Australian Government

Department of the Environment and Energy

Regulator Performance Framework

Annual Self-Assessment Report 2015–16

REGULATOR PERFORMANCE FRAMEWORK

FRAMEWORK

ANNUAL SELF-ASSESSMENT REPORT 2015–16

Executive summary

The Department of the Environment and Energy is pleased to release the first self-assessment of its regulatory performance under the Government's *Regulator performance framework* for the 2015–16 financial year.

The Department administers a diverse range of environmental legislation dealing with a variety of subject matter, from managing national parks to regulating the importation of ozone depleting substances. In recent years, the Department has made concerted efforts to improve the way it regulates, including consolidating a majority of its regulatory functions in a single division and developing more systematic and consistent approaches for compliance and enforcement functions.

During the first half of this reporting period, the Department commissioned the *Regulatory maturity project*, an independent review of its major regulatory functions by Mr Joe Woodward. The project found that the Department's approach to regulation is sound and consistent with other regulators and that there was a strong desire for the Department to become a modern best-practice regulator. The project also identified areas for improvement. The Department is now responding to the project recommendations, including developing more systematic approaches to regulatory governance, developing a regulatory framework and improving engagement with the regulated community. The Department expects that the next self-assessment will show further improvement as the actions undertaken in response to the review by Mr Woodward take effect.

Overall, the Department has assessed its regulatory performance as **maturing** to **well established** in relation to risk-managed and proportionate actions (KPI 3) and its compliance and monitoring approaches (KPI 4), **maturing** in relation to its impact on the efficient operation of regulated entities (KPI 1) and how it communicates and engages with regulated entities (KPI 2 and KPI 5), and **developing** in relation to actively improving its regulatory frameworks (KPI 6).

The following table summarises the Department's performance against each of the KPIs. The criteria for each maturity level against each KPI is provided in Appendix 2.

Maturity Level	KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities	KPI 2—Communication with regulated entities is clear, targeted and effective	KPI 3—Actions undertaken by regulators are proportionate to the regulatory risk being managed	KPI 4—Compliance and monitoring approaches are streamlined and coordinated	KPI 5—Regulators are open and transparent in their dealings with regulated entities	KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks
Leading						
Well established			■	■		
Maturing	■	■	■	■	■	
Developing						■
Emerging						
Absent						

Contents

1. Introduction

The Australian Government's *Regulator performance framework* was released in October 2014. The framework was developed by the Department of the Prime Minister and Cabinet to improve the performance of regulators by encouraging them to minimise their impact on the regulated community while still achieving their regulatory objectives. The framework seeks to create positive ongoing and lasting cultural change within regulators.

The framework has six key performance indicators (KPIs) which articulate the expectations for regulator performance. The KPIs are underpinned by specific measures against which regulators will demonstrate their performance. Each regulator has identified measures which are appropriate to their organisation and the legislation they administer. These measures have been the subject of consultation with regulated entities.

The framework provides the basis for annual, externally validated self-assessments. The first annual reporting period is from 1 July 2015 through to 30 June 2016. This is the Department's first self-assessment report under the framework.

1.1 Regulatory roles within the Department

The Department administers a wide range of regulation across four divisions. These regulatory roles are outlined in section 1.1.

Following machinery of government changes in July 2016, some regulatory functions formerly administered by the Department of Industry, Innovation and Science have become the responsibility of the Department. These functions include the Commercial Building Disclosure Program and the Greenhouse and Energy Minimum Standards Regulator. As these changes occurred after the current reporting period, they have not been assessed in this review. Self-assessments of those functions are reported separately, as are the regulatory functions performed by the Clean Energy Regulator, Great Barrier Reef Marine Park Authority and the Sydney Harbor Federation Trust.

1.1.1 Australian Antarctic Division

Australian Antarctic Division has a regulatory role in administering the following pieces of legislation:

Antarctic Marine Living Resources Conservation Act 1981

Under this Act, a permit is required to harvest or carry out research with respect to Antarctic living marine organisms in the area of application of the Convention on the Conservation of Antarctic Marine Living Resources unless an activity is authorised under another Commonwealth Act (such as the *Fisheries Management Act 1991*).

Antarctic Treaty (Environment Protection) Act 1980

This Act includes processes to determine the environmental impact of an activity and in what circumstances an activity may be authorised. The Act stipulates activities that are offences and in what circumstances, if any, an activity can be permitted.

Heard Island and McDonald Islands Act 1953

Under this Act, activities proposed to be undertaken in the Territory of Heard Island and the McDonald Islands must be assessed and approved under strict environmental conditions.

1.1.2 Director of National Parks / Parks Australia

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The Director of National Parks is a Commonwealth corporate entity under the EPBC Act with responsibility for managing the 67 Commonwealth reserves established under the Act. The Director's functions include the conservation of biodiversity and heritage in those reserves and contributing to their conservation outside Commonwealth reserves. The Director of National Parks is supported by Parks Australia, a division within the Department. She has delegated powers and functions concerning one reserve, Heard Island and McDonald Islands Marine Reserves, to the Director of the Australian Antarctic Division.

1.1.3 Environment Standards Division

Environment Standards Division has regulatory roles in administering parts or all of the following pieces of legislation:

Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act provides a legal framework to protect and manage matters of national environmental significance. In addition, the EPBC Act confers jurisdiction over actions that have a significant impact on the environment where the actions affect, or are taken on, Commonwealth land, or are carried out by a Commonwealth agency (even if that significant impact is not on one of the nine matters of national environmental significance). Actions that have, or are likely to have, a significant impact on a matter of national environmental significance require approval from the Minister.

The Division's regulatory role in relation to the Act includes:

- assessment, approval (where appropriate) and post-approval monitoring and compliance of proposals referred to the Department under Parts 7, 8, 9 and section 160 of the EPBC Act
- strategic assessments and approvals under Part 10 of the EPBC Act.

Environment Protection (Sea Dumping) Act 1981 (Sea Dumping Act)

This Act fulfils Australia's international obligations under the London Protocol to prevent marine pollution from dumping of wastes and other matter. Under the Sea Dumping Act, a permit is required for the disposal of waste and pollutants at sea. Permits are most commonly issued for dredging operations and the creation of artificial reefs. Permits are also issued for dumping vessels, platforms and other man-made structures and burials at sea.

Fuel Quality Standards Act 2000

This Act regulates the quality of fuels used in Australia and requires the fuel industry, including fuel suppliers, to supply certain fuels which meet strict environmental requirements in accordance with fuel quality standards.

Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Hazardous Waste Act)

This Act regulates the export, import and transport of hazardous waste to ensure that it is managed in an environmentally sound way to protect human beings and the environment, within and outside Australia, from its harmful effects.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (including *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*)

This legislation regulates the use of ozone depleting substances and synthetic greenhouse gases in Australia and gives effect to Australia's international obligations concerning these substances. The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* provides for a licensing system for the import, export and manufacture of ozone-depleting substances and synthetic greenhouse gases, including equipment that contains these substances. It prohibits the import or manufacture of certain products that contain or use scheduled substances unless the Minister grants an exemption.

Australia is obliged under the Montreal Protocol to phase out ozone-depleting substances. This is implemented under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* through a quota on these substances, in addition to licensing requirements. Levies are payable by people who import or manufacture certain scheduled substances and equipment under a licence.

Product Stewardship Act 2011

This Act implements key elements of the National Waste Policy, which is Australia's strategic framework for waste management and resource recovery. It provides for three levels of product stewardship:

- Voluntary—Organisations seek Government accreditation for product stewardship arrangements and obtain permission to use product stewardship logos.
- Co-regulatory—For example industry-funded annual recycling targets for end-of-life products. Importers and manufacturers of these products fund collection and recycling through membership fees paid to industry-run co-regulatory arrangements. The Minister approves these co-regulatory arrangements.
- Regulatory (mandatory)—Both requirements and outcomes are prescribed in Regulations. No product stewardship schemes were mandated in 2015–16 and no mandatory schemes are currently in operation.

1.1.4   Wildlife Heritage and Marine Division

Wildlife Heritage and Marine Division has regulatory roles in administering parts or all of the following pieces of legislation:

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

This Act aims to preserve and protect areas and objects in Australia and Australian waters that are of particular significance to Indigenous people in accordance with Aboriginal and Torres Strait Islander tradition. Under the Act, the Minister makes decisions in relation to applications made by Indigenous people or groups for protection of Indigenous heritage objects or sites under threat and reported discovered remains.

Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act contains an extensive regime for the conservation of biodiversity. The regulatory role of Wildlife Heritage and Marine Division under this Act includes:

- managing the assessment and listing of threatened species and ecological communities, marine species and migratory species under Parts 9, 13 and 19, including development of conservation advices, recovery plans and wildlife conservation plans for these species

- the assessment and listing of key threatening processes and development and review of threat abatement plans for listed key threatening processes
- regulation of international trade in endangered species under Part 13A, including:
  - permitting, compliance monitoring and engagement, assessment and policy development functions
  - oversight and approval of management arrangements for wild harvesting of species for export
  - regulating imports and administration of the live import list.
- assessment of the sustainability of fisheries under Parts 10, 13 and 13A
- management of heritage under Parts 9 and 15 including:
  - supporting the Australian Heritage Council in its assessment of places for inclusion on the National and Commonwealth heritage lists
  - promoting best-practice management plans for heritage values of national interest
  - acting as secretariat to the Australian Heritage Council.

Historic Shipwrecks Act 1976

This Act provides for the protection of all historic shipwrecks and their associated relics situated in Australian waters that are at least 75 years old. It achieves this through:

- the declaration of shipwrecks and relics and historic wreck protection zones
- prohibiting conduct which destroys, damages, interferes, disposes or removes a historic shipwreck or relic
- issuing of permits to allow certain conduct, including for the recovery of shipwrecks and relics
- notification and registration of the discovery of historic shipwrecks and relics
- the prohibition of some activities in historic shipwreck protected zones (such as the use of some diving equipment and explosives, trawling and mooring within a protected zone).

1.2   Approach taken to this self-assessment under the framework

While much of the Department's regulatory work and profile comes from the EPBC Act, the Department's regulatory functions are administered across four divisions and under 11 separate legislative frameworks. The nature of the regulation is diverse and can impact a large number of stakeholders, or small numbers from a single sector. Performance against the key performance indicators (KPIs) under the *Regulator performance framework* is varied across the Department.

In June 2015, the Department committed to undertake annual self-assessments under the framework using measures relevant to each KPI (refer to Appendix 1). Different measures were selected to assess each piece of legislation. Some measures will not be relevant to all regulatory functions, while some measures will apply to more than one function. In some cases, the same measure may have been used to assess performance under other KPIs as a result of their interdependency.

The effectiveness of the Department as a regulator has been assessed in the context of the current legislative regime, where best practice may not always be achievable due to prescriptive requirements in legislation. Most of the Department's regulatory legislation was passed by Parliament before the year 2000 and may no longer reflect contemporary approaches in regulatory design or enable current best practice implementation.

This self-assessment draws on the findings and recommendations of the *Regulatory maturity project* which was an independent review that examined the majority of the Department's regulatory activities during this assessment period (see section 2.2 for more information). The project identified a need for the Department to develop a

regulatory framework and associated regulatory posture to provide a high level, consistent position on its purpose and objectives as a regulator and the approach it will take to achieve those objectives.

The Department has published its response to the *Regulatory maturity project* and established a regulatory maturity steering committee to facilitate its implementation. This committee is chaired by the Deputy Secretary of the Department's Environment Protection Group, has broad representation from across the Department and includes membership from other government agencies with strong regulatory experience. The project's recommendations are expected to be implemented over the next 12 to 18 months, with outcomes to take full effect over the coming years. The Department will review its progress in implementing the project's recommendations regularly, undertaking targeted consultation and course correction as needed, to ensure reforms are effective, enduring and have the support of regulated entities and the broader community.

The *Regulator performance framework* self-assessment supports the Department's work to implement its response to the *Regulatory maturity project* by providing an assessment of the Department's regulatory performance. Importantly it provides a mechanism to benchmark performance across all regulatory functions.

While this is the Department's first self-assessment under the framework, the Department is considering whether including different or additional KPIs and measures in future years will allow for a more comprehensive assessment of the performance of our regulatory regimes and the outcomes they achieve.

1.3   Assessment criteria

The Department's approach for this assessment period is based predominantly on qualitative data. It will take time for the Department to improve the collection and analysis of quantitative data relating to the performance of regulatory functions, including those in the *Regulator performance framework*. In some instances, qualitative data may remain the most appropriate and useful data source to measure performance.

The Department has developed a tool to assess performance against the six KPIs and corresponding measures using qualitative data. This tool is based on the Australian Environmental Law Enforcement and Regulators Network *Modern regulator improvement tool*[1], which provides a set of maturity level descriptions for 12 regulatory attributes. The Department adapted the tool so that the maturity level descriptions align with the framework's six KPIs and underpinning measures (Appendix 2).

