders include consulting with tourism stakeholders with an interest in the Department's administration of the Antarctic regulatory framework and regular contact with industry bodies and stakeholders to support the development and implementation of the Product Emissions Standards legislation.

## **Outcome 3. Our regulatory activity is consistent, risk and evidence based, and makes effective use of a range of regulatory tools**

- Development of new regulatory approaches considers efforts to coordinate and integrate regulatory approaches.
- Existing mechanisms or processes are used where possible to coordinate and integrate regulatory approaches.
- References to evidence base in decision making.
- Methods and practices ensure consistent application of regulation.
- Compliance effort and resources are focused on high-risk behaviours and attitudes.
- Information is shared with similar domestic and international regulators, where appropriate.

2019 Survey Outcome score = 58

The primary focus for this Outcome is to improve stakeholder understanding of compliance and enforcement actions being proportional to the level of potential risk.

The Department's investment in establishing an Economics and Analysis Branch and appointing a Chief Economist is bringing a new level of rigour to the evidence-base available to support policy, program and regulatory functions. The expertise provided by in-house economic modelling and analytics, complimented by insights from behavioural analysis into what motivates people, strengthens both the quality of our advice and also capacity for consultation and collaboration.

### **Mandatory Petroleum Reporting review**

New levels of reporting under the Mandatory Petroleum Reporting scheme provide more comprehensive, quality data on all petroleum activities, supporting industry to better monitor trends, evaluate market performance and prioritise investment. Additionally, a review of the scheme has improved relations with industry through better understanding operating environments and looking for efficiencies in reporting processes. The Department has also established data sharing arrangements with other government agencies reducing duplicative reporting for some companies.

### **NEAR program**

Planning for Australia's energy future requires better understanding of new technologies and consumers' energy use. The National Energy Analytics Research (NEAR) Program applies cutting-edge data science to energy markets by working with previously inaccessible or fragmented datasets and linking these data in new ways. These new data techniques will be critical in developing efficient and effective policy in the energy sector, while also improving market security, reliability, affordability and efficiency through improved energy demand forecasting.

### **Using behavioural insights to trial new approaches**

In partnership with an energy retailer, the Behavioural Analysis team ran a trial to improve our understanding of what motivates people to take up carbon neutral products and services. The team designed three different email messages based on marketing research and behavioural science literature. These emails were sent to approximately 30 000 customers who were randomly allocated to receive one of the three messages. Click rates revealed that while the environmental message was of interest to customers, cost was the primary driver in encouraging email open rates. A significant drop off in click throughs also suggests a streamlined process may help retailers engage more customers in their carbon neutral offers.

### **National Greenhouse Accounts Improvement Plan**

The Department has built robust emissions data and analytical capability to support our National Greenhouse Accounts which has opened up opportunities to export our experience and systems to countries that are building their own capabilities. Preparing high-quality, transparent national greenhouse gases inventories remains a significant challenge for many countries. The Department's work with Thailand has delivered a national greenhouse gas inventory information system that will support implementation of their reporting obligations under the Paris Agreement, and better inform its domestic emissions reduction policies and programs. Ongoing mutual technical exchanges with China, the world's largest emitter, aims to enhance both countries' capability to effectively inform and monitor domestic action and international commitments.

### **Geological and Bioregional Assessments Program**

The Department's Geological and Bioregional Assessment Program is designed to encourage exploration for new shale and tight gas resources while maintaining the highest possible environmental standards. The Program brings together expertise from Geoscience Australia, CSIRO and the Bureau of Meteorology to deliver independent scientific assessments on the potential impacts on water and the environment of new onshore shale and tight gas resources in the Cooper Basin, Isa Superbasin and Beetaloo Sub-basin regions. This collaboration provides the information necessary for robust decision making and planning, as well as a reference point for ongoing regulation and monitoring to measure any post-development impact. The assessments synthesise environmental data focused on water quantity and quality, environmental assets directly related to regulatory and stakeholder concerns, and cultural and socio-economic assets, to support the development of effective management measures in future Commonwealth and state assessments.