Descriptions are provided across six maturity levels for each of the KPIs. The maturity levels are: absent, emerging, developing, maturing, well established and leading. Qualitative information provided by regulatory areas was reviewed and matched to the most representative maturity level (or levels, where the Department exhibits behaviour across multiple levels).

---

1   The Department is a member of the Australian Environmental Law Enforcement and Regulators Network.

2. Outcomes of recent external review processes

During the reporting period, five external reviews and audits were undertaken or initiated that are relevant to the Department's regulatory activities. These are summarised below for context.

2.1 ANAO Report No.7 2015–16 Performance Audit— Managing Compliance with the Wildlife Trade Provisions of the EPBC Act

In November 2015, the Australian National Audit Office completed its performance audit on managing compliance with the wildlife trade provisions of the EPBC Act. The audit objective was to assess the effectiveness of the Department and the former Australian Customs and Border Protection Service (now Australian Border Force) in managing compliance with the wildlife trade Regulations under Part 13A of the EPBC Act.

The audit found the effectiveness of the Department's regulation of wildlife had been undermined by the absence of appropriate and tailored policy and procedural guidance, functional information technology support systems and a risk-based approach to monitoring compliance.

The audit noted the Department considered the risks arising from this area of regulatory activity to be low compared to its other regulatory responsibilities and had allocated resources accordingly. The audit highlighted that this had not been informed by structured departmental-wide risk assessment focusing on its regulatory activities.

The audit found the absence of an appropriate set of performance measures and reporting arrangements meant the Department was not well positioned to report either internally or externally on the extent to which it is achieving its regulatory objectives.

The audit determined there was scope for improvement in the quality of regulatory data and public information, the sharing of information and intelligence with Australian Border Force and for greater coordination of compliance and investigation activities.

In response to the audit, the Department has begun work to increase the regulatory capacity of its wildlife trade functions and is moving to a more risk-based, data-driven and intelligence-focused wildlife trade compliance program.

The recommendations for wildlife trade outlined by this audit have helped the Department improve its regulatory capacity. It is working closely with Australian Border Force to:
- promote compliance through better public information
- implement improved data exchange to better inform the Department's risk analyses on wildlife trade compliance
- help reduce the threat of illegal wildlife trade to Australia.

2.2 Regulatory maturity project

The *Regulatory maturity project*, led by Mr Joe Woodward, was an independent, internally commissioned review to assess the maturity, capability and capacity of the Department's Environment Standards Division and Wildlife Heritage and Marine Division in fulfilling their regulatory functions. The Secretary initiated the project to improve the Department's internal practice as a regulator. The project defined the attributes of a best-practice

regulatory agency, taking into account experience and practice in comparable regulatory agencies and made recommendations on changes that would enable the Department's regulatory functions to reflect those attributes.

The project report made recommendations across six key areas: objectives and performance, approach to regulation, people, systems and tools, approach to risk and how we engage.

Overall the project concluded that the Department's approach to regulation is sound and consistent with other regulators. Both officers and the leadership team are skilled and committed with a strong desire for the Department to become a modern best-practice regulator. The project identified opportunities for improvement, some achievable within existing resources, some to be offset by future efficiency gains and others that rely on an additional commitment of resources. It concluded that any further reduction in regulatory resourcing would significantly impede the Department's progression to best practice regulatory status.

The Department has accepted, or accepted in principle, all of the project's recommendations and established a dedicated team to support their implementation. The project report and the Department's response are available on our internet site (**www.environment.gov.au**).

2.3 Relevant Productivity Commission reviews currently underway

2.3.1   Inquiry into the Regulation of Australian Agriculture

In November 2015, the Australian Government asked the Productivity Commission to undertake an inquiry into the regulatory burden on farm business. The inquiry is focusing on regulation that has a material impact on the competitiveness and productivity of Australian agriculture, with the aim of:

- defining priority areas for removing or reducing unnecessary regulatory burdens on farm businesses, where doing so would raise the productivity of farm businesses and the wider economy
- identifying unnecessary restrictions on competition.

A draft report on the inquiry was released in July 2016. The report found that farm businesses are subject to a vast and complex array of regulations that interact within and across jurisdictions at every stage of the supply chain. It found scope for governments to better engage with the sector and to coordinate actions. The report made recommendations which are potentially relevant to the EPBC Act which included:

- changes to native vegetation and biodiversity conservation regulations at all levels of government so that they are risk based, landscape-scale and consistently consider economic, social and environmental factors
- governments continue to develop market-based approaches to native vegetation and biodiversity conservation
- governments provide greater support for, and engagement with, farmers.

The Department has indicated in-principle support for the draft recommendations made in the Commission's report for improving environmental regulation. The EPBC Act already requires consideration of social and economic matters, allows landscape-scale impact assessments and provides for different assessment streams depending on the scale and complexity of environmental risks. The Department is working to collaborate more closely with the farming sector.

The Department considers that market-based approaches are likely to be most effective when used with complementary regulatory, investment and policy measures.

The final report is expected to be handed to the Government in November 2016.

2.3.2 Public Inquiry into the Regulation of Marine Fisheries and Aquaculture

In December 2015, the Australian Government asked the Productivity Commission to undertake a public inquiry into the regulation of the Australian marine fisheries and aquaculture sectors. The inquiry is considering whether there are opportunities to improve fisheries regulation without compromising fisheries policy and environmental objectives. Consideration has been given to regulatory simplification, streamlining and consistency of arrangements across multiple jurisdictions, more efficient regulatory models, the practices of the various regulators and removing unnecessary restrictions on competition.

In its submission into the inquiry, the Department noted:

- Regulation is important in preventing not only the depletion of target fish stocks, but also the adverse impacts on non-target marine species and the environment.
- Assessment of fisheries under the EPBC Act includes the requirement for a management regime to demonstrate the fishery will not result in over fishing or that over-fished stocks will recover and that the impact on the ecosystem and the environment will be minimised.
- There have been recent improvements in the way fisheries are regulated under the EPBC Act such as extending the approval period for fisheries assessed as low risk from maximum period of five years to 10 years.
- Opportunities exist for further improvements in fisheries and aquaculture management such as the use of market ecolabels and potential accreditation of fishery and aquaculture management agencies.

The draft report was released on 31 August 2016. The draft report found that, in general, government policies to reduce over fishing have been successful, although current policy settings are sometimes overly prescriptive and outdated (for example, limiting fishing methods). The draft report welcomed the Department's decision to extend the maximum duration of the EPBC Act approval for low risk fisheries from five to 10 years, which has reduced regulatory burden and uncertainty, and rewarded good stewardship.

The final report is due by December 2016.

2.4 State of the Environment Reporting

The *State of the environment report* is required by section 516B of the EPBC Act. The Act does not specify the content or reporting processes for the report. These are determined by the Department. The final report is prepared by an independent committee.

The reporting process occurs in five-year cycles, culminating in the delivery of a final report to the Minister for tabling in Parliament by 31 December of the respective reporting year (1996, 2001, 2006, 2011). The next report is due for tabling by 31 December 2016.

The intent of the report is to capture and present, in as accurate and useful a format as practicable, key information on the state of the environment in terms of: its current condition, the pressures on it and the drivers of those pressures, management initiatives in place to address environmental concerns, and the impacts of those initiatives.

3. Assessment against key performance indicators

3.1 KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities

3.1.1 Background

The *Regulator performance framework* recognises that best-practice regulators aim to achieve the intended outcomes of their regulation without unnecessarily restricting or imposing burden on regulated entities. When designing and reviewing policies and operational procedures and practices, best-practice regulators consider how they might avoid imposing unnecessary costs while fulfilling their statutory role. They seek a balance between responsibility to deliver protection to the community and the burden imposed by external intervention. Regulators should have regard to their legislative and authorising environment and seek to minimise duplication with other relevant regulators.

3.1.2 Findings

The measures that the Department selected in June 2015 for assessing performance against this KPI are:

- regular, ongoing review of policies, procedures and requirements, including through consultation and engagement with stakeholders, independent experts and industry
- documented established communication mechanisms with regulated entities, including complaint mechanisms and surveys of regulated entities
- demonstrated engagement with relevant international organisations to learn from peer experience and share better practices
- environment scanning is undertaken regularly.

Table 1 in Appendix 1 outlines the legislation that was assessed against each measure.

Regular ongoing review of policies, procedures and requirements

Some legislation the Department administers has built-in requirements for review. For example Section 552A of the EPBC Act requires the Act to be reviewed every 10 years. In addition, some policy documents have set periods over which they are applicable, or commitments to ongoing review. For example, Recovery Plans for threatened species and ecological communities under the EPBC Act are adopted to cover a specified period, after which time, revision of the plan is required.

During the reporting period the Director of National Parks amended her procedure for park pass sales for Kakadu National Park, moving from a paper-based pre-purchase system to a digital e-ticketing solution for regulated tour operators and independent visitors. The new system reduces the business and financial burden placed on tourism operators, as they are now able to buy passes quickly and easily in 'real time' through the online portal rather than having cash tied up in ticket stockpiles. The new system requires fewer park staffing resources attributed to ticket sales, freeing up staff to focus on interacting with visitors, therefore improving the overall visitor experience for tour operators and their clients. The Director is able to capture and store customer data to inform future business decisions that deliver world class natural and cultural experiences. She regularly shares this information with regulated tourism operators and involves them in decision making about improving the overall experience.

Review of the Ozone Protection and Synthetic Gas Program

During the reporting period, the Department undertook a review of its ozone protection and synthetic greenhouse gas program. The review was an opportunity to assess whether the program was meeting its objectives and identify opportunities to improve environmental outcomes and reduce cost to business.

In undertaking the review, the Department sought stakeholder views through public consultation, advice from a representative technical working group, targeted consultation with particular sectors and a Ministerial roundtable with major sectors. An options paper was released in October 2015, supported by a detailed technical analysis and independent cost benefit analysis and environmental impact analysis.

The independent environmental impact analysis found the program had been successful and reduced consumption of ozone depleting substances by over 99 per cent and emissions of greenhouse gas by 24 megatonnes (MT) of carbon-dioxide equivalents in the period covering 2004–2013.

The Department held public meetings in Brisbane, Sydney and Melbourne to outline recommendations from the review and receive initial stakeholder reactions. Fifty-seven submissions were received from industry associations, businesses and individuals.

In May 2016, the Government agreed to recommendations of the review which will result in a further reduction in greenhouse gas emissions by up to 80 MT carbon-dioxide equivalents in the period to 2030. At the same time business costs will be reduced by $1.2 million annually by reducing the number of businesses requiring licences, reducing the frequency of reporting and levy payments, renewing licences and waiving small levy debts.

The Department has established a regulatory maturity steering committee in response to the *Regulatory maturity project's* recommendation that the Department establish an oversight body to consider the Department's regulatory policies and posture and have oversight of regulatory issues, policies and major pieces of public guidance. It oversees the Department's internal reform program in response to the *Regulatory maturity project* and advises on areas for regulatory improvement. Further work is being undertaken as part of the internal reform program to prioritise the ongoing evaluation of regulatory functions consistent with the Department's evaluation policy.

Stakeholder consultation and engagement in policy reviews

To ensure the efficient operation of regulated entities is not unnecessarily impeded, a best-practice regulator will undertake ongoing review of its policies, procedures and requirements in consultation and engagement with stakeholders, independent experts and industry.

The Department has a *Stakeholder engagement handbook* which was last updated in February 2013. The handbook aims to equip staff to ensure all programs and policies are well considered and communicated effectively on behalf of government. The handbook provides guidance on determining who the stakeholders are, how to engage with them and tools for stakeholder engagement.

Most regulatory areas include stakeholder engagement as business as usual when developing and reviewing policies and procedures. Stakeholder consultation is a requirement when completing a regulation impact statement.

During the reporting period, Environment Standards Division implemented two new policies in response to concerns about unnecessary burden being placed on regulated entities through conditions of approval for projects assessed under the EPBC Act.

The first of these policies is the *Condition setting policy* which was released in January 2016 and was developed to address concerns about unnecessary duplication between Australian Government and state or territory environmental assessment and approval processes. Under this policy, approvals under the Act will rely on existing state and territory conditions to the greatest extent possible. This policy was developed following consultation on a draft policy for a period of two months in early 2015. The Department received submissions on the draft policy from state and territory governments, industry groups, non-government organisations and individuals. These submissions have been published on the Department's internet site.

The second policy is the *Outcomes-based conditions policy* which was published in March 2016. Outcomes-based conditions (as opposed to prescriptive or management-based conditions) specify the environmental outcome that must be achieved by an approval holder without prescribing how that outcome should be achieved. Outcomes-based conditions allow approval holders to be innovative and achieve the best environmental outcome at the lowest cost, while increasing public transparency of the required environmental outcomes. The policy was finalised following a public consultation period of eight weeks in mid-2015.

During consultation with some stakeholders, particularly non-government organisations, the *Regulatory maturity project* found that more proactive engagement in the development and implementation of new policies was required. Stakeholders suggested that the public consultation and comment period on new policies was too late in the process to make a substantive change and in some instances the purpose of the engagement was unclear.

The *Regulatory maturity project* recommended the Department routinely engage with relevant stakeholders throughout all phases of design and implementation of regulatory processes. To facilitate this, the Department is considering the establishment of stakeholder policy roundtables comprising non-government, industry and professional organisations and academics to co-identify and co-design policy initiatives. When undertaking stakeholder engagement, policy officers will be clearer on its purpose (for example to explain a new policy and its rationale or to seek stakeholder input to influence policy development).

CASE STUDY
Cost Recovery Changes to Hazardous Waste Permitting

New cost recovery arrangements for hazardous waste movement permits commenced on 1 July 2016. In the development of this policy change, two rounds of stakeholder consultation were undertaken. Stakeholders included regulated entities, state and territory regulators, independent experts and international agencies. The Department consulted on options for reform, including changes to the fee structure and options for a levy component of the proposed changes.

The regulated entities for international movements of hazardous waste are well known to the permit team who used stakeholder lists to inform the consultation approach throughout the different stages of the cost recovery implementation statement process. Early consultation was conducted with these stakeholders on an initial draft of the implementation statement that identified and discussed cost recovery options. Being clear about the benefits and disadvantages of each option helped obtain useful feedback, leading to a revised version of the implementation statement. The Department's preferred cost recovery option contained both a fee and a levy. Further consultation with a selection of stakeholders was held to discuss the preferred approach. The key issues raised in consultation and responses to these concerns were documented in the implementation statement and made available on the Department's internet site.

The consultation informed the selection of the final cost recovery model and the timetable for its staged implementation over a three year period.

Documented communication mechanisms

The Department has documented how it communicates with regulated entities, including through complaint mechanisms and surveys. It has developed a *Service charter (June 2014)* which is available to the public at **www.environment.gov.au**. The charter includes a statement of what the Department does and the standard of service that can be expected from it. It informs the public on how to find out more about the Department and encourages feedback on its performance.

Wildlife Heritage and Marine Division is planning to update its *Guide to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and corresponding internet page to incorporate information on how relevant stakeholders can contact the Department about the Act or its administration.

The Department has committed to undertake best-practice engagement with external stakeholders and co-regulators. The Department has developed a communications strategy to communicate the *Regulatory maturity project* findings and the actions that the Department is undertaking as a result, to both the internal audience and to the regulated community. The intent is to ensure that key audiences are aware of the project's findings and that the Department is taking action to address the recommendations. This will form the basis for a wider communications strategy which will be developed to cover all of the Department's regulatory functions. The communication strategy will provide new and improved communication channels informed by a better understanding of the Department's audience, their needs and preferred methods of engagement.

To assist in this process, the Department is auditing its current regulatory communication materials, talking to key stakeholder groups about how they prefer to receive regulatory information and establishing best-practice regulatory communication platforms and procedures. The Department is developing a survey of the regulated community to benchmark the status of its regulatory communications prior to the implementation of the new communications strategy.

The Department has made the recording of stakeholder data a priority of its information and communication technology strategy in response to the *Regulatory maturity project's* recommendation that all relevant interactions with stakeholders be recorded and made available to staff. During the reporting period, the Department implemented an enterprise customer relationship management system using Microsoft Dynamics to manage and record stakeholder interactions. The platform includes case management and workflow functionality and will provide a consolidated view of all interactions the Department has with stakeholders across its broad range of regulatory processes. During the reporting period, stakeholder data from the Department's environmental impact assessments and fuel quality regulatory functions has been migrated from bespoke systems. The Department's hazardous waste permitting and wildlife trade programs, seizures and permitting functions, including relevant stakeholder data, are scheduled for migration during the next reporting period.

Engagement with relevant international organisations

The amount of engagement the Department undertakes with international organisations varies across the divisions. Engagement is more frequent and structured where regulation is in place to support Australia's obligations under international treaties or protocols. For example, the *Antarctic Treaty (Environment Protection) Act 1980* gives effect to the Protocol on Environment Protection to the Antarctic Treaty (the Madrid Protocol). The Committee for Environmental Protection, made up of Antarctic Treaty parties, experts and observers, meets annually to provide advice and recommendations on the way the Protocol is implemented. During the reporting period, as Chair of the committee, Australian Antarctic Division led committee members in discussions on Antarctic environmental impact assessment best practice and standards and practices of competent regulatory authorities.

Environment Standards Division has undertaken the following engagement on hazardous waste regulation over the reporting period:

- participation in the Open-Ended Working Group of the Basel Convention in May–June 2016
- participation in Pacific hazardous waste issues through the Secretariat of the Pacific Regional Environment Program and Waigani Conference of the Parties' meeting in September 2015
- ongoing engagement as a member of the Basel Convention working groups on used electronic equipment and national reporting.

Wildlife, Heritage and Marine Division is the focal point for Australia's engagement with the World Heritage Committee. The management of the Tasmanian Wilderness and Great Barrier Reef World Heritage areas was a particular focus for the Department during the reporting period.

Environment scanning

The way in which the Department undertakes environmental scanning varies across regulatory areas. Assessment officers working in Environment Standards Division gather information on emerging issues through officer attendance at industry workshops and conferences.

Australian Antarctic Division led Australia's participation in the Commission for the Conservation of Antarctic Marine Living Resources annual meeting in October 2015. At this meeting, Australia engaged with 24 other members that administer legislation implementing obligations under the convention and was able to scan the regulatory environment for identified regulatory pressures, trends, solutions and future challenges.

The *Regulatory maturity project* found that economic and social impacts of regulation were not always fully understood by staff and that some staff lack confidence in how and when to appropriately consider these impacts. The project recommended that the senior executive promote a culture of viewing all problems and proposed solutions through the prism of environmental, economic and social impacts (where this is legally appropriate). Additionally, it was recommended that guidance material be developed to assist staff in identifying when social and economic impacts should be considered and how to adequately consider them.

3.1.3   Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 1 in Appendix 2, the Department has assessed itself as having a **maturing** maturity level for KPI 1.

The way in which stakeholder feedback, including complaints, is handled differs between regulatory areas. Some regulatory areas have reviewed their policies and procedures in direct response to stakeholder feedback and complaints.

Some review mechanisms within the Department have been implemented and resourced and the outcomes of these review processes fed back into discrete regulatory areas. In line with recommendations from the *Regulatory maturity project*, the Department has established a regulatory maturity steering committee to maintain oversight of regulatory performance. The Department has developed the *Evaluation policy 2015–2020*. The Department is in the process of developing an implementation plan for the policy that will include a systematic timetable of evaluations, which will include evaluation of regulatory functions.

Some of the Department's international networks for its regulatory functions have been formalised. This is most likely for regulatory functions related to international agreements and conventions. Some environmental scanning is undertaken in most regulatory areas but there is scope to build the capacity of regulatory officers in some divisions by increasing their understanding of the regulated community's operating environment.

3.2 KPI 2—Communication with regulated entities is clear, targeted and effective

3.2.1 Background

The *Regulator performance framework* states that best-practice regulators communicate effectively so that regulated entities clearly understand what they need to do in order to comply with regulation. A regulated entity should be able to find out quickly which regulations apply to them, what the requirements are (and how those requirements fit within the overarching regulatory framework) and how they can comply and improve compliance over time. Communication on regulatory decisions should be clear and consistent.

3.2.2 Findings

The measures that the Department selected in June 2015 for assessing performance against this KPI are:

- demonstrated appropriate consultation with stakeholders prior to significant regulatory or policy changes
- timely decisions are accompanied by a statement of reasons and advice about relevant review or appeal mechanisms, where appropriate
- feedback is sought from stakeholders on guidance and advice provided by the regulator through a wide range of mechanisms (including stakeholder surveys)
- guidance material complies with *Government accessibility guidelines*
- demonstrated effective mechanisms for responding to stakeholder engagement and complaints.

Table 2 in Appendix 1 outlines the legislation that was assessed against each measure.

Stakeholder consultation on significant regulatory or policy changes

The Department's performance in demonstrating appropriate consultation with stakeholders prior to significant regulatory or policy changes was discussed in relation to KPI 1 above. Although most areas include consultation in the design of new or review of existing regulatory policies and there is a general understanding of the need to do so, the Department could benefit from a more systematic approach.

Since the *Regulatory maturity project*, the Department has begun to create a more structured approach in the way it engages with industry sectors. Working groups with industry representatives such as the National Farmers Federation are being established with the aim of increasing engagement and mutual understanding.

In addition to these improvements, there were examples of good practice undertaken throughout the reporting period.

Australian Antarctic Division held consultative meetings with tourism stakeholders in October 2015, ahead of the Antarctic tourism season. This engagement with tourism stakeholders is ongoing and they are kept informed of developments that may affect their interests as they arise.

The Director of National Parks and the Boards of Management of jointly-managed Commonwealth reserves maintain ongoing engagement with Tourism Consultative Committees, Scientific Research Advisory Committees and other consultative committees prior to recommending any regulatory changes affecting Commonwealth reserves users. During the reporting period, the Kakadu Board of Management, which includes the Director of National Parks, sought public comment on a draft Kakadu walking strategy. Public feedback was incorporated into the strategy before finalisation in 2016.

Consultation with the motor racing industry on the timeframe for a phase-out of leaded petrol

Environment Standards Division undertook consultation with the motor racing industry as part of its review of the Government's policy on the use of leaded petrol in motor racing. In determining how to undertake consultation, the Department considered the following factors:

- the small number of stakeholders involved (less than 15)
- their regional distribution
- their familiarity with Government processes and their likely ability or inclination to provide written submissions.

Telephone interviews were determined to be the best form of contact. These were held with all peak racing associations and importers and producers of specialist racing fuel. Conversations followed a script that allowed for individualised input. Each call took between 60 and 90 minutes. Discussions were summarised and provided back to industry participants for review and correction before being used as input into the Department's policy position.

All stakeholders consulted reported that they felt all their concerns had been heard because of the open-ended questions and the unlimited time allocated for each call and that the consultation had been targeted, personal and appropriate. They appreciated not needing to provide written material, but being able to comment on the permanent record of the discussion to ensure its accuracy.

Statement of reasons for regulatory decisions

Environmental regulation is highly contested. The Department has noticed an increase in litigation over regulatory decisions over the last few years, particularly in relation to EPBC Act approvals. Clear, targeted and effective communication is one way to mitigate adversarial behaviour.

To increase clarity and transparency in decision making processes, some regulatory areas within the Department have implemented processes to ensure that appropriate regulatory decisions are routinely accompanied by a statement of reasons and advice about relevant review avenues. For example, during the reporting period, Australian Antarctic Division prepared new supporting information for permits issued under the *Antarctic Marine Living Resources Conservation Act 1981*. This information includes a statement of reasons and advice regarding relevant review or appeal mechanisms. While no permits have been issued since this revision, at least one is likely to be issued in the 2016–2017 reporting period. The supporting information has been included into the permit process in response to the commitments made under the *Regulator performance framework*.

During the reporting period, 11 statements of reasons were provided in response to 13 requests under the *Administrative Decisions (Judicial Review) Act 1977* and the EPBC Act. The two additional statement of reasons were due and responded to in July 2016. When issuing project approvals under the EPBC Act, decision briefs or statement of reasons are not regularly provided or made public and instead are only provided to individual parties on request.

It may not always be appropriate to prepare a formal statement of reasons for every regulatory decision, as they are legal documents, with specific requirements and intent. They can be resource intensive and time consuming to produce. To address this, the Department provides information about the factors that were considered in making contentious environmental impact assessment decisions.

Consultation on the 17th Conference of the Parties (CoP17) to the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES is an international agreement between governments to ensure that international trade in wildlife does not threaten endangered wild populations. Species listed under CITES are afforded protections through sustainability assessments and a permitting system to regulate imports and exports. Decisions on listings of species are made at the Conference of the Parties, held every three to four years.

Wildlife Heritage and Marine Division is responsible for preparing advice for Australian Government engagement in the CITES Conference of the Parties meeting. The Division developed an approach to consultation based on the following key factors: consideration of species proposed for changes to listing and stakeholders this may impact, guidance from relevant state and territory government agencies in relation to potential industry impacts, and identification of peak industry bodies and relevant non-government organisations to ensure effective and comprehensive engagement.

Based on the broad range of stakeholders identified, the Division determined that the most effective form of engagement would be by inviting public comment on CoP17 proposals through the Department's internet site, supplemented by inviting feedback directly from:

• industries that may be affected by species listing proposals

• non-government organisations with an interest in wildlife

• state and territory governments (environment departments and fisheries agencies)

• Australian government agencies.