### **ERIN Regulatory Support team**

Environmental Resources Information Network have stood up a regulatory support team to advise, develop and liaise with the department's regulatory support community. This group provides a central point of contact for staff to access ERIN capability and advice on location information and analysis.

### **Domestic and international collaboration combating wildlife and hazardous waste crimes**

The Department works with international partners, Commonwealth agencies and state regulators, including INTERPOL, the Australian Federal Police, Australian Border Force, state and territory police and environmental agencies to combat wildlife crimes. During 2018–19,



521 items were seized at Australian borders. The most common items seized were traditional medicines with ingredients including extracts of protected animal or plant products.

The Office continued to work with border agencies and industry to prevent the illegal export of hazardous waste with one matter before the Court in 2018–19.

This inter-agency collaboration is critical to intelligence gathering, joint criminal investigations and enhanced our intelligence capabilities as a result of our engagement activities.

## Outcome 4. Regulated entities are not unnecessarily impeded in their operations

- Availability and use of a range of mechanisms to provide regulated entities with flexibility in how they meet regulatory obligations.
- Consideration of the burden and compliance cost for regulated entities.
- The objectives of energy and environment legislation are met.

2019 Survey Outcome score = 63

The focus for this Outcome is consideration of the burden and cost of compliance to stakeholders.

The Department is implementing a range of ways to reduce the regulatory burden on individuals and businesses while ensuring the objectives of energy and environment legislation are met.

### Improving and simplifying the ERF's regulatory framework

To build on the success of the Emissions Reduction Fund and facilitate greater participation, the Department and the Clean Energy Regulator are working to make it easier to participate in the Fund, while maintaining its integrity. This work is looking to find new opportunities for projects, reduce transaction and audit costs, and streamline and simplify the legislative and policy arrangements.

An Expert Panel Examining Opportunities for Further Abatement has been asked to identify opportunities to streamline existing reporting, audit, compliance and method development processes.

Following independent reviews of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the Department is also working on legislative amendments to implement the recommendations of the Reviews and to reduce red tape.

### A Default Market Offer

The Department developed the Electricity Retail Code to deliver savings to small and medium businesses as well as residential customers. Under this code the Default Market Offer caps prices on standard offer contracts in regions not already subject to retail price regulation. In addition to reducing the cost of energy bills, the Default Market Offer price also operates as a common point of reference against which all other offers in the market must be compared, making it easier for business and residential customers to identify the cheapest deal for them.

### Parks Australia online services

Parks Australia has introduced online ticketing for visitors to Uluru-Kata Tjuta, Kakadu and Booderee National Parks who can now purchase their passes through the Parks website in advance. Permit and licence applications will also move online to provide businesses and researchers with an easier process when applying to undertake activities in reserves managed by the Director of National Parks.

## **Outcome 5. We understand the regulatory environment in which we operate and continuously seek to improve our approach to regulation**

- Reporting and evaluation processes in our regulatory approaches drive continuous improvement.
- The Department consults with, and listens to, a wide range of interests and views across stakeholders to improve regulatory approaches and outcomes.
- The Department has a culture of exploring alternative ways to improve its regulatory approach.
- Regulatory approaches are developed with consideration of the costs and benefits to stakeholders.
- Development of and changes to regulatory activity based on risk assessments.
- Risk-based frameworks and policy are publicly available.

2019 Survey Outcome score = 60

The primary focus for this Outcome is to continue to build a culture of continuous improvement.

The Department is refining internal processes and testing new approaches to build a culture of continuous improvement. This includes exploring better ways to understand what stakeholders need to make compliance more user friendly.

### **Optimising traditional tools**

The Behavioural Analysis team build and test interventions to prompt behaviour change by uncovering insights about the motivations and behaviour of people at the centre of a policy or program. This can optimise traditional tools like regulation, incentives and information and maximise the impact of policies and programs. This includes reviewing and improving processes to align better with the needs of our stakeholders so they can easily understand and comply with requirements.

One example demonstrates how 'light touch' advice improved reporting compliance to the Carbon Neutral Program. After analysing the 'user journey' of Carbon Neutral member organisations, the team redesigned the reporting approach by incorporating carefully tailored messages, and short, timely reminders. Making the process more user friendly led to improvements in reporting, with 98 per cent of members compliant by the due date, up from 42 per cent previously. Even those who requested extensions were quicker at submitting reports with 100 per cent compliance reached 59 days faster than prior to the redesign.

### **Streamlining Antarctic grant assessment and marine planning processes**

The Australian Antarctic Division (AAD) is working to transition its science grant program to a Grants Hub in line with the Streamlining Government Grants Administration program. Alongside this is a review of science application processes, including optimising the use of the Australian Government's Southern Ocean research vessels, RSV Nuyina (currently under construction) and RV Investigator, in any overlapping areas of tasking and capability in this important area of

research. This will aim to reduce duplication in assessments and maximise collaboration (and budget) between AAD and the Marine National Facility, in line with recommendations of the 2018 Australian Antarctic Science Program Governance Review.

### **Implementing feedback from grant recipients**

In response to recommendations from evaluations and feedback from funding recipients the Australian Renewable Energy Agency (ARENA) has implemented changes to improve the grant application and contract negotiation process which has significantly reduced decision times during the 2016 to 2018 period.

Improvements include refreshing the standard funding agreements to reflect the level of risk of projects being funded; adopting a risk-based approach to determine the appropriate level of monitoring for projects; a significant update of its Grants Management System to improve data capture across the entire grants process to improve overall contract and project management.

An independent external stakeholder survey conducted in 2019 acknowledged ARENA's continued efforts to streamline the funding process with a high overall satisfaction rating.

### **Expert policy development advice**

The Policy Analysis section provides expert guidance to staff on how and when to consider economic, environmental and social impacts, ensuring that impacts and associated regulatory costs are accounted for at appropriate stages of policy development. This expertise has seen our Commonwealth national parks reach a financially sustainable footing by making recommendations on entry fee pricing, including for tourism businesses.

## Outcome 6. Our staff have the skills and capabilities required for effective regulation

- Key internal Department documents have clear statements of outcomes.
- Staff understand their role and function.
- Staff are supported by high-quality training, guidance material and tools.
- Use of quality assurance processes in supervising the work of staff.
- The Department's ICT system is fit for purpose and future proofed and facilitates the capture of data that provides insight into regulatory risk, trends and patterns, noncompliance by regulated entities and potential negative regulatory outcomes.

2019 Survey Outcome score = 59

The primary focus for this Outcome is to improve regulatory IT systems, training, guidance materials and tools.

The Department is committed to ensuring our systems are fit for purpose and our staff are supported to deliver effective regulatory outcomes. This has seen the piloting and integration of training programs across the organisation to ensure staff are equipped to provide consistent and quality advice. This is coupled with an enterprise-wide focus on investing in IT systems to align client experience with internal processes that support best-practice regulation.

### Data capability and maturity

Good data governance underpins effective regulation that relies on data to make decisions. The Department has made considerable progress in this area by developing data management policies and guidance documents for staff. This program of work establishes an overarching data policy defining roles of Data Stewards & Custodians, creating and implementing a data valuation framework, and setting procedures for acquiring, maintaining, sharing and retiring data. These documents are easily accessible internally, and expert one-on-one guidance is available to all staff. The Department provides data capability roadmaps for all staff to upskill in data analysis and information management, complimented by specialist data training for areas with a business need to perform analytical functions.