The Department directly contacted around 150 industry representatives, including individual traders, peak bodies for antique houses, crocodile farmers, custom brokers, the fashion industry, the pet industry, commercial fishing and seafood representatives, recreational fishers, traditional medicine practitioners, zoos and aquariums. About 20 responses were received. Comments were also invited from all state and territory government agencies responsible for environment and the management of fisheries, with almost all providing a response. Positions on CoP17 proposals were received from 15 non-government organisations. The Department worked closely with other Australian government agencies in preparing advice for the delegation.

The information provided by industry and governments informed the development of the Australian Government's positions on proposed species listings and other agenda items to guide preparation of a national interest analysis on those listings adopted by CoP17 that may be significant for Australia. A review of consultation will be provided to the Joint Standing Committee on Treaties once CoP17 has concluded.

Consultation as part of the *Regulatory maturity project* revealed that some non-government stakeholders had a relatively low level of trust in the Department's regulatory decisions, believing that the Department is deliberately secretive about the reasons for decisions. Industry bodies noted that regulated businesses did not always understand why the Department had made particular decisions, although this confusion was more often related to process decisions (such as the manner in which a project will be assessed) rather than final decisions on whether the project should proceed.

Proponents, co-regulators and the broader community all expressed a desire for more information about the status of projects undergoing assessment. The *Regulatory maturity project* found the Department's internet site gives limited information about the progress of applications. The project suggested that improvements could be made by providing further detail regarding the application process publicly on the Department's internet site.

Stakeholder feedback on guidance

The following are examples where the Department has sought stakeholder feedback on its guidance and advice during the assessment period:

- Wildlife Heritage and Marine Division seeks stakeholder feedback on guidance documents through both targeted stakeholder consultation and public consultation. For example, during the reporting period, stakeholder specific and public feedback on the draft *Marine turtle recovery plan* was sought online, in addition to meetings with Indigenous communities in Northern Australia.

- The Director of National Parks and the relevant Boards of Management seek feedback from reserve tourism consultative committees, scientific research advisory committees and other reserve consultative committees in relation to regulatory guidance material produced by the Director.

- Environment Standards Division seeks informal feedback from proponents during assessment processes under the EPBC Act. The EPBC Act provides for consultation with stakeholders during the assessment process, including consultation on a proposed decision before it is finalised. In instances where client service charter agreements have been implemented for specific projects, more defined feedback loops are available.

- Environment Standards Division, together with the Department's Policy Analysis and Implementation Division, has commenced a project looking at the effectiveness of its regulatory communications. This project will seek stakeholder feedback on communication materials.

The *Regulatory maturity project* found that some staff within the Department did not have a strong understanding of the operating environment of relevant regulated entities and the full range of factors that influence their behaviour. This was thought to be a result of the wide range of stakeholders and industries that are affected by the Department's regulation and the high level of staff turnover and movement within the Department in recent years. The project recommended that the Department establish a group of officers who would be industry or stakeholder experts and act as an internal source of information and intelligence. These officers would undertake formal and informal training activities to improve their understanding of the operating context of key industries, as well as the broader regulatory, social and economic pressures they face. Since the reporting period Environmental Standards Division has introduced a sectoral-based approach to stakeholder engagement.

Government accessibility guidelines

The Department has developed an internal *Publications and communications guidelines* (2015) document to improve accessibility of guidance material for stakeholders. These guidelines are available to all staff on the Department's intranet. The guidelines support the Department's commitment to establishing, maintaining and promoting publication management in compliance with Australian Government guidelines. They require that all online publications are available in both Word/RFT and PDF format in accordance with the Government's

Web publishing guidelines and Web content accessibility guidelines (WCAG) v2.0. This is standard practice for the Department's regulatory policies and guidelines published online.

Response to stakeholder engagement or complaints

In order to build the Department's capability in responding to stakeholder engagement or complaints, the Department has developed an internal *Complaints management policy* (November 2013) and corresponding *Guidelines for managing complaints* (November 2013). These Guidelines state:

> *'Each line area should have a designated complaints officer who has received formal training in complaints handling, and who can manage the complaints process in conjunction with the initial contact officers. Where line areas have high public interaction, it may be necessary to appoint a team to manage complaints. All staff handling complaints should receive appropriate training in complaints management.'*

The application of these guidelines by all regulatory areas is varied. Wildlife Heritage and Marine Division received one complaint in regards to its regulation of wildlife trade during the reporting period. This complaint was managed in accordance with the Department's complaints management policy and guidelines. The area maintains a complaints register which records the actions taken in response to each complaint. Given the low frequency of complaints received by this area, a designated complaints officer has not been nominated.

Environment Standards Division operates a national information line and dedicated email address to receive and respond to stakeholder issues surrounding the application of the *Product Stewardship Act 2011*. Emails received at this address are monitored daily. The volume of emails received depends on the operational cycle of the scheme. Emails are prioritised on receipt and allocated to the appropriate officer. The rate of response to queries varies from immediate to within a week, depending on the complexity of the query and the urgency of the request. On some occasions, responses to complex emails can take longer.

The Director of National Parks and the Boards of Management of jointly-managed Commonwealth reserves monitor and review visitor and stakeholder feedback and complaints in order to identify and respond to emerging issues and trends.

3.2.3 Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 2 in Appendix 2, the Department has assessed itself as having a **maturing** maturity level for KPI 2.

It is clear that most regulatory areas appreciate the need to understand and effectively engage with the regulated community and relevant stakeholders, including by publishing information about decisions and processes. There has been evidence provided throughout the reporting period of regulatory areas undertaking stakeholder engagement to inform the development of guidance and advice.

As discussed under KPI 1, the Department's *Stakeholder engagement policy* was not developed with a specific regulatory focus, but as a general guidance document for the Department. The Department is limited in its ability to incorporate the findings of any stakeholder engagement into corporate memory. It is difficult to assess how frequently the policy is being applied by regulatory staff across the Department.

The Department has committed to improve its engagement with external stakeholders and co-regulators by adopting the use of the online survey platform, Citizen Space, to design and review policies and programs in collaboration with stakeholders. The Department has established a dedicated team to apply behavioural insights theory with the aim of improving engagement, simplification of public communication materials and identification of any barriers to compliance.

3.3 KPI 3—Actions undertaken by regulators are proportionate to the regulatory risk being managed

3.3.1 Background

The *Regulator performance framework* considers comprehensive risk assessment processes to be essential in ensuring that resources focus on areas requiring the most attention. Efficient regulatory risk assessment takes account of the regulated activity and the nature of the regulated entity, including its compliance history. Where the risk of non-compliance is high or the consequences of non-compliance significant, there should be a higher degree of monitoring. A full suite of regulatory tools should be used appropriately and where possible, regulators should consider the use of positive incentives, cooperation from industry groups and other means to encourage compliance. Any enforcement action should be within the constraints of the authorising legislation and penalties and risks proportionate to both the seriousness of the breach and the risk being managed.

3.3.2 Findings

The measures that the Department established in June 2015 for assessing performance against this KPI are:

- demonstrated engagement with the regulated entities to inform them of regulator's expectations (and the nature of the risk and the need for mitigation)
- risk management policies and procedures are available to regulated staff and the public
- relevant staff are trained in risk management policies, processes and procedures
- compliance and enforcement strategies are published and consistent with the agreed risk management policies
- documented enforcement strategy includes options for graduated compliance actions consistent with the regulator's powers
- documented enforcement strategy allows for the compliance records of the regulated entities to be considered in determining regulatory actions
- agreed quality assurance processes are in place for staff use.

The legislation that was assessed against each measure above is outlined in Table 3 in Appendix 1.

Communication of regulator's expectations

Regulatory divisions provide guidance on expectations and legislative requirements on the Department's internet site. Areas communicate regulatory requirements with stakeholders throughout the regulatory process. For example, each hazardous waste permit application has a designated project officer to provide tailored guidance to the applicant throughout the application process.

In undertaking EPBC Act assessments, the Department held around 60 pre-referral meetings with stakeholders. Pre-referral meetings assist potential proponents to understand the referral, assessment and approval process and their obligations under the legislation. The Division's referral gateway responded to around 190 queries from stakeholders during the reporting period.

Australian Antarctic Division provides prospective proponents of activities with directions to key planning resources. Each enquiry is directed to practical guidance on the Division's internet site. The internet site encourages prospective proponents of activities to consult with the Department at least two months prior to the intended departure date.

> **CASE STUDY**
>
> ## Improving compliance with Ozone Protection and Synthetic Greenhouse Gases reporting requirements
>
> The Department is investing in new capabilities so that it can use new and emerging techniques to improve business processes and outcomes. For example, following consistently low levels of compliance with reporting requirements by regulated entities under the *Ozone Protection and Synthetic Gas Management Act 1989* the Department conducted a behavioural insights trial to evaluate options for improving compliance.
>
> The Department has established a dedicated design and analytics team to provide support to line areas to design and test innovative techniques to improve departmental outcomes. Working with Environment Standards Division, the design and analytics team re-designed the standard reminder email being sent to regulated entities to remind them of their reporting requirements.
>
> Over three quarterly reporting periods, the design and analytics team ran a randomised controlled trial to test the effectiveness of the new approach by measuring the on-time reporting rates of companies receiving a re-designed email versus companies receiving the standard email reminder. The effectiveness of early and last-minute reminders was also tested.
>
> The trial which was run in 2014–15, with data analysis being completed in 2015–16 showed the most effective approach for improving on-time reporting rates involved sending a reminder email that was simpler than the original and clearly specified the required reporting requirement.
> This approach was most effective when combined with early and last-minute reminders.

The *Regulatory maturity project* found that despite the professional and dedicated officers working within the Department, high levels of staff turnover in some areas have meant stakeholders often have to repeat details and information about their applications and have experienced inconsistent requirements or advice. One industry representative noted that one proponent had had to deal with eight primary assessment officers over a period of two years on one particular proposal. The project found that stakeholders do not always understand the Department's information requirements and receive requests for information that is already available or has been provided previously. Likewise, terms of reference for assessment documentation was in some instances considered too broad, requiring large amounts of information to be submitted, even though it is not relevant to the core issues.

The *Regulatory maturity project* recommended that the Department reduce the burden associated with information requests by making requirements and requests clearer, only requesting information that is necessary to the assessment, clearly explaining the reasoning behind requests and where possible, maintaining a single point of contact during licensing, permitting and assessment processes.

In undertaking external validation of this self-assessment, the National Farmers Federation (the Federation) noted that despite the limited number of referrals under the EPBC Act from the agricultural sector, compliance with the Act was a significant issue for the sector. In its submission on the Australian Productivity Commission's Inquiry into the regulation of Australian agriculture, the Federation noted the requirements of the EPBC Act meant that legal certainty could not be provided to farmers undertaking low-risk farming activities without them undergoing the referral process. The Federation believed the referral process to be expensive and not well understood by the sector. The Department acknowledges that more work is required to improve the regulated community's understanding of the Act. The recent establishment of a formal consultative committee with the agricultural sector will help to facilitate this.

Application and availability of risk management policies and procedures, including staff training and consideration of stakeholder feedback

The following evidence has been compiled against the three measures relating to the Department's risk management policies and procedures.

The Commonwealth risk management policy is publicly available. The policy supports the *Public Governance, Performance and Accountability Act 2013*, which requires entities to establish a risk management policy and framework, embed risk management into business processes, articulate roles and expectations of officials to manage risks and develop a positive risk culture.

The Department's risk management framework includes a risk management policy, guidelines and risk management tools. The Department has issued instructions to all staff about accountability for managing risk.

In December 2015, the Department appointed a Chief Risk Officer to deepen the Department's understanding and engagement with risk and to act as a change agent to further strengthen the Department's risk culture and to ensure risks are identified and managed as well as possible.

Since their appointment, the Chief Risk Officer and support staff have met with all divisions to provide guidance and assistance on their divisional risk plans and continue to build on a whole-of-department approach to risk management. This includes the development of the Department's risk tolerance and risk appetite statements and regular review of the policy. Training on risk management has been incorporated into the Department's graduate program as well as the orientation program for all new staff. Staff are able to contact the Chief Risk Officer for assistance at any time, including to facilitate workshops and provide advice to business units and individuals.

There have been some scheme specific risk-based approaches developed within the Department such as the National Environmental Significance Threat and Risk Assessment (refer to Case Study).

Wildlife Heritage and Marine Division has applied a risk-based approach to granting fisheries approvals under the EPBC Act. Up until 2015, fisheries assessed as having low environmental risk under the fisheries provisions of the Act were provided approvals for a maximum of five years. Following extensive consultation and broad stakeholder support, the Environment Minister agreed that fisheries assessed as low risk could potentially have their approvals extended to a maximum of 10 years. This change rewards fisheries which are well managed and provides a greater incentive to fisheries with a high environmental risk to improve their management. It also frees departmental resources to focus on fisheries which pose the greatest risk to the environment.

In addition, Wildlife Heritage and Marine Division and Environment Standards Division are developing a risk-based approach to the regulation of international trade in wildlife under the EPBC Act. The Department has completed phase one of its development of a Wildlife Intelligence Strategic Threat Risk Assessment (WISTRA) tool. This tool analyses data holdings to support the identification and classification of risks associated with wildlife trade and the targeting of compliance effort.

Environment Standards Division updates and maintains a risk register to support the administration of the *Product Stewardship Act 2011*. The risk register deals with four major risks covering:

- industry compliance
- performance against statutory obligations
- the systems and information needed for delivery
- broader health, safety and environmental risks that may be associated with actions taken under the legislation, but do not fall within the boundaries of the regulated environment.

The risk register informs the focus of the Department's interactions with regulated entities, as well as the design of monitoring and reporting processes. For example, management of health and safety risk at recycling premises is a central focus of quarterly reporting under the National Television and Computer Recycling Scheme, while the identification of emerging environmental risks (e.g. stockpiling of waste) is a focus of biannual meetings with state environmental protection agencies. The Department is undertaking an assessment of co-regulators' management of higher risk waste materials, like leaded glass and processes, such as export of materials for advanced recycling. This will enable improved risk-management practices to be implemented both by co-regulators and the Department.

Wildlife Heritage and Marine Division has developed a matrix to determine the risk of different types of offences under the *Historic Shipwreck Act 1976* on historic shipwrecks and associated relics. The matrix compares the perceived motivation of an offender with the potential damaging impact on the affected shipwreck or relic and to the objectives of the Historic Shipwrecks Program. This matrix helps staff complete a preliminary compliance incident assessment document to determine the type of action required, including whether the commitment of departmental resources to undertake a formal investigation is appropriate.

Both the *Regulatory maturity project* and the Australian National Audit Office audit on managing compliance with wildlife trade provisions under the EPBC Act made recommendations about developing a structured, departmental-wide risk assessment of all regulatory activities to systematically allocate resources proportionate to risk. The Department's approach to risk will be influenced by the setting of its formal regulatory posture,

---

CASE STUDY
National Environmental Significance Threat and Risk Assessment

The Department is maturing its approach to compliance monitoring of approvals under the EPBC Act and in particular, is actively focusing efforts and resources towards those activities representing the greatest risk to the environment and community. The need to shift to risk-based regulation was a key recommendation of an Australian National Audit Office's performance audit of the Department's compliance monitoring capability in 2013–14 and the *Regulatory maturity project* (2015).

To support a consistent risk-based approach to compliance and enforcement, the Department developed a risk-based prioritisation model. The National Environmental Significance Threat and Risk Assessment (NESTRA) tool was developed in collaboration with CSIRO, to focus the Department's compliance monitoring activities on projects that pose the greatest risk to nationally protected matters.

High-risk projects, sectors and regions are subject to increased compliance monitoring focus. This can include increased scrutiny of annual compliance and monitoring reports, consideration under the Department's strategic compliance audit program and on-site inspections to verify compliance with approval conditions. Increased education and outreach activities are directed towards high-risk regions and sectors.

In 2014–15, for example, the Department focused its compliance monitoring activities on residential development projects in the Perth–Peel region of Western Australia. The program included inspections of projects in the region and reviews of annual compliance and monitoring reports. The Department provided information to individual approval holders and representative bodies to increase their awareness of approval requirements. The Department addressed non-compliance in accordance with Departmental policies and procedures. This included additional monitoring and follow up. By the end of the program there were no instances of repeat non-compliance in relation to these projects and the sector's NESTRA risk rating fell in 2015–16.

Risk-based approaches like NESTRA help prioritise and allocate resources and effort where they will have the greatest impact and contribute to the protection of matters of national environmental significance.

which will be a clear and consistent statement of the Department's regulatory purpose and approach. This will be developed as part of the Department's new regulatory framework, which is due to be published in 2017.

Compliance and enforcement strategies are published and consistent with risk policies, include graduated compliance actions and account for compliance records of regulated entities

The Department has an overarching *Compliance and enforcement policy* (December 2009) which is available on the Department's internet site. The Department has published a *Compliance and enforcement policy: Environment Protection and Biodiversity Conservation Act 1999* (2013) which is consistent with the Department's overarching policy. The policy aims to promote a consistent, transparent and fair approach to compliance and enforcement activities and provide guidance for stakeholders and the wider community about how the Department addresses potential contraventions of the Act.

Despite the existence of the above policies, the *Regulatory maturity project* noted that the overarching compliance policy has not been substantively updated since 2009 and newer policies only cover specific regulatory regimes. There is not a current, comprehensive and consistent strategy to cover all the Department's regulatory activities. Some external stakeholders reported frustration with what they believe to be a lack of consistency in compliance and enforcement actions. The project found that given the contestable environment the Department is operating in, these circumstances can lead to a lack of trust in the Department and may encourage non-compliance due to a perceived lack of enforcement action.

The Department has established an internal regulatory advisory panel to provide centralised guidance on compliance activities. The *Regulatory maturity project* noted that the panel will improve consistency in compliance and enforcement activities, but found that not all compliance activities were referred to the panel. The panel was still developing the capacity to proactively set standards for starting and escalating compliance activities. While some tools for compliance monitoring have been developed in some areas, these tools do not allow for the prioritisation of resources across the Department's regulatory schemes. The project recommended that a renewed compliance and enforcement strategy be developed as part of the Department's regulatory framework to increase consistency of approach and facilitate the prioritisation of resources. The Department will implement this recommendation.

The Department is considering establishing an Office of Compliance and Enforcement that would consolidate all compliance functions across the Department. This would increase the consistency and improve the oversight of a large proportion of the Department's compliance and enforcement activities.

Quality assurance processes

The Department has established a Governance and Performance Committee which plays a critical role in strengthening and embedding sound business practices across the Department. The committee identifies and addresses opportunities to enhance performance and effectively manage risk.

Australian Antarctic Division ensured that all approvals and permits issued during the reporting cycle were in accordance with the *Australian Antarctic Division's guide to administering environmental approvals (2016–2018)*. The Division reviews and updates its guide biannually and undertakes ad hoc reviews as required (for example following novel or contentious matters). Extensive work has been done by Wildlife Heritage and Marine Division to update standard operating procedures and guidance documents for its compliance activities relating to wildlife trade and biosecurity. These procedures helped ensure the Department maintained a consistent approach to wildlife trade compliance activities during the reporting period.

The *Regulatory maturity project* found that across the Department, the development of policies, templates, standard operating procedures and other guidance material for staff is largely the responsibility of individual

sections. While some areas, such as Australian Antarctic Division, have comprehensive and well established standard operating procedures, many sections lack the necessary time and capacity to develop and maintain these materials. Some departmental officers raised concerns regarding the lack of consultation when processes, guidance or tools are developed, including with specialist areas such as the General Counsel Branch, to ensure they are robust and legislatively compliant.

The project found that staff at all levels expressed concern that officers were not aware of all policies, templates, standard operating procedures and guidance material available to them. The project reported that staff found this material to be unclear, incomplete, poorly-written or difficult to understand. Consequently staff developed their own unofficial procedures or work arounds. This meant that supervisors need to be extra vigilant to ensure current policies and standard operating procedures are being implemented.

The project noted recent efforts by the Department to improve the development of business systems and supporting tools, such as a cross-divisional team to stress-test interim business processes to provide greater confidence that environmental approval decisions are supported by the correct statutory documentation. Environment Standards Division has commenced a project to review and update its environmental impact assessment manual.

3.3.3   Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 3 in Appendix 2, the Department has assessed itself as having a **maturing** to **well established** maturity level for KPI 3.

The Department uses a variety of mediums for communicating its expectations and requirements to its regulated entities. Improvement could be made by reducing staff turnover so that designated officers are not frequently changed and making information requests more targeted.

The Department could make better use of focus groups and surveys to measure the regulated community's understanding of the Department's requirements and regulatory posture. The Department's design and analytics team has begun work in this area.

The Department has an overarching compliance and enforcement policy as well as policies specific to particular regulatory areas and has developed tools for applying risk-based approaches to compliance management. Despite these policies and tools the *Regulatory maturity project* identified some confusion among stakeholders regarding the consistency of the Department's compliance actions. Risk-management strategies were still being revised and developed over the reporting period.

Over the reporting period, the Department has demonstrated a move towards more risk-based and outcome-focused regulation and has developed tools to factor a regulated entity's compliance history into regulatory decisions for some regulatory functions (see section 3.4.2).

3.4   KPI 4—Compliance and monitoring approaches are streamlined and coordinated

3.4.1   Background

The *Regulator performance framework* states that compliance and monitoring are an essential part of regulatory frameworks because they allow regulators to determine the level of compliance with the regulation. According to the framework, best-practice regulators seek to minimise the compliance costs from inspection and monitoring

activities imposed on regulated entities, through implementing risk-based approaches and streamlining inspection and monitoring processes as far as possible. Information is not sought unless it is necessary to achieve the regulatory outcome and requests are minimised by removing duplication and considering if the information is available through alternative means. Inspections should focus on identifying and addressing persistent breaches of regulation and aim to improve compliance.

3.4.2 Findings

The measures that the Department established in June 2015 for assessing performance against this KPI are:

- demonstrated effort to reduce number and crossover of information requirements imposed on regulated entities
- demonstrated effort to coordinate inspections with similar regulators, where appropriate
- demonstrated effort to share and receive information among regulators, where appropriate
- demonstrated effort to store and retrieve information among regulators, where appropriate
- evidence of collected information being acted on or stored
- demonstrated transparency of inspection monitoring arrangements
- monitoring and enforcement strategies that allow for a range of regulatory responses
- feedback mechanisms to seek stakeholder views on inspection and monitoring regimes.

The legislation that was assessed against each measure above is outlined in Table 4 in Appendix 1.

Reducing the number and crossover of information requirements

Over the reporting period, the Department has continued to improve the management and implementation of bilateral agreements with state and territory regulators to streamline information requirements on the regulated community for environmental impact assessments. Out-posted Commonwealth officers have been placed with the NSW Government to provide guidance and advice in relation to the assessment of nationally protected matters under bilateral arrangements. The ACT Government out-posted officer program was successfully completed during the reporting period. Commonwealth officers are co-located with the Queensland and Western Australian Governments to work on EPBC Act regulatory matters. In addition, two new policies implemented by the Department during the reporting period, the *Conditions setting policy and Outcomes-based conditions policy*, will reduce the reporting requirements on regulated entities during the post-approval phase.

The Department reduced the administrative burden on large scale commercial importers of wildlife products such as crocodile products. This was done by removing the mandatory requirement to present paper permits to Australian Border Force on import. This work is the first stage of the 'Importing goods into Australia' project managed by the Department of Immigration and Border Protection and the Digital Transformation Office.

Working with other regulators (coordinating inspections and sharing information)

The Department has an Agreement with Australian Border Force which allows for the sharing of data collected on importations to be provided to the Department to assist in administering the *Product Stewardship Act 2011*. The Department requests this data from Australian Border Force at least three times a year. Under this arrangement, the need for regulated entities to report to the Department on the importation of particular products is eliminated.

The *Regulatory maturity project* found that the Department had limited tools, particularly in terms of information technology for sharing protected data with co-regulators, and storing, mining and analysing data to identify emerging issues, trends and risks. It was noted that the Department was working on several projects to improve its relationship with Australian Border Force, including data sharing and intelligence. The project highlighted that

this would provide an opportunity for the Department to learn from Australian Border Force, which has a more sophisticated approach to intelligence.

The *Regulatory maturity project* referred to the Department's heavy reliance on other regulators to gather information and carry out monitoring activities. Despite this heavy reliance on co-regulators at all levels (for example the International Criminal Police Organisation, Australian Border Force, State and Territory Environment and Planning Agencies and the Australian Federal Police) the project found there were no clear institutional arrangements in place for managing relationships with these agencies. Coordination varied across the Department and, if they existed, memorandums of understanding were out of date or inadequate.

The *Regulatory maturity project* recommended the Department increase its engagement with the other Commonwealth and state regulators including building stronger bilateral relationships through staff exchanges, secondments and ad hoc or standing working groups. It recommended that the Department work with relevant state and territory co-regulators to agree on cooperative approaches to monitoring and compliance activities, including sharing supporting information such as briefs. The Department actively participates in the regulator community of practice events convened biannually by the Department of the Prime Minister and Cabinet for all Commonwealth regulators.

There have been recent steps by the Department to formalise relationships with co-regulators. Wildlife Heritage and Marine Division has established a joint working group with the Department of Immigration and Border Protection to coordinate improvements into the sharing of intelligence and data on wildlife, in response to recommendations made in the Australian National Audit Office's report on managing compliance with wildlife trade provisions of the EPBC Act. Environment Standards Division has embedded officers within state agencies to assist in the EPBC Act one-stop-shop process.

Acting on collected information

In undertaking compliance activities under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, the Department maintains a database capturing each compliance incident, including the outcomes and reasons for decision. This data is used when responding to incidents involving the same entities and as a reference tool in the assessment of the suitability of applicants. The Department provides this data to Australian Border Force, which uses it to develop profiles on potential illegal exporters of hazardous waste.