Knowing what data the Department holds, who manages it and what it contains, are crucial for improving data maturity and through it our regulatory performance. The Department operates a Dataset Register, managed by a Data Librarian who undertook the first enterprise wide stocktake of data holdings to identify and document datasets that are critical to the operation of the Department. This project identified 82 critical data assets and assigned management responsibilities for these data to Data Stewards, and recording on divisional risk registers and business continuity plans. This represents an important foundational step in improving data maturity in the Department.

### Customer Relationship Management tool

This project will deliver an enterprise approach to centralise core business applications for customer relationship management, data management, and business intelligence and analytics systems. This will provide a single registration process for businesses and individuals to create

their own profile to ensure a consistent experience when interacting with the Department, particularly for management of risk assessments, permits and compliance. This will deliver considerable efficiencies, both internally and externally, by reducing administration and eliminating duplication, ultimately creating greater levels of trust and confidence in the Department's systems.

### **Minimising exposure to fraud**

As part of our fraud awareness strategy the Department conducts online and targeted face-to-face fraud awareness training. An online e-learning module is available to staff all year round. In 2018–19, 464 staff completed the online fraud awareness training. A total of 2809 staff have completed the online e-learning to the date 30 June 2019.

### **Environment Assessments and Approvals Training program**

The Environment Assessments and Approvals training program was developed to build capacity to undertake environment assessments and approvals in an effective, legally robust manner and to drive consistency in regulatory practice. The program delivers a full suite of training modules addressing environment assessments and approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection (Sea Dumping) Act 1981*. Training is supported by a dedicated Environment Assessments Resources toolkit providing a central intranet resource for everything related to environment assessments training.

Eighteen training modules were delivered in 2018 to a total of 375 officers from across the Department, the NSW Department of Planning and Environment and the NSW Office of the Environment and Heritage. The training program has built a collaborative learning culture by bringing together subject matter experts to develop training materials and to present and participate in training. The program also provides opportunity for core trainers to undertake a Certificate IV in Training and Assessment, to equip them with the necessary skills to effectively deliver the training.

### **Location mapping tool**

Location information plays a vital role in evidence-based decision making to support policy, program and regulatory functions. Wylie seamlessly brings together location-specific data in one tool, supporting staff with access to display and generate reports from these data holdings. Further work is underway to provide public access to and reuse of the Department's location data.

### **Workforce planning – Division Plans**

People Branch facilitates annual workforce plans with individual divisions to identify key capability and capacity gaps, and solutions to minimise these gaps. As part of this process, divisions have the opportunity to review their regulatory capabilities and identify associated learning and development opportunities.

### **Learning Programs**

The Department has been building its learning programs to lift regulatory capability. People Branch provides access to face-to-face training opportunities and e-learning courses through the LearnHub and LinkedIn Learning platforms. This includes the pre-course module Introduction

to Better Practice Regulation in LearnHub with further training offerings for assessment officers to meet divisional needs.

### **Review of HR Delegations**

Through an Instrument of Delegation for Human Resources Powers and Functions the Secretary delegates these powers to people in certain positions or at certain classification levels. These HR delegations have recently been reviewed and appropriate changes have now been implemented resulting in more streamlined processes. This has seen a reduction of approximately 70 HR Delegations down to lower classifications and an increase of 11 based on risk, the complexity of the employment decision and applicable legislation. Further to this, HR delegations have now been built into ESS, the Department's employee self service system, providing added assurance that only relevant delegates can approve the respective HR Delegation.

### **eRecruit system updates**

The Department has recently implemented new eRecruit forms to facilitate requests to fill positions. The recent upgrades to eRecruit now allow the Recruitment Team to efficiently and effectively manage the recruitment requisition process from initial requests to advertisement through the online system.

All internal and external recruitment processes are now managed through eRecruit, including delegate approvals, significantly reducing hard copy paperwork. There is now increased visibility of pending recruitment requests to proactively manage team workload and set expectations for our users. This will feed into new reporting capabilities to accurately capture active recruitment throughout the Department, at the request of the leadership team.