Australian Antarctic Division maintains a database of permits and authorisations issued to stakeholders under the *Heard Island and McDonald Islands Act 1953*, the *Antarctic Treaty (Environment Protection) Act 1980* and the *Antarctic Marine Living Resources Conservation Act 1981*. It is standard policy within the Division that environment policy officers refer to this database when assessing new permit applications.

In addition, as a condition of permit approval, Australian Antarctic Division requires regulated entities to complete a post-activity or post-visit report. These reports are filed with the permit and are used to facilitate ad hoc reviews of the Division's procedures where necessary, for example where practices or procedures have been highlighted for improvement.

Transparency of inspection monitoring arrangements

The Department has standard operating procedures in place for all compliance monitoring undertaken under the *Fuel Quality Standards Act 2000*. Information and guidance is provided to fuel suppliers during fuel testing inspections. The Department's internet site provides information for fuel suppliers on what they can expect during a site visit, the powers of inspectors under the Act and the obligations of the occupier of the premises during an inspection.

The Department has published a *Compliance and monitoring program 2015–2016* in relation to environmental approvals made under the EPBC Act and the *Environment Protection (Sea Dumping) Act 1981*. The program outlines operational achievements from the 2014–2015 period (including 77 projects being subject to a monitoring and compliance inspection), business improvement achievements (such as the National Environmental Significance Threat and Risk Assessment tool) and the compliance monitoring focus for 2015–16 in terms of sector-specific issues and challenges. The program established objectives for the 2015–2016 period including at least 20 per cent of all high-risk rated projects being subject to a compliance monitoring inspection and at least one project of any risk category in the vicinity of a high risk-rated project to be subject to a compliance monitoring inspection.

Range of regulatory responses

Most of the Department's regulatory business areas undertake a graduated compliance and enforcement approach in line with the Department's *Compliance and enforcement policy*. For example, in administering the regulatory functions of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, one licence was refused and 92 monitoring inspections were undertaken during the reporting period. Of the inspections undertaken, five infringement notices were issued while the remaining 87 (94.5 per cent) were brought into compliance without requiring further action.

A key principle of Australian Antarctic Division's *Environmental compliance and enforcement framework* is the application of a range of enforcement strategies under a risk-based, proportionate and effective compliance effort. During the reporting period, four non-compliance events under the *Antarctic Treaty (Environment Protection) Act 1980* were investigated, one of which has been concluded. In accordance with the framework, a proportionate response was taken. As the non-compliance was a first time offence that had negligible impact on the Antarctic environment, a warning letter was issued and Australian Antarctic Division (in this case responsible for the non-compliance) subsequently revised its policies and procedures to prevent reoccurrence.

The Director of National Parks uses a range of regulatory responses including education of reserve visitors by park rangers, directions to leave the reserve, formal warning letters, suspension or cancellation of commercial activity permits, licenses or approvals, issuing infringement notices, commencing civil penalty action or referral to the Commonwealth Director of Public Prosecutions for criminal prosecution. Compliance and enforcement statistics and associated performance measures are made publicly available in the Director of National Parks' annual reports.

Stakeholder feedback on inspection and monitoring regimes

Environment Standards Division seeks feedback from stakeholders during site inspections undertaken by the Department in its administration of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and related legislation. All issues raised at these inspections are discussed at a monthly compliance meeting and are used to inform amendments to policy and legislation. This feedback guides future activities by the Department and industry boards.

3.4.3   Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 4 in Appendix 2, the Department has assessed itself as having a **maturing** to **well established** maturity level for KPI 4.

The Department has been taking steps over the reporting period to formalise relationships with agencies on which it relies to gather information and undertake monitoring activities. Such steps include developing information technology systems to automate information sharing and embedding officers in other regulatory agencies.

The Department has compliance and enforcement policies and published its *2015–16 Compliance monitoring program* for environmental approvals which is consistent with the relevant compliance monitoring policies and sets clear, quantifiable objectives to be achieved over the program period.

3.5 KPI 5—Regulators are open and transparent in their dealings with regulated entities

3.5.1 Background

The *Regulator performance framework* reflects the view that transparency is important in ensuring confidence in the way a regulator regulates and by providing a greater understanding of the regulator's role, while also increasing compliance of regulated entities. Best-practice regulators clearly communicate the evidence base and approach used in regulatory decision making processes to regulated entities. Under the framework, regulatory objectives and risk-based frameworks should be made publicly available, unless it can be clearly demonstrated that this would lead to a failure in the regulatory system.

3.5.2 Findings

The measures that the Department established in June 2015 for assessing performance against this KPI are:

- requirements of regulated entities are open and transparent
- enforcement strategy and risk approach are published
- responses to requests from regulated entities are provided within specified timeframes
- reasons for information requests are communicated clearly and consistently
- performance measurement results are published
- performance information is made publicly available where appropriate
- advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement
- 100 per cent of regulation impact statements are certified as compliant by the Office of Best Practice Regulation.

Table 5 in Appendix 1 outlines the legislation that was assessed against each measure.

Published enforcement strategy and risk approach

The Department has published both the overarching and the EPBC Act specific compliance and enforcement policies on its internet site.

Australian Antarctic Division's *Environment compliance and enforcement framework* is published internally within the Division. No requests were received from the public for this document during the reporting period.

The Department's risk management framework has not been published externally.

Timeframe for responses to regulated entities

The Department of the Environment service charter 2014–2016 has been published on the Department's internet site. The charter stipulates that the Department will aim to reply to all correspondence within 20 working days of receipt, or if unable to provide an answer within that time, will send an acknowledgement including a timeframe within which a reply can be expected.

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and related Regulations specify timeframes in which decisions to grant permit applications must be made. Within the reporting period, 100 per cent of applications were completed within these timeframes.

There are statutory timeframes within which decisions must be made and other actions completed under the EPBC Act and related Regulations. The Department publishes its performance against these timeframes in its annual report on the Department's internet site.

Contrary to the suggestion of some stakeholders, the *Regulatory maturity project* found no evidence to suggest the Department inappropriately withholds information requested by stakeholders in regards to assessments under the EPBC Act, or that it deliberately draws out freedom of information requests. Legislative requirements were met for freedom of information requests.

Published performance measurement results and information

Compliance statistics and associated performance measures are made publicly available in the annual reports of the Department of the Environment and Energy and the Director of National Parks. The relevant data for the 2015–16 reporting period is available in the *Director of National Parks Annual Report 2015–16* and the *Department of the Environment and Energy Annual Report 2015–16*. Both reports are publicly available on the Department of the Environment and Energy's internet site (**www.environment.gov.au**).

Widely available stakeholder advice and guidance, open and transparent requirements, clear and consistent information requests

The following evidence has been compiled against the three measures relating to regulator advice and guidance, requirements and information requests.

The measure relating to a regulator's requirements overlaps with the measure in KPI 3, regarding the communication of the regulator's expectations. Under this measure it was found that many of the Department's regulatory areas provide guidance through the Department's internet site and undertake ongoing engagement with stakeholders throughout the regulatory process. All guidelines and policy statements published by the Department in the reporting period are listed in its Annual Report.

CASE STUDY

Commonwealth Marine Reserve Vessel Monitoring System

The Commonwealth Marine Reserves Alert Service is an automated messaging facility that alerts commercial fishers when they enter a Commonwealth marine reserve or reserve zone which does not permit their licensed fishing method.

The alert service requires a satellite vessel-monitoring system to be installed on the fishing vessel. The service was developed and tested with the support of the South-east Trawl Fishing Industry Association. The Australian Fisheries Management Authority administers the alert service under a partnership agreement with the Director of National Parks.

In the two years since its implementation, over 1250 alerts have been issued, resulting in no record of non-compliance by those operators that have access to the service. This outcome represents significant savings to government and industry in legal costs and, importantly, ensures the protection of these significant marine areas.

The Department publishes all approval decisions and related conditions for proposals assessed under the EPBC Act on its internet site. This allows potential proponents to become aware of the types of conditions that may be placed on them if their proposal requires approval under the Act.

In its regulation of wildlife trade and biosecurity under the EPBC Act, Wildlife Heritage and Marine Division publishes all application forms for wildlife trade management plans, wildlife trade operations, artificial propagation programs, captive breeding operations and aquaculture programs. The Department will update the information available to online shoppers and travellers available on the its internet site in the 2016–2017 reporting period in response to the Australian National Audit Office's report on *Managing compliance with the wildlife trade provisions of the Environment Protection and Biodiversity Conservation Act 1999*.

The Director of National Parks publishes management plans in effect for Commonwealth reserves on the Parks Australia internet site, along with *Commercial tour operator permit and licence guidelines*. Template permit conditions are attached to permit application forms.

The Department undertook a survey of proponents and consultants in response to the *Regulatory maturity project's* findings on the clarity of its information requests. The survey focused on streamlining EPBC Act assessment and approval processes and has resulted in improvements that will deliver more upfront advice and guidance to stakeholders. Some of these improvements include standard templates and guidance to be used by assessment officers when requesting preliminary assessment documentation and guidance for officers on the use of 'stop the clock' provisions.

Compliance with regulation impact statements

During the reporting period, the Department completed four regulation impact statements. All four were deemed by the Office of Best Practice Regulation to be compliant with the Government's regulatory impact analysis requirements.

3.5.3 Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 5 in Appendix 2, the Department has assessed itself as having a **maturing** maturity level for KPI 5.

The Department's compliance and enforcement strategy and policies and *Client service charter* are all publicly available on the Department's internet site.

As discussed under KPI 3, the Department is continuing to develop risk-based approaches to regulatory activities as well as its overarching risk management framework. The Department expects that the work of the Chief Risk Officer will improve staff understanding and implementation of the Department's risk management framework, including the application of risk-based, outcome-focused regulation.

Compliance statistics and associated performance measures are made publicly available through the Department's annual report. In addition, annual self-assessments against the *Regulatory performance framework* will increase transparency.

3.6 KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks

3.6.1 Background

The *Regulator performance framework* considers best-practice regulators will actively contribute to the continuous improvement of the regulatory framework, ensuring the flexibility to adjust to changing circumstances. Information collected as part of monitoring and compliance approaches should be used by regulators to inform improvements in the authorising legislation. Stakeholder feedback should inform the development of any proposed change to management activities and ensure the proposed actions are appropriately targeted.

3.6.2 Findings

The measures that the Department established in June 2015 for assessing performance against this KPI are:

- documented procedures are in place to allow active and regular engagement with stakeholders (to seek contributions to improvement of the regulatory framework)
- stakeholder events are held regularly to facilitate participation in the development or amendment of the regulatory framework
- documented procedures are in place to facilitate the flow of information between the regulator and the policy departments.

Table 6 in Appendix 1 outlines the legislation that was assessed against a particular measure.

Procedures for engagement with regulated entities on regulatory framework improvements

The Department's engagement and consultation with regulated entities on the improvements of regulatory frameworks has been discussed above under KPI 1. The Department's *Stakeholder engagement handbook* provides general guidance to staff.

Most regulatory areas include stakeholder engagement when developing and reviewing policies and procedures, although in many instances this engagement is ad hoc and procedures for undertaking stakeholder engagement have not been well documented.

A recommendation of the *White paper for developing northern Australia* is that the Government will consult Indigenous communities, interested parties and industry on possible amendments to the *Aboriginal and Torres Strait Heritage Protection Act 1984* to reduce duplication in Indigenous heritage protection processes across jurisdictions. This includes considering the establishment of a system to accredit appropriate state and territory Indigenous heritage protection regimes. Over the next reporting period, the Department will commence consultation regarding possible amendments to the Act, including establishing an accreditation scheme. A plan for consultation and stakeholder engagement is being developed.

The *Regulatory maturity project* found stakeholder engagement was not conducted consistently across sections and branches within the Department and staff were often unaware of previous or concurrent engagement with particular stakeholders. Ad hoc recording of stakeholder engagement and feedback through file notes and hand written notation made it difficult for this data to be incorporated into corporate memory for future use. The project recommended that the Department develop a broad communication strategy focused on identifying the most effective engagement options, given the limited resources and map stakeholder engagement across the Department to provide for a more coordinated approach.

Stakeholder regulatory framework events

Australian Antarctic Division held various consultative forums during the reporting period. An annual stakeholder consultative meeting was held in October 2015 ahead of the Antarctic tourist season. Three consultative forums relating to Australia's engagement in the Commission for the Conservation of Antarctic Marine Living Resources were held. Stakeholders who have previously undertaken an activity under the *Antarctic Marine Living Resources Conservation Act 1981* were invited to attend. These forums did not result in any impact on how the Acts are implemented but did inform proponents on the importance of submitting timely and complete applications to conduct activities. Australian Antarctic Division received direct feedback confirming that stakeholders appreciate and benefit from such consultative forums.

To inform stakeholders on the management of the South-east Commonwealth Marine Reserves Network, the Director of National Parks coordinates a South-east Network Stakeholder forum to facilitate engagement and collaboration of representatives from industry associations, conservation and marine science agencies and community groups. The forum is held biannually. Over the reporting period, forum members contributed to the planning and delivery of the implementation schedule and the development of the communications and education plan.

Procedures for information exchange between regulatory and policy areas

The *Regulatory maturity project* found that staff within the Department were generally aware of the link between policy and regulation, but continuous monitoring, review and revision of specific policies was not common practice. As such, the success or failure of specific policies was difficult to measure.

The *Regulatory maturity project* noted that, consistent with government policy, the Department routinely develops regulation impact statements for new policies and initiatives with regulatory impacts. This process requires staff to define the relevant problem and consider a range of policy options for addressing it. Despite this process, the project found that the Department uses a relatively limited range of regulatory tools, particularly 'command and control' approaches. This was in part due to the prescriptive and inflexible nature of the legislation administered, although resourcing, time restrictions and a lack of understanding of the full range of potential regulatory responses were responsible for limited analysis and creativity in responses to challenges.

The *Regulatory maturity project* recommended that the Department recognise the continuum between policy and regulation and maintain constant communication between those developing and those implementing policy. It further recommended that the Department look for opportunities, both within the current legislative framework and through future legislative amendments, to use innovative approaches to achieve the relevant objectives.

Environment Standards Division has established a policy working group to support policy development and implementation, consider regulatory policy issues and provide a mechanism for regular information exchange. The group's membership brings together executive staff from the Division's policy, reform, assessments, and compliance and enforcement areas. The Department's Regulatory Advisory Panel further supports information exchange by providing guidance, advice and recommendations on regulatory and policy decisions.

3.6.3   Assessment of performance

Based on the evidence above and the assessment criteria contained in Table 6 in Appendix 2, the Department has assessed itself to be **developing** in its maturity against KPI 6.

Although the Department's *Stakeholder engagement handbook* promotes the use of stakeholder feedback in project and policy development, the Department is yet to develop the systems to effectively use feedback as a corporate resource and feed information into policy areas. This will be a focus for the Department over the next reporting period.

Some business areas hold regular consultative forums with stakeholders to communicate information on any proposed regulatory changes and provide an opportunity for stakeholders to identify areas that may require review or enhancement. The Department would benefit by adopting this approach across all of its regulatory functions.

While staff across the Department are generally aware of the link between policy and regulation, regular monitoring, review and revision of specific policies is not systematic. The Department will promote and maintain continuous communication between its regulatory and policy development areas.

4. Future regulatory performance assessment

In undertaking this self-assessment, it has been noted that the *Regulator performance framework*'s KPIs and the related measures nominated by the Department are heavily weighted towards reducing burden placed on stakeholders by the implementation of a regulatory framework. Given the focus on engagement with regulated communities, the framework is more limited in allowing for a complete assessment of regulatory performance or the extent to which a regulator is achieving intended objectives (for example, environmental outcomes such as reducing a decline in biodiversity).

The Department will further consider how the framework can be adapted to assess other useful information in future, including:

Governance—Best-practice regulators have clear governance structures to ensure regulatory activities and policies are administered consistently and appropriately throughout the organisation. The *Regulatory maturity project* found that there was no standard way for developing or approving policy guidance within the Department. Clear governance structures could include an oversight body that guides matters such as the Department's regulatory priorities and posture, as well as the appropriate allocation of resources across regulatory functions.

Workforce planning—People with the required skills, experience and approach are fundamental to successful regulation. A best-practice regulator has a clear understanding of its role and function, and the skills and capabilities required to achieve desired policy objectives. The *Regulatory maturity project* found that some regulatory areas had focused on recruiting subject matter expertise or general government skills, rather than targeting people with a good understanding of regulation and best practice. In addition, an integrated capability framework or training program to develop regulatory skills would benefit in these areas.

Systems and tools—A mature regulator has well developed and maintained business systems and supporting tools that increase staff capacity and provide a high degree of confidence that decision making is legal, robust and predictable. The *Regulatory maturity project* found recent enhancement of the Department's information technology systems was yet to deliver its full benefit because of the time and investment required for design and implementation.

The Department has made substantial investment to reform and upgrade its information and communication technology platforms. The Department's Chief Information Officer is developing a forward work program to prioritise activities and balance the immediate and long-term needs of the agency.

Evaluation—Best-practice regulators routinely and systematically measure and evaluate their performance and outcomes. The *Regulatory maturity project* recommended that the Department improve the way it measures, evaluates and continuously improves its regulatory functions.

Limited data across the Department was available to form a quantitative assessment of its performance against the existing measures. The assessment found some duplication between measures across KPIs. In the 2016–17 reporting period, the Department will revisit the measures it has nominated. This will include considering what quantitative data is able to be collected and determining how this data can be used to demonstrate performance against the KPIs. The Department will streamline duplicative measures. Qualitative measures will remain an important component in assessing the Department's performance as a regulator.

The Department is committed to improving its regulatory maturity. It will revisit the framework regularly so that it is capable of assessing all aspects of regulatory maturity and the Department is able to continue to improve and develop into a leading regulator.

5. External validation and outcomes

The Department invited all stakeholders who commented on the development of the framework's metrics to act as external validators. Three groups accepted this invitation. To increase the representation of external stakeholders, the Department identified seven additional organisations to seek feedback from. The following organisations provided feedback as part of the external validation process:

- Australian Heritage Council
- Consumer Electronics Supplier Association
- South East Trawl Fishing Industry Association
- National Farmers Federation.

The overall feedback on the report was generally positive and in agreement with the findings on performance. The feedback commended the initiatives the Department has implemented to improve its performance as a regulator, although noted there is still room for improvement.

Stakeholders noted that the performance of specific regulatory regimes administered by the Department may differ from the Department's overall performance. Two stakeholders gave a preference for future assessments to be broken down by regulatory regimes so that the performance of regimes relevant to their constituents could be understood and reviewed more easily. The Department will consider how to best address this concern in the 2016–17 self-assessment.

In its feedback the National Farmers Federation noted that farmer understanding of the EPBC Act is low and agreed with the sentiment throughout the self-assessment that more needs to be done to communicate the Department's regulatory expectations and requirements to the regulated community. The Federation welcomed the recent establishment of Departmental working groups with industry representatives like themselves, as an approach to increase engagement and mutual understanding.

The Federation also identified that using measurable (rather than qualitative) performance indicators would help to track regulatory improvements over time. The Department is working towards developing improved measures and supporting evidence. It will take time for the Department to improve the collection and analysis of quantitative data relating to the performance of regulatory functions. In some instances qualitative data will remain the most appropriate and useful data source. To support qualitative findings of performance, the Department will continue to use case studies as evidence and to highlight performance specific to particular regulatory regimes.

6. Conclusion

Overall, this self-assessment has found that the Department's regulatory performance is:

- **Maturing to well established** in relation to risk managed proportionate actions (KPI 3) and its compliance and monitoring approaches (KPI 4)

- **maturing** in relation to its impact on the efficient operation of regulated entities (KPI 1) and how it communicates and engages with regulated entities (KPI 2 and KPI 5)

- **developing** in relation to actively improving its regulatory frameworks (KPI 6).

The Department expects that its operation and performance as a regulator will continue to improve as the recommendations from this and other reviews are implemented. The findings and assessment contained in this review will provide a performance baseline against which the Department can measure future improvements. Future self-assessments will have the added benefit of assisting the Department in evaluating the implementation of its response to the *Regulatory maturity project*.

Appendix One: Departmental measures by legislation

In June 2015, the Department agreed to report on specific measures to gauge its performance against each key performance indicators (KPIs) in the Department of Prime Minister and Cabinet's *Regulator performance framework*.

At the time, it was envisaged that the Department would report on the performance of each of its 11 legislative frameworks individually against each KPI. As such, different measures were selected for each piece of legislation.

The approach taken in this annual assessment is to provide an overall assessment of the Department's performance against each measure. Performance data for each legislative framework was collected for the measures that were selected for that framework in June 2015. The tables below explain which measures were reported against for each legislative framework.

Legislation key:

1. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
2. *Antarctic Marine Living Resources Conservation Act 1981*
3. *Antarctic Treaty (Environment Protection) Act 1980*
4. *Environment Protection and Biodiversity Conservation Act 1999*
5. *Environment Protection (Sea Dumping) Act 1981*
6. *Fuel Quality Standards Act 2000*
7. *Hazardous Waste (Regulation of Exports and Imports) Act 1989*
8. *Heard Island and McDonald Islands Act 1953*
9. *Historic Shipwrecks Act 1976*
10. *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
11. *Product Stewardship Act 2011*

Table 1: KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities

Measure	1	2	3	4	5	6	7	8	9	10	11
1.1—Regular, ongoing review of policies, procedures and requirements, including through consultation and engagement with stakeholders, independent experts and industry	✱	NA	NA	✱	✱	✱	✱	✱	✱	✱	✱
1.2—Documented established communication mechanisms with regulated entities, including complaint mechanisms and surveys of regulated entities	✱	NA	NA	NA	NA	✱	NA	NA	NA	NA	NA
1.3—Demonstrated engagement with relevant international organisations to learn from peer experiences and share better practices	NA	✱	✱	✱	NA	NA	✱	NA	✱	✱	NA
1.4—Environment scanning is undertaken regularly	NA	✱	✱	✱	NA	NA	NA	✱	NA	NA	✱

✱: Reported

Table 2: KPI 2—Communication with regulated entities is clear, targeted and effective

Measure	1	2	3	4	5	6	7	8	9	10	11
2.1—Demonstrated appropriate consultation with stakeholders prior to significant regulatory or policy changes	✱	✱	✱	✱	✱	✱	✱	✱	✱	✱	✱
2.2—(*Timely) Decisions are accompanied by a statement of reasons and advice about relevant review or appeal mechanisms, where appropriate	✱	✱*	✱	NA	NA	NA	✱	✱	NA	NA	NA
2.3—Feedback is sought from stakeholders on guidance and advice provided by the regulator through a wide range of mechanisms (including stakeholder surveys)	NA	NA	NA	✱	✱	✱	NA	NA	✱	✱	NA
2.4—Guidance material comply with Government accessibility Guidelines	NA	NA	NA	NA	NA	NA	NA	NA	✱	NA	NA
2.5—Demonstrated effective mechanisms for responding to stakeholder engagement and complaints	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	✱

✱: Reported

Table 3: KPI 3—Actions undertaken by regulators are proportionate to the regulatory risk being managed

Measure	1	2	3	4	5	6	7	8	9	10	11
3.1 a—Demonstrated engagement with the regulated entities to inform them of regulator's expectations	✲	✲	✲	NA	✲	✲	✲	✲	✲	✲	NA
3.1b—Demonstrated engagement with the regulated entities to inform them of the nature of the risk, the need for mitigation and the regulator's expectations	NA	NA	NA	✲	NA	NA	NA	NA	NA	NA	NA
3.2—Risk management policies and procedures are available to regulated staff and the public	✲	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
3.3—Compliance and enforcement strategies are published and consistent with the agreed risk management policies	✲	NA	NA	✲	✲	NA	NA	NA	NA	NA	NA
3.4—Documented enforcement strategy includes options for graduated compliance actions consistent with regulator's powers	NA	NA	NA	NA	NA	✲	NA	NA	NA	✲	NA
3.5—Documented enforcement strategy which allows for the compliance records of the regulated entities to be considered in determining regulatory actions	NA	NA	NA	NA	NA	NA	✲	NA	NA	NA	✲
3.6—Agreed quality assurance processes are in place for staff use	NA	✲	✲	NA	NA	NA	NA	✲	NA	NA	NA
3.7—Relevant staff trained in risk management policies, processes and procedures	NA	NA	NA	NA	NA	NA	NA	NA	✲	NA	NA
3.8—Demonstrated avenues for stakeholders to provide feedback and processes or policies to incorporate or consider this when tailoring approaches to risk	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	✲

✲: Reported

Table 4: KPI 4—Compliance and monitoring approaches are streamlined and coordinated

Measure	1	2	3	4	5	6	7	8	9	10	11
4.1—Demonstrated effort to reduce number and crossover of information requirements imposed on regulated entities	✱	NA	NA	✱	✱	NA	NA	NA	✱	NA	NA
4.2—Demonstrated effort to coordinate inspections with similar regulators, where appropriate	✱	NA	NA	NA	NA	NA	NA	NA	✱	NA	NA
4.3a—Demonstrated effort to share and receive information among regulators, where appropriate	NA	NA	NA	NA	NA	NA	✱	NA	✱	NA	NA
4.3b—Demonstrated effort to store and retrieve information among regulators, where appropriate	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	✱
4.4—Evidence of collected information being acted on or stored	NA	✱	✱	NA	NA	NA	✱	✱	NA	NA	NA
4.5—Demonstrated transparency of inspection monitoring arrangements	NA	NA	NA	NA	NA	✱	NA	NA	NA	NA	NA
4.6—Monitoring and enforcement strategies that allow for a range of regulatory responses	✱	✱	NA	✱	✱	✱	NA	✱	NA	✱	NA
4.7—Feedback mechanisms to seek stakeholder views on inspection and monitoring regimes	NA	NA	NA	NA	NA	NA	NA	NA	NA	✱	✱

✱: Reported

Table 5: KPI 5—Regulators are open and transparent in their dealings with regulated entities

Measure	1	2	3	4	5	6	7	8	9	10	11
5.1—Requirements of regulated entities are open and transparent	NA	NA	NA	✱	✱	NA	NA	NA	NA	NA	NA
5.2—Enforcement strategy and risk approach are published	✱	✱	✱	NA	✱	NA	NA	✱	✱	NA	NA
5.3—Reponses to requests from regulated entities are provided within specified timeframes	NA	NA	NA	NA	NA	✱	NA	NA	✱	✱	NA
5.4—Reasons for information requests are communicated clearly and consistently	NA	NA	NA	NA	NA	NA	✱	NA	✱	✱	NA
5.5a—Performance measurement results are published	NA	✱	✱	✱	NA	✱	NA	NA	✱	NA	NA
5.5b—Performance information is made publicly available where appropriate	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	✱
5.6—Advice and guidance is widely available to stakeholders, with feedback mechanisms in place to support and inform continuous improvement	✱	NA	NA	NA	NA	NA	✱	✱	NA	NA	NA
5.7—100 per cent of regulation impact statements are certified as compliant by the Office of Best Practice Regulation	NA	NA	NA	✱	NA	NA	NA	NA	NA	NA	NA

✱: Reported

Table 6: KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks

Measure	1	2	3	4	5	6	7	8	9	10	11
6.1—Documented procedures are in place to allow active and regular engagement with stakeholders *to seek contributions to improvement of the regulatory framework	✱	✱	✱	✱	✱	✱	✱	✱	✱	✱	✱
6.2—Stakeholder events are held regularly to facilitate participation in the development and amendment of regulatory frameworks	NA	✱	✱	NA	NA	NA	✱	✱	NA	NA	✱
6.3—Documented procedures are in place to facilitate the flow of information between the regulator and the policy departments	✱	NA	NA	✱	✱	✱	NA	NA	✱	✱	NA

✱: Reported

Appendix Two: Assessment criteria by key performance indicator

Table 1: KPI 1—Regulators do not unnecessarily impede the efficient operation of regulated entities

Maturity Level	Criteria
Leading	• Regulatory policies, procedures and requirements are systematically reviewed within the Department and with regulatory peers, experts and stakeholders. Recommendations are acted on transparently. • Complaint mechanisms are in place and easily accessible for each regulatory function. Complaints are investigated and regulated entities advised of outcomes. • Networking, collaboration and exchange (including internationally) are core organisational principles and a key part of organisational culture and regulatory capability. They are subject to continual review and improvement. • Environment scanning and surveys of regulated entities are planned and regularly undertaken. Results are incorporated into business practices.
Well Established	• Review mechanisms are embedded in each regulatory function and are fit for purpose. Outcomes from reviews of regulatory policies, procedures and requirements are feed into strategic planning. • Complaint mechanisms are in place for each regulatory function and all complaints are investigated. • Environment scanning and international collaboration is planned and implemented systematically across all regulatory divisions at appropriate intervals.
Maturing	• Review mechanisms are in place for most regulatory functions. • Complaint mechanisms exist. • Some international networks have been formalised. • Environment scanning has occurred in one or more business areas.
Developing	• Review mechanisms are implemented and resourced and some review outcomes are fed back to discrete regulatory areas. • Discrete processes for complaints handling exist. • International engagement has occurred in one or more regulatory divisions. • Environment scanning is planned.
Emerging	• The approach to complaints and internal checks on decision making and regulatory processes is ad hoc. • The benefits of review mechanisms have been identified and resources have been allocated to develop review functions in one or more regulatory divisions. • International collaboration occurs in an ad hoc manner by individuals. • Environment scanning has been identified but not acted on.
Absent	• The approach to assessing operational decisions and approaches is reactive (e.g. as a result of a major incident or crisis). Legislative review, litigation and complaint processes are the only mechanisms in place to test decision making. • Environment scanning and international collaboration are not undertaken.

Table 2: KPI 2—Communication with regulated entities is clear, targeted and effective

Maturity Level	Criteria
Leading	• Examples or case studies of successful engagement are regularly showcased and recognised as best practice in the sector. • Information about regulatory decisions and process is routinely published, meets accessibility requirements and the relevance and usefulness of this information to stakeholder is regularly tested. • Multiple pathways exist for stakeholder participation in the development of new policies, guidelines and standards.
Well Established	• The Department has a clear understanding of why it is engaging and this is communicated clearly with stakeholders and the community. • The Department has a clear understanding of what stakeholders and community groups it needs to engage with. • Fit-for-purpose stakeholder and community engagement is valued, prioritised and resourced across regulatory functions. • The Department provides timely, easy to understand and transparent information to communicate its expectations and explain its decisions.
Maturing	• The Department has developed an Engagement Policy (or equivalent). • Most business areas seek feedback and engagement from stakeholders and the regulated community. • Appropriate information about decisions and processes is published.
Developing	• The need to understand and effectively engage with stakeholders and the community has been identified but not yet implemented across the Department. • Engagement with stakeholders and the community is undertaken by some but not all staff in the Department. • Some information about regulatory decisions, process or changes is publicly available.
Emerging	• Engagement with regulated entities, stakeholders and the community is ad hoc, reactive and based on problems and issues.
Absent	• Processes for stakeholder and community engagement are undocumented or absent.

Table 3: KPI 3—Actions undertaken by regulators are proportionate to the regulatory risk being managed

Maturity Level	Criteria
Leading	• Environmental and regulatory risk is considered across the full spectrum of regulated activities. • The Department has published and clearly and consistently articulates its approach to risk-based regulation and sets out clear expectations for regulated entities. • The Department's regulatory approach is supported by a published compliance and enforcement policy that outlines a graduated response to these activities and is recognised as best practice in the sector • The regulated and wider community has a clear understanding of the Department's approach to regulation and compliance and enforcement. • A process or mechanism exists to scan for emerging regulatory theory and practice for continuous review and improvement. Stakeholder input is encouraged. • All regulatory staff are trained to undertake a risk-based approach to regulation.
Well Established	• The regulator's compliance and enforcement policy clearly describes how it will regulate using a harms- or risk-based responsive approach. • Staff understand the approach to risk-based regulation and apply it in their day to day work. Staff are able to articulate requirements to regulated entities. • A process is used to review and document and regulatory decision making to ensure the Department is making decisions in line with its articulated risk-based regulatory approach. • Staff and the regulated community's understanding of the regulator's posture and approach is measured. • Risk-based regulatory training is encouraged and commonly undertaken.
Maturing	• A compliance and enforcement policy (or equivalent) is developed. Elements of riskbased and outcome-focused regulation are applied in parts of the Department. • The Department's regulatory approach is articulated and applied in some business areas. • Regulated entities' compliance history are considered in some decisions.
Developing	• The need to clearly articulate and apply a regulatory approach has been identified but not yet implemented across the Department's regulatory functions. • Regulatory posture and approaches are discussed by some regulatory staff but not all in the Department.
Emerging	• Staff within regulatory areas are aware of and discussing risk-based approaches, but not yet in a formal or consistent way.
Absent	• The Department does not employ risk-based approaches to regulatory decision making.

Table 4: KPI 4—Compliance and monitoring approaches are streamlined and coordinated

Maturity Level	Criteria
Leading	• The Department has clear processes and systems to work with other regulators to reduce the number and crossover of information requirements and share, store and use information. • Formal relationships with co-regulators are proactively built and maintained and are used to coordinate monitoring, audit, compliance and enforcement activities. • Published monitoring and compliance strategies offer regulators a range of responses to compliance incidents and are developed in consultation with stakeholders. They are regularly reviewed.
Well Established	• Systems are mostly in place and enable communication with other regulators to reduce the number and crossover of information requirements and share, store and use information. • There are some formal processes to govern monitoring, compliance and enforcement activities. • Monitoring, audit and inspection regimes follow published guidelines and policies, allow for a range of responses and have feedback mechanisms.
Maturing	• Capability and systems are being developed to ensure information can be appropriately shared, stored and used. • Some relationships with other regulators have been formalised. Staff are encouraged to use networks to share information, align activities and minimise duplication. • Monitoring, audit and inspection regimes follow published guidelines and policies and there are some feedback mechanisms in place.
Developing	• Staff often use informal networks to exchange ideas and information with regulators in other jurisdictions. • Staff sometimes coordinate with other regulators to minimise duplication. • The need to provide information to and seek views from stakeholders about monitoring, audit, compliance and enforcement regimes has been identified.
Emerging	• Some staff are aware of related regulatory functions in other jurisdiction but have limited engagement with them. Exchange of ideas and information from other regulators is ad hoc and at an individual level. • Some information on monitoring, audit, compliance and enforcement regimes is available and there are ad hoc stakeholder engagement and feedback mechanisms.
Absent	• There is reactive contact with other regulators and regulatory activities are not coordinated across different jurisdictions. • Mechanisms are not in place to facilitate transparency and stakeholder feedback of monitoring and audit and compliance and enforcement regimes.

Table 5: KPI 5—Regulators are open and transparent in their dealings with regulated entities

Maturity Level	Criteria
Leading	• The regulated and wider communities have a clear understanding of regulatory requirements and access to accurate and timely advice and guidance. • The Department has a published compliance and enforcement and risk policies that are regularly showcased and recognised as best practice. • A specific regulatory engagement strategy or client service charter that includes feedback mechanisms to support continuous improvement and sets out clear timeframes for responding to requests for information and guidance from regulated entities are regularly promoted and readily available. • Regulatory performance is systematically measured, has mechanisms to involve stakeholders and is published annually. • All regulatory decisions are published (except where that would be inappropriate). • Freedom of information processes are explained and easy to access. • The impact of all new and substantively revised regulation is subject to a regulatory impact assessment process. Each regulation impact statement is certified as best practice by the Office of Best Practice Regulation.
Well Established	• Most elements of the regulated and wider community have a good understanding of the regulator's requirements and how to access information and guidance. • The regulator's compliance and enforcement policy or client service charter clearly describes how it will regulate using a risk-based responsive approach. • Staff understand how to best request information and provide guidance and advice to regulated entities. • Regulatory performance is regularly measured and published, and stakeholder involvement is common. • All regulation impact statements are certified as compliant or best practice by the Office of Best Practice Regulation.
Maturing	• A compliance and enforcement policy or client service charter is developed. • Some business areas use risk-based or outcome-focused approaches. • Staff and regulated communities have mostly a shared understanding of how regulation is undertaken, what type of information is required and where it can be accessed. • Performance measurement is done semi regularly.
Developing	• The need to clearly articulate the Department's approach to regulation and clearly state requirements and provide guidance has been identified but not yet implemented across regulatory divisions. • Performance measurement is ad hoc and not always published. Most regulation impact statements are certified as compliant by the Office of Best Practice Regulation.
Emerging	• Staff are unable to accurately and consistently articulate the Department's approach to decision making or consistently practice regulatory transparency in interactions with regulated entities and stakeholders.
Absent	• Regulatory decisions are not published or available. • Regulated entities are not provided with reasons for decisions that affect them.

Table 6: KPI 6—Regulators actively contribute to the continuous improvement of regulatory frameworks

Maturity Level	Criteria
Leading	• There are clear processes in place to facilitate active and regular engagement with all relevant stakeholders to seek and implement improvements across all of the Department's regulatory functions. • Networking, collaboration and exchange are core organisational principles and key parts of organisational culture. • The Department actively plants and organises regular events to facilitate stakeholder input into the development and maintenance of the Department's regulatory regimes.
Well Established	• There are formalised processes in place to review and improve the Department's regulatory functions including by involving stakeholders. • The Department regularly holds events to engage stakeholders to participate in the development of new and maintenance of existing, regulatory regimes.
Maturing	• Staff are actively encouraged to engage with stakeholders to facilitate input into the development, maintenance and improvement of regulatory regimes. • Some formal events are held to engage stakeholders to participate in the development of new and maintenance of existing, regulatory regimes.
Developing	• Some resources have been set aside to promote stakeholder involvement in the development, maintenance and improvement of regulatory regimes. • Staff are supported to share information between policy and regulatory areas and central agencies, but there are no formalised processes to achieve this.
Emerging	• Staff are aware of the need to maintain and improve regulatory regimes but there is no consistent or systematic process in place. • Some ad hoc stakeholder events are held and there are limited ways for stakeholders to provide input into review processes.
Absent	• There are no active or formal procedures or mechanisms to maintain or improve regulatory functions or to involve stakeholders into these processes